

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 27, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2391-FT

Cir. Ct. No. 2006JV240

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF JEFFREY T.M.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JEFFREY T. M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
ROBERT G. MAWDSLEY, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ This is an appeal from a denial of a juvenile’s motion to stay sex offender registration. The juvenile court here balanced the fact that this was basically a consensual boyfriend-girlfriend relationship among teenagers relatively close in age against the juvenile’s past history as well as expert evidence that the juvenile was a “moderately high” risk to re-offend. The court balanced these factors in favor of the State. Such was a discretionary act by the court and one to which we defer. On that basis, this court affirms.

¶2 When a juvenile commits certain sex offenses that require registration as a sex offender, the statutes allow the juvenile to seek a stay based on certain factors discussed in *State v. Cesar G.*, 2004 WI 61, ¶50, 272 Wis. 2d 22, 682 N.W.2d 1. A *Cesar G.* hearing took place here and all the factors were evaluated. The juvenile in this case, Jeffrey T. M., now seeks to review those factors with this court. He begins with the factors in his favor. We will address them *seriatim*:

(1) Seriousness of the offense: Jeffrey admits to the assault, but states that it is a boyfriend-girlfriend situation between minors. While illegal, Jeffrey maintains that it was not predatory in nature.

(2) Ages of the juvenile and the victim: He was sixteen by two days and she was fourteen. Jeffrey submits that the two were close enough in age that it should not be considered an unusual relationship.

(3) The relationship between the juvenile and the victim: As mentioned before, they were boyfriend-girlfriend.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.35(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

(4) Whether the violation resulted in bodily harm as defined in Sec. 939.22 (4): According to Jeffrey, both sides agreed that there was no bodily harm to the victim.

(5) Whether the victim had either a mental illness or deficiency which would have rendered her temporarily or permanently incapable of understanding or evaluating the consequences of her actions: All parties agreed that this factor was inapplicable. Jeffrey maintains that the lack of mental disability bolsters the consensual nature of the act.

¶3 All of the above factors militate in favor of Jeffrey and the juvenile court so found. It is the next factor that the court found to be weighted against Jeffrey. We will now discuss that factor, which is the “probability that the juvenile will commit other violations in the future.” *Cesar G.*, 272 Wis. 2d 22, ¶50.

¶4 The record shows that this is not Jeffrey’s first involvement with sexually related matters. As the juvenile court noted, this is the third time the juvenile system has dealt with allegations that are sexual in nature. The court acknowledged that the present offense was not “predatory,” but it was nonetheless a “a clear indication [that] while he was ... under supervision and working with the [support] team and before assuming he had a change in attitude with the [support] team, but this was basically an underage sexual situation that is pretty clear. The focus of all of his offenses was this, and *he just didn’t stay away from it.*” (Emphasis added.) The juvenile court’s reference to Jeffrey’s past history is supported by the record. At age eleven, he attempted to perform anal intercourse on his cousin, aged six at the time. Prosecution was deferred. He had an incident in ninth grade involving what he termed a “miscommunication” with his girlfriend at the time and admitted penetrating her digitally and fondling her about ten times, although he denied sexual intercourse. He was placed on formal supervision where he received counseling.

¶5 Jeffrey was also the subject of an independent court-ordered examination by a psychologist, Robert H. Gordon. A sex offender risk assessment was conducted using various instruments and actuarial risk rating tools. Based on his examination, Dr. Gordon opined that Jeffrey poses a “moderate high risk of recidivism.” The juvenile court also relied on this evidence in making its determination.

¶6 The *Cesar G.* court held that the juvenile has the burden to prove by clear and convincing evidence that, based on these factors, a stay should be granted. *Id.*, ¶51. By this quantum of proof, the juvenile had to convince the court that registration was not necessary in order to protect the interest of the public. *See id.*, ¶49. The juvenile court held that Jeffrey had failed to satisfy that burden.

¶7 The *Cesar G.* court also held that the juvenile court’s ruling on a stay is discretionary. *Id.*, ¶¶40-42. That court properly exercises its discretion when it examines the relevant facts, applies the proper legal standard, and uses a rational process to reach a reasonable conclusion. *Garfoot v. Fireman’s Fund Ins. Co.*, 228 Wis. 2d 707, 717, 599 N.W.2d 411 (Ct. App. 1999). Our examination of the record shows that the juvenile court did examine the relevant facts, applied the appropriate standard and used a rational process to reach the reasonable conclusion that it did. In fact, the record shows that the hearing was initially adjourned so that the juvenile court could order an independent psychological examination of Jeffrey. It is evident from the record that this was not a rush to judgment, but a judgment preceded by a deliberate and thoughtful gathering of pertinent information. As such, we pay deference to the juvenile court’s conclusion and affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

