NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA, Appellant, v. RAY LA VEL JAMES, Appellee.	)	Case No. 2D18-2552

Opinion filed April 15, 2020.

Appeal from the Circuit Court for Hillsborough County; Mark Kiser, Judge.

Ashley Moody, Attorney General, Tallahassee, and Elba Caridad Martin, Assistant Attorney General, Tampa, for Appellant.

Ray La Vel James, Appellee.

SMITH, Judge.

The State appeals the trial court's order granting the motion to dismiss the information charging Ray La Vel James with two counts of failing to report quarterly as a sexual offender under section 943.0435(14)(b), Florida Statutes (2017). The trial court found Mr. James does not qualify as a "sexual offender" under section 943.0435(1)(h)(1) because he has not yet been released from the sanction imposed in

his underlying case; therefore, Mr. James is not required to report and register as a "sexual offender" under section 943.0435(14)(b). We agree with the trial court and affirm the dismissal.

In case number 02-CF-015590, Mr. James was convicted of attempted lewd and lascivious molestation in violation of section 800.04, Florida Statutes (2001). Mr. James was sentenced to fifteen years' prison and a $10,000 fine pursuant to section 775.083, Florida Statutes (2001). After Mr. James was released from prison, the State filed a two-count information alleging Mr. James failed to report quarterly, in person, to the Hillsborough County Sheriff's Office to register as a "sexual offender" as required by section 943.0435(14)(b). Mr. James moved to dismiss the information, arguing he did not qualify as a "sexual offender" under section 943.0435(1)(h)(1) and he was not required to register and report, notwithstanding his release from prison, because his $10,000 fine has not yet been released or discharged. The trial court agreed and dismissed the charges.

Under section 943.0435(1):

> (h) 1. "Sexual offender" means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:
>
> > a. (I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the

> court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-sub-subparagraph or at least one offense listed in this sub-sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and
>
> (II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(Emphasis added.)

Here, Mr. James was convicted of attempted lewd and lascivious molestation under section 800.04, for which the trial court imposed a sanction of fifteen years' prison and a $10,000 fine. The fine was not imposed as a lien, nor was it imposed as a cost. See § 938.30(6)-(9), Fla. Stat. (2017); Jones v. DeSantis, 410 F. Supp. 3d 1284, 1298 (N.D. Fla. 2019) ("Florida law allows a judge to convert a financial obligation imposed at the time of sentencing to a civil lien."). Mr. James was not sentenced to any sex offender probation. The State concedes the $10,000 fine has not been released and remains outstanding. However, the State argues the plain language of the statute requires that Mr. James be released from a sanction, which could be a fine or incarceration. According to the State, the statute does not require Mr. James be released from both incarceration and the fine to qualify as a "sexual offender" under section 943.0435(1)(h)(1) and trigger the registration requirements. This is a

constrained reading of the statute and one that we cannot follow.

Courts must afford statutory language "its plain and ordinary meaning, giving due regard to the context within which it is used." Hampton v. State, 103 So. 3d 98, 110 (Fla. 2012); see also Brittany's Place Condo. Ass'n. v. U.S. Bank, N.A., 205 So. 3d 794, 797-98 (Fla. 2d DCA 2016). The plain language of section 943.0435(1)(h)(1)(a) provides that to qualify as a "sexual offender" under that section—thereby triggering the registration requirement—the person must be released from "the sanction imposed" for any conviction of an offense enumerated in the previous subsection (which includes Mr. James' conviction for attempted lewd and lascivious molestation under section 800.04). § 943.0435(1)(h)(1)(a)(I). The statute further provides the "sanction . . . includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility." § 943.0435(1)(h)(1)(a)(II) (emphasis added).

Here, Mr. James' entire "sanction" for his conviction under section 800.04 consists of fifteen years' prison and a $10,000 fine. Mr. James' release from incarceration has no effect on the $10,000 fine, which is a portion of his sanction for his conviction. Accordingly, his sanction, as a whole, has not been released, and he does not qualify as a "sexual offender" for purposes of reporting and registration under section 943.0435.

The State urges this court to read the statutory language as meaning a release of either the period of incarceration or the fine triggers the registration requirement. The State's interpretation of the legislature's use of the word "or" does not comport with the plain reading the statute. The statute clearly mandates that the person

be released from "the sanction imposed," which "includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility." § 943.0435(1)(h)(1)(a)(II). The statute does not say the person must be released from either "a sanction" or "the incarcerative portion of the sanction" to qualify as a "sexual offender." See § 943.0435(1)(h)(1)(a)(II).

Nor did the legislature provide for an automatic designation as a "sexual offender" upon conviction for certain crimes in the body of the statute. If the legislature intended for an automatic designation as a "sexual offender" upon the conviction of certain offenses, it could have so provided, as it did in Florida's Sexual Predator Act. See § 775.21, Fla. Stat. (2017). Under section 775.21, the legislature provides:

> (4) Sexual predator criteria. - -
>
> (a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:
>
> 1. The felony is:
>
> a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction.
>
> . . . .
>
> (5) Sexual predator designation. - - An offender is designated as a sexual predator as follows:
>
> . . . .
>
> (a) 2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing

> court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order.

(Emphasis added.)

The legislature declined to include this automatic designation in section 943.0435, as it did in the Sexual Predator Act. And when the legislature has included a provision in one statute, but omitted it in an analogous statute, courts should not read it into the statute from which it has been excluded. See Mesen v. State, 271 So. 3d 164, 169 (Fla. 2d DCA 2019); see also Rollins v. Pizzarelli, 761 So. 2d 294, 299 (Fla. 2000) (explaining that "[j]ust as the legislative use of different terms in different portions of the same statute is evidence that different meanings were intended," the language of statutes in different chapters can be compared for the same purpose); Ocala Jockey Club, LLC v. Rogers, 981 So. 2d 1245, 1247 (Fla. 5th DCA 2008) (finding language in one statute "reveal[ing] that the [l]egislature knows how to make provision" for an award of both actual and treble damages implied that another statute lacking such language did not permit both).

The State also argues that to interpret section 943.0435(1)(h)(1)(a) to require both portions of Mr. James' sanction to be released to qualify as a "sexual offender" is contrary to the legislative intent of the statute and would lead to an absurd result. But courts must "presume that [the] legislature says in a statute what it means and means in a statute what it says there." Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992); see also Cason v. Fla. Dep't of Mgmt. Servs., 944 So. 2d 306, 315 (Fla. 2006) ("[W]e have pointed to language in other statutes to show that the [l]egislature

'knows how to' accomplish what it has omitted in the statute in question."). To be sure, the legislature may not have intended the ultimate outcome in this case; however, "unless it can be said 'with absolute confidence that no reasonable legislature would have intended for the statute to carry its plain meaning,' the courts should 'presume that [our] legislature says in a statute what it means and means in a statute what it says there.' " Mesen, 271 So. 3d at 169 (alteration in original) (quoting Maddox v. State, 923 So. 2d 442, 452 (Fla. 2006) (Cantero, J., dissenting)). "[T]he question . . . is not what [the legislature] would have wanted but what [the legislature] enacted. . . . " Mesen, 271 So. 3d at 171 (quoting Republic of Argentina v. NML Capital, Ltd., 573 U.S. 134, 145 (2014)); see also Macchione v. State, 123 So. 3d 114, 119 n.3 (Fla. 5th DCA 2013) ("[W]hatever the consequences, we must accept the plain meaning of plain words." (quoting United States v. Brown, 206 U.S. 240, 244 (1907))).

Moreover, "the absurdity doctrine 'exception to the plain meaning rule should not be used to avoid an unintended result, only an absurd or patently unreasonable one.' " Mesen, 271 So. 3d at 169 (quoting Maddox, 923 So. 2d at 452-53) (Cantero, J., dissenting). Here, the plain meaning of the statute does not produce an absurd or patently unreasonable result—the result may not be the one ultimately desired by the legislature, but without more, this court is bound by the plain meaning of the language used in the statute. We are mindful of the State's legislative complaint, arguing a defendant could take advantage of this provision by simply failing to ever pay a fine in order to delay having to comply with the reporting requirements, but this is an issue for the legislature to address, and not the courts.

Accordingly, under the plain terms of section 943.0435, Mr. James does

not qualify as a "sexual offender" because his sanction, which includes a $10,000 fine, has not been released. The trial court properly dismissed the charges brought against Mr. James for failing to report and register as a "sexual offender" under section 943.0435(14).

Affirmed.

CASANUEVA and VILLANTI, JJ., Concur.