

State of New Hampshire
Supreme Court

NO. 2020-0243

2020 TERM
OCTOBER SESSION

John Doe

v.

New Hampshire Department of Safety

RULE 7 APPEAL OF FINAL DECISION OF THE
MERRIMACK COUNTY SUPERIOR COURT

REPLY BRIEF

October 7, 2020

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ARGUMENT

I. Evidentiary Guideline Rule Does Not Bolster the Government's Case

In its brief, NHDOS notes that during a “Reasonably Equivalent Offense Hearing,” its rules require it to consider “all relevant information.” *Admin.Rules* Saf-C 5502.02(b). NHDOS cites the rule as though it affects the burden of proof or enhances the government's case. NHDOS BRF. at 4-5. It does neither.

The rule provides:

In conducting the [equivalency] analysis . . . , the division shall review all relevant information including but not limited to the following:

- (1) The sexual offender or offender against children's criminal record;
- (2) The applicable out of state laws and New Hampshire laws;
- (3) Court records; and
- (4) Any admissions by the sexual offender or offender against children.

Admin.Rules Saf-C 5502.02(b).

It is apparent that the rule is an evidentiary guide – simultaneously permitting and requiring the NHDOS to widely cast its inquiry to aid in determining the status of the alleged registrant.

The rule does not, however, affect the standard of proof, nor does it bolster the government's case regarding equivalency.

Nothing in the items listed in the rule – Doe's record, state laws, court records, admissions – sheds any light on which subsection of the New York statute Doe was convicted of. Considering all the evidence, Doe's conviction remains ambiguous.

Accordingly, the government did not meet its burden, and the evidentiary rule does nothing to strengthen its position.

II. Consistent Docket Number is Unremarkable

In its brief, NHDOS points out that the New York court's docketing number and the New York criminal history system's tracking number were consistent throughout Doe's 2002 incident, and that this consistency justifies its equivalency finding. NHDOS BRF. at 6.

Doe is not arguing that the 2002 conviction was from some separate incident; in 2002 there was clearly a charge, a bargain, a plea, and a sentence – all part of the same criminal proceeding. That the proceeding kept the same docketing number or tracking number throughout the process is unremarkable, and proof of nothing.

III. Erroneous Burden of Proof

As noted in Doe's opening brief, NHDOS enunciated a burden of proof twice. The first time, it placed the entire burden on Doe. The second time, it claimed a burden-shift to Doe after satisfaction of an initial burden by the Government. DOE'S BRF. at 19. In its brief, NHDOS claims its statements about the burden of proof merely describe Doe's due process right to be heard. NHDOS BRF. at 7.

There has been, however, no dispute about Doe's opportunity to be heard. It is apparent that NHDOS's statements about the burden of proof were indeed about the burden of proof, and as argued in Doe's brief, in error.

CONCLUSION

Because there is no way to know which subsection of New York's statute Doe was convicted of, New Hampshire cannot place Doe's name on the public sex offender registry, and this court should reverse.

Respectfully submitted,

John Doe
By his Attorney,
Law Office of Joshua L. Gordon

Dated: October 7, 2020

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CERTIFICATIONS

I hereby certify that this brief contains no more than 3,000 words, exclusive of those portions which are exempted.

I further certify that on October 7, 2020, copies of the foregoing will be forwarded to Christina M. Wilson, Assistant Attorney General; and to Anthony F. Sculimbrene, Esq.

Dated: October 7, 2020

Joshua L. Gordon, Esq.