

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In re B.O.

Court of Appeals No. L-12-1021

Trial Court No. DL 09195671

DECISION AND JUDGMENT

Decided: May 31, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Melissa Meister, Assistant Prosecuting Attorney, for appellee.

Timothy Young, Ohio Public Defender, and
Sheryl Trzaska, Assistant Public Defender, for appellant.

* * * * *

OSOWIK, J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, that classified appellant B.O. as a juvenile sex offense registrant. For the reasons set forth below, the judgment of the trial court is affirmed.

{¶2} On July 2, 2009, a complaint was filed in Lucas County Juvenile Court case No. DL09195671 alleging that appellant, then 14 years old, was delinquent of one count of rape of a person under the age of 13 in violation of R.C. 2907.02(A)(1)(b). On July 21, 2009, appellant admitted to the charge of rape and the trial court found appellant to be delinquent child in violation of rape. The trial court continued appellant's dispositional hearing until August 4, 2009, so that a sex offender treatment assessment could be completed. On August 4, 2009, appellant appeared before the court for his dispositional hearing. The trial court committed appellant to a minimum of one year or until the age of 21 in a secure facility, stayed the commitment, and placed appellant on probation. The court also chose to wait until after appellant had participated in sex offender treatment to conduct his discretionary registration hearing.

{¶3} The trial court conducted weekly review hearings and, in December 2009, placed appellant at the Youth Treatment Center ("YTC") after he was charged with, and admitted to, two separate motion to show cause offenses. In August 2010, after appellant admitted to violating the terms of his probation, he was committed to the Department of Youth Services ("DYS").

{¶4} On July 12, 2011, after appellant served his DYS commitment and was released to parole, the trial court conducted a reentry hearing and indicated it intended to address appellant's sex offender registration status. However, the court continued the matter until August 16, 2011, so that a court diagnostic evaluation could be completed before the registration hearing. At a hearing held on August 16, 2011, the trial court

classified appellant as a Tier II juvenile sex offense registrant pursuant to R.C. 2152.83(A).

{¶5} Appellant sets forth the following assignments of error:

First Assignment of Error

The Lucas County Juvenile court acted without jurisdiction when it classified [appellant] as a juvenile offender registrant, because it did so outside of the specified timing requirement of R.C. 2152.83(B)(1).

Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution. (A-1; A-2; August 16, 2011 T.pp.30).

Second Assignment of Error

The Lucas County Juvenile Court erred when it classified [appellant] as a Tier II juvenile sexual offender registrant without following the requirements provided in R.C. 2152.83(B)(2)-(D). Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution. (A-1; A-2; August 16, 2011 T.pp.26-36).

Third Assignment of Error

Defense counsel rendered ineffective assistance by failing to object to the juvenile court's improper exercise of jurisdiction and classification. Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. R.C. 2152.83(B); (A-1; A-2); (August 16, 2011 T.pp. 26-36).

{¶6} In support of his first assignment of error, appellant asserts that the trial court was required to hold his sex offender registration hearing at his dispositional hearing on August 4, 2009, and that the court erred by not holding the hearing until August 16, 2011, after appellant was released from DYS.

{¶7} Pursuant to R.C. 2152.83(B), a juvenile court has discretion as to whether to hold a sex offender classification hearing for juveniles who are 14 or 15 years of age and commit a sexually oriented offense, but do not have a prior sexually oriented offense adjudication on their record. Appellant was 14 years old at the time he admitted to the rape in this case and he had no prior adjudication for a sexually oriented offense. If the court chooses to conduct a sex offender classification hearing, as the court did in this case, it has discretion as to whether to classify the juvenile as a sex offender and, if so, at what tier the juvenile will be classified.

{¶8} R.C. 2152.83(B)(1) governs the time period during which the court may conduct the classification hearing and states:

The court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct *at the time of the child's release from the secure facility*, a hearing for the purposes described in division (B)(2) of this section * * *. (Emphasis added.)

{¶9} Appellant asserts that his August 4, 2009 dispositional hearing was the only “time of disposition” for purposes of R.C. 2152.83(B)(1). That argument, however, disregards the language of the statute as set forth above which also permits the juvenile court to conduct a registration hearing “at the time of the child’s release from the secure facility[.]” In the case before us, the juvenile court imposed a sentence at DYS for a minimum of one year up to age 21 for the rape offense, but stayed the offense and placed appellant on probation. Unfortunately, appellant was unable to comply with the conditions of his probation and, after several violations, was placed at the YTC in Toledo on December 17, 2009. After several more violations, the YTC recommended that appellant be committed to DYS and, on August 27, 2010, the juvenile court lifted the stay and appellant began his term of incarceration at DYS. Upon appellant’s release from DYS on July 12, 2011, the trial court scheduled a classification hearing pursuant to R.C. 2152.83(B)(2), which states: “A judge shall conduct a hearing under division (B)(1) of this section to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant.” On August 16, 2011, the juvenile court classified appellant as a Tier II juvenile sex offense registrant.

{¶10} Upon our careful consideration of the applicable statutory law as set forth above and the facts of appellant’s case, we find that the juvenile court properly conducted

appellant's registration hearing on August 16, 2011, following appellant's release from DYS, a "secure facility." Accordingly, appellant's first assignment of error is not well-taken.

{¶11} In support of his second assignment of error, appellant asserts that the juvenile court failed to comply with the requirements of R.C. 2152.83(D) which set forth the factors a judge shall consider in making a decision under division (B) of that section as to whether a delinquent child should be classified a juvenile sex offense registrant. This argument is without merit.

{¶12} This court has reviewed the transcript of the August 16, 2011 hearing, which clearly reveals the judge's thorough consideration of appellant's case, including the offense committed, appellant's risk of re-offending as well as the public interest and safety, the results of treatment appellant received after the offense, and the contents of the very detailed Court Diagnostic Evaluation prepared after appellant's release from custody. Upon consideration thereof, we find that the judge fully complied with the requirements of R.C. 2152.83(D) and, accordingly, appellant's second assignment of error is not well-taken.

{¶13} In his third assignment of error, appellant asserts that he was denied effective assistance of counsel. Appellant argues that trial counsel should have objected to the classification hearing on the basis of a lack of jurisdiction. Based upon our analysis of appellant's first assignment of error, in which we found that there was no error on the part of the court, we conclude that trial counsel's representation did not fall

below an objective standard of reasonableness for failing to object to the hearing. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Appellant's third assignment of error is not well-taken.

{¶14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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