



THE FAMILY COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	FILE NO. 1401017282
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
J----- L-----,	)	
	)	
Respondent.	)	

**ORDER ON MOTION FOR RELIEF FROM
SEX OFFENDER REGISTRATION**

Before the Court is a Motion for Relief from the Sex Offender Registration and Community Notification Requirements filed on June 4, 2015 by J----- L----- (hereinafter "Respondent "), represented by Andrew J. Witherell, Esq., against the State of Delaware, represented by Jan van Amerongen, Esq. The State took no position on the Motion. The Court held a hearing on the Motion on March 28, 2017, and heard statements by the victim's mother, as well as Respondent's Probation Officer Jennifer Johnson.

BACKGROUND

The record reflects that in October of 2013 a report was filed with the Division of Family Services (DFS) alleging that Respondent, then sixteen (16) years old, had engaged in sexual contact with a female cousin, then seven (7) years old. The report alleged that Respondent forced his cousin to put his penis in her mouth and that he inserted his penis into her vagina. The victim was later interviewed at the Child Advocacy Center and corroborated the allegations against

Respondent. In January of 2014, Respondent was arrested and charged with Rape in the Second Degree. He was subsequently placed on pre-trial supervision. On October 13, 2014, Respondent entered a plea to one count of Rape in the Fourth Degree. His sentencing was deferred pending completion of a psychosexual evaluation.

Respondent was directed to undergo a psychosexual evaluation, which was completed on November 20, 2014. The evaluator determined Respondent was at low risk to re-offend but recommended Respondent receive sex offense specific treatment. According to a Progress Summary received by the Court, Respondent received psychosexual treatment from Aim Therapeutic Services from January of 2015 to September of 2015, when he was successfully discharged and again determined to be at low risk to re-offend.

Respondent, through counsel, filed this Motion on January 4, 2015, asserting that he was at low risk to re-offend based on the psychosexual evaluation completed in November of 2014 and requested to be relieved from the sex offender registration and community notification requirements. Consideration of the Motion was stayed pending the completion of Respondent's sex offense specific treatment.

Thereafter, in the fall of 2016 Respondent was arrested for Possession of Marijuana. Due to his previous adjudication for a sex offense, although his new charge was not a sex offense, Respondent was ordered to enter the Psycho Sexual Intake Transitions Program and again entered sex offense specific treatment. An evaluation completed on January 18, 2017 by Connections CSP regarding the Psycho Sexual Intake Transitions program determined that Respondent was a low risk to re-offend, but noted some concerning behaviors of Respondent, including the viewing of pornography.

The Court held a hearing on the Motion for Relief from the Sex Offender Registry on March 28, 2017. At the hearing, the State advised the Court that it took no position on the Motion. Respondent, through counsel, asserted that all evaluations indicate Respondent is at low risk to re-offend and requested the Court grant the Motion for Relief. The Court also heard testimony from the mother of the victim, who requested the Court deny the Motion and stated she believes that Respondent continues to pose a potential risk of harm to the community. Finally, the Court heard from Respondent's probation officer, Jennifer Johnson, who stated her concerns regarding Respondent's viewing of pornography and his marijuana use.

ANALYSIS

In order to determine if a juvenile should be placed on the sex offender registry, the Court must first determine whether the offense at bar mandates registration or whether registration is at the discretion of the Court pursuant to 11 *Del. C.* §4123(c)(1). If the Court finds that registration is discretionary, the Court must consider the factors outlined in §4123(c)(2) in determining whether to place a juvenile respondent on the registry, including the risk the juvenile poses to the community, the nature of the offense, and the recommendations of psychological evaluations.

The Court notes that the sole purpose of the sex offender registration and community notification requirements is to promote public safety, not punish the offender.¹ Accordingly, in analyzing the factors outlined in §4123(c)(2), the Court must weigh the risk the juvenile poses to public safety versus the adverse impact of the notification process on the respondent.

Discretionary v. Mandatory Review

The Court's determination of whether to place a juvenile on the sex offender registry is based on 11 *Del. C.* §4123, which provides that:

¹ See *State v. A.C.*, 2014 WL 4695046 at *2, Del. Fam. Ct., (August 21, 2014) (stating the Court has discretion "...if the Court finds by a preponderance of the evidence that the juvenile is not likely to pose a threat to public safety is relief is granted.").

(c)(1) If a juvenile was at least 14 years old on the date of the sex offense, and was adjudicated delinquent of any of the offenses enumerated in §770(a)(3) [etc.]... the juvenile shall be immediately registered as a sex offender...

A number of offenses are included in §4213(c)(1), including §770, the statute regarding Rape in the Fourth Degree, in the enumerated offenses mandating registration. Respondent was adjudicated delinquent of Rape in Fourth Degree. However, §4123 specifically provides that only §770(a)(3)² is among the offenses mandating registration, not *all* Rape in the Fourth Degree offenses. The Respondent's record reflects he pled to an amended charge of §770(a)(1). Furthermore, on the Respondent's plea agreement, it is noted that the Respondent's obligation to register as a sex offender will be left to the discretion of the Court pursuant to §4123. Accordingly, the Court finds that it is within the discretion of the Court to determine whether Respondent should be placed on the registry and that the offense he was adjudicated delinquent for is not one of the mandated offenses within §770 requiring registration.

DISCRETIONARY ANALYSIS PURSUANT TO §4123

Once the Court determines that it has discretion as to whether to place the Respondent on the sex offender registry, the Court must then analyze the factors outlined in 11 *Del. C.* §4123(c)(2), which provide that:

(2) ...if the juvenile does not fit the criteria set forth in paragraph (c)(1) of this section above, the Family Court shall have the discretion to relieve the juvenile of registration and community notification requirements...³

² 11 *Del. C.* §770 provides, in part:

(a) A person is guilty of rape in the fourth degree when the person:

- (1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's sixteenth birthday; or
- (2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse; or
- (3) Intentionally engages in sexual penetration with another person under any of the following circumstances:
 - a. The sexual penetration occurs without the victim's consent; or
 - b. The victim has not reached that victim's sixteenth birthday.

³ 11 *Del. C.* §4123

...the Court [shall] determine[s] by a preponderance of the evidence that such juvenile is not likely to pose a threat to public safety if relieved of the requirements... In making this determination, the Family Court shall consider all relevant factors, including:

- a. the risk the juvenile poses to the victim, the community and to other potential victims;
- b. the nature and circumstances of the offenses;
- c. the impact on the victim, including the effects of registration and community notification;
- d. the comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section;
- e. the likelihood of successful rehabilitation, if known; and
- f. the adverse impact of public registration on the juvenile and the rehabilitative process.⁴

The Court considers each factor in turn.

a. The risk the juvenile poses to the victim, the community and to other potential victims;

The potential risk the juvenile poses to the victim and other members of the community can best be determined by a series of evaluations completed by trained social workers and psychologists with experience working with sex offenders. At the hearing, the Court received copies of four (4) assessments of the Respondent with recommendations and risk evaluations, summarized below in chronological order:

1. DPBHS Psychological Evaluation, by Ja'Nae Freeman, M.A., 2014

This psychosexual evaluation was completed on November 25, 2014 by the Division of Prevention and Behavioral Health Services (DPBHS) of the Department of Services for Children, Youth, and their Families (DSCYF) following Respondent's adjudication for Rape in the Fourth Degree.

⁴ 11 Del. C. §4123(c)(2)

The evaluator interviewed Respondent and his Father, J--- L----- . Both reported a good relationship with family members; Father stated that he had no concerns with his son's emotional stability or behavior.

The report states that in October of 2013, a report was made to the Division of Family Services of DSCYF (DSCYF/DFS) that Respondent, who was sixteen (16) years old at the time, had engaged in sexual contact with his seven (7) year old female cousin. The report alleged that the Respondent forced his cousin to put his penis in her mouth and that he inserted his penis into her vagina. There were also allegations that Respondent had inappropriate sexual contact with an eleven (11) year old cousin; however, this cousin denied the allegations and he was not charged with an additional offense. DSCYF/DFS substantiated Respondent for sexual abuse and he was criminally charged in this matter. Ms. Freeman notes that Respondent continues to deny all allegations of inappropriate contact with either of his cousins. According to the report, Respondent has no previous history of inappropriate sexual behavior, and there have been no further incidents of sexual acting out.

The report stated that Respondent was healthy, had never been in treatment or prescribed medication, and did well in school. Although he briefly attended an alternative school following his adjudication, he returned to his regular high school.

Ms. Freeman states that Respondent was "pleasant and cooperative" throughout the evaluation. She performed a series of evaluations on Respondent, including:

- ***Child & Adolescent Symptom Inventory-5 (CASI-5)***, which suggested no symptoms indicating the presence of a psychiatric disorder;
- ***Global Appraisal of Individual Needs-Short Screener (GAIN-SS)***, a self-report measure which indicated little to no emotional difficulties, behavioral problems, or substance abuse;

- ***Personality Assessment Inventory, Adolescent Version (PAI-A)***, for which none of the PAI-A scales were clinically elevated and suggested Respondent to be a “confident, optimistic person” who demonstrates “concern for others”;
- ***UCLA PTSD Index***, which indicated no trauma history;
- ***Adolescent Cognitions Scale-Revised (ACS-R) and PHASE Sexual Attitudes Questionnaire***, to which Respondent largely responded in a manner consistent with someone who has healthy attitudes about what constitutes appropriate sexual behavior;
- ***Levinson Victim Empathy Scale***, which indicated Respondent has empathy for victims for abuse;
- ***Inventory of Callous-Unemotional Traits (ICU)***, which indicated that he has difficulty expressing his emotions but that he is caring and expresses remorse;
- ***Juvenile Sex Offender Assessment Protocol –II (JSOAP-II) and the Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR)***, which indicated low risk.

Respondent’s sexuality, including his knowledge of sexual issues and his sexual experiences, were also addressed in the evaluation. Respondent admitted he has viewed pornographic magazines and movies and does so “once every two months.” He stated that he had been sexually active since the age of fifteen (15) and had five (5) partners since that time. He denied any aberrant fantasies, behaviors, or interests and denied having sexual thoughts about children or forcing others into sexual activity. He denied ever being abused as a child.

Respondent denied the allegations of abuse against him. He stated that he pled delinquent on the Rape in the Fourth Degree because he had nude photos of same-age females on his cellular telephone and was concerned that he would be charged with child pornography if he did not.

Overall, the report suggests that Respondent

“has a low number of risk factors that are thought to increase the level of risk for future inappropriate sexual behaviors. Risk factors that are present include the fact that [Respondent] offended against a child over a period of time and that he has never engaged in sex offense specific treatment. However, [Respondent] has no history of or recent increase in negative behaviors and emotionality, there have been no further incidents of inappropriate sexual behavior, nor does he have any other characteristics to suggest that he has deviant sexual interests or sexual preoccupations.”

Therefore, all assessments, as well as the report's conclusion, found that Respondent was at low risk to re-offend. The report does not provide a recommendation as to whether the Respondent should be placed on the sex offender registry.

2. *Aim Therapeutic Services LLC, by Stacy Huffman, LCSW, 2015*

This report was written on September 13, 2015, following Respondent's initial discharge from sex offense specific treatment, which he underwent from January 2015 to September 2015. Ms. Huffman notes that Respondent feels remorse for his actions and was "responsible, respectful, and engaged" throughout treatment. Although at first he denied his offense, as treatment progressed he "honest[ly] examine[d]... his offense cycle and "challenge[d] his cognitive distortions concerning the victim and developed an understanding of his responsibility for his offense. She notes that he purposefully avoided risky situations, such as "senior week," and that he has remained focused "on a positive pro-social life in which he is accountable and productive." She recommends that he not be registered as a sex offender due to his compliance with conditions and treatment and low risk to re-offend.

3. *Connections CSP: Psycho Sexual Intake Transitions Program, by Kelly Barto, MSW*

This report was completed in January of 2017 following Respondent conviction for Possession of Marijuana. The report restates his charges and his anxiety around the herein charge and possible registration. According to the report, Respondent graduated from high school and is now employed as a truck driver. Although he had been smoking marijuana "heavily," he has not smoked since being sentenced to probation.

According to the report, Respondent stated that he was sixteen (16) years old when he first had sexual intercourse, with a family friend of the same age. He denies ever being abused as a

Child. He stated that he watches consensual, heterosexual pornography from the internet and denies ever watching child or bondage pornography. He reported that he currently masturbates once or twice a month and that his girlfriend often sends him nude pictures to his phone.

The reports lists the following paraphilic or sexual acting out behaviors:

- ***Voyeurism***- no, but said his friends looked in the windows of other people's apartments
- ***Internet Sexual Behavior***- yes, has viewed pornography on the internet
- ***Videotaped yourself or others having sex***- yes, said his girlfriend videotapes them having sex once or twice a month
- ***Sent Naked pictures of yourself***-Yes, has sent 2 or 3 to his girlfriend over the course of their 3 year relationship and she sends them to him daily, though he does not save them
- ***Coercive Sex (manipulate someone into sex?)***-said he has been convinced, but he has never convinced someone.

Ms. Barto finds that, despite these behaviors, Respondent's overall risk is "low" and recommended sex offender orientation group meetings and substance abuse treatment for marijuana use.

4. *Aim Therapeutic Services LLC, by Stacy Huffman, LCSW, 2017 Report*

This report was written on March 24, 2017. Ms. Huffman reports that the Respondent successfully completed individual therapy from January 2015 to September of 2015, after which he was discharged. He returned to therapy in October of 2016 for a marijuana charge. The report states that the Respondent was anxious regarding his pending registration hearing, which has been pending since his adjudication in 2014. His anxiety contributed to his marijuana usage, which resulted in his arrest for Possession of Marijuana.

Ms. Huffman states that the Respondent is remorseful and accepts full responsibility for his actions. He has a full time job, has been in a stable relationship for over a year, and has prioritized "a renewed commitment to mental and physical health and wellbeing" by stopping his

drug use and healthy diet and exercise. Ms. Huffman states, “Overall in treatment [Respondent] has consistently demonstrated his focus on making progress.”

Ms. Huffman “strongly recommends” that Respondent not be required to register as a sex offender. She notes that he “was determined to be a low risk offender when he was originally assessed.” Since that time, he has completed sex offender treatment and has been in the community for over two (2) years without re-offending, which further lowers his risk level.

Attached to Ms. Huffman’s report is the policy position of the Association for the Treatment of Sexual Abusers, “which discourages policy makers and the courts from registering sex offenders” due to “harm to the juvenile offender and their family,” which “far exceeds any community benefit.”

Overall, each of the assessors find that Respondent’s risk of reoffending is low. Ms. Huffman specifically recommends that he not be placed on the registry. Ms. Barto notes some behaviors of concern, such as viewing pornography and receiving nude pictures on his cellular phone from his girlfriend, but overall concludes that his risk is low. Ms. Freeman, who completed her report in 2014, also found that Respondent’s risk of re-offending was low.

Respondent’s probation officer, Ms. Johnson, requested the Court consider the Connections report which outlines some concerning behaviors of Respondent prior to determining whether to place Respondent on the registry. The Court notes that the behaviors noted to be of concern include watching consensual adult pornography and videotaping himself and his girlfriend of having sexual intercourse. The Court does not find that these behaviors indicate a likelihood of re-offending; the evaluation overall also finds that his risk is low. Therefore, the Court finds that Respondent’s risk to the victim, the community and to other potential victims is low and find that this factor weighs against registration.

b. the nature and circumstances of the offenses;

The record reflects that Respondent, who was then sixteen (16) years old, raped his seven (7) year old cousin vaginally and orally multiple times over the course of a summer. Respondent was charged with Rape in the Second Degree and pled delinquent to Rape in the Fourth Degree. Although the Connections Report states that Respondent denies “forcing” the victim, he acknowledged to his therapist that because of her age she was unable to consent. There were also allegations that Respondent had inappropriate contact with his eleven (11) year old cousin; however, both Respondent and this cousin denied the allegations.

It is clear that the herein offense was egregious. The abuse perpetrated by Respondent towards the victim, as testified to by the victim’s mother, has caused the victim significant trauma from which she will struggle for the remainder of her life. Additionally, the differences in the ages of the Respondent and the victim at the time of the offense render the offense particularly egregious; Respondent should have been clearly aware that his actions were grossly harmful. Therefore, the Court finds that this factor favors registration.

c. the impact on the victim, including the effects of registration and community notification;

At the hearing, the Court heard a statement from the victim’s mother. She stated that this offense has been extremely difficult for her daughter and that “she has lost so much.” She stated that she did not believe Respondent had received the treatment he needs and that he has not apologized for his behavior. She states that her daughter is restricted from going to family functions because of his presence and that his family protects him. Although she acknowledged that Respondent should “maybe not be on the registry his whole life,” she nonetheless felt he was still a risk and should be placed on the registry at this time. Therefore, the Court finds that this factor favors registration.

d. the comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section;

As noted *supra*, the Court received four (4) evaluations outlined above. Based on those evaluations, the Court finds that the Respondent has complied with all of his recommended treatment, remains in treatment at this time due to his marijuana offense, and that his risk assessment is low. Therefore, the Court finds that this factor does not favor registration.

e. the likelihood of successful rehabilitation, if known; and

As noted *supra*, the evaluations indicate that Respondent has had no other incidents of sexual acting out or inappropriate behavior. He reported that he is remorseful for his actions and understands the consequences of his actions following treatment. Accordingly, the Court finds it likely that Respondent will be, if not already has been, successfully rehabilitated and finds this factor does not favor registration.

f. the adverse impact of public registration on the juvenile and the rehabilitative process.

The consequences of placement on the sex offender registry are well-known. Placement on the registry may affect Respondent's employment, housing, and education prospects, as well as his self-esteem. As noted by counsel for the Respondent in the hearing, registration on the registry is not meant to be punitive; rather, it is a protective measure designed to alert the community of individuals with high risk of re-offending for sexual offenses. Therefore, the Court finds that this factor disfavors registration.

CONCLUSION

The record reflects that Respondent's overall risk is low; two of the six factors the Court must consider favor registration, whereas four of the six do not. Moreover, the State took no

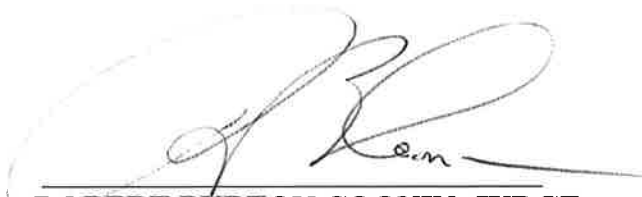
position on Respondent's Motion. Accordingly, the Court finds that Respondent should not be placed on the registry.

The Court does not make this determination lightly. The offense in this case was egregiously harmful and particularly offensive, given its prolonged nature and the difference in ages between the victim and the Respondent. The Court recognizes that the victim must suffer the trauma of these offenses for the remainder of her life, and that Respondent's actions deprived her of the opportunity at an extremely tender age to mature free from abuse and pain. On the other hand, the Court must also look to the purpose of the sex offender registration and community notification requirements, which is to promote public safety, and not to punish the offender. Despite the egregiousness of the offense, all four (4) psychological assessments submitted the Court indicate that Respondent is at low risk to re-offend and has complied with all the requirements of his sex offense specific treatment. Since the time of the offense in 2013, Respondent has accrued no other sex related offenses. Finally, the State took no position on this matter. Based on an analysis of the factors outlined in §4123(c)(2), therefore, the Court finds that Respondent is at low risk to re-offend and therefore is not likely to pose a risk to public safety.

Accordingly, Respondent's Motion for Relief from the Requirements of the Sex Offender Registration and Community Notification is hereby **GRANTED**.

IT IS SO ORDERED.

April 19, 2017
Date Written Order Issued



ROBERT BURTON COONIN, JUDGE

RBC: cap

Cc: File
Parties

Date Order mailed to parties: