

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

TRAVIS BLANKENSHIP,

Defendant-Appellant.

:
: Case No. 14-0363
:
: On Discretionary Appeal from the
: Clark County Court of Appeals,
: 2nd Appellate District,
: Case No. 2012-CA-74
:
:

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
DEFENDANT-APPELLANT TRAVIS BLANKENSHIP**

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Clark County Prosecutor's Office

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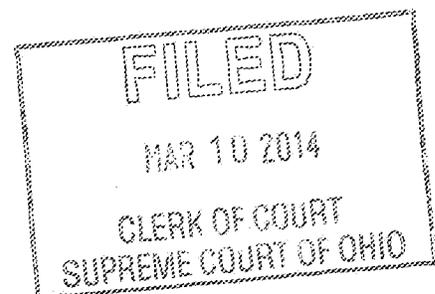


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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Appellant Travis Blankenship pleaded guilty to a bill of information charging one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04 and a fourth-degree felony. Based on that conviction, he was sentenced to five years of community control. Additionally, despite a psychological evaluation stating he was not at a high risk to reoffend, he did not warrant sex offender treatment, and he was not a sexual offender, Mr. Blankenship was automatically classified as a Tier II sex offender, carrying a 25-year registration requirement, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment.

In cases such as this, regardless of the fact that the characteristics of the offender and the nature of the offense diminish the offender's culpability, trial judges are bound by S.B. 10 to classify such individuals as sex offenders, without the opportunity to apply a less onerous punishment. This mismatch makes the mandatory nature of sex-offender classification in such cases a violation of the Eighth Amendment.

This Court should accept this case and remedy this constitutional violation by holding that where mandatory sex-offender classification creates a disproportionate punishment given the characteristics of the offender and the nature of the offense, the trial court can depart from the mandatory classification scheme of S.B. 10, and use its discretion to impose a less onerous and more appropriate punishment. Without this Court's guidance, Ohio courts will continue to impose constitutionally prohibited punishments in similar cases.

STATEMENT OF THE CASE AND FACTS

At the age of 21, Travis Blankenship engaged in consensual sexual conduct with a 15 year-old girl. He pleaded guilty to a bill of information charging one count of unlawful sexual conduct with a minor, a violation of R.C. 2907.04 and a fourth-degree felony. At the time of the offense, Mr. Blankenship was attending Clark State and working a part-time job at a department store. As part of the pre-sentence investigation a psychologist evaluated Mr. Blankenship and found that he was not a sexual offender despite having committed a sexual offense, that his risk of reoffending was not high, and that he did not need sex offender treatment.

Mr. Blankenship was sentenced to five years of community control with conditions, including a six-month jail sentence, which was suspended after approximately ten days. However, he was classified as a Tier II sex-offender, requiring 25 years of registration. At sentencing, Mr. Blankenship objected to the classification as violating the Eighth Amendment's prohibition against cruel and unusual punishment.

On direct appeal, the Second District Court of Appeals overruled the single assignment of error, addressing the Eighth Amendment issue, and affirmed the trial court's judgment. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232. The dissent would have reversed and remanded the case, having found an Eighth Amendment violation. *Id.* (Donovan, J., dissenting).

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW I

Mandatory sex offender classifications under Senate Bill 10 constitute cruel and unusual punishment where the classification is grossly disproportionate to the nature of the offense and character of the offender. Eighth and Fourteenth Amendments to the United States Constitution; Article 1, Section 9 of the Ohio Constitution.

This Court has held that the enhanced sex-offender reporting and notification requirements enacted by S.B. 10, are punitive in nature: “Following the enactment of S.B. 10 all doubt has been removed: R.C. Chapter 2950 is punitive.” *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16. While the *Williams* court held retroactive application of R.C. 2950’s requirements unconstitutional, this case concerns the mandatory nature of sex offender classification in violation of the Eighth Amendment’s prohibition on cruel and unusual punishment.

“The Eighth Amendment, applicable to the States through the Fourteenth Amendment, provides that ‘[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.’ The Amendment proscribes ‘all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive.’” *Kennedy v. Louisiana*, 554 U.S. 407, 419, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008) (quoting *Atkins v. Virginia*, 536 U.S. 304, 311, fn. 7, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002)). The United States Supreme Court has explained that the Eighth Amendment’s protection against excessive or cruel and unusual punishments flows from the basic “precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.” *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910). As this case does, the bulk of Eighth Amendment jurisprudence

concerns whether a punishment is disproportionate to the crime. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, ¶ 25.

In *In re C.P.*, this Court held that S.B. 10 violates the constitutional prohibition against cruel and unusual punishment by imposing an automatic, lifetime requirement of sex-offender registration and notification on certain juvenile offenders. *Id.* at syllabus. In so holding, this Court found that there was a national consensus against the policy at issue in that case. *Id.* at ¶ 35. It further found that juvenile offenders possess certain characteristics, specifically a reduced degree of culpability and increased capability for change as compared to their adult counterparts. *Id.* at ¶ 39-41. Additionally, this Court considered the nature of the offenses at issue, finding that sex offenses differed from homicide crimes in a moral sense, and therefore found the offenders to have reduced moral culpability. *Id.* at ¶ 42-43. Furthermore, this Court considered the severity of lifetime registration and notification requirements on juveniles, when they are applied at the beginning of their adult lives. *Id.* at ¶ 45. This Court noted that juvenile penological theory was inadequate to justify such severe punishment. Considering all of these points together, this Court held that automatic sex-offender classification for juveniles was cruel and unusual punishment. *Id.* at ¶ 58.

While not a juvenile, “some of the analysis of *In Re: C.P.* applies equally to young offenders such as Mr. Blankenship who do not have prior felonies and who pose no real threat to the community.” *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, ¶ 16 (Donovan, J., dissenting). For example, in *In re C.P.*, this Court considered the nature of the offense at issue and its relationship to the offender’s moral culpability when determining that the sentencing scheme constituted cruel and unusual punishment. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, ¶ 42-43.

In the present case, Mr. Blankenship pleaded guilty to one count of unlawful sexual conduct with a minor, a fourth-degree felony. He was sentenced to five years of community control, with a six-month jail sentence. His jail sentence was ultimately suspended after serving approximately ten days in jail. However, due to the mandatory nature of sex-offender classification under S.B. 10, Mr. Blankenship is branded as a Tier II sex-offender for the next 25 years. “He was punished with a scarlet letter of twenty-five years duration. This twenty-five years is part of his punishment and, in my view, is grossly disproportionate to the crime committed.” *Blankenship*, 2014-Ohio-232, at ¶ 15 (Donovan, J., dissenting). Just as the nature of the offense was illustrative of a constitutional violation in *In re C.P.*, the nature of Mr. Blankenship’s offense, that of a fourth-degree felony punished by community control, also leads to the conclusion that his mandatory classification as a Tier II sex-offender is disproportionate to his crime.

Additionally, in *In re C.P.* this Court concluded that the length of punishment was extraordinary when the notification and registration requirements attached at the start of adult life. *In re C.P.*, 2012-Ohio-1446, at ¶ 45. Similarly, Mr. Blankenship is still at the beginning of his adult life, having committed the crime at issue when he was 21 years old. As in *In re C.P.*, where this Court was concerned that a juvenile will be hampered in his education, in his relationships, and in his work life, Mr. Blankenship is so hampered by his mandatory classification as a Tier II sex-offender. “This classification carries significant restraints on Blankenship’s liberty and a social stigma that interferes with employability, travel, and housing.” *Blankenship*, 2014-Ohio-232, at ¶ 15 (Donovan, J., dissenting). “Blankenship was just shy of graduating with an associates degree from Clark State and was working 16-20 hours per week while in school at a department store. Numerous teachers, his former high school principal, and

former employer vouched for his character and future promise.” *Id.* at ¶ 17 (Donovan, J., dissenting). The psychologist, as part of the pre-sentence investigation, found that Mr. Blankenship was not a sexual offender despite having committed a sexual offense, that his risk of reoffending was not high, and that he did not need sex offender treatment. Given Mr. Blankenship’s young age, his registration requirements constitute disproportionate punishment.

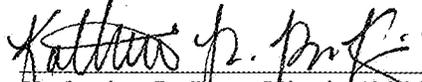
This Court can accept “that juveniles and adults are constitutionally different in Eighth Amendment analysis of sentencing due to their diminished culpability and prospects of reform,” however that “distinction should not preclude consideration of whether Blankenship’s classification is cruel, unusual, and excessive.” *Id.* at ¶ 16 (Donovan, J., dissenting). Because of Mr. Blankenship’s characteristics and the nature of his crime, mandatory sex-offender classification under S.B. 10 constitutes cruel and unusual punishment as the punishment is disproportionate to the crime. Given this constitutional violation, the trial court should have discretion to apply less onerous punishment to individuals like Mr. Blankenship who possess such characteristics.

CONCLUSION

In cases such as Mr. Blankenship’s, despite the characteristics of the offender and the nature of the offense diminishing the offender’s culpability, trial judges are bound by S.B. 10 to classify such individuals as sex-offenders, without the opportunity to apply a less onerous punishment. This mismatch makes the mandatory nature of sex-offender classification in such cases violative of the Eighth Amendment’s prohibition against cruel and unusual punishment. This Court can remedy this constitutional violation by accepting Mr. Blankenship’s case.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

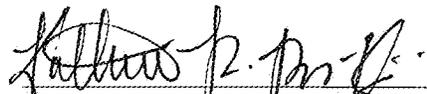

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT TRAVIS BLANKENSHIP** was forwarded by regular U.S. Mail to Lisa M. Fannin, Clark County Assistant Prosecuting Attorney, 50 East Columbia Street, 4th Floor, P.O. Box 1608, Springfield, Ohio 45501, this 10th day of March, 2014.


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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:
	: Case No.
Plaintiff-Appellee,	:
	: On Discretionary Appeal from the
v.	: Clark County Court of Appeals,
	: 2nd Appellate District,
TRAVIS BLANKENSHIP,	: Case No. 2012-CA-74
	:
Defendant-Appellant.	:

**APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION OF
DEFENDANT-APPELLANT TRAVIS BLANKENSHIP**

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

TRAVIS BLANKENSHIP

Defendant-Appellant

Appellate Case No. 2012-CA-74

Trial Court Case No. 12-CR-318

(Criminal Appeal from
Common Pleas Court)

CLARK COUNTY
COURT OF APPEALS
JAN 28 2014
FILED
RONALD E. VINCENT, CLERK

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OPINION

Rendered on the 24th day of January, 2014.

.....
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.....
HALL, J.,

{ 1 } Travis Blankenship appeals from his conviction and sentence on one count of
unlawful sexual conduct with a minor, a fourth-degree felony.

{¶ 2} The record reflects that Blankenship pled guilty to the foregoing charge, which involved sexual conduct with a fifteen-year-old girl. He was twenty-one years old at the time. As part of the pre-sentence investigation, a psychologist evaluated him and opined that he was not "a sexual offender" despite having committed a sex offense. The psychologist found that Blankenship's risk of re-offending was not high. The trial court sentenced Blankenship to community control and designated him a Tier II sex offender as required by law.

{¶ 3} In his sole assignment of error, Blankenship contends requiring him to register as a Tier II sex offender constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. In support, he stresses the psychologist's belief that he is not a sex offender and that he does not need sex-offender treatment. He also notes the existence of evidence that he has a "caring relationship" with the victim and that no aggravating facts, such as the use of drugs or alcohol, exist. Blankenship additionally stresses his relative youth and the twenty-five-year length of his registration requirement. He argues that this registration period serves no legitimate penological purpose in his case.

{¶ 4} In advancing the foregoing arguments, Blankenship urges us to extend the holding of *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729. In that case, the Ohio Supreme Court recently held that imposing automatic, lifetime sex-offender registration and notification requirements on juvenile sex offenders tried in the juvenile system violates the constitutional prohibition against cruel and unusual punishment. *Id.* at ¶58. Having examined *In re C.P.*, we conclude that its rationale does not extend to Blankenship.

{¶ 5} "Central to the Constitution's prohibition against cruel and unusual punishment is the 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Id.* at ¶25, quoting *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910). "Proportionality review falls within two general classifications: the first involves 'challenges to the length of term-of-years sentences given all the circumstances in a particular case.' The second, which until recently was applied only in capital cases, involves 'cases in which the Court implements the proportionality standard by certain categorical restrictions.'" *Id.* at ¶26, quoting *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010).

{¶ 6} The Ohio Supreme Court's decision in *In re C.P.* involved the second classification—proportionality review based on categorical restrictions. The court noted that this classification itself involved two subsets, one based on the nature of the offense and one based on the characteristics of the offender. *Id.* at ¶27. *In re C.P.* dealt with the second subset, the characteristics of the offender. *Id.* Specifically, the Ohio Supreme Court considered the offender's status as a juvenile and whether *that particular characteristic* made the imposition of automatic, lifetime sex-offender registration and notification requirements unconstitutionally disproportional. *Id.* at ¶27-58.

{¶ 7} Unlike the offender in *In re C.P.*, Blankenship was not a juvenile when he committed his sex offense. Because he does not fit within the category at issue in *In re C.P.*, the Ohio Supreme Court's Eighth Amendment analysis in that case has little, if any, applicability to him. Blankenship also fails clearly to identify any other group into which he does fit where a categorical rule might be established prohibiting Tier II sex-offender registration as cruel and unusual punishment.

{¶ 8} As noted above, proportionality review based on categorical restrictions can consider the nature of the offense (for example, a categorical prohibition of capital punishment for non-homicide crimes against individuals) or the characteristics of the offender (for example, a categorical prohibition of capital punishment for offenders who committed their crimes before age eighteen). *Id.* at ¶27-28. At best, Blankenship's appellate brief suggests a categorical prohibition of Tier II sex-offender registration for young-adult offenders who present a relatively low risk of recidivism, who have a caring relationship with their victim, and who did not use drugs or alcohol to facilitate their sex offenses.

{¶ 9} When considering Eighth Amendment challenges on the basis of cruel and unusual punishment, courts engage "in a two-step process in adopting categorical rules in regard to punishment: first, the court considers whether there is a national consensus against the sentencing practice at issue, and second, the court determines 'in the exercise of its own independent judgment whether the punishment in question violates the Constitution.'" *Id.* at ¶29, quoting *Graham*.

{¶ 10} On appeal, Blankenship concedes the lack of a national consensus against lengthy sex-offender registration for individuals such as him. This fact militates against his Eighth Amendment challenge. With regard to our own independent judgment, we also find no Eighth Amendment violation. Blankenship contends he is not a sex offender and that he is not in need of any treatment. Implicit in this argument is that there is no need for sex-offender registration. (Appellant's brief at 5). As a matter of law, however, Blankenship is a sex offender by virtue of his conviction for a sexually-oriented offense. The fact that a psychologist believes he is unlikely to re-offend does not make his registration requirement

cruel and unusual punishment. Nor are we persuaded that anything about the facts of Blankenship's case establishes an Eighth Amendment violation. He met the fifteen-year-old victim on the internet. The record contains evidence that he knew the victim's age before twice having sex with her. While the criminal case against him was pending, he violated a court order by having contact with the victim. He then lied and denied the contact. The psychologist's report estimates his risk of committing another sex offense at twelve percent over five years and nineteen percent over fifteen years, placing him in the low-to-moderate risk category.

{¶ 11} This court has recognized that "Eighth Amendment violations are rare, and instances of cruel and unusual punishment are limited to those punishments, which, under the circumstances, would be considered shocking to any reasonable person." *State v. Harding*, 2d Dist. Montgomery No. 20801, 2006-Ohio-481, ¶77. We see nothing in the foregoing facts to convince us that Blankenship's Tier II sex-offender registration requirement constitutes cruel and unusual punishment. Accordingly, his assignment of error is overruled.

{¶ 12} The trial court's judgment is affirmed.

.....

WELBAUM, J., concurs.

DONOVAN, J., dissenting:

{¶ 13} I disagree. Although ensuring public safety is a fundamental regulatory goal and should be given serious weight in the classification of sex offenders, Blankenship's designation, in my view, is illustrative of a classification that is grossly disproportionate to the nature of the offense and character of Blankenship. The 25-year designation

completely ignores the nature of the felony of the fourth degree, the characteristics of a young adult offender who has no prior felony convictions and is at low to moderate risk to re-offend.

{¶ 14} Justice is blindfolded to reflect neutrality, but this does not mean that justice should be sightless to the consequences of a Tier II Sex Offender classification on a 21-year-old for half of his adult life. As the Supreme Court stated in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16: "Following the enactment of S.B. 10, all doubt has been removed: R.C. Chapter 2950 is punitive. The statutory scheme has changed dramatically since this court described the registration process imposed on sex offenders as an inconvenience 'comparable to renewing a driver's license.' [*State v. Cook*, 83 Ohio St.3d [404,] at 418, 700 N.E. 2d 570 [1998]]."

{¶ 15} Blankenship received a thirty-day jail sentence with twenty days suspended, a total of ten days in jail. Yet he was punished with a scarlet letter of twenty-five years duration. This twenty-five years is part of his punishment and, in my view, is grossly disproportionate in severity to the crime committed. This classification carries significant restraints on Blankenship's liberty and a social stigma that interferes with employability, travel and housing.

{¶ 16} In my view, some of the analysis of *In Re: C.P.* applies equally to young adult offenders such as Blankenship who do not have prior felonies and who pose no real threat to the community. Although I accept and understand that juveniles and adults are constitutionally different in Eighth Amendment analysis of sentencing due to their diminished culpability and prospects of reform, this distinction should not preclude consideration of whether Blankenship's classification is cruel, unusual and excessive.

Blankenship is certainly an individual to whom the trial judge should have the discretion to apply less onerous punishment.

(¶ 17) Blankenship was just shy of graduating with an associates degree from Clark State and was working 16-20 hours per week while in school at a department store. Numerous teachers, his former high school principal, and former employer vouched for his character and future promise. There is a mismatch between the culpability and character of Blankenship and the severity of his punishment, a 25-year classification. Although I recognize and accept that the legislature's role is to affix punishment for certain offenses, the 25-year classification for Blankenship is a sentence which is demonstrably grossly disproportionate to the nature of the offense and character of the offender. I would find an Eighth Amendment violation and reverse.

.....

Copies mailed to:

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- Hon. Richard J. O'Neill

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

TRAVIS BLANKENSHIP

Defendant-Appellant

Appellate Case No. 2012-CA-74

Trial Court Case No. 12-CR-318

(Criminal Appeal from
Common Pleas Court)

FINAL ENTRY

CL
COURT

JAN 28

RONALD

Pursuant to the opinion of this court rendered on the 24th day
of January, 2014, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Clark County
Court of Appeals shall immediately serve notice of this judgment upon all parties and make
a note in the docket of the mailing.

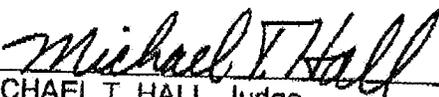
CLARK COUNTY
COURT OF APPEALS

JAN 28 2014

FILED
RONALD E. VINCENT, CLERK

MARY E. DONOVAN, Judge

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT


MICHAEL T. HALL, Judge


JEFFREY M. WELBAUM, Judge

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