COURT OF APPEALS
DECISION
DATED AND FILED

April 30, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1876-CR **Cir. Ct. No. 2012CF833**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC L. NIGL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: SCOTT C. WOLDT, Judge. *Affirmed*.

Before Higginbotham, Sherman and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. Eric Nigl appeals a judgment of conviction of one count of Sex Offender Registry Violation, and an order denying his postconviction motion. Nigl contends that he was unlawfully convicted of violating sex offender reporting requirements because he is not a person required

to register as a sex offender. Specifically, he argues that the circuit court that had adjudicated him delinquent for First Degree Sexual Assault of a Child in 1999, erred when it did not exercise its discretion and determine whether compliance with the sex offender reporting requirements was in the best interest of the then-juvenile Nigl,[1] as he asserts the court was required to do by subsequent case law; therefore, he argues, the reporting requirements do not apply to him. In addition, Nigl argues that it would be fundamentally unfair to apply the reporting requirements to him because the circuit court "did not even know" it had any discretion to exercise. We do not reach Nigl's arguments because, as we explain, we conclude that Nigl forfeited his statutory rights to relief from the sex offender reporting requirements when he failed to request either a waiver or a stay of the requirements under the law in effect at the time of his juvenile adjudication. Therefore, we affirm.[2]

BACKGROUND

¶2 In April 1999, Nigl, a juvenile at the time, was adjudicated delinquent for First Degree Sexual Assault of a Child, for sexual contact with a child under the age of thirteen, in violation of WIS. STAT. § 948.02(1) (1997-98).[3]

[1] Nigl refers to the "best interest of the child" and we understand him to mean the best interest of the juvenile offender.

[2] In the circuit court, Nigl also argued that he was not a person required to register as a sex offender because the dispositional order from his 1999 juvenile adjudication did not include the reporting requirement. However, on appeal Nigl neither develops an independent argument on this topic nor cites any legal authority to support it. Therefore, we do not consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed," and "[a]rguments unsupported by references to legal authority will not be considered."); *see also* ***Cosio v. Medical College of Wisconsin, Inc.***, 139 Wis. 2d 241, 242-43, 407 N.W.2d 302 (Ct. App. 1987) (issues not briefed on appeal are deemed abandoned).

[3] All references to the Wisconsin Statutes are to the 1997-98 version.

The circuit court issued a dispositional order placing Nigl on supervision by the Department of Health and Human Services until April 2000, at which time the order expired. The dispositional order did not contain a reference to sex offender reporting requirements.

¶3 In December 2012, the State filed a criminal complaint alleging a sex offender registry violation for Nigl's failure to report his change of address as of August 2012.

¶4 Nigl filed a motion to dismiss, arguing "that the dispositional order must include the registry requirement before a juvenile is subjected to the registry requirement." The circuit court denied the motion.

¶5 At a trial to the court, a registration specialist with the Department of Corrections Sex Offender Registry testified that the department had made Nigl aware of his reporting obligations "numerous ways over the course of the years," both through his social worker and by mailing registration or confirmation letters to him, and that the specialist met with him about the reporting requirements in January 2012. The specialist testified that Nigl was noncompliant with the current address requirement from August to November 2012. The court found Nigl guilty of one count of Sex Offender Registry Violation, a Class H felony.

¶6 Nigl filed a postconviction motion asking the court to vacate the sentence and judgment of conviction. In his motion, Nigl acknowledged that the juvenile disposition "was for a mandatory registration crime," but argued that he "was unable to effectively ask for a stay of the [reporting] requirement as a juvenile." After briefing and a hearing, the circuit court denied the motion. Nigl appeals.

DISCUSSION

¶7 Nigl asserts that he is not a person required to comply with the sex offender registry reporting requirements, on the ground that the automatic application of the reporting requirements do not apply to him because there is "nothing that is automatic in juvenile court." Nigl explains that, to the contrary, the circuit court was required to exercise its discretion and determine whether it was in the best interest of the then-juvenile Nigl to require sex offender registry reporting, but the court could not have done so because the standard for exercising that discretion was not yet known. In light of that asserted void in the law, Nigl argues that it would be fundamentally unfair to apply the reporting requirements to him. The State responds that Nigl's statutory rights to relief from the reporting requirements existed at the time of his juvenile adjudication, and that Nigl forfeited his statutory rights to relief from the reporting requirements by not asserting those rights at his juvenile dispositional hearing.

¶8 We agree with the State. As we explain, the problem with Nigl's argument is that he did not request either a waiver or a stay of the reporting requirements under the law that he acknowledges existed at the time of his juvenile adjudication. Therefore, Nigl forfeited his rights under that law to relief from the reporting requirements.

¶9 We first review the relevant statutes in effect at the time of Nigl's juvenile adjudication, along with the case law addressing those statutes before and after Nigl's juvenile adjudication. We then turn to the facts and conclude that Nigl forfeited his statutory rights to relief from the automatic sex offender registry reporting requirements.

A. Relevant Juvenile Justice Code and Sex Offender Registration Statutes

¶10 "Mandatory sex offender registration was added to chapter 48, the Children's Code ... by 1993 Act 98, effective December 25, 1993." ***State v. Cesar G.***, 2004 WI 61, ¶30, 272 Wis. 2d 22, 682 N.W.2d 1. In 1995, the legislature revised the Children's Code and created the Juvenile Justice Code, including the sex offender reporting requirements as a disposition under WIS. STAT. § 938.34. 1995 Wis. Act 77, § 629 (creating WIS. STAT. § 938.34); 1995 Wis. Act 440, § 81 (creating WIS. STAT. § 938.34(15m)).

¶11 At the time that Nigl was adjudicated delinquent of sexual assault in 1999, the Juvenile Justice Code provided two means by which he was able to seek relief from the automatic sex offender reporting requirements: (1) by making a motion to the court to waive the requirements before issuance of the dispositional order under WIS. STAT. § 938.34(15m)(bm); or (2) by seeking a stay in the circuit court of the automatic sex offender reporting requirements after issuance of the dispositional order under WIS. STAT. § 938.34(16). The former provision was enacted in April 1998, as 1997 Wis. Act 130, § 11, and went into effect in May 1998. *See* ***State v. Hezzie R.***, 219 Wis. 2d 848, 880 n.10, 580 N.W.2d 660 (1998). The latter provision was enacted and went into effect in 1995. 1995 Wis. Act 77, § 629.[4]

[4] These provisions in WIS. STAT. § 938.34, and the provisions in WIS. STAT. § 301.45 cited below, remain in effect, but we refer to them using the past tense because what matters is what the law was when Nigl was adjudicated delinquent in 1999.

1. Waiver Under WIS. STAT. § 938.34(15m)(bm)

¶12 We first address the provision that prescribed the procedure to be followed as to the sex offender reporting requirements before issuance of the dispositional order in a juvenile adjudication. That provision, WIS. STAT. § 938.34(15m)(bm), provided that the sex offender reporting requirements in WIS. STAT. § 301.45 applied automatically to juveniles adjudicated delinquent for specified violations, including the violation for which Nigl was adjudicated delinquent in 1999. WIS. STAT. § 938.34(15m)(bm) ("the court *shall* require the juvenile to comply with the reporting requirements under s. 301.45" (emphasis added)). *Cf.* WIS. STAT. § 938.34(15m)(am) ("Except as provided in par. (bm), … the court *may* require the juvenile to comply with the reporting requirements under s. 301.45." (emphasis added)). However, the statute also provided that the court may waive these requirements: "[T]he court shall require the juvenile to comply with the reporting requirements under s. 301.45 *unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m)*." WIS. STAT. § 938.34(15m)(bm) (emphasis added).

¶13 WISCONSIN STAT. § 301.45(1m) set forth the criteria for exceptions to the reporting requirement. *See generally* WIS. STAT. § 301.45(1m)(a) ("A person is not required to comply with the reporting requirements" if all criteria apply, including that the person was under the age of nineteen at the time of the violation.). Section 301.45(1m)(a)3. listed as the third criterion for qualifying for an exception to the reporting requirements the determination that, "It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements ...." In deciding whether requiring sex offender registration was "not necessary, in the interest of public protection," the court could consider factors set out in the statute, as well as "[a]ny other factor that the

court determines may be relevant to the particular case." WIS. STAT. § 301.45(1m)(e)7.[5]

¶14 In a case decided before Nigl's adjudication, our supreme court acknowledged that these provisions in WIS. STAT. §§ 938.34(15m)(bm) and 301.45(1m) established a procedure by which a juvenile could seek waiver of the

[5] WISCONSIN STAT. § 301.45(1m)(e) stated:

> (e) At the hearing held under par. (bm), the person who filed the motion ... has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a). In deciding whether the person has satisfied the criterion specified in par. (a) 3. ["It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements under this section."], the court may consider any of the following:
>
> 1. The ages, at the time of the violation, of the person and of the child with whom the person had sexual contact or sexual intercourse.
>
> 2. The relationship between the person and the child with whom the person had sexual contact or sexual intercourse.
>
> 3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the child with whom the person had sexual contact or sexual intercourse.
>
> 4. Whether the child with whom the person had sexual contact or sexual intercourse suffered from a mental illness or mental deficiency that rendered the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
>
> 5. The probability that the person will commit other violations in the future.
>
> 6. The report of the examination conducted under par. (d).
>
> 7. Any other factor that the court determines may be relevant to the particular case.

sex offender reporting requirements. *See* ***Hezzie R.***, 219 Wis. 2d at 880-81. Thus, a motion by a juvenile to waive the sex offender registration requirements triggered both the hearing provided for in § 301.45(1m)(bm) and the court's consideration of the factors set forth in § 301.45(1m)(e), before issuance of the dispositional order.

2. Stay Under WIS. STAT. § 938.34(16)

¶15 We next address the provision prescribing the procedure to be followed as to the sex offender reporting requirements after issuance of the dispositional order in a juvenile adjudication. In addition to reviewing the relevant statutes and case law, we also address and reject Nigl's misinterpretation of that law.

¶16 The pertinent provision, WIS. STAT. § 938.34(16), provided that the court could stay the execution of a dispositional order "contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court." WIS. STAT. § 938.34(16).

¶17 In a case decided after Nigl's adjudication, our supreme court confirmed that the circuit court had the discretion to stay the sex offender reporting requirements after issuance of a dispositional order, based on the circuit court's consideration of the seriousness of the offense and the factors enumerated in WIS. STAT. § 301.45(1m)(e). ***Cesar G.***, 272 Wis. 2d 22, ¶¶2-3, 40, 47-50, 52. We subsequently opined that the "decision in ***Cesar*** effectively attache[d] a 'best interest of the child' consideration" (with respect to the juvenile offender) to the circuit court's exercise of its discretion to stay the sex offender reporting

requirements. ***State v. Jeremy P.***, 2005 WI App 13, ¶16, 278 Wis. 2d 366, 692 N.W.2d 311 (WI App 2004).

¶18 Nigl concedes that the circuit court's discretion to stay the sex offender reporting requirements existed when he was adjudicated delinquent in 1999. But, he argues, the correct legal standard for exercising that discretion was not known until the decisions in ***Cesar G.*** and ***Jeremy P.*** were issued in 2004 and 2005, and, therefore, "it would have been impossible" for the court to have correctly exercised its discretion. We are not persuaded.

¶19 "'[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purposes of achieving a reasonable determination.'" ***Cesar G.***, 272 Wis. 2d 22, ¶42 (quoted source omitted). Nigl identifies nothing that would have foreclosed the circuit court from properly exercising its discretion by relying on the plain language of the statute that authorized the court to execute a stay, reviewing the facts in the record, and considering them together to reach a reasoned decision. That our supreme court subsequently identified specific factors by which the circuit court was to weigh the facts before it means, at the most, that an appellate court could have concluded that the circuit court's exercise of discretion was deficient to the extent it did not adequately take those factors into account. It does not mean that the circuit court could not have, prior to ***Cesar G.***, properly exercised the discretion that Nigl concedes it had.

¶20 Indeed, as the State points out, that is effectively what happened in ***Cesar G.*** The State in that case filed a delinquency petition in 2001, just two years after Nigl was adjudicated delinquent. After the circuit court in that case issued the dispositional order, the juvenile filed a motion for the court to stay the sex

offender registry reporting requirements. ***Cesar G.***, 272 Wis. 2d 22, ¶9; ***State v. Cesar G.***, No. 2002AP2106, unpublished slip op. at ¶2 (WI App Apr. 1, 2003) (cited for the date of the underlying adjudication). Our supreme court determined that the circuit court had denied the motion for a stay based on its erroneous view that it lacked the authority to do otherwise, and remanded for the circuit court to exercise its discretion consistent with the opinion. ***Cesar G.***, 272 Wis. 2d 22, ¶52. Nigl fails to direct us to any language in ***Cesar G.*** that suggested that the circuit court was foreclosed from exercising its discretion in deciding the juvenile's motion for a stay until the supreme court issued its opinion clarifying the contours of that discretion.[6]

¶21 In sum, at the time that Nigl was adjudicated delinquent of sexual assault in 1999, the statutes provided that he could seek relief from the automatic sex offender reporting requirements set forth in WIS. STAT. § 938.34(15m)(bm): (1) by making a motion for the court to waive the requirements under § 938.34(15m)(bm), based on the court's consideration of the factors in WIS. STAT. § 301.45(1m)(e); or (2) by seeking a stay of the automatic sex offender reporting requirements under WIS. STAT. § 938.34(16), also based on the circuit court's consideration of the factors in § 301.45(1m)(e) and the seriousness of the offense.

[6] Nigl appears to argue in his reply brief that the circuit court was required to consider whether the reporting requirements should be stayed even absent a motion by the juvenile. However, while the court in ***Cesar G.*** stated that "the circuit court may, on its own initiative, without a motion by the juvenile, decide to stay the sex offender [reporting] requirement[s]," 272 Wis. 2d 22, ¶51, Nigl cites no legal authority stating that the circuit court must do so. Therefore, we do not consider this argument further. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("[a]rguments unsupported by legal authority will not be considered").

B. Nigl's Forfeiture of his Statutory Rights to Relief

¶22 Nigl concedes that he "never took any action to ask for the [reporting] requirement[s] to be stayed" after the dispositional order was issued under WIS. STAT. § 938.34(16). Nor does Nigl present any evidence that he moved for the reporting requirements to be waived before the dispositional order was issued under WIS. STAT. § 938.34(15m)(bm). Then-existing statutes gave Nigl a right to seek relief from the reporting requirements, both before and after the dispositional order was issued, but he did not claim either right at either time. By failing to make the timely assertion of either statutory right to relief from the automatic reporting requirements, Nigl forfeited those rights. *See* ***State v. Ndina***, 2009 WI 21, ¶¶29-30, 315 Wis. 2d 653, 761 N.W.2d 612 (rights that are not claimed in the circuit court are forfeited). Accordingly, we affirm the order denying Nigl's motion for postconviction relief from his conviction for failing to comply with the automatic reporting requirements in 2012, because he failed to timely seek relief from those requirements in his juvenile proceeding in 1999.

CONCLUSION

¶23 As explained above, we conclude that Nigl forfeited his statutory rights to relief from the sex offender reporting requirements because he failed to request either a waiver or a stay of the requirements under the law in effect at the time of his juvenile adjudication. Therefore, we affirm the judgment convicting him of violating the current address provision of the requirements, and the order denying his postconviction motion in which he argued that he was not subject to those requirements.

By the Court.—Judgment and order affirmed.

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