

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: June 1, 2021]

STATE OF RHODE ISLAND

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v.

C.A. No. PM-2018-2467

CESARE DECREDICO

DECISION

TAFT-CARTER, J. Before this Court for decision is Cesare Decredico’s (Decredico) appeal of an August 2, 2019 decision (Decision) of Magistrate Flynn (Magistrate), affirming the Level II sex offender classification order issued by the Rhode Island Sex Offender Board of Review (Board). Decredico contends that the Board did not utilize a validated risk-assessment tool in reaching its decision to classify him as a Level II risk to reoffend and that the Board did not utilize reasonable means to collect the information used in the STABLE-2007. Decredico has appealed this classification pursuant to the Rhode Island Sexual Offender Registration and Community Notification Act (Act), G.L. 1956 §§ 11-37.1-1 *et seq.* Jurisdiction is pursuant to G.L. 1956 § 8-2-39.2(j).

I

Facts and Travel

On April 28, 2015, Decredico pled guilty to a single count of Possession of Child Pornography, in violation of 18 U.S.C. § 2252(a)(4)(B), a Class C felony, before the Honorable Judge Lisi in the United States District Court for the District of Rhode Island. *See* Appellant’s

Record on Appeal (R.A.) 9; Appellant's R.A. 4, Ex. D. On November 6, 2015, Decredico was sentenced to a prison term of twelve months and one day, followed by five years of supervised release as to Count I. Appellant's R.A. 4, Ex. D. Additionally, Decredico was ordered to pay the lump sum of \$16,881.50 in restitution. *Id.*

On June 19, 2017, the Sex Offender Community Notification Unit (SOCN Unit) interviewed Decredico and administered the STABLE-2007¹. Appellant's R.A. 8; Appellant's R.A. 4, Ex. E. Decredico scored as a moderate risk on the STABLE-2007, scoring four points out of a possible score of twenty-six. *See* Appellant's R.A. 8; Appellant's R.A. 4, Ex. A. On November 27, 2017, the Board reviewed Decredico's case. *See* Appellant's R.A. 4, Ex. A. The Board found that the overall risk in Decredico's case was "[m]oderate" and recommended that Decredico be classified as a "RISK LEVEL II." *Id.*

In the Board's Risk Assessment Report, the Board stated that "[it] considered the Offender's Stable-2007 score, as well as other available documentation, including but not limited to criminal record, police report(s), Offender's statements (or intentional refusal to give a statement), institutional record, probation and parole supervision and treatment information and response to treatment and noted the following . . . [.]" *Id.* Regarding factors concerning the Commission of the Current Sexual Offense, the Risk Assessment Report noted that Decredico was convicted of Possession of Child Pornography and sentenced Federally to thirty-six months incarceration and 120 months supervised release.² *Id.*

¹ In the Risk Assessment Report, it states that the STABLE-2007 "is a specialized tool designed to assess and track changes in risk by assessing changeable risk factors. Dynamic risk factors are negative social influences, intimacy deficits, problems with self-regulation, attitudes tolerant of sexual crimes, lack of cooperation with supervision, and problems with general self-regulation." Appellant's R.A. 4, Ex. A, at 4.

² As Decredico noted in his brief before the Magistrate, the Board indicated that Decredico received a 36-month prison sentence and 120 months of supervised release. *See* Appellant's R.A.

The Risk Assessment Report noted that the investigation found a large amount of child pornography—over 2,600 images and 375 videos of child pornography. *Id.* In addition, the Risk Assessment Report noted the graphic nature of images and videos. *Id.* The Risk Assessment Report pointed out that Decredico does not have any known history of sexual aggressions or any other criminal history. *Id.* Decredico also denied having any substance abuse history. *Id.* He had been treated by Dr. Engle for approximately two months for both mental health and sex offender treatment. *Id.*

Decredico noted that he had positive supports, including his mother, stepfather, friends and his boss. *Id.* Decredico has never been married and was not in a relationship at the time. *Id.* He did not have any children. *Id.* He had been employed at his current job since October 2016. *Id.* Before his conviction, he was employed by Home Depot for two and a half years. *Id.* He is on federal probation and has been compliant with probation. *Id.*

Decredico stated that he received no sex offender treatment while incarcerated or while in a halfway house. *Id.* He started treatment a few months prior. *Id.* Regarding his response to sex offender specific treatment, Decredico stated that he realized he was not in a good place at the time. *Id.* He has come to appreciate just how many good people he has in his life. *Id.* Decredico denied any sexual attraction to children. *Id.* He stated that “I didn’t access it because it was sexual but more because of how taboo it is.” *Id.* Decredico was cooperative throughout the SOCN Unit interview and did admit to accessing Child Pornography. *Id.*

On November 29, 2017, the SOCN Unit’s Notice of Offender’s Option for Court Review of Designated Level of Community Notification stated that “[u]pon review of all relevant

3, at 1 n.1; Appellant’s R.A. 4, Ex. A. However, this is inaccurate. *See* Appellant’s R.A. 4, Ex. D. As noted above, Decredico was only ordered to be imprisoned for a total term of twelve months and one day. *Id.* Decredico was then placed on supervised release for five years. *Id.*

information and documentation provided concerning your case, the [Board] has determined that your risk of re-offense is MODERATE. Consequently, Community Notification shall take place at Level II.”³ *See* Appellant’s R.A. 6.

On December 12, 2017, Decredico filed an objection to the November 29, 2017 decision by the SOCN Unit. *See* Appellant’s R.A. 5. On April 12, 2018, the State filed a motion that the court consider the record, hear the defendant, and affirm the finding of the Board. *See* Appellant’s R.A. 12.

On February 19, 2019, there was a hearing before the Magistrate regarding Decredico’s appeal of the Board’s decision. *See* Appellant’s R.A. 1 (cited as Tr. Vol. I). At the hearing, Decredico’s counsel argued that the Board provided a lack of factual basis for its scoring of “poorly considered decisions.” (Tr. Vol. I at 2:23-3:5). Decredico’s counsel rested on his memorandum regarding the issue of using the STABLE-2007 for a non-contact offense, such as possession of child pornography. *Id.* at 2:17-20. The State argued that the STABLE-2007 is the actuarial test used by the Board on noncontact offenses such as child pornography offenses.⁴ *Id.* at 3:15-18.

³ According to the Parole Board’s Sexual Offender Community Notification Guidelines (the Guidelines), Level I sex offenders are subject to the fewest notification requirements: victim, witness, and local law enforcement agency notification. *See* Sexual Offender Community Notification Guidelines § 5; § 11-37.1-12(b)(1). Level II “Moderate Risk” offenders are subject to Level I notification standards along with additional requirements: notification to public and private education institutions, daycare facilities, and any establishments and organizations catering to children. *See id.* § 7; § 11-37.1-12(b)(2). Notification standards for Level III “High Risk” offenders include the Level I and Level II sex offender notification standards and also empower local law enforcement agencies to provide additional disclosure to myriad other community groups which may come into contact with the sex offender. *See id.* § 9; § 11-37.1-12(b)(3).

⁴ At oral argument before this Court, Decredico noted that the Sex Offender Community Notification Guidelines were changed in 2019 to state:

“For child pornography and non-hands-on offenses, where a validated risk assessment instrument is not available, the Sex Offender Board of Review shall use a Structured Professional Judgment (SPJ) approach, in which the Board shall evaluate the

Decredico received a score of four on the STABLE-2007, which placed him in the moderate risk category. *Id.* at 3:18-19.

The State acknowledged that Decredico in his memorandum did claim that the STABLE-2007 is not a validated risk assessment tool for use for noncontact offenses, and therefore the State could not meet its burden of presenting a *prima facie* case. *Id.* at 3:20-23. In response, the State argued that the STABLE-2007 is a validated risk assessment tool in Rhode Island. *Id.* at 3:23-25. The State asserted that the manual discusses how the STABLE-2007 can be used as a method for therapeutic purposes, as well as counseling and assessment of an offender. *Id.* at 4:5-7. The State contended that the Board is using the STABLE-2007 as an assessment tool to find that Decredico is a moderate risk to reoffend. *Id.* at 4:8-11. Additionally, the State argued that the legislative

presence or absence of commonly employed risk variables (both static and dynamic), together with all other information available to the Board, to make a determination concerning the level of risk.” Rhode Island Sexual Offender Community Notification Guidelines at § 2.1.

The Guidelines also now state that,

“[c]urrently, the Parole Board approved the use of the following validated risk assessment instruments to assist the Sex Offender Board of Review with its determination of risk level for adult offenders: Static99R, Static2002R, Stable 2007 and the above-referenced SPJ approach when a validated risk assessment instrument is not otherwise recognized as credible and reliable for forensic purposes.” *Id.* § 2.2.

However, these Guidelines were not in place at the time the Board determined Decredico’s level of re-offense, so they are not applicable here. *See Wilkinson v. State Crime Laboratory Commission*, 788 A.2d 1129, 1140 (R.I. 2002) (quoting *Lawrence v. Anheuser-Busch, Inc.*, 523 A.2d 864, 869 (R.I. 1987)). The Supreme Court has consistently held that “‘statutes and *their amendments* are applied prospectively.” *Id.* “Only when ‘it appears by clear, strong language or by necessary implication that the Legislature intended’ a statute to have retroactive application will the courts apply it retrospectively.” *Id.* at 1141 (quoting *Hydro-Manufacturing, Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 954-55 (R.I. 1994)).

intent was for individuals who have been convicted of non-contact offenses to go before the Board to determine what level they are. *Id.* at 4:12-6:2.

The State noted that the Board can look at other factors. *Id.* at 6:14-17. The State argued that,

“I think with someone who has this number of images, who has this type of need for a collection, and who admits to being sexually attracted to, at the very least, mid and older teens, there is a high-risk level to reoffend; and that reoffense potentially just being quote-unquote ‘just being another child pornography offense.’” *Id.* at 11:2-8.

The State asserted that the Board was appropriate in using the STABLE-2007 and in giving Decredico a level II risk to reoffend. *Id.* at 11:14-17.

On July 9, 2019, the Magistrate issued his bench decision. *See* Appellant’s R.A. 2 (cited as Tr. Vol. II). The Magistrate noted that the Board considered many factors, including the factors discussed on the Risk Assessment Report, the scores from the STABLE-2007, and the amount and nature of the pornography. Tr. Vol. II at 6:21-11:24. The Magistrate found that the State had met the two-prong test required by statute and established a *prima facie* case. *Id.* at 12:5-9. In his decision, the Magistrate stated that “[r]egarding the first prong, the STABLE test used in this case is a nationally recognized, well-established risk assessment tool frequently used by the Board and this Court. Also, rather than the STATIC test, it is considered appropriate for noncontact offenses.” *Id.* at 12:10-15. The Magistrate added, “[r]egarding the second prong, the Court believes nothing was presented to the contrary that reasonable means were used to collect the information of the assessment report, including interviewing the petitioner and also a thorough review of all the reports, particularly the police reports, regarding the nature of the pornography.” *Id.* at 12:16-23.

The Magistrate found no error by the Board in the scoring of the STABLE-2007, particularly regarding the scoring of the category of problem-solving skills. *Id.* at 13:14-19. The Magistrate noted that the Board focused their attention on other factors, particularly the amount of pornography found. *Id.* at 13:19-22. The Magistrate stated,

“[r]egarding the appropriateness of the usage of the STABLE-2007, this Court would agree with the Attorney General’s position as outlined in detail at hearing. Specifically in that regard the Court would note that STATIC tests are not appropriate for noncontact offenses, that the STABLE-2007 is a validated assessment tool, and that while a noncontact offense, possession of child pornography, is within the Rhode Island General Laws as an offense that people must register for, that people convicted of offenses that need to be registered must go through the Board for levelling, and that the Board properly followed their process as set forth in law regarding the level of this person.” *Id.* at 13:23-14:12.

The Magistrate added,

“[u]nlike some other cases with noncontact offenses where a Level I might be appropriate to carry out the statute’s purpose, the amount and large volume and nature of the child pornography that the Board set forth on Page 2 of their eight-page risk assessment report justifies the Board’s finding as does the graphic and offensive nature of the pornography, including young toddlers with bondage and bestiality scenes.” *Id.* at 14:13-22.

The Magistrate noted that,

“the petitioner’s own words on Page 3 of the ten-page interview that the Attorney General summarized at hearing also weighed against him. And again, in its review of the Board’s work, in many instances, such as not having a criminal record, his overall stability factors, the Board considered not just the bad things about this petitioner but also noted what the Court would consider positive things. In sum total, the Court finds that no error was made by the Board and the petitioner did not meet the burden of proof. For all of the above, this petition is denied. The Board is affirmed. An order shall enter keeping him as a Level II offender.”⁵ *Id.* at 14:23-15:13.

⁵ The State at the hearing stated:

On August 2, 2019, the Magistrate affirmed the Board’s decision and ordered that Decredico be classified at Risk Level II. *See* Appellant’s R.A. 11. The Magistrate also ordered that Community Notification shall take place in accordance with the provisions of Chapter 11-37.1 of the General Laws of the State of Rhode Island and any guidelines adopted pursuant thereto. *Id.* On August 15, 2019, Decredico filed a Notice of Appeal from the Order of Magistrate Flynn entered on August 2, 2019. *See* Notice of Appeal from Decision of Magistrate. Oral arguments regarding the appeal were held before this Court on April 16, 2021.

II

Standard of Review

Section 8-2-39.2(j) governs direct appeals from a drug court magistrate. The appeals are heard by a justice of the Superior Court in accordance with the rules of procedure established by the Superior Court. Section 8-2-39.2(j) of the Rhode Island General Laws 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).

“And he described it more as a collection. He went on to say – this is on page 3 of his interview – that he has a tendency to collect things; that his father and him ‘have a collection of African artwork’ as well as ‘a collection of books.’ So for him it was almost ‘not a physical attraction’ but ‘an anonymous type of’ collection. However, he later went on to admitting to masturbating to some of these images. And throughout his interview there were a couple of discrepancies. He would say that he wasn’t interested or attracted to these children. However, he would then talk about – well, he was more into ‘mid’ and ‘older teens.’ So, clearly, there’s an attraction there.” Tr. Vol. I at 9:1-14.

Superior Court Rule of Practice 2.9(h) sets forth the standard by which a Superior Court justice considers appeals from decisions of a magistrate, though the rule does not specifically govern reviews of decisions from a drug court magistrate.

Under 2.9(h),

“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.” Superior Court R.P. 2.9(h).

Whether this rule of practice impermissibly extends the applicable statute to permit *de novo* review of factual findings is not pertinent to this Decision. In this case, the Court limited its review of the Magistrate’s decision to the record and did not entertain additional evidence.

This Court finds guidance in the decisions of the Rhode Island Supreme Court in reviewing the decision of a drug court magistrate. The role of our Supreme Court in addressing a drug court magistrate’s review of the Board’s determination of a sex offender’s risk to reoffend is clear. Sections 8-2-11.1(e) and 8-2-39(f) set forth the standard of review by which the Rhode Island Supreme Court reviews an order by a magistrate. The Supreme Court upholds factual determinations of the hearing justice unless those findings are clearly erroneous or demonstrate that the Superior Court justice misconceived or overlooked material evidence. The Supreme Court accords great weight to a hearing justice’s determinations of credibility but considers issues of law *de novo*. *DiCarlo v. State*, 212 A.3d 1191, 1195 (R.I. 2019). In *State v. Dennis*, the Supreme Court applied the standard applicable to reviews of factual findings following a nonjury hearing.

29 A.3d 445, 450 (R.I. 2011). However, decisions from a drug court magistrate are generally not brought to the Supreme Court on direct appeal.

III

Analysis

Judicial review of sex offender classifications is governed by § 11-37.1-16. Section 11-37.1-16, entitled “Application review—Burden of production and persuasion,” provides that:

“(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.” Section 11-37.1-16(a)-(c).

On appeal, the State carries the burden of presenting “a prima facie case that justified the proposed level of and manner of notification.” Section 11-37.1-16(a). Pursuant to the statute, a *prima facie* case is made out by establishing the following two prongs: “(1) [a] validated risk assessment tool has been used to determine the risk of re-offense; (2) [r]easonable means have been used to collect the information used in the validated assessment tool.” Section 11-37.1-16(b)(1)-(2). The Magistrate 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, the appellant is given the 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).

A

The Board Used a Validated Instrument when Conducting Its Evaluation

Decredico first argues that the Magistrate erred in finding that the State met its initial burden of establishing a *prima facie* case pursuant to § 11-37.1-16 because the Board did not use a validated instrument when conducting its evaluation. Br. of Appellant at 6. Decredico contends that the STABLE-2007 is not a validated risk assessment tool for evaluating Category B offenders, such as child pornography offenses. *Id.* at 7. Because it is not a validated risk assessment tool, Decredico argues that the State did not meet the first prong of the *prima facie* case as required by statute. *Id.*

To support his argument, Decredico argues that the coding rules state that STABLE-2007 should not be used to measure the risk that a non-contact offender will reoffend. *Id.* The STABLE-2007 manual states that,

“[L]ike STATIC-99, STABLE-2007 has only been validated on adult male sexual offenders who have had at least one identifiable victim (Category ‘A’ offences; see Harris et al., 2003). Nevertheless, some evaluators may wish to use STABLE-2007 for offenders outside the sampling frame of STATIC-99, such as female sexual offenders or *men whose only sexual convictions involve possession of child pornography. With these populations, STABLE-2007 should only be used as a clinical guide to identifying treatment needs and supervision targets. It should not be used to estimate recidivism rates or to assign nominal risk categories (e.g., low/moderate/high risk).* Furthermore, we recommend that evaluators explicitly state that STABLE-2007 has not been validated for the offender at-hand if the offender is not an adult male with a Category ‘A’ sexual

offence somewhere on his record.” Appellant’s R.A. 4, Ex. B, at 54 (emphasis added).

Decredico on appeal also maintains that there are no notes on the STABLE-2007 tally sheet or on the SOCN Unit evaluation stating that the STABLE-2007 has not been validated to measure the risk that Decredico might re-offend, based on his status as a Category B offender. Appellant’s R.A. 3, at 7. This does not conform with the guidelines for the STABLE-2007, which recommend that the evaluator should explicitly state that the “STABLE-2007 has not been validated for the offender at-hand if the offender is not an adult male with a Category ‘A’ sexual offence somewhere on his record.” *Id.* at 6; Appellant’s R.A. 4, Ex. B, at 54. Decredico notes that neither the State nor the Magistrate provided a citation to an authority in support of the holding that the STABLE-2007 is validated for estimating recidivism rates or assigning nominal risk categories of Category B offenders. Br. of Appellant at 8.

In addition, Decredico contends that the manual requires that in order for the STABLE-2007 to be used to estimate recidivism rates, it must be used in conjunction with a STATIC actuarial measure.⁶ *See* Appellant’s R.A. 3, at 6; Appellant’s R.A. 4, Ex. B, at 53. Here, no static actuarial measure was used. *See* Appellant’s R.A. 8, at 1.

⁶ The STABLE-2007 manual states:

“STABLE-2007 is intended to be used with adult male sexual offenders who have been convicted for at least one sexually motivated offence against a child or a non-consenting adult. *In order for STABLE-2007 to be used to estimate recidivism rates, it must be used in conjunction with a STATIC actuarial measure (e.g., STATIC-99, STATIC-99R, STATIC-2002, STATIC-2002 [sic]); consequently, a full STATIC/STABLE evaluation requires that the offenders fit the sampling frame of both the STABLE and STATIC measures (see Harris et al., 2003; Phenix, Doren, Helmus, Hanson, & Thornton, 2009).” See* Appellant’s R.A. 4, Ex. B., at 53 (emphasis added).

The State argues that the STABLE-2007 is a validated risk assessment tool, that it is appropriate for non-contact offenses, and that it is only one component in how the Board makes its risk level determination. State's Mem. Supp. of Magistrate's Decision (hereinafter State's Mem.), at 1. The State contends that the STABLE-2007 is appropriate with non-contact offenses for research and therapeutic purposes. *Id.* at 4. The State asserts that the Board uses the STABLE-2007 *as well as other factors* to appropriately level a sex offender's risk of recidivism. *Id.* (emphasis added). The State does not rely solely upon test scores to make its leveling determination. *Id.* The level is assigned upon conducting a risk assessment evaluation. *Id.* Part of this risk assessment evaluation includes the risk assessment tool, but the results of the risk assessment evaluation do not wholly depend upon the risk assessment tool. *Id.*

Additionally, the State argues that, according to legislative intent, all registrable offenses, including non-contact offenses, are to be leveled and evaluated the same way. *Id.* The State maintains that there is no risk assessment tool that has been validated for the risk of recidivism for non-contact offenders.⁷ *Id.* The State asserts that the STABLE-2007 is the only assessment tool that has been deemed appropriate for counseling and therapeutic assessments of non-contact offenders. *Id.*

Here, the first prong of § 11-37.1-16(b)(1) requires that a validated risk assessment tool be used to determine the risk of re-offense. *See* § 11-37.1-16(b)(1). However, it does not mandate that a validated risk assessment tool is the *only* factor to be used to measure the risk of re-offense. *Id.* Both the Act and the Guidelines contain affirmative, mandatory language requiring the Board to consider both the actuarial test scores and outside factors in determining the appropriate

⁷ *Cf.* fn. 6. Although the Guidelines now permit the use of the SPJ approach to assess non-hands-on offenses, it was not approved as a validated instrument until 2019, after Decredico's assessment.

classification level for a given sex offender. *See Dennis*, 29 A.3d at 451. The Supreme Court in *Dennis* articulated that “a sexual offender assessment should not take place in a vacuum or solely rest on the results of the risk assessment tools. The classification of an individual’s future risk of sexual recidivism is not a one-size-fits-all application.” *Id.* Furthermore, the Supreme Court in *Germane* held that “[r]isk assessment is not an exact science, and a certain amount of judgment and even intuition must be exercised by both the board of review and the reviewing magistrate.” *Germane*, 971 A.2d at 589. The Supreme Court added that “the board of review’s ability to consider dynamic factors beyond the static factors analyzed by the [validated risk assessment tool] . . . has a ‘substantial relation to the public health, safety, morals, [and] general welfare.’” *Id.* at 585 (quoting *Kaveny v. Town of Cumberland Zoning Board of Review*, 875 A.2d 1, 10 (R.I. 2005)).

In terms of relevant statutes, § 11-37.1-6(1)(b) requires that “the [Board] *will utilize* a validated risk assessment instrument *and other material approved by the parole board* to determine the level of risk an offender poses to the community . . .” (Emphasis added.) Section 11-37.1-6(2)(i) mandates that “[t]he [B]oard shall within thirty (30) days of a referral of a person shall conduct the validated risk assessment, *review other material* provided by the agency having supervisory responsibility and assign a risk of re-offense level to the offender.” (Emphasis added.) Section 11-37.1-6(4) further requires that “the [Board] *shall have access to all relevant records and information* in the possession of any state official or agency . . . relating to the juvenile and adult offenders under review by the [Board].” Section 11-37.1-6(4). (Emphasis added.)

As made evident by the case law, statutes, and guidelines, the STABLE-2007 is just one factor in determining an offender’s risk of re-offense. The Board also considers other additional relevant material when determining the offender’s risk of re-offense. Pursuant to the plain language of the statute, it follows that as long as the STABLE-2007 is a validated risk assessment

tool for something—and here it has been clearly validated “as a clinical guide to identifying treatment needs and supervision targets”—then it is permissible to use when determining the risk of re-offense.

Moreover, the Rhode Island Supreme Court has concluded that the STABLE-2007 is a validated risk assessment tool. *See DiCarlo*, 212 A.3d at 1193 (“As part of the risk-assessment process, the board utilized the STATIC-99R, STATIC 2002, and STABLE 2007 tests, which are recognized as validated risk-assessment tools[.]”) The Superior Court has noted that the STABLE-2007 is a nationally-used and validated actuarial risk assessment test. *See State v. Beaulieu*, No. PM-2012-2126, 2013 WL 861544, at * 3 n.9 (R.I. Super. Feb. 26, 2013) (“The STABLE-2007 test is also a nationally-used and validated actuarial risk assessment test”). *See In re Interest of D.H.*, 797 N.W.2d 263, 272 (Neb. 2011); *United States v. Hunt*, 643 F. Supp. 2d 161, 178 (D. Mass. 2009).

Because the STABLE-2007 can be used as a validated risk assessment tool to determine, in part, the risk of re-offense, the Court finds that the State has presented a *prima facie* case and the first prong has been satisfied. With regard to the first prong, Decredico has failed to demonstrate by a preponderance of the evidence that the determination on either 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 in force at the time of Decredico’s assessment. The Magistrate’s decision affirming the Board is supported by competent evidence in the record. *See Dennis*, 29 A.3d at 450 (holding that a reviewing court will not disturb the findings of a justice sitting without a jury when “the record indicates that competent evidence supports the [justice’s] findings.”) In particular, the Magistrate, in his decision, noted the amount

of child pornography and the nature of the child pornography. After a *de novo* review this Court finds no error and therefore accepts the Magistrate’s findings.

B

The Board Did Provide Sufficient Factual Justification to Support its Decision to Allocate One Point for Mr. Decredico’s Lack of Problem-Solving Skills

Decredico also argues that although the Risk Assessment Report includes the factual basis for the Board’s decision to allocate two points for Decredico’s relationship capacity and one point for having a deviant sexual interest (as noted on the tally sheet), the report does not reference a factual basis to allocate one point for Decredico’s alleged “poorly considered decisions.” Appellant’s R.A. 3, at 8. With regard to scoring the “poorly considered decisions” category, the STABLE-2007 Coding Manual provides that one point should be allocated when,

“[t]he offender has a history of poorly considered decisions but is willing to make changes. He is able to recognize areas of his life or decisions he has made that have caused him problems, but has deficits in one or more of the other components of effective cognitive problem solving (e.g., generating alternatives, evaluating alternatives, choosing a course of action and follow through, and evaluating the outcome).” See Appellant’s R.A. 4, Ex. B, at 59.

In the Notes for the scoring item “Poor Problem Solving Skills,” it states “[s]ome poorly considered decisions but open to correction when difficulties are pointed out.” Appellant’s R.A. 4, Ex. E. Decredico maintains that this is not a factual basis for the allocation of one point. Appellant’s R.A. 3, at 8. Decredico contends the scoring of this one point should be ignored, which would give Decredico a final score of three and thus a low risk to re-offend. *Id.*

The State argues the process of the scoring of the STABLE-2007 does not go towards the unreasonableness of the means but rather the accuracy of the scoring. State’s Mem. at 5. The State contends that the process by which the STABLE-2007 was scored—including the offender’s interview and review of materials—is not the culprit of unreasonableness. *Id.* The State further asserts that this argument about the inaccuracy of the scoring must be made at the initial hearing

level and sustained by a preponderance of the evidence. *Id.* The State maintains that even if the Court does find that the scoring of one point was inaccurate, it does not detract from the Board's overall analysis for Petitioner's leveling, when viewed along with the other materials used by the Board. *Id.* at 5-6.

Here, the Court agrees with the State that reasonable means were used to collect the information used in the validated assessment tool. Although Decredico disagrees with the scoring in the tally sheet, that does not equate to unreasonable means being used to collect the information used in the validated risk assessment tool. In this case, the SOCN Unit completed a Probation Offender Interview Form with Decredico. The SOCN Unit also completed a tally sheet for scoring the STABLE-2007. The Board then produced the Risk Assessment Report using Decredico's STABLE-2007 score, as well as other available documentation, including but not limited to criminal record, police report(s), Offender's statements (or intentional refusal to give a statement), institutional record, probation and parole supervision and treatment information and response to treatment. Appellant's R.A. 4, Ex. A. The Court finds this to be reasonable means. As the Magistrate noted, "nothing was presented to the contrary that reasonable means were used to collect the information of the assessment report, including interviewing the petitioner and also a thorough review of all the reports, particularly the police reports, regarding the nature of the pornography." Tr. Vol. II at 12:17-23.

Furthermore, the Magistrate found that the scoring used in the tally sheet was just one factor in determining Decredico's risk to re-offend. *See id.* at 13:14-22 ("Counsel did challenge the scoring of the STABLE-2007, particularly on Pages 7 and 8 of his memo with its discussion of the point given for the category of problem-solving skills. The Court found no error by the Board in that regard. But more importantly perhaps, within their discretion, they appeared to focus

their attention on other factors, particularly the amount of pornography found.”) Accordingly, the Magistrate’s decision is supported by competent evidence in the record. Because reasonable means have been used to collect the information used in the validated assessment tool, the State has established a *prima facie* case regarding the second prong. Decredico has not demonstrated by a preponderance of the evidence that the determination on either the level of notification or the manner in which it is proposed is not in compliance with this chapter or the guidelines adopted pursuant to this chapter. *See* § 11-37.1.16(c). After a *de novo* determination, this Court finds no error and accepts the Magistrate’s Decision.

IV

Conclusion

Based on a *de novo* review of the entire record on appeal, this Court finds that there is competent evidence in the record supporting the Magistrate’s findings concerning Decredico’s risk level classification. This Court accepts all parts of the Magistrate’s Decision affirming the Board’s classification of Decredico as a Level II sex offender.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Cesare Decredico

CASE NO: PM-2018-2467

COURT: Providence County Superior Court

DATE DECISION FILED: June 1, 2021

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

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