

concurrently. In February 1987, while on parole supervision, Buss attacked and stabbed an acquaintance in her home. He pleaded guilty to attempted murder in the second degree, in full satisfaction of an indictment that included first-degree rape and first-degree sodomy counts. He was sentenced, as a second violent felony offender, to 10 to 20 years' imprisonment.

When Buss was released in 2002, the Board of Examiners of Sex Offenders ("the Board") determined that he was required to register under the Sex Offender Registration Act (SORA), citing his 1983 sexual abuse conviction. The Board calculated a total risk assessment score of 80 points, on the basis of the 1983 incident, making Buss presumptively a level two (moderate risk) offender (see Correction Law § 168-1 [6]). The Board however recommended an upward departure to level three (high risk), because of "the brutal sexual and physical assault" Buss committed in 1987. Buss filed an objection to the Board's recommended SORA assessment level, arguing, among other things, that SORA does not apply to him because his sentence for the sexual abuse conviction "was due to expire" before SORA became effective in 1996.

County Court rejected that argument and designated Buss a level three sex offender. The court agreed with the Board's level three recommendation, based on two overrides, "[o]ffender inflicted serious injury or caused death" and "offender has made a recent threat that he will reoffend by committing a sexual or

violent crime."

The Appellate Division affirmed County Court's level three designation. Noting the serious physical injury Buss had inflicted on his first victim, the Appellate Division concluded that County Court had properly determined that Buss was a presumptive level three sex offender by application of the serious injury override. Without discussion, the Appellate Division rejected as meritless Buss's claim that SORA did not apply to him in the first instance. We granted leave and now affirm.

Buss argues in this Court that he is not subject to SORA because his 1983 sentence was "due to expire" or "scheduled to expire" before SORA became effective. He does not dispute that his 1987 sentence ran consecutively to the undischarged part of his 1983 sentence (see Penal Law § 70.25 [2-a]). He contends that because the undischarged portion of the sentence he received in 1983 was completed in 1989, he was no longer serving a sentence for a sex crime.¹

The People do not argue that Buss would be subject to SORA even if he were no longer serving a sentence for his sexual abuse conviction when SORA became effective. Instead, they rely on Penal Law provisions which, they argue, show that Buss was still serving a sex offense sentence when SORA took effect. The

¹According to his parole report, when Buss was declared delinquent in February 1987, he owed 2 years and 14 days.

People cite Penal Law § 70.30 (1) (b), which directs how terms of imprisonment are to be calculated when a defendant is serving multiple, indeterminate sentences that run consecutively.

Penal Law § 70.30 provides for the calculation of terms of imprisonment by merging of concurrent sentences and addition of consecutive sentences. Although the primary function of the statute is to allow for the ready calculation of parole eligibility, we find it reasonable to apply § 70.30 to the question of whether a prisoner who has been given multiple sentences is subject to all his sentences for the duration of his term of imprisonment.

Concurrent and consecutive sentences are governed by different methods of calculation. If two or more indeterminate sentences are consecutive, then, with certain limitations not relevant here, the minimum and maximum sentences are added to form aggregate minimum and aggregate maximum wholes (Penal Law § 70.30 [1] [b]). In concurrent sentencing, on the other hand, "[t]he maximum term or terms of the indeterminate sentences and the term or terms of the determinate sentences shall merge in and be satisfied by discharge of the term which has the longest unexpired time to run" (Penal Law § 70.30 [1] [a]). Practically, the difference in prison term may be very significant to a defendant, depending on whether he was sentenced to consecutive or concurrent sentences. Nevertheless, in both situations, the Penal Law provides for a method whereby two or more sentences are

made into one: the result either way is a single, indeterminate sentence. Underlying Penal Law § 70.30 is the proposition that concurrent sentences and consecutive sentences yield single sentences, either by merger or by addition.

We hold that for SORA purposes a prisoner serving multiple sentences is subject to all the sentences, whether concurrent or consecutive, that make up the merged or aggregate sentence he is serving. Buss was therefore still serving a sentence for his 1983 sex crime at the time SORA became effective in 1996.

The primary goals of SORA, one of which is to "protect the public from the danger of recidivism posed by sex offenders" (People v Stevens, 91 NY2d 270, 275 [1998], quoting Legislative Findings and Intent, L 1995, ch 192, § 1 [internal quotation marks omitted]), are best served by recognizing that a person who is returned to prison while on parole for a sex offense continues to be subject to his sex offense sentence for the duration of the aggregate sentence. Common sense and experience dictate that a defendant's conduct while on parole is a reliable predictor of the risk he poses to society. In 1983, Buss committed a crime of a type that SORA subsequently denominated a sex offense. In 1987, while on parole, he demonstrated himself still willing to disregard the law. It is consistent with SORA's aims that Buss was required to identify himself as a sex offender when ultimately released from prison, even though his sex offense

sentence would have expired before SORA became effective had he not committed his later crime.

Defendant's remaining contentions before us lack merit. Consequently we affirm his level three designation.

The order of the Appellate Division should be affirmed, without costs.

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Order affirmed, without costs. Opinion by Judge Pigott. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith and Jones concur.

Decided December 16, 2008