STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 17, 2019)

RHODE ISLAND DEPARTMENT OF ATTORNEY GENERAL	:	
VS.	:	**C.A. No. PM-2018-1209**
PAUL LAFRANCE	:	

DECISION

LANPHEAR, J. Paul LaFrance (Petitioner) brings this appeal from an October 30, 2018 decision of the Drug Court Magistrate (Magistrate) upholding his Risk Level II sex offender classification order issued by the Rhode Island Sex Offender Board of Review (the Board). Petitioner argues that he should have been classified as a Risk Level I sex offender. Jurisdiction is pursuant to G.L. 1956 § 8-2-39.2(j). For the reasons set forth herein, the Court affirms the decision of the Magistrate.

I

Facts and Travel

On October 7, 2014, Chariho High School officials became aware of a possible inappropriate relationship between a sixteen-year-old female student and Petitioner. *See* Richmond Police Narrative. Petitioner's victim, a former student of Petitioner, was interviewed multiple times by the Richmond Police Department and eventually disclosed that she and Petitioner had been engaging in a sexual relationship over the past months, when she was fifteen years old. *Id*. The relationship began two days before the previous school year ended when the two started talking on skype.com and kik.com. *Id*. The victim told Police that the conversations quickly turned sexual. *Id*. A subsequent search of Petitioner's phone revealed hundreds of

messages between the parties as well as sexually explicit photos of a female juvenile. *Id*. The victim also disclosed that in July of that summer, Petitioner transported the victim in his car to a nearby pond where they engaged in oral sex. *Id*. Then in August of that summer, Petitioner again transported the victim to his house, where they engaged in oral sex. *Id*.

On December 12, 2015, Petitioner pled *nolo contendere* to two counts of third-degree sexual assault and one count of indecent solicitation of a child. He received a five-year sentence at the ACI with two years to serve and three years suspended with probation. While at the ACI, Petitioner was notified by the Board that they determined he was a "moderate" risk to reoffend and was therefore labeled a Risk Level II sex offender. *See* Board Letter. In making its decision, the Board considered the Petitioner's scores from three tests: the STATIC-99R, the STATIC-2002R and the STABLE-2007. The STATIC-99R and the STATIC-2002R scores found Petitioner to be a below average risk to reoffend and the STABLE-2007 score found Petitioner to be a moderate risk to reoffend. However, the Board also examined other factors such as the details of the offense, the details of the arrest, significant crime considerations, victim selection, prior history, criminal history, and Petitioner's support systems. The Board also noted that Petitioner would blame his victim at times, stating she initiated oral sex in July and texted him in August asking to meet. Petitioner appealed the Board's decision to a Superior Court magistrate and a hearing was held on October 30, 2018. In support of his appeal, Petitioner submitted the report and offered testimony of Peter Loss, a social worker who specializes in working with sex offenders. Mr. Loss stated that Petitioner would be "more than manageable on a Level I rating;" however, the Magistrate found other language in Mr. Loss's report troubling. Magistrate's Tr. 17, Oct. 30, 2018. Specifically, Petitioner referred to the incident as a "mistake" and not a crime; Petitioner placed responsibility on his victim; and Petitioner took advantage of a young woman

who was "struggling with life and sexuality" and therefore vulnerable. *Id.* at 18-19.

In a thorough, well-reasoned decision, the Magistrate affirmed the findings of the Board. Petitioner appealed to this Court.

II

Standard

Section 8-2-39.2(j) of the Rhode Island General Laws governs the Superior Court review of a magistrate's decisions and provides:

> "A party aggrieved by an order entered by the drug court magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, such review shall be on the record and appellate in nature. The superior court shall, by rules of procedure, establish procedures for reviews of orders entered by a drug court magistrate, and for enforcement of contempt adjudications of a drug court magistrate." Section 8-2-39.2(j).

In turn, Superior Court Rule of Practice 2.9(h) states:

> "The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject, or modify, in whole or in part, the judgment, order, or decree of the magistrate. The justice, however, need not formally conduct a new hearing and may consider the record developed before the magistrate, making his or her own determination based on that record whether there is competent evidence upon which the magistrate's judgment, order, or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter with instructions." R.I. Super. Ct. R. Prac. 2.9(h).

Thus, this Court conducted a *de novo* review of the portions of the record appealed. *See id.* The Court offered each of the parties the opportunity to present testimony and any additional evidence at the hearing, but they rested on the record from the hearing before the Magistrate and argued based on the record. Petitioner was present.

III

Analysis

Judicial review of sex offender classifications is governed by G.L. 1956 § 11-37.1-16. It provides, in pertinent part:

> "(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 of 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." Section 11-37.1-16(a)-(c).

Hence, according to § 11-37.1-16, the reviewing justice must affirm the Board's findings when the State presents a *prima facie* case unless he or she "is persuaded by a preponderance of the evidence that the determination on either the level of notification of 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." Section 11-37.1-16(c). As such, a petitioner is given an opportunity to present evidence and testimony challenging the State's *prima facie* case. *See State v. Germane*, 971 A.2d 555, 580-81 (R.I. 2009) (holding that "[p]ursuant to the plain language of § 11-37.1-16, the state bore the initial burden of making out a *prima facie* case before the Superior Court, whereupon the burden shifted to appellant to rebut the board of review's classification of his risk

level").

This Court finds the State met its burden to produce a valid risk assessment tool and that reasonable means were used to collect information. It did so by providing evidence of its use of testing, along with other factors, and by reporting those results. *See DiCarlo v. State*, 212 A.3d 1191 (R.I. 2019) (holding the STATIC-99R, the STATIC-2002 and STABLE-2007 tests to be valid risk assessment tests). Here, the Petitioner was assessed via the STATIC-99R, the STATIC-2002R and the STABLE-2007. The burden now rests upon the Petitioner to rebut his level of classification. *See Germane*, 971 A.2d at 580-81.

The principle argument forwarded at the Superior Court hearing was that Petitioner tested well in the standardized testing before the Board. These are, however, risk assessment "tools" which assist the reviewers in what is an inexact science. They assist in assessing what the risk may be, but clearly do not draw a complete picture.

Before the Magistrate and before this Court, Petitioner argues that his low test scores, combined with the work he has done with Mr. Loss, demonstrates that he should only be a Risk Level I offender. Below, the Magistrate found Petitioner's low test scores, as well as his lack of previous criminal history, his long work record, and his family support are factors that weigh in his favor. This Court agrees. However, Petitioner minimalized his behavior before Mr. Loss, referring to it as a "mistake," not a crime and by placing responsibility on the victim, as she initiated contact. Mr. Loss seems to contend that Petitioner's risk remains constant for some time: "He wouldn't be sexually abusing an adolescent if he were *not* demonstrating minimization—it is what allowed him to move forward beyond the very first occasion where he contemplated such an offense. This is a pattern that must change with time." Loss letter, 3.

The report also stated that Petitioner demonstrated behavior that is "typical" of someone

who abuses a minor and that Petitioner "groomed" and "encouraged" his victim into a sexually abusive position. *Id.* Petitioner's arguments that scoring well on the assessments was noteworthy. While the scores benefit the Petitioner's cause, the grooming of a young student by an authority figure who clearly knows better and the limited display of remorse is, frankly, alarming when trying to determine future risk. After declaring that "[p]rogression of sexual abuse activity is common amongst offenders who target minors . . ." Loss letter, 4; Mr. Loss concluded that Petitioner may be better "manageable" if classified as Risk Level I. *Id.* at 6. He never concluded that Risk Level I was more appropriate and does not seem to have considered the threat to the public.

This Court agrees with the Magistrate and affirms his findings. This Court acknowledges Petitioner's low test scores but views them pursuant to our high Court's holding in *Germane* which stated, "a prudent evaluator will always consider other external factors that may influence risk in either direction."[1] 971 A.2d at 585. As such, this Court reviewed Mr. Loss's report and testimony and is troubled by the negative language therein. This Court finds that Petitioner's minimalization of his crime, his victim blaming, and the demonstration of what Mr. Loss refers to as a "typical pattern of sexually abusing a minor"[2] by Petitioner is alarming and mandates a Risk Level II classification. Loss letter, 3. This Court finds that Petitioner's crime was especially harmful to his victim because, as a teacher, he used his position of authority to overwhelm a malleable mind and potentially cause irreparable damage. This Court also finds that the facts surrounding Petitioner's crimes, consisting of multiple sexual encounters, are aggravated by the copious amount of sexually explicit messages and videos sent between Petitioner and his victim,

[1] This Court notes the Supreme Court took this language directly from STATIC-99's creators.
[2] Mr. Loss found that "Mr. LaFrance contemplated this action, groomed and implicitly encouraged this 15 year old student into a sexually abusive position." Loss letter, 3.

transmitted until the relationship was discovered by school authorities. This leads the Court to believe Petitioner had no intent of stopping. The Court cannot conclude that Petitioner intended to cease his deviant behavior and is left to question whether he is regretful now. Accordingly, Petitioner's classification should remain untouched.

IV

Conclusion

This Court finds that the State has clearly met its burden, and Petitioner has not established by a preponderance of the evidence that his classification was inappropriate. Petitioner's Risk Level II classification is affirmed.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rhode Island Department of Attorney General v. Paul LaFrance**
CASE NO:	**PM-2018-1209**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 17, 2019**
JUSTICE/MAGISTRATE:	**Lanphear, J.**
ATTORNEYS:	
For Plaintiff:	**Bethany A. Laskowski, Esq.**
For Defendant:	**Michael J. Zarrella, Esq.**