

IN THE SUPREME COURT OF OHIO

In re : Case No. 15-1977
J.N., :
appellant. : On Appeal from the
: Franklin County Court
: of Appeals, Tenth
: Appellate District
:
: Court of Appeals
: Case No. 15AP-159

**MEMORANDUM OF APPELLEE, THE STATE OF OHIO,
IN OPPOSITION OF JURISDICTION**

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EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE A
SUBSTANTIAL CONSTITUTIONAL QUESTION NOR IS IT OF PUBLIC OR
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Juvenile courts are created by statute with jurisdictional limits as determined by the General Assembly. Ohio Constitution, Article IV, Section 4(B). It is, therefore, within the authority of the General Assembly to expand the jurisdictional boundary of juvenile courts regarding juvenile sex offenders and attendant registration requirements. R.C. 2151.23(A)(15) and R.C. 2152.83(E) codify such an expansion, broadening the juvenile court's jurisdiction regarding juvenile sex offenders' registration requirements beyond the offenders' twenty-first birthdays. Giving juvenile courts the ability to periodically assess an offender's rehabilitation and make determinations whether existing registration requirements should be modified promotes the unique role that the juvenile judge plays in a juvenile's rehabilitative journey. See, *State v. D.H.*, 120 Ohio St. 3d 540, ¶59, 2009-Ohio-9, *In re C.P.*, 131 Ohio St. 3d 513, 535-536, 2012-Ohio-1446.

Because the General Assembly, in an appropriate exercise of its authority as set forth in the Ohio Constitution, has determined that juvenile sex offender registration requirements will survive beyond an offender's age of majority, this case presents nothing of such constitutional substance or of such public or great general interest as to warrant further review by this Court.

STATEMENT OF THE CASE AND THE FACTS

Appellee, the State of Ohio, accepts Appellant's Statement of the Case and Facts.

PROPOSITION OF LAW

JUVENILE COURTS ARE STATUTORY CREATIONS WITH JURISDICTION AS DETERMINED BY THE GENERAL ASSEMBLY. THE SPECIFIC PROVISIONS OF R.C. 2151.23(A)(15) AND R.C. 2152.83(E) EXPAND THE JUVENILE COURT'S JURISDICTION REGARDING JUVENILE SEX OFFENDERS BEYOND THE OFFENDER'S TWENTY-FIRST BIRTHDAY.

The general subject matter jurisdiction of Ohio's courts of common pleas is defined entirely by statute. Ohio Constitution, Article IV, Section 4(B). See also, *State v. Wilson*, 73 Ohio St. 3d 40, 1995 Ohio 217. Juvenile courts, therefore, are "creatures of statute with limited jurisdiction set by the General Assembly." *In re D.R.*, Fifth Dist. No. 13 CA 27, 2014-Ohio-588, citing *In re Agler*, 19 Ohio St. 2d 70, 72-74, 2012-Ohio-4961 and *In re J.V.*, 134 Ohio St. 3d 1, 2012-Ohio-4961 (McGee Brown, J., concurring).

R.C. 2151.23, the statute defining the parameters of the court's jurisdiction, provides for sex offender registration hearings:

(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

* * * (15) To conduct the hearings, and to make the determinations, adjudications, and orders authorized or required under sections 2152.82 to 2152.86 and Chapter 2950. of the Revised Code * * * .

R.C.2152.83 provides, with regard to classification hearings, that:

(E) Any order issued under division (A) or (B) of this section and any determination included in the order shall remain in effect for the period of time specified in section 2950.07 of the Revised Code, subject to a modification or termination [as otherwise specified]. The child's attainment of eighteen or twenty-one 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.

R.C. 2151.23(15) and R.C. 2152.83(E), therefore, specifically exempt juvenile classification hearings from the general rule that limits the jurisdiction of the juvenile court beyond the juvenile's twenty-first birthday. See, *In re M.W.*, Sixth Dist. No. WD-13-089, 2014-

Ohio-3758; *In re J.O.*, Second Dist. No. 25903, 2014-Ohio-2813; *In re M.R.*, Seventh Dist. No. 13 JE 30, 2014-Ohio-2623; *In re C.R.*, Fourth Dist. No. 13CA3411, 2014-Ohio-1936; *In re D.R.*, *supra*; *In re N.Z.*, Eighth Dist. No. 2012-L-100, 2014-Ohio-157.

An enactment of the General Assembly is presumed constitutional absent proof beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible. *State v. Cook*, 83 Ohio St.3d 404, 409, 1998-Ohio-291 quoting *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955), syllabus paragraph one. “A regularly enacted statute of Ohio is presumed to be constitutional and is therefore entitled to the benefit of every presumption in favor of its constitutionality.” *Id.*, at 147.

Appellant cites *In re C.P.*, 131 Ohio St. 3d 513, 2012-Ohio-1446, in support of his claim that any registration requirement imposed pursuant to R.C. 2152.83 is unconstitutional; *C.P.*, however, is specifically limited to "automatic, lifelong registration and notification requirements" pursuant to R.C. 2152.86, not tier classifications for specified periods of time made within the discretion of the juvenile court pursuant to R.C. 2152.83. Finding the R.C.2152.86 lifelong requirements unconstitutional, this Court distinguished the two sections, noting the less stringent requirements of R.C. 2152.83 and the potential, when classified pursuant to that section, for reclassification or declassification. *Id.*, **P20-24. *In re M. C.*, *supra*. See also, *In re B.D.*, 11th Dist. No. 2011-P-0078, 2012-Ohio-4463 and *In re A.H.*, *supra*, **P11-13.

Unlike juvenile offenders addressed in *C.P.*, juvenile offenders subject to registration pursuant to R.C.2152.83 have numerous opportunities to demonstrate their rehabilitation to the court and have the sexual offender label reduced or removed. See, R.C. 2152.83, 2152.84, and 2152.85. The juvenile sex offender classification and registration statutes, therefore, incorporate and advance the unique role of juvenile courts with the ultimate goal of rehabilitation of the

juvenile offender. See, *State v. D. H.*, 120 Ohio St. 3d 540, 2009-Ohio-9.

State v. Williams, 129 Ohio St. 3d 344, 2011 Ohio 3374, cited by appellant, is, likewise, irrelevant to this discussion. *Williams* held that Senate Bill 10 had a punitive effect when applied retroactively to adult offenders who committed their crimes before the new law went into effect. As observed by the court in *In re N.Z.*, *supra*, *P39, “*Williams* * * * has no relevance with regard to whether a juvenile court may impose a classification that requires a juvenile defendant to continue sex offender registration after the age of 21.”

A review of *Williams* supports this conclusion. *Williams*, noting the statutorily mandated lengthy, possibly life-long, reporting requirements, imposed without a consideration of the offender’s future dangerousness, found S.B.10 as applied to adult offenders to be punitive. The juvenile registration requirements are significantly different. As was recognized in *C.P.*, juvenile registration requirements pursuant to R. C. 2152.83 are made within the discretion of the juvenile court, after a consideration of the circumstances present in each unique case. In addition juvenile defendants subject to registration pursuant to R.C.2152.83 have numerous opportunities to demonstrate their rehabilitation to the court and have the sexual offender label modified or vacated. See, R.C. 2152.83, 2152.84, and 2152.85.

In re D.J.S., 130 Ohio St. 3d 257, 2011-Ohio-5342, involved a juvenile defendant but, likewise, is not on point. *D.J.S.* committed his offense prior to the enactment of Senate Bill 10; his case, therefore, was reversed and remanded for the specific application of *Williams* which held that the applying the new law to defendants who committed sex offenses prior to its enactment is an unconstitutional application of retroactive laws. See, *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St. 3d 421, 424, 2012-Ohio-5697. Neither *Williams*, *C.P.*, nor *D.J.S.* address the specific claim raised, that any registration requirement imposed on a juvenile

defendant denies due process of law if the registration requirement extends beyond the offender's twenty-first birthday.

It is the duty of the General Assembly to determine the parameters of Ohio's juvenile courts' jurisdiction. Ohio Constitution, Article IV, Section 4(B). The General Assembly, in furtherance of its stated purpose to protect the public, specifically addressed this issue and directed that juvenile sex offender classifications as provided in R.C.2152.82 through 2152.86 survive the offender's twenty-first birthday, the typical limit to the juvenile court's jurisdiction. R.C. 2151.23(15) and R.C. 2152.83(E). As was previously determined by this Court, there is "no per se prohibition against Ohio juvenile courts imposing a registration requirement that extends beyond a person's attainment of age 21." *In re N.Z.*, *supra*, *P44, citing *State ex rel. N.A. v. Cross*, 125 Ohio St. 3d 6, 9, 2010 Ohio 1471.

Appellant has not established that the juvenile sex offender classification and registration statutes are punitive in effect or serve to deny his right to due process of law. The proposition of law merits no further review.

CONCLUSION

Based on the foregoing, the within appeal does not present a question of such constitutional substance or of such public or great general interest as would warrant further review by this Court. It is respectfully submitted that jurisdiction should be declined.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum was duly served upon **DAVID L. STRAIT**, attorney for appellant J.N., Office of the Franklin County Public Defender, 373 South High Street, 12th Floor, Columbus, Ohio, 43215, by hand-delivery on this 28th day of December, 2015.

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