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Recent Developments: Twine v. State: Sex Offenders Who Become Homeless Will Not Necessarily Be Subject to Prosecution When They Fail to Notify the Maryland Sex Offender Registry That They Have Changed Residence

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RECENT DEVELOPMENT

TWINE V. STATE: SEX OFFENDERS WHO BECOME HOMELESS WILL NOT NECESSARILY BE SUBJECT TO PROSECUTION WHEN THEY FAIL TO NOTIFY THE MARYLAND SEX OFFENDER REGISTRY THAT THEY HAVE CHANGED RESIDENCE.

By: Matthew Luzuriaga

The Court of Appeals held that the sex offender registration statute in Criminal Procedure Article Section 11-721, does not necessarily impose an obligation on homeless sex offenders to notify the Department of Public Safety and Correctional Services of a change in residence. *Twine v. State*, 395 Md. 539, 910 A.2d 1132 (2006).

Raymond Twine ("Twine") was originally convicted of a third degree sex offense in July 2002. As a result, Twine was required by the Maryland Sex Offender Statute ("the Statute") to register with the Department of Public Safety and Correctional Services ("the Department") and additionally notify the Department of any change in residence.

Following his conviction, Twine complied with the requirements under the statute by submitting to yearly fingerprinting and registering all changes in his address through July 2004 when he moved to 20013 Sweetgum Circle. Twine lived at this address for only a short period of time before becoming homeless. Twine notified a detective charged with monitoring registered sex offenders in Montgomery County of his homeless status orally, but did not officially file a change of residence form. In December 2004, the Montgomery County Police were notified that Twine no longer lived at his last registered address, and filed charges in response to this noncompliance.

At trial in the Circuit Court for Montgomery County, Twine was convicted for violating section 11-721(a) of the Criminal Procedure Article. Twine was convicted and sentenced to be incarcerated for ten days. He filed a timely appeal to the Court of Special Appeals of Maryland. Prior to a decision being issued by the Court of Special Appeals, the Court of Appeals granted certiorari to determine whether the Statute and registration requirement apply to homeless persons.

The Court examined the Statute and interpreted its meaning, purpose, and the intent of the legislature when it was written. *Twine*, 395 Md. 539, 547, 910 A.2d 1132, 1136. Section 11-721(a) provides: "A registrant may not knowingly fail to register, knowingly fail to provide the written notice required under § 11-705 (d), (e), or (f) of this subtitle, or knowingly provide false information of a material fact as required by this subtitle." *Twine*, 395 Md. at 547, 910 A.2d at 1137. Twine was allegedly in violation of section 11-705(d) of the Criminal Procedure Article, which requires written notice to be sent to the Department within five days of a change in residence. *Twine*, 395 Md. at 547, 910 A.2d at 1137.

The Court took notice, in its analysis that the Statute uses the terms "residence" and "address" interchangeably, while defining neither. *Id* at 584, 910 A.2d at 1137. Given the ambiguity of the terms within the Statute, the Court reduced the issue to whether Twine changed residences when he was evicted from the Sweetgum Circle apartment in August 2004 and became homeless. *Id.* at 549, 910 A.2d at 1138.

When interpreting the Statute, the Court revisited the established rule of statutory construction which gives effect to the intent of the legislature that originally enacted the statute. *Id.* The Court first looks to the plain meaning of the Statute, giving it effect if it is unambiguous and consistent with its apparent purpose. *Id.* Additionally, the Court avoids a "...construction of the statute that is unreasonable, illogical, or inconsistent with common sense." *Id.*

Accordingly, the Court concluded that, given the plain meanings of "address" and "residence," both terms imply a degree of permanence or intent to return to a specific place, which Twine, concededly, did not have. *Id.* Further, the Court noted that the statute did not address how homeless sex offenders could properly comply with the registration requirement. *Id.* Finally, the Court concluded that because Twine did not change residences within the interpreted meaning of section 11-705(d) of the Criminal Procedure Article when he became homeless the Statute did not apply, and that he had no obligation to update his registration. *Twine*, 395 Md. at 549, 910 A.2d at 1138.

In support, the Court also relied upon persuasive authority from the State of Washington. *Twine,* 395 Md. at 558, 910 A.2d at 1139. The Washington Court of Appeals held that Washington's sex offender registration requirement did not impose an obligation on homeless persons to report any change in residence. *Twine,* 395 Md. at 558, 910

A.2d at 1139 (citing *State v. Pickett*, 95 Wash. App. 475 (1999)). The Washington statute shared similar language with the Maryland one, using "residence," "address," and "resident address" interchangeably and the reviewing court relied on their plain meanings to imply a sense of permanency or intent to return to one place. *Id.* The appellant in that case was homeless, sleeping on sidewalks and streets, and therefore the statute did not apply to him. *Id.* at 552, 910 A.2d at 1139.

Also persuasive was a Minnesota case where the Minnesota Supreme Court examined Minnesota's sex offender registration statute that used the terms "residence," "address," and "living address" without any distinction. *Twine*, 395 Md. at 552, 910 A.2d at 1139 (citing *State v. Iverson*, 664 N.W.2d 346 (Minn. 2003)). Applying the plain meaning rule, the Minnesota Supreme Court held that the statute did not mean that a person's living location, or wherever a person happens to be staying was their "residence." *Id.* The Minnesota Supreme Court stated that any other reading of the statute would be inconsistent with the statute's intent, and held that future cases of similar circumstances would have to be examined individually to determine if compliance with the registration requirement was even possible. *Id.*

Despite some structural differences between the Maryland, Washington, and Minnesota sex offender statutes, the Court held that the plain meanings of "residence" and "address" imply that the legislative intent of the statute did not encompass homeless persons. *Id.* at 553, 910 A.2d at 1140. The Court also concluded that a sex offender registrant has a "residence" when they have a fixed location, such as a shelter, at which they live or intend upon returning to. *Id.* Based on its interpretation of "residence," the Court found an insufficient amount of evidence that Twine had a residence, given that both parties conceded at trial that Twine had been "staying wherever he could." *Id.* at 554, 910 A.2d at 1141.

In a related note, the Court stated that any homeless defendant charged with violating the statute would need to present evidence to show that they were homeless. *Id.* Once the issue is raised and evidence is offered by the defendant, the State must prove beyond a reasonable doubt that the defendant otherwise had a residence and could properly comply with the registration requirement. *Id.*

The holding of the Court indicates Maryland's understanding attitude toward homeless people, generally. However, *Twine* rests on

the stipulation that Twine was staying "wherever he could," implying that Maryland may recognize different "degrees" of homelessness to which the Statute will not apply equally. *Twine* seems to be setting the Court up for more, rather than less litigation, creating a rule requiring case-by case analysis, rather than establishing a black-letter rule.