

IN THE SUPREME COURT OF OHIO

In the Matter of J.N.,
Appellant

Case No.:

On Appeal From the
Franklin County Court of Appeals,
Tenth Appellate District

Court of Appeals
Case No. 15AP-159

MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT J.N.

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Proposition of Law

The Fifth and Fourteenth Amendments to the United States Constitution and Sections 1, 16, and 19 of Article I of the Ohio Constitution, guarantee due process of law defendants in juvenile delinquency proceedings. By imposing a punitive sanction that exceeds the duration of juvenile court jurisdiction, the imposition of the Tier III classification below violated Appellant’s Due Process rights.	2
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**Explanation of Why This Case Presents a Substantial
Constitutional Question and Matters of Public or Great
General Interest**

This case presents questions regarding the constitutionality of Ohio's sex offender system applicable to juveniles. This system extends sex offender registration requirements beyond the age jurisdiction of the juvenile court. The fact that the sex offender classification and registration system is punitive makes the extension of registration requirements beyond the age jurisdiction of the juvenile court unconstitutional. Under Ohio law, the only instances in which the General Assembly's treatment of children as adults is constitutionally permissible is when youth are provided the same due process protections as youth who have been given serious youthful offender blended sentences or who have been transferred to criminal court. But these protections do not exist for children such as the Appellant whose cases proceed only in juvenile court and who are classified as juvenile offender registrants.

This issue is presently pending in this Court in *In re D.S.*, Ohio Supreme Court Case No. 2014-0706.

This Court should accept jurisdiction to address these questions and to provide Ohio courts, law enforcement officers, and the public with clear guidance on these issues.

STATEMENT OF THE CASE AND FACTS

On November 25, 2013, a complaint was filed in the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch charging Appellant with a delinquency count of rape (R.C. 2907.02(A)(2)). (R.3) On July 16, 2014, the case came on for adjudicatory hearing before the Honorable Omia N. VanDyke, Magistrate. The State moved the Court to amend the charge to attempted rape, R.C. 2923.02(A) as it

relates to R.C. 2907.02(A)(2). (Tr. 7/16/14, 2) Appellant admitted to the amended charge. (Tr. 7/16/14, 5)

On September 4, 2014, the case came on for dispositional hearing before the Magistrate. After hearing from the parties, the Magistrate ordered that Defendant be placed on probation for a period of two years. The Magistrate also classified Appellant as a Tier II sex offender pursuant to R.C. 2950.01(F) and ordered that Appellant register as a Tier II offender within three days. (Tr. 9/4/14, 27-33)

Appellant requested that the Magistrate issue findings of fact and conclusions of law. (R. 76) The Magistrate filed the findings on September 30, 2014. On October 14, 2014, Appellant filed timely objections to the Magistrate's Decision. (R. 80) On October 23, 2014, the State filed an opposing memorandum. (R. 83)

On February 4, 2015, the Honorable Elizabeth Gill, Judge of the Franklin Court of Common Pleas, Division of Domestic Relations, filed a decision overruling the objection, and adopting the Magistrate's Decision. (R. 99)

On March 6, 2015, Appellant filed a notice of appeal to the Franklin County Court of Appeals. By Decision and Entry rendered October 27, 2015, the Court of Appeals affirmed the judgment of the juvenile court.

Appellant now seeks further review by this Honorable Court.

ARGUMENT

Proposition of Law

The Fifth and Fourteenth Amendments to the United States Constitution and Sections 1, 16, and 19 of Article I of the Ohio Constitution, guarantee due process of law defendants in juvenile delinquency proceedings. By imposing a punitive sanction that exceeds the duration of juvenile court jurisdiction, the imposition of the Tier III classification below violated Appellant's Due Process rights.

A juvenile court's power "is derived from Section 1, Article IV of the Constitution of Ohio, and the court is established and its jurisdiction is defined by [O.R.C.] Chapter 2151." *State ex rel. Schwartz v. Haines*, 172 Ohio St. 572, 573, 179 N.E.2d 46 (1962). Juvenile courts have exclusive jurisdiction over children who are alleged to be delinquent. R.C. 2151.23(A)(1). In delinquency proceedings, "child" means a person who is under 18 years of age, except as otherwise provided" in R.C. 2152.02(C)(2)-(6). R.C. 2152.02(C)(1); *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791, 895 N.E.2d 166 ¶¶ 4-17.

Generally, the juvenile court's jurisdiction over a child terminates when the child turns 21. Specifically, R.C. 2152.22(A) provides that, once validly entered, dispositions made under R.C. 2152 "shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age." But, a narrow exception exists for youth who are subject to Ohio's juvenile registration and notification statutes. Revised Code Section 2151.23(A)(15) authorizes juvenile courts to "make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86 and Chapter 2950 of the Revised Code regarding a * * * [delinquent] child."

In turn, R.C. 2152.82(C) extends the jurisdiction of the juvenile court beyond the age of 21 for juvenile offender registrants. Specifically, R.C. 2152.82(C) provides:

If an order is issued under division (A) of this section, the child's attainment of [18] or [21] years of age does not affect or terminate the order, and the order remains in effect for the period of time described in this division.

Further, R.C. 2152.84 and R.C. 2152.85 permit the juvenile court to review, continue, modify, or terminate the registration duties of any juvenile offender registrant indefinitely.

When read together, R.C. 2152.82(C), R.C. 2152.84 and R.C. 2152.85 expressly grant juvenile courts jurisdiction over adults, who were formerly delinquent children, where jurisdiction would not otherwise exist. This is the only delinquency disposition that may extend beyond the age jurisdiction of the juvenile court. But, given both recent and well-established precedent from this Court and the Supreme Court of the United States, this extension of jurisdiction is contrary to the purposes of juvenile delinquency dispositions.

1. R. C. 2950 is punitive.

As noted above, this Court has found that R.C. 2950 is punitive. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, at ¶ 16. The Court extended that holding to juvenile cases as well. *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291, ¶ 1; *In re Cases Held for the Decision in In re D.J.S.*, 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E. 2d 288, ¶ 1; and *In re C.P.* 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶11.

2. The juvenile justice system's purpose is rooted in rehabilitation.

Juvenile courts "occupy a unique place in our legal system." *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 65. Traditionally, the juvenile court has functioned "to provide measures of guidance and rehabilitation for the child and protection for society, not to affix criminal responsibility, guilt[,] and punishment."

Kent v. United States, 383 U.S. 541, 554, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). Thus, the philosophy driving juvenile justice has been rooted in social welfare, rather than in the body of the law. *Id.*

The objective of the juvenile court from its inception, has been to protect wayward children from evil influences, save them from criminal prosecution, and to provide them social and rehabilitative services. *Children's Home of Marion City v. Fetter*, 90 Ohio St. 110, 127, 106 N.E. 761 (1914). This means that juvenile courts are to remain centrally concerned with the care, protection, development, treatment, and rehabilitation of youthful offenders who remain in the juvenile justice system. *In re Caldwell*, 76 Ohio St.3d 156,157, 1996-Ohio-410, 666 N.E.2d 1367; R.C. 2152.01.

This Court has recognized that "punishment is not the goal of the juvenile system, except as necessary to direct the child toward the goal of rehabilitation." *Caldwell* at 157. Thus, this Court directed that inquiries into the appropriateness of a disposition must begin with that premise and implement efforts to protect society during the period of rehabilitation. *Id.* "Therefore, if registration under Senate Bill 10, although punitive, is necessary to protect society while the child is being rehabilitated and hold that child accountable, then like other delinquency dispositions, it can only be in effect through the child's period of rehabilitation, which is until the age of 21. R.C. 2152.22(A). Once the child turns 21, the period of rehabilitation is over and all delinquency dispositions must cease.

3. Imposition of a sexual offender registration sanction that exceeds the duration of juvenile court jurisdiction is unconstitutional.

In *In re C.P.*, this Court affirmed the punitive nature of the statute. C.P. was a juvenile sentenced to mandatory lifetime registration under S.B. 10, including in-person

registration with the sheriff in the country of residence every 90 days, in-person registration in the counties where the juvenile was attending school working, re-registration upon changes to personal information, placement on a public registry, and felony prosecution for failing to register Id. at 733-34. This Court found that these requirements for juveniles were not only punitive, but constituted cruel and unusual punishment under the Eighth Amendment. This Court also concluded that automatic, lifetime registration for juveniles actually "do[es] violence to the rehabilitative goals of the juvenile court process" by making reintegration into society more difficult. Id. at 744.

It follows, then, that punishments that extend beyond the age jurisdiction of the juvenile court are unconstitutional. The Court also noted that, once C.P. had fulfilled his juvenile commitment, his incarceration would be complete but his punishment would continue. Appellant in this case faces a similar prospect.

While the juvenile court system does not provide alleged delinquents with the full panoply of constitutional protections guaranteed adult defendants, "[n]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault*, 387 U.S. 1, 13, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Young offenders who fall within the jurisdiction of juvenile court are vested with some due process protections provided by the Fifth and Fourteenth Amendments to the United States Constitution and Sections 1, 16, and 19 of Article I of the Ohio Constitution. Although juveniles may receive different due process, their treatment must meet the applicable standard of "fundamental fairness." *In re C.P.*, ¶ 71. Further, this Court has also determined "that fundamental fairness is not a one-way street that allows only for an easing of due process requirements for juveniles; instead, fundamental fairness may require * * * additional procedural

safeguards for juveniles in order to meet of the juvenile system's goals of rehabilitation and reintegration into society." *In re C.P.*, ¶ 85.

Classification of a child as a Tier I, II, or III juvenile offender (whether that classification is mandatory or discretionary) is only warranted as long as the child is under the rehabilitative care of the Juvenile Court. The imposition of this punitive sanction that extends beyond the age jurisdiction of the juvenile court violates the Due Process Clauses of the U.S. and Ohio Constitutions.

Appellant notes that issues regarding the constitutionality of the juvenile court sex offender registration system are now before the Court in two other cases. On March 25, 2015, the Court held oral argument in *In re D.S.*, Ohio Supreme Court Case No. 14-0607. The Court has also accepted jurisdiction in *In re C.R.*, Ohio Supreme Court 14-0943, and *In re D.M.D.*, 2015-0738 and has stayed briefing in those cases pending the decision in *In re D.S.*

This case, too, presents, substantial constitutional questions and matters of public and great general interest. The Court should likewise accept jurisdiction in this case.

CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Court to accept jurisdiction and reverse the judgment of the Franklin County Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Memorandum in Support of Jurisdiction was served upon the following by electronic mail this 11th day of December 2015:

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APPENDIX

Appendix Page No.

Court of Appeals Judgment Entry, October 27, 2015.....A-1
Court of Appeals Opinion, October 27, 2015A-3

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: : Case No. 15AP-159
J.N., : (C.P.C. No. 13JU-16036)
Appellant. : (REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on October 27, 2015, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed. Costs assessed against appellant.

KLATT, DORRIAN, and BRUNNER, JJ.

/S/JUDGE
By: Judge William A. Klatt

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 Oct 27 3:15 PM-15AP000159

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A-1

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Tenth District Court of Appeals

Date: 10-27-2015
Case Title: IN THE MATTER OF: JARRON NELOMS
Case Number: 15AP000159
Type: JEJ - JUDGMENT ENTRY

So Ordered


The signature is written in cursive and includes a circular seal of the Tenth District Court of Appeals of the State of Ohio. The seal features a sunburst design and the text "TENTH DISTRICT COURT OF APPEALS" and "of the State of Ohio".

/s/ Judge William A. Klatt

Electronically signed on 2015-Oct-27 page 2 of 2

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: : Case No. 15AP-159
J.N., : (C.P.C. No. 13JU-16036)
Appellant. : (REGULAR CALENDAR)

D E C I S I O N

Rendered on October 27, 2015

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*,
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Yeura R. Venters, Public Defender, and *David L. Strait*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

KLATT, J.

{¶ 1} Defendant-appellant, J.N., appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which, in part, classified him as a Tier II sex offender. For the following reasons, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} On November 25, 2013, a complaint was filed in the trial court alleging that J.N. was a delinquent minor¹ for committing an act of rape in violation of R.C. 2907.02(A)(2). J.N. originally denied the allegation but ultimately admitted to one count of attempted rape. A magistrate of the trial court accepted that admission and found J.N. to be a delinquent minor. As a result, on September 8, 2014, the magistrate placed J.N. on two years of probation and classified him as a Tier II sex offender pursuant to R.C.

¹ J.N. was born in 1996. He was 17 at the time of the complaint, but 16 when the alleged offense occurred.

2950.01(F). J.N. objected to that classification, arguing that the sexual offender scheme is unconstitutional as applied to juveniles because it requires the juvenile court to retain jurisdiction over the juvenile even after he or she reached the age of 21. The trial court rejected the argument and affirmed the magistrate's disposition.

II. The Appeal

{¶ 3} J.N. appeals and assigns the following error:

The Juvenile Court erred and deprived appellant of Due Process rights arising under the United States and Ohio Constitutions by imposing a punitive sanction that extends beyond the age jurisdiction of the Court.

{¶ 4} J.N. argues in this assignment of error that the trial court could not classify him as a Tier II sex offender because the requirements of that classification would exceed the duration of the juvenile court jurisdiction over him. This court has recently considered and rejected the very same argument in *In re D.M.D., Jr.*, 10th Dist. No. 14AP-289, 2015-Ohio-1134.² See also *In re M.C.*, 10th Dist. No. 12AP-618, 2013-Ohio-2109. Accordingly, in light of this court's previous resolution of this argument, we overrule J.N.'s assignment of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

DORRIAN and BRUNNER, JJ., concur.

² We note that a jurisdictional memorandum in *In re D.M.D., Jr.*, is currently pending before the Supreme Court of Ohio, Case No. 2015-0738.

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