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NM Supreme Court rules on extended parole requirement for sex offenders

SANTA FE – Defendants convicted of child solicitation by electronic device are subject to a parole term of five to 20 years under changes made to a sex offender parole law in 2007, the state Supreme Court ruled today.

The Court reversed a decision of the state Court of Appeals, which held that the longer parole requirements did not apply to the electronic solicitation crime because of conflicting amendments to the sex offender parole statute by two bills passed in the 2007 legislative session.

“We disagree that these bills are irreconcilable and conclude that the extended parole term applies to those convicted of this crime,” the Court wrote in its unanimous opinion by Justice David K. Thomson.

The justices affirmed a district court’s imposition of the longer parole term on Anthony Sena rather than two years provided for under other parole provisions. The Clovis man pleaded no contest to child solicitation for using a dating website in 2015 to arrange a sexual encounter with an undercover police officer posing as a 14-year-old girl. He was sentenced to three years in prison, and appealed the requirement for parole of at least five years and up to 20 years.

In deciding the appeal, the Court analyzed the legislative intent of two bills that amended the same statutory section related to sex offender parole.

“The fact that the two bills addressed parole requirements for sex offenders does not demonstrate conflicting intentions of the Legislature because each bill’s purpose is distinct in its efforts to make specific independent improvements to the sex offender statute,” the Court wrote.

One measure, Senate Bill 735, created the offense of child solicitation by electronic communication (CES) and required those convicted of the crime to register as sex offenders and serve a parole period from five to 20 years. Another measure, Senate Bill 528, “focused on goals unrelated to the specific charge of CES,” the Court reasoned. SB 528 created a crime of aggravated criminal sexual penetration, imposed lifetime parole for the most severe sex offenses

and provided for GPS monitoring of sex offender parolees. SB 528 made no mention of the crime of electronic solicitation of a child.

In deciding the case, the justices explained the proper legal test for judges to follow in reconciling statutory changes and made clear that “our role is to read statutes harmoniously if possible.”

The Court rejected arguments that SB 528 nullified the longer parole provision for CES because it more extensively revised the sex offender parole law. The Senate passed both bills within two days of each other, the House passed the measures on the same day and the governor signed them into law on the same day, with SB 528 signed last.

“An interpretation that the Legislature intended SB 528 to supersede SB 735 assumes that the Legislature acted superfluously in enacting SB 735,” the Court wrote. “Given the improbability of the Legislature undertaking the legislative process to pass a bill and render it ineffective two days later and the lack of any express legislative intent to support this contention, the Court finds that SB 528 did not comprehensively amend SB 735 and gives effect to both amendments.”

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To read the decision in *State v. Sena*, No. S-1-SC-38713, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521636/index.do>