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## Atryzek v. State, 268 A.3d 37 (R.I. 2022)

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**Criminal Law.** *Atryzek v. State*, 268 A.3d 37 (R.I. 2022). When determining if a convicted sex offender violated their duty to register as a sex offender, the Court must look to the date of the offense rather than the date of conviction. If a sex offender's failure to register in Rhode Island constitutes a new duty to register, the State must raise that argument before remanding and provide the defendant with proper notice.

#### FACTS AND TRAVEL

Sebastian Atryzek was seventeen years old when he pled guilty to the rape and abuse of a child.<sup>1</sup> Atryzek received a fifteen-year suspended sentence with five years of probation, which ended on June 19, 2000.<sup>2</sup> When he was released, he moved to Rhode Island and was charged with failure to register as a sex offender.<sup>3</sup> In 2012 and 2013, Atryzek entered pleas of *nolo contendere*, resulting in a five-year sentence, with ten months to serve and fifty months suspended for the first three charges, and a sentence of seven years, with five years to serve and two years suspended with probation for the 2013 charge.<sup>4</sup>

Atryzek did not believe he had to register as a sex offender, so he sought post-conviction relief.<sup>5</sup> State law required that Atryzek register for life after he was convicted; however, that law was later repealed.<sup>6</sup>

The trial court ruled in favor of the State and found Atryzek guilty.<sup>7</sup> Atryzek appealed to the Rhode Island Supreme Court, and the Court granted certiorari.<sup>8</sup> The Court based its analysis on its

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1. *Atryzek v. State*, 268 A.3d 37, 39 (R.I. 2022).
  2. *See id.*
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *See id.* (citing 11 R.I. GEN. LAWS § 11-37-16(2021)).
  7. *Atryzek*, 268 A.3d at 39.
  8. *Id.* at 41.

prior decision in *State v. Gibson*.<sup>9</sup> In *Gibson*, the Court held that section 11-37.1-4(a) of the Rhode Island General Laws determined the duration of a defendant's registration requirement.<sup>10</sup> In that case, the Court concluded that the offender "had a duty to register for ten years from the expiration of sentence for the offense."<sup>11</sup> In applying the *Gibson* analysis, the state argued that section 11-37.1-4(a) did not apply to Atryzek as he had committed an aggravated offense; therefore, the state asserted that Atryzek had a lifetime duty to register.<sup>12</sup> Furthermore, the state argued that Atryzek's convictions for failure to register were new convictions that required an additional duty to register.<sup>13</sup> The Court rejected the state's arguments and found that the ruling in *Gibson* also applied here.<sup>14</sup> As a result, the Supreme Court quashed the judgment of the Superior Court, remanded the case, and affirmed the ruling that the State waived the argument that Atryzek had a lifetime duty to register because section 11-37-16 no longer applied.<sup>15</sup>

On remand, Atryzek again argued that he did not have a duty to register and wanted his other charges dismissed.<sup>16</sup> The State again asserted that Atryzek had a lifetime duty to register and a new duty to register based on his failure to register convictions.<sup>17</sup> The Superior Court justice found that the State's argument cannot be decided on remand and Atryzek's duty to register had expired in 2010. The Court vacated Atryzek's four failures to register convictions.<sup>18</sup> As a result, the State filed a writ of certiorari which the Supreme Court granted.<sup>19</sup>

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9. *Id.* at 39.

10. *Id.* at 39–40 (citing *State v. Gibson*, 182 A.3d 540 (R.I. 2018)).

11. *Id.* at 45 (citing *Gibson*, 182 A.3d at 549).

12. *Atryzek*, 268 A.3d at 40.

13. *Id.*

14. *Id.*

15. *Id.* at 40–41.

16. *Id.* at 41.

17. *Id.*

18. *Id.*

19. *Id.*

## ANALYSIS AND HOLDING

A. *Vacating Four Convictions*

The Court conducted a *de novo* review.<sup>20</sup> The Court started its analysis by examining the statutory language of R.I.G.L. §§ 11-37.1-3(a)(1) and 4(a), “[a]nyone convicted of a criminal offense against a victim who is a minor is obligated to annually register for a period of ten (10) years from the expiration of sentence for the offense.”<sup>21</sup> Atryzek’s sentence expired on June 19, 2000, and his duty to register expired on June 19, 2010.<sup>22</sup> Atryzek’s 2009 and 2010 failures to register offenses occurred before his duty expired, but he was not convicted for either until 2012.<sup>23</sup> Critical to the Court’s reasoning was the date of Atryzek’s offenses, rather than the dates of the convictions.<sup>24</sup> While Atryzek was not convicted until 2012, he committed two of the offenses before his duty to register expired, on May 22, 2009, and January 28, 2010.<sup>25</sup> Thus, because he failed to register before his duty expired, the Court overruled part of the trial court’s judgment and found that the trial court erred in vacating Atryzek’s 2009 and 2010 convictions for failure to register as a sex offender.<sup>26</sup>

B. *Scope of Remand*

Additionally, the Court considered whether the trial court had misconstrued its authority in prohibiting some of the State’s arguments on remand.<sup>27</sup> The State believed that Atryzek’s 2009 and 2010 offenses fell under the then-applicable 2008 statutory amendment to include Section 11-37.1-10.<sup>28</sup> This amendment changed the statutory definition to a “criminal offense against a victim who is a minor to include a conviction for failure to register.”<sup>29</sup> The State asserted that these statutory changes administer a new duty to

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20. *Id.* at 42.

21. *Id.*

22. *See id.* at 43.

23. *See id.*

24. *See id.*

25. *Id.*

26. *See id.*

27. *Id.* at 41.

28. *See id.* at 45.

29. *Id.* (citing 11 R.I. GEN. LAWS § 11-37.1-10 (2021)).

register, but the State did not make this argument during the prior proceedings.<sup>30</sup> The prosecution did not produce evidence that indicated Atryzek was notified by the State of the potential additional duties to register if he pled *nolo contendere*.<sup>31</sup> The State argued that the Court had enabled the trial court to consider this argument on remand, but the Court rejected this argument as they did not remand the action to consider this issue.<sup>32</sup> Because the State never presented an argument about the specific 2008 amendment at an earlier stage, the trial court did not allow them to bring this argument on remand.<sup>33</sup> The Court does not allow trial courts to consider arguments that create legal inquiry beyond the scope of the remand, and the State's contention that Atryzek's offenses created a new duty is outside this scope.<sup>34</sup> As a result, the trial court did not err in preventing the admission of this argument.<sup>35</sup>

C. *Duty to Register as a Sex Offender*

The Supreme Court of Rhode Island determined that Atryzek's duty to register expired on June 10, 2010; however, he was not convicted for failure to register until February 2, 2012.<sup>36</sup> If the State expected Atryzek to take on a new duty to register after he pled *nolo contendere*, the Court would be forced to consider whether Atryzek knowingly and voluntarily entered his pleas for all four convictions.<sup>37</sup> Because there was such a gap in time, and the State would like to avoid this inquiry, the Court concluded that Atryzek does not have a duty to register as a sex offender in Rhode Island.<sup>38</sup>

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30. *See Atryzek*, 268 A.3d at 43.

31. *Id.* at 46.

32. *Id.* at 47.

33. *See id.* at 43-44 (quoting *Cusick v. Cusick*, 210 A.3d 935, 938 (R.I. 2017)) ("It is well established that, absent narrow exceptions, 'a litigant cannot raise an objection or advance a new theory on appeal [or on certiorari] if it was not raised before the trial court.'").

34. *Atryzek*, 268 A.3d at 46-47.

35. *See id.* at 48.

36. *Id.* at 47.

37. *Id.*

38. *Id.* at 48.

## COMMENTARY

The Rhode Island Supreme Court displayed the importance of applying the appropriate and most up-to-date statutes' amendments to determine when and how convicted sex offenders must register.<sup>39</sup> The Court emphasized the need to pay attention to the dates of statutory amendments and the date of the offenses for failing to register as a sex offender.<sup>40</sup> When a defendant is convicted and their sentence expires, the length of time the defendant must register within to prevent additional convictions for failure to register is directly impacted.

The Court mitigated potential harm to a defendant when applying repealed statutes by preventing newly raised arguments about specific statutory amendments that could impact a judgment on remand.<sup>41</sup> The Court's decision preserved its prerogative of judicial efficiency.<sup>42</sup> The focus on holding sex offenders accountable for failing to register is at the forefront of this case; however, the State must provide the defendant with notice of a potential new duty to register, and the State cannot raise new legal arguments on remand.<sup>43</sup>

While requiring convicted sex offenders to register is critical to public safety, the Rhode Island Supreme Court is right to balance the importance of allowing rehabilitated sex offenders to move on with their lives. Under the Fifth Amendment, defendants cannot be punished for the same crime twice.<sup>44</sup> Requiring sex offenders to register years after their sentence expires is punishing that defendant for the same act a second time. Atryzek was punished for his original sexual assault conviction; after his sentence and probation ended, he relocated to Rhode Island.<sup>45</sup> Once Atryzek's duty to register expired in 2010, he should not have faced future punishment

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39. *See generally id.* at 45 (determining which statute applied and which of Atryzek's convictions were relevant).

40. *See id.* at 43.

41. *Id.* at 43–44.

42. *Id.* at 44.

43. *Id.* at 46.

44. *See* U.S. CONST. amend. V.

45. *Atryzek*, 268 A.3d at 39.

for registration violations when he had not committed any new crimes.<sup>46</sup>

Atryzek's sentence and statutory requirements expired well before this Court reviewed this case.<sup>47</sup> Before remand, the State did not make a compelling argument that imposed a new duty for Atryzek to register as a sex offender in Rhode Island.<sup>48</sup> The Rhode Island Supreme Court acknowledges the importance of sex offenders registering within the State when they are statutorily required to do so, but this was not the case here.<sup>49</sup> If the State had compelling arguments that displayed the need for Atryzek to register, they would have had to notify him before trial and they failed to do so.<sup>50</sup>

#### CONCLUSION

The Rhode Island Supreme Court quashed the judgment vacating the 2009 and 2010 convictions but affirmed the trial justice's conclusion that Atryzek does not have a duty to register as a sex offender.<sup>51</sup> The Court concluded that the trial justice was wrong to consider the *nolo contendere* pleas that Atryzek entered in 2012 in its analysis and, instead, should have focused its analysis on the defendant's 2009 and 2010 failures to timely complete his required registration.<sup>52</sup> Therefore, the 2009 and 2010 offense charges should not have been vacated, as they occurred before Atryzek's registration requirement expired.<sup>53</sup> Furthermore, the Court held that because the State had not argued that Atryzek's new convictions resulted in a new duty to register in any prior filings or proceedings, the State had waived this argument. As a result, the trial court justice did not err in prohibiting the argument on remand.<sup>54</sup> Atryzek did not have a duty to register as a sex offender in Rhode Island.<sup>55</sup>

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46. *See id.* at 41.

47. *Id.* at 46–47.

48. *Id.* at 46.

49. *See id.* at 47.

50. *Id.*

51. *See id.* at 48.

52. *Id.* at 42.

53. *See id.*

54. *See id.* at 46–47.

55. *Id.* at 48.