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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JAMES RICHARD JOHNSON,

Petitioner and Appellant,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest and
Respondent.

E055194

(Super.Ct.No. CIVDS1105422)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn,
Judge. Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for
Defendant and Appellant.

Michael A. Ramos, District Attorney, and Brent J. Schultze, Deputy
District Attorney, for Real Party in Interest and Respondents.

I

INTRODUCTION

Petitioner James Richard Johnson sought to be relieved of the mandatory lifetime requirement to register as a sex offender under Penal Code section 290 et seq.¹ After the superior court denied his petition for writ of mandate, this court's original opinion reversed the superior court's decision on equal protection grounds, relying on *People v. Hofsheier* (2006) 37 Cal.4th 1185. Now, however, in *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, the California Supreme Court has overruled its own *Hofsheier* decision, reversed our original opinion, and remanded to us for further proceedings.

In the Supreme Court's *Johnson* opinion, the court held unequivocally that "with respect to [defendant Johnson's] section 288a(b)(2) conviction, that there is no violation of his federal and state constitutional rights to equal protection of the laws in the ongoing requirement that he register as a sex offender pursuant to section 290." (*Johnson v. Department of Justice, supra*, 60 Cal.4th at p. 888.) The court also determined there was "no reason to deny retroactive application where, as here, a sex offender has taken no action in justifiable reliance on the overruled decision." (*Id.* at p. 889.)

In view of the Supreme Court's *Johnson* opinion, defendant cannot assert an equal protection argument. The parties have not submitted any supplemental appellate briefs in accordance with California Rules of Court, rule 8.200(b)(1).

¹ All statutory references are to the Penal Code unless stated otherwise.

Accordingly, we now affirm the judgment of the superior court denying the petition for writ of mandate.

II

FACTUAL AND PROCEDURAL BACKGROUND

As recited in *Johnson*: “In 1990, a five-count complaint was filed against James Richard Johnson, alleging two counts of lewd acts upon a child under 14 years of age, a felony (§ 288, subd. (a)), one count of nonforcible sodomy with a minor under 16 years of age, a felony (§ 286, subd. (b)(2)), and two counts of nonforcible oral copulation by a person over 21 years of age with a minor under 16 years of age, a felony (§ 288a, subd. (b)(2) (hereafter section 288a(b)(2))). All of these counts named the same girl as the alleged victim. Johnson, who was 27 years old at the time of the alleged conduct, pleaded guilty to a single count of felony nonforcible oral copulation in violation of section 288a(b)(2). As part of that plea, Johnson initialed and signed a declaration in which he acknowledged: ‘If I plead guilty to any sex crime covered by Penal Code Section 290, I will be required to register as a sex offender’ Johnson’s section 288a(b)(2) conviction resulted in a two-year prison sentence and mandatory sex offender registration under section 290.” (*Johnson v. Department of Justice, supra*, 60 Cal.4th at pp. 875-876.)

In 2011, defendant filed a petition for writ of mandate based on the 2006 Supreme Court decision in *Hofsheier*, contending that the mandatory registration requirement for the section 288a, subdivision (b)(2), conviction violated equal

protection. He further argued that the court should not require discretionary registration in his case. He asserted that he “has not, in the twenty years since his conviction in 1990, committed any offenses that would otherwise require him to register as a sex offender.”

The superior court noted a conflict in the courts of appeal about whether *Hofsheier* applied to a section 288a, subdivision (b)(2), conviction. The superior court followed *People v. Manchel* (2008) 163 Cal.App.4th 1108, and denied the petition for writ of mandate. After this court reversed the superior court’s decision, the Supreme Court granted review and requested supplemental briefing on two issues which had not been previously raised in the trial court or in this court regarding whether *Hofsheier* should be overruled and whether the court’s decision should apply retroactively. (*Johnson v. Department of Justice, supra*, 60 Cal.4th at p. 876.)

III

DISCUSSION

When it overruled its own 2006 decision in *Hofsheier*, the Supreme Court in 2015 held: “*Hofsheier*’s equal protection analysis is fundamentally flawed and deserves to be overruled.” (*Johnson v. Department of Justice, supra*, 60 Cal.4th at p. 879.) The court explained: “*Hofsheier* failed to recognize that, with regard to sex offender registration, concerns regarding recidivism, teen pregnancy, and child support obligations provide a rational basis for treating offenders who engage in unlawful sexual intercourse differently from those engaging in nonforcible oral

copulation. *Hofsheier*'s faulty analysis has now resulted in a number of sex crimes against minors being judicially excluded from mandatory registration, despite the legislative intent to exclude only one. *Hofsheier*, moreover, leaves the Legislature with a classic Hobson's choice: If the Legislature wishes to effectuate its policy judgment that mandatory registration is appropriate for sex offenders convicted of crimes other than unlawful intercourse, then the only option realistically available is to add section 261.5 to section 290's list of mandatory offenses—but that is precisely what the Legislature has repeatedly refused to do in light of the unique potential for pregnancy and parenthood that attends section 261.5 offenses.” (*Johnson v. Department of Justice, supra*, 60 Cal.4th at p. 880.)

After detailed elaboration of its reasoning for overruling *Hofsheier*, which for reasons of judicial economy we do not repeat here, the Supreme Court concluded in *Johnson* that mandatory registration for a section 288a, subdivision (b)(2), conviction for oral copulation, does not violate equal protection: “Inasmuch as Johnson’s claim for relief rests entirely on *Hofsheier*, we conclude, with respect to his section 288a(b)(2) conviction, that there is no violation of his federal and state constitutional rights to equal protection of the laws in the ongoing requirement that he register as a sex offender pursuant to section 290.” (*Johnson v. Department of Justice, supra*, 60 Cal.4th at p. 888.)

The court also rejected any argument based on the issue of retroactivity. It determined its 2015 decision applies to Johnson’s 1990 conviction because there is “no reason to deny retroactive application where, as here, a sex offender has taken

no action in justifiable reliance on the overruled [*Hofsheier*] decision.” (*Johnson v. Department of Justice, supra*, 60 Cal.4th at p. 889.)

In view of the Supreme Court overruling its *Hofsheier* decision in *Johnson*, defendant Johnson cannot assert an equal protection argument to challenge the requirement imposed on him for mandatory lifetime registration as a sex offender. Defendant has offered no other grounds to challenge the requirement.

IV

DISPOSITION

In accordance with the directions of the Supreme Court, we affirm the judgment of the superior court denying defendant’s petition for writ of mandate.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

KING
J.