

Review of Recent Juvenile Cases (2011)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Hearing not required for trial court to order sex offender registration where respondent failed to successfully complete treatment. [Adams v. State](11-4-5A)

On November 7, 2011, the Dallas Court of Appeals held that, although originally deferring a decision to require registration, trial court was not mandated to hold a hearing before requiring respondent to register as a sex offender where respondent did not successfully complete sex offender treatment.

¶ 11-4-5A. **Adams v. State**, No. 05-10-01056-CR, --- S.W.3d ----, 2011 WL 5311099 (Tex.App.-Dallas, 11/07/11).

Facts: In 2005, a juvenile court found that appellant engaged in delinquent conduct for committing the offense of aggravated sexual assault of a child. See Tex. Fam.Code Ann. § 51.03(a)(1) (West Supp.2010) (delinquent conduct); Tex. Penal Code Ann. § 22.021(a)(1)(B), (2)(B) (West 2011). The juvenile court sentenced appellant to ten years' confinement with the Texas Youth Commission, probated for ten years, and also deferred its decision on whether appellant would be required to register as a sex offender while he participated in a sex offender treatment program. See Tex.Code Crim. Proc. Ann. art. 62.352(b)(1) (West 2006); see also id. art. 62.001(5)(A) (requiring sex offender registration for conviction based on aggravated sexual assault).

When appellant turned eighteen in 2008, the district court accepted transfer of appellant's case from the juvenile court and placed him on adult community supervision for the remainder of his ten-year term. See Tex. Fam.Code Ann. § 54.051 (West 2006). As part of his probation, appellant was subject to numerous terms and conditions, including the requirement that he "participate fully in [sex offender] counseling, comply with the rules and regulations of the approved agency, ... and continue in treatment/counseling for sex offenders until released by the Court." According to the conditions of his community supervision, appellant was instructed to report to the "Sex Offender Supervision Unit" to schedule an appointment.

The State filed a motion to revoke appellant's probation in June 2009, alleging appellant violated four conditions of his probation. The State subsequently withdrew its motion, and appellant was continued on probation. The trial court ordered that appellant be released to the staff of the Wayback House for treatment and also modified the conditions of appellant's probation to include a requirement that appellant faithfully comply with all rules, regulations, and treatment programs at the Wayback House. One year later, the State filed a second motion to revoke. Among the alleged violations included in the motion was appellant's "unsuccessful [] discharge from [the] Wayback House."

Appellant pleaded true to the State's allegations at a hearing on the State's second motion to revoke. During the hearing, the trial court heard testimony from Mark Brandon, appellant's case manager at the

Wayback House, and from appellant. Brandon described the Wayback House as a facility that provided general supervision and assistance with the requirements of probation and explained the "majority of the residents that [had] been referred there" during his tenure were registered sex offenders. Brandon testified that appellant had made no progress in his treatment, did not take his probation seriously, and had not demonstrated an ability to follow the rules. He said appellant had committed at least fourteen infractions during his time at the Wayback House and described specific examples of appellant's disregard for authority; Brandon stated he could "see no justification for wanting to continue [appellant's probation] by the basis of his actions." Brandon also testified that appellant was untrustworthy, appellant's "arrogance [was] just totally irrational," and that appellant had a "total disregard for any authority figure whatsoever."

Appellant admitted he was a sex offender, that he pleaded guilty to raping his young nieces, and that he had thirteen child victims since he was fourteen years old. He also admitted he committed the various infractions described by Brandon and that he received an unsuccessful discharge from the Wayback House. Yet he hoped to continue his probation, explaining that he "let [his] pride get in the way" and had "[a] lot of learning" to do.

The trial court accepted appellant's plea of true, found he violated the terms and conditions of his probation as alleged by the State, and revoked appellant's probation. The trial court assessed punishment at ten years' imprisonment. The trial court also set aside the prior order excusing appellant from sex offender registration and ordered appellant to register to as a sex offender under Texas Code of Criminal Procedure article 62.352(c) because appellant's "treatment was terminated." See Tex.Code Crim. Proc. Ann. art. 62.352(c).

Held: Affirmed

Opinion: In his first point of error, appellant contends the trial court erred by requiring him to register as a sex offender without first holding a hearing, which he contends is required by code of criminal procedure article 62.352(c). See *id.* He claims that when the trial court did not hold a hearing before requiring him to register, he was deprived of a "state-created liberty interest" in violation of his due process rights.

An adjudication of delinquent conduct for aggravated sexual assault of a child requires the juvenile to register as a sex offender. See *id.* art. 62.001(5)(A). Under article 62.352(b)(1), however, a court may defer making a decision on requiring a juvenile to register as a sex offender until the juvenile has completed treatment for the sexual offense as a condition of probation or while the juvenile is committed to the Texas Youth Commission. *Id.* art. 62.352(b)(1). If the court enters an order under article 62.352(b)(1), the court "retains discretion and jurisdiction" to require, or exempt the juvenile from, registration on the successful or unsuccessful completion of treatment. *Id.* art. 62.352(c). Before the court may require registration of one who successfully completed treatment, subsection (c) provides the court must hold a hearing on the State's motion and determine that the interests of the public require registration. *Id.*

Appellant asserts subsection (c) affords him a "mandatory opportunity to be heard prior to the imposition of sex offender registration." Under subsection (c), however, the requirement of a hearing before being required to register as a sex offender is conditioned upon whether the person successfully completed treatment for his sexual offense. *Id.* Specifically, the subsection provides: "Following successful completion of treatment, the respondent is exempted from registration under this chapter unless a hearing under this subchapter is held on motion of the state, regardless of whether the respondent is 18 years of age or older, and the court determines the interests of the public require registration." *Id.* (emphasis added). Nothing in the statute mandates the trial court hold a hearing before requiring registration of a person who does not successfully complete treatment. Rather, the trial court retains the discretion to require the person to register on the unsuccessful completion of treatment. *Id.*

Appellant does not claim he successfully completed treatment for his sexual offense. Instead, he maintains the programs assigned by the Wayback House were not "sex of-fender-specific," but were general meetings, life skills meetings, or behavioral classes. He described his infractions as involving "relatively mundane issues" and argues that because none of his fourteen infractions were related to sex offender treatment programs, his discharge from the Wayback House was "not an unsuccessful discharge from sex offender treatment" under article 62.352(c). Contrary to appellant's assertion, the type of treatment he received at the Wayback House is irrelevant for purposes of this appeal. A condition of appellant's probation was to participate fully in sex offender counseling and treatment until released by the court, and nothing in this record suggests he was successful in completing the required treatment.

Conclusion: Thus, we conclude the trial court did not abuse its discretion when it ordered appellant to register as a sex offender without holding a separate hearing. See *id.* art. 62.357(b) (providing appellate court reviews court's order requiring registration for procedural error or an abuse of discretion). We overrule appellant's first point of error.