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SUMMARY
February 15, 2024

2024COA14

No. 22CA2216, *People v. Dulac* — Criminal Law — Sex Offender Registration — Petition for Removal from Registry — Deferred Judgments

A division of the court of appeals holds that a defendant who successfully completes a deferred judgment and sentence for a sex offense is ineligible to petition for removal from the sex offender registry under section 16-22-113(1)(d), C.R.S. 2023, if they have other outstanding convictions in the same case. The division concludes that section 16-22-113(1)(d) requires dismissal of the case — not merely the charge that is the subject of the deferred judgment — before a petition may be filed under that subsection.

Court of Appeals No. 22CA2216
Grand County District Court No. 16CR52
Honorable Sandra H. Gardner, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Derek Abram Dulac,

Defendant-Appellant.

ORDER AFFIRMED

Division IV
Opinion by JUDGE SCHOCK
Navarro and Kuhn, JJ., concur

Announced February 15, 2024

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¶ 1 A person who is required to register as a sex offender under the Colorado Sex Offender Registration Act (SORA) ordinarily must wait a specified period of time before petitioning to discontinue registration. § 16-22-113(1)(a)-(c), C.R.S. 2023. But there is an exception when the registration requirement results from a deferred judgment and sentence or a deferred adjudication. In that case, the person may petition for removal from the registry “after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case.” § 16-22-113(1)(d).

¶ 2 The question in this case is whether this exception applies to a person who successfully completes a deferred judgment and sentence for a sex offense but has other outstanding convictions in the same case. Because section 16-22-113(1)(d) requires dismissal of “the case” before a petition may be filed, we hold that it does not.

¶ 3 Defendant, Derek Abram Dulac, appeals the denial of his petition for removal from the sex offender registry under those circumstances. He received a deferred judgment and sentence for a sex offense but also pleaded guilty to two non-sex offenses in the same case. After successfully completing his deferred judgment and sentence, Dulac petitioned for removal from the registry. The

district court denied the petition, concluding that Dulac was ineligible to petition for removal under section 16-22-113(1)(d) because his case had not been dismissed. We affirm.

I. Background

¶ 4 Dulac pleaded guilty to one count of attempted sexual assault and two counts of third degree assault arising from his assault of two women while they were sleeping. For the attempted sexual assault count, Dulac agreed to and received a deferred judgment and sentence, which included four years of sex offender intensive supervision probation. For the third degree assault counts, Dulac was sentenced to sixty days in jail and four years of unsupervised probation, consecutive to the deferred sentence on the other count. The parties' stipulation provided that the third degree assault counts would not be dismissed upon successful completion of the deferred judgment and sentence. Dulac was required to register as a sex offender due to the attempted sexual assault count.

¶ 5 Dulac successfully completed the deferred judgment and sentence, which resulted in dismissal of the attempted sexual assault charge. *See* § 18-1.3-102(2), C.R.S. 2023. He then filed a

petition under section 16-22-113(1)(d) to discontinue sex offender registration. That statute allows for such a petition

[i]f the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication for an offense involving unlawful sexual behavior, after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case.

§ 16-22-113(1)(d). When Dulac filed his petition, he was still serving his probationary sentences for the third degree assaults.

¶ 6 The district court held a hearing on the petition and ordered the parties to brief whether Dulac was eligible to petition for registry removal under section 16-22-113(1)(d). The People argued he was not. They asserted that subsection (1)(d) requires “dismissal of the case” and that Dulac’s case had not been (and never would be) dismissed due to his third degree assault convictions. Dulac acknowledged that the third degree assault charges would never be dismissed, but he argued that he should be permitted to petition for removal under section 16-22-113(1)(d) because “[t]he legislature had to have intended the statute to mean dismissal of the deferred charge[,] not dismissal of everything else involved in the case.”

¶ 7 The district court agreed with the People. It concluded that section 16-22-113(1)(d) includes two conditions precedent to a petition for removal: successful completion of the deferred judgment and sentence, and dismissal of the case. And because Dulac’s case had not been dismissed, he did not qualify for relief under that subsection. Instead, it explained that Dulac could petition for relief under section 16-22-113(1)(b), which imposes a ten-year waiting period. The court therefore denied Dulac’s petition as premature.

II. Analysis

¶ 8 Dulac contends that the district court erred by concluding that he is ineligible to petition for removal from the sex offender registry when he has successfully completed his deferred judgment and sentence and his only remaining convictions are not sex offenses. But his argument on appeal is slightly different than the one he made below. In the district court, Dulac argued that “dismissal of the case,” as used in section 16-22-113(1)(d), should be construed to mean “dismissal of the deferred charge.” He does not pursue that argument on appeal. Instead, he asserts that “dismissal of the case” is required only when the person was placed

on a deferred adjudication and not when the person was placed on a deferred judgment and sentence. We disagree.

A. Principles of Statutory Interpretation

¶ 9 The construction of a statute is a question of law that we review de novo. *McCulley v. People*, 2020 CO 40, ¶ 10. In interpreting statutes, “our primary purpose is to ascertain and give effect to the legislature’s intent.” *Id.* To accomplish this task, we begin with the language of the statute, giving the words and phrases their “plain and ordinary meaning” and reading them in context “according to the rules of grammar and common usage.” *Id.* (citation omitted). We must also “interpret the statute as a whole and in the context of the entire statutory scheme, giving consistent, harmonious, and sensible effect to all its parts.” *Id.* If the language of a statute is clear and unambiguous, we must apply the statute as written and look no further. *Cowen v. People*, 2018 CO 96, ¶ 12.

B. Section 16-22-113(1)(d) Applies Only When the Case Has Been Dismissed

¶ 10 Dulac’s argument hinges on how the clauses of section 16-22-113(1)(d) are divided. As noted above, the statute permits the filing of a petition to deregister “after the successful completion of the

deferred judgment and sentence or deferred adjudication *and* dismissal of the case.” *Id.* (emphasis added). A natural reading of this provision — and the one adopted by the district court — is that it imposes two prerequisites that must *both* be satisfied before a petition may be filed: (1) successful completion of the deferred judgment and sentence or deferred adjudication and (2) dismissal of the case. *See People v. Carbajal*, 2012 COA 107, ¶ 51.¹

¶ 11 But Dulac proposes a different division of the statutory language. He contends that the phrase should instead be divided into two *alternative* grounds for seeking deregistration, separated by the word “or”: (1) successful completion of the deferred judgment and sentence *or* (2) deferred adjudication and dismissal of the case. Under this construction, dismissal of the case would be required for a deferred adjudication but not for a deferred judgment and sentence. We reject Dulac’s proposed construction for four reasons.

¶ 12 First, it is inconsistent with our case law. Although no Colorado case has directly addressed the question we do here, cases

¹ There is a third statutory prerequisite that is not at issue: the defendant must also not have been subsequently convicted of any other offense involving unlawful sexual behavior. § 16-22-113(1)(d), C.R.S. 2023; *see also People v. Carbajal*, 2012 COA 107, ¶ 51.

considering petitions to deregister after completion of a deferred judgment and sentence have treated “dismissal of the case” as a requirement in that context. In *Carbajal*, the court identified “successful completion of the deferred judgment and sentence” and “dismissal of the case” as two distinct “express statutory factors” that a district court must consider in ruling on a section 16-22-113(1)(d) petition. *Carbajal*, ¶ 51. Similarly, in *McCulley*, the supreme court summarized section 16-22-113(1)(d) as permitting a petition to deregister after successful completion of the deferred judgment and sentence *and* dismissal of the case. *McCulley*, ¶ 5 n.3;² *see also* *People v. Perry*, 252 P.3d 45, 49 (Colo. App. 2010).

¶ 13 Indeed, in *McCulley*, the court noted that section 16-22-113(1)(b) — not section 16-22-113(1)(d) — governed the timing of the defendant’s petition because he had an outstanding misdemeanor conviction. *McCulley*, ¶ 5 n.3. And although the misdemeanor conviction in *McCulley* was itself a sex offense, unlike

² We recognize that *McCulley v. People* later quoted section 16-22-113(1)(d) and omitted the phrase “dismissal of the case.” 2020 CO 40, ¶ 17. But that phrase was not at issue in that case because the petition had been filed after the ordinary waiting period in section 16-22-113(1)(b). *McCulley*, ¶ 5 n.3.

Dulac’s remaining convictions, the court did not indicate that its conclusion was contingent on the nature of the outstanding conviction. *Id.* As in this case, the defendant in *McCulley* was required to register as a condition of his deferred judgment. *Id.* at ¶¶ 3, 17. Completion of that deferred judgment nevertheless was not sufficient for the defendant to invoke section 16-22-113(1)(d).

¶ 14 Second, Dulac’s bifurcation of the phrase “deferred judgment and sentence or deferred adjudication” is inconsistent with other statutory uses of that phrase. Elsewhere in SORA — including in the first clause of the sentence at issue — the phrase “deferred judgment and sentence or deferred adjudication” is used as a unitary phrase encompassing both types of dispositions, with no distinction between the two. *See* § 16-22-113(1)(d) (“If the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication”); § 16-22-102(3), C.R.S. 2023 (defining “conviction” to include “having received a deferred judgment and sentence or a deferred adjudication”). Other statutes use the phrase in the same way. *See* § 16-18.5-111, C.R.S. 2023; § 18-1.3-603(4)(a)(I), C.R.S. 2023. We see no indication of legislative intent to sever the two components of that phrase here.

¶ 15 Third, Dulac’s proposed construction would divorce “successful completion” from “deferred adjudication.” But that cannot be the case. It is not simply the existence of the deferred adjudication that entitles a person to petition for removal but the successful completion of that deferred adjudication. *See C.B. v. People*, 122 P.3d 1065, 1067 (Colo. App. 2005). Dulac has offered no sensible reason to attach the phrase “successful completion” to a deferred judgment and sentence but not to a deferred adjudication.

¶ 16 Fourth, a deferred adjudication is effectively the juvenile corollary to a deferred judgment and sentence for an adult. *See People in Interest of J.D.*, 2020 CO 48, ¶ 15. But Dulac’s reading of the statute would treat the two dispositions differently, with dismissal required for one but not the other. Under his reading, there would be no equivalent to “dismissal of the case” that would apply to a deferred judgment and sentence. That too would not be a sensible result. The more reasonable reading is that the dismissal requirement applies equally to both types of deferred dispositions.

¶ 17 There is a canon of statutory construction that names this commonsense conclusion: the series-qualifier canon. Under that canon, “when several words are followed by a clause which is

applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.” *Anschutz v. Colo. Dep’t of Revenue*, 2022 COA 132, ¶ 18 (citation omitted). Thus, because dismissal of the case may follow successful completion of *either* a deferred judgment and sentence *or* a deferred adjudication, the natural construction of the language indicates that dismissal is required for both. *Id.*

¶ 18 Dulac contends that the phrase “dismissal of the case” is *not* equally applicable to a deferred judgment and sentence as to a deferred adjudication because, while the deferred adjudication statute refers to dismissal of “the case,” the deferred sentence statute refers to dismissal of “the charge.” *See* § 19-2.5-903(4), C.R.S. 2023 (“Upon full compliance with the conditions of supervision [for a deferred adjudication] . . . the case [must be] dismissed with prejudice.”); § 18-1.3-102(2) (“Upon full compliance with [the conditions of a deferred judgment and sentence] . . . the charge . . . shall be dismissed with prejudice.”). But *this* statute, in another subsection, refers to dismissal of “the case” in the context of both. *See* § 16-22-113(1.3)(a) (requiring notice that court may discontinue duty to register when it “dismisses the case as a result

of the person’s successful completion of the deferred judgment and sentence or deferred adjudication”). And successful completion of a deferred judgment and sentence *can* result in dismissal of the case — such as when there are no other charges. *See Carbajal*, ¶¶ 9, 21 (dismissing case after successful completion of deferred judgment).

¶ 19 Dulac also points to section 16-22-108(1)(d)(I), C.R.S. 2023, which requires lifetime registration for certain offenses but allows a person who receives a deferred judgment and sentence for such an offense to petition for removal “as provided in section 16-22-113(1)(d).” That statute is inapplicable because Dulac was not convicted of one of the specified offenses. But it would not help him in any event because it says only that a person’s duty to register “may discontinue *as provided in section 16-22-113(1)(d).*” § 16-22-108(1)(d)(I) (emphasis added). Thus, it simply returns us to where we started — determining what section 16-22-113(1)(d) provides.

¶ 20 We therefore conclude that a defendant is eligible to petition for removal from the sex offender registry under section 16-22-113(1)(d) only after successful completion of the deferred judgment and sentence (or deferred adjudication) *and* dismissal of the case.

C. Dulac’s Case Was Not Dismissed

¶ 21 Dulac does not dispute that his case has not been dismissed. Nor could he. Although the attempted sexual assault charge for which he received the deferred judgment and sentence was dismissed, his other convictions remain.³ And section 16-22-113(1)(d) requires dismissal of the case, not the charge — even though the deferred sentence statute refers only to dismissal of the charge. See § 18-1.3-102(2); *Stackpool v. Colo. Dep’t of Revenue*, 2021 COA 150, ¶ 40 (noting that legislature’s use of different phrase in another statute “tells us that it knew how to signify” that phrase and “was aware of the distinction” between that phrase and the one it used). Thus, the district court correctly concluded that Dulac is ineligible to petition for removal from the sex offender registry under section 16-22-113(1)(d). See *McCulley*, ¶ 5 n.3.

¶ 22 We recognize that this creates an arguable anomaly in which a defendant is precluded from deregistering solely due to non-sex

³ Dulac points out that the stipulation for the deferred judgment and sentence stated that upon successful completion, the court would dismiss the case. But the stipulation also stated that the third degree assault charges would *not* be dismissed upon successful completion of the deferred judgment and sentence. In any event, there is no dispute that Dulac’s case was not dismissed.

offenses that would not themselves require registration. The People posit one reason this might make sense: it allows for a “split plea,” like the one in this case, by which a defendant can receive a deferred judgment and sentence for a sex offense while accepting a more prolonged registration obligation as a result of a conviction for a non-sex offense in the same case. But we do not need to speculate about why the legislature might have done what it did. Unless “a literal interpretation of a statute would produce a result contrary to the expressed intent of the legislature” — and this one does not — we are bound to apply the statute as written. *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1191 (Colo. 2010); see also *Oracle Corp. v. Dep’t of Revenue*, 2017 COA 152, ¶ 41 (“[C]ourts must approach rejecting a statute’s plain language to avoid creating an absurd result very cautiously.”), *aff’d*, 2019 CO 42.

¶ 23 Moreover, two other points demonstrate that this scenario is not as anomalous as it might seem at first blush. First, even where the deferred judgment and sentence is the defendant’s *only* conviction and the case is dismissed, termination of the registration requirement is not automatic. The court still must find that the petitioner is not likely to commit a subsequent sex offense, and in

making that determination, it must consider treatment records, victim statements, and any other relevant information. § 16-22-113(2)(f); *see also Carbajal*, ¶ 48 (holding that district court's determination whether to grant a petition for removal is discretionary). Thus, a defendant who successfully completes a deferred judgment and sentence may be required to continue registering even when they have *no* other outstanding convictions.

¶ 24 Second, a person who is ineligible to petition for removal under section 16-22-113(1)(d) is not forever barred from deregistering. The person may still petition for removal after expiration of the normal statutory time period. *See* § 16-22-113(1)(a)-(c); *McCulley*, ¶ 5 n.3. The person just may not take advantage of the *exception* to that time period in subsection (1)(d).

¶ 25 Dulac also argues that he should no longer be required to register as a sex offender because he no longer has a conviction for a sex offense. *See McCulley*, ¶ 28. But that is a policy decision for the legislature. There is no question that Dulac was required to register as a result of having received a deferred judgment and sentence for attempted sexual assault. § 16-22-103(2), C.R.S. 2023; § 16-22-102(3). The legislature set forth the conditions that

must be satisfied for a person to petition to discontinue that registration requirement. § 16-22-113(1). Dulac has not met those conditions. It is not our role to assess the desirability of the legislature's choice. *See People v. Butler*, 2017 COA 117, ¶ 35.

III. Disposition

¶ 26 The order is affirmed.

JUDGE NAVARRO and JUDGE KUHN concur.