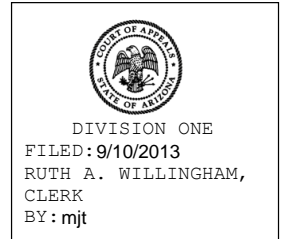


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



IN RE ANTHONY B.) 1 CA-JV 13-0093
)
) DEPARTMENT C
)
) **Memorandum Decision**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv.
) Ct.; Rule 28 ARCAP)

Appeal from the Superior Court in Maricopa County

Cause No. JV555602

The Honorable Bradley H. Astrowsky, Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney Phoenix
By Joneice S. Burnett, Deputy County Attorney
Attorneys for Appellee

Christina Phillis, Maricopa County Public Advocate Mesa
By Arthur K. Merchant, Deputy Public Advocate
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Anthony B. (Juvenile) appeals from the juvenile court's order requiring him to register as a sex offender. Juvenile argues that the juvenile court lacked jurisdiction to order him to register, and that the order was an abuse of the juvenile court's discretion. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In February 2010, Juvenile's three-year-old cousin, K.B., reported that Juvenile had, among other things of a sexual nature, "touched his private to her private." Juvenile was fourteen years old at the time. Juvenile subsequently entered a plea agreement in March 2011, pleading delinquent to solicitation to commit molestation of a child, a class 4 felony. At the disposition on June 21, the juvenile court placed Juvenile on probation and ordered him to adhere to both the conditions of standard probation and sex offender addendum terms 1-7 and 9-19. Juvenile was also ordered to participate in, cooperate with, and complete all sex offender treatments, including placement at a treatment facility. A decision regarding whether Juvenile needed to register as a sex offender pursuant to Arizona Revised Statutes (A.R.S.) section 13-3821(D) (2010) was deferred¹ by the juvenile court.

¶3 Juvenile was first placed at A New Leaf treatment facility and, upon successful discharge from A New Leaf, was placed in the U-Turn Foundation treatment facility (U-Turn). Shortly before his discharge from U-Turn, however, it was discovered that Juvenile was in possession of a number of

¹ The oral pronouncement placed no time limit on the deferral, while the minute entry stated that the matter was deferred for one year.

pornographic images, thereby violating sex offender addendum term 10. Juvenile was unsuccessfully discharged from U-Turn, and his probation officer filed a petition alleging two counts of probation violation: Count One, Juvenile failed to participate in, cooperate with, and successfully complete all sex offender treatments by being unsuccessfully discharged from his placement; Count Two, Juvenile possessed sexually oriented material as deemed inappropriate by the treatment facility's staff.

¶14 Pursuant to a plea agreement, the juvenile court adjudicated Juvenile as being in violation of probation on Count Two and dismissed Count One with prejudice. The juvenile court then ordered Juvenile committed to the Arizona Department of Juvenile Corrections and that he register² as a sex offender. Juvenile timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(A)(1) (Supp. 2012).

DISCUSSION

¶15 Juvenile argues that the juvenile court lacked jurisdiction to order sex offender registration because the judge signed the June 21, 2011 minute entry, adopting its one-year deferment, leaving the juvenile court without jurisdiction to order sex offender registration since the year had passed.

² This order was given in the April 2013 disposition.

Whether the juvenile court had jurisdiction to order sex offender registration is subject to de novo review. *David S. v. Audilio S.*, 201 Ariz. 134, 136, ¶ 4, 32 P.3d 417, 419 (App. 2001).

¶6 When a discrepancy between the oral pronouncement of a sentence and its minute entry can be resolved by examining the record, the “[o]ral pronouncement in open court controls over the minute entry.” *State v. Ovante*, 231 Ariz. 180, ¶ 38, 291 P.3d 974, 982 (2013) (citation omitted) (oral pronouncement stating two sentences would run consecutively controlled over minute entry stating they would run concurrently). It is possible for a minute entry to be affirmed over an oral pronouncement, but that occurs when the record demonstrates the oral pronouncement to be in error. See *State v. Bowles*, 173 Ariz. 214, 216, 841 P.2d 209, 211 (App. 1992) (trial court made oral statements on two previous occasions clearly supporting minute entry over oral pronouncement).

¶7 Here, the one-year deferment is only mentioned in the June 11 minute entry, with no support anywhere else in the record. Consequently, the oral pronouncement controls, which stated only that “sex offender registration is deferred.”

¶8 Furthermore, the oral pronouncement and the minute entry do not necessarily conflict. The year deferral is not a time limit, but merely postpones the issue to address it at a

later time. Given that Juvenile was placed in a treatment program for an unspecified amount of time, it is unlikely the juvenile court would limit deferment on registration to a year when the program might last longer, and the juvenile court would not want to limit its authority in such a way prior to Juvenile's completion or failure of treatment. Sex offender registration is meant to help protect the public by enabling law enforcement to locate child sex offenders, see *State v. Noble*, 171 Ariz. 171, 178, 829 P.2d 1217, 1224 (1992), and losing the option of imposing the registration requirement before treatment completion would hinder any such protection.

¶9 We also note that A.R.S. § 8-202(G) provides that:

[J]urisdiction of a child that is obtained by the juvenile court in a proceeding under this chapter . . . shall be retained by it, for the purposes of implementing the orders made and filed in that proceeding, until the child becomes eighteen years of age, unless terminated by order of the court before the child's eighteenth birthday.

Here, the juvenile court never terminated its jurisdiction of Juvenile. Consequently, the juvenile court had jurisdiction to order Juvenile to register as a sex offender.

¶10 Juvenile asserts the juvenile court abused its discretion in ordering that he register as a sex offender by failing to balance registration's public safety purpose against the impact of registration on Juvenile, which would show

registration to be inappropriate. An order requiring a juvenile to register as a sex offender is reviewed for an abuse of discretion. *In re Javier B.*, 230 Ariz. 100, 104, ¶ 17, 280 P.3d 644, 648 (App. 2012); *In re Nickolas T.*, 223 Ariz. 403, 404, ¶ 4, 224 P.3d 219, 220 (App. 2010). An abuse of discretion occurs "where the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice. Similarly, a discretionary act which reaches an end or purpose not justified by, and clearly against, reason and evidence is an abuse." *In re Hyrum H.*, 212 Ariz. 328, 330, ¶ 10, 131 P.3d 1058, 1060 (App. 2006) (citations and internal quotations omitted).

¶11 Juvenile cites *In re Javier B.*, 230 Ariz. 100, 280 P.3d 644 (App. 2012), to allege that the juvenile court was required to balance sex offender registration's public safety purpose against the effect registration could have on Juvenile's life. *Javier B.*, however, actually held that a juvenile court is not required to engage in such balancing. *Id.* at 104, ¶ 19, 280 P.3d at 648. The *Javier B.* court acknowledged that while such balancing had occurred in a separate case, the court there "was merely noting that the trial court's decision was not arbitrary because it balanced the public safety purpose of registration and the potential effect registration would have on the defendant's life," as opposed to creating a required balancing test. *Id.*

¶12 Although balancing was not required, the record shows the juvenile court did balance the safety of the public against the impact registration would have on Juvenile's life. When Juvenile argued that registration would have a punitive effect on his life, the juvenile court explained that registration was meant to protect the public, balancing Juvenile's success in treatment against the deviant sexual interests he still exhibited. After examining the record and finding that Juvenile could still potentially be a danger to the public, the juvenile court ordered registration.

¶13 Moreover, the record demonstrates sufficient evidence that it was in the public's interest to have Juvenile register as a sex offender. First, shortly before his scheduled release from U-Turn, Juvenile disclosed that he had accessed pornography while visiting his grandparents and uncle. Viewing pornography has been a problem in the past for Juvenile, and it was noted at times that he required continual prompting and the threat of a polygraph to be completely honest during such disclosures. Also, days before his release, Juvenile's iPod was found to contain 60-70 pornographic images, and two memory sticks were later found among his belongings containing a large amount of pornographic images and an image of a young girl (no sexual content). It was also noted in the September 14, 2011 Review of Treatment Services

Report that Juvenile "disclosed additional victims and sexual contact with a dog" during his preparation for a sexual history polygraph. In the April 3, 2013 Disposition Report, his probation officer stated that Juvenile was "in great need of continued treatment to address his pornography addiction and sexually maladaptive behaviors in a locked environment." She also mentioned that he was "nowhere near ready to be released safely to the community," and he "continues to make poor decisions that puts [sic] himself and the community at risk."

¶14 Considering the above facts, the juvenile court's registration order following its balancing of the public safety against the impact on Juvenile's life was not untenable or against reason and evidence. There was behavior indicating Juvenile had not been fully rehabilitated, and that he might even be attempting to circumvent treatment by hiding his activities. Combined with the reports stating that Juvenile was not ready to be released safely and needed further treatment, it was within the juvenile court's discretion to find it necessary for public safety that Juvenile register.

¶15 Juvenile also contends the order is punitive because viewing and possessing adult pornography would not be a crime if

he were a few months older.³ However, adult sex offenders can also be ordered in their probation to not possess pornography, despite being of legal age to own such material. This approach has been adopted in a number of different states and counties, including Maricopa County. Leilah Gilligan and Tom Talbot, *Community Supervision of the Sex Offender: An Overview of Current and Promising Practices*, Center For Sex Offender Management at 8 (2000), <http://www.csom.org/pubs/supervision2.pdf>; *Sex Offenders Regulations*, Yuma County, Arizona, Term 8 (2009), <http://www.co.yuma.az.us/index.aspx?page=191>. The purpose behind forbidding pornography is to help destroy offenders' assault patterns, lowering the chances of reoffense by stopping deviant thoughts and fantasies that precede sexual assault. Kim English, et al., *Managing Adult Sex Offenders in the Community*, National Institute of Justice Research in Brief (1997), <http://www.mincava.umn.edu/documents/managing/managing.html>.

¶16 Similar to forbidding pornography to sex offenders of any age, the purpose behind sex offender registration is to help protect the public, not to serve as a punishment. See *Noble*, 171 Ariz. at 178, 829 P.2d at 1224. Juvenile's "disregard for the

³ As of the month the Notice of Appeal was filed, Juvenile was 17 years and 9 months old.

rules leads one to believe his participation in treatment is superficial," and Juvenile's polygraph results were consistent with him being a deceptive person. Juvenile's "pornography issue has continued to be a main concern throughout his treatment," and a sexual risk assessor "spoke of the pornography addiction issue as being a great concern." Viewed in the context of these factors, Juvenile's possession of pornography demonstrates that he may not be fully rehabilitated, thus representing a danger to the public. Because of this potential danger, it was within the juvenile court's discretion to decide that Juvenile's possession and viewing of pornography required his registration as a sex offender.

CONCLUSION

¶17 For the foregoing reasons, we affirm the juvenile court's findings that it had jurisdiction and was within its discretion to order Juvenile to register as a sex offender.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge