Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 22nd day of October, 2019, are as follows:

BY CRICHTON, J.:

2018-CK-01571 *STATE OF LOUISIANA IN THE INTEREST OF A.N. (Parish of Orleans)*

We granted the writ in this matter primarily to address the constitutionality of mandatory lifetime sex offender registration as applied to a juvenile. This appeal arises from an application for post-conviction relief in which the juvenile argued that mandatory lifetime sex offender registration pursuant to R.S. 15:542, as applied to a fourteen-year-old juvenile, violates the Eighth Amendment prohibition of inflicting "cruel and unusual punishments." U.S. Const. amend. VIII. Finding that A.N. did not have a right to file for post-conviction relief because he was not in custody at the time of his application, we affirm the denial of A.N.'s post-conviction relief application by the juvenile court. Since A.N. is denied relief on the basis of custody, all remaining issues presented by his writ application, including whether R.S. 15:542 is unconstitutional under the Eighth Amendment, are moot.

AFFIRMED.

Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, appointed as Justice pro tempore, sitting for the vacancy in the First District.

Retired Judge Michael Kirby appointed Justice ad hoc, sitting for Clark, J.

Weimer, J., concurs and assigns reasons.

Hughes, J., dissents with reasons.

Chehardy, J., additionally concurs for the reasons assigned by Kirby, J.

Kirby, J., additionally concurs and assigns reasons.

10/22/19

SUPREME COURT OF LOUISIANA

No. 2018-CK-01571

STATE OF LOUISIANA IN THE INTEREST OF A.N.

ON SUPERVISORY WRIT TO THE JUVENILE COURT, PARISH OF ORLEANS

CRICHTON, J.

We granted the writ in this matter primarily to address the constitutionality of mandatory lifetime sex offender registration as applied to a juvenile.[1] This appeal arises from an application for post-conviction relief in which the juvenile argued that mandatory lifetime sex offender registration pursuant to R.S. 15:542,[2] as applied to a fourteen-year-old juvenile, violates the Eighth Amendment prohibition of inflicting "cruel and unusual punishments." U.S. Const. amend. VIII. Finding that A.N. did not have a right to file for post-conviction relief because he was not in custody at the time of his application, we affirm the denial of A.N.'s post-conviction relief application by the juvenile court. Since A.N. is denied relief on the basis of

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* Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, assigned as Justice pro tempore, sitting for the vacancy in the First District. Retired Judge Michael Kirby appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

[1] This case was consolidated – for purposes of oral argument only – with a companion case, *State in Interest of E.S.*, 18-1763 (La. 10/22/19), -- So. 3d --, because we intended to examine the constitutionality of R.S. 15:542 as applied to both juveniles. In both cases, however, the constitutional issue is pretermitted by resolution of evidentiary or procedural issues.

[2] R.S. 15:542 provides in pertinent part:

> A. The following persons *shall* be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:
>
> . . .
>
> (3) Any juvenile, who has attained the age of fourteen years at the time of commission of the offense, who has been adjudicated delinquent based upon the perpetration, attempted perpetration, or conspiracy to commit any of the following offenses:
>
> (a) Aggravated or first degree rape (R.S. 14:42) . . .

custody, all remaining issues presented by his writ application, including whether R.S. 15:542 is unconstitutional under the Eighth Amendment, are moot.

FACTS AND PROCEDURAL HISTORY

A.N. was adjudicated delinquent in Orleans Parish Juvenile Court for the crime of aggravated incest[3] involving his sister, J.N. The petition charging A.N. alleged that J.N. was between the ages of seven and eleven and that A.N. was between the ages of twelve and sixteen when the offending acts occurred. The investigation began in 2011 when J.N. submitted a poem she wrote for school expressing her anger at her older brother for molesting her. J.N.'s teacher passed the poem to a social worker who later confirmed with J.N. that she had been sexually abused by her brother. A.N. admitted that he and J.N. engaged in sexual acts but stated it was consensual.

Prior to the delinquency hearing in March 2012, A.N. filed a motion to be exempt from sex offender registration, or, in the alternative, to declare R.S. 15:542, *et seq*., which requires lifetime sex offender registration for certain juvenile offenders, unconstitutional as applied to a fourteen-year-old. The juvenile court denied the motion. A.N. was ultimately adjudicated delinquent for committing aggravated incest in violation of R.S. 14:78.1. As a result of this adjudication and a finding that A.N. was fourteen years old at the time of the offense, the juvenile court ordered A.N. to be placed in secure care with the Office of Juvenile Justice until he turned twenty-one years old, to register as a sex offender for the remainder of his life pursuant to R.S. 15:542, and to participate in "sexual predators counseling." On appeal, A.N. argued that the sex offender registration and notification requirements as applied to a juvenile offender are punitive and not rehabilitative. He also argued

[3] A.N. was convicted of violation of R.S. 14:78.1, which has been since subsumed under R.S. 14:89.1 by 2014 La. Acts 601 (effective June 12, 2014, repealing R.S. 14:78 and 14:78.1 and adding R.S. 14:89(A)(2) and 14:89.1(A)(2)).

that the evidence was insufficient to establish that the aggravated incest occurred after he turned fourteen years of age and, therefore, he should not be subject to sex offender registration and notification requirements upon release from custody. [4] The court of appeal upheld his adjudication and disposition, and this Court denied writs. *State in Interest of A.N.*, 12-1144 (La. App. 4 Cir. 8/28/13), 123 So.3d 824, 825, *writ denied*, 13-2287 (La. 11/8/13), 125 So. 3d 1095. Because the juvenile was twenty years old at the time of the adjudication and was released early, he was held in secure care for only six months.[5] He remains, however, subject to the requirement that he maintain sex offender registration for life pursuant to R.S. 15:542.

A.N. timely filed a petition for post-conviction relief in juvenile court on November 7, 2014, challenging the constitutionality of sex offender registration as applied to a juvenile. Notably, the petition does not list a place of confinement or a custodian to be served, as A.N. was no longer in secure care. The juvenile court held a hearing on January 11, 2018 and summarily denied the application for post-conviction relief. The judge read the victim's poem—which contained the allegations of abuse that began the initial investigation in 2011—into the record and stated that she was "not going to reconsider [her] decision at that time that [A.N.] register as a sex offender."

The court of appeal denied A.N.'s writ application, finding that his arguments were without merit for the following reasons: (1) pursuant to C.Cr.P. art. 928, it is within the discretion of the district court to dismiss an application for post-conviction relief without requiring an answer; (2) the previous denial of A.N.'s Eighth Amendment challenge on direct review is the law of the case;[6] and (3) A.N. is not

[4] A.N. concedes that he was fourteen years old at the time of the offense in his argument to this Court.

[5] A.N. was placed in secure care in June 2012 and was granted early release in December 2012.

[6] The "law of the case" doctrine does not preclude this Court from considering A.N.'s constitutional argument, as the court of appeal's prior denial on direct appeal only constitutes "law of the case" for the court of appeal and this Court's writ denial does not amount to an adoption of

in custody and therefore cannot seek post-conviction relief. *State in Interest of A.N.*, 18-0219 (La. App. 4 Cir. 8/23/18) (unpub'd).[7]

LAW AND ANALYSIS

There are several threshold issues this Court must examine before we can reach the merits of A.N.'s application – *i.e.*, the Eighth Amendment question. Finding that A.N. was not in custody at the time of his post-adjudication petition and as such not entitled to post-adjudication relief, we ultimately do not reach the constitutional issue.

Venue

As a preliminary matter, the Attorney General argues that the Orleans Parish Juvenile Court was an improper venue to determine whether to relieve A.N. of sex offender registration. The Attorney General cites R.S. 15:544.1, which provides in pertinent part:

> Any petition for injunctive relief or for declaratory judgment regarding the *application or interpretation* of the registration and notification requirements of this Chapter . . . shall be filed through ordinary civil proceedings in the district court for the parish where the state capitol is situated.

(emphasis added).

Thus, according to the plain language of R.S. 15:544.1, the 19th Judicial District Court is the proper venue for challenging the "application or interpretation" of the

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the court of appeal's ruling. *See Pitre v. Louisiana Tech University*, 95-1466, p. 7 (La. 5/10/96), 673 So. 2d 585, 589.

[7] In *dicta* and despite its finding that A.N. could not be granted relief, the court of appeal nonetheless observed that lifetime sex offender registration as applied to juveniles "ostensibly runs afoul of the entire premise for the juvenile justice system" and "may very well expose [A.N.] to potential life-long direct stigmatization, social exclusion and ostracism, marginalization, harassment, residential restrictions, employment restrictions, alternative school arrangements, scrutiny and condemnation, which are theoretically expected as it pertains to an adult offender." By imposing such an onerous burden, the court commented, the state "has abandoned its role as *parens patriae* and has imposed draconian punishment instead of focusing on rehabilitation." The court of appeal thus concluded that the requirements were punitive as applied to a juvenile, *cf State ex rel Oliver v. State*, 2000-172 (La. 2/21/01) 779 So. 2d 735, counterproductive to the goals of rehabilitation, and contrary to the long-held policy of the state to maintain confidentiality of juvenile records. *State in Interest of A.N.*, 18-0219 at p. 5–6.

registration requirements set forth in Title 15, Chapter 3-B, which includes R.S. 15:542. *See also State v. Cook*, 16-1518 (La. 5/3/17), 226 So. 3d 387 (finding that defendant should have brought action in 19th J.D.C. where alleging R.S. 15:540, *et seq*., does not apply to those found not guilty of a sexual crime by reason of insanity). In the instant case, however, A.N. does not seek relief regarding the "application or interpretation" of R.S. 15:542. Instead, A.N. (1) concedes that, as written, R.S. 15:542 *does apply* to him, and (2) that such application violates the Eighth Amendment. Since the issue presented by A.N.'s petition and writ application to this Court is not one of application or interpretation, R.S. 15:544.1 is inapplicable. The juvenile court, therefore, was a proper venue for A.N.'s petition for post-conviction relief, and this argument is without merit.

Service

The Attorney General also argues that this matter should be remanded to the juvenile court for an evidentiary hearing because the Department of Justice was not served in the lower court proceedings. In support of this argument, the Attorney General cites C.C.P. art. 1880, which requires service upon the Attorney General of any written pleading challenging the constitutionality of state statutory authority in the context of a petition for declaratory relief. That article provides:

> When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In a proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard. *If the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.*

C.C.P. art. 1880 (emphasis added).

Although A.N. did allege in his post-conviction petition that R.S. 15:542 is unconstitutional as applied to a fourteen-year-old juvenile, we find that C.C.P. art. 1880 does not mandate service upon the Attorney General in this case. Article 1880

is found within the Code of Civil Procedure, and the Attorney General fails to successfully argue why this particular *civil* procedural article should be applied to a post-conviction *criminal* proceeding established by and defined in the Code of Criminal Procedure.[8] Moreover, the reason for which the legislature would have mandated that parties provide notice to the Attorney General in a civil matter is clear, as civil matters generally involve disputes among private parties, and in such cases the State would not otherwise have any actual or constructive notice that a party is assailing the constitutionality of a "statute, ordinance, or franchise." In a criminal matter, by contrast, the State is always a party to the proceeding through its district attorneys. *See* C.Cr.P. art. 61 ("Subject to the supervision of the attorney general, as provided in C.Cr.P. art. 62, the district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute."); C.Cr.P. art. 927 ("If an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, *through the district attorney in the parish in which the defendant was convicted*, to file any procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days.") Any concern we may have had that the Attorney General's interest should be represented in criminal court proceedings related to the constitutionality of a statute is thus quelled by our understanding that the State – through its acting district attorney – is on notice of any constitutional argument made in the district court, and the State's interests are thus represented in all criminal matters. *State v. Hatton*,

[8] *See* C.Cr.P. art. 924, *et seq*; Ch. C. art. 803. Although the Attorney General correctly notes that this Court cited C.C.P. art. 1880 in a footnote in *State v. Schoening*, 00-0903 (La. 10/17/00), 770 So. 2d 762, the reference therein is *dicta* and does not infer application of this article to all criminal proceedings. *Id*. at. 775-776. Indeed, the legislature might well have purposefully omitted a similar provision in the Code of Criminal Procedure, as (1) constitutional questions are more commonly raised in criminal cases than civil, potentially inundating the Attorney General's office with notices, and (2) pro se litigants, who are again more common in criminal matters, are less likely to successfully jump such procedural hurdles.

2007-2377 (La. 7/1/08), 985 So. 2d 709, 721 (recognizing the purpose of procedural requirements for challenging the constitutionality of a statute is "to give the parties an opportunity to brief and argue the constitutional grounds and to prepare an adequate record for review."). Furthermore, nothing prohibits the Attorney General from exercising his statutory authority to participate in such proceedings if he believes the circumstances warrant his intervention. C.Cr.P. art. 62(B).[9] This argument is without merit.

Post-Adjudication Relief

Although the State does not argue otherwise, we must first address whether the Louisiana Children's Code provides a right to "post-*adjudication*" relief.[10] Children's Code art. 803 mandates that where procedures are not provided in Title VIII thereof, the court shall proceed in accordance with the Code of Criminal Procedure. *See also* Ch. C. art. 104 ("Where procedures are not provided in this Code, or otherwise by law, the court shall proceed in accordance with: (1) The Code of Criminal Procedure in a delinquency proceeding."). While Ch. C. art. 909 of that title permits a juvenile court to modify any order of disposition, such power does not provide relief to a juvenile equivalent to post-conviction relief, C.Cr.P. art 924, *et seq.*, and is instead analogous to relief obtained through a motion to reconsider sentence. *See* C.Cr.P. art. 881.1; *State v. J.R.S.C.*, 00–2108 (La. 6/1/01), 788 So. 2d

[9] Relatedly, R.S. 13:4448 provides that "[p]rior to adjudicating the constitutionality of a statute of the State of Louisiana, the courts of appeal and the Supreme Court of Louisiana shall notify the attorney general of the proceeding and afford him an opportunity to be heard . . . No judgment shall be rendered without compliance with the provisions of this section." Though the Attorney General cites this statute in passing, he does not assert its direct application to this case, acknowledging that this Court gave him notice of the proceedings. Further, he does not seek remand to the court of appeal or assert he is prejudiced by lack of notice by the court of appeal.

[10] Despite this issue being *res nova* for this Court, all five courts of appeal have held that a juvenile is entitled to post-adjudication relief. *See, e.g.*, *State in Interest of C.T.*, 15-1864, p. 9 (La. App. 1 Cir. 4/15/16), 195 So. 3d 70, 77–78, *writ granted*, 2016-0939 (La. 5/19/17), 219 So. 3d 334, and *aff'd on other grounds*, 2016-0939 (La. 10/18/17), 236 So. 3d 1210; *State In Interest of D.M.*, 51,920 (La. App. 2 Cir. 1/10/18), 247 So. 3d 133, 141; *State in the Interest of D.J.*, 08-0345, p. 15 (La. App. 3 Cir. 8/28/08), 996 So.2d 1, 11; *State in Interest of H.N.*, 15-173, p. 5 (La. App. 5 Cir. 6/30/15), 171 So. 3d 1242, 1246; *State in Interest of H.N.*, 15-0173, p. 5 (La. App. 5 Cir. 6/30/15), 171 So.3d 1242, 1246.

424, 424–425 (noting that the sole difference between motions under the Ch. C. art. 909 and C.Cr.P. art. 881.1 "is that the juvenile may file his motion to modify the judgment of disposition at any time while the disposition is in force, whereas an adult offender's motion to reconsider sentence must be filed within 30 days of original sentencing unless the trial court enlarges that time period.").

The key distinction between C.Cr.P. art. 924, *et seq*., and Ch. C. art. 909 is the ability in a post-conviction petition not only to seek modification of the sentence – in a juvenile proceeding, the "disposition" – but also to overturn the conviction – in a juvenile proceeding, the "adjudication." Applications for post-conviction relief are defined under C.Cr.P. art. 924 as "a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the *conviction and sentence set aside*." *Id*. (emphasis added). In Ch. C. art. 909, by contrast, the only possible relief to be granted is a modification of the disposition.

For the foregoing reasons, it is clear that Title VIII of the Children's Code does not provide for post-conviction relief for a juvenile, *i.e.*, post-adjudication relief. The legislature has therefore directed through Ch. C. art. 803 that the courts impute C.Cr.P. art. 924, *et seq*., to adjudication proceedings to provide such relief for juveniles.

Custody

Finding post-adjudication relief exists for juveniles, however, does not end the analysis. The State argues A.N. is nevertheless not entitled to post-adjudication relief because A.N. is not in "custody." *See* C.Cr.P. art. 924(2); C.Cr.P. art. 926(B)(1). As set forth above, an application for post-conviction relief is defined under C.Cr.P. art. 924(1) as "a petition filed by a person in custody." "'Custody' means detention or confinement, or probation or parole supervision, after sentence following conviction for the commission of an offense." C.Cr.P. art. 924(2). At the time he filed his petition, A.N. was neither in secure care nor subject to probation or

parole supervision and thus fails to meet the requirements of C.Cr.P. art. 924. *See also* C.Cr.P. art. 926(B).

Nor is it sufficient for purposes of the custody requirement that R.S. 15:542 subjects A.N. to potential future imprisonment and restricts his liberty. *See* R.S. 15:542(C)(3) and R.S. 15:542.1.4. In *State v. Smith*, 96-1798 (La. 10/21/97), 700 So. 2d 493, this Court found that a defendant is not in "custody" merely because his or her conviction may be used to enhance sentence or serve as an element of another crime in the future. *Id*. at 494. We reasoned in *Smith* that in order to have standing to seek post-conviction relief "the petitioner must demonstrate some *significant restraint* upon his or her individual liberty." *Id*. at 495 (emphasis added).

We are unable to conclude that sex offender registration is a "significant restraint" on A.N.'s liberty such that it amounts to detention or confinement. It is true that knowingly providing false information or failing to register under R.S. 15:542 can subject a sex offender to imprisonment, *see* R.S. 15:542(C)(3) and R.S. 15:542.1.4, but, as held in *Smith*, the possibility of future imprisonment is not sufficient to convert a sentence to "restraint." *Id*. at 494. A.N. fails to otherwise demonstrate why the requirements of sex offender registration under R.S. 15:542, which include, among other things, that the defendant or juvenile provide temporary lodging information to authorities when travelling, constitute a "significant restraint" upon his individual liberty in accordance with *Smith*.[11]

[11] R.S. 15:542(C)(1) provides:

> The offender shall register and provide all of the following information to the appropriate law enforcement agencies listed in Subsection B of this Section in accordance with the time periods provided for in this Subsection:
>
> (a) Name and any aliases used by the offender.
>
> (b) Physical address or addresses of residence.
>
> (c) Name and physical address of place of employment. If the offender does not have a fixed place of employment, the offender shall provide information with as much specificity as possible regarding the places where he works, including but not limited to travel routes used by the offender.
>
> (d) Name and physical address of the school in which he is a student.

We therefore decline to extend the "custody" requirement of C.Cr.P. art. 924 to include instances where, as here, a defendant is subject to sex offender registration pursuant to R.S. 15:542.[12] As such, we hold that the lower courts correctly denied

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> (e) Two forms of proof of residence for each residential address provided, including but not limited to a driver's license, bill for utility service, and bill for telephone service. If those forms of proof of residence are not available, the offender may provide an affidavit of an adult resident living at the same address. The affidavit shall certify that the affiant understands his obligation to provide written notice pursuant to R.S. 15:542.1.4 to the appropriate law enforcement agency with whom the offender last registered when the offender no longer resides at the residence provided in the affidavit.
>
> (f) The crime for which he was convicted and the date and place of such conviction, and if known by the offender, the court in which the conviction was obtained, the docket number of the case, the specific statute under which he was convicted, and the sentence imposed.
>
> (g) A current photograph.
>
> (h) Fingerprints, palm prints, and a DNA sample.
>
> (i) Telephone numbers, including fixed location phone and mobile phone numbers assigned to the offender or associated with any residence address of the offender.
>
> (j) A description of every motorized vehicle registered to or operated by the offender, including license plate number and vehicle identification number, and a copy of the offender's driver's license and identification card. This information shall be provided prior to the offender's operation of the vehicle.
>
> (k) Social security number and date of birth.
>
> (l) A description of the physical characteristics of the offender, including but not limited to sex, race, hair color, eye color, height, age, weight, scars, tattoos, or other identifying marks on the body of the offender.
>
> (m) Every e-mail address, online screen name, or other online identifiers used by the offender to communicate on the internet. If the offender uses a static internet protocol address, that address shall also be provided to the appropriate law enforcement agency. Required notice must be given before any online identifier or static internet protocol address is used to communicate on the internet. For purposes of this Subparagraph, "static internet protocol address" is a numerical label assigned to a computer by an internet service provider to be the computer's permanent address on the internet.
>
> (n)(i) Temporary lodging information regarding any place where the offender plans to stay for seven or more days. This information shall be provided at least three days prior to the date of departure unless an emergency situation has prevented the timely disclosure of the information.
>
> (ii) Temporary lodging information regarding international travel shall be provided regardless of the number of days or nights the offender plans to stay. This information shall be provided at least twenty-one days prior to the date of departure unless an emergency situation has prevented the timely disclosure of the information. Upon receipt of this information by the bureau from the law enforcement agency pursuant to Subsection E of this Section, this information shall then be sent by the bureau to the United States Marshals Service's National Sex Offender Targeting Center for transmission to the proper authorities.
>
> (o) Travel and immigration documents, including but not limited to passports and documents establishing immigration status.

[12] The fact that sex offender registration pursuant to R.S. 15:542 does not constitute "custody" for purposes of C.Cr.P. art. 924 does not preclude a juvenile from challenging the constitutionality of such a statute when the juvenile is in secure care only briefly. A juvenile has the ability to assail

A.N.'s petition for post-adjudication relief. Thus, we are unable to reach the constitutional issue for which we granted the juvenile's writ.

DECREE

Accordingly, we affirm the juvenile court's dismissal of A.N.'s petition.

AFFIRMED.

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the constitutionality of a statute in other ways, including, for example, by motion while the adjudication proceedings are pending. In fact, A.N. did challenge the constitutionality of lifetime sex offender registration by motion prior to his adjudication and appealed the juvenile court's denial of the same. *See supra* page 2.

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SUPREME COURT OF LOUISIANA

No. 2018-CK-01571

STATE OF LOUISIANA IN THE INTEREST OF A.N.

ON SUPERVISORY WRIT TO THE JUVENILE COURT,
PARISH OF ORLEANS

WEIMER, J., concurs in the result.

I concur in the ultimate result, but write separately regarding the venue issue addressed by the majority. See **State in the Interest of A.N.**, 18-CK-1571 (La. __/__/19), slip op. pp. 4-5. The state argues venue is governed by La. R.S. 15:544.1 which provides:

> Any petition for injunctive relief or for declaratory judgment regarding the application or interpretation of the registration and notification requirements of this Chapter, other than the summary proceeding provided for in R.S. 15:542(F) and 544(E), shall be filed through ordinary civil proceedings in the district court for the parish where the state capitol is situated. ...

Based on a straightforward textual interpretation, this venue provision is not applicable because A.N. filed for post-conviction relief; he did not file "for injunctive relief or for declaratory judgment" as contemplated by the statute. Stated differently, as a prerequisite for this venue provision to apply, the petition must be one "for injunctive relief or for declaratory judgment," regarding the registry statute.

The majority finds the venue provision not applicable based on A.N.'s argument he is not seeking relief regarding the "application or interpretation" of the sex offender registry statute. Instead, A.N. admits the sex offender registry provisions apply to him, but are unconstitutional. However, if unconstitutional, the sex offender registry provisions have no application to him. This circuitous argument

is not the reason the venue statute is not applicable. Rather, as indicated, the venue statute is not applicable because A.N. did not file for injunctive relief or for a declaratory judgment.

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SUPREME COURT OF LOUISIANA

No. 2018-CK-01571

STATE OF LOUISIANA IN THE INTEREST OF A.N.

**ON SUPERVISORY WRIT TO THE JUVENILE COURT,
PARISH OF ORLEANS**

Hughes, J., dissents.

I respectfully dissent. I would find lifetime registration for a fourteen year old unconstitutional.

Advances in law and science recognize that juveniles are developmentally different from adults, with significant psychological differences. *See* Reasons for Judgment, *State v. H.F.*, #613874 G, Parish of St. Tammany (Gardner, J.). The law should alleviate unconstitutional results, not avoid them.

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CHEHARDY, J., additionally concurs for the reasons assigned by Kirby, J.

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SUPREME COURT OF LOUISIANA

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ON SUPERVISORY WRIT TO THE JUVENILE COURT, PARISH OF ORLEANS

KIRBY, J., ad hoc, additionally concurs.

I concur in the majority opinion as, procedurally, the law requires the result reached therein. Nonetheless, I write separately to express my opinion that the imposition of lifetime sex offender registration on a 14-year old child violates the Eighth Amendment of the United States Constitution and the Louisiana Constitution's prohibition against excessive sentences. See La. Const. art. I, § 20.

The very nature of this statutory scheme carries lifelong restrictions that will affect this child's educational opportunities, as well as where he will be able to live, travel, and work. His personal information will become part of a statewide database, subject to public disclosure, which is contrary to the otherwise confidential nature of juvenile matters. He will forever be stamped as a sex offender, which necessarily will impact, and possibly foreclose, all future opportunities, both personally and professionally. Further, he will face imprisonment for failure to comply with the registration requirements, essentially creating an impossible situation that, by its design, sets the juvenile up for a decreased chance of rehabilitation.

It has been said that pursuant to *State ex rel. Oliveri v. State*, 2000-172 (La. 2/21/01), 779 So.2d 735, sex offender registration has already been found to be remedial and not punitive based on the public policy of promoting safety. However, the *Oliveri* court only made such a holding as to sex offender registration for *adults*. Since *Oliveri*, the United States Supreme Court has expressly highlighted the differences between adults and juveniles. *See, e.g.*, *Miller v. Alabama*, 567 U.S. 460,

132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Montgomery v. Louisiana*, 577 U.S. ——, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016); *Graham v. Florida*, 560 U.S. 48, 80, 130 S.Ct. 2011, 2033, 176 L.Ed.2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed. 2d 1 (2005). The United States Supreme Court has emphasized the intellectual immaturity and lack of full mental development when addressing crimes committed by juveniles, as well as the small proportion of juvenile offenders who go on to repeat criminal behavior later in life. *Graham*, 560 U.S., at 68, 130 S.Ct., at 2026; *Roper*, 543 U.S., at 569-570, 125 S.Ct. 1183.

Moreover, rehabilitation is an important consideration in tailoring appropriate consequences for juvenile offenders. *Graham*, 560 U.S., at 74, 130 S.Ct., at 2030; *Miller*, 567 U.S., at 478, 132 S.Ct., at 2468. By virtue of lifetime registration and the enormous restrictions associated therewith, juveniles are effectively precluded from experiencing a chance at rehabilitation. The possibility that the registration period may be reduced to twenty-five years pursuant to La. R.S. 15:544(E)(2) is insufficient to cure the constitutional defects inherent in the statutory scheme as applied to a minor, since a fourteen-year old child would be thirty-nine before he would be eligible to seek such a reduction. This interval of time is precisely the age span when significant life opportunities present themselves to young adults seeking to better themselves and establish their place in society.

I find by mandating lifetime registration for juvenile offenders, the State's role in fostering children's welfare is abandoned in favor of harsh, excessive punishments that do not promote rehabilitation or further the important goal of presenting a troubled youth with the opportunity to live a productive life, contrary to the latest United States Supreme Court pronouncements on this issue. Thus, while I concur in the majority decision, I express my opinion that the juvenile sex offender registration requirements are infected with serious constitutional flaws worthy of legislative attention.