

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:
J.E., A Minor Child

: JUDGES:

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Hon. Patricia A. Delaney, P.J.
Hon. Craig R. Baldwin, J.
Hon. Earle E. Wise, Jr., J.

Case No. 19-CA-38

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Juvenile Division, Case
No. A2018-0718

JUDGMENT:

REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY:

November 4, 2019

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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Delaney, P.J.

{¶1} Appellant J.E. appeals from the May 6, 2019 Judgment Entry of the Licking County Court of Common Pleas, Juvenile Division. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} A statement of the facts underlying appellant's sexual-battery conviction is not necessary to our resolution of this appeal. Appellant was charged by amended juvenile complaint with one count of delinquency by means of sexual battery pursuant to R.C. 2907.03(A)(1) and R.C. 2152.02(E), a felony of the third degree.

{¶3} On March 11, 2019, the trial court accepted appellant's plea of "admit" to the amended offense, adjudicated appellant delinquent for having committed sexual battery, and continued the dispositional hearing pending a mental evaluation and sex-offender assessment.

{¶4} On May 6, 2019, appellant appeared for disposition. The trial court noted it had reviewed the probation department's findings and recommendations, and also the mental-health evaluations and assessments. The victim and family members made compelling statements about the effect of the crime on their lives. The prosecutor stated for the record that she was in agreement with the recommendation of the probation department and urged that appellant was classified as Tier I juvenile sex offender registrant. Defense counsel argued against the registration requirement.

{¶5} The trial court then proceeded to disposition, imposing an indefinite term of 6 months to age 21 in D.Y.S., with the term suspended upon a number of conditions specific to juvenile sex offenders. The trial court determined appellant to be a Tier I sex offender registrant, stating the following in pertinent part:

* * * *

THE COURT: One of the common denominators that we see—I'm not sure, 80 percent, Mr. Schneider? Maybe 80 percent of the sex—adolescent sex offender cases that we see, there are certain common denominators, but one of the common denominators we see with a great deal of frequency is an early abuse of pornography, and when I read, you know, the reports, you were introduced to pornography secretly when your mother and father weren't home in eighth grade.

DELINQUENT CHILD: That is correct, Your Honor.

THE COURT: And do you understand—do you understand how harmful that is, especially to young minds and even older minds, but how harmful it is you get a complete and total distortion of the world and what sex is and what sex is for?

DELINQUENT CHILD: Yes, sir.

THE COURT: That's not life. It's not real. It's harmful. It's harmful to adults, as well as juveniles, but especially a young mind who is trying to find—a young person trying to find their way in life. I am going to follow the recommendations of the Probation Department. I am going to classify you as a Tier I sex offender registrant. That's a requirement that you register for ten years with in-person verification annually with the Licking County Sheriff's Department if you continue to reside in Licking County. You must

also register in the county in which you are employed if you are employed outside of Licking County.

As your attorney has noted, the issue—and there is no community notification.

Have you explained, [defense trial counsel], to your clients what that means?

[DEFENSE TRIAL COUNSEL]: Yes.

THE COURT: All right. So, no one's going to go out to your neighborhood and post posters. You're not on a website through the State of Ohio, but that information is available to the public through the Licking County Sheriff's Department. Do you understand what I'm saying?

DELINQUENT CHILD: Yes, sir.

THE COURT: Yeah. And it's—you can be penalized if you fail to register.

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{¶6} The trial court went on to detail the remaining conditions of appellant's disposition.

{¶7} Relative to classification, the dispositional order dated May 6, 2019 states "Youth is classified as a Tier I Juvenile Sex Offender Registrant."

{¶8} Appellant now appeals from the trial court's dispositional order of May 6, 2019.

{¶9} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶10} “THE JUVENILE COURT CLASSIFIED APPELLANT AS A JUVENILE OFFENDER REGISTRANT WITHOUT CONSIDERING THE R.C. 2152.83(D) FACTORS.”

{¶11} Appellant argues the trial court abused its discretion in classifying him as a juvenile offender registrant because the court did not consider the R.C. 2552.83(D) factors. We agree.

{¶12} Pursuant to R.C. 2152.19(A)(4), a juvenile court has broad discretion to craft an appropriate disposition for a child adjudicated delinquent. Upon review, the court's disposition will be upheld unless we find an abuse of discretion. *In re D.S.*, 111 Ohio St.3d 361, 2006-Ohio-5851, 856 N.E.2d 921, ¶ 6.

{¶13} In the instant case, appellant was age 15 at the time of the offense, and also a first-time offender. It was therefore discretionary with the trial court whether to classify appellant as a juvenile offender registrant. See, R.C. 2152.83(B).

{¶14} R.C. 2152.83 (B)(2) provides for a hearing, and R.C. 2152.83(D) requires the judge to consider all relevant factors, including but not limited to, all of the following:

- (1) The nature of the sexually oriented offense or the child-victim oriented offense committed by the child;
- (2) Whether the child has shown any genuine remorse or compunction for the offense;
- (3) The public interest and safety;

(4) The factors set forth in division (K) of section 2950.11 of the Revised Code, provided that references in the factors as set forth in that division to “the offender” shall be construed for purposes of this division to be references to “the delinquent child;”¹

¹ R.C. 2950.11(K) states:

In making a determination under division (H)(1) of this section as to whether to suspend the community notification requirement under this section for an offender, the judge shall consider all relevant factors, including, but not limited to, all of the following:

- (1) The offender's age;
- (2) The offender's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexually oriented offenses or child-victim oriented offenses;
- (3) The age of the victim of the sexually oriented offense or child-victim oriented offense the offender committed;
- (4) Whether the sexually oriented offense or child-victim oriented offense the offender committed involved multiple victims;
- (5) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or child-victim oriented offense the offender committed or to prevent the victim from resisting;
- (6) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an adult would be a criminal offense, whether the offender completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sexually oriented offense or a child-victim oriented offense, whether the offender or delinquent child participated in available programs for sex offenders or child-victim offenders;
- (7) Any mental illness or mental disability of the offender;
- (8) The nature of the offender's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense the offender committed or the nature of the offender's interaction in a sexual context with the victim of the child-victim oriented offense the offender committed, whichever is applicable, and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (9) Whether the offender, during the commission of the sexually oriented offense or child-victim oriented offense the offender committed, displayed cruelty or made one or more threats of cruelty;
- (10) Any additional behavioral characteristics that contribute to the offender's conduct.

(5) The factors set forth in divisions (B) and (C) of section 2929.12 of the Revised Code as those factors apply regarding the delinquent child, the offense, and the victim;²

² R.C. 2929.12(B) and (C) state:

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.

(3) The offender held a public office or position of trust in the community, and the offense related to that office or position.

(4) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

(5) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

(6) The offender's relationship with the victim facilitated the offense.

(7) The offender committed the offense for hire or as a part of an organized criminal activity.

(8) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

(9) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(6) The results of any treatment provided to the child and of any follow-up professional assessment of the child.

{¶15} In the instant case, appellant argues the record is devoid of any evidence that the trial court considered the factors cited in R.C. 2152.83(D). Upon our review of the record, we find that the trial court referenced the probation-department recommendations and mental-health evaluations, including evidence of appellant's exposure to pornography. But we agree with appellant to the extent that we cannot discern from the record before us whether the trial court considered the R.C. 2152.83(D) factors.

{¶16} “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 135 Ohio St.3d 343, 2013–Ohio–966, 986 N.E.2d 971, ¶ 34. An abuse of discretion is apparent where the trial court's decision does not reveal a “‘sound reasoning process.’” *State v. Morris*, 132 Ohio St.3d 337, 2012–Ohio–2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

{¶17} In the instant case, we find that to conduct a meaningful review of the trial court's decision to classify appellant a Tier I juvenile offender registrant, we must be able to determine that the court has considered all the applicable statutory factors. The dispositional entry does not contain factual findings. The record of the dispositional

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

hearing does not indicate which of the factors the trial court relied upon in determining the classification.

{¶18} We conclude that this record does not contain a sufficient rationale to permit us to perform meaningful appellate review of the classification under an abuse-of-discretion standard.

{¶19} We therefore sustain the sole assignment of error, reverse the dispositional order of the trial court, and remand the matter to the juvenile court for re-consideration of the juvenile-offender registrant classification, for consideration of the statutory factors sufficient to permit us to review the classification for an abuse of discretion.

CONCLUSION

{¶20} Appellant's sole assignment of error is sustained. The judgment of the Licking County Court of Common Pleas, Juvenile Division is reversed and the matter is remanded for further proceedings consistent with this opinion.

By: Delaney, P.J.,

Baldwin, J. and

Wise, Earle, J., concur.