STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1405

In the Matter of the Welfare of: C. P. T.

Filed August 5, 2008
Affirmed
Connolly, Judge

Carver County District Court
File No. 10-JV-05-972

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James W. Keeler, Jr., Carver County Attorney, Jennifer L. Casanova, Assistant County Attorney, Carver County Justice Center, 604 East Fourth Street, Chaska, MN 55318 (for respondent State of Minnesota)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's decision to adjudicate him delinquent for an offense of criminal sexual conduct in the third degree. Appellant also challenges the constitutionality of the statute requiring the lifetime registration of predatory sex

offenders as applied to juveniles, arguing that it violates due process and the doctrine of the separation of powers. Because the district court did not abuse its discretion and because the statute is constitutional, we affirm.

FACTS

On May 17, 2005, pursuant to an agreement, appellant, who was age 15, entered an admission of guilt to a charge of criminal sexual conduct in the third degree. As a result of his admission, appellant was adjudicated delinquent, designated an extended-jurisdiction juvenile (EJJ), received a stay of execution of 48 months, and placed on probation.

During the investigation of this case, law enforcement learned that from January 2003 through June 2005, appellant had sexual contact, including oral and vaginal sexual contact, with a minor child who was between the ages of 11 and 13 years old and who suffered from learning disabilities. Appellant was in foster care, and the victim of this sexual assault was another foster child residing in the same home as appellant. Appellant was charged with one count of criminal sexual conduct in the third degree. Appellant entered an admission of guilt in this second case on January 17, 2006. Appellant was initially adjudicated delinquent in this second case, but that adjudication was later vacated by agreement of the parties so appellant could have an opportunity to avoid the

requirement of mandatory lifetime registration as a predatory sex offender.[1] The case was continued for six months for disposition at that time.

While on probation for the EJJ offense, and while disposition was pending on his second third-degree criminal sexual conduct offense, appellant admitted to at least four probation violations. These included leaving his parent's home without permission and consuming alcohol; having contact with a vulnerable child whom appellant asked if she wanted to see his penis; and two new offenses: one offense of fifth-degree criminal sexual conduct for grabbing or touching the breast of a fellow student at a treatment program and one offense of disorderly conduct for making inappropriate sexual comments to several female students at appellant's school.

On May 17, 2007, appellant entered an admission of guilt to the disorderly conduct offense and admitted the corresponding violation of his EJJ probation. The state moved the district court to adjudicate appellant delinquent on the second offense of third-degree criminal sexual conduct, on which disposition had not been ordered. The defense opposed the motion and asked the district court to either continue to stay disposition or to enter a stay of adjudication.

In a written order, the district court adjudicated appellant delinquent on the second offense of third-degree criminal sexual conduct and placed him on probation. In adjudicating appellant, the district court noted that appellant had repeatedly been "subject to review and violation hearings." The district court also noted that appellant's violations

[1] Minn. Stat. § 243.166 (2004) requires that all juvenile offenders adjudicated delinquent of two charges of criminal sexual conduct in violation of Minn. Stat. § 609.344 (2004) must register with law enforcement as predatory sex offenders for life.

have been of "core conditions of probation." The district court concluded that "[t]he community will be best protected by the registration of [appellant]." As a consequence of this second adjudication of delinquency for third-degree criminal sexual conduct, appellant is now required to register as a predatory sex offender for the rest of his life. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion when it adjudicated appellant delinquent on the charge of third-degree criminal sexual conduct.

Appellant argues that the district court abused its discretion when it denied his request to continue to stay disposition or to stay adjudication for his second offense of third-degree criminal sexual conduct, after appellant admitted to the probation violations and the new criminal offenses. Appellant argues that the district court's disposition order was arbitrary and substantially undermined the goal of rehabilitation, and therefore must be reversed.

"In delinquency cases, district courts have broad discretion to order dispositions authorized by statute." *In re Welfare of J.B.A.*, 581 N.W.2d 37, 38 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998). "Absent a clear abuse of that discretion, the disposition will not be disturbed." *Id.* "This court will affirm the disposition as long as it is not arbitrary." *In re Welfare of J.A.J.*, 545 N.W.2d 412, 414 (Minn. App. 1996). "The district court has broad discretion in determining whether the evidence justifies the revocation of probation." *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005) (citing *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980)).

> If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:
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> (1) order a disposition pursuant to Minnesota Statutes, section 260B.198; or
>
> (2) for a child who was previously granted a continuance without adjudication pursuant to Rule 15.05, subdivision 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260B.198.

Minn. R. Juv. Delinq. P. 15.07, subd. 4(D).

In adjudicating appellant delinquent, the district court found that "[t]he need for continued supervision of the child requires that he be adjudicated and placed on indefinite supervision, rather than a stay of adjudication of sentence for a period not to exceed six months." Appellant argues that the district court erred when it failed to consider that appellant had previously received an EJJ disposition on a separate charge of third-degree criminal sexual conduct, subjecting him to EJJ probation on that offense until age 21 and exposing him to the possible imposition of an adult criminal sentence should he continue to violate his probation. Appellant seems to argue that the imposition of an EJJ consequence on a previous adjudication should have weighed against the adjudication of delinquency in the instant case. But appellant fails to cite to any authority that would support an argument that adjudication on a subsequent juvenile offense is an abuse of discretion when the juvenile has previously been designated as EJJ in a different case. Nothing in the record suggests that the district court's decision to adjudicate appellant delinquent was arbitrary or that the district court abused its discretion.

Appellant next argues that the district court did not explain why the ten-year registration period appellant was already subject to as a result of his first adjudication was insufficient to protect public safety and that the district court did not explain why adjudication and lifetime registration were in appellant's best interests and how they protected public safety. Therefore, appellant argues, the district court abused its discretion. Written dispositional findings are essential to meaningful appellate review. *In re Welfare of N.T.K.*, 619 N.W.2d 209, 211-12 (Minn. App. 2000); *see* Minn. Stat. § 260B.198, subd. 1 (2006); Minn. R. Juv. Delinq. P. 15.05, subd. 2(A) (stating dispositional order shall contain written findings). But the district court's written findings in this case are sufficiently detailed to allow for meaningful review.

The district court's adjudication was based on more than the two underlying offenses. The district court also considered several violations of appellant's probation, including two new offenses involving inappropriate sexual conduct, all of which appellant admitted. The district court found that appellant had "repeatedly been subject to review and violation hearings. The violations have been of core conditions of probation such as completion of sexual-offender treatment, remaining law abiding with no sexual offenses, and having [no contact] with vulnerable children." The district court also found that appellant's violations had been intentional and inexcusable. The district court did not abuse its discretion when it adjudicated appellant delinquent on the second offense of criminal sexual conduct.

II. The predatory-offender-registration statute requiring lifetime registration is not punitive as applied to juveniles because it does not violate the due-process clauses of the federal and state constitutions or the separation-of-powers doctrine of the state constitution.

Appellant also challenges the constitutionality of the lifetime registration statute as applied to juvenile offenders, arguing that it is punitive and violates due process and the separation-of-powers doctrine.

These arguments were not raised in the district court. Generally, an appellant must raise a constitutional challenge at the district court to preserve it for appeal. *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) (concluding that factual record was not adequately developed to depart from usual rule, so court would not consider challenge). "[A] party cannot challenge the constitutionality of a statute for the first time on appeal." *Id.* (citing *State v. Schleicher*, 672 N.W.2d 550, 555 (Minn. 2003)). But this court may review any matter "as the interests of justice may require." Minn. R. Crim. P. 28.02, subd. 11. We address appellant's constitutional challenges merely to note that they lack merit.

The constitutionality of a statute presents an issue of law reviewed de novo. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Minnesota statutes are presumed constitutional. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). A party challenging the constitutionality of a statute bears the burden of proving a violation of a constitutional protection beyond a reasonable doubt. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989).

Minnesota Statutes, section 243.166, subdivision 1b (2006), reads, in relevant part:

> A person shall register under this section if:
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> (1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:
>
> . . . .
>
> (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; 609.3451, subdivision 3; or 609.3453.

Appellant argues that the registration requirement is punitive. This court has previously addressed the issue of mandatory registration for juvenile offenders. In *In re Welfare of C.D.N.*, 559 N.W.2d 431 (Minn. App. 1997), appellant raised a due-process challenge to Minn. Stat. § 243.116 (1996). This court concluded that application of the statute was nonpunitive as applied to juveniles because it neither restricted their access to employment and education nor their freedom to travel. *Id.* at 433; *see also In re Welfare of J.R.Z.*, 648 N.W.2d 241, 244, 247-49 (Minn. App. 2002) (holding that the 2000 version of the statute was not punitive and did not violate due process), *review denied* (Minn. Aug. 20, 2002); *In re Welfare of H.V.*, No. A06-1214, 2007 WL 1599207 (Minn. App. 2007).[2] This court also noted that registration was consistent with confidentiality because the information gathered remains private data. *C.D.N.*, 559 N.W.2d at 433. In

[2] Unpublished decisions of this court are not precedential. Minn. Stat. § 480A.08, subd. 3 (2006). This opinion is cited only for such insight as it may provide. *H.V.* addressed the identical version of the statute appellant now challenges and held that the statute was nonpunitive, and that it did not violate due process or the separation of powers. 2007 WL 1599207, at *3-4.

addressing the concern that mandatory registration is contrary to the rehabilitation of juveniles, this court said "registration does not substantially interfere with the rehabilitation of adjudicated juveniles because it is nonpunitive and, therefore, the registration statute is not inconsistent with the rehabilitative purpose of the juvenile court system." *Id.* at 434.

Appellant argues that the requirement that he register as a predatory sex offender violates his right to due process under both the state and federal constitutions and that he should be granted the right to a jury trial to ensure the "reliability" of the adjudication.

"The applicable due process standard in juvenile proceedings is fundamental fairness." *State v. Little*, 423 N.W.2d 722, 724 (Minn. App. 1988), *review denied* (Minn. July 6, 1988) (citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S. Ct. 1976, 1985 (1971)). In this case, appellant admitted the underlying offense of third-degree criminal sexual conduct and the subsequent violations. Appellant does not argue that the proceedings in which he entered these admissions were not fundamentally fair. Moreover, "Minnesota courts have not recognized a right to a jury trial in juvenile proceedings under the state constitution." *C.D.N.*, 559 N.W.2d at 434 (citing *In re Welfare of K.A.A.*, 397 N.W.2d 4, 6 (Minn. App. 1986), *rev'd on other grounds*, 410 N.W.2d 836 (Minn. 1987)). It is not the province of this court to "make . . . a dramatic change in the interpretation of the Minnesota Constitution" when the supreme court has not done so. *Minn. State Patrol Troopers Ass'n ex rel. Pince v. State, Dep't of Pub. Safety*, 437 N.W.2d 670, 676 (Minn. App. 1989) (quotation omitted), *review denied* (Minn. May 24, 1989).

Appellant points out that this court in *C.D.N.* invited the legislature "to review the prudence of requiring all juveniles adjudicated for criminal sexual conduct to register as predatory sexual offenders." *C.D.N.*, 559 N.W.2d at 435. The legislature has revisited this question and in doing so has amended the statute to its current form which requires lifetime registration.

Appellant also argues that the mandatory-registration requirement violates the separation-of-powers doctrine of the Minnesota Constitution.

The Minnesota Constitution provides, in relevant part: "The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." Minn. Const. Art. III, § 1.

The supreme court has held that the requirement of "predatory offender registration is not a punitive consequence, it is collateral in nature." *Kaiser v. State*, 641 N.W.2d 900, 904 (Minn. 2002). "Consequences flowing from the plea that are not punishment serve a substantially different purpose than those that serve to punish, as they are civil and regulatory in nature and are imposed in the interest of public safety." *Id.* at 905. The statute requiring predatory-offender registration is civil and regulatory, not penal, because it does not have the fundamental characteristics of punishment. *Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn. 1999) (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S. Ct. 554 (1963)). The supreme court in *Kaiser* noted that the statute specifically allows for notification of the registration requirement to be made by a

corrections officer, who is an executive branch agent, should the district court fail to provide a defendant with the proper notice. *Kaiser*, 641 N.W.2d at 907.[3]

Because the statute provides for notification by a member of the executive branch, and because Minnesota caselaw has held that the requirement that a defendant register as a predatory sex offender is a collateral consequence rather than a direct punitive consequence, there is no violation of the doctrine of separation of powers. Even if the registration requirement could be considered part of the sentence, there is no separation-of-powers violation because the legislature can limit the exercise of judicial discretion in

[3] Minn. Stat. § 243.166, subd. 2 (2006), reads,

> When a person who is required to register under subdivision 1b, paragraph (a), is sentenced or becomes subject to a juvenile court disposition order, the court shall tell the person of the duty to register under this section and that, if the person fails to comply with the registration requirements, information about the offender may be made available to the public through electronic, computerized, or other accessible means. The court may not modify the person's duty to register in the pronounced sentence or disposition order. The court shall require the person to read and sign a form stating that the duty of the person to register under this section has been explained. The court shall forward the signed sex offender registration form, the complaint, and sentencing documents to the bureau. If a person required to register under subdivision 1b, paragraph (a), was not notified by the court of the registration requirement at the time of sentencing or disposition, the assigned corrections agent shall notify the person of the requirements of this section. When a person who is required to register under subdivision 1b, paragraph (c) or (d), is released from commitment, the treatment facility shall notify the person of the requirements of this section. The treatment facility shall also obtain the registration information required under this section and forward it to the bureau.

sentencing. *See State v. Olson*, 325 N.W.2d 13, 18 (Minn. 1982) (stating that the legislature can restrict the exercise of judicial discretion in sentencing by setting mandatory sentences).

Affirmed.