STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JOSIAH JON-CHRISTOPHER HARDWICK, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

JOSIAH JON-CHRISTOPHER HARDWICK,

Respondent-Appellant.

UNPUBLISHED
February 19, 2004

No. 239951
Shiawassee Circuit Court
Family Division
LC No. 00-009586-DL

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

This appeal arises out of the sexual activities between two minors. At the time of the offense, respondent, a thirteen year old boy, engaged in sexual activity with the minor, a twelve year old girl who was also respondent's neighbor. Delinquency proceedings were commenced, and the petition charged respondent with two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(a), for oral and vaginal penetration involving a victim under the age of thirteen. Following a jury trial, he was found responsible of first-degree criminal sexual conduct for vaginal penetration, but was found not responsible for the CSC charge involving oral activity. Respondent was sentenced to thirty days in a detention facility, with fifteen days of the sentence suspended, and community service. At sentencing, the trial judge instructed respondent to comply with all "statutory requirements of the convicted offense" which included registration in accordance with the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*. This appeal followed, and we affirm.

Respondent does not dispute the registration process of SORA. Rather, he challenges the statutory provision allowing the publication of the conviction following a juvenile's eighteenth birthday. MCL 28.728(2). Respondent also alleged that this publication provision constitutes cruel and unusual punishment and violates due process where a juvenile has become a reformed adult. This, in turn, requires the reformed adult to carry the stigma for youthful offenses.

Appellate courts do not unnecessarily decide constitutional issues. *People v Riley*, 465 Mich 442, 447; 636 NW2d 514 (2001). Judicial review of constitutional questions must not be decided if a case may be disposed of on other grounds. *J & J Construction Co v Bricklayers & Allied Craftsmen, Local 1*, 468 Mich 722, 733-734; 664 NW2d 728 (2003). An issue is not ripe

for adjudication unless and until an encroachment upon a constitutional right occurs. *Straus v Governor*, 459 Mich 526, 544; 592 NW2d 53 (1999).

MCL 28.728 addresses the data compilation and availability of the SORA to the public. MCL 28.728 provides, in relevant part:

> (1) The department shall maintain a computerized data base of registrations and notices required under this act.
>
> (2) The department shall maintain a computerized data base separate from that described in subsection (1) to implement section 10(2) and (3). The data base shall consist of a compilation of individuals registered under this act, but except as provided in this subsection, shall not include any individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. *The exclusion for juvenile dispositions does not apply to a disposition for a violation of section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, after the individual becomes 18 years of age.* [Emphasis added.]

Thus, respondent challenges the publication of the compiled data after he reaches eighteen years of age. However, he, at this time, is still a juvenile and the data exclusion exception had not yet been initiated. Therefore, this issue is not ripe for review. *Straus, supra*. Moreover, in *People v Wentworth*, 251 Mich App 560, 568; 651 NW2d 773 (2002), this Court broadly rejected the remaining constitutional challenges to the SORA raised by respondent:

> We conclude that the requirements of the SORA are not an unconstitutional infringement of respondent's protected liberty, property, or privacy interests, and that the state is not required to engage in due process beyond that afforded in respondent's juvenile court proceedings before including information about respondent in the public database of registered sex offenders.

Although we do not provide respondent with any form of relief, we agree with the *Wentworth* Court's expression of the negative impacts of this legislation:

> Although we hold that the SORA is not an unconstitutional deprivation of respondent's liberty or privacy interests, we express our concern over the draconian nature of this act. As noted above, under the requirements of the SORA, respondent's registration would remain confidential while she remains a juvenile; however, once she reaches the age of majority, that information would be added to the public database and would remain there for the rest of her life. Although we do not debate the seriousness of the circumstances surrounding the offense in this particular case, we question the propriety of publicly and permanently labeling juveniles as convicted sex offenders. Traditionally, our justice system has distinguished between juvenile delinquency and adult criminal conduct. MCL 712A.1(2), which confers jurisdiction over juveniles on the family

> division of the circuit courts, specifically states that "proceedings under this chapter are not criminal proceedings." MCL 712A.23 also limits the admissibility of juvenile records in both criminal and civil proceedings in an attempt to "hide youthful errors from the full glare of the public . . . ." *People v Poindexter*, 138 Mich App 322, 326; 361 NW2d 346 (1984). The public notification provisions of the SORA appear to conflict with our traditional reluctance to criminalize juvenile offenses and our commitment to keep juvenile records confidential. . . . We invite the Legislature to reconsider whether the implied purpose of the act, public safety, is served by requiring an otherwise law-abiding adult to forever be branded as a sex offender because of a juvenile transgression. [*Id*. at 568-569.]

We note that the Legislature has taken action to address the applicable requirements of the SORA that occur when a juvenile reaches the age of eighteen. House Bill 4920 (2003)[1] would limit the number of years that a juvenile was registered with the SORA, would allow for an exclusion from publication where youthful trainee status was successfully completed, and would allow a respondent to petition the court for an exemption from the SORA. Accordingly, respondent must direct his request for relief to the Legislature.

Lastly, respondent's challenge to the jury's verdict is without merit. Juries may render inconsistent verdicts because they are not held to the rules of logic or required to explain their decisions. *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003).[2]

Affirmed.

/s/ Michael R. Smolenski
/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood

[1] See http://www.michiganlegislature.org. On November 13, 2003, the house bill was referred to the Committee on Families and Human Services.

[2] We further note that the jury verdict does not necessarily reflect that it rejected the testimony of the victim. While respondent denied an oral sex act with the victim, he admitted that he was on top of the victim with his pants down, but denied that penetration occurred. The victim testified that penetration did occur. In assessing credibility, the jury was free to reject all, part, or some of the testimony of the witnesses.