RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2828-21

IN THE MATTER OF
REGISTRANT C.R.

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Argued May 9, 2023 – Decided June 26, 2023

Before Judges Gilson and Perez-Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. M-064-19.

Laura B. Lasota, Assistant Deputy Public Defender, argued the cause for appellant C.R. (Joseph E. Krakora, Public Defender, attorney; Laura B. Lasota, of counsel and on the brief).

Timothy Kerrigan, Senior Assistant Prosecutor, argued the cause for respondent State of New Jersey (Camelia M. Valdes, Passaic County Prosecutor, attorney; Timothy Kerrigan, of counsel and on the brief).

PER CURIAM

Registrant C.R.[1] appeals from an April 24, 2022 order, which classified him as a Tier Three sex offender pursuant to the registration and community notification provisions of Megan's Law, N.J.S.A. 2C:7-1 to -23. C.R. challenges the Registration Risk Assessment Scale (RRAS) scores imposed under factor 3, the age of the victim, and factor 13, employment and educational stability. Finding no merit in C.R.'s arguments, we affirm.

Defendant has been convicted of four offenses, two of which were sexual offenses. In 2005, when C.R. was a juvenile of age fifteen, he was charged with aggravated sexual assault of a sixteen-year-old female. He was waived to adult criminal court and pleaded to third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7). In 2011, he pleaded guilty to first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(3), and second-degree sexual assault, N.J.S.A. 2C:14-29(c)(1). Those convictions involved offenses C.R. committed in 2008 and 2009, when he was eighteen years old and nineteen years old on victims who were fifteen years old and sixteen years old. C.R. also pleaded guilty to second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b).

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[1] We use initials to preserve the confidentiality of these proceedings. R. 1:38-3(c)(9).

C.R. was sentenced to an aggregate prison term of nine years with a period of parole ineligibility as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. C.R. was also sentenced to parole supervision for life and registration requirements under Megan's Law.

On February 2, 2017, C.R. was released from prison, placed on parole supervision and was classified under Megan's Law as a Tier One registrant. Thereafter, C.R. became a resident of the City of Paterson and registered as a sex offender with the Paterson Police Department. On July 26, 2021, the State completed its RRAS assessment, and scaled C.R. as a Tier Three high risk registrant with a score of 79. On August 11, 2021, the State notified C.R. it intended to move before the court for a Megan's Law Tier Three classification, which required placement on the Sex Offender Internet Registry (Internet Registry), community notification, and electronic monitoring.

On April 6, 2022, after multiple adjournments, the trial judge held a classification hearing and addressed C.R.'s risk for re-offense. The State presented evidence on the thirteen RRAS scale factors to support its Tier Three recommendation. C.R. objected to the assessment of three factors: factor 3- age of the victim; factor 7- length of time since the last offense; and factor 13- employment and educational stability. The State agreed to a downward

adjustment of factor 7, from a moderate risk score of three to a low risk score of zero, because it had been over five years since C.R.'s last offense. The State also agreed to a downward adjustment for factor 13, from a high risk score of two to a moderate risk score of one. The State continued its request for a Tier Three classification, with a revised RRAS total score of 74, which was the combined subtotal for the four categories' scores of: 35 for seriousness of offense; 36 for offense history; 2 for characteristics of offender; and 1 for community support.

C.R. maintained he should be scored a low risk under factor 3 because the juvenile exception applied. He argued that he was a juvenile at the time of his first offense in 2005; each victim was within four years of his age; and he was a peer offender. The State argued a moderate risk score of five was accurate, as the juvenile exception was inapplicable and the Juvenile Risk Assessment did not apply. The State asseverated C.R. was an adult when he committed the two sexual assaults. The judge found C.R. was "not a juvenile for two of these three offenses," and "tier[ed] him under the adult [RRAS]" as "the [J]uvenile [R]isk [A]ssessment [S]cale" was not applicable. The judge assessed a moderate risk score of 5.

As to factor 13, C.R. argued his employment over several months at HelloFresh demonstrated a consistent work history, and his enrollment at Lincoln Tech established educational stability. The State argued C.R.'s employment was "intermittent" as C.R. had been unemployed a few months prior to the hearing. The judge found, "in light of the fact that this gentleman has been at this job for a short period of time . . . worked for about six months, and [attended] Lincoln Tech [for] seven months . . . I think it's not unreasonable for it to be scored at moderate risk." The trial judge assessed a moderate risk score of 1.

In a thorough oral opinion, the trial judge found that the State had proved by clear and convincing evidence the aggregate RRAS score of 74 was appropriate and classified C.R. as a Tier Three registrant (high risk score range is 74-111). The judge ordered C.R. to be placed on the Internet Registry with community notification and electronic monitoring. On April 27, 2022, the judge stayed community notification pending appeal. Thereafter, on June 7, 2022, we continued the stay of "door-to-door" notification pending this appeal.

On appeal, C.R. raises the following arguments:

> POINT I: THE COURT BELOW ABUSED ITS DISCRETION WHEN IT FOUND THAT MODERATE RISK SCORES WERE APPROPRIATE UNDER THE REGISTRANT RISK ASSESSMENT

SCALE FOR FACTORS 3 AND 13, AND THAT C.R.
SHOULD BE CLASSIFIED AS TIER III.

A. The Trial Court Abused Its Discretion In Assessing
A Moderate Risk Score To Factor 3.

B. The Trial Court Abused Its Discretion In Assessing
A Moderate Risk Score To Factor 13.

C. The Overall High Risk Assessment and Tier III
Classification Ordered By The Trial Court Was
Undermined By The Registrant's Over Five Years Of
Compliance With Tier I Classification And Notification
Requirements.

C.R. contends the trial judge incorrectly imposed RRAS moderate risk

scores for factor 3 and factor 13, resulting in an inappropriate Tier Three

classification. Consequently, C.R. seeks to be classified as a Tier Two

registrant. Additionally, in an argument raised for the first time on appeal, C.R.

seeks consideration of his alleged five years of compliance as a Tier One

registrant while on parole.[2]

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[2] As C.R. did not raise the issue of compliance, and provide evidence at the
hearing below, we decline to consider the issue on appeal. See Nieder v. Royal
Indem. Ins. Co., 62 N.J. 229, 234 (1972) (issues not raised at the trial court that
do not concern matters of substantial public interest will not be considered by
appellate court); see also In re Bell Atl.-New Jersey, Inc., 342 N.J. Super. 439,
442-43 (App. Div. 2001); Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580,
586 (2012).

"We review a trial court's conclusions regarding a Megan's Law registrant's tier designation and scope of community notification for an abuse of discretion." In re Registrant B.B., 472 N.J. Super. 612, 619 (App. Div. 2022). "[A]n abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. R.Y., 242 N.J. 48, 65 (2020) (internal quotations omitted) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). However, "[a] trial court's interpretation of the law and the . . . consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. Of Manalapan, 140 N.J. 366, 378 (1995). "In challenging a tier determination, a registrant may argue that (1) the RRAS score was erroneously calculated, (2) the case falls outside the 'heartland' of Megan's Law cases, or (3) the extent of community notification required is excessive due to 'unique' aspects of the registrant's case." In re Registrant J.G., 463 N.J. Super. 263, 275 (App. Div. 2020) (citing In re T.T., 188 N.J. 321, 330 (2006)).

The purpose of Megan's Law is "to protect the community from the dangers of recidivism by sexual offenders." In re C.A., 146 N.J. 71, 80 (1996) (citing N.J.S.A. 2C:7-1a). "The law is remedial and not intended to be

punitive." In re A.A., 461 N.J. Super. 385, 394 (App. Div. 2019) (citing Doe v. Poritz, 142 N.J. 1, 14 (1995)). "The expressed purposes of the registration and notification procedures [under Megan's Law] are 'public safety' and 'preventing and promptly resolving incidents involving sexual abuse and missing persons.'" A.A., 461 N.J. Super. at 394 (quoting N.J.S.A. 2C:7-1).

The Megan's Law "[t]ier designations reflect a registrant's risk of re-offense, as determined by a judge assessing various information, including thirteen factors referenced in the RRAS." Id. at 402. Pursuant to N.J.S.A. 2C:7-2(a), the RRAS was developed for the State's use "to establish its prima facie case concerning a registrant's tier classification and manner of notification." T.T., 188 N.J. at 328 (quoting C.A., 146 N.J. at 110). The RRAS "is presumptively accurate and is to be afforded substantial weight—indeed it will even have binding effect—unless and until a registrant 'presents subjective criteria that would support a court not relying on the tier classification recommended by the Scale.'" In re G.B., 147 N.J. 62, 81 (1996) (quoting C.A., 146 N.J. at 109). "Although a tier classification made on the basis of the Scale should be afforded deference, a court should not rely solely on a registrant's point total when it conducts a judicial review of a prosecutor's tier level classification or manner of notification decisions." C.A., 146 N.J. at 108.

"Judicial determinations regarding tier classification and community notification are made 'on a case-by-case basis within the discretion of the court[]' and 'based on all of the evidence available[,]' not simply by following the 'numerical calculation provided by the [RRAS].'" In re Registrant C.J., 474 N.J. Super. 97, 120 (App. Div. 2022) (alterations in original) (citing G.B., 147 N.J. at 78-79).

The RRAS contains four categories of review: seriousness of the offense; offense history; personal characteristics; and community support. See State v. C.W., 449 N.J. Super. 231, 260 (App. Div. 2017) (citing In re Registrant V.L., 441 N.J. Super. 425, 429 (App. Div. 2015)). "The first two categories, '[s]eriousness of [o]ffense' and '[o]ffense [h]istory,' are considered static categories because they relate to the registrant's prior criminal conduct." C.A., 146 N.J. at 103. The next two categories, "[c]haracteristics of '[o]ffender' and '[c]ommunity [s]upport' are considered to be dynamic categories, because they are evidenced by current conditions." Ibid. The "static factors," relate to past criminal conduct, and weigh more heavily under the RRAS than the dynamic factors. In re Registrant J.M., 167 N.J. 490, 500 (2001).

The "seriousness of offense" category takes into account: (1) degree of force; (2) degree of contact; and (3) age of the victim(s). C.A., 146 N.J. at 103.

The "offense history" category covers: (4) victim selection; (5) number of offenses/victims; (6) duration of offensive behavior; (7) length of time since last offense; and (8) any history of anti-social acts. Ibid. The "personal characteristics" category accounts for the registrant's: (9) response to treatment and (10) substance abuse. Id. at 103-04. The final category, "community support" considers a registrant's: (11) therapeutic support; (12) residential support; and (13) employment/educational stability. Id. at 104.

"Each factor is assigned a risk level of low (0), moderate (1), or high (3), and '[t]he total for all levels within a category provides a score that is then weighted based on the particular category.'"[3] A.A., 461 N.J. Super. at 402 (alteration in original) (quoting C.A., 146 N.J. at 104). "An RRAS score [totaling] 0 to 36 is low risk; 37 to 73 moderate risk; and 74 or more, high risk." T.T., 188 N.J. at 329. The State ultimately bears the burden of proving—by clear and convincing evidence—a registrant's risk to the community and the scope of notification necessary to protect the community. In re Registrant R.F., 317 N.J. Super. 379, 383-84 (App. Div. 1998).

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[3] The point total for the category of "seriousness of offense," "which is designed to predict the nature of any re-offense . . . is multiplied by five." C.A., 146 N.J. at 104. On the other hand, the categories of "offense history," "personal characteristics" and "community support" "are multiplied by three, two and one respectively." Ibid.

We conclude the trial judge's assessment of a moderate risk under the RRAS, for both factors 3 and 13, was not an abuse of discretion. We find no merit to C.R.'s argument the scores assessed were erroneous. As to factor 3, C.R. committed two sexual assaults as an adult. The RRAM states: "For juveniles, a four year age difference between the offender and the victim is needed to score this criterion." Undisputedly, C.R. as an adult committed sexual assaults against 16-year-old M.M. and 15-year-old W.N. Hence, the juvenile exception does not apply because C.R. was not a juvenile when he committed two of the sexual assaults. We are also unpersuaded the juvenile exception should apply because C.R. was a peer to his victims. As the State correctly noted, factor 3 goes to the criteria for seriousness of the offense, and C.R. was not engaged in consensual acts with peers.

As to factor 13, C.R. conceded to a period of unemployment prior to his several months of employment at HelloFresh. Additionally, C.R.'s educational history at Lincoln Tech was for a period of approximately eight months. The trial judge correctly considered the period of employment, period of unemployment, and contemplated the totality of facts surrounding C.R.'s employment and educational endeavors. The judge's determination that C.R.'s employment and educational stability was "intermittent but appropriate," and

thus a moderate risk, is well supported by the record. We discern no abuse of discretion.

The trial judge appropriately assessed C.R.'s RRAS factors after a thorough review of the evidence and arguments presented, therefore we find no basis to disturb the Tier Three classification and community notification ordered.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION