

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: April 26, 2019]

STATE OF RHODE ISLAND

:

VS.

:

PM-2017-5459

:

JASON ELLIOTT

:

:

DECISION

LANPHEAR, J. This case is before the Court on Jason Elliott’s (Petitioner) appeal from a decision of a magistrate affirming the decision of the Sex Offender Board of Review classifying Petitioner as a Level III offender for community notification purposes.

Facts and Travel

In November 2015, Petitioner was convicted of one count of possession of child pornography, one count of production of child pornography and five counts of indecent solicitation of a child in P2-2014-1285A, for which he received time to serve at the Adult Correctional Institutions and additional time in a suspended sentence. As coach of a local basketball team, Petitioner secretly recorded juvenile males while they were in the bathrooms at hotels. While searching Petitioner’s apartment, police located a laptop with images of child pornography. Several hidden surveillance cameras were located. Police also discovered chat conversations on Petitioner’s iPhone where he posed as a young female to solicit nude photos of young males. Petitioner sent various images to other email accounts. Several members of the basketball team were victims.

Prior to his release from incarceration, the Petitioner was brought before the Sex Offender Board of Review for classification of his risk to reoffend. The Board considered

Petitioner's scores from three risk assessment instruments: the Static-2002R, the Stable-2007, and the Static-99R, and other materials. Two of these tests found that Petitioner had less than a 7% risk of reoffending during the first five years after conviction. Petitioner had no history of violence or aggression and no prior criminal record, but had been involved in counseling for his sexual interest at the time of the crimes. In a Risk Assessment Report prepared by the Sex Offender Board of Review on April 28, 2017, the Board considered many considerations of the acts resulting in the convictions (including the secrecy, sharing of the images, and his position of trust), his prior history, available support systems, treatment progress, the test results and the accuracy of the tests' predictions during extended periods.

On May 3, 2017, the Sex Offender Board of Review determined that Petitioner's risk of reoffending is high, and he was placed at a Level III community notification level. The Petitioner appealed that determination to a Superior Court magistrate and on December 18, 2018, the Magistrate affirmed the decision of the Sex Offender Board of Review. Petitioner appealed the Order of the Magistrate, bringing the matter before this Court for review. After memoranda were submitted, the parties waived the introduction of additional evidence¹ and the matter is now ripe for decision.

Standard

Both this Court and the Magistrate are statutorily limited concerning the scope of review of the Sex Offender Board of Review. Unlike the Administrative Procedures Act, the burdens of proof are uniquely set forth in a different statute:

¹ While this Court does not reach the issue, G.L. 1956 § 8-2-39.2 appears to limit additional evidence at this review.

§ 11-37.1-16. Application review – Burden of production and persuasion.

- (a) In any proceeding under this chapter, the state shall have the burden of going forward, which burden shall be satisfied by the presentation of a prima facie case that justifies the proposed level of and manner of notification.
- (b) For purposes of this section, “prima facie case” means:
 - (1) A validated risk assessment tool has been used to determine the risk of re-offense;
 - (2) Reasonable means have been used to collect the information used in the validated assessment tool.
- (c) Upon presentation of a prima facie case, the court shall affirm the determination of the level and nature of the community notification, unless it is persuaded by a preponderance of the evidence that the determination on either the level of notification or the manner in which it is proposed to be accomplished is not in compliance with this chapter or the guidelines adopted pursuant to this chapter.

...

Accordingly, the initial burden of the State is quite limited. The State need only produce a validated risk assessment tool and show that reasonable means were used to collect its information. The State met its burden through three different tools presented to the Board of Review, by enumerating the information collected which it relied upon. At that point, the burden clearly shifted to the Petitioner to establish that the level of notification was not in compliance with the statute or its regulations.² Given that G.L. 1956 §§ 11-37.1-6, 11-37.1-9, and 11-37.1-12 set forth a clearly defined statutory scheme clearly intending to provide the Board with considerable deference, the Court’s role here is quite limited.

Analysis

Petitioner notes that he had no prior criminal history, he was never violent or assaultive, he was frank about his impulses and cooperative with ongoing treatment and recommended

² This burden shifting procedure was found to be appropriate. *State v. Germane*, 971 A.2d 555, 581 (R.I. 2009).

programs. However, discretion, if any, is afforded to the Sex Offender Board of Review—this Court has a limited function on appeal.

The State produced a validated risk assessment tool. It found that the information which the tools relied upon were reasonable and appropriate for its reliance.

Cognizant of the harm to the members of the coach’s team, the irreparable nature of the harm as photos were shared on the internet, and the violation of trust to the victims and their families, the Petitioner’s crimes are easy to loath and harsh punishment is clearly appropriate. However, punishment has already been meted out by the criminal court. Counsel should remember that the primary purpose of this inquiry is to determine the level of community notification to ensure safety.³ Knowing the significant and enduring burdens placed upon a defendant who is classified as a Level III offender, the Court ponders whether a Tier III classification is appropriate. On appeal, it is not the function of the Court to second guess the considerations of the Sex Offender Board of Review who are tasked with a difficult task and with whom the legislature has left considerable deference. Instead, the Court’s function is to ensure that the procedure was appropriate, and that each of the parties has met their statutory burdens. *Germane*, 971 A.2d at 581-82. Here, there is no question that the State met its burden, and the Petitioner never established by a preponderance of evidence that the Board’s determination was inappropriate.

Conclusion

The Decision of the Magistrate is affirmed. The appeal is dismissed.

³ The United States Supreme Court has repeatedly held that states’ acts to classify sex offenders and notify communities of sex offenders in their areas are nonpunitive and civil in nature, even though it may have been triggered by a defendant’s criminal conduct, and even when they are set forth in the criminal code. *Smith v. Doe*, 538 U.S. 84, 94-95 (2003); *Kansas v. Hendricks*, 521 U.S. 346, 362 (1997).



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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CASE NO: PM-2017-5459

COURT: Providence County Superior Court

DATE DECISION FILED: April 26, 2019

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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