County Criminal Court: CRIMINAL PROCEDURE—Dismissal. The trial court properly granted Appellee's motion to dismiss, finding the term "entering" in § 775.13(2), Fla. Stat., not to be ambiguous or vague, and, applying the plain meaning of the term, that Appellee could not be convicted of violating the statute by failing to register as a convicted felon in Pasco County, having never physically entered the county between the time of conviction and sentencing in the previous case, and the time charges were filed in this case. Affirmed. *State of Florida v. Tina Hess*, No. 13-CF-4590-ES (Fla. 6th Cir. App. Ct. June 20, 2014).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

STATE OF FLORIDA,

Appellant,

v.

TINA HESS,

Appellee.
_____/

UCN: 512013CF004590AES
Appeal No: CRC1304590CFAES
L.T. No: 13-0926MMAES

On appeal from County Court

Honorable William G. Sestak

Hannah Tait, Esquire,
Office of the State Attorney,
for Appellant

Frank D. L. Winstead, Esquire,
for Appellee

ORDER AND OPINION

Appellant, State of Florida, appeals an order of the trial court dismissing the charges against Appellee, Tina Hess, based on the court's finding that use of the term "entering" in § 775.13(2), Fla. Stat., is not ambiguous or vague, but rather, given the

plain meaning of the term "entering," Appellee could not be convicted of violating the statute by failing to register as a convicted felon in Pasco County, because Appellee never physically entered the county, having been convicted and sentenced in Pasco County. This Court finds that the plain language of the statute warrants dismissal of the charges against Appellee, who could not have been found to have committed a violation for failure to register as a convicted felon pursuant to the statute. Therefore, the order of the trial court is AFFIRMED.

STATEMENT OF THE CASE AND FACTS

Appellee was charged with violation of § 775.13(2), Fla. Stat., for failure to register as a convicted felon. Appellee filed a Motion to Dismiss, claiming the statute was unconstitutionally vague, or that Appellee had not violated the terms of the statute, having never physically entered Pasco County after the felony conviction.[1] The trial court held a hearing on the motion on May 28, 2013.[2] The trial court granted the motion to dismiss and certified the question to the Second District Court of Appeals of whether a person convicted of a felony has a duty pursuant to the statute to register with the sheriff of the same county in which the individual was convicted and sentenced. Appellant appealed to the Second District Court of Appeals, which declined to assume jurisdiction over the case and transferred the notice of appeal to this Court.[3]

Prior to the hearing on the Motion, the parties stipulated that the Defendant/Appellee was convicted of a felony in Pasco County, was released from custody in Pasco County, and had not registered as a convicted felon in Pasco County.

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[1] Counsel for Appellee filed a Notice of Companion Cases on October 2, 2013, noting that five additional cases involving the same issue were before the Court on appeal of the trial court's May 28, 2013, order, which granted dismissal in each case, the trial court having found that the parties had entered a stipulation as to the facts in each case, and the cases involved substantially the same issues. Although the Court finds the issues involved are substantially the same, the cases were not consolidated for appeal and shall be addressed in separate orders. The related cases are: *State v. Michael Edwards*, Case No. 512013CF4589AES; *State v. Kevin Hill*, Case No. 512013CF4588AES; *State v. Jennifer Gray*, Case No. 512013CF4587AES; *State v. Skye Uragallo*, Case No. 512013CF4586AES; and *State v. Jennifer Daniels*, Case No. 512013CF4585AES.

[2] The hearing was held on the combined motions in the cases cited in note 1, *supra*, based on the finding that the motions addressed substantially the same issue.

[3] The Second District Court of Appeals likewise declined to assume jurisdiction over the five related cases, *supra*, and transferred each case to this Court to be heard on appeal.

STANDARD OF REVIEW

This Court reviews questions involving statutory interpretation as a matter of law pursuant to a de novo standard. *See Polite v. State*, 973 So. 2d 1107, 1111 (Fla. 2007). In cases involving statutory construction, the Court's purpose is to give effect to the intent of the Legislature. *Id.* "If the plain meaning of the language is clear and unambiguous, then the Court need not delve into principles of statutory construction unless that meaning leads to a result that is either unreasonable or clearly contrary to legislative intent." *Id.* "One of the most fundamental principles of Florida law is that penal statutes must be strictly construed according to their letter." *Perkins v. State*, 576 So. 2d 1310, 1312 (Fla. 1991). And, "when the language is susceptible of differing constructions, it shall be construed most favorably to the accused." § 775.021(1), Fla. Stat.

ANALYSIS

The statute in question provides in relevant part:

> Any person who has been convicted of a felony in any court of this state shall, **within 48 hours after entering any county in this state**, register with the sheriff of said county, be fingerprinted and photographed, and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation.

§ 775.13(2), Fla. Stat. (emphasis added). Appellant contends that a reasonable interpretation of this statute is that it requires registration of a convicted felon within the county in which the individual was convicted and sentenced, even if that individual never physically entered the county pursuant to the common meaning of the word. In order to give the statute its intended effect, Appellant maintains that after an individual has been convicted of a felony, or after the individual is released from a correctional facility, the individual should be deemed to have entered a county for the first time pursuant to the statute. Therefore, Appellant claims Appellee was required to register within 48 hours after conviction or release. Appellant states this interpretation would give effect to the intent of the Legislature, which Appellant contends was to require all convicted felons to register after being convicted of a felony, either after conviction or

upon release from custody, rather than only requiring registration upon physically entering a county.

In support of this contention, Appellant relies on the definition provided in § 775.21(2)(h), Fla. Stat., which defines "[e]ntering the county" as including "being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4)." However, the definitions provides by § 775.21 apply to the provisions of The Florida Sexual Predators Act, which is not at issue in this case. Appellant acknowledges that the term "entering" is not defined by the statutes applicable to this case.

The trial court found the statute not to be ambiguous or vague, and that a logical application of the statute required dismissal of the charges against Appellee, who never physically left Pasco County between the time of conviction and the time the misdemeanor charges were filed in this case. Principles of statutory construction require that where the Legislature does not provide a definition for a term, it should be given its "plain and ordinary" meaning. *State v. Hagan*, 387 So. 2d 943, 945 (Fla. 1980). The court further found the purpose of the statute was to provide the sheriff with notice of a convicted felon entering a county for more than 48 hours, and that the sheriff of the county in which the person was convicted and sentenced would already have notice of the felony conviction, as the individual would have been fingerprinted and registered with the sheriff's office upon conviction and sentencing. Therefore, it would not defeat the purpose of the statute to give plain meaning to the terms included in the statute.

Appellant contends the trial court erred because although criminal statutes are to be strictly construed, they should not be construed such that the intention of the legislature is defeated. *State ex rel. Washington v. Rivkind*, 350 So. 2d 575 (Fla. 3d DCA 1977); *George v. State*, 203 So. 2d 173, 176 (Fla. 2d DCA 1967) (rejecting a construction of a statute which would frustrate its purpose, and "make a mockery of our criminal laws"). Appellant maintains that the Legislature's intention in this case was to require a convicted felon to register in any county in which he or she remains for 48

hours after conviction, and therefore, this Court must construe the statute to find that a person enters a county at the time they are declared a felon by a conviction. Appellant claims the statute should be construed to accomplish the purpose for which it was adopted, "even if the result seems contradictory to ordinary rules of construction and strict wording of the statute." *See George*, 203 So. 2d at 175-76. However, principles of statutory construction also require the Court give effect to the intent of the Legislature by looking to the plain language of the statute. *Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2008).

Appellant contends that legislative history of the statute demonstrates the Legislature intended to require all convicted felons to register, and it is an illogical construction of the statute to only require registration of convicted felons entering a county different from that in which they were convicted and sentenced. However, this Court is not persuaded by Appellant's reference to the 1997 version of § 775.13, which formerly read:

> 3) Any person who is presently within any county of the state as of the effective date of this section shall likewise be required to register with the sheriff of such county within 30 days after the effective date of this section, if such person would be required to register under the terms of subsection (1) or subsection (2), if he or she were entering such county.

Appellee maintains that Appellant's definition would also be impractical for defendants who were incarcerated after their convictions and would therefore be unable to register with the sheriff of the county within 48 hours due to their restricted freedom. Further, the trial court noted that upon conviction a defendant is fingerprinted by the sheriff and the charges, conviction and sentence are recorded by the sheriff in the county when the defendant is sent to the jail for processing, and that a defendant is also photographed upon booking. Therefore, all of the information that would be required if the State's version of the statute were accepted is already provided to the county in which a defendant is convicted. Appellee contends Appellant's interpretation of the statute would effectively require that a defendant "re-register" with the sheriff after being released from custody.

Appellee contends that in the event the Court finds that the statute is ambiguous, the Legislature's failure to provide a clear definition renders the statute unconstitutionally vague. And, "any doubt as to a statute's validity should be resolved in favor of the citizen and against the State," because "citizens should be put on reasonable notice of conduct proscribed by the State when the proscription utilizes criminal sanctions for its breach." *DuFresne v. State*, 826 So. 2d 272, 274 (Fla. 2002). "A statute must provide persons of common intelligence and understanding adequate notice of the proscribed conduct." *Id.* at 275. The rule of lenity requires that any doubt as to legislative intent must be construed strictly and favorably to the accused. *See* § 775.021(1), Fla. Stat; *State v. Rubio*, 917 So. 2d 383, 397 (Fla. 5th DCA 2005). Therefore, Appellee maintains that should the Court reject the trial court's interpretation of the statute, it should nevertheless affirm the order dismissing the charges against the Appellee, because the statute is unconstitutionally vague as it applies in this case.

We agree with the trial court's determination that use of the term "entering" in § 775.13(2) is not unconstitutionally vague, and that correct application of the plain meaning of the terms in the statute warranted dismissal of the charges against Appellee based on the facts in this case. Where the terms of the statute are "clear and unambiguous," the Court need look no further to determine legislative intent, and need not engage in statutory construction unless the plain meaning leads to an unreasonable result, or one that is "clearly contrary to legislative intent." *Polite v. State*, 973 So. 2d 1107, 1111 (Fla. 2007).

When "a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." *State v. Hagan*, 387 So. 2d 943, 945 (Fla. 1980). Because the Legislature has not specifically defined the term "entering" in § 775.13(2), the ordinary meaning should be applied. The meaning adopted by Appellant in this case would require a convicted felon be deemed to have entered a county upon conviction, or upon release from a correctional facility, terms which are not included in the statute. The only authority provided to support this meaning is the definition from § 775.21, Fla. Stat., which is not on point. This further demonstrates that had the Legislature intended to use the definition proposed by

Appellant, such a definition or term could have been included in the statute in question. *See also* § 943.0435(2), Fla. Stat., requiring a sexual offender to register in the county in which the offender establishes a residence within 48 hours after establishing such residence or after being released from the Department of Corrections, and expressly requiring registration in the county in which the offender was convicted within 48 hours after conviction if the offender is not in the custody or control of the DOC; § 775.21(6), Fla. Stat., requiring registration for a sexual predator with the DOC or other custodian if the person is in custody, or, if the person is not in custody, requiring registration within 48 hours after establishing a residence in the county of such residence, or with the sheriff of the county in which the person was designated a sexual predator within 48 hours after such finding was made; *and* § 775.261(4), Fla. Stat., requiring a career offender to register in the county in which the person establishes a residence within two working days after establishing such residence or within two working days of being released from custody.

We hold that the term "entering" as it is used in the statute should be given its plain and ordinary meaning, absent the Legislature's provision of a definition of the term, which the trial court found to mean that a person enters a county when physically coming into that county. We further find this does not lead to an absurd result or one that is contradictory to legislative intent. The previous versions of the amended statute referenced by Appellant reinforce this holding. And, the references to non-applicable statutes which do provide a definition for the term "entering" further serve to demonstrate that the Legislature could have, but did not, include such a definition in the statute applicable to the facts of this case. Additionally, a holding to the contrary would violate the rule of lenity. *See DuFresne v. State*, 826 So. 2d 272, 274 (Fla. 2002); § 775.021(1), Fla. Stat.

CONCLUSION

We find the provisions of § 775.13(2) to be clear and unambiguous. Applying the plain and ordinary meaning of the term "entering" as used in the statute, Appellant failed to meet the burden of demonstrating that Appellee could have been found in violation of the terms of the statute, and dismissal was therefore appropriate. This holding does not reach a result that frustrates the purpose of the statute or contradicts the intent of the Legislature. Further, a holding to the contrary would violate the rule of lenity. The order of the trial court granting Appellee's Motion to Dismiss is therefore AFFIRMED.

It is ORDERED AND ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 20th day of June 2014.

Original order entered on June 20, 2014 by Circuit Judges Stanley R. Mills, Daniel D. Diskey and Linda Babb.