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SUMMARY  
May 2, 2024

**2024COA48**

**No. 23CA1538, *Moore v. 4th Judicial District Attorney* —  
Criminal Law — Sex Offender Registration — Petition for  
Removal from Registry**

Section 16-22-113(3), C.R.S. 2023, provides that certain persons are not eligible for removal from the sex offender registry. Subject to an exception not relevant here, such persons include “[a]ny adult who has more than one conviction as an adult for unlawful sexual behavior or any other offense, the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103(2), [C.R.S. 2023,] in this state or any other jurisdiction.” § 16-22-113(3)(c). In turn, section 16-22-103(2)(a) requires any person convicted of unlawful sexual behavior “on and after July 1, 1994,” to register as a sex offender.

In this case, a division of the court of appeals considers whether section 16-22-113(3)(c)'s reference to section 16-22-103(2) means that section 16-22-113(3)(c) applies only to convictions for unlawful sexual behavior entered on and after July 1, 1994. The division holds that section 16-22-113(3)(c) does not impose such a time limitation. Accordingly, the division concludes that, because the defendant has two convictions for unlawful sexual behavior in 1987 and 1999, section 16-22-113(3)(c) renders him ineligible for removal from the sex offender registry. The division therefore affirms the district court's order.

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Court of Appeals No. 23CA1538  
El Paso County District Court No. 23CV30866  
Honorable Gregory R. Werner, Judge

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Raymond Edward Moore,

Plaintiff-Appellant,

v.

4th Judicial District Attorney,

Defendant-Appellee.

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ORDER AFFIRMED

Division VI  
Opinion by JUDGE YUN  
Welling and Lum, JJ., concur

Announced May 2, 2024

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Borquez Law Office, Robert P. Borquez, Denver, Colorado, for Plaintiff-Appellant

No Appearance for Defendant-Appellee

¶ 1 Raymond Edward Moore appeals the district court’s order denying his petition to discontinue his sex offender registration. We conclude that, because Moore has more than one conviction as an adult for unlawful sexual behavior, section 16-22-113(3)(c), C.R.S. 2023, renders him ineligible to petition for removal from the sex offender registry. In doing so, we reject Moore’s argument that, because section 16-22-113(3)(c) contains a reference to section 16-22-103(2), C.R.S. 2023, it applies only to convictions for unlawful sexual behavior entered on and after July 1, 1994. Accordingly, we affirm.

## I. Background

¶ 2 Moore has two out-of-state convictions for sexual offenses involving minors. In 1987, when he was eighteen years old, a Minnesota jury convicted him of criminal sexual conduct in the first degree with a minor. In 1999, when he was thirty-one, he pleaded guilty in Indiana to sexual misconduct with a minor. Moore subsequently moved to Colorado and registered as a sex offender based on his Indiana conviction. See § 16-22-103(1)(b) (providing that “[a]ny person who was convicted on or after July 1, 1991, in another state or jurisdiction, . . . of an offense that, if committed in

Colorado, would constitute an unlawful sexual offense,” is required to register).

¶ 3 In 2023, Moore filed a petition to discontinue his sex offender registration, and the People filed an objection. At a hearing, the People argued that Moore was ineligible to petition for removal from the sex offender registry for two reasons: first, because he has more than one conviction as an adult for unlawful sexual behavior, *see* § 16-22-113(3)(c), and second, because his Indiana offense, if committed in Colorado, would constitute sexual assault on a child, *see* § 16-22-113(3)(b)(II). The district court agreed with the People’s second argument and denied the petition.

¶ 4 Moore appeals the district court’s order.

## II. Analysis

¶ 5 Moore contends that the district court erred by denying his petition to discontinue his sex offender registration. We affirm the district court’s order, but we do so for the first reason argued by the People — Moore’s multiple convictions for unlawful sexual behavior.

*See Taylor v. Taylor*, 2016 COA 100, ¶ 31 (“An appellate court may . . . affirm on any ground supported by the record.”).<sup>1</sup>

#### A. Standard of Review

¶ 6 We review a district court’s denial of a petition to discontinue sex offender registration for an abuse of discretion. *See People v. Carbajal*, 2012 COA 107, ¶ 48 (“[T]he statute appears to leave to the discretion of the trial court the ultimate decision of whether to grant

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<sup>1</sup> Under section 16-22-113(3)(b)(II), C.R.S. 2023, any person who is convicted as an adult of sexual assault on a child, in violation of section 18-3-405, C.R.S. 2023, is ineligible to petition for removal from the sex offender registry. The district court found that had Moore’s Indiana conviction for sexual misconduct with a minor been committed in Colorado, it would constitute sexual assault on a child. *See Curtiss v. People*, 2014 COA 107, ¶ 19 (concluding that “the General Assembly intended that section 16-22-113(3) apply to persons whose convictions were obtained from out-of-state courts”). But the elements of the Colorado and Indiana statutes are different. In Colorado, the sexual assault on a child statute applies to victims “less than fifteen years of age.” § 18-3-405(1). In Indiana, Moore pleaded guilty to sexual misconduct with a minor “at least fourteen (14) years of age but less than sixteen (16) years of age.” Ind. Code Ann. § 35-42-4-9(b) (West 1999). This plea was not based on the actual age of the victim. Because of the differences in the two statutes, we decline to address whether Moore’s Indiana conviction would constitute sexual assault on a child as provided in Colorado law if committed in Colorado. *See People v. Brooks*, 2012 COA 52, ¶ 17 (concluding that the defendant was not required to register as a sex offender in Colorado because the “defendant’s Texas conviction for indecency with a child by exposure did not satisfy all the elements of the crime of indecent exposure in Colorado”).

a petition requesting discontinuation of sex offender registration, as well as the factors to consider in making that decision.”). “A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or when it misconstrues or misapplies the law.” *In re Marriage of Fabos*, 2022 COA 66, ¶ 16.

¶ 7 Statutory interpretation is a question of law that we review de novo. *Yen, LLC v. Jefferson Cnty. Bd. of Comm’rs*, 2021 COA 107, ¶ 10. We aim to effectuate the legislature’s intent, and, in doing so, we look first to the statute’s plain language, giving words and phrases their plain and ordinary meanings. *Oakwood Holdings, LLC v. Mortg. Invs. Enters. LLC*, 2018 CO 12, ¶ 12. We must also interpret the “applicable statutory provisions as a whole in order to accord consistent, harmonious, and sensible effect to all their parts.” *Yen*, ¶ 11 (quoting *Prairie Mountain Publ’g Co. v. Regents of Univ. of Colo.*, 2021 COA 26, ¶ 12). If the statute’s language is clear, we must apply it as written and need look no further. *Oakwood Holdings*, ¶ 12. But if the language is ambiguous — that is, if it is “reasonably susceptible of multiple interpretations” — we may turn to other tools of statutory interpretation, including the

statute’s legislative history. *Hice v. Giron*, 2024 CO 9, ¶ 10 (quoting *McBride v. People*, 2022 CO 30, ¶ 23).

## B. Law and Discussion

¶ 8 Section 16-22-113 governs petitions for removal from the sex offender registry and provides that certain persons “are not eligible for relief pursuant to this section, but are subject for the remainder of their natural lives to the registration requirements.”

§ 16-22-113(3). Subject to an exception not relevant here, such persons include “[a]ny adult who has more than one conviction as an adult for unlawful sexual behavior or any other offense, the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103(2), in this state or any other jurisdiction.” § 16-22-113(3)(c).

¶ 9 The referenced section 16-22-103(2) is lengthy. Paragraph (a) provides that, “[o]n and after July 1, 1994, any person who is convicted in the state of Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior, . . . shall be required to register” as a sex



offender. § 16-22-103(2)(a).<sup>2</sup> Paragraph (b) incorporates the definition of “unlawful sexual behavior” set forth in section 16-22-102(9), C.R.S. 2023. § 16-22-103(2)(b). Paragraphs (c) and (d) concern how to determine, for convictions entered on or after July 1, 2002, whether a person has been “convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior,” and how the Department of Corrections may determine that a person is a sex offender for the purposes of classification and treatment. § 16-22-103(2)(c)-(d).

¶ 10 At the hearing on Moore’s petition, the People argued that Moore’s two convictions for unlawful sexual behavior rendered him ineligible under section 16-22-113(3)(c) to petition for removal from the sex offender registry.

¶ 11 Moore concedes that he is an “adult who has more than one conviction as an adult for unlawful sexual behavior” in other states. See §§ 16-22-113(3)(c), 16-22-102(9). But he argues that, by referring to section 16-22-103(2), section 16-22-113(3)(c) adopts

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<sup>2</sup> Section 16-22-103(3)(a), C.R.S. 2023, provides that “any person convicted of an offense in any other state or jurisdiction, . . . for which the person would be required to register if convicted in Colorado, is required to register.”

“the time frame set out” in section 16-22-103(2)(a). Specifically, he argues that, because section 16-22-103(2)(a) creates a registration requirement only for persons convicted of unlawful sexual behavior “[o]n and after July 1, 1994,” section 16-22-113(3)(c) *also* applies only to convictions on and after July 1, 1994. Thus, under Moore’s reading of section 16-22-113(3)(c), the only convictions that count when determining whether an adult “has more than one conviction as an adult for unlawful sexual behavior” are those entered on and after July 1, 1994. So, he argues, his 1987 Minnesota conviction “does not constitute a second conviction precluding [him] from discontinuing registration.” We are not persuaded for three reasons.

¶ 12 First, because Moore concedes that his two convictions were for “unlawful sexual behavior” rather than “any other offense, the underlying factual basis of which is unlawful sexual behavior,” the phrase “pursuant to section 16-22-103(2)” does not apply to his convictions. § 16-22-113(3)(c). For clarity and convenience, we quote the relevant statutory language again here: the persons “not eligible for relief” pursuant to section 16-22-113 include

[a]ny adult who has more than one conviction as an adult for unlawful sexual behavior or any other offense, the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103(2), in this state or any other jurisdiction.

§ 16-22-113(3)(c). Thus, for the reference to section 16-22-103(2) to apply to Moore’s convictions, the phrase “the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103(2)” must apply to *both* preceding terms, “unlawful sexual behavior” and “any other offense.” But a “conviction . . . for unlawful sexual behavior . . . , the underlying factual basis of which is unlawful sexual behavior,” would be redundant. The underlying factual basis is relevant only when the conviction is *not* for “unlawful sexual behavior” but for some “other offense.” See *McCoy v. People*, 2019 CO 44, ¶ 37 (“We read statutory words and phrases in context, and we construe them according to the rules of grammar and common usage.”). Accordingly, under the statute’s plain language, the phrase “the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103(2)” applies only to “any other offense.”

¶ 13 Second, even considering alone the phrase “any other offense, the underlying factual basis of which is unlawful sexual behavior,” we disagree with Moore that the legislature intended the reference to section 16-22-103(2) to incorporate the time limitation — “[o]n and after July 1, 1994” — set forth in section 16-22-103(2)(a). The time limitation applies to the affirmative obligation to register, which is a different question from eligibility to petition for deregistration. Instead, a more likely explanation for the reference to section 16-22-103(2) is that the legislature intended to capture the detailed guidance in subsection (2)(c) concerning how to determine whether a person has been “convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior.”

¶ 14 Third, even assuming that the language of section 16-22-113(3)(c) is ambiguous, the statute’s legislative history further supports our conclusion that it is not limited to convictions entered on and after July 1, 1994. In 2002, when section 16-22-113(3) was first enacted, paragraph (c) simply provided that “[a]ny adult who has more than one conviction or adjudication for unlawful sexual behavior in this state or any other jurisdiction” was

ineligible to petition for deregistration. § 16-22-113(3)(c), C.R.S. 2002. The reference to section 16-22-103(2) (which itself was enacted in 2002) was not added until 2021. That amendment changed the persons subject to the lifetime registration requirement to include the following, with dashes through words indicating deletions from the prior version and capital letters indicating new text added:

Any adult who has more than one conviction  
~~or adjudication~~ AS AN ADULT for unlawful sexual  
behavior OR ANY OTHER OFFENSE, THE UNDERLYING  
FACTUAL BASIS OF WHICH IS UNLAWFUL SEXUAL  
BEHAVIOR PURSUANT TO SECTION 16-22-103(2), in  
this state or any other jurisdiction, OR HAS A  
CONVICTION AS AN ADULT AND ONE OR MORE  
ADJUDICATIONS AS A JUVENILE FOR UNLAWFUL  
SEXUAL BEHAVIOR OR FOR ANY OTHER OFFENSE, THE  
UNDERLYING FACTUAL BASIS OF WHICH IS UNLAWFUL  
SEXUAL BEHAVIOR PURSUANT TO SECTION  
16-22-103(2), IN THIS STATE OR ANY OTHER  
JURISDICTION.

Ch. 320, sec. 8, § 16-22-113(3)(c), 2021 Colo. Sess. Laws. 1969.

¶ 15 Returning to our first (and dispositive) point, the amendment’s addition of the language “or any other offense, the underlying factual basis of which is unlawful sexual behavior pursuant to section 16-22-103(2)” further clarifies that the phrase “the underlying factual basis of which is unlawful sexual behavior

pursuant to section 16-22-103(2)” applies only to convictions for “any other offense” and not to convictions for “unlawful sexual behavior.” Thus, because Moore’s convictions were for “unlawful sexual behavior,” the phrase “pursuant to section 16-22-103(2)” does not apply to his convictions.

¶ 16 Further, in its summary of the bill that amended section 16-22-113(3)(c), the legislature stated that the bill was intended to implement the following changes:

- “[a]dding language to adult or juvenile provisions that currently reference only crimes defined as ‘unlawful sexual behavior’ to also include convictions and adjudications for nonsexual crimes where there has been, pursuant to statute, a judicial finding of an underlying factual basis involving unlawful sexual behavior”; and
- “[c]hanging current law that requires lifetime registration for an adult who has more than one adjudication as a juvenile so that juvenile adjudications alone may not trigger mandatory lifetime registration.”

H.B. 21-1064, 73d Gen. Assemb., 1st Reg. Sess., Bill Summary (Colo. 2021), <https://perma.cc/6QNL-JKDJ>. Conspicuously absent from these intended changes is the imposition of a bar on considering convictions entered before July 1, 1994, in determining whether a person is eligible for deregistration.

¶ 17 We acknowledge Moore’s argument that it is unfair that a conviction so old that it did not require him to register as a sex offender in the first place should now render him ineligible to petition for deregistration. (Because his 1987 conviction in Minnesota predates July 1, 1991, his obligation to register in Colorado as a sex offender was based solely on his 1999 conviction in Indiana. See § 16-22-103(1)(b).) But drawing such a distinction is a policy decision reserved for the legislature (subject to constitutional limitations not raised here). See *McCulley v. People*, 2020 CO 40, ¶ 44 n.2 (Boatright, J., dissenting) (“In enacting [sex offender] registration requirements, the General Assembly sought to protect the community and aid law enforcement officials in investigating future sex crimes. These concerns are heightened when an offender commits multiple acts of unlawful sexual contact on separate occasions, as is the case here.”) (citation omitted); *cf.*

*People in Interest of T.B.*, 2021 CO 59, ¶ 73 (holding that “mandatory lifetime sex offender registration for offenders with multiple juvenile adjudications constitutes cruel and unusual punishment in violation of the Eighth Amendment”).

¶ 18 We thus conclude that the district court did not err by denying Moore’s petition to deregister.

### III. Disposition

¶ 19 The order is affirmed.

JUDGE WELLING and JUDGE LUM concur.