

Cite as 2010 Ark. App. 475

ARKANSAS COURT OF APPEALSDIVISION III
No. CA 09-1300

T.Y.R.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 2, 2010APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. JV-2007-367]HONORABLE RHONDA WOOD,
JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant T.Y.R. appeals the order of the Faulkner County Circuit Court requiring him to register as a juvenile sex offender. For reversal, appellant raises three issues contesting the trial court's registration decision. We affirm.

On December 7, 2007, the trial court entered a delinquency-adjudication order finding that appellant perpetrated two counts of rape and committing him to Division of Youth Services (DYS). In this order, the trial court also determined that appellant was at risk to re-offend. We affirmed that finding in *Ramos v. State*, CA 08-314 (Ark. App. Nov. 12, 2008) (unpublished opinion). Following a Community Notification Risk Assessment (CNRA) dated May 12, 2009, the State filed a motion to require appellant to register as a juvenile sex offender upon his release from DHS. The trial court conducted both a status hearing and a hearing on the State's motion on August 3, 2009.

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At the hearing, the State introduced the CNRA into evidence. The assessment discloses that the adjudication for rape stemmed from appellant's molestation of his six-year-old cousin when he was age fifteen. The report also states that appellant attempted to silence the victim from revealing the abuse by threatening her with a gun. Two other cousins asserted that appellant had abused them as well at a young age. The assessor reported that appellant had undergone sex-offense treatment through individual and group therapy but that appellant's participation was limited and that he did not display a significant understanding of the materials. The assessment noted the belief expressed by appellant's providers that appellant was simply biding his time, trying to wait out the commitment, and that he was focused only on going home with little grasp of the severity of his crime or its consequences.

Skip Hoggard, who performed the CNRA, also testified at the hearing. Hoggard, a therapist who treats juveniles with sexual behavior problems, testified that appellant continued to maintain his innocence of the charges and that appellant viewed himself as a victim. He said that appellant did not possess an understanding of appropriate sexual behavior. Hoggard testified that, at the time of the assessment, appellant was approaching "treatment failure," even though he had been given opportunities to participate in treatment modalities that did not require him to admit his past sexual misconduct. Hoggard explained that appellant's providers had specially created a "mock offense" program for appellant but that appellant "chose not to do that" and thus had made little progress. He felt that appellant was at a moderate risk for continuing to engage in inappropriate sexual behavior and that appellant was

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not a good candidate for sex-offense-specific treatment due to his lack of effort. Hoggard warned that appellant should not be in contact with young children unless closely supervised. He recommended against appellant's release from DYS and preferred that appellant continue with a treatment program in the hope that he might make progress. Hoggard did not believe that it was advisable to release appellant into the community given his lack of insight, and he also thought that it would be risky to release him to his parents, who also denied the truth of appellant's misconduct, as their disbelief might lead to a lack of supervision.

Eric Miller, a service manager at DYS, testified that appellant had received more staffings than any other juvenile with whom he had worked. Miller also stated that appellant repeated at every staffing that "I didn't do it." He said that appellant blamed his victims, who he claimed had ulterior motives. Miller commended the coordinators of the aftercare program for developing one of the most strict safety programs that he had seen.

Dominik Morton, a therapist at Arkansas Juvenile Assessment and Treatment Center, testified that appellant "shut down" after his appeal was denied and that, as a result, a lot of time passed without appellant making any progress. Morton said that appellant could be lazy and does not internalize what is said, but he believed that appellant could make progress if he "set his mind to it." He testified that appellant was not able to regurgitate the information imparted to him and that, as an example of his responses in therapy, appellant would answer "stay away from little kids," when asked what he could do to avoid re-offending. Morton said that appellant had made only thirty-percent progress with the special treatment program

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they designed for him. He considered appellant's prognosis as "fair" and said that appellant's chances for success were in the range of thirty to forty percent.

On August 5, 2009, the trial court entered an order granting appellant's release under certain conditions, including a provision stating that the court would have "zero tolerance" for noncompliance with the court's directives. On August 18, 2009, the trial court entered its order requiring appellant to register as a juvenile sex offender. The trial court found that appellant's delinquency adjudication involved the serious offense of rape and that requiring registration would protect society, given the assessor's belief that appellant's release was not advisable, as opposed to the State's recommendation in favor of release because there were no additional services that DYS could provide. In this regard, the court also found it unlikely that appellant would be closely monitored by his family because they did not take the charges seriously. In addition, the trial court determined that appellant's commission of the offense involved a high level of planning and noted that appellant had no previous history of sex-based offenses other than those victims already identified. The court also found that there were no additional programs that were likely to rehabilitate appellant in light of appellant's failure to complete the sex-offender program. The trial court further considered the CNRA. The court found that the only factor weighing against registration was the recommendation for appellant's release to be postponed to give appellant another opportunity to complete the program. However, the trial court dismissed the recommendation in light of the testimony that appellant's prognosis for completing treatment was considered poor.

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Appellant's first argument on appeal is that the trial court erred by considering his denial of committing the offense in making its decision. Arkansas Code Annotated section 9-27-356(d) (Repl. 2009) provides that "following a sex offender screening and risk assessment the prosecutor may file a motion to request that a juvenile register as a sex offender at any time while the court has jurisdiction of the delinquency case." According to subsection (e) of the statute, the court must conduct a hearing within ninety days of the State's registration motion to consider the following factors in making its decision to require the juvenile to register as a delinquent sex offender:

- (i) The seriousness of the offense;
- (ii) The protection of society;
- (iii) The level of planning and participation in the alleged offense;
- (iv) The previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses;
- (v) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
- (vi) The sex offender assessment and any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (vii) Any other factors deemed relevant by the court.

Section 9-27-356(3)(2)(B) provides that, under no circumstances, shall the court consider the juvenile's refusal to admit to an offense in deciding whether to require registration.

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The trial court must find by clear and convincing evidence that a juvenile should be required to register as a sex offender. Ark. Code Ann. § 9-27-356(f)(2). Clear and convincing evidence is the degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004). On appeal, when factual findings require clear and convincing evidence, we consider whether the trial court's findings are clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of the witnesses. *L.W. v. State*, 89 Ark. App. 318, 202 S.W.3d 552 (2005). Further, where there are two possible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous. *Allen v. Rutledge*, 355 Ark. 392, 139 S.W.3d 491 (2003).

When considering the CNRA, the trial court addressed the assessor's recommendation to allow appellant more time to complete treatment. In its discussion, the court did mention appellant's refusal to admit that he raped his cousin. However, the court expressly stated that it did not take this fact into consideration in deciding whether appellant was to register as a juvenile sex offender. Instead, the court focused on that portion of the report and testimony indicating that appellant failed to make progress in the program specially designed for him that did not require him to admit his transgressions. The trial court also noted that, despite the providers' best efforts, appellant lacked motivation and had no interest in completing the program. In all, the court rejected the assessor's recommendation for additional time based on a finding that it was unlikely, and even improbable, that appellant would ever complete

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the program. When the court's comment is placed in context, we cannot conclude that the trial court failed to abide by the statute's prohibition not to consider a juvenile's refusal to admit the offense.

Appellant's final two points are that the trial court's decision is clearly erroneous because there was room for progress to be made in treatment and because the assessor recommended that the decision on registration be deferred to give appellant additional time to complete the program. As noted above, the trial court found that appellant's prospects for rehabilitation were unlikely. This finding was based on testimony and evidence that, after almost two years, appellant had failed to make significant progress in treatment and that the prognosis for his completing the program was poor. In light of this finding and the others made by the trial court in reaching its decision, we are not able to say that the trial court's conclusion that appellant should register as a sex offender is clearly erroneous.

Affirmed.

ROBBINS and GRUBER, JJ., agree.