

*This opinion is nonprecedential except as provided by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
A23-1047**

State of Minnesota,
Respondent,

vs.

Dymond Rene Hayden,
Appellant.

**Filed July 8, 2024
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-22-5058

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a final judgment of conviction following a guilty plea, appellant Dymond Rene Hayden argues that he should not be required to register as a predatory offender because the offense of furnishing alcohol to a minor, of which he was convicted,

arose from different circumstances than the charged but dismissed predatory offense of third-degree criminal sexual conduct. Because we conclude that the two offenses arose from the same set of circumstances, we affirm.

FACTS

In September 2022, respondent State of Minnesota charged Hayden with two counts of criminal sexual conduct: one felony count of third-degree criminal sexual conduct committed against a minor and one gross-misdemeanor count of fifth-degree criminal sexual conduct committed against another person.

According to the complaint, on August 5, 2022, the minor was staying at her friend's apartment, along with both girls' mothers. The minor's mother invited Hayden to come to the apartment, and, late that night, Hayden arrived. There, Hayden offered the minor and her friend alcohol, which the friend believed was "Fireball," as well as marijuana and cocaine. The girls declined the cocaine but drank the alcohol and smoked the marijuana. They did so "outside the apartment in the community area of the complex."

During the night, Hayden made inappropriate sexual comments to the minor's friend and tried to persuade the friend to go with him, saying that, "if anything sexual happened, they couldn't tell anybody—not parents, or cops, or anything." Both girls were uncomfortable and wanted Hayden to leave. The girls observed that Hayden was "drunk."

The girls set up beds for themselves on the floor next to a couch, and Hayden went into a bedroom to sleep. When the minor went into the bathroom to get ready for bed, Hayden followed her in. He shut and locked the door and, using force, sexually penetrated

her. During the night, Hayden also entered the friend's mother's bedroom and engaged in nonconsensual sexual contact with her.

Hayden entered into a plea agreement under which he pleaded guilty to gross-misdemeanor furnishing alcohol to a minor (a count that was added in an amended complaint) in exchange for dismissal of the two criminal-sexual-conduct charges. At his guilty-plea hearing, Hayden admitted that, on or between August 5 and 6, 2022, he provided the minor with alcohol—specifically, “Fireball”—while they were at the apartment. Hayden testified that the minor consumed the alcohol. Hayden's trial counsel asked Hayden if he understood that his conviction would require him to register as a predatory offender. Hayden responded that he understood. The prosecutor also confirmed with Hayden that he had had enough time to talk with his attorney about the registration requirement.

The district court sentenced Hayden to 230 days in jail, with credit for time served. When sentencing Hayden, the district court reminded Hayden of his duty to register as a predatory offender.

Hayden appeals, challenging the registration requirement.

DECISION

The predatory-offender registration statute, Minnesota Statutes section 243.166 (2022 & Supp. 2023),¹ enumerates registrable offenses. Minn. Stat. § 243.166, subd. 1b. A defendant convicted of an enumerated offense must register as a predatory offender. *Id.*

¹ The predatory-offender registration statute has been amended in a manner not relevant to this case. *See* 2023 Minn. Laws ch. 52, art. 4, § 1, at 201-02.

A defendant also must register as a predatory offender if they were “charged with” an enumerated offense and were convicted of “another offense arising out of the same set of circumstances.” *Id.*, subd. 1b(a)(1). Here, Hayden was charged with the enumerated offense of third-degree criminal sexual conduct. *See id.*, subd. 1b(a)(1)(iii). Although that charge was dismissed under the plea agreement, Hayden is still subject to registration as a predatory offender if the offense of which he was convicted—furnishing alcohol to a minor—arose out of the same set of circumstances as the dismissed enumerated offense. He argues that it did not.

I. Justiciability

As a preliminary matter, the state argues that Hayden’s claim is nonjusticiable in this criminal appeal because Hayden agreed to predatory-offender registration as part of his plea agreement and the district court did not order Hayden to register in its sentencing order. Instead, the state asserts, the registration requirement was imposed by the Minnesota Department of Corrections (DOC) or the Minnesota Bureau of Criminal Apprehension (BCA) and the district court merely gave Hayden notice of the registration requirement as required by statute. *See id.*, subd. 2 (requiring district court to notify defendant of obligation to register). The state contends that this appeal should therefore be dismissed, observing that Hayden can seek relief from the registration requirement in a civil action against the DOC or the BCA.

Hayden acknowledges that the district court was statutorily required to give notice. But he argues that the district court imposed the registration requirement by its oral pronouncement at sentencing and that the imposed obligation must be based on the district

court's implicit finding that the offenses arose out of the same set of circumstances. He contends that judicial review in this proceeding is therefore appropriate.

The term “justiciable” refers to a case or controversy that is “capable of being disposed of judicially” or one that is “subject to proper resolution on the merits by a court of justice.” *Black’s Law Dictionary* 1036 (11th ed. 2019). Justiciability is an issue of law reviewed de novo. *In re Civ. Commitment of Nielsen*, 863 N.W.2d 399, 401 (Minn. App. 2015), *rev. denied* (Minn. Apr. 14, 2015).

Although we appreciate the state’s argument, we are not persuaded that this appeal is nonjusticiable and must be dismissed. As reflected in *State v. Lopez*, 778 N.W.2d 700 (Minn. 2010), and *State v. Berry*, 959 N.W.2d 184 (Minn. 2021), the supreme court has reviewed predatory-offender registration requirements in criminal appeals. It is true, as the state points out, that here, unlike in these other cases, Hayden did not dispute the registration requirement in the district court and the registration requirement was not reduced to writing in a sentencing order. Nevertheless, when a predatory-offender registration requirement is part of the defendant’s plea agreement with the state and is orally affirmed by the district court at sentencing, we are not convinced that we are without authority to review the registration requirement in a criminal appeal. We do not disagree with the state that an offender may have a civil avenue to challenge the registration requirement, but we still decline to dismiss this appeal as nonjusticiable.

II. Predatory-Offender Registration Requirement

Hayden contends that imposition of the registration requirement was error because his offense of furnishing alcohol to a minor did not “aris[e] out of the same set of

circumstances” as the dismissed charge of third-degree criminal sexual conduct. Minn. Stat. § 243.166, subd. 1b(a)(1). Before evaluating his argument, we first address the standard of review.

A. Standard of Review

The state urges us to apply the plain-error standard of review. It asserts that Hayden knew that he would be required to register and yet he made no objection to the requirement. As a result, the state asserts, Hayden forfeited his claim and can receive review only under the plain-error standard. Under that standard, an appellant must show (1) error (2) that is plain and (3) that affects substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998); *see* Minn. R. Crim. P. 31.02. If the three prongs are met, the reviewing court will not exercise discretion to grant relief unless “failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

Hayden argues that review of the question of whether the registration requirement applies is de novo because there are no facts in dispute. He points out that the supreme court in *Lopez* and *Berry* applied de novo review when evaluating the application of the predatory-offender registration statute to established facts. *See Lopez*, 778 N.W.2d at 705 (applying de novo review to district court’s application of predatory-offender registration statute to undisputed facts); *Berry*, 959 N.W.2d at 187 (applying de novo review to district court’s application of “same set of circumstances” standard to factual findings).

We agree with Hayden that review is de novo. To determine whether the predatory-offender registration requirement applies, we must look to the facts established at the plea

hearing and the allegations in the criminal complaint supporting the dismissed charge of third-degree criminal sexual conduct. There is no dispute about the facts that were established at the plea hearing, nor is there any dispute about what the complaint alleges. Our review of the application of law to those facts is de novo.

B. Application of the Statute

We turn to the question of the proper application of the predatory-offender registration statute. In *Lopez*, the supreme court interpreted the “same set of circumstances” provision in the statute. 778 N.W.2d at 706. It concluded that the provision requires registration “where the same general group of facts gives rise to both the conviction offense and the charged predatory offense.” *Id.* It elaborated:

In other words, the circumstances underlying both must overlap with regard to time, location, persons involved, and basic facts. Although the conviction offense need not be based on identical facts to the charged predatory offense, the facts underlying the two must be sufficiently linked in time, location, people, and events to be considered the “same set of circumstances.”

Id. In the later case of *Berry*, the supreme court reaffirmed “that the test of time, location, persons involved, and basic facts is the correct framework, and a district court’s consideration of whether predatory registration is required must include at least these factors.” 959 N.W.2d at 188. The *Berry* court emphasized that “these factors should be read narrowly” and “cannot be applied so broadly as to include merely ‘related’ circumstances.” *Id.* (quoting *Lopez*, 778 N.W.2d at 706).

Hayden challenges only the first and second factors—time and location; he does not dispute that there is sufficient overlap with respect to the third and fourth factors—persons involved and basic facts.

For both the time and the location factors, Hayden relies primarily on *Berry*. In that case, Berry’s husband forced employees of a laundry into a breakroom at gunpoint. *Id.* at 185. One minute later, Berry entered the laundry and told her husband that it was “time to leave.” *Id.* at 186. Berry and her husband drove away and were apprehended in Ohio the next day. *Id.* The state charged Berry with kidnapping, false imprisonment, threats of violence, and aiding an offender to avoid arrest. *Id.* Kidnapping and false imprisonment are enumerated as offenses requiring registration as a predatory offender. Minn. Stat. § 243.166, subd. 1b(a)(1)(ii) (kidnapping), (2)(ii) (false imprisonment). Berry pleaded guilty to aiding an offender to avoid arrest in exchange for dismissal of the other charges. *Berry*, 959 N.W.2d at 186. The district court ordered Berry to register as a predatory offender, determining that her offense of aiding an offender to avoid arrest arose out of the same set of circumstances as the dismissed kidnapping and false-imprisonment charges. *Id.* at 186-87. Berry appealed the registration requirement, and this court affirmed, but the supreme court reversed. *Id.* at 185. It held that Berry was not required to register as a predatory offender because her conviction offense did not arise out of the same set of circumstances as her charged predatory offenses. *Id.* at 191.

Time Factor

Hayden contends that *Berry* compels the conclusion that there is insufficient overlap between his offense of conviction and the charged criminal sexual assault. He asserts that,

under *Berry*, “the time factor looks to when each offense was complete relative to the other.”² He argues that the time factor is not satisfied here because “[his] furnishing-alcohol offense was complete when he handed the alcohol to the minor” and “the probable cause portion of the Complaint alleged that the sexual assault occurred at a later time, after they were done drinking.”

In *Berry*, the supreme court determined that Berry’s offense of conviction—aiding an offender to avoid arrest—did not overlap in time with the dismissed charges of false imprisonment and kidnapping. 959 N.W.2d at 190. The supreme court emphasized that “[t]he offense of aiding an offender to avoid arrest is unique because it necessarily occurs *after* the aided offender has committed the underlying crime.” *Id.* at 188.³ The supreme court also relied on the district court’s factual finding that Berry “decided to help her husband flee the jurisdiction *after* her husband committed the kidnapping and false imprisonment.” *Id.* at 189.

Unlike in *Berry*, the offense of which Hayden was convicted is not “unique” because furnishing alcohol to a minor does not “necessarily occur after” any other crime. Moreover, it is undisputed that the alleged sexual assault occurred on the same night that Hayden provided the minor with alcohol, after the minor returned to the apartment and before she

² Hayden also cites a nonprecedential case, *State v. Anderson*, No. A21-0325 (Minn. App. Dec. 27, 2021). “Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel.” Minn. R. Civ. App. P. 136.01, subd. 1(c). Moreover, that case is not persuasive because the factual circumstances in that case are different than those here.

³ The supreme court went on to refer to the offense as “unique” three more times. *Id.* at 188-89, 190 n.10.

went to bed. And, in contrast to *Berry*, where Berry did not decide to commit the offense of aiding her husband in avoiding arrest until after the kidnapping and false-imprisonment offenses were committed, here, the complaint alleges that Hayden gave alcohol to the girls and made inappropriate sexual comments to the girls during the night, which demonstrates a link between the offense of conviction and the charged sexual assault. We therefore conclude that there is sufficient overlap in the time of the offenses.

Location Factor

Hayden argues that the offenses were separated by location because he provided the minor with alcohol “in the community space of an apartment complex, outside the apartment unit,” whereas the alleged sexual assault occurred “in the bathroom inside the apartment unit.” He again relies on *Berry*.

In *Berry*, the supreme court determined that there was insufficient overlap in location, reasoning: “The kidnapping and false imprisonment offenses occurred entirely within the laundry building. By contrast, the offense of aiding an offender to avoid arrest occurred almost entirely outside the laundry building in a car traveling over hundreds of miles of interstate highway.” *Id.* at 190.

Here, even though Hayden provided alcohol to the minor outside the apartment in the community area, that space was located in the same complex. Any distance between the two offenses here is unlike the hundreds of miles that separated the offenses by location in *Berry*. We conclude that there is sufficient overlap in the location of the offenses.

Because there is sufficient overlap in the time, location, persons involved, and basic facts of Hayden's offenses, they arose from the same set of circumstances. Thus, Hayden is required to register as a predatory offender.

Affirmed.