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IN THE
COURT OF APPEALS OF INDIANA

J.C.C.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-0403-JV-266
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Christopher Piazza, Magistrate
Cause No. 49D09-0101-JD-379, 49D09-0101-JD-380 and 49D09-0101-JD-389

December 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

J.C.C. appeals his three adjudications as a delinquent child for committing nine acts of Child Molesting, as Class B felonies, when committed by an adult. He presents two issues for our review:

1. Whether the juvenile court erred when it ordered that J.C.C. be placed on the sex offender registry.

2. Whether the juvenile court abused its discretion when it denied his Trial Rule 60(B) motion to set aside the adjudications against him.

We affirm.

FACTS AND PROCEDURAL HISTORY

During the fall of 2000, J.C.C., who was fourteen years old at the time, forced three young boys to engage in various sex acts. The victims' ages ranged from seven to nine years old. J.C.C. used threats of violence to compel the boys to engage in oral and anal sex with him and with each other. Several months later, one of the victims reported the incidents to an adult, who contacted police.

The State filed three petitions against J.C.C. alleging his delinquency for child molesting. J.C.C. was represented by private counsel during the joint proceedings before the juvenile court. Following a factfinding hearing, the juvenile court adjudicated J.C.C. a delinquent child on May 29, 2001. The juvenile court did not advise J.C.C. that he had a right to counsel to pursue an appeal. A disposition hearing was held on July 11, and the juvenile court ordered J.C.C. committed to the Indiana Boys' School for two years. J.C.C. and his parents talked to his private counsel about pursuing an appeal, but they

decided that they could not afford to hire counsel for an appeal. Accordingly, J.C.C.'s private counsel withdrew her appearance on August 19, 2002.

On August 7, 2002, the State filed a petition to have J.C.C. register as a sex offender. On September 9, the juvenile court appointed a public defender to represent J.C.C. Following an evidentiary hearing over the course of October 6, 2003 and February 9, 2004, the juvenile court ordered J.C.C. to register as a sex offender. On March 11, 2004, the juvenile court granted J.C.C.'s request to appeal the order, and this court ordered that J.C.C.'s registration be stayed pending this appeal.

In addition, J.C.C.'s appellate counsel obtained permission from this court to pursue relief under Trial Rule 60(B) with the juvenile court. Accordingly, on September 9, 2004, J.C.C. filed a motion alleging that he was entitled to relief because: the juvenile court had not advised J.C.C. of his right to pauper counsel on appeal; and he was denied the effective assistance of counsel. The trial court denied the motion. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sex Offender Registry

J.C.C. first contends that the trial court erred when it ordered him to register as a sex offender. In B.J.B. v. State, 805 N.E.2d 870, 872-74 (Ind. Ct. App. 2004), we explained the law on this issue and our standard of review on appeal:

> Before a juvenile who has been adjudicated delinquent for committing a sex offense may be ordered to publicly register as a sex offender, a court must find by clear and convincing evidence that the juvenile is likely to commit another sex offense. See Ind. Code § 5-2-12-4(b)(3). We have consistently construed this statute as requiring an evidentiary hearing before a juvenile may be ordered to register as a sex offender.

Additionally, our standard of review of a decision to place a juvenile on a sex offender registry requires that we neither reweigh the evidence nor judge the credibility of the witnesses, and that we determine whether any reasonable fact finder could find the elements of Indiana Code Section 5-2-12-4 to have been proven by clear and convincing evidence. It is impossible to apply this standard if there has not been a hearing at which evidence and testimony was presented.

This is especially true with respect to a finding that must be supported by clear and convincing evidence. That standard "requires a stricter degree of proof than a mere preponderance of the evidence." K.J.P. v. State, 724 N.E.2d 612, 615 (Ind. Ct. App. 2000), trans. denied.

> [C]lear and convincing proof is a standard frequently imposed in civil cases where the wisdom of experience has demonstrated the need for greater certainty, and where this high standard is required to sustain claims which have serious social consequences or harsh or far reaching effects on individuals to prove willful, wrongful and unlawful acts to justify an exceptional judicial remedy. . . .

Id. at 615-16.

We discussed the difference between the adult criminal justice system and the juvenile delinquency system in [In re G.B., 709 N.E.2d 352 (Ind. Ct. App. 1999)]:

> The statutory scheme for dealing with minors who commit crimes is vastly different from the statutory scheme directed to adults who commit crimes. "American society [has] rejected treating juvenile law violators no differently from adult criminals in favor of individualized diagnosis and treatment." State ex rel. Camden v. Gibson Circuit Court, 640 N.E.2d 696, 697 (Ind. 1994). Therefore, it is the policy of this State to "ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation[.]" Ind. Code § 31-10-2-1(5) (emphasis added); see also B.L. v. State, 688 N.E.2d 1311, 1314 (Ind. Ct. App. 1997) (the "[S]tate's primary interest [is] in the rehabilitation, rather than the punishment, of juvenile delinquents.") (emphasis added).

709 N.E.2d at 354.

> We also observe that in Spencer v. O'Connor, 707 N.E.2d 1039 (Ind. Ct. App. 1999), trans. denied, this court concluded that requiring an adult criminal sex offender to place his or her name on the sex offense registry is not a "punishment" within the meaning of the Ex Post Facto clauses of the United States and Indiana Constitutions. In so doing, we emphasized that much of the information contained in the registry with respect to adult criminal offenses is already in the public domain and is already accessible to the public. Id. at 1044. Also, to the extent registered offenders were sometimes subjected to vigilante acts, we observed that such incidents "are not consequences imposed by the [Registry] Act itself, but flow from the fact of the underlying criminal act." Id. at 1046. The identity of juvenile delinquents, however, is often not a matter of public knowledge because of the underlying policy of rehabilitating, not punishing, juveniles. See I.C. § 31-39-1-2 (providing for general confidentiality of juvenile records, subject to delineated exceptions). We also acknowledged in Spencer "that the indirect effects of notification on the offenders and their families may be harsh" and "may include lost employment opportunities, housing discrimination, threats, and violence." Spencer, 707 N.E.2d at 1045.
>
> In light of these considerations and the general policy of rehabilitation underlying the juvenile delinquency system, it is clear that there must be an inquiry at a full evidentiary hearing before a juvenile may be placed on the sex offender registry. Additionally, we have held that when a juvenile is placed in a secure facility, a sex offender registry hearing can only be conducted after the juvenile has been released from the facility. G.B., 709 N.E.2d at 354; see also I.C. § 5-2-12-4(b)(2) (defining sex offender as including a juvenile who has been discharged from a Department of Correction facility, secure private facility, or juvenile detention facility). "This statutory scheme helps insure that juveniles who have been rehabilitated by virtue of their detention are not required to register as a sex offender." G.B., 709 N.E.2d at 354. Thus, the focus of inquiry, with respect to a juvenile who has been released from a secure facility, is whether the treatment received in that facility has resulted in the juvenile's rehabilitation. If that is the case, there cannot be clear and convincing evidence that the juvenile is likely to re-offend and the juvenile cannot be placed on the sex offender registry.

(Some citations omitted).

J.C.C. contends that the State did not present clear and convincing evidence showing that he is likely to re-offend. In particular, J.C.C. asserts that the State's expert witness relied on a risk-assessment test that did not account for all criteria relevant to the

likelihood that J.C.C. would re-offend. As such, J.C.C. maintains that the State presented "an improper and insufficient quantum of proof[.]" Brief of Appellant at 15. We cannot agree.

The State presented the testimony of Michael Johnson, a certified juvenile sex offender counselor with advanced degrees in clinical psychology and eleven years' experience working with juvenile sex offenders. Johnson testified that he conducted an assessment of the likelihood that J.C.C. would re-offend using a test called ERASOR. In applying the ERASOR criteria to J.C.C.'s history, as revealed to Johnson through written documentation, Johnson concluded that J.C.C. was in the "moderately high" risk category to re-offend. Transcript at 447. Johnson testified that he would rate J.C.C. at an eight or a nine on a scale of one to ten, with ten being the highest risk to re-offend.

In arriving at that conclusion, Johnson considered his clinical experience in addition to the ERASOR test. Johnson testified that the nature of the offenses was a significant factor in arriving at his conclusion. For example, Johnson testified that one of the factors that increases the risk to re-offend is "having a diverse sexual pattern during the offenses." Id. at 446. Here, Johnson explained that because J.C.C. "performed oral sex on the victims, had the victims perform oral sex on him, and [he] committed anal sex against the victims . . . those things in combination, and the multiple times that those offenses occurred, with the multiple victims, is how I sort of come to that decision that he's in that high risk category." Id. at 447. Johnson also testified that J.C.C. was at high risk of re-offending despite his successful completion of treatment at the Boys' School.

In essence, on appeal, J.C.C. argues that the ERASOR test is faulty and that Johnson's use of it was faulty. Specifically, J.C.C. contends that the test does not constitute adequate proof because "no amount of rehabilitation could result in someone not being at risk to re-offend pursuant to that test unless the original charges were benign." Brief of Appellant at 15. But J.C.C. was able to thoroughly cross-examine Johnson on that issue. And our review of the transcript reveals that Johnson gave a thoughtful explanation of how the ERASOR test was created and why, given the nature of the offenses, insufficient time had passed since the offenses to demonstrate rehabilitation sufficient to justify a lower risk rating. In addition, Johnson testified that his conclusion was not based solely on the ERASOR test, but it was also based on his clinical experience.

We hold that the State presented clear and convincing evidence that J.C.C. is likely to re-offend and should be placed on the sex offender registry. See B.J.B., 805 N.E.2d at 876 n.3 (noting expert testimony regarding likelihood of re-offending "very helpful in meeting the clear and convincing evidence standard"). J.C.C.'s contention on appeal amounts to a request that we reweigh the evidence, which we will not do.

Issue Two: Trial Rule 60(B) Motion

J.C.C. also contends that the juvenile court abused its discretion when it denied his Trial Rule 60(B) motion. A motion for relief from judgment is within the equitable discretion of the court; appellate review of the grant or denial thereof is limited to whether the trial court abused its discretion. D.D.J. v. State, 640 N.E.2d 768, 769 (Ind. Ct. App. 1994), trans. denied. An abuse of discretion occurs when the trial court's

decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable inferences to be drawn therefrom. Id.

As the juvenile court found, J.C.C. did not specify under which subsection of Trial Rule 60(B) he sought relief. The juvenile court correctly concluded that the only possibly applicable subsection is Trial Rule 60(B)(8),[1] which requires that the movant file his motion "within a reasonable time."[2] The juvenile court rejected J.C.C.'s arguments that his motion was timely filed in light of the court's failure to advise him of his appellate rights and his counsel's difficulty in ascertaining grounds for the motion until 2004. The juvenile court concluded that "J.C.C.'s Motion for Relief from Judgment filed forty (40) months and eleven (11) days after the dispositional order of July 11, 2001, was not filed within a reasonable time." Appellant's App. at 240.

On appeal, J.C.C. contends that "[w]hile [he] was represented by counsel [in September 2002,] the delays of counsel should not be held against him in such a way as to end his rights." Reply Brief at 4. But J.C.C. does not direct us to any authority in support of that contention. And our review of the record and the circumstances in this case leads us to agree with the juvenile court's conclusion that J.C.C.'s motion was not timely filed. J.C.C. and his parents had talked to his private counsel about an appeal immediately after the adjudication, but they decided that they could not afford her services. Thus, they knew that J.C.C. had a right to appeal. Still, despite being assigned

[1] Trial Rule 60(B)(8) provides relief from judgment for "any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4)."

[2] J.C.C.'s motion might have been brought under Trial Rule 60(B)(1), but that requires filing within one year after the challenged judgment. J.C.C.'s motion, filed more than three years after the delinquency adjudication, was untimely under that subsection.

a public defender in September 2002, J.C.C. did not file his Trial Rule 60(B) motion until March 3, 2004.

The circumstances of this case are similar to those in D.D.J.:

> [D.D.J.] argues that under the circumstances of his case, his motion was brought within a reasonable time. The determination of what period constitutes a reasonable time varies with the circumstances of each case. Graham v. Schreifer, 467 N.E.2d 800, 806 (Ind. Ct. App. 1984). According to [D.D.J.], the circumstance warranting relief in his case is the failure of the court to advise him of his right to appointment of pauper counsel.
>
> [D.D.J.] argues that because he was not properly advised of his right to counsel and thus proceeded pro se, he was unaware of the constitutional violations to which he was subjected. However, the instant record reveals that [D.D.J.] was represented by counsel as early as April 23, 1992, less than one year after the original disposition of his case and some fourteen months prior to the filing of his T.R. 60 motion. From this evidence the juvenile court could reasonably infer that [D.D.J.] had ample opportunity to identify any grounds for relief and promptly file the appropriate motion. Accordingly, the juvenile court did not abuse its discretion by denying [D.D.J.]'s motion as untimely.

640 N.E.2d at 769-70. Here, likewise, J.J.C. has not demonstrated that the juvenile court abused its discretion when it denied his Trial Rule 60(B) motion as untimely.[3]

Affirmed.

BAILEY, J., and CRONE, J., concur.

[3] The juvenile court also concluded that J.J.C. had not presented prima facie evidence of a meritorious defense, as required under the rule.