Circuit Court for Anne Arundel
Case No. 02-K-00-002267

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 862

September Term, 2019

GARY W. PESCRILLO

v.

STATE OF MARYLAND

Beachley,
Kehoe,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 24, 2020

This case comes before this Court as a Motion to Correct an illegal sentence and involves a court order requiring registration as a sex offender. In 2002, appellant Gary W. Pescrillo entered an *Alford* plea[1] in the Circuit Court for Anne Arundel County to the first-degree sex offense that he committed in 1989. He was sentenced in 2002 and resentenced in 2017. Appellant, *pro se*, presents the following question for our review, which we have rephrased for clarity:

> 1. Did the lower court impose an illegal sentence under Md. Rule 4-345(a) when it imposed its special conditions of probation?

We shall hold that the condition that appellant register as a sex offender, if based on his 1989 offense predating the enactment of the Maryland Sex Offender Registration Act ("MSORA") in 1995, violates the state constitutional prohibition against *ex post facto* laws and, hence, is illegal under Md. Rule 4-235(a). We vacate the circuit court's registration condition and remand to that court to determine whether a separate registration condition applies constitutionally based on any of appellant's out-of-state sex offenses and registrations.[2]

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[1] *See North Carolina v. Alford*, 400 U.S. 25 (1970). An *Alford* plea is a "specialized type of guilty plea where the defendant, although pleading guilty, continues to deny his or her guilt, but enters the plea to avoid the threat of greater punishment." *Ward v. State*, 83 Md. App. 474, 478 (1990). An *Alford* plea is the functional equivalent of a guilty plea. *Id.* at 480.

[2] Persons subject to registration as a sex offender in Maryland include "a sex offender who is required to register by another jurisdiction . . . , and who is not a resident of this State, and who enters this State: (i) to begin residing or to habitually live; (ii) carry on employment; . . . or (iv) as a transient." Md. Code, Criminal Procedure ("C.P.") § 11-704(a)(4).

I.

On December 15, 2000, appellant was indicted by the Grand Jury for Anne Arundel County for first-degree sex offense and ten related charges[3] committed in 1989 after DNA evidence identified him in 2000. On April 8, 2002, appellant entered an *Alford* plea to first-degree sex offense in the Circuit Court for Anne Arundel County, whereby the court bound itself to sentencing a maximum term of "actual incarceration" of thirty years and retained imposing "[a]ny split sentence . . . , any probation, any terms of probation, all of those kinds of things" in its discretion. The court ordered a presentence investigation report and set the sentencing date for July 17, 2002.

The presentence investigation revealed that at the time of his 1989 Maryland offense, appellant was on probation, presumably for his 1985 battery conviction in Illinois.[4] Appellant was also convicted in 1994 of taking indecent liberties with children in North Carolina and registered as a sex offender there in 1998.[5] Although not shown in the presentence investigation report, it seems that appellant was additionally required to

[3] The related charges were two counts of assault with intent to commit a sex offense, second-degree sex offense, burglary with intent to commit a felony, use of a handgun in a felony, use of a handgun in the commission of a crime of violence, third-degree sex offense, assault and battery, assault, and fourth-degree sex offense.

[4] The presentence investigation report in the record before us contained incomplete details regarding appellant's previous convictions.

[5] The presentence investigation report did not contain details of appellant's registration requirement, including its duration.

register as a sex offender in Illinois for an offense committed in 2000.[6]

At sentencing in 2002 in Maryland, appellant's psychiatric expert witness testified that appellant had been, for much of his adult life, emotionally imbalanced and suffering from "paraphilia, not otherwise specified," depression that was treatable possibly with medication, and potentially a personality disorder. According to the expert, appellant was suffering from depression at the time of his 1989 offense.

The court sentenced appellant to a term of incarceration of forty-five years with all but thirty years suspended and five years supervised probation with the first two on home detention. As special conditions of his probation, appellant was to register as a sex offender, have no contact with the victim or her family, receive psychosexual evaluation and counselling and take any necessary medication throughout probation, and pay court and supervision costs to the Department of Parole and Probation ("DPP"). When the State asked the court to include sex offender registration as a probation condition, the court asked, "Now I thought he was already registered?" The State answered, "I think the registration is for 10 years." The court replied "okay" and ordered appellant to register as a sex offender in Maryland. Appellant did not object to any part of his sentence.

In 2011, appellant filed a motion to correct an illegal sentence. The circuit court denied the motion, and appellant filed a notice of appeal and a petition for a prejudgment writ of certiorari, which was stayed. On August 15, 2013, we held in an unreported opinion

[6] At the 2017 sentencing, appellant's counsel informed the court that appellant was required previously to register in Illinois. According to a search result on the Dru Sjodin National Sex Offender Public Website, appellant was convicted in Illinois in 2000 for a first-degree sex offense.

that the home detention portion of appellant's sentence was illegal because the statute authorizing home detention as a punishment did not exist when appellant committed his crime. *Pescrillo v. State*, No. 2482, Sept. Term 2011 (filed Aug. 15, 2013). We vacated that portion of his sentence and affirmed the rest. *Id.* The Court of Appeals subsequently considered and denied appellant's petition. *Pescrillo v. State*, No. 426, Sept. Term 2013 (Dec. 23, 2013).

On September 19, 2017, the circuit court approved an agreement between appellant and the State, whereby appellant would waive his right to seek post-conviction relief and, in exchange, would be resentenced to a term of incarceration of forty-five years with all but twenty-nine years suspended and five years "supervised probation with all terms and conditions presently existing." The court announced the resentence as follows:

> "By way of resentencing, it is the sentence of this Court that you be committed to the Division of Correction for a sentence of 45 years, I am going to suspend all but 29 years of that sentence.
>
> That sentence is dated from November 9, 2000. Upon your release, you will be placed on five years supervised probation. In addition to the regular conditions of probation, the following special conditions are hereby imposed:
>
> One, you are to register as a sex offender immediately upon your release. Two, you are to have no contact by any means with the victim in this matter . . . or her family. Three, you are to submit to psychosexual evaluation and treatment, including medication, as deemed necessary by the Department of Parole and Probation.
>
> Special condition four, you [are] to pay Court costs in the amount of $835 payable through parole and probation and you are also to pay the supervision fees."

The following colloquy ensued:

> "THE COURT: Counsel, let me ask you a question because we now have different tiers of registration required. Was your client ever required to register in another state?
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> ***
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> [DEFENSE COUNSEL]: Yes, Your Honor, he was required to register in the State of Illinois.
>
> THE COURT: So, that would be a Tier 1[7] Sex Offender Registration.
>
> [THE CLERK]: Tier 1, thank you Judge.
>
> THE COURT: Yes. All right, thank you, that will conclude this matter."

Witnessed by his counsel, appellant signed the Probation/Supervision Order that acknowledged that he was advised of the consequences of any probation violation. Appellant did not make a statement on his own behalf, and his counsel did not object or argue that there was any change in circumstances that rendered the special probation conditions no longer necessary.

On February 6, 2018, appellant filed a second motion to correct an illegal sentence. In response, the State pointed out that because appellant was resentenced on September 19, 2017, any complaint about his 2002 sentence was moot. The circuit court denied appellant's motion, and appellant appealed. The State moved to dismiss the appeal, and we granted the State's motion on November 21, 2018. Mandate, *Pescrillo v. State*, No. 19,

[7] Tier 1 is the lowest tier of sex offender registration in Maryland and requires that the offender register in person every six months with a local law enforcement for fifteen years. *See* C.P. §§ 11-707(a)(1)(i), 11-707(a)(4)(i).

Sept. Term 2018 (Nov. 21, 2018).

On or about May 9, 2019, appellant filed his third motion to correct an illegal sentence challenging the special conditions of his probation. The State opposed the motion, and on June 12, 2019, the circuit court summarily denied the motion without a hearing. On July 2, 2019, appellant filed this timely appeal.

II.

Before this Court, appellant argues that the circuit court abused its discretion or, in the alternative, imposed an illegal sentence when it imposed the special conditions of probation apart from having no contact with the victim or her family. Appellant acknowledges that he did not object below but contends that one cannot consent to a sentence that is illegal and that an illegal sentence can be challenged at any time without an objection below.

Citing federal law, appellant argues that (1) his thirty-year-old offense is too remote in time to justify his special probation conditions; (2) the court did not state in open court on the record its reasons for imposing its particular conditions, especially that of medication; and (3) the conditions have no rational connection to the purposes of deterrence, public protection, or rehabilitation because the State did not present evidence that appellant had a propensity to commit sex offenses. Citing Maryland law, he argues further that (4) the conditions have no rational connection to his offense; (5) he was not on notice of conditions before entering his plea agreement, which he contends did not include

probation conditions; and (6) he was also not advised of the potential consequences of violating them.

Specifically regarding the condition that he register as a sex offender, appellant argues that MSORA did not exist at the time of his offense in 1989 and that applying it to him would be a violation of, *inter alia*, the prohibition against *ex post facto* laws in the United States Constitution and Maryland Declaration of Rights.

As to the conditions requiring him to partake in psychosexual evaluation, counselling, and any necessary medication as directed by DPP and to pay $835 in court costs and supervision costs to DPP, appellant seems to argue that those conditions are illegal because they are an "unlawful delegation of judicial authority" to DPP in violation of "separation-of-powers principles." In appellant's view, the court has given DPP "complete discretion" in deciding his psychosexual evaluation and treatment plan.

The State argues that appellant's probation conditions are not illegal because they are not vague or uncertain and have a rational connection to appellant's crime of first-degree sex offense. Additionally, the State argues that appellant was on notice of his probation conditions and advised of the potential consequences of violating those conditions. As to the registration condition specifically, the State argues that appellant is entitled to no relief because the 2010 amendment to MSORA applied retroactively to him at his 2017 resentencing.[8]

[8] The State does not address appellant's arguments concerning the court's lack of authority to delegate to DPP the power to oversee psychosexual evaluation, counselling, and any necessary medical treatment or to order appellant to pay court costs and supervision fees to DPP. The State also does not engage with appellant's various (footnote continued . . .)

III.

As a narrow exception to the general rule of finality, we may correct an illegal sentence, including illegal conditions of probation, at any time. Rule 4-345(a); *Barnes v. State*, 423 Md. 75, 83 (2011). A defendant can challenge an illegal sentence within the meaning of Rule 4-345(a), notwithstanding that (1) he did not object at sentencing, (2) he purported to consent to it, or (3) he did not challenge it in a timely-filed direct appeal. *Chaney v. State*, 397 Md. 460, 466 (2007). Whether such illegality exists is a question of law that we review *de novo*. *Carlini v. State*, 215 Md. App. 415, 443 (2013).

Illegality under Rule 4-345(a) is "limited to those situations in which the illegality inheres in the sentence itself," which occurs where "there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed." *Chaney*, 397 Md. at 466. Such illegality is "intrinsically and substantively unlawful." *Id.*

The Court of Appeals explained the difference between this inherent illegality, subject to correction at any time under Rule 4-345(a), and illegality in the commonly understood sense, subject to ordinary review and procedural limitations, as "the difference between a substantive error in the sentence itself, and a procedural error in the sentencing proceedings." *Bryant v. State*, 436 Md. 653, 663 (2014). A sentence does not become

arguments based on federal law and instead notes that these arguments are inapplicable because the federal statutory provisions and the Federal Rules of Criminal Procedure that he cites do not apply to his state court proceedings.

illegal in the sense of Rule 4-345(a) because of "some arguable procedural flaw in the sentencing procedure." *Tshiwala v. State*, 424 Md. 612, 619 (2012). In other words, Rule 4-345(a) may not be used as a vehicle to obtain belated appellate review of "errors occurring at the trial or other proceedings prior to the imposition of sentence." *Carlini*, 215 Md. App. at 425 (citing *Hill v. United States*, 368 U.S. 424, 430 (1962)); *see also State v. Wilkins*, 393 Md. 269, 284 (2006) ("In defining an illegal sentence the focus is not on whether the judge's 'actions' are *per se* illegal but whether the sentence itself is illegal.").

A trial court has very broad discretion when imposing probation conditions in order to best accomplish the objectives of sentencing—punishment, deterrence, and rehabilitation. *Meyer v. State*, 445 Md. 648, 670 (2015); *see* Md. Code, C.P. § 6-221.[9] The court is limited only by constitutional standards and statutory limits; a condition of probation must not be vague, indefinite, uncertain, arbitrary, or capricious and must be reasonable and have a rational connection to the offense. *Meyer*, 445 Md. at 670. A court may express probation conditions in general terms "so long as it is contemplated that the court or its designee (usually the probation authority) will provide the probationer with reasonable, specific direction within the ambit of the initially expressed general condition, and such guidance is in fact given." *Hudgins v. State*, 292 Md. 342, 348 (1982); *see also Russell v. State*, 221 Md. App. 518, 529 (2015) (holding that a probation authority is

[9] C.P. § 6-221 states that "[o]n entering a judgment of conviction, the court may suspend the imposition or execution of sentence and place the defendant on probation on the conditions that the court considers proper."

permitted to provide specific rules for a probationer within the ambit of a general condition imposed by the court).

As part of appellant's plea agreement in 2002, the circuit court bound itself only to imposing a maximum actual incarceration of thirty years and stated explicitly that it retained the discretion to impose conditions of probation. Appellant did not object at that time or at his sentencing. Furthermore, appellant did not object at his 2017 resentencing, where the court re-imposed the same probation conditions from 2012 except for the previously vacated condition of home detention. Because of appellant's lack of objections and his agreement at his 2017 resentencing to forgo all postconviction relief in exchange for a shortened term of incarceration, we have left to consider only the alleged illegality, under Rule 4-345(a), of appellant's probation conditions.

We turn first to appellant's general arguments concerning his probation conditions. We reject his arguments that he was not on notice about his probation conditions and was not advised of the potential consequences of violating them because (1) the record contradicts his factual claims and (2) these arguments are not cognizable under Rule 4-345(a). At appellant's plea hearing in 2002, the court informed him that it had discretion over probation conditions. Appellant acknowledged that he understood and did not object. At his 2017 resentencing, he was on notice of his specific probation conditions from 2002, which were to remain. Again, appellant did not object. The record also indicates that appellant confirmed that he was advised of the potential consequences of violating his probation. Even if he was not on notice or not advised properly, such procedural defects do not render his probation conditions inherently illegal. *See Tshiwala*, 424 Md. at 619

("A sentence does not become 'an illegal sentence because of some arguable procedural flaw in the sentencing procedure.'").

Appellant argues that the court was required to but did not state on record its reasons for imposing its specific probation conditions. The problem with appellant's argument is that the court is not required to do so. Rule 4-242 lays out the extent of the court's requirement and states, in pertinent part, as follows:

> "(c) Plea of Guilty. The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, *the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea.*"

(Emphasis added). Even if the court were required to state on the record its reasons for imposing specific probation conditions, this is another procedural claim not cognizable under Rule 4-345(a).

Appellant argues that his 1989 offense was too remote in time, either from his sentencing date or anticipated release date from incarceration, to justify imposing his probation conditions. In Maryland, the amount of time between a defendant's offense and his sentencing date or anticipated release date from incarceration is not a factor—independent of the confines of being reasonable and having a rational connection to his offense—in considering justifiability of probation conditions. *See Doe v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 535 (2013) (a term of incarceration of ten years, with all but four and a half years suspended, and three years supervised probation for a defendant

who was charged in 2005 for 1983–84 sex crimes); *State v. Crawley*, 455 Md. 52 (2017) (for a life sentence with all but 35 years suspended, upholding a four year supervised probation with special conditions that included submitting to alcohol and drug evaluation, testing, and treatment).

We hold that the circuit court acted within its broad discretion to impose probation conditions for the purpose of deterrence, public protection, and rehabilitation. The court's probation conditions were reasonable and had a rational connection to appellant's first-degree sex offense considering his history of committing sex offenses in multiple states, the fact that he was on probation when he committed his 1989 offense, and his psychiatric expert witness's testimony that he suffered from a mental disorder at the time of his 1989 offense and that he still suffered from various mental disorders.

We turn to appellant's arguments regarding individual probation conditions, beginning with the condition that he receive, during his five-year probation, psychosexual evaluation, counselling, and any necessary medication. We hold that this condition is not inherently illegal because it has a rational connection to his offense and diagnosis of mental disorders and does not unduly curtail his liberty rights. *See Russell v. State*, 221 Md. App. 518, 522–23 (2015) (appellant's probation conditions included the Collaborative Offender Management Enforcement Treatment (COMET) supervision, which requires taking prescribed psychiatric medication).

To further the goals of sentencing, a trial court has broad discretion to impose probation conditions that curtail a defendant's liberty while on probation. *Allen v. State*, 449 Md. 98, 111 (2016). Whether a condition significantly deprives the defendant's liberty

requires a case-by-case analysis. *Peterson v. State*, 467 Md. 713, 738 (2020). In this case, it is appellant's psychiatric expert witness who attributed life-long and current mental disorders to him and opined that he suffered from one at the time of his 1989 offense. In addition, appellant committed multiple out-of-state sex offenses after his 1989 offense. We hold that a probation condition requiring appellant to take any necessary psychiatric mediation during his five-year probation does not unduly violate his liberty rights.

Furthermore, the court acted within its authority in delegating to DPP the implementation of psychosexual evaluation, counselling, and potential medication. *See State v. Callahan*, 441 Md. 220, 230, 235 (2015) (holding that "an order of probation may allow a probation agent a degree of latitude in enforcing a general condition of probation" and rejecting the argument that the probation agent, in doing so, "usurps the judiciary's powers by essentially choosing conditions of probation"); *Russell*, 221 Md. App. at 529–30 (upholding discretionary curfew imposed by the court and administered by the DPP).

As to the condition that appellant pay $835 in court costs and supervision costs to DPP, the court was within its authority to order so. *See* C.P. § 6-219(b)(2) (stating that as part of suspension of sentence and other conditions placed on sentence, "a court . . . may pass orders and impose terms as to costs . . . as may be deemed proper"); *id.* § 6-226 (stating that a supervisee shall pay his fees for probation under supervision of DPP to DPP); *Fuller v. State*, 64 Md. App. 339, 355 (1985) (stating costs may be imposed as condition of probation).

Finally, we turn to the condition and requirement of sex offender registration. If based solely on appellant's 1989 offense in Maryland, the registration condition violated

the state prohibition against *ex post facto* laws and is illegal under Rule 4-345(a). *See Doe*, 430 Md. at 568. Hence, we vacate the circuit court's registration condition and remand to that court to determine the applicability of the registration condition *vis-à-vis* any of his out-of-state sex offenses and registrations.

Based on his 1989 offense, appellant's registration requirement is illegal under Rule 4-345(a). In 1995, the Maryland General Assembly enacted MSORA, which applied prospectively to sex offenders who committed their crime after the statute went into effect on October 1, 1995. *See* 1995 Md. Laws, Ch. 142, § 3. Although the retroactivity provision in the 2010 amendment to MSORA applied to appellant, the Court of Appeals held that such retroactive applications violated the state prohibition of *ex post facto* laws and were unconstitutional. *See Doe*, 430 Md. at 568. We turn to *Doe* to explain these points.

The defendant in *Doe* was charged in 2005 with various sex crimes involving children, which occurred during the 1983–84 school year. *Id.* at 538. In 2006, he pled guilty to one count of child sexual abuse and was sentenced to a term of incarceration of ten years, with all but four and a half years suspended, and three years supervised probation. *Id.* at 538–39. His probation conditions included registering as a child sex offender. *Id.* at 539–40. Subsequently, he filed a Motion to Correct an Illegal Sentence, challenging, *inter alia*, the registration condition. *Id.* at 540. He noted that the version of MSORA that was in effect in 2006 applied retroactively to a child sex offender who committed his offense on or before October 1, 1995, *if* he was "under the custody or supervision of the supervising authority on October 1, 2001." *Id.* Because his offense took place before October 1, 1995 and he was indisputably *not* under custody or supervision of the supervising authority on

October 1, 2001, the Circuit Court agreed with him and struck his registration condition. *Id.*

After the defendant's early release from incarceration in 2008, the General Assembly passed a 2009 amendment to MSORA, which retroactively required a child sex offender who committed his offense prior to October 1, 1995 but was convicted on or after October 1, 1995 *and* had not been previously required to register under Maryland law to now register as a child sex offender. *Id.*; *see* C.P. § 11-702.1(c)(ii). The defendant registered in early October 2009, allegedly under his probation officer's threat of arrest and incarceration. *Doe*, 430 Md. at 540–41. The subsequent 2010 amendment to MSORA, which introduced a tier system for offenders, categorized the defendant as a Tier III sex offender—the highest tier that requires registering in person every three months for life. *Id.* at 541; *see* C.P. §§ 11-701(q)(1)(ii), 11-704(a)(3), 11-707(a)(2)(i), 11-707(a)(4)(iii); 2010 Md. Laws, Chs. 174 and 175. The Circuit Court for Washington County denied appellant's request for a declaratory judgment that he not be required to register and for the relief that he be removed from the registry. In an unreported opinion, we affirmed the circuit court's judgment. *Doe v. Dep't of Pub. Safety & Corr. Servs.*, No. 1326, Sept. Term 2010 (filed Nov. 15, 2011).

In a plurality opinion, the Court of Appeals reversed, holding that requiring a sex offender who had committed his offense prior to the enactment of MSORA to register pursuant to its retroactivity provisions violated the prohibition against *ex post facto* laws in

Article 17 of the Maryland Declaration of Rights.[10] *Doe*, 430 at 547. Article 17 provides as follows:

> "That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required."

The Court of Appeals elaborated as follows:

> "[W]e have said, the 'two critical elements' that 'must be present' for a law to be unconstitutional under the *ex post facto* prohibition are that the law is retroactively applied and the application disadvantages the offender.
>
> ***
>
> The prohibition against *ex post facto* laws is rooted in a basic sense of fairness, namely that a person should have 'fair warning' of the consequences of his or her actions and that a person should be protected against unjust, oppressive, arbitrary, or vindictive legislation.
>
> ***
>
> *Based on principles of fundamental fairness and the right to fair warning within the meaning of Article 17, retrospective application of the sex offender registration statute to Petitioner is unconstitutional.*
>
> ***
>
> Ensuring this protection is especially vital in this case because a sex offender registration statute 'imposes significant affirmative obligations and a severe stigma on every person to whom it applies.'
>
> ***

[10] Because of this holding, the Court of Appeals noted that it needed not and did not address state or federal due process or other federal constitutional issues. *Doe*, 430 at 547.

> First, requiring Petitioner to register has essentially the same effect on his life as placing him on probation. It is well-settled in this State that probation is a form of a criminal sanction. Because the sex offender registration statute has a highly similar effect on Petitioner's life as being on probation, applying the statute to Petitioner effectively imposes on him an additional criminal sanction."

Doe, 430 at 551–53, 562 (emphasis added) (internal citations omitted).

Turning to the case at bar, at appellant's 2017 resentencing, the 2010 amendment to MSORA stated that MSORA "shall be applied retroactively to include a person who [] is under the custody or supervision of a supervising authority on October 1, 2010," C.P. § 11-702.1(a)(1); 2010 Md. Laws, Chs. 174 and 175. As appellant remained incarcerated on October 1, 2010 for his 1989 sex offense, the amendment applied retroactively to him. But as in *Doe*, this retroactive application violates Article 17 and is illegal under Rule 4-345(a). *See Doe*, 430 Md. at 568. We thus vacate appellant's registration condition as it applies to his 1989 offense.

But it is constitutional to require a defendant, who moved to Maryland after the enactment of MSORA in 1995, to register as a sex offender in Maryland based on his unexpired out-of-state sex offender registration. MSORA requires a Maryland registration for "a sex offender who is required to register by another jurisdiction . . . , and who is not a resident of this State, and who enters this State: (i) to begin residing or to habitually live; (ii) carry on employment; . . . or (iv) as a transient." C.P. § 11-704(a)(4). We held in *Dietrich v. State*, 235 Md. App. 92 (2017) that the defendant, who was obligated to register as a sex offender for life in Virginia for a 1993 offense and who moved to Maryland in

2009, was required to register in Maryland and that this was not a retroactive application of MSORA. We explained as follows:

> "At the time [the defendant] moved to Maryland in 2009, he was subject to compliance with the Maryland sex offender statute that was in effect at that time. In [his] case, it was the date that he moved to Maryland, not the date of the offenses [, *i.e.*, 1993], that determined his obligation to comply with the Maryland statute. Because [the defendant] was obligated to register for life under Virginia law when he moved to Maryland, the Maryland sex offender registration statute was not applied to him retroactively.
>
> ***
>
> [The defendant] was on notice of the Maryland registration requirement at the time he moved to Maryland."

Id. at 100–101.

The record before us seems to indicate that appellant relocated to Maryland after the enactment of MSORA in 1995, as he was indicted in 2000 in Maryland and was convicted of a crime in Illinois earlier in 2000. It also appears that his multiple out-of-state sex offender registrations include an Illinois's registration based on the 2000 conviction. We thus remand to the circuit court to examine each of appellant's out-of-state registrations and determine if any requires that he register in Maryland.

CONDITION OF PROBATION REQUIRING REGISTRATION AS A SEX OFFENDER UNDER MARYLAND SEX OFFENDER REGISTRATION ACT VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE

DIVIDED EQUALLY BETWEEN APPELLANT AND ANNE ARUNDEL COUNTY.