

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP625

Cir. Ct. No. 2011JV7

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE INTEREST OF M. E.-T., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

M. E.-T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
STEPHANIE ROTHSTEIN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ M.E.-T. appeals from a dispositional order adjudicating him delinquent for first-degree sexual assault. M.E.-T. challenges that portion of the order requiring him to register as a sex offender. We affirm.

BACKGROUND

¶2 On June 21, 2011, M.E.-T. was adjudicated delinquent after entering an admission that he sexually assaulted his foster brother. M.E.-T. was fourteen years old at the time of the offense. The offense was the second time M.E.-T. was charged with sexual assault. A prior delinquency petition alleged that when M.E.-T. was ten years old, he sexually assaulted a three-year-old relative while placed on an out-of-home CHIPS order. Because of his age, M.E.-T. was found incompetent and was placed in the Homme Home treatment facility where he remained until he was charged with the sexual assault of his foster brother.

¶3 The circuit court adjudicated M.E.-T. delinquent and placed him in a Serious Juvenile Offender Program at the Lincoln Hills School. After successfully completing his treatment, M.E.-T. was moved to the Lad Lake service center. While at Lad Lake, M.E.-T. moved the circuit court to permanently stay his sex offender registration requirement. The circuit court held an evidentiary hearing, which required consideration of the following factors pursuant to WIS. STAT. § 938.43(15m)(c):

1. The ages, at the time of the violation, of the juvenile and the victim of the violation;
2. The relationship between the juvenile and the victim of the violation;

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22(4), to the victim;
4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions;
5. The probability that the juvenile will commit other violations in the future; and
6. Any other factor that the court determines may be relevant to the particular case.

See id.; *see also State v. Cesar G.*, 2004 WI 61, ¶50, 272 Wis. 2d 22, 682 N.W.2d 1. Along with these factors, the court was also required to consider the seriousness of the offense. *Cesar G.*, 272 Wis. 2d 22, ¶50.

¶4 Multiple witnesses testified at the hearings. Sheila Corroo, a social worker at Lincoln Hills School, testified that she spent five years working in the Sex Offender Accepting Responsibility Program at the school. Corroo testified that she worked with M.E.-T. while he was in the program, that M.E.-T. completed the program, and that M.E.-T. had no sexually-related incidents during his time at Lincoln Hills. Corroo testified that M.E.-T. “did very well in the SOAR program.... He took complete responsibili[ty] for his offending.” Corroo stated that M.E.-T. accepted responsibility for both offenses, felt remorse and gained “an understanding of how things like this impact victims’ lives.” Corroo stated that M.E.-T. seemed to demonstrate a good understanding of his risk factors, which included “[p]ornography[,] ... being in isolated places, parks, day cares, various places like that, being around children, being around ... negative peers.” When asked whether M.E.-T.’s “plan was simply to stay away from those places[,]” Corroo responded affirmatively.

¶5 Patrick Schultz, a therapist at Lad Lake, testified that he had worked with M.E.-T. since M.E.-T.'s August 2012 transfer to Lad Lake. Schultz stated that he had individual sessions with M.E.-T. at least once per week. Schultz testified that he works on many different things with M.E.-T., including "continuing to build on and develop his relapse prevention plan and safety plan." Schultz said that M.E.-T. never denied responsibility for his offenses while at Lad Lake, nor did M.E.-T. engage in any inappropriate sexual behavior to his (Schultz's) knowledge while at the facility. Schultz said that M.E.-T. has "shown that he is committed to making changes and maintaining positive changes as he moves forward." Schultz said that M.E.-T. "was very self aware of his own personal boundaries and actually kept himself removed from the younger residents at all times to make sure that he was not put in a position to be accused or put in a position of offending.... [H]e said that he had no feelings towards any of the kids that he was working with."

¶6 Jeffrey Asen, M.E.-T.'s probation agent, also testified, telling the court that M.E.-T.'s progress at Lad Lake was "positive," and that M.E.-T. has been a positive influence on the other children at the school. Asen stated that placing a juvenile convicted of a sex offense in independent living is a difficult process and that once placed, M.E.-T. would be required to continue with sex offender treatment. Asen stated that he would continue to work with M.E.-T. once he is placed in independent living. Asen also stated that while M.E.-T. is under Department of Corrections supervision, the Department would make sure that M.E.-T. is not placed near places M.E.-T. identified as risk factors.

¶7 Dr. Melissa Westendorf, a psychiatrist, testified that she conducted an assessment of M.E.-T., which involved an evaluation of M.E.-T.'s police and treatment records, and an analysis based on "the Caldwell Study." Dr. Westendorf

explained that the Caldwell Study is a medical analysis of sixty studies, consisting of 11,000 juveniles, which “demonstrated that approximately seven percent of juvenile offenders go on to commit an adult offense.” Dr. Westendorf stated that the conductor of the study, Michael Caldwell, is “one of the leaders” in researching juvenile sex offender risks for reoffending. Dr. Westendorf opined that based on the study, M.E.-T. was at a low risk for reoffending.

¶8 The circuit court asked Dr. Westendorf several questions about the Caldwell Study, particularly whether the study included juveniles who had offended twice. The following exchange took place:

[The Court]: Isn't it true that some of those sub studies of Caldwell focus on juveniles like [M.E.-T.] who offended twice?

[Dr. Westendorf]: Certainly.

[The Court]: Did you look at those sub studies to see how many of those individuals in that sub study subsequently reoffend as an adult?

[Dr. Westendorf]: I didn't look at those particular sub studies. I guess that's why we rely on the med analysis. If you look closely at Caldwell Studies what it says is that juveniles while they are juveniles are high risk offenders....

[The Court]: It happens a lot in kids under 25.

[Dr. Westendorf]: Yes, while they're juveniles. But what he saw when you look at them even with the kids quickly reoffending as juveniles when you look at them as adults, only seven percent.... What we saw with [M.E.-T.] was that pattern reoffending while a juvenile. As an adult seven percent go on.

[The Court]: But my question is do those sub studies indicate those that have had two offenses as a juvenile, are they likely to be in that seven percent? In other words, ... what percentage of those individuals go on as adults to commit a sexual offense?

[Dr. Westendorf]: There was no significant difference because ... there was nothing that was an outcome of the study[.]

[The Court]: ... Let's say he had 100 in his sub study. How many in those 100 went on to reoffend a third time as an adult? That's the question I'm asking.

[Dr. Westendorf]: Yeah, and I couldn't tell you specifically any of those studies.

¶9 After consideration of the WIS. STAT. § 938.43(15m)(c) factors, particularly M.E.-T.'s risk for reoffending, the testimony of all of the witness, and multiple psychological evaluations, the circuit court rejected M.E.-T.'s motion. The circuit court stated:

The purpose of [the sex offender reporting requirement] is not to punish the juvenile. The purpose of this law, if you look at the legislative history, it is to protect the community....

The burden is on the juvenile by clear, convincing evidence. He has not convinced me by clear, convincing evidence. I don't know if he could. And that's simply because of the fact that people were wrong once before, and I cannot take that chance.

¶10 This appeal follows.

DISCUSSION

Standard of Review.

¶11 A juvenile who moves the court to stay sex offender registration must prove, by clear and convincing evidence, that based on the factors enumerated in WIS. STAT. §§ 938.34(15m)(c) and 301.45(1m)(3), and the seriousness of the offense, a stay should be granted. *Cesar G.*, 272 Wis. 2d 22, ¶¶50-51. The decision to stay is discretionary and requires consideration of several factors, none of which are individually dispositive. *See id.*, ¶¶ 42-51. One

of the factors for the court to consider is a juvenile's likelihood to reoffend. *Id.*, ¶50. We address whether the circuit court exercised its discretion in deciding whether to impose a WIS. STAT. § 938.34(16) stay. *See Cesar G.*, 272 Wis. 2d 22, ¶42. We will affirm a circuit court's discretionary decision as long as the court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *See id.* (citation omitted).

Exercise of Discretion.

¶12 M.E.-T. contends that the circuit court erroneously exercised its discretion when it refused to grant a permanent stay of the sex offender reporting requirement because the court's decision reflects a "preconceived policy" that she believes all reoffending juveniles must register as sex offenders:

He has not convinced me by clear, convincing evidence. *I don't know if he could.* And that's simply because of the fact that *people were wrong once before, and I cannot take that chance.*

(Emphasis added.)

¶13 In a lengthy and well-reasoned oral decision, the circuit court discussed numerous factors which ultimately led to the court's conclusion that M.E.-T. was at risk of reoffending, and thus, should be on the sex offender registry. The court considered the WIS. STAT. § 938.34(15m)(c) factors, M.E.-T.'s upbringing, witness testimony, multiple psychological evaluations, M.E.-T.'s progress at Lincoln Hills and Lad Lake, and the impact on the victim, among other things. The court noted contradictions between multiple clinical evaluations of M.E.-T. and witness testimony attesting to M.E.-T.'s maturity and low risk of reoffending.

¶14 Ultimately, after a fifteen-page explanation of numerous facts, witness testimony and psychological evaluations, the circuit court determined that “[M.E.-T.’s] risk will always reflect at least a moderate level given the significant number of static factors that he possesses.” The court stated:

[One evaluation] assessed [M.E.-T.] at a low-moderate risk to reoffend ... in September 2007.... Dr. Diorio says he is currently assessed at a high risk to recidivate.... Remember this is May of 2011 after [M.E.-T.] has had a course of treatment up in Homme Home. In sum, [M.E.-T.’s] risk will always reflect at least a moderate level given the significant number of static factors that he possesses.... Regardless of these static factors being out of control, they still significantly contribute to his overall risks to recidivate....

[W]hen [M.E.-T.] was receiving intense treatment inclusive of his sexual abuse history and offending, he was able to reduce his dynamics risk factors substantially.... Sadly, when this intensity faded, he re-offended.... In fact, he has done exactly what [was] predicted in May of 2011.

....

Everybody thought the second offense a surprise because he did so well in treatment. Everybody was wrong.

(Some formatting altered.)

¶15 The record demonstrates that the circuit court considered the appropriate factors, including M.E.-T.’s risk for reoffending, when rendering its decision. The circuit court examined the relevant facts and applied those facts to a proper standard of law. Thus, the circuit properly exercised its discretion when it ordered M.E.-T. to register as a sex offender.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

