A plea to Justice Armstead: Please use correct, scientific information

written by Sandy | July 2, 2021

By Sandy and Michael S . . . Nobody today references the daily price of whale oil. Why? Because given the presence of modern-day petroleum, whale oil is not relevant to everyday life. So why do some judges continue to refer to outdated and debunked information that distorts the realities of everyday life for those on a public registry?

From the high bench of the Supreme Court, to the prosecutors' offices, to the public and the offenders themselves – all believe that good laws produce public safety. And while some courts are moving in that direction, some judges in particular remain an obstacle to public safety by reinforcing old stereotypes of those who have committed a sexual offense.

In recent court decisions upholding the rights of registered persons, state supreme courts are, to use a popular idiom, on a roll.

In mid-June, 2021, the South Carolina Supreme Court ruled that ". . . a state law requiring sex offenders to register for life without prior judicial review is unconstitutional." Then the very end of June, the Colorado Supreme Court ruled that, without a procedure allowing for individual assessment and a path off of the registry, placing juveniles on it for life violates the Eighth Amendment. These courts are getting it right!

And in West Virginia in mid-July, a person with a sexual crime conviction prevailed in his case, resulting in a Supreme Court decision reinstating good time credit for many on extended supervision revocations.

While the court itself did the right thing, two justices dissented, and in writing their dissenting opinion, Justice Armstead, while making his argument against the majority decision, chose to imply that those with sexual crime convictions should not be the recipients of early release benefits. He does not explicitly say this; he is much more subtle than that. He does it so abruptly that it seems out of place by inserting this statement: "Study after study has shown that sex offenders have one of the highest likelihoods of reoffending once they are released from custody. *See* *Hensler v. Cross*, 210 W. Va. 530, 536, 558 S.E.2d 330, 336 (2001) ('We are aware that sex offenders are significantly more likely than other repeat offenders to reoffend with sex crimes or other violent crimes and the tendency persists over time.')."

He says "study after study," but he does not cite to any of these studies. Instead, he cites to a decision from 2001 where the sentence in parentheses appears, and it too has no citation or documentation. Statements such as these only reinforce myths about registered persons and, at worst, create bad laws and harm public safety.

If we could, we would say to Justice Armstead:

Sir, if you insist on using such old references to make a case about sexual offense recidivism, please refer to the 2003 DOJ study, the largest ever done, where the results showed a 5.3% rate of rearrest for a sexual crime with a 3.5% reconviction rate at the three-year mark.

As a first step toward reimagining a judicial system that is fair, equitable, and accurate, NARSOL calls on Judge Armstead to acknowledge the error of his statement and retract it from the record.