MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

J.A.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner

February 26, 2024

Court of Appeals Case No.
23A-JV-2026

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

The Honorable Elizabeth A. Bellin, Magistrate

Trial Court Cause No.
20C01-2107-JD-192

Memorandum Decision by Chief Judge Altice

Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

[1] J.A. appeals the juvenile court's order requiring him to register as a sex offender pursuant to the Sexual Offender Registration Act[1] (SORA), challenging the sufficiency of the evidence. J.A. also contends that the decision requiring him to register was premature.

[2] We affirm.

Facts and Procedural History

[3] On July 21, 2021, the State filed a petition alleging that J.A., when he was thirteen or fourteen[2], committed child molesting, a Level 3 felony, and child molesting, a Level 4 felony, had those offenses been committed by an adult. The State alleged in Count I that J.A. "with . . . a child under fourteen . . . perform[ed] or submit[ted] to sexual intercourse or other sexual conduct." *Appellant's Appendix Vol. II* at 35. The State alleged in Count II that J.A. "with . . . a child under fourteen . . . perform[ed] or submit[ted] to any fondling or

[1] Ind. Code § 11-8-8 *et seq.*

[2] J.A. was born on December 19, 2002.

touching of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person. . . ." *Id.*

[4] At a factfinding hearing on August 31, 2022, R.A. testified that when she was six or seven years old, she shared a bed at home with her thirteen-year-old brother, J.A. R.A. testified that on at least two occasions, J.A. "inserted his penis into her vagina and had sex with her." *Appellant's Appendix Vol. 2* at 205. R.A. further testified that on multiple occasions "[J.A.] would touch her vagina with his hands, and [J.A.] would take R.A.'s hand and make her touch his penis." *Id.* at 205-06. At the conclusion of the hearing, J.A. was found to have committed the delinquent acts as charged. The juvenile court ordered J.A. to remain in the Elkhart County Jail,[3] and directed the probation department to prepare a pre-dispositional report (the Report). The juvenile court then set the matter for dispositional hearing.

[5] The Report was completed on October 22, 2022, and a psychosexual evaluation determined that J.A. was at a high risk to reoffend. The Report also showed that J.A. had two separate delinquency adjudications for battery and domestic battery in 2017, allegations of criminal mischief and possession of marijuana and paraphernalia in 2019, and an adjudication for auto theft in 2019. Additionally, when the pre-dispositional report was prepared, J.A. had pending charges as an adult for theft and resisting law enforcement.

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[3] J.A. was serving a sentence at the jail "through an Elkhart City case." *Appellant's Appendix Vol. 2* at 69.

[6] At the dispositional hearing, R.A. testified about the emotional and physical pain she endured because of J.A.'s actions. R.A. requested that J.A. take responsibility for his actions, that he be ordered to therapy, and that he be placed on the sex offender registry. At the conclusion of the hearing, the juvenile court ordered J.A. to remain incarcerated and for the probation department to create a safety plan in anticipation of J.A.'s release from incarceration.

[7] At a subsequent hearing on November 15, 2022, the trial court heard testimony from J.A. regarding his plan to live under the supervision of Darrin Johnson, a relative. J.A. testified that he planned to work with Johnson, who had helped him obtain employment. Pursuant to its proposed safety plan, the probation department recommended that J.A. be placed on supervised probation and participate in sex-offense individual and group therapy through a Department of Child Services (DCS) approved provider. The probation department further recommended that J.A. be ordered to enroll in an education program and obtain his GED. J.A. agreed to the safety plan's provisions.

[8] On November 29, 2022, the juvenile court adopted the probation department's recommendations and entered its disposition. J.A. was ordered to participate in individual and group therapy and placed on supervised probation. J.A. was to be directly supervised by an adult when in the presence of children twelve and under and make "best efforts" to obtain his GED. *Appellant's Appendix Vol. III* at 7. J.A. was then released to Johnson's custody.

[9] On May 9, 2023, the probation department filed a motion for a rule to show cause, alleging that J.A. had not complied with the juvenile court's orders and the conditions of release under the safety plan. It was specifically alleged that J.A. failed to attend therapy sessions, made no progress in treatment programs, and made no effort to obtain his GED. The probation department further alleged that J.A. had been fired from two jobs and had moved from Johnson's residence to a hotel.

[10] At an evidentiary hearing on July 14, 2023, J.A. admitted to the allegations, but testified that he had missed therapy appointments because of transportation issues. The evidence confirmed that J.A. had been terminated from two different jobs after working at those places of employment for only a couple of weeks. During that hearing, the State requested that J.A. be required to register as a sex offender. The juvenile court found J.A. in contempt and ordered him to serve sixty days in jail. It suspended that time, however, pending J.A.'s re-engagement with the therapy program, compliance with other court-ordered services, and enrollment in GED testing. The juvenile court then set a hearing as to whether J.A. must register under SORA.

[11] At that hearing on July 24, 2023, Ian Curtis—J.A.'s licensed therapist—testified that he has worked for nearly fifteen years with adults and juveniles who "act out sexually." *Transcript Vol. II* at 246-47. Curtis testified that J.A. lacked insight into his own behavior, made bad decisions, resisted therapy, and was making no progress. J.A. was ultimately terminated from a counseling program due to missed appointments. Curtis also observed that J.A. considered his

conduct with R.A. to be mere "horseplay," and J.A. told Curtis that placing R.A.'s hand on his crotch was simply a game that he called "fire truck" or "fire engine." *Id.* at 15. J.A. did not believe that such conduct amounted to risky behavior.

[12] Curits further testified that J.A. would show him jokes on his phone during therapy sessions that were sexual in nature. Curtis believed that J.A. failed to recognize that he should not be displaying that type of material at their appointments. As J.A. claimed that he had done nothing wrong to R.A., Curtis was concerned that J.A. would not recognize the risk of engaging in sexual activity with underaged females.

[13] Curtis also testified that J.A. blamed others for his actions, and he believed that J.A. requires another individual to establish acceptable life guidelines for him. Additionally, while Curtis's office instituted various GED courses, J.A. refused to attend, and he went to only half of his scheduled therapy appointments. *Id.* at 3, 4. Because of these concerns, Curtis opined that J.A. would likely continue to commit sex offenses and would be unable to abide by the everyday rules of society.

[14] At the conclusion of the hearing, the juvenile court determined that the State proved by clear and convincing evidence that J.A. must register as a sex offender in accordance with SORA. The juvenile court's order provided in relevant part as follows:

5. On the Indiana Youth Assessment System Disposition Tool . . . [J.A.] scored in the *high-risk category to reoffend* in September 2022.

6. A Psychosexual assessment was completed on October 27, 2022, and recommended that [J.A.] engage in sex offense specific adult individual and group therapy to address the litany of risk factors as laid out in the psychosexual evaluation.

7. [J.A.] was placed on probation supervision on November 29, 2022, and he began treatment in December 2022.

8. [*J.A.] was discharged from treatment unsuccessfully in May 2023 due to several missed treatment sessions and failing to progress in treatment.*

9. [Curtis] testified that he attempted to treat [J.A.], but that treatment was unsuccessful and *there is a likelihood that [J.A.] would reoffend.*

10. *The likeliness to reoffend is due to [J.A.'s] history of risky behaviors and a pattern of unwillingness to engage in services.*

11. While [J.A.] made arrangements to meet with another therapist to discuss further treatment, his sole motivation for doing so was due to his concerns of going to jail for failure to comply rather than addressing his therapeutic needs.

12. Clear and convincing evidence has been presented to show that [J.A.] is likely to repeat his delinquent act.

l3. Registry is the only viable means to provide protection to the public.

. . .

The Court ORDERS:

2. [J.A.] shall be placed on the Indiana Sex Offender Registry pursuant to Ind. Code § 11-8-8-19.

Appellant's Appendix Vol. 3 at 59-60. (Emphases added).

[15] J.A. now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[16] J.A. claims that the juvenile court's order requiring him to register as a sex offender under SORA must be set aside. J.A. maintains that the evidence failed to support the juvenile court's decision.

[17] In determining whether there is sufficient evidence to place a juvenile on a sex offender registry, we do not reweigh the evidence or judge the credibility of witnesses. *A.R. v. State,* 196 N.E.3d 289, 295-96 (Ind. Ct. App. 2022), *trans. denied*. Rather, we look to the evidence and the reasonable inferences that can be drawn therefrom that support the juvenile court's decision, and we will affirm if there is clear and convincing evidence from which the juvenile court could find the elements of SORA have been met. *B.W. v. State*, 909 N.E.2d 471, 476 (Ind. Ct. App. 2009). The "clear and convincing" standard is an intermediate standard of proof that lies between a preponderance of the

evidence and beyond a reasonable doubt which is required to find guilt in criminal prosecutions. *J.C.C. v. State*, 897 N.E.2d 931, 934 (Ind. 2008). This burden is greater than a burden of convincing a factfinder that the facts are "more probably true than not true." *Id.*

[18] SORA requires sex or violent offenders residing in Indiana to register their principal residence's address with local law enforcement. I.C. § 11-8-8-7(a). SORA imposes prerequisites for juvenile registration, which "implicitly recognizes, and attempts to balance, the tension between [the] registration's harsh effects and the juvenile system's rehabilitative aims." *J.D.M. v. State*, 68 N.E.3d 1073, 1077 (Ind. 2017). Strict construction of the juvenile sex offender registration requirement is necessary to accomplish the express statutory goal of "ensur[ing] that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation." *Id.* at 1078.

[19] I.C. § 11-8-8-4.5(b)(2) defines a "sex offender," in part, as:

> [A] child who has committed a delinquent act and who:
>
> (A) is at least fourteen (14) years of age;
>
> (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and

> (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

[20] I.C. § 11-8-8-4.5(c) provides that the juvenile court "shall consider expert testimony" as to whether the child is likely to commit another offense in determining whether a juvenile should be required to register under SORA.

[21] In this case, the psychosexual evaluation established that J.A. was at a high risk to reoffend. And Curtis—J.A.'s counselor—testified that J.A.'s lack of insight into his own behaviors made him likely to reoffend. J.A. blamed others for his actions and he defined the acts he committed against R.A. as mere "horseplay." *Transcript Vol. 3* at 3, 13-14. J.A. referred to placing R.A.'s hand on his crotch as nothing more than a game of "fire truck" or "fire engine" and he did not see his actions as inappropriate or risky behavior. *Id.* at 15. The fact that J.A. considered his acts of child molesting a game corroborated Curtis's testimony that J.A. lacked insight about his own behavior and was likely to re-offend. J.A.'s sharing of sexual jokes with Curtis during therapy sessions further demonstrated J.A.'s lack of insight into the risks of sexual behavior and appropriate boundaries.

[22] Curtis further testified that individuals who lack insight into their own actions require someone else to establish guidelines for their behaviors. J.A. resisted therapy, did not adhere to the safety plan conditions, refused to discuss personal boundaries with Curtis, and was not able to connect with his own peer group. In light of these circumstances, Curtis believed that J.A. would likely engage in

unhealthy relationship patterns and continue to commit sexual offenses. In short, J.A.'s resistance to treatment, the lack of insight to the risks of his own behavior, and the high risk that he would reoffend supported the juvenile court's conclusion that the State met its burden of proof by clear and convincing evidence that J.A. should be placed on the sex offender registry. *See, e.g., K.J.P. v. State*, 724 N.E.2d 612, 615-16 (Ind. Ct. App. 2000) (finding sufficient evidence where expert witnesses opined the juvenile had a substantial to high risk to re-offend, particularly if he was not supervised), *trans. denied.*

II. Premature Placement on the Registry

[23] J.A. claims that the juvenile court's order must be set aside because the registration requirement was "premature." *Appellant's Brief* at 13-14. J.A. maintains that he should have been afforded more opportunities to complete a therapy program and counseling before being ordered to register under SORA.

[24] Notwithstanding J.A.'s contention, the evidence established that J.A. was released on an agreed safety plan, and he failed to abide by those standards and conditions. As discussed above, J.A. was afforded the opportunity to demonstrate rehabilitation and to participate in counseling, but he missed appointments, resisted treatment, and was ultimately discharged from the therapy program in light of his noncooperation. In light of these circumstances, J.A.'s contention that he should have been afforded alternative treatment programs and additional opportunities to complete such plans before being

placed on the registry is not persuasive. Thus, J.A.'s contention that the juvenile court prematurely ordered him to register under SORA, fails.

[25] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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