

No. 1-14-1255

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 11 CR 17332
)	
JUAN RODRIGUEZ,)	Honorable
)	Garritt E. Howard,
Defendant-Appellee.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Hyman concurred in the judgment in the judgment.

ORDER

¶ 1 *Held:* An individual unfit to stand trial and unlikely to be restored to fitness must register under the Sex Offender Registration Act, 730 ILCS 150/1 *et seq.* (West 2012), after a finding of *not* not guilty of a sexual offense.

¶ 2 The State appeals the trial court's ruling that defendant Juan Rodriguez, an individual found *not* not guilty of a sexual offense, was not required to register as a sex offender under the Sex Offender Registration Act (SORA), 730 ILCS 150/1 *et seq.* (West 2012), because he was not and will not be capable of understanding the registration requirements. On appeal, the State claims SORA does not provide an exception to the registration requirements for individuals

charged with a sex offense who are found unfit to stand trial and unlikely to be restored to fitness. Finding merit in the State's claim, we reverse and remand with directions.

¶ 3

BACKGROUND

¶ 4

On August 28, 2011, 33 year-old Rodriguez was arrested based on allegations of sexual assault to 14-year old K.J. On October 21, 2011, Rodriguez was charged by indictment with one count of aggravated criminal sexual abuse and one count of criminal sexual abuse of K.J.

¶ 5

Following Rodriguez's arrest, Dr. Fidel Echevarria, a medical doctor and psychiatrist, evaluated him on September 22, 2011 to assess his sanity and fitness to stand trial. In a written report also dated September 22, Dr. Echevarria opined that Rodriguez was unfit to stand trial. Dr. Echevarria noted that Rodriguez suffered from significant cognitive impairments causing him to be uncertain of the charge against him and lacked an understanding of the nature and purpose of the court proceedings or the roles of various courtroom personnel. Dr. Echevarria also opined that Rodriguez, even with intensive remedial services, would unlikely attain fitness to stand trial within the statutory period of one year. The State requested a second opinion, which the trial court granted.

¶ 6

On December 6, 2011, Rodriguez met with Dr. Susan Messina, a licensed clinical psychologist in forensic clinical services, but she was unable to issue an opinion regarding his sanity and fitness to stand trial because he did not cooperate with the evaluation. Dr. Christofer Cooper, a board certified forensic psychologist and a licensed clinical psychologist, provided the second opinion and evaluated Rodriguez on February 10, 2012.

¶ 7

In a written reported dated February 14, 2012, Dr. Cooper opined that Rodriguez was currently unfit to stand trial because he manifested significant cognitive deficits. Dr. Cooper also noted that Rodriguez was aware of the allegations pending against him, but lacked a sufficient understanding of the nature and purpose of legal proceedings, which would compromise his

ability to rationally assist counsel in his defense and to testify. Dr. Cooper also opined that the least restrictive, most therapeutically appropriate treatment setting for Rodriguez would be in an outpatient Spanish-language fitness restoration program. Dr. Cooper further opined that with structured and consistent education, a reasonable probability existed that Rodriguez could attain fitness within the one year statutory time frame.

¶ 8 On April 11, 2012, the trial court held a fitness hearing during which Dr. Cooper was the only testifying witness. Dr. Cooper testified consistent with his written report and indicated he differed with Dr. Echevarria's opinion that Rodriguez could not be restored to fitness within a year due to his significant cognitive impairment. Dr. Cooper elaborated that with fitness education instructing Rodriguez about basic legal proceedings, his clinical opinion was that within the one year statutory time frame, Rodriguez could be restored to fitness. After Dr. Cooper's testimony, the trial court stated it had considered Dr. Cooper's and Dr. Echevarria's reports, and was placing more weight on Dr. Echevarria's report because he was a medical doctor, a psychiatrist, and indicated that Rodriguez, who had no prior diagnosis, suffered from significant cognitive impairment causing uncertainty about the charge against him. The trial court disagreed with Dr. Cooper's opinion that intensive remedial services would provide Rodriguez with the ability to understand the criminal procedures and the role of the participants in the legal proceedings sufficient to retain fitness. The trial court interpreted Dr. Cooper's opinion as meaning "you have to train him to answer the questions correctly and then he'll be found fit." The trial court found that Rodriguez suffered from moderate mental retardation and was unfit and unlikely to attain fitness. Based on its ruling, the trial court continued the matter for a discharge hearing.

¶ 9 On August 22, 2012, Dr. Cooper evaluated Rodriguez a second time, this time to assess his sanity at the time of the alleged offense and ability to understand his *Miranda* rights at the

time of his arrest. Dr. Cooper opined Rodriguez was "legally insane" at the time of the alleged offense. Dr. Cooper stated that Rodriguez, at or about the time of the offense, was suffering from a mental defect (likely mild mental retardation), which would have caused him to lack substantial capacity to appreciate the criminality of his conduct. Dr. Cooper also opined that due to Rodriguez's cognitive and verbal limitations, specifically his expressive and receptive language deficits, he was unable to understand his *Miranda* rights at the time of his arrest.

¶ 10 The State requested a second opinion, which the trial court granted. Dr. Messina met with Rodriguez again on December 5, 2012. Following her evaluation and in a written report dated January 11, 2013, Dr. Messina opined that Rodriguez was "legally sane" at the time of the alleged offense because, despite an indication of cognitive disability, his intellectual limitations would not have prevented him from appreciating the wrongfulness of his behavior. Dr. Messina could not assess Rodriguez's ability to understand his *Miranda* rights because he failed to cooperate during that portion of the evaluation.

¶ 11 The trial court held a discharge hearing on March 20, 2013. K.J. testified that on August 28, 2011, after she left a tennis court area with her friend and started walking home, she decided to stop at the Rodriguez house, where her two friends lived, because she needed to use the bathroom. Rodriguez answered K.J.'s knock on the patio door and allowed her to use the bathroom. Both K.J. and her friend entered the apartment and according to K.J., the television was on and the blinds were open making the inside of the apartment was very bright from the sunlight. Apart from Rodriguez, no other adults were inside the apartment. Prior to that day, K.J. had been at the Rodriguez house almost every other day, but she would rarely see Rodriguez and had never been alone in the house with him before.

¶ 12 K.J. stayed in the bathroom for approximately five minutes and after she left the bathroom, she noticed the apartment's blinds were now halfway closed, the television had been

turned off and her friend was no longer inside the apartment. Rodriguez approached K.J. from behind, pulled her into the bedroom, pushed her onto the bed, held her wrists on the bed, touched her chest area and tried to unhook her bra. K.J. pushed Rodriguez off of her and she tried to run out of the apartment, but she hurt her foot when she hit it on the wall. K.J. again started to run toward the door, but Rodriguez approached K.J. from behind a second time, grabbed her arms and pushed her onto the couch. Rodriguez then pulled condoms out of his pocket, attempted to unbutton K.J.'s pants and tried to kiss her three times, but she pushed him away and ran outside. K.J. ran home and told her father what happened. K.J.'s father went to the Rodriguez house and asked Rodriguez if he touched his daughter; Rodriguez responded no, but repeated "I'm sorry, I'm sorry." K.J.'s father pulled Rodriguez out of the house, put him on the ground and held him until the police arrived.

¶ 13 The parties stipulated that if called to testify, police officer Domenech, who is fluent in Spanish and English, would testify that he was the translator for an interview between Rodriguez and two detectives. According to officer Domenech, he provided Rodriguez with a *Miranda* waiver written in Spanish and Rodriguez indicated that he understood the *Miranda* waiver and initialed each right. Officer Domenech would also testify that Rodriguez said after he let J.K. inside the apartment, she went into his niece's bedroom and started looking through her fingernail polish. Rodriguez told J.K. to leave because his niece would get mad, but J.K. became mad. To calm J.K. down, Rodriguez just touched her shoulder to have her sit down on the couch.

¶ 14 Officer Domenech would further testify that following additional questioning, Rodriguez stated he allowed J.K. to enter the apartment and waited for her to leave the bathroom. Rodriguez then pushed J.K. onto his niece's bed, J.K. pushed him away and she went into the living room where he pushed her onto the couch and stood in front of her so she could not get up. When J.K. stood up, Rodriguez pushed her back down onto the couch, tried to kiss her, reached into his

pocket pulling out a condom and said "it's okay, I got protection." J.K. pushed him away and she ran out of the apartment. J.K.'s father came to the apartment and after Rodriguez responded to his knock on the door, J.K.'s father grabbed him, struck him and he fell to the ground where J.K.'s father held him until the police arrived.

¶ 15 Dr. Cooper testified on Rodriguez's behalf and testified consistently with his written report. Dr. Messina testified on behalf of the State and she, too, testified consistently with her written report, but elaborated she found Rodriguez's denial that he did anything to be significant because it indicated he did not want to be considered responsible for having done something wrong and get in trouble for it.

¶ 16 On May 29, 2013 after arguments, the trial judge stated he was not impressed with either Dr. Cooper's or Dr. Messina's testimony, but found Dr. Messina's testimony that Rodriguez was sane at the time of the offense more credible. The trial judge also stated that Rodriguez had mental impairments, but they did not rise to the level of legal insanity and he was sane at the time of the commission of the offense. The trial court found Rodriguez *not* not guilty of aggravated criminal sexual assault and ordered the Illinois Department of Human Services (IDHS) to conduct an evaluation on an outpatient basis as to whether he was subject to involuntary admission or in need of mental health services on an inpatient or outpatient basis.

¶ 17 In a letter dated June 17, 2013, Dr. Ray Kim, Forensic Outpatient Director at the IDHS, opined that Rodriguez was "unlikely to attain fitness to stand trial" in the future due to significant cognitive deficits that significantly impair his ability to understand the court process and adequately assist in his defense. Dr. Kim also opined Rodriguez would not benefit from fitness restoration services and he was not subject to involuntary admission or in need of inpatient or outpatient mental health services. The State requested a second opinion as to whether Rodriguez was in need of inpatient or outpatient mental health services especially because he would be

required to register as a sex offender for life. The trial court appointed Dr. Messina to provide the second opinion. Dr. Messina met with Rodriguez on August 14, 2013, but because Rodriguez refused to cooperate, she could not assess whether he was in need of mental health services.

¶ 18 The State moved to compel Rodriguez to register under SORA. Defense counsel argued Rodriguez should not be ordered to register because he was incapable of following the registration requirements and the trial court would be entering an order requiring him to do something that was impossible. The State argued that a finding of *not* not guilty was specifically listed in SORA classifying Rodriguez as a sex offender required to register for 10 years. The trial court found that Rodriguez was not now or ever going to be capable of understanding or complying with the SORA registration requirements and it made no sense to order him to comply. The trial court denied the State's motion to reconsider. The State timely appealed.

¶ 19 On November 21, 2014, this court entered an order finding that Rodriguez had failed to file a brief within the prescribed time and this case would be taken for consideration on the record and the State's brief only. Because the record is simple and the State's claimed error can be decided without the aid of Rodriguez's brief, we will decide this appeal on the State's brief only. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 20 ANALYSIS

¶ 21 On appeal, the State claims the trial court erred in finding Rodriguez was not required to register as a sex offender because he is incapable of understanding and adhering to the registration requirements. The State maintains that the trial court finding Rodriguez *not* not guilty of a sexual offense requires registration under the plain meaning of section 2(A)(1)(d). The State also maintains that fitness is not required for registration purposes under SORA. (Vol. 2, p. 259). We agree.

¶ 22 SORA's purpose is to protect the public from sex offenders. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 203 (2009), *People v. Logan*, 302 Ill. App. 3d 319, 331 (1998). SORA defines a "sex offender" as any person who is charged pursuant to Illinois law with a sex offense and who "is the subject of a finding not resulting in an acquittal" following a discharge hearing. 730 ILCS 150/2(A)(d) (West 2012); *In re S.B.*, 2012 IL 112204, ¶ 12. To comply with the SORA registration requirements, a sex offender or sexual predator must: (1) register within the required time frame; (2) register in person; and (3) provide accurate information as required by the Department of State Police, which includes, but is not limited to: (i) current address; (ii) current place of employment; (iii) telephone number; and (iv) all e-mail addresses. 730 ILCS 150/3 (a) (West 2012). Individuals other than a sexually violent person or sexual predator are required to register for a period of 10 years. 730 ILCS 150/7 (West 2012). SORA's registration process is considered "a *de minimis* administrative requirement." *Logan*, 302 Ill. App. 3d at 329. We review the construction and application of a statute *de novo*. *Blum v. Koster*, 235 Ill. 2d 21, 44 (2009).

¶ 23 Our supreme court's decision in *People v. Cardona*, 2013 IL 114076, is directly on point and dispositive. The trial court found the defendant in *Cardona* not guilty of committing a sexual offense. *Id.* ¶ 9. A mental evaluation of the defendant after the discharge hearing revealed that defendant remained unfit to stand trial and was unlikely to be restored to fitness. *Id.* ¶10. The State moved to certify the defendant as a sex offender, which the trial court granted and ordered the defendant to register as a sex offender. *Id.* ¶10. The defendant objected because, as legally unfit, subjecting him to proceedings resulting in sex offender certification was and will always be fundamentally unfair, regardless of the procedural protections provided to him, which violated his procedural due process rights. *Id.* ¶¶ 18, 21.

¶ 24 Relying on its prior decision in *People v. Waid*, 221 Ill. 2d 464, 480 (2006), the *Cardona* court reiterated that a discharge hearing is civil, and not criminal in nature and an individual facing sex offender registration is not entitled to the same degree of procedural safeguards afforded a defendant in a criminal prosecution. *Id.* ¶¶ 23, 24. The *Cardona* court held the "sex offender" classification was entirely a creature of statute, and an individual acquires that label when subject to a finding not resulting in acquittal at a discharge hearing. *Id.* ¶ 25. The court expressly stated that "being found *not* not guilty of a triggering offense is the *very definition of* 'sex offender.'" (Emphasis in original.) *Id.* The *Cardona* court affirmed the lower courts' rulings ordering the defendant to register under SORA. *Id.* ¶¶ 25, 26.

¶ 25 Because *Cardona* is not only factually similar, but controlling law, we apply its holding and reasoning to conclude that Rodriguez must register under SORA. *Cardona* clearly articulates that an individual found *not* not guilty of a sex offense, even on the basis of being found unfit, falls within the purview of SORA, and the State may enforce that statute as written. *Id.* ¶ 25. The statutory definition of "sex offender" applied in *Cardona* is identical to the definition applicable here. *Cardona*, 2013 IL 114076, ¶ 20; 730 ILCS 150/2(A)(1)(d) (West 2012). Reading the plain language of section 2(A)(1) of SORA, an individual may be labeled a sex offender by being: (1) charged with an applicable sex offense and (2) the subject of a finding not resulting in an acquittal at a discharge hearing. 730 ILCS 150/2(A)(1)(d) (West 2012). Rodriguez was charged with aggravated criminal sexual abuse, which is a triggering sex offense, and was the subject of a finding not resulting in an acquittal at a discharge hearing. 730 ILCS 150/2(A)(1)(d), (B)(1) (West 2012). Consequently, Rodriguez was a "sex offender" as defined by SORA and applying the holding in *Cardona*, must comply with SORA's registration requirements.

¶ 26 Moreover, the trial court's finding that Rodriguez is not capable of understanding the registration requirements and complying with those requirements now or in the future is at odds

with the evidence in the record. The evidence adduced during the discharge hearing demonstrates that Rodriguez has some level of cognitive functioning as was evident when he partially closed the apartment's blinds, presumptively to conceal his actions, made sexual advances to J.K. when no other adult was home, repeatedly pushed and restrained J.K. and had a condom in his pocket that he showed to K.J. and stated "it's okay, I got protection." Further, Rodriguez' initial statement to Officer Domenech indicating, in an effort to deflect responsibility, that he only touched K.J. on her shoulder is indicative of his ability to appreciate that his actions were wrong. The evidence also reveals that Rodriguez had worked in a shop where his responsibilities included sweeping, putting on gloves, and gathering scrap metal and brake lining and putting them in a truck. Rodriguez was also responsible for his own personal hygiene, had the ability to clean, do laundry, pay bills, and received a high school degree from a school that specializes in teaching individuals with cognitive deficits. Nothing in the record at this juncture reveals that it would be impossible for Rodriguez to perform "the relatively simple act of complying" with requirements described as "a *de minimis* administrative requirement." *People v. Adams*, 144 Ill. 2d 381, 388; *Logan*, 302 Ill. App. 3d at 329. Accordingly, we conclude that the trial court must advise Rodriguez of his obligation to register under SORA. See *Konetski*, 233 Ill. 2d at 194, 211 (trial judge has a nondiscretionary duty to advise a minor classified as a sex offender to register under SORA and registration is a mandatory obligation.)

¶ 27

CONCLUSION

¶ 28

For the reasons stated, the trial court's finding that Rodriguez is not required under SORA to register as a sex offender is reversed and this matter is remanded to the circuit court of Cook County with directions that Rodriguez be required to register as a sex offender.

¶ 29

Reversed and remanded with directions.