

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE J.C.

No. 2 CA-JV 2017-0151
Filed April 17, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV20140477
The Honorable Patricia A. Green, Judge Pro Tempore

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Heather A. Mosher, Deputy County Attorney, Tucson
Counsel for State

Joel Feinman, Pima County Public Defender
By Susan C.L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Eppich concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Appellant J.C. challenges the juvenile court’s July 2017 ruling ordering him to register as a sex offender until the age of twenty-five. Finding no error, we affirm.

¶2 Pursuant to a plea agreement in September 2014, J.C. was adjudicated delinquent for attempted sexual abuse and voyeurism involving his younger sisters. In October 2014, the juvenile court placed J.C. on juvenile intensive probation supervision (JIPS) until his eighteenth birthday. In June 2015, the state filed a petition to revoke J.C.’s probation based on his unsuccessful discharge from a court-ordered sex-offender treatment program. Based on J.C.’s admission, the court found he had violated the conditions of his probation, but returned him to JIPS, ordering him to complete his treatment at a different treatment facility.

¶3 In March 2017, the state again petitioned to revoke J.C.’s probation after he was unsuccessfully discharged by his treatment provider. J.C. admitted he had violated his probation by possessing a cellular telephone and pornography, and by accessing the internet without permission, and the juvenile court again found him in violation of the terms of his probation and continued him on JIPS but ordered him detained until proper placement could be found. The court had previously deferred ordering J.C. to register as a sex offender. However, after considering the parties’ briefs and arguments at a hearing held in July 2017, one week before J.C. turned eighteen, it ordered J.C. to register as a sex offender until the age of twenty-five.

¶4 On appeal, J.C. contends the juvenile court abused its discretion because the “risk of continuing harm” of ordering him to register as a sex offender “far outweighs” the public safety purpose of the statute.¹

¹ Section 13-3821(D), A.R.S., is primarily a regulatory provision, and is designed to “facilitat[e] the location of child sex offenders by law enforcement.” *State v. Noble*, 171 Ariz. 171, 178 (1992); *see also In re Maricopa*

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He maintains the court's order was inappropriate in light of his "otherwise typical teenage conduct," and points out that "he ha[s] not committed a new substantive offense in over three years" and has "successfully completed all but one of [his] treatment programs and placements." He also argues the court improperly relied on the probation officer's recommendation that he register as a sex offender and ignored studies showing "the vast majority of juvenile sex offenders [d]o not re-offend sexually." J.C. recites several potential negative consequences that might impact a juvenile who is required to register, and he also argues "[t]here is no clear indication that registration for juveniles is effective."

¶5 "This court will not disturb the juvenile court's order requiring a juvenile to register as a sex offender unless the court abused its discretion." *In re Javier B.*, 230 Ariz. 100, ¶ 17 (App. 2012). Pursuant to A.R.S. § 13-3821(D), a juvenile court may order a juvenile to register as a sex offender until the age of twenty-five if he has been adjudicated delinquent under subsections (A) or (C) of the statute. *Javier B.*, 230 Ariz. 100, ¶ 18. In *Javier B.*, this court rejected a claim that a juvenile court "is required to consider and balance both the public safety purpose of sex offender registration and the potential substantial effect the registration requirement would have on" the juvenile. *Id.* ¶ 19. The statute "does not direct the court to consider any specific factors" in determining whether to order registration. *Id.* ¶ 18. Rather, the court has broad discretion to determine if registration is appropriate. *See State v. Davis*, 226 Ariz. 97, ¶ 23 (App. 2010).

¶6 At the July 2017 hearing, J.C.'s counsel argued against registration, pointing out that J.C. was not likely to reoffend because he had not had "a new substantive offense" in three years and his probation violations were not for sex offenses. Counsel described the "dire

Cty. Juv. Action No. JV-132744, 188 Ariz. 180, 183 (App. 1996) (relying on *Noble* and concluding "the overriding purpose of the statute is to facilitate the location of offenders and that purpose is unrelated to punishing the offender for past crimes"). The primary consideration under the statute is whether the juvenile is "a danger to society." *In re Nickolas T.*, 223 Ariz. 403, ¶ 11 (App. 2010). Factors which may be considered include, therefore, the need to protect the public and, consequently, conduct reflecting the likelihood the person will commit another offense, and the "potentially substantial effect the requirement would have on [the person's] life." *State v. Davis*, 226 Ariz. 97, ¶ 23 (App. 2010).

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consequences” J.C. might suffer if the court ordered him to register.² In contrast, J.C.’s probation officer testified that, although he had not been adjudicated delinquent of another offense, the sexual nature of his probation violations showed an increased risk to reoffend. The state similarly argued “[t]he fact that [J.C.] didn’t follow the rules[,] we can minimize that as much as we want, but the rules are there for a reason. And one’s following or not following the rules I think is a pretty good predictor of how they’re [going to] behave.”

¶7 In the addendum to the September 2015 revocation report, J.C. was described as being at a high risk to reoffend. And again, in the April 2017 revocation report, J.C. was given an Arizona Youth Assessment System score of fifteen³ with a high risk to reoffend, and it was recommended in that report that he register as a sex offender. In addition, one of J.C.’s counselors opined that although he is unlikely to sexually reoffend against young children, he “lacks impulse control to resist pursuing younger teenage girls.”

¶8 In its under advisement ruling, the juvenile court noted it had considered the probation file, including the 2014 psychosexual evaluation; J.C.’s attempts at treatment, both failed and successful; the recommendation by J.C.’s probation officer that he register as a sex offender because “he is likely to reoffend, which creates a substantial risk of harm to the community”; and, the arguments of counsel. The court noted that despite J.C.’s successful completion of treatment, he nonetheless had violated the conditions of his probation, and the allegations in the most recent violation petition included accessing pornography and attempting to have a sexual relationship with a “female who appeared to be between the ages of 15 and 18[and] requesting sexual pictures from her.” The court also stated it had “contemplated the nature and duration of [J.C.’s] sexual offense history, [including] charges of sexual assault before the age of 16,” his “antisocial and impulsive behaviors,” and his “failure to recognize that his offenses caused substantial harm to the victims.” The court thus

²At the hearing, the guardian ad litem stated she was “reluctant” to support sex offender registration for the same reason, citing “the harm to this minor versus the risk to the community.”

³Notably, J.C.’s score of fifteen in 2017 was almost as high as his previous score of nineteen in 2014. And even when his score was as low as nine in September 2015, he nonetheless was considered at a high risk to reoffend.

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concluded J.C. “has additional work to do before” it could “find that the public is safe without requiring [him] to register as a sex offender.”

¶9 Based on the record before us, we disagree with J.C. that the juvenile court did not properly consider the evidence before it or that the evidence did not support its decision. Sufficient evidence, including J.C.’s extensive treatment history, his probation violations, and his reported risk to reoffend, were fully presented to and considered by the court. In addition, counsel argued extensively to the court. In summary, the factors the court considered were neither erroneous, given the purpose and language of § 13-3821, nor did they constitute an abuse of discretion.

¶10 J.C. also maintains ordering him to register as a sex offender places him at greater risk of harm because he may be subject to the community notification requirements under A.R.S. § 13-3825. We note, however, as did the probation officer and the juvenile court below, that § 13-3825(L) provides that community notification “does not apply to persons who are subject to the registration requirements in § 13-3821 as a result of offenses adjudicated by a juvenile court unless ordered by the court.” Because the court did not order J.C. to participate in community notification, we decline to address his argument.⁴ Nor do we address J.C.’s arguments that he may be subject to harsher sex-offender registration requirements of another state if he leaves Arizona before he turns twenty-five, and that he generally may be unable to comply with the registration requirements because the brains of youthful offenders, like him, “have not yet reached the level of maturity and organization necessary to timely comply with the multiple notifications made necessary under A.R.S. § 13-3821.” These arguments are speculative and overly broad, and we need not address them.

¶11 We affirm the juvenile court’s order.

⁴We likewise decline to address J.C.’s related argument regarding “level zero” offenders.