

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

B.M.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 29, 2021

Court of Appeals Case No.
21A-JV-473

Appeal from the Wayne Superior
Court

The Honorable Darrin M.
Dolehanty, Judge

Trial Court Cause No.
89D03-1804-JD-12

Pyle, Judge.

Statement of the Case

- [1] B.M. appeals the juvenile court's order requiring him to register as a sex offender.¹ B.M. argues there was insufficient evidence to support the order. Concluding that there was clear and convincing evidence that B.M. was likely to repeat an act that would be a sex offense, if committed by an adult, we affirm the juvenile court's order.
- [2] We affirm.

Issue

Whether there is sufficient evidence to support the juvenile court's order requiring B.M. to register as a sex offender.

Facts

- [3] In March 2018, the State filed a delinquency petition against seventeen-year-old B.M. The petition alleged that B.M. had committed an act of child molesting, a criminal act that would have been a Level 4 felony if committed by an adult. Specifically, the petition alleged that B.M. had committed delinquent acts against C.M., who was between the ages of seven and nine. Subsequently, B.M. admitted to being a delinquent child, and the juvenile court entered an adjudication against B.M. for child molesting in April 2018.

¹ IND. CODE § 11-8-8-5.

- [4] In July 2018, the juvenile court issued a dispositional order placing B.M. on formal probation and ordering B.M. into residential treatment at the Pierceton Woods Academy (“Pierceton”). B.M. was ordered to complete a sex offender and relapse prevention training program at Pierceton. B.M. made some progress but was ultimately transferred to another program called The Redwoods (“Redwoods”) in January 2019.
- [5] In January 2021, the juvenile court ordered B.M. to be removed from the Redwoods and placed on formal probation. The juvenile court cited B.M.’s “minimal progress in treatment” as a reason for the removal. (App. Vol. 2 at 214).
- [6] In February 2021, the juvenile court held an evidentiary hearing to determine whether B.M. should be placed on the Sex and Violent Offender Registry. The State presented evidence from its expert witness, Doctor Courtney Washington (“Dr. Washington”), who is the clinical psychologist who oversees the residential sexual health program at the Redwoods. Dr. Washington testified that she had supervised B.M.’s first therapist when B.M. arrived at the facility in January 2019. Dr. Washington became B.M.’s primary therapist in August 2019 and was responsible for B.M.’s monthly reports, treatment plans, and therapy.
- [7] Dr. Washington testified that B.M. had gone “through phases where he would put forth a great deal of effort, and [she] would feel that [they] were making a great deal of progress . . . and then [B.M.] would later disclose things that kind

of counteracted the progress that [she] felt that [they] had made[.]” (Tr. Vol. 2 at 8). Specifically, Dr. Washington testified that in August 2020, B.M. had “disclosed . . . sexual interest in minors and children, as well as some real lack of concern about other people’s feelings[.]” (Tr. Vol. 2 at 9). Dr. Washington explained that she was concerned that B.M. would reoffend because of B.M.’s “deviant sexual interest in children; the kind of lack of . . . concern about the impact that his actions had on his victims, as well as the continued masturbation to [thoughts of] his victims[.]” (Tr. Vol. 2 at 9). Dr. Washington explained that B.M. had been placed on masturbation retraining, but that he had been “pretty unsuccessful[.]” (Tr. Vol. 2 at 9). Dr. Washington further testified that “the more [a person] consistently masturbate[s] to orgasm to a specific content, it becomes a reinforcement or a feedback loop. So it kind of drives the fantasies. And so [B.M.] was continuing to feed that loop.” (Tr. Vol. 2 at 9).

[8] The State asked Dr. Washington about B.M.’s progress on his treatment plan and his likelihood to reoffend. When the State asked Dr. Washington about whether she was worried about B.M.’s deviant thoughts about minors or B.M.’s potential to act on his thoughts causing B.M. to reoffend, she replied “both.” (Tr. Vol. 2 at 9). When asked if she believed the treatment plan had been successful, Dr. Washington replied, “I do not believe so. No.” (Tr. Vol. 2 at 10). When the State asked Dr. Washington about B.M.’s likelihood of reoffending with a juvenile victim, Dr. Washington answered: “I think he is at high risk for that.” (Tr. Vol. 2 at 10).

[9] The juvenile court concluded that the State had established by clear and convincing evidence that B.M. was likely to reoffend and ordered B.M. to register as a sex offender. B.M. now appeals.

Decision

[10] B.M. argues that the evidence was insufficient to support the juvenile court's order requiring him to register on the Sex and Violent Offender Registry.

“When judging the sufficiency of the evidence supporting a decision to place a juvenile on a sex offender registry, we neither reweigh the evidence nor judge the credibility of the witnesses.” *B. W. v. State*, 909 N.E.2d 471, 476 (Ind. Ct. App. 2009). “Instead, we look to the evidence and the reasonable inferences that can be drawn therefrom that support the juvenile court's decision, and we will affirm if there is clear and convincing evidence from which the juvenile court could find the elements of the Sex Offender Registration Act have been met.” *Id.*

[11] A juvenile may be found to be a sex offender under the Sex Offender Registration Act if he is:

(2) a child who has committed a delinquent act and who:

(A) is at least fourteen (14) years of age;

(B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility . . . or is discharged from a juvenile detention facility as a result of an adjudication as a

delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and

(C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

IND. CODE § 11-8-8-5(b)(2). A juvenile court “shall consider expert testimony” concerning whether a juvenile is likely to reoffend. I.C. § 11-8-8-5(c). “Thus, before a juvenile may be ordered to register as a sex offender, the juvenile court must hold an evidentiary hearing and find by clear and convincing evidence that the juvenile is likely to commit another sex offense.” *B.W.*, 909 N.E.2d at 477. *See also J.C.C. v. State*, 897 N.E.2d 931, 934 (Ind. 2008). “[A] sex offender registry hearing needs to include ‘an evaluation of whether that period of treatment sufficiently rehabilitated [the juvenile] and whether he was likely to commit another sex offense.’” *B.W.*, 909 N.E.2d at 477 (quoting *B.J.B. v. State*, 805 N.E.2d 870, 874 (Ind. Ct. App. 2004)).

[12] B.M. argues that the juvenile court erred when it ordered him to register with the Sex and Violent Offender Registry “because the State failed to prove he is likely to reoffend by clear and convincing evidence.” (B.M.’s Br. 4). We disagree.

[13] Our review of the record reveals that Dr. Washington testified that B.M.’s treatment plan had not been successful. Dr. Washington cited to an August 2020 disclosure that B.M. had made involving his “deviant sexual interest in children; the kind of lack of . . . concern about the impact that his actions had

on his victims, as well as the continued masturbation to [thoughts of] his victims[.]” (Tr. Vol. 2 at 9). Dr. Washington also testified that attempts to retrain B.M.’s masturbation habits had been unsuccessful. She noted the dangers of masturbating while thinking of minors, describing it as a feedback loop that “drives the fantasies. And so [B.M.] was continuing to feed that loop.” (Tr. Vol. 2 at 9). Dr. Washington was concerned that B.M. would reoffend because of his deviant sexual thoughts about minors and his failure to rehabilitate during the program. When the State asked Dr. Washington if she was worried that B.M. would reoffend with a juvenile victim, she replied “I think he is at high risk for that.” (Tr. Vol. 2 at 10).

[14] Because the record contains sufficient evidence of B.M.’s failed efforts to rehabilitate himself, which served as the basis for Dr. Washington’s conclusion that B.M. was at high risk for reoffending, we agree with the juvenile court that the State presented clear and convincing evidence that B.M. was likely to reoffend. Accordingly, we affirm the juvenile court’s order requiring B.M. to register as a sex offender.

[15] Affirmed.

Bailey, J., and Crone, J., concur.