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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1699**

In the Matter of the Welfare of: T. P. B.,
Juvenile.

**Filed June 23, 2009
Affirmed
Lansing, Judge**

Scott County District Court
File Nos. 70-JV-08-6758, 07-JV-07-2457,
70-JV-08-10920

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Considered and decided by Shumaker, Presiding Judge; Lansing, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from delinquency adjudication for fifth-degree criminal sexual conduct, TPB argues that the district court abused its discretion by denying his request to stay adjudication despite factors indicating that he did not pose a threat to public safety and despite the harsh collateral consequences of requiring registration as a predatory offender under Minn. Stat. § 243.166 (2008). Because the district court properly considered public safety and TPB's best interests, the delinquency adjudication does not constitute an abuse of discretion, and we affirm.

FACTS

The Blue Earth County Attorney filed a delinquency petition in July 2007, charging TPB with the felony offenses of third- and fourth-degree criminal sexual conduct. The petition described several ways in which TPB, who was then fifteen years old, sexually abused his teammate, JRW, while they were on a three-day overnight trip to Mankato for football camp.

According to the petition, TPB gained access to JRW's room one night, took off his own clothes below the waist, rubbed his genitals on JRW's face, put his testicles in JRW's mouth, and inserted a plastic bottle between JRW's buttocks over his shorts. TPB performed these acts in front of ten or eleven other football players, who stood near the doorway to watch. JRW did not wake up because he had taken a prescription medication that induced deep sleep. The next day at practice JRW's teammates indicated that something scandalous had happened the night before and showed him a video recording

of TPB trying to insert the bottle between JRW's buttocks. JRW reported the incident to police.

Under a plea agreement in January 2008, TPB agreed to plead guilty to a gross-misdemeanor charge of fifth-degree criminal sexual conduct, and Blue Earth County agreed not to pursue the felony charges. TPB admitted that he inserted a bottle between JRW's buttocks, but he did not admit to performing the other acts of abuse. The district court accepted TPB's plea and transferred the case to Scott County, the county of TPB's residence, for disposition.

About a month after TPB entered his plea, a Jordan police officer received reports that TPB was aggressively hitting walls at school and swearing at teachers and other students. The officer issued TPB a citation for disorderly conduct in March 2008.

The district court held a hearing in August 2008 to address both the criminal-sexual-conduct and disorderly conduct charges. At the beginning of the hearing, the district court accepted TPB's guilty plea to the charge of disorderly conduct. The state then requested that TPB be adjudicated delinquent for both disorderly conduct and fifth-degree criminal sexual conduct. TPB did not object to the delinquency adjudication on the disorderly conduct charge. The district court adjudicated him delinquent on that charge, sentenced him to 120 days of probation, and imposed related requirements.

TPB did, however, object to the delinquency adjudication on the fifth-degree criminal-sexual-conduct charge and requested that the adjudication be stayed for six months. He emphasized that, if the court adjudicated him delinquent, he would be required to register as a predatory offender. After hearing testimony and reviewing a

psychological assessment of TPB, the district court denied TPB's request to stay the adjudication. TPB was sentenced to 180 days of probation to run concurrently with the probation for disorderly conduct, ordered to comply with several requirements, and reminded that as a result of the adjudication he was now statutorily required to register as a sex offender.

In its written order, the district court emphasized that testing showed TPB "lacked insight . . . into the dynamics of his illegal sexual behavior" and that, according to the petition, a witness said TPB had bragged about the abusive incident and "appeared to be amused at what he had done." The district court noted several factors indicating that TPB "was at a higher or elevated risk to sexually reoffend." And it concluded that the adjudication of delinquency on both charges would serve the interest of public safety, was "in the best interests of [TPB] in order to help restore [him] to law-abiding conduct," and was the "least restrictive action under the circumstances."

TPB appeals from the adjudication of delinquency for the charge of fifth-degree criminal sexual conduct.

D E C I S I O N

The dispositional provisions of Minn. R. Juv. Delinq. P. 15.05, subd. 4(a), allow but do not require a district court to continue a case without adjudicating a child delinquent "when it is in the best interests of the child and the protection of the public to do so." Similarly, Minn. Stat. § 260B.198, subd. 7 (2008), states that a district court may continue a juvenile-delinquency case without adjudicating a child delinquent "[w]hen it is in the best interests of the child to do so and when the child has admitted the allegations

contained in the petition before the judge.” *See In re Welfare of J.R.Z.*, 648 N.W.2d 241, 246 (Minn. App. 2002) (emphasizing permissive language in statute), *review denied* (Minn. Aug. 20, 2002).

These provisions give a district court broad discretion in deciding whether to adjudicate delinquency or continue a case without adjudication. *Id.* at 244. They do not require that a district court make particularized findings when making the decision or that it take the “least drastic step necessary to restore law-abiding conduct in the juvenile.” *Id.* at 245 (quotation omitted); *see also id.* at 245-46 (distinguishing decision to adjudicate from decision to impose particular disposition). Accordingly, we uphold a district court’s decision to adjudicate a child delinquent if the court acts within its broad discretion, mindful of the best interests of the child and the need to protect the public. *Id.* at 244-47 (applying this general standard).

TPB presents two arguments on appeal. First, he suggests that the district court abused its discretion when it adjudicated him delinquent because it did not expressly recognize some factors indicating that TPB did not pose a threat to public safety. He points out that the psychological evaluation states that he does “not suffer from any serious thought or mood disorder,” has “no history of sexual assault,” is “smart enough to be educated about why his behavior is wrong,” and has “an available social support network.” We agree that these factors are relevant to the public-safety consideration, but they are not dispositive of the question of whether the district court abused its discretion in adjudicating TPB delinquent.

The district court expressly relied on other factors set forth in the psychological evaluation that suggested TPB was at an elevated risk to sexually reoffend: TPB's lack of understanding and knowledge of appropriate boundaries, his reported interest in inflicting sexual humiliation or pain on others, and his inability to control his impulses due to his ADHD. The district court also emphasized that TPB "lacked insight or understanding into the dynamics of his illegal sexual behavior" and concluded that the adjudication of delinquency would help TPB gain needed insight into the serious nature of his actions and "help his personal and social growth." Because the district court properly considered public safety and TPB's best interests and because the record supports the district court's findings, TPB's first argument does not provide a basis for reversal.

TPB's second argument is that the district court abused its discretion in adjudicating him delinquent because a collateral consequence of the adjudication—the requirement that he register as a predatory offender under Minn. Stat. § 243.166—is extreme under the circumstances and not in TPB's best interests. *See Kaiser v. State*, 641 N.W.2d 900, 901, 907 (Minn. 2002) (holding that statutory duty to register as predatory offender is collateral, not punitive, consequence of guilty plea).

Under Minn. Stat. § 243.166, subd. 1b(a)(1)(iii), a juvenile must register as a predatory offender if he is charged with third- or fourth-degree criminal sexual conduct and is adjudicated delinquent "for that offense or another offense arising out of the same set of circumstances." An offense arises out of the same set of circumstances as another offense if the two offenses are united in time and place and part of the same course of

conduct; the elements of the charged offense need not be included in the elements of the offense for which the person was adjudicated delinquent. *See Boutin v. LaFleur*, 591 N.W.2d 711, 716 n.4 (Minn. 1999) (concluding that conviction of third-degree assault “arose out of the same set of circumstances that supported the charge of criminal sexual misconduct in the third degree” when complaint alleged that defendant had sexual intercourse with victim after assaulting her).

Minnesota courts have upheld the predatory-offender-registration statute against constitutional challenges, emphasizing repeatedly that the statute is not punitive because it primarily serves the regulatory purpose of assisting police investigations. *Kaiser*, 641 N.W.2d at 907; *State v. Manning*, 532 N.W.2d 244, 248-49 (Minn. App. 1995), *review denied* (Minn. July 20, 1995). The supreme court has held that requiring an offender to register based on a predatory offense for which he was charged but not convicted does not violate an offender’s constitutional right to substantive and procedural due process when the charge is supported by probable cause. *Boutin*, 591 N.W.2d at 716-19. And this court has previously held that the application of the predatory-offender-registration statute to juveniles does not violate their due process rights and is not inconsistent with the rehabilitative purpose of the juvenile court system. *In re Welfare of C.D.N.*, 559 N.W.2d 431, 434-35 (Minn. App. 1997), *review denied* (Minn. May 20, 1997).

The predatory-offender-registration statute applies to TPB because he was charged with third- and fourth-degree criminal sexual conduct and was adjudicated delinquent for an offense that arose out of the same set of circumstances that supported the third- and fourth-degree criminal-sexual-conduct charges. Minn. Stat. § 243.166, subd.

1b(a)(1)(iii). The charge of third-degree criminal sexual conduct was based on allegations that TPB put his testicles in JRW's mouth while JRW was incapacitated from prescription medication. *See* Minn. Stat. § 609.344, subd. 1(d) (Supp. 2007) (defining third-degree criminal sexual conduct as engaging in sexual penetration with another person when actor knows complainant is mentally incapacitated or physically helpless). The charge of fourth-degree criminal sexual conduct was based on allegations that TPB put his genitals on JRW's face while he was helpless from prescription medication. *See* Minn. Stat. § 609.345, subd. 1(d) (Supp. 2007) (defining fourth-degree criminal sexual conduct as knowingly engaging in sexual contact with mentally incapacitated or physically helpless person). TPB was adjudicated delinquent for fifth-degree criminal sexual conduct based on his admission that he inserted a plastic bottle between JRW's buttocks over his shorts. *See* Minn. Stat. § 609.3451, subd. 1(1) (2006) (defining fifth-degree criminal sexual conduct as engaging in nonconsensual sexual contact). The record demonstrates, and TPB does not dispute, that the felony charges were based on probable cause. And the petition shows that TPB's act of inserting the plastic bottle between JRW's buttocks occurred at the same time and place and was part of the same course of conduct as his alleged acts of putting his testicles in JRW's mouth and putting his genitals on JRW's face.

The registration requirement in Minn. Stat. § 243.166, subd. 1b(a)(1)(iii), that appears to apply to TPB's circumstances, provides for registration as a predatory offender for ten years. *See* Minn. Stat. § 243.166, subd. 6(a) (stating general rule that person must register for ten years or "until probation, supervised release, or conditional release

expires, whichever occurs later”). Neither the state nor TPB has identified an exception to the general ten-year-registration rule that would apply to TPB.

Having established that TPB’s delinquency adjudication triggers the statutory requirement that he register as a predatory offender for ten years, the question presented is whether the collateral consequence of this mandatory registration weighs so heavily against adjudication that the adjudication constitutes an abuse of discretion.

The caselaw supports TPB’s assertion that the mandatory-registration requirement is relevant to the district court’s adjudication decision. Minnesota courts have recognized that predatory-offender-registration requirements may have a lasting impact on juveniles. In *C.D.N.*, we quoted the California Supreme Court’s observation that “[a]lthough the stigma of a short jail sentence should eventually fade, the ignominious badge carried by the convicted sex offender can remain for a lifetime.” 559 N.W.2d at 434. In *J.R.Z.*, we recognized that imposing a lifetime registration requirement on an eleven year old “may . . . be a harsh result.” 648 N.W.2d at 248. And we have, at least twice, “invit[ed] the legislature to review the prudence of requiring all juveniles adjudicated for criminal sexual conduct to register as predatory sexual offenders.” *Id.* at 249 (quoting *C.D.N.*, 559 N.W.2d at 435).

Even though we recognize that the mandatory-registration requirement may be relevant to the district court’s adjudication decision, we conclude that TPB has failed to demonstrate that the registration requirement weighed so heavily against adjudication that the district court abused its discretion in denying his request for a stay. TPB has not identified any specific ways in which the registration requirement will have an impact on

him. The registration statute clearly imposes the burden of registering and re-registering for an apparent ten-year period, and TPB's registration may increase the likelihood that law enforcement will suspect him of and investigate him for additional predatory crimes. Minn. Stat. § 243.166, subds. 3-7a. But if he does not commit any additional offenses and complies with the registration requirements, his information will never be released to the public. *See* Minn. Stat. § 244.052, subds. 1(5), 4-4c (2008) (authorizing public disclosure of information for some offenders but excluding "persons required to register based solely on a delinquency adjudication"). Thus, TPB has not shown that the registration requirement will result in the type of stigma anticipated by this court in *C.D.N.*, 559 N.W.2d at 434.

The record shows that TPB informed the district court several times that he was requesting a stay of adjudication because, if he did "what he's supposed to do, [he] would not have to register as a sex offender." And after adjudicating TPB delinquent, the district court told TPB that he would "have to register as a sex offender." Thus, although the district court did not make particularized findings on the potential effect of the registration requirement on TPB, the record indicates that the district court considered the requirement in making its determination. *See J.R.Z.*, 648 N.W.2d at 245-46 (noting that neither statutory law nor caselaw require particularized findings on effect of registration requirement).

Because the district court properly considered public safety and TPB's best interests, the delinquency adjudication does not constitute an abuse of discretion.

Affirmed.