2016 IL App (1st) 160382-U

SIXTH DIVISION
September 2, 2016

Nos. 1-16-0382, 1-16-1037 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Daniel M., a Minor,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellant	)	
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14 JD 2429
	)	
Daniel M.,	)	Honorable
	)	Terrence V. Sharkey,
Respondent-Appellant).	)	Judge Presiding

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** Certain provisions of Sex Offender Registration Act and the Sex Offender Community Notification Law that are applicable to juveniles do not violate the federal or state constitutions. Affirmed.

¶ 2 Following a hearing, the trial court adjudicated minor-respondent, Daniel M., to be a ward of the court for having committed the offense of criminal sexual assault (720 ILCS 5/11-

1.20(a) (West 2014)). The trial court then placed respondent on five years' probation and ordered him to register under the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2016)). On appeal, respondent contends that certain provisions of SORA and the Sex Offender Community Notification Law (Notification Law) (730 ILCS 152/101 *et seq.* (West 2016)) that are applicable to juveniles violate both the federal and state constitutions. We affirm.

¶ 3 BACKGROUND

¶ 4 Resolving this appeal does not hinge on the evidence presented before the trial court, so we will only briefly summarize it. In an amended petition for adjudication of delinquency, the State alleged that the 12-year-old minor-respondent, Daniel M., committed one count each of criminal sexual assault and criminal sexual abuse, and two counts of misdemeanor battery.[1] The counts centered on the State's allegation that respondent digitally penetrated the vagina of his cousin, G.M., a minor.

¶ 5 At trial, G.M. testified that she was born in May 2005, and respondent was her cousin. On the morning of May 25, 2014, G.M. was at her father's residence watching television in his bedroom while he was working on a car outside and her aunt was taking a shower. Respondent arrived, and G.M.'s grandfather let him in and then went outside to help her father with the car. After her grandfather left, G.M. saw respondent start to run to the bedroom where she was watching television, so she "locked" the door by using the hook that was attached to it. Respondent, however, used either a spoon or a fork to slide the hook off and unlock the door. G.M. said that respondent then entered the bedroom and locked the door behind him.

[1] Although respondent states in his brief that he was charged only with criminal sexual assault, the record reveals that the State filed an amended petition that included four separate allegations.

¶ 6 Alone with G.M. in the locked bedroom, respondent then pulled up G.M.'s dress, pulled down her underwear, and put his fingers inside her "private"—the "back and then the front end." G.M. said she kept pushing him back, but he persisted until she heard her aunt turn off the water. Respondent then left the bedroom and went to the living room. G.M. pulled up her underwear, and her aunt came out of the bathroom. G.M. said she ran toward her because she did not want to be near respondent, and respondent left. G.M. said she had locked the door because, on more than one occasion when she was six or seven years old, respondent had put his private in her mouth until "cream" came out of it. In addition, G.M. recounted that respondent put his private in her "butt" about six weeks prior. G.M. explained that she did not tell her aunt about the incident because respondent told her that, if she told anyone, she would get in trouble, *i.e.*, her parents would hit her.

¶ 7 G.M. returned to her mother's house and spent the night there. When she took a shower the next morning, she felt stinging in her "private" and noticed a cut. She asked her mother for some lotion, and the mother asked her if anyone had been touching her. At that point, G.M. was in tears and told her, "my cousin Danny." Her mother took G.M. to the hospital.

¶ 8 G.M.'s testimony was substantially corroborated by testimony from her mother, her father, her aunt, the treating physician and nurse at the hospital, as well as a forensic interviewer with the Chicago Children's Advocacy Center. The State then rested, and respondent elected not to testify or to present any evidence.

¶ 9 The trial court found respondent guilty of all counts, placed him on electronic monitoring, and ordered a juvenile sex offender evaluation. On October 29, 2015, respondent appeared in court in an unrelated case involving another alleged criminal sexual assault of a 13-year-old female classmate. The trial court vacated the electronic monitoring, remanded

respondent into custody, and continued the matter for disposition pending completion of the juvenile sex offender evaluation.

¶ 10 At the dispositional hearing, the trial court merged the counts into a single conviction for criminal sexual assault, placed respondent on probation for five years probation at an inpatient treatment facility, and ordered him to register in the sex offender registry. This appeal followed.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent contends that sections 2, 3, 3-5, 6, 8, and 10 of SORA (730 ILCS 150/2, 3, 3-5, 6, 8, 10 (West 2016)) and section 121 of the Notification Act (730 ILCS 152/121 (West 2016)) violate his substantive and procedural due process rights, the eighth amendment to the federal constitution (U.S. Const. Amend. VIII), and the proportionate penalties clause of the Illinois constitution (Ill. Const. 1970, art. I, § 11).

¶ 13 On May 18, 2016, after respondent had filed his opening brief, another division of this court issued its decision in *In re A.C.*, 2016 IL App (1st) 153047, *appeal denied*, No. 120932 (July 18, 2016). In that case, the court thoroughly examined, and then rejected, precisely the same arguments that respondent makes here.[2]

¶ 14 Upon due consideration of the briefs and record filed in this case, and our own independent consideration of the issues presented, we agree with the *A.C.* court's analysis and disposition.

¶ 15 The court in *A.C.* first held that the respondent lacked standing to challenge section 10 of the Notification Act (the "penalty provision") because the respondent was not suffering or in immediate danger of suffering "a direct injury as a result of enforcement of this provision. *Id.* ¶ 24 (citing *People v. Greco*, 204 Ill. 2d 400, 409 (2003)). The court further rejected the

[2] We further note that respondent's opening brief in this case is virtually identical, in every respect, to that filed by the respondent-appellant in *A.C.*

respondent's reliance upon *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 30-32, noting that the adult defendant in that case had standing to challenge various restrictions pursuant to SORA because those restrictions were "automatically triggered" whereas section 10 of the Notification Law was not automatically triggered; instead, section 10 first required that a respondent fail to abide by the registration requirements, then be charged with a violation and convicted after a trial. *Id.*

¶ 16 The *A.C.* court next considered the respondent's substantive due process claim, examining his arguments that strict scrutiny review was appropriate or, in the alternative, that the statutes failed under the rational-basis test. As to the strict scrutiny argument, the respondent argued, as here, that strict scrutiny review was warranted because the statutes violated his fundamental rights to liberty, privacy, the pursuit of happiness, and his reputation. *Id.* ¶ 35. The *A.C.* court rejected this argument, observing that "our supreme court and this court have repeatedly held that SORA and the Notification Law do not implicate fundamental rights and have analyzed constitutional challenges under the rational basis standard." *Id.* ¶¶ 38-42 (citing *People v. Cornelius*, 213 Ill. 2d 178, 204 (2004); *In re J.W.*, 204 Ill. 2d 50, 67 (2003); *People v. Adams*, 144 Ill. 2d 381, 390 (1991); *People v. Malchow*, 193 Ill. 2d 413, 425-26 (2000); *In re J.R.*, 341 Ill. App. 3d 784, 792 (2003); *In re T.C.*, 384 Ill. App. 3d 870, 874 (2008); *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 74).

¶ 17 The *A.C.* court then rejected the respondent's argument that the statutes fail the rational basis test, noting that our supreme court had already determined that SORA and the Notification Law did not violate substantive due process because they were rationally related to the legitimate government interest of protecting the public and they were a reasonable means of accomplishing that goal. *Id.* ¶¶ 52-53 (citing *J.W.*, 204 Ill. 2d at 66-68, 72).

¶ 18 The *A.C.* court also rejected the respondent's argument that it violates procedural due process to require juveniles to register upon adjudication of specified sex offenses without first providing an individualized determination regarding their risk level. *Id.* ¶ 59. The court reiterated that SORA and the Notification Law do not implicate protected liberty or property interests, and that our supreme court had already rejected that same argument. *Id.* ¶ 63 (citing *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200-01 (2009)).

¶ 19 Finally, the *A.C.* court rejected the respondent's eighth amendment and proportionate penalties claims. The court noted that our supreme court had "repeatedly" held that SORA and the Notification Law do not constitute punishment. *Id.* ¶¶ 70-71 (citing *Adams*, 144 Ill. 2d at 387-89; *Malchow*, 193 Ill. 2d at 419-24; *People v. Cornelius*, 213 Ill. 2d 178, 207-09 (2004); *People v. Cardona*, 2013 IL 114076, ¶ 24; *J.W.*, 204 Ill. 2d at 74-75; *Konetski*, 233 Ill. 2d at 206-08).

¶ 20 The respondent claimed that the court should analyze the then-current provisions under the test set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), because "SORA and the Notification Law have evolved to become more punitive" due to amendments to those laws that occurred after the Illinois supreme court decisions (the same argument that respondent in this case makes). *Id.* ¶¶ 72, 77. The *A.C.* court rejected this argument, however, holding that the subsequent amendments to SORA and the Notification Law merely reflected "social changes" rather than "a punitive bent." *Id.* ¶ 77-79. Since the respondent failed to demonstrate a punitive intent behind the challenged statutes, his eighth amendment and proportionate penalties claims necessarily failed. *Id.* ¶ 79 (citing *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 46).

¶ 21 Here, respondent's arguments (and brief) are nearly identical to those that the respondent in *A.C.* presented that court. Accordingly, the holding in *A.C.* controls the disposition here, and

respondent's claims are unavailing. In his reply brief, respondent argues that *A.C.* was wrongly decided because it relied upon a "misreading" of *Malchow*, because *Malchow* only addressed "the 1998 SORNA [*sic*] laws."[3] We disagree. The changes that respondent here makes were addressed by this court in *A.C.* and were found to merely reflect societal changes and not a desire to inflict punishment. *A.C.*, 2016 IL App (1st) 153047, ¶¶ 77-79. Respondent provides no argument that would persuade us to set aside the reasoning in *A.C.* Respondent's claim is therefore without merit.

¶ 22 CONCLUSION

¶ 23 Neither SORA nor the Notification Law provisions applicable to juveniles violate the federal or state constitutions. Accordingly, we affirm the judgment of the trial court.

¶ 24 Affirmed.

[3] In his opening brief, respondent collectively refers to the statutes he challenges as the "juvenile SORA" laws, but in his reply brief, he seems to have adopted the *A.C.* respondent's nomenclature of "juvenile SORNA" laws.