

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-0672-21

IN THE MATTER OF J.A.

Argued February 27, 2023 – Decided June 15, 2023

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. ML-99-13-0052.

James H. Maynard argued the cause for appellant J.A. (Maynard Law Office, LLC, attorneys; James H. Maynard, on the briefs)

Alecia Woodard, Assistant Prosecutor, argued the cause for respondent State of New Jersey (Raymond S. Santiago, Monmouth County Prosecutor, attorney; Alecia Woodard, of counsel and on the brief).

PER CURIAM

Petitioner J.A., who was adjudicated delinquent over two decades ago for first-degree aggravated sexual assault and endangering the welfare of a child, appeals from an order denying his application to terminate his statutory

obligations under Megan's Law. He argues on appeal that N.J.S.A. 2C:7-2(f) violates the New Jersey Constitution. For the reasons that follow, we affirm.

I.

On October 1, 1999, J.A. was adjudicated delinquent for first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a), and endangering the welfare of a child, N.J.S.A. 2C:24-4(a). At the time of his offenses, the record shows J.A. was fifteen-years old, and his victim was a five-year-old girl.

The victim's family rented a room from J.A.'s family, and they had done so for approximately one year, when the victim disclosed to her mother that her vagina hurt. She explained to her mother that J.A. inserted his fingers into it while masturbating. The victim also told her mother J.A. assaulted her on prior occasions. After a trial in the Family Part, J.A. was adjudicated delinquent and his disposition was three years' probation conditioned upon no victim contact, community service, and Megan's Law penalties, including registration.

A little over one year after his sexual assault adjudication, on October 23, 2000, J.A. was adjudicated delinquent of receiving stolen property, N.J.S.A. 2C:20-7, and received one year of probation and twenty hours of community service. A year later, on October 12, 2001, J.A. was again adjudicated delinquent, this time for second-degree robbery, N.J.S.A. 2C:15-1. His

disposition for this offense was a four-year custodial term at Jamesburg Youth Correctional Facility.

Upon his release from custody in 2004, the trial court classified J.A. as a tier two sex offender and ordered him to comply with community registration requirements. The court did not include J.A. on the New Jersey Sex Offender Internet Registry.

In June 2020, J.A. moved to terminate his Megan's Law registration requirements pursuant to N.J.S.A. 2C:7-2. The trial court conducted a hearing, and J.A. testified. He explained he has led a stable and productive life and has become a naturalized citizen. He stated that he held a steady job as a truck driver and that he and his partner purchased a house together. J.A. also presented extensive expert testimony to meet his burden under the statute to demonstrate that he did not pose a threat to the community.

The motion court found J.A. had demonstrated that he was no longer a threat to the community. Nonetheless it denied J.A.'s application. Using the plain language of N.J.S.A. 2C:7-2(f), the court found J.A. ineligible for relief because he committed other crimes within the fifteen-year period following his sex assault adjudication.

II.

On appeal, J.A. argues the conditional lifetime bar to terminate Megan's Law registration set forth by N.J.S.A. 2C:7-2(f) is unconstitutional. Specifically, he asserts it violates his equal protection, substantive due process, and procedural due process rights under our state Constitution.

Our review of rulings of law and issues of constitutionality or interpretation of statutes is de novo. State v. Hemenway, 239 N.J. 111, 125 (2019). "Our courts have demonstrated a steadfast adherence to the principle 'that every possible presumption favors the validity of an act of the Legislature.'" State v. Trump Hotels & Casino, 160 N.J. 505, 526 (1999) (quoting N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972)). We must "exercise 'extreme self restraint' before using 'the judicial power to invalidate a legislative act[,] and we will not declare a legislative act void 'unless its repugnancy to the Constitution is clear beyond a reasonable doubt.'" LaManna v. Proformance Ins. Co., 184 N.J. 214, 223 (2005) (alteration in original) (quoting Trump Hotels & Casino, 160 N.J. at 526).

III.

"Megan's Law is intended 'to protect the community from the dangers of recidivism by sexual offenders.'" In re Registrant B.B., 472 N.J. Super. 612,

618 (App. Div. 2022). The legislative findings that underpin Megan's Law are found in N.J.S.A. 2C:7-1, which states:

- a. The danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children, and the dangers posed by persons who prey on others as a result of mental illness, require a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety.
- b. A system of registration of sex offenders and offenders who commit other predatory acts against children will provide law enforcement with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons.

Our Supreme Court, in Doe v. Poritz, 142 N.J. 1, 12 (1995), held that sections of Megan's Law relevant to us here, including N.J.S.A. 2C:7-1 to -5, passed muster under the New Jersey Constitution, surviving equal protection and due process challenges.

N.J.S.A. 2C:7-2(f) states:

Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within [fifteen] years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

This subsection establishes two conditions for termination. First, the registrant must be offense-free for fifteen years from the date of their sex offense conviction, and second, the registrant must show they are not likely to pose a threat to the safety of others.

J.A. first argues that N.J.S.A. 2C:7-2(f), as applied to juveniles adjudicated delinquent for a sex offense that triggers the requirements of Megan's Law, unconstitutionally violates juveniles' rights to substantive due process and equal protection under the New Jersey Constitution. After a review of the applicable law, we are not persuaded.

A.

Article I, paragraph 1 of the New Jersey State Constitution states:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

Our courts utilize a balancing test "[w]hen evaluating substantive due process and equal protection challenges under the New Jersey Constitution" Caviglia v. Royal Tours of Am., 178 N.J. 460, 472 (2004).

The balancing process by which we decide the challenge to the constitutionality of a statute on state

equal protection grounds involves the weighing of three factors: (1) the nature of the right asserted; (2) the extent to which the statute intrudes upon that right; and (3) the public need for the intrusion.

[State v. O'Hagen, 189 N.J. 140, 164 (2007) (citing Sojourner A. v. N.J. Dep't of Hum. Servs., 177 N.J. 318, 333 (2003)).]

"A state statute does not violate substantive due process if the statute reasonably relates to a legitimate legislative purpose and is not arbitrary or discriminatory." Greenberg v. Kimmelman, 99 N.J. 552, 563 (1985).

Here, J.A. failed to show how his statutory obligation to remain offense free for fifteen years under N.J.S.A. 2C:7-2(f) violates any interest he has under Article I, paragraph 1 of our Constitution. The record shows J.A.'s constitutional liberty and property interests have not been significantly intruded upon by operation of subsection (f). To his credit, Megan's Law registration requirements have not stopped J.A. from being a contributing member of society. Indeed, by his own admission, he is a "productive citizen," involved in a long-term relationship, and has consistent employment. Turning to the third element of the balancing test, the public need for intrusion, we have already found that "[N.J.S.A. 2C:7-2(f)'s] design signals a desire [by the Legislature] to measure the offense-free time frame against fifteen years of compliance with the registration requirements." In re J.S., 444 N.J. Super. 303, 312 (App. Div.

2016). We have also found subsection (f) is "part and parcel of the Legislature's reasonable conclusion that the 'risk of re-offense can be fairly measured, and the knowledge of the presence of offenders provides increased defense against them.'" In re Registrant G.H., 455 N.J. Super. 515, 532-33 (App. Div. 2018) (citing In re A.D., 441 N.J. Super. 403, 419 (App. Div. 2015)).

The registration requirements of Megan's Law, including N.J.S.A. 2C:7-2(f), are rationally related to a legitimate government purpose under Poritz. Subsection (f) passes muster when viewed through the lens of the three-part balancing test. We conclude subsection (f) is not violative of J.A.'s substantive due process or equal protection rights.

B.

J.A. next argues his procedural due process rights were violated because, once he failed to meet subsection (f)'s first condition, he faced a lifetime bar to termination of Megan's Law requirements. He contends that subsection (f)'s fifteen-year lookback provision, which indefinitely disqualifies juvenile sex offenders seeking termination if they commit any offense, sexual or otherwise, deprives him of his fundamental right to procedural due process.

"In examining a procedural due process claim, we first assess whether a liberty or property interest has been interfered with by the State, and second,

whether the procedures attendant upon that deprivation are constitutionally sufficient." Poritz, 142 N.J. at 99 (citing Valmonte v. Bane, 18 F. 3d 992 (2d Cir. 1994)). "Procedural due process requires notice and an opportunity to be heard." State v. Polanca, 332 N.J. Super. 436, 442 (App. Div. 2000) (citing Mettinger v. Globe Slicing Mach. Co., 153 N.J. 371, 389 (1998)). Here, subsection (f) provides adequate notice of its two requirements and affords an opportunity to be heard for those who met the requirements.

J.A. conflates subsection (f)'s two elements. Its language does not create an irrebuttable presumption of dangerousness, but simply requires registrants to satisfy two distinct conditions to have their registration requirements terminated. The first condition requires offenders to be offense-free for the fifteen years immediately following their sex offense conviction. The second condition addresses a registrant's dangerousness. Here, J.A. offended twice in the two years following his initial sexual assault disposition. He therefore failed subsection (f)'s first condition. In our view, the fifteen-year condition is separate and distinct from the danger condition. We find no irrebuttable presumption of dangerousness here. Subsection (f), as designed by the Legislature, provides juvenile sex offenders a full and fair opportunity to demonstrate they are not a

threat to the safety of others, provided they can avoid committing crimes for the fifteen years following their sex offense.

Megan's Law satisfies its procedural due process obligation to juvenile sex offenders. N.J.S.A. 2C:7-2, taken as a whole, provides sufficient notice of an offender's registration requirements, and, importantly, sufficient notice of what conditions offenders must meet to terminate those requirements.

C.

J.A. relies heavily upon State ex rel. C.K., 233 N.J. 44 (2018), to support his central premise on appeal, which is that subsection (f) creates a lifetime bar to termination of Megan's Law requirements as well as an irrebuttable presumption of dangerousness. Both his substantive and procedural due process arguments contain this thread.

We are not persuaded, as a closer look at C.K. suggests that its logic should not transfer to subsection (f). C.K. held "N.J.S.A. 2C:7-2(g) . . . unconstitutional as applied to juveniles adjudicated delinquent as sex offenders." 233 N.J. at 77. The Court considered the extensive record developed at the trial court concerning research on adolescent brain development and juvenile sex offender recidivism rates, and it found that subsection (g) did in fact create "an irrebuttable presumption that juveniles

adjudicated delinquent for committing certain sex offenses will forever pose a danger to society." Id. at 74. This finding led to the Court's holding that subsection (g) violated C.K.'s substantive due process rights. However, in reaching this result, the C.K. Court analyzed subsections (f) and (g) together:

Subsection (g) of N.J.S.A. 2C:7-2, moreover, cannot be viewed in isolation from other provisions of the statute. Subsection (f) imposes presumptive lifetime registration and notification requirements for sex offenses covered by subsection (g) but allows for a juvenile sex offender to be relieved of those requirements fifteen years after his juvenile adjudication or release from a correctional facility, provided he has been offense-free and "is not likely to pose a threat to the safety of others." Thus, under subsection (f), those juvenile sex offenders who have reoffended or pose a continuing threat after fifteen years will not be relieved of their registration and notification requirements. Subsection (g) has the perverse effect of keeping on the sex-offender registry those juveniles who have completed their rehabilitation, not reoffended, and who can prove after a fifteen-year look-back period that they are not likely to pose a societal threat. When, in the case of juveniles, the remedial purpose of Megan's Law—rehabilitation of the offender and protection of the public—is satisfied, then the continued constraints on their lives and liberty pursuant to subsection (g), long after they have become adults, takes on a punitive aspect that cannot be justified by our Constitution.

[Id. at 75-76.]

While subsection (f) was not before the C.K. Court, it was accounted for in the Court's constitutional analysis of subsection (g), as the provisions "cannot be viewed in isolation." Ibid. The Court examined subsection (g) and found it unconstitutional in that juvenile offenders adjudicated of a certain class of sex crimes could never apply for termination, whereas by comparison, subsection (f) afforded juvenile sex offenders a two-step path to termination. The logic C.K. used to invalidate subsection (g) cannot be extended to subsection (f).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION