

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-0488**

State of Minnesota,  
Respondent,

vs.

Terry Allen Stewart,  
Appellant.

**Filed January 11, 2021  
Affirmed  
Reilly, Judge**

Otter Tail County District Court  
File No. 56-CR-19-2678

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michelle M. Eldien, Otter Tail County Attorney, Benjamin G. A. Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Cleary, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## **NONPRECEDENTIAL OPINION**

**REILLY**, Judge

Appellant challenges his conviction for failing to register as a predatory offender, arguing that his guilty plea was invalid because his requirement to register was unconstitutional and violates separation-of-powers principles. We affirm.

### **FACTS**

Appellant Terry Allen Stewart is required to register as a predatory offender. Appellant's obligation to register arises out of criminal charges for assault, burglary, kidnapping, and damage to property. In June 2009, appellant pleaded guilty to assault and the remaining charges were dismissed. Under the registration requirements, appellant needed to submit paperwork to the Minnesota Bureau of Criminal Apprehension (the BCA) stating his primary address. In July 2019, appellant registered a primary address in Fergus Falls, Minnesota. After a traffic stop in August 2019, police officers opened an investigation to determine whether appellant lived at his registered address. Officers learned that appellant was not living at the address registered with the BCA, which belonged to appellant's wife's grandparents. The homeowners told officers that appellant had not been to their home for at least one year.

Based on this information, respondent State of Minnesota charged appellant with failing to register as a predatory offender in violation of Minn. Stat. § 243.166, subd. 5(a)(1) (Supp. 2019). In November 2019, appellant pleaded guilty to the offense. Appellant acknowledged that he did not notify law enforcement of his true address and knew that, by

withholding this information, he was failing to fulfill his registration requirements. The district court entered judgment of conviction and imposed sentence. This appeal follows.

### DECISION

Appellant seeks to withdraw his guilty plea. “A defendant does not have an absolute right to withdraw a valid guilty plea.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). After sentencing, a defendant may withdraw a guilty plea only by establishing that “withdrawal is necessary to correct a manifest injustice.” *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice arises when a guilty plea is invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is valid if it is intelligent, voluntary, and accurate. *Id.* “A defendant bears the burden of showing his plea was invalid.” *Id.* We review the validity of a guilty plea de novo. *Id.*

Appellant argues that his guilty plea is invalid because the registration statute is unconstitutional. While appellant did not raise this issue to the district court, a party may challenge the validity of a plea for the first time in a direct appeal when the grounds for the challenge do not go outside the record. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). The constitutionality of a statute presents a question of law, which we review de novo. *State v. Hensel*, 901 N.W.2d 166, 170 (Minn. 2017). “We presume that Minnesota statutes are constitutional and will strike down a statute as unconstitutional only if absolutely necessary.” *State v. Cox*, 798 N.W.2d 517, 519 (Minn. 2011). “To prevail, a party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute violates a constitutional provision.” *Id.*

The registration statute provides that a person “shall register” as a predatory offender if the person is charged and convicted of a “felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit” certain enumerated predatory offenses. Minn. Stat. § 243.166, subd. 1b(a)(1) (Supp. 2019). Additionally, a person must register if the person is charged with an enumerated felony offense and is “convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances.” *Id.* One of these enumerated offenses is kidnapping. *Id.*, subd. 1b(a)(1)(ii). Appellant acknowledges that he is required to register as a result of his assault and kidnapping charges from 2009. Under the penalty provision of the statute, a person who “knowingly commits an act or fails to fulfill a requirement that violates any provision of this section . . . is guilty of a felony.” *Id.*, subd. 5(a)(1)-(2) (Supp. 2019).

## **I. Substantive Due Process**

Appellant argues that the registration statute violates his substantive-due-process rights. The United States and Minnesota Constitutions provide that the government cannot deprive a person of “life, liberty, or property without due process of law.” U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7.

Appellant argues that the registration statute infringes on his right to the presumption of innocence. The presumption of innocence applies to statutes that are punitive, or criminal, in nature. *State v. Halvorson*, 181 N.W.2d 473, 477-78 (Minn. 1970). Appellant argues that the statute is punitive. *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999) informs our analysis. In that case, the defendant registered as a predatory offender and then sought a declaration that the registration requirement violated his constitutional

rights. *Id.* at 714. The supreme court held that the registration requirements of section 243.166 are regulatory, rather than punitive or criminal, in nature. *Id.* at 717. *Boutin* also held that the statute did not implicate fundamental rights, was rationally related to the legitimate state interest of solving crimes, and did not violate a registrant's substantive-due-process rights. *Id.* at 717-18.

Appellant acknowledges the *Boutin* holding but asserts that “the statute has morphed dramatically” since the supreme court’s 1999 decision. Appellant is correct that the registration requirements have mushroomed since 1999. And the Minnesota Legislature continues to alter the registration statute today. For example, at the time *Boutin* was decided, the law required the registrant to provide “a statement in writing signed by the person, giving information required by the bureau of criminal apprehension, a fingerprint card, and [a] photograph,” to register with the law enforcement authority where the person resides, and to annually “mail [a] signed verification form back to [the BCA] within ten days after receipt of the form, stating on the form the current and last address of the person.” Minn. Stat. § 243.166, subd. 4(a), (c)(2) (1999). Now, a registrant must also provide a “biological specimen for DNA,” “a written consent form signed by the person allowing a treatment facility or residential housing unit or shelter to release information to a law enforcement officer about the person’s admission to, or residence in, a treatment facility or residential housing unit or shelter,” “the person’s primary address,” “all of the person’s secondary addresses in Minnesota, including all addresses used for residential or recreational purposes,” “the addresses of all Minnesota property owned, leased, or rented by the person,” “the addresses of all locations where the person is employed,” “the

addresses of all schools where the person is enrolled,” “the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person,” “the expiration year for the motor vehicle license plate tabs of all motor vehicles owned by the person,” and “all telephone numbers including work, school, and home and any cellular telephone service.” Minn. Stat. § 243.166, subds. 4(a), 4a(1)-(8) (Supp. 2019). The statute also covers many more criminal offenses, creates more severe penalties for violations, and requires law enforcement agents to distribute this information to hospitals or health care facilities providing care to a registrant. *Id.*, subds. 1b (enumerating offenses), 4b(c) (providing that law enforcement authorities “shall notify” health care administrators of registrant’s demographic and personal information), (d) (providing that upon admission of an offender, a health care facility “shall distribute” a registrant’s demographic and personal information to all residents of the facility), 5 (listing criminal penalties) (Supp. 2019).

We are sensitive to appellant’s argument that the registration statute has ballooned since 1999. But this court “is bound by supreme court precedent” and must follow explicit holdings of the supreme court. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). *Boutin*, which remains precedential, holds that the registration statute does not violate a registrant’s substantive-due-process rights. 591 N.W.2d at 717-18. And this court is also bound by the published decisions of this court. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating this court is “bound by” both supreme court precedent and published appellate court opinions), *review denied* (Minn. Sept. 21, 2010). This court recently acknowledged the *Boutin* holding and reiterated that “[w]hile the registration requirements have expanded since *Boutin* was decided, it remains controlling precedent.” *Thibodeaux*

*v. Evans*, 926 N.W.2d 602, 608 (Minn. App. 2019), *review denied* (Minn. June 26, 2019), *cert. denied*, 140 S. Ct. 1136 (2020); *see also Bedeau v. Evans*, 926 N.W.2d 425 (Minn. App. 2019) (holding that registration statute did not violate substantive- or procedural-due-process rights, did not burden constitutionally-recognizable interests, and did not violate separation-of-powers doctrine).

Given the precedential authority of the Minnesota Supreme Court and this court, we must hold that the registration statute is not punitive and therefore does not implicate appellant’s substantive-due-process rights.

## **II. Procedural Due Process**

Appellant also argues that the statute violates his procedural-due-process rights. In a procedural-due-process challenge, we first determine whether the government deprived a person of a protectable liberty interest, and, if so, we “determine whether the procedures followed by the government were constitutionally sufficient.” *Rew v. Bergstrom*, 845 N.W.2d 764, 785 (Minn. 2014) (quotation omitted).

Appellant argues that his procedural-due-process rights were violated under the “stigma-plus” doctrine. This doctrine provides that a liberty interest is implicated where (1) there is a loss of reputation, (2) which “is coupled with the loss of some other tangible interest.” *Boutin*, 591 N.W.2d at 718. A “recognizable interest” is a liberty or property interest that receives constitutional protection under due-process analysis. *Id.* (citing *Paul v. Davis*, 424 U.S. 693, 710, 96 S. Ct. 1155, 1165 (1976)).

Appellant asserts that he suffered a loss of reputation and a loss of other tangible interests as a result of the registration requirement. Caselaw recognizes that “being labeled

a predatory offender is injurious to one's reputation and satisfies the 'stigma' requirement of the stigma-plus test." *Thibodeaux*, 926 N.W.2d at 608 (citing *Boutin*, 591 N.W.2d at 718). Even so, *Thibodeaux* also held that the predatory-offender label does not satisfy the "plus" requirement of the test. *Id.*

While the registration requirements in 1999 when the statute was first enacted may have been limited concerning a loss of reputation, we are sympathetic to appellant's argument that the consequences may now be reaching a tipping point concerning the loss of other tangible liberty interests. *Boutin* concluded that being labeled a predatory offender is injurious to a registrant's reputation. 591 N.W.2d at 718. But *Boutin* also determined that a protectable liberty interest was not at stake because "there is no recognizable interest in being free from having to update address information," and the stigma-plus doctrine did not apply. *Id.* As discussed above, the registration requirements have significantly expanded since 1999. For example, a registrant must now register with law enforcement where the registrant works or attends school, must provide vehicle information, and must consent to law enforcement releasing data to treatment facilities or residential housing units. Minn. Stat. § 243.166 (Supp. 2019). Additionally, law enforcement agents "shall" distribute the registrant's information to hospitals or health care facilities providing treatment. *Id.*, subd. 4b(c), (d). A registrant may also face difficulty finding housing and employment as a result of the registration requirement, as the housing and employment options for a registrant are greatly restricted. See Stacy L. Bettison, *The New Scarlet Letter: Is Minnesota's Predatory Offender Registry helping or hurting?*, Bench & Bar of Minn., Dec. 2019, at 16, 18-19 (stating that the registry law is "so hostile" that it "impacts

everything that a human needs to survive: stable housing, employment, community support, [and] relationships”). These added consequences may be nearing the loss of other tangible liberty interests, as required for a stigma-plus finding.

Yet, we are bound to follow *Boutin* and the published decisions of this court. Based on controlling precedent, we must conclude that appellant has not established a violation of his procedural-due-process rights under the “stigma-plus” doctrine.

### **III. Sixth Amendment Rights**

Appellant argues that the registration statute violates his Sixth Amendment rights under the Constitution. The Due Process Clause of the Fourteenth Amendment guarantees criminal defendants a meaningful opportunity to present a complete defense, and the Compulsory Process Clause of the Sixth Amendment encompasses the defendant’s right to call witnesses and the right to call oneself as a witness. *State v. Holloway*, 905 N.W.2d 20, 24 (Minn. App. 2017), *aff’d*, 916 N.W.2d 338 (Minn. 2018).

Appellant contends that because he was required to register, without the right to a jury trial, he did not have an opportunity to confront witnesses at a jury trial. Yet, the rights afforded under the Sixth Amendment are not unlimited and “the Sixth Amendment does not by its terms grant to a criminal defendant the right to secure the attendance and testimony of any and all witnesses.” *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S. Ct. 3440, 3446 (1982). Moreover, the United States and Minnesota Constitutions provide that this right applies only to “criminal prosecutions.” U.S. Const. amend. VI; Minn. Const. art. I, § 6. As discussed above, *Boutin* holds that the registration statute is not criminal in nature. 591 N.W.2d at 717. Because *Boutin* remains controlling,

we must conclude that appellant has not sufficiently alleged a violation of his Sixth Amendment rights.

#### **IV. Separation-of-Powers Doctrine**

Appellant claims the registration statute violates the separation-of-powers doctrine. This doctrine generally prohibits each branch of government from intruding upon another's unique constitutional functions. *State v. T.M.B.*, 590 N.W.2d 809, 812 (Minn. App. 1999), *review denied* (Minn. June 16, 1999). The *Bedeau* court held that the registration statute “does not implicate the separation-of-powers doctrine” because the prosecutor’s discretion to charge offenses that could require registration as a predatory offender “is checked by the judiciary” by requiring a judicial determination of probable cause for the charged offense, and because “registration is a collateral consequence of a conviction.” 926 N.W.2d at 434.

We question whether this situation remains tenable. The registration statute “applies to persons charged with certain crimes even if they are not convicted.” *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010). A person must register as a predatory offender if the person “was charged” with a qualifying crime, even if the prosecutor later dismisses that charge. Minn. Stat. § 243.166, subd. 1b(a)(1). The discretion to bring criminal charges “rests almost entirely with the prosecutor.” *State v. Streiff*, 673 N.W.2d 831, 836 (Minn. 2004). And the prosecutor has the discretion to dismiss charges. Further, “unless the prosecutor abuses his or her discretion or demonstrates improper intent, the judiciary is powerless to interfere with the prosecutor’s charging authority.” *Eason v. State*, 950 N.W.2d 258, 266 (Minn. 2020) (quotation omitted). We recognize that criminal charges are often dismissed as part of a plea negotiation. But charges also can be dismissed because

the prosecutor does not have the evidence to prove the charge at trial. In that circumstance, the person would still have to register even if he or she could not have been convicted at trial, if the dismissed charge was a qualifying crime. Here, although appellant's kidnapping charge was dismissed, he was still required to register as a predatory offender based on a dismissed charge. Yet, as stated, we are bound by the published cases of this court. We therefore reject appellant's argument that the registration statute violates the separation-of-powers doctrine.

We are sympathetic to appellant's argument that the registration requirements have ballooned since 1999. But we are bound to follow Minnesota Supreme Court cases and published opinions of this court unless a different rule of law is announced. See *M.L.A.*, 785 N.W.2d at 767 (recognizing that this court is "bound by" both supreme court precedent and published appellate court opinions). As an error-correcting court, it is not our role to alter or modify existing law. See *State v. Haywood*, 886 N.W.2d 485, 491 (Minn. 2016) ("It is not for the [lower] courts to make, amend, or change the statutory law, but only to apply it." (quotation omitted)). Appellant's arguments are better directed to the Minnesota Supreme Court or to the legislature. See *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

Because precedential and binding caselaw provides that the registration requirements of Minn. Stat. § 243.166 are regulatory rather than punitive or criminal in nature, we must hold that appellant has not established a violation of his constitutional

rights. And without a showing that a manifest injustice occurred, appellant has no right to withdraw his guilty plea under rule 15.05.

**Affirmed.**