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## Court of Appeals of New York, *People v. David*

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# Court of Appeals of New York, People v. David

**Cover Page Footnote**

17-1

## DUE PROCESS

*U.S. CONST. amend. V:*

*No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .*

*U.S. CONST. amend. XIV, § 1:*

*The Fourteenth Amendment provides in pertinent part that no State shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

*N.Y. CONST. art. I, § 6:*

*This section provides in pertinent part that “[n]o person shall be deprived of life, liberty or property without due process of law.”*

## COURT OF APPEALS

People v. David W.<sup>1</sup>  
(Decided June 15, 2000)

Defendant, who was convicted of a sex offense in the New York State Supreme Court in 1995, appeals from a conviction for failing to register as a sex offender under the Sex Offender Registration Act (hereinafter “SORA”).<sup>2</sup> SORA took effect during the defendant’s five-year probation term following two consecutive jail sentences for charges of sodomy and sexual abuse of two underage victims.<sup>3</sup> Defendant moved to dismiss the suit in New York Supreme Court alleging that SORA violated the ex post facto,<sup>4</sup> equal protection<sup>5</sup> and due process guarantees of the

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<sup>1</sup> 95 N.Y.2d 130, 733 N.E.2d 206, 711 N.Y.S.2d 134 (2000).

<sup>2</sup> N.Y. C.L.R. § 168 et seq. (1999).

<sup>3</sup> *David W.*, 95 N.Y.2d at 135, 733 N.E.2d at 206, 711 N.Y.S.2d at 138.

<sup>4</sup> U.S. CONST. amend. I, § 9 cl. 3 provides in pertinent part that “[n]o Bill of Attainder or ex post facto law shall be passed.” *Id.*

<sup>5</sup> U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part that no State shall “deprive any person of life, liberty, or property,

Fourteenth Amendment<sup>6</sup> of the United States Constitution and Article One Section Six<sup>7</sup> of the New York Constitution.<sup>8</sup> Defendant's challenges were rejected by the Supreme Court, and he was sentenced to one-year imprisonment.<sup>9</sup> The Appellate Division affirmed the Supreme Court's decision rejecting defendant's ex post facto and equal protection claims.<sup>10</sup> In addition, the defendant's due process claim was also denied as a result of the court's belief that SORA provided ample safeguards against a wrongful deprivation of defendant's interests.<sup>11</sup> The New York Court of Appeals granted defendant's motion to appeal to determine whether defendant, after being convicted of a sex offense, is entitled to a constitutional right to notice and an opportunity to be heard before being classified as "a sexually violent predator" under SORA.<sup>12</sup>

In May 1995, defendant plead guilty to charges of sodomy and sexual abuse with two underage victims and served concurrent jail sentences followed by a five-year probation term.<sup>13</sup> SORA took effect prior to the termination of his five-year probation and imposed a duty on the defendant to register as a sex offender in a sexually violent predator subdirectory, which is distributed to interested communities.<sup>14</sup> The defendant was notified of his obligation to register, however, he was classified as a level three offender, or a "sexually violent predator," representing the highest risk assignable under SORA without an opportunity to be heard

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without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

<sup>6</sup> U.S. CONST. amend. XIV, § 1.

<sup>7</sup> N.Y. CONST. art. I, § 6. This section provides in pertinent part that "[n]o person shall be deprived of life, liberty or property without due process of law." *Id.*

<sup>8</sup> *David W.*, 95 N.Y.2d at 135, 733 N.E.2d at 206, 711 N.Y.S.2d at 137.

<sup>9</sup> *Id.* at 136, 733 N.E.2d at 210, 711 N.Y.S.2d at 138.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* The court based this finding on SORA's provision that allowed the defendant to seek relief from the court from the further duty to register and the ability to bring an Article 78 proceeding to review the Division of Probation and Correctional Alternatives determination. *Id.*

<sup>12</sup> *Id.* at 134, 733 N.E.2d at 209, 711 N.Y.S.2d at 136 (quoting N.Y. C.L.S. § 168-16(c) (1999)).

<sup>13</sup> *David W.*, 95 N.Y.2d at 135, 733 N.E.2d at 206, 711 N.Y.S.2d at 137.

<sup>14</sup> *Id.*

prior to the determination of his risk level.<sup>15</sup> A probation employee was responsible for making the initial classification determination assigned to the defendant.<sup>16</sup> Such a classification allows defendant's photograph, description and exact address to appear in the directory.<sup>17</sup>

The Court of Appeals focused on the fundamental principle inherent in the due process guarantees of both the United States and New York Constitutions, such that "when the State seeks to take life, liberty, or property from an individual, the State must provide effective procedures that guard against an erroneous deprivation."<sup>18</sup> Procedural due process, within the meaning of the Fifth<sup>19</sup> and Fourteenth Amendments,<sup>20</sup> confines governmental action, which imposes a deprivation upon an individual, through a prior hearing.<sup>21</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 134, 733 N.E.2d at 209, 711 N.Y.S.2d at 136. In the instant case, the defendant's risk level was determined by an employee who received one day of training with respect to the methods and guidelines set forth by the Board of Examiners of Sex Offenders to assist the individual in determining risk level. The determination is made on the based on four primary risk factors: current offenses; criminal history; post-offense behavior and release environment. The assessment is based on a point system whereby points are assigned with respect to the defendant's conduct and character as a result of a detailed analysis of the four factors.

The defendant was assigned points sufficient to categorize him at the highest risk under SORA. The defendant was then offered and seized the opportunity to challenge and review the SORA level assigned to him whereby disputing and objecting to various points he received. The Department of Probation and Correctional Alternatives failed to address any of defendant's objections, but instead stated that the level three determination was correct. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *David W.*, 95 N.Y.2d at 136, 733 N.E.2d at 210, 711 N.Y.S.2d at 138. See also U.S. CONST. amend. I, § 9 cl. 3; U.S. CONST. amend. XIV, § 1.

<sup>19</sup> U.S. CONST. amend. V. This section provides in pertinent part that "[n]o person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." *Id.*

<sup>20</sup> U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

<sup>21</sup> *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

In *Mathews v. Eldridge*,<sup>22</sup> the United States Supreme Court acknowledged the elasticity of due process in an effort determine what type of evidentiary hearing is required prior to the termination of disability benefits.<sup>23</sup> The Court established that confines of due process are not technical and clear cut.<sup>24</sup> Furthermore, for guidance in determining whether administrative procedures provided prior to the termination of an individual's

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<sup>22</sup> *Id.* In *Mathews*, the issue before the Court was whether the Due Process Clause of the Fifth Amendment entitled the respondent to an evidentiary hearing prior to the termination of his Social Security disability benefits. Under Title II of the Social Security Act benefits are provided to workers when they have demonstrated that they are unable to participate in any substantial employment as a result of any physical or mental impairments. Eldridge was awarded benefits in 1968. In 1972, the state agency responsible with monitoring his condition reviewed his file, and informed Eldridge that it had made a tentative determination that his disability has ceased in May 1972. Eldridge disputed the findings by the agency in a written response. However, the state agency made its final determination reaffirming its tentative decision. The Social Security Administration accepted the agency's determination and notified Eldridge that his benefits would terminate immediately. Eldridge was informed of his right to have the state agency reconsider his condition within six months. Instead Eldridge brought an action challenging the constitutionality of the procedures for terminating disability benefits and sought reinstatement of benefits until a hearing was granted.

The United States Supreme Court reversed holding that the present administrative procedures are consistent with due process and that an evidentiary hearing is not required prior to terminating of disability benefits. The Court based its decision on the flexibility of due process because each situation in itself presents different threats to the individual, and thus the need for procedural protections depending on that given set of facts. The Court developed a three part test to apply to situation where procedural safeguards should be present to safeguard one's due process rights, i.e. not having life, liberty, or property taken away with out a hearing. *Id.*

<sup>23</sup> *Mathews*, at 334.

<sup>24</sup> *Id.* See *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) (The Court was silent concerning the Constitutional right of an individual to a pretermination hearing involving garnishment of wages). See also *Bell v. Burson*, 402 U.S. 535 (1971) (for an individual's driver's license to be revoked due process required that a hearing prior to revocation reveal the existence of probable cause as to the fault of the licensee and did not have to address the question of liability). *But see*, *Goldberg v. Kelly*, 397 U.S. 254 (1970) (the only case where the Court has held that a hearing closely resembling a judicial trial is required prior to the deprivation of some type of property interest even if such a hearing will follow). *Id.*

disability benefits are consistent with the Due Process Clause of the Fifth<sup>25</sup> and Fourteenth<sup>26</sup> Amendments, the Court concentrated on three factors and analyzed the governmental and private interests.<sup>27</sup>

The first factor considered by the Court was the strength private interest that will be affected by the official action.<sup>28</sup> The second factor the Court looked to was the risk of erroneous deprivation of such interest through the procedures used, and the probable value if any, of additional or substitute procedural safeguards.<sup>29</sup> Lastly, the above two factors are considered in light of the interest held by the government such as the administrative and fiscal burdens that an additional or substitute procedural requirement would entail.<sup>30</sup>

In applying the above mentioned three-part test to determine the value of an evidentiary hearing prior to the termination of an individual's disability benefits, the *Mathews* Court looked to its previous holding in *Goldberg v. Kelly*<sup>31</sup> to determine whether these two cases resulted in a interpretational ambiguity, or whether the two cases presented different factual situations which justified different holdings.<sup>32</sup> In *Goldberg*, the adversely affected party was estopped from collecting welfare benefits without a procedural hearing.<sup>33</sup> The *Goldberg* Court held

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<sup>25</sup> U.S. CONST. amend. V.

<sup>26</sup> U.S. CONST. amend. XIV.

<sup>27</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976); *See also Morrissey v. Brewer*, 408 U.S. 471 (1972) “[d]ue process is flexible and calls for such procedural protections as the particular situation demands”).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* The focus of the Court centered on two key inquiries with respect to the second prong. Their first consideration was the complexity of the issues involved, meaning that when the governmental action is contingent upon factual questions, the greater there is going to be a need for process to protect the private interest. Conversely, the more objective the information, the less formal the procedure. Second, the Court tries to protect against erroneous decisions leading to deprivation of liberty or property by taking into account the government's rate of errors. The greater the number of errors the greater the process the court may impose to minimize such errors. *Id.*

<sup>30</sup> *Mathews*, 424 U.S. at 335.

<sup>31</sup> *Goldberg v. Kelly*, 397 U.S. 254 (1970).

<sup>32</sup> *Mathews*, 424 U.S. at 335.

<sup>33</sup> *See Goldberg*, 397 U.S. 254 (1970).

that an evidentiary hearing must be provided prior to an individual's welfare benefits being terminated.<sup>34</sup> On the other hand, the *Mathews* Court noted that the private interest that will be adversely affected by an erroneous termination of benefits to a disabled worker is generally less, compared to a welfare recipient, because disability benefits are not based on financial need.<sup>35</sup> Further, the *Mathews* Court found a greater governmental interest and held that an evidentiary type hearing was not necessary prior to termination of social security disability benefits in order to satisfy procedural due process.<sup>36</sup>

The *David W.* Court, in support of its decision, looked to the decision in *Matter of Lee TT v. Dowling*,<sup>37</sup> in which it recognized that an individual's liberty interest is substantial where one's name or reputation within a community is questioned or a legal right modified.<sup>38</sup> Moreover, the Court looked to its own decision in *Matter of Swinton v. Safir*,<sup>39</sup> in which the Court found that the likelihood that allegations of rape and abuse contained in the personal file of a fired public employee having the potential to be distributed to other employees possessed the requisite impairment to that employee's liberty interest to justify due process protections.<sup>40</sup>

In applying *Matter of Lee TT* and *Matter of Swinton* to the instant case, the Court found that a risk level three determination,

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<sup>34</sup> *Id.* at 325 (citing *Goldberg*, 397 U.S. 254 (1970)).

<sup>35</sup> *Mathews*, 424 U.S. at 335 (recognizing the applicability of procedural due process guarantees with respect to termination of Social Security disability benefits such that the receipt of benefits is a property interest protected by the Fifth Amendment)

<sup>36</sup> *Id.* The procedures that the government has in place, specifically the individual may submit written explanations prior to termination and a full evidentiary hearing after termination. *Id.*

<sup>37</sup> 87 N.Y.2d 699, 664 N.E.2d 1243, 642 N.Y.S. 181 (1996) (holding that the due process clause of the Federal Constitution requires that, in order for the Department of Social Services to place petitioner's name in the New York State Central Register of Child Abuse and Maltreatment following a hearing, a fact finder must determine that the justification for placing the individual's name in the report be substantiated by a fair preponderance of the evidence prior to sending the information to employers in the child care industry).

<sup>38</sup> *Id.* at 708, 664 N.E.2d at 1250, 642 N.Y.S.2d at 186.

<sup>39</sup> 93 N.Y.2d 758, 720 N.E.2d 89, 697 N.Y.S.2d 869 (1999).

<sup>40</sup> *David W.*, 95 N.Y.2d at 137, 138, 733 N.E.2d at 210, 711 N.Y.S.2d at 138.



published in a sexually violent predator subdirectory, possessed a considerably greater effect on defendant's liberty interest, thus stimulating due process protections.<sup>41</sup> The Court held that the State's procedures did not sufficiently mitigate the risk of an inaccurate finding that a sex offender on probation is a sexually violent predator.<sup>42</sup> In doing so, the Court found that the defendant has a profound private interest in not being stigmatized as a sexually violent predator.<sup>43</sup> The Court further noted that being labeled a sexually violent predator under SORA had a much greater impact on the defendant's life, because the label is a "determination of status" which may have a detrimental effect on the accused's life, specifically with community interaction.<sup>44</sup> The resulting effect on the defendant's life was deemed to have threatened the defendant's liberty by ignoring his right to due process.<sup>45</sup>

In respect to the second prong of the *Mathews* test, the Court found that the procedures used to determine the defendant's risk level were not sufficient in respect to preventing "the risk of an erroneous deprivation of defendant's interest."<sup>46</sup> The defendant was not presented with an opportunity to challenge his risk level determination.<sup>47</sup>

The evaluation of the third prong involved the court's discernment whether the Legislature, in trying to consolidate procedures and facilitate the determination of SORA risk levels for

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<sup>41</sup> *Id.*

<sup>42</sup> *David W.*, 95 N.Y.2d at 137, 733 N.E.2d at 211, 711 N.Y.S.2d at 139.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (considering the significant effect that a level three classification may have on prospective employer's willingness to hire an individual that has such a record).

<sup>45</sup> *Id.* at 138, 733 N.E.2d at 211, 711 N.Y.S.2d at 139.

<sup>46</sup> *Id.* (quoting *Mathews*, 424 U.S. at 319 which noted that "[t]he bedrock of due process is notice and opportunity to be heard").

<sup>47</sup> *Id.* The defendant was not notified that a determination under SORA was being made, he was not advised of the information relied upon in making such determination, nor was he afforded an opportunity to object to the State's characterization of his behavior prior to the making the determination. However, the court noted that sex offender who are still in custody when the sentencing court make the risk level determination, the court is required to allow the offender to appear and be heard, consider his statements, and inform him of his right to counsel. *Id.*

individuals already on probation, have instead collided with constitutional due process impediments.<sup>48</sup> The fiscal and administrative burdens imposed on the State, by requiring notice and an opportunity to be heard prior to a SORA risk level determination is made upon an individual, are not so problematic nor significant to justify limiting the individual to proscribed legislative procedures.<sup>49</sup>

Accordingly, the Court determined that the SORA Correction Law<sup>50</sup> does not properly guard against subjecting an individual to an erroneous risk level classification.<sup>51</sup> The law fails to provide the means for examining whether the individual's circumstances were analyzed properly to arrive at his risk level.<sup>52</sup> The Court of Appeals explained that the due process clause requires that the State bear the burden of proving that a defendant deserves the classification he is assigned.<sup>53</sup> Since the State failed to do so, the risk level determination made in respect to the defendant did not conform with minimum State or Federal constitutional requirements of due process.

*Courtney Blakeslee*

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<sup>48</sup> *David W.*, 95 N.Y.2d at 139, 733 N.E.2d at 212, 711 N.Y.S.2d at 140.

<sup>49</sup> *Id.*

<sup>50</sup> N.Y. C.L.R. § 168 et seq. (1999).

<sup>51</sup> *David W.*, 95 N.Y.2d at 140, 733 N.E.2d at 213, 711 N.Y.S.2d at 140.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*