2017 IL App (5th) 160465-U

NO. 5-16-0465

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re DYLAN B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-JD-168
	)	
Dylan B.,	)	Honorable
	)	Andrew J. Gleeson,
Defendant-Appellant).	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's finding of delinquency and the dispositional order of commitment based upon the minor's plea of guilty on two counts of criminal sexual assault. We also find that whether a juvenile should be labeled a sexual predator, as the minor was here, is a matter better left to our legislature.

¶ 2 Dylan B. (D.B.), a minor, appeals from his adjudication of delinquency and dispositional order of commitment entered after his plea of guilty to two counts of criminal sexual assault (720 ILCS 5/11-1.20, 12-13 (West 2010)). D.B. was sentenced to probation and, over objection, ordered to register under the Sex Offender Registration

Act (SORA) (730 ILCS 150/1 *et seq*. (West 2014)). D.B. appeals, arguing that the provisions of SORA requiring automatic and mandatory registration as a sex offender or predator, which are applicable to juveniles, are unconstitutional absent a particularized consideration of the juvenile's recidivist tendencies. In the alternative, D.B. argues the default imposition of lifetime registration violates due process as applied to him. We affirm.

¶ 3 BACKGROUND

¶ 4 D.B. was charged with two counts of criminal sexual assault for engaging in sexual penetration with his 10-year-old sister. At the time of the offenses, D.B. was 14 years old. D.B. admitted he engaged in approximately 12 sexual acts with his sister over a six-month period in 2014 while he and his sister lived with their father.

¶ 5 Pursuant to court orders, Dr. Daniel Cuneo, a clinical psychologist, twice evaluated D.B. for the purpose of providing a sexual offender risk assessment. On both occasions, Dr. Cuneo found D.B. to be a low to moderate risk for sexual reoffending and a high risk for violent reoffending unless D.B. receives ongoing treatment. Dr. Cuneo diagnosed D.B. with bipolar I disorder and found that his bipolar disorder, coupled with extreme impulsivity, contributed to D.B.'s sexual acting out.

¶ 6 In exchange for his guilty plea, D.B. was sentenced to five years of probation, to expire on his twenty-first birthday, and required to complete 30 days of detention. The detention was stayed. Over the objection of defense counsel, D.B. was ordered to register

pursuant to the requirements of SORA. He was further ordered not to have contact with his sister without parental supervision.

¶ 7 Defense counsel filed a motion to reconsider mandatory imposition of registration as a sex offender and predator under the requirements of SORA. The trial court denied the motion to reconsider. A timely notice of appeal was filed.

¶ 8 ANALYSIS

¶ 9 I. Substantive Due Process

¶ 10 D.B. first contends that Illinois' requirement that a juvenile automatically register as a sex offender or predator based on offense type alone is unconstitutional absent a particularized consideration of the juvenile's recidivist tendencies. D.B. insists that SORA violates his right to substantive due process. The State replies that SORA as it applies to juveniles does not violate substantive due process and has consistently been held to be constitutional. We agree with the State.

¶ 11 D.B.'s adjudication for criminal sexual assault qualifies him as a "sexual offender" under SORA. 730 ILCS 150/2(A)(5), (B)(1) (West 2014). D.B. also falls within the definition of a "sexual predator" under SORA. 730 ILCS 150/2(E)(1) (West 2014). Section 3 of SORA requires sexual offenders to provide appropriate identification and proof of residence, as well as telephone numbers, e-mail addresses, and Internet communications when he or she registers with the chief of police in the municipality where he or she resides, and pays a registration fee. 730 ILCS 150/3(a)(1), (c)(5) (West 2014). If D.B. attends a university, he will be required to register with the chief of police

or sheriff where the school is located and the public safety or security director at the school. 730 ILCS 150/3(a)(i), (ii) (West 2014). Section 6 imposes a duty to report in person to the appropriate law enforcement agency every year, up to four times per year, and also requires a sexual offender to report in person and register within the time period specified in section 3 (three days) if there is a change of address, employment, telephone number, or school. 730 ILCS 150/6 (West 2014). Section 7 requires that a sexual predator register for his or her natural life. 730 ILCS 150/7 (West 2014).

¶ 12 Section 3-5 applies these registration requirements to adjudicated delinquent juveniles. 730 ILCS 150/3-5(a), (b) (West 2014). However, for felonies, the juvenile may petition for termination of registration after five years. 730 ILCS 150/3-5(c) (West 2014). At the hearing on the petition for termination of registration, the juvenile is represented by counsel and may present a risk assessment evaluation by a licensed evaluator. The court may terminate the registration requirement if it finds the juvenile "poses no risk to the community by a preponderance of the evidence" based on several enumerated factors. 730 ILCS 150/3-5(d) (West 2014).

¶ 13 Section 120 of the Sex Offender Community Notification Law (Notification Law) provides for liberal disclosure by law enforcement of a registrant's name, address, date of birth, place of employment, school, e-mail addresses, Internet identities, and offense information to local schools, colleges, childcare centers, libraries, or other social service or volunteer organizations which provide services to minors and sex offense victims. 730 ILCS 152/120 (West 2014). However, section 121 limits dissemination of information regarding adjudicated juvenile delinquents to individuals whose "safety may be

compromised for some reason" as determined by the local authority and to the principal or chief administrative officer of the juvenile's school and requires the registration information be kept separately from the juvenile's other school records. 730 ILCS 152/121(a), (b) (West 2014).

¶ 14 It is well settled that statutes enjoy a strong presumption of constitutionality. *People v. Mosley*, 2015 IL 115872, ¶ 22, 33 N.E.3d 137. In order to overcome the presumption, a party challenging the statute must clearly establish its invalidity. *Id.* Courts have "a duty to construe a statute in a manner that upholds its validity and constitutionality if it can be reasonably done." *People v. Malchow*, 193 Ill. 2d 413, 418, 739 N.E.2d 433, 437 (2000). We review the constitutionality of a statute *de novo*. *Mosley*, 2015 IL 115872, ¶ 22, 33 N.E.3d 137.

¶ 15 Substantive due process bars the government from arbitrarily exercising its power without the reasonable justification of serving a legitimate interest. *Daniels v. Williams*, 474 U.S. 327, 331 (1986). "When confronted with a claim that a statute violates the due process guarantees of the United States and Illinois Constitutions, courts first must determine the nature of the right purportedly infringed upon by the statute." *In re J.W.*, 204 Ill. 2d 50, 66, 787 N.E.2d 747, 757 (2003). In *In re J.W.*, our supreme court held that SORA and the Notification Law did not violate the 12-year-old juvenile respondent's substantive due process rights in requiring him to register as a sex offender for life, and it upheld the statutes in question following a rational basis review. Our supreme court specifically determined that SORA and the Notification Law are rationally related to the legitimate government interest of protecting the public and they constitute a reasonable

means of accomplishing that goal. *Id.* at 72, 787 N.E.2d at 760. Given "the serious problems presented by juvenile sex offenders," requiring a juvenile sex offender to register as a sex offender for life is not at odds with the purpose and policy of the Juvenile Court Act. *Id.* at 70, 787 N.E.2d at 759.

¶ 16 Similar to D.B., the juvenile offender in *In re J.W.* argued that registration was unreasonable because juveniles are less culpable and more amenable to treatment and rehabilitation than adults. *Id.* at 68, 787 N.E.2d at 758. However, despite the respondent's young age, our supreme court stated: "The public interest is to assist law enforcement in the protection of the public from juvenile sex offenders. [SORA] as applied to a 12-year-old child serves that public interest by providing police officers ready access to information on known juvenile sex offenders." *Id.* The court further noted that the Notification Law "strictly limits the availability of information with regard to juvenile sex offenders," because the information may only be disseminated to someone if that person's safety may be in jeopardy and the information was not available on the Internet. *Id*. at 71, 787 N.E.2d at 759-60. Requiring a 12-year-old offender to register for life was "reasonable in light of the strict limits placed upon access to that information." *Id*. at 72, 787 N.E.2d at 760.

¶ 17 In *In re J.R.*, 341 Ill. App. 3d 784, 793 N.E.2d 687 (2003), our colleagues in the First District followed the principles set forth by our supreme court in *In re J.W.* in holding that SORA and the Notification Law did not violate substantive due process. *Id.* at 791, 793 N.E.2d at 693. In that case, the juvenile respondent, like D.B. here, challenged the mandatory registration and disclosure of offender information without an

assessment as to whether the offender was a continuing danger. *Id.* The First District held that a rational relationship existed between registration of juvenile sex offenders and disclosure of their information and protection of the public. *Id.* at 793-94, 793 N.E.2d at 695-96. That court noted that whether "there are better means to achieve this purpose, such as further limiting the time frame during which disclosure may occur, is a matter better left to the legislature." *Id.* at 794, 793 N.E.2d at 696.

¶ 18 Nevertheless, D.B. insists that there are new developments so that while the legislature may have created a reasonable statute when it first crafted the juvenile registry, current research shows that automatic inclusion of juveniles based solely on offense type is irrational. In support of this contention D.B. cites a 2014 report by the Illinois Juvenile Justice Commission, Improving Response to Sexual Offenses Committed by Youth (available at http://ijjc.illinois.gov/youthsexualoffenses). Our colleagues in the First District recently addressed the identical argument in *In re A.C.*, 2016 IL App (1st) 153047, 54 N.E.3d 952.

¶ 19 In that case, the First District held that "[r]egardless of the conclusions outlined in the Commission's report, it is, of course, not binding precedent on this court. We are bound to follow our supreme court's decision in *In re J.W.*" *In re A.C.*, 2016 IL App (1st) 153047, ¶ 52, 54 N.E.3d 952. Moreover, *In re A.C.* pointed out that amendments to SORA and the Notification Law extend more protection to juvenile offenders than previously afforded:

> "[T]hese amendments demonstrate that our legislature already accounted for in the act that juveniles are different from adults. Their information is not made publicly available on the Internet, they are not required to register as adults once reaching 17 years of age, and they may petition for termination of registration after five years. The fact that their information is provided to their school and anyone else whose safety may be compromised constitutes a reasonable method of protecting the public." *Id.* ¶ 57.

With this in mind, we believe D.B.'s arguments are better directed to the legislature than they are to us.

¶ 20 In *People v. Pollard,* 2016 IL App (5th) 130514, 54 N.E.3d 234, we specifically stated, "[i]t is well established that there is a legitimate state interest behind the SORA Statutory Scheme. It serves the goal of protecting the public from sex offenders." *Id.* ¶ 39. We further stated that "[a]lthough the SORA Statutory Scheme may be overinclusive, thereby imposing burdens on offenders who pose no threat to the public because they will not reoffend, there is a rational relationship between the registration, notification, and restrictions of sex offenders and the protection of the public from such offenders." *Id.* ¶ 42. "As long as the legislation has a rational relationship to the government objectives, it is valid even if it is to some extent overinclusive, underinclusive, or both." *Id.*

¶ 21 D.B. has failed to convince us that SORA and the Notification Law violate substantive due process under the rational basis test. The statutory scheme set forth is rationally related to protecting the public from juvenile sexual offenders and a reasonable

means of accomplishing that goal. In keeping with the binding precedential decision of our supreme court in *In re J.W.*, and more recent decisions from the appellate court, we find D.B.'s substantive due process argument fails under a rational basis review.

¶ 22 II. Lifetime Registration

¶ 23 D.B. also contends that the default imposition of lifetime registration violates due process as applied to him where it is premised on a subsection of the criminal sexual assault statute which was intended to protect minors in their home, not label them predators for life. D.B. insists the predator label is unconstitutional as applied to him. While we have addressed this argument to a certain extent, we reiterate the 2007 amendments to SORA have minimized the impact of the delinquent juvenile's registration requirement by eliminating the provision that would have required him to register as an adult when he reached 17 years of age. See Pub. Act 95-658, § 5 (eff. Oct. 11, 2007) (amending 730 ILCS 150/2(A)(5), 3(a)).

¶ 24 As previously set forth, a delinquent juvenile's registration information is available to only a limited group of people, including those whose "safety may be compromised for some reason" by him, and the principal or chief administrative officer of the school he attends and any guidance counselor designated by him or her. 730 ILCS 152/121 (West 2014). On the other hand, the adult registry provides for widespread dissemination of registration information to the public. See 730 ILCS 152/120(c), (d) (West 2014). Most importantly, D.B. will also be able to petition for termination of his registration after five years. 730 ILCS 150/3-5(c) (West 2014).

> "[T]he termination provision in section 3-5 demonstrates the legislature's recognition ' "that, in many instances, juveniles who engage in sexually inappropriate behavior do so because of immaturity rather than predatory inclinations. The purpose of the termination provisions of section 3-5 is to afford juveniles the opportunity to demonstrate this is true in an individual case, and to prove that they do not pose a safety risk to the community." ' " *In re A.C.*, 2016 IL App (1st) 153047, ¶ 56, 54 N.E.3d 952 (quoting *In re M.A.*, 2015 IL 118049, ¶ 67, 43 N.E.3d 86, quoting *In re S.B.*, 2012 IL 112204, ¶ 29, 977 N.E.2d 144).

At the termination hearing, a court hears evidence regarding the risk posed by the juvenile offender, under factors set forth, including a risk assessment performed by a licensed evaluator, sex offender history and evidence of rehabilitation of the adjudicated juvenile delinquent, information about the petitioner's mental, physical, educational, and social history and victim impact statements. 730 ILCS 150/3-5(e) (West 2014).

¶ 25 While we understand D.B.'s concerns about being labeled a sexual predator, we note that if the court finds by a preponderance of the evidence that the petitioner does not pose a risk to the community, the court may grant the petition and terminate the registration term. 730 ILCS 150/3-5(d) (West 2014). Therefore, regardless of the underlying offense, a delinquent juvenile sex offender's registration obligation can only be extended if the court determines the juvenile still poses a risk to the public. While D.B. argues he is subject to the sex offender registry for the rest of his life, it is clear that this would only be the case if a court determined him to be a danger to society, in which case D.B.'s substantive due process rights would not be violated.

¶ 26 Finally, we note that in *In re J.W.*, our supreme court addressed similar concerns about a juvenile being labeled a sexual predator, specifically stating:

> "Clearly there is a rational relationship between the registration of juvenile sex offenders and the protection of the public from such offenders. Requiring the registration of juvenile sex offenders, even where the offender is only 12 years old and the duration of registration is for life, is reasonable in light of the strict limits placed upon access to that information. Whether there are better means to achieve this result, such as limiting the duration of registration for all juvenile sex offenders *including juvenile sexual predators*, is a matter better left to the legislature." (Emphasis added.) *In re J.W.*, 204 Ill. 2d at 72, 787 N.E.2d at 760.

Relying on *In re J.W.*, we reject D.B.'s arguments regarding the label "sexual predator." Whether a juvenile should be labeled a sexual predator for engaging in sexual acts with a family member is a matter best left to our legislature.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, we hereby affirm the circuit court's finding of delinquency, his sentence requiring registration as a sex offender, and his continued compliance with notification laws.

¶ 29 Affirmed.