

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0268, A17-0220, A17-0222**

State of Minnesota,
Respondent,

vs.

Emanuel Lydell Collier,
Appellant,

and

Emanuel Lydell Collier, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

**Filed December 4, 2017
Affirmed
Worke, Judge
Concurring specially, Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CR-14-10939

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Bradford Colbert, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

In this consolidated appeal of the district court's order denying his postconviction petition and the district court's sentencing order, appellant argues that the predatory-offender-registration statute violates his right to substantive and procedural due process as well as the separation-of-powers doctrine, and also that the district court abused its discretion by imposing a top-of-the-box sentence. Appellant raises additional claims in his pro se supplemental brief. We affirm.

FACTS

On April 21, 2014, appellant Emanuel Lydell Collier was charged with first-degree aggravated robbery. The complaint alleged that Collier and another man entered a restaurant carrying handguns, forced several people to lie down, and then tied them up in a storage area.

During plea negotiations, the state was prepared to amend the complaint to add charges for assault and kidnapping or false imprisonment if the parties were unable to reach an agreement. The state explained on the record that amending the complaint to include kidnapping or false-imprisonment charges would result in Collier having to register as a predatory offender for a period of time.

The parties were unable to reach an agreement. The state filed an amended complaint adding five counts of kidnapping, five counts of second-degree assault, and one

count of first-degree assault. The amended complaint alleged that Collier and another man held five victims at gunpoint and that several of the victims had their hands tied behind their backs. It also alleged that Collier and another man prevented the victims from leaving, brought three victims to a stock room against their will, and forced them to lie on the floor. The other two victims were taken against their will, tied up, and confined in a cooler.

During Collier's jury trial, he agreed to plead guilty to the sole count of aiding and abetting first-degree aggravated robbery in exchange for the dismissal of the remaining 11 counts and a sentence in the range of 88 to 105 months, as well as the dismissal of another unrelated charge. Collier asked the district court if he would still be required to register as a predatory offender despite the dismissal of the kidnapping charges, to which the district court answered affirmatively. Collier pleaded guilty to first-degree aggravated robbery, and the district court sentenced him to 105 months in prison.

Approximately eight months later, Collier filed a petition for postconviction relief, arguing that: (1) requiring him to register as a predatory offender based upon dismissed charges violated his substantive and procedural due-process rights; (2) the district court violated separation-of-powers-principles by requiring him to register as a predatory offender; (3) the district court erred in imposing a top-of-the-box sentence; and (4) the district court erroneously calculated his criminal-history score with regard to two Illinois convictions. The district court granted Collier's petition only as it related to correcting his criminal-history score. The district court resentenced Collier to 81 months in prison, the top-of-the-box sentence based on his recalculated criminal-history score. This appeal followed.

DECISION

Due Process¹

Collier argues that the predatory-offender registration statute is unconstitutional because it violates his right to due process. The constitutionality of a statute is a question of law that appellate courts review de novo. *State v. Ness*, 834 N.W.2d 177, 181 (Minn. 2013). Appellate courts exercise their power to declare statutes unconstitutional “with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). This court will uphold a statute as constitutional unless the challenging party demonstrates beyond a reasonable doubt that it is unconstitutional. *Soohoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007).

Substantive due process

Collier asserts that the predatory-offender registration statute infringes his substantive due-process rights by requiring registration based on dismissed charges. The Due Process Clauses of the United States and Minnesota Constitutions prohibit “certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them.” *Zinerman v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990) (quotation omitted); *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988) (stating that due-process protections under the Minnesota and United States Constitutions are identical). If a statute implicates a fundamental right, “the state must show a legitimate and compelling interest for abridging that right.” *Boutin v. LaFleur*, 591 N.W.2d 711, 716

¹ Collier did not present a due-process challenge in his petition, but he reserved his right to raise substantive and procedural due-process challenges on appeal.

(Minn. 1999). When a statute does not implicate a fundamental right, the statute must “provide a reasonable means to a permissible objective.” *Id.*

In *Boutin*, the supreme court ruled that the registration statute at issue in this case did not violate substantive due process. *Id.* at 718. Specifically, the *Boutin* court concluded that the registration statute did not implicate a fundamental right and that it was rationally related to the legitimate state interest of solving crimes. *Id.* at 717-18.

Collier argues that since the *Boutin* decision in 1999, a series of local community ordinances were enacted that severely restrict the rights of a registered predatory offender. Collier argues that these ordinances implicate fundamental rights because they “impact every aspect . . . of a person’s life—where to live, where to work, where to travel, and with whom to associate.” However, whether these ordinances implicate Collier’s fundamental rights is not properly before this court, as Collier does not argue that he is personally affected by any of these ordinances. Collier lacks standing to challenge these ordinances because he offers no argument that he has suffered or is in immediate danger of suffering some direct injury. See *Paulson v. Lapa, Inc.*, 450 N.W.2d 374, 380 (Minn. App. 1990), review denied (Minn. Mar. 22, 1990) (stating that an individual challenging a statute’s constitutionality must show that he has sustained or is in immediate danger of sustaining a direct injury resulting from the statute’s enforcement).

Collier also argues that the registration statute restricts his right to interstate travel, does not serve a compelling government interest, and is not narrowly tailored.

“The right to interstate travel is a fundamental right recognized by the United States Constitution.” *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 654 (Minn. 2012). A statute

does not burden the right to interstate travel unless it affects one of the three components of that right: (1) the right of a citizen of one state to enter and leave another state; (2) the right to be treated as a welcome visitor rather than an unfriendly alien; and (3) for travelers who elect to become permanent residents, the right to be treated like other citizens of that state. *Id.* (citing *Saenz v. Roe*, 526 U.S. 489, 500, 119 S. Ct. 1518, 1525 (1999)).

Collier implicitly invokes all three components by arguing that the registration statute makes interstate travel “more complicated for him” due to burdens imposed by other states on registrants. As the supreme court noted in *Boutin*, however, “the registration statute does not restrict [a registrant’s] ability . . . to move out of state.” 591 N.W.2d at 717.

Collier expressed a desire to travel to Indiana. Collier argues that because he is required to register as a predatory offender in Minnesota, he would be required to register as a “sex offender” in Indiana. See Ind. Code § 11-8-8-5(a), (b)(1) (2016) (defining “sex or violent offender” to include “a person who is required to register as a sex or violent offender in any jurisdiction”). However, if Collier moved to Indiana, the Minnesota registration statute would not require him to register there. See Minn. Stat. § 243.166, subd. 3(b) (2016). Rather, if an offender moves to a new state and that state has a registration requirement, the Minnesota statute requires the offender to give written notice of his new address to the designated registration agency in that state as a prerequisite for the suspension of registration requirements in Minnesota. *Id.* The fact that a statute makes interstate travel “more complicated” does not indicate a constitutional infirmity. *Cf. Schatz*, 811 N.W.2d at 655-56 (rejecting the argument that a Minnesota statute burdened

an injured worker's right to travel to Wyoming because she received a diminution in her workers' compensation rights under Wyoming law). Consequently, Collier has not demonstrated that the registration statute impairs his right to interstate travel.

Because the registration statute does not implicate a fundamental right, it need only "provide a reasonable means to a permissible objective." *Boutin*, 591 N.W.2d at 716. In *Boutin*, the supreme court noted that "the primary purpose of the [registration] statute is to create an offender registry to assist law enforcement with investigations." *Id.* at 717. Furthermore, the supreme court concluded that such a list is rationally related to the legitimate state interest of solving crimes. *Id.* at 718.

An individual must register as a predatory offender if that person was charged with a qualifying felony and convicted of that offense or another offense arising out of the same set of circumstances. See Minn. Stat. § 243.166, subd. 1b(a)(1) (2016). Collier does not dispute that he was charged with kidnapping, a predatory felony, and that he was convicted of an offense arising out of the same circumstances. See *id.*, subd. 1b(a)(1)(ii). Rather, he disputes the rationality of requiring him to register as a result of a charge that was dismissed. However, the supreme court has rejected that argument. See *Boutin*, 591 N.W.2d at 718 (reasoning that keeping a list of offenders convicted of offenses arising out of the same set of circumstances as qualifying predatory offenses "is rationally related to the legitimate state interest of solving crimes"). Because Collier has failed to demonstrate that the registration statute implicates a fundamental right and that the statute is not rationally related to a legitimate state interest, he has failed to establish that the registration statute violates his right to substantive due process.

Procedural due process

Collier argues that the district court violated his right to procedural due process by requiring him to register as a predatory offender based on a charge that was dismissed, thus depriving him an opportunity to contest the charge.

The Due Process Clauses of the United States and Minnesota Constitutions prohibit the deprivation of constitutionally protected interests in life, liberty, or property without due process of law. *Zinerman*, 494 U.S. at 125, 110 S. Ct. at 983 (quotation omitted); *Sartori*, 432 N.W.2d at 453. “When procedural due process is at issue, [this court] must first determine whether a protectable liberty interest is at stake.” *Boutin*, 591 N.W.2d at 718. If the interest at stake is a person’s reputation, a complainant must demonstrate a loss of reputation coupled with the loss of some other tangible interest—the “stigma-plus” test. *Id.* (citing *Paul v. Davis*, 424 U.S. 693, 701-02, 96 S. Ct. 1155, 1160-61 (1976)).

In *Boutin*, the supreme court held that although being labeled a predatory offender is injurious to one’s reputation, that injury must still be coupled with the loss of some other recognizable interest. *Id.* The supreme court also rejected the argument that complying with the requirements of the registration statute constitutes the loss of a recognizable interest. *Id.* The court concluded that “there is no recognizable interest in being free from having to update address information” and that such a minimal burden is insufficient to satisfy the “stigma-plus” test. *Id.* Consequently, the supreme court held that the registration statute did not violate the registrant’s right to procedural due process. *Id.* at 719.

Collier argues that since *Boutin*, the legislature has substantially expanded the predatory-offender-registration requirements. He identifies numerous changes to the registration statute that he claims restrict offenders' liberty: (1) an offender lacking a primary address must report weekly to law enforcement in the jurisdiction in which he is staying; (2) an offender working or attending school in Minnesota who was convicted of a predatory offense in another state or another offense arising out of the same set of circumstances must register with law enforcement in the area where he works or attends school; (3) an offender working or attending school outside of Minnesota must register in the state where he works or attends school; (4) an offender must provide a primary address, any secondary addresses in Minnesota, addresses of all property owned, leased, or rented in Minnesota, addresses of employment and schools, and the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the offender; (5) offenders must consent to a treatment facility or residential housing unit releasing information to law enforcement; (6) prior to admission to a health-care facility, offenders must notify the facility of their registration status and inform law enforcement that inpatient admission will occur; and (7) corrections agencies supervising offenders must notify a child-protection agency before authorizing the offender to live in a household with children. See Minn. Stat. §§ 243.166 (predatory offender registration), 244.057 (predatory offender household with children) (2016).

With the exception of the health-care and child-protection agency notifications, these requirements are reminiscent of updating address information, which the supreme court in *Boutin* determined was “a minimal burden” and “clearly not the sufficiently

important interest the ‘stigma-plus’ test requires.” 591 N.W.2d at 718. Although the registration statute now requires offenders to provide more information than in 1999, these changes still impose only a minimal burden on offenders. Consequently, these changes to the registration statute do not sufficiently burden Collier’s liberty interest to constitute a due-process violation.

Collier argues that the health-care notification burdens his liberty interest because it authorizes dissemination of offender information to the general public. In *Boutin*, the supreme court acknowledged that while the dissemination of information about a registered offender is injurious to the offender’s reputation, to succeed on a due-process challenge, a person must suffer more than mere stigma. *Id.* Collier has not demonstrated that he has been or is likely to be deprived of health care or any other recognizable interest as a result of the dissemination of his registration information to individuals who do not work in law enforcement. Similarly, Collier has not demonstrated that he has been or is likely to be deprived of housing as a result of the child-protection agency notification. Collier has not established that the registration statute restricts his liberty now more than it did when the supreme court decided *Boutin*.

Collier also argues that he was denied due process because he never had an opportunity to contest the predatory charges against him, as those charges were dismissed.

“[I]t is the judiciary’s determination of probable cause . . . that triggers the statutory basis for sex-offender registration.” *State v. Haukos*, 847 N.W.2d 270, 273 (Minn. App. 2014). In *State v. Lopez*, 778 N.W.2d 700, 704 (Minn. 2010), the supreme court recognized that the registration statute mandates registration for offenders charged with, but not

necessarily convicted of, predatory offenses to “ensure that true predatory offenders cannot plead out of the registration requirements.”

Here, the district court concluded that probable cause existed to support each charge of the amended complaint. Collier never challenged the probable-cause determination regarding the kidnapping charges despite having an opportunity to do so. Furthermore, Collier pleaded guilty after several days of trial. Collier had sufficient opportunity to contest the kidnapping charges that triggered the registration requirement. On this record, Collier has not demonstrated that the registration statute violates his right to procedural due process.

Separation of powers

Collier argues that the registration statute violates the separation-of-powers doctrine by placing complete power to require registration in the hands of the prosecution—the executive branch. However, “it is the judiciary’s determination of probable cause, not the prosecutor’s bringing of a charge, that triggers . . . registration.” *Haukos*, 847 N.W.2d at 273. While the prosecutor may exercise discretion to charge offenses that could trigger predatory-offender registration, that discretion is checked by the judiciary. Collier has failed to establish that the registration statute violates the separation-of-powers doctrine.

Sentence

Collier argues that the district court abused its discretion by imposing a top-of-the-box sentence. This court affords the district court great discretion in the imposition of sentences and will reverse sentencing decisions only for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A sentence within the guidelines range is

presumed to be appropriate. Minn. Sent. Guidelines 2.D.1 (2013); *see State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008). Because the district court imposed a sentence within the guidelines range, the district court did not abuse its discretion. *See State v. Kindem*, 313 N.W.2d 6, 7-8 (Minn. 1981) (stating that although reasons may support departing downward, the district court is not required to depart).

Pro se supplemental brief

In his pro se supplemental brief, Collier argues that the district court did not properly consider the suppression of a 911-call transcript and “caller ID” in a prior order and improperly calculated his criminal-history score by failing to account for time served on a prior probation revocation. This court does not consider pro se claims that are unsupported by either arguments or citations to legal authority. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Collier cites no legal argument or legal authority in his pro se supplemental brief. Collier is not entitled to relief based on the claims in his pro se supplemental brief.

Affirmed.

CLEARY, Chief Judge (concurring specially)

While I concur with the majority that, under *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999) and *Gunderson v. Hvass*, 339 F.3d 639 (8th Cir. 2003), appellant's required registration does not deny him his constitutional right to procedural due process, I write separately to suggest that while the consequence of registration was once arguably limited to a loss of reputation, the consequences are now coming dangerously close to the loss of other tangible liberty interests, as required for a finding of "stigma-plus" under *Paul v. Davis*, 424 U.S. 693 (1976).

Since the *Boutin* court rejected the argument that the "stigma-plus" test had been met by a requirement of updated address information in 1999, registration requirements have expanded significantly, penalties for failure to register have become more severe, and those who are labelled as predatory offenders (level III or not) have become true pariahs. The majority suggests such additional requirements impose "an additional, but still minimal, burden upon offenders." Arguably so, but "minimal" is reaching the tipping point into "substantial."

Most concerning is the new health care facility requirement. Unlike the statutes considered in *Boutin* and *Gunderson*, the law now provides that if appellant were ever to be admitted to a hospital or other health care facility, his information, including his demographics, conviction history, risk level classification, and profile of possible victims, would be distributed to several of the facility's staff as well as the facility's entire residential population, including any resident's next of kin or emergency contact in the event of that resident's unstable status. Minn. Stat. § 243.166, subd. 4b(c), (d) (2016).

Law enforcement, and indeed government officials, are no longer the only recipients of a registrant's information: a registrant's information is now subject to any and every health care facility resident's possession. While the law limits the government recipients' use of the information to law enforcement and corrections purposes only, Minn. Stat. § 243.166, subd. 7(b) (2016), we are left with the mere hope that the civilian recipients will use the information in the same fashion.

One is forced to conclude that when it comes to a "stigma-plus" test, one must start by recognizing that in this day and age, simply being labelled a predatory offender, with all that connotes, is more than sufficient to satisfy the "stigma" portion of the analysis. Developments in registration requirements have increased the burden on registrants while these same registrants are finding new and even more burdensome restrictions on where they are allowed to live and work, if they can find employment. And, in appellant's case, all of these consequences resulted from a finding of probable cause on charges later dismissed.

While existing caselaw suggests that appellant has not been denied his constitutional right to procedural due process, that caselaw is arguably outdated, overtaken by what it means to be labelled a predatory offender in 2017, subjected to new and more invasive registration requirements and living restrictions, eighteen years after *Boutin*.