

THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY



C.P.,	:	
	:	
Petitioner,	:	File No.
	:	
v.	:	
	:	
	:	SBI No.
State of Delaware,	:	
	:	
Respondent.	:	

ORDER

Pending before the Court is a “Motion for Relief From/Modification of Registration and Community Notification Requirements” (“Motion”) filed by C.P. (“Petitioner”) on February 22, 2017. The State of Delaware (“State”) filed a “Response to Motion for Relief From/Modification of Registration and Community Notification Requirements” (“Response”) on March 30, 2017.

BACKGROUND

On May 20, 2015, Petitioner was adjudicated delinquent of one count of Unlawful Sexual Contact in the Second Degree.¹ On July 1, 2015, Petitioner was sentenced to an indefinite commitment to the Delaware Division of Youth Rehabilitative Services (“DYRS”), suspended for Level III probation for a period of two years with the Inappropriate Sexual Behaviors Unit (“ISB”). Conditions of Petitioner’s probation included registration as a Tier II sex offender, participation in individual ISB Counseling and Psychotherapeutic Children’s Services (“PCS”) Family Counseling. Petitioner was to have no contact with the victim, his stepsister, and no unsupervised contact with anyone under the age of twelve.

On January 19, 2016, Petitioner’s sentence was modified so that he was permitted to have contact with his stepsister in order to permit reunification to occur

¹ Unlawful Sexual Contact in the Second Degree is a class F felony. 11 *Del. C.* § 768.

between them in a supervised setting, and for further reunification to proceed as directed by Petitioner and the victim's therapists.

On or about October 18, 2016, Petitioner's therapist communicated that Petitioner had successfully reunified with his stepsister and had successfully completed therapy regarding his past inappropriate sexualized behaviors.

On January 30, 2017, Petitioner's probation officer submitted via letter to Petitioner's counsel that Petitioner successfully completed treatment for inappropriate sexual behaviors; attended individual sessions at Delaware Guidance; worked in Pathways; was able to process what he learned during individual sessions; and successfully completed individual sessions in October 2016. Petitioner also attended family and group sessions with PCS Family Support Program. Petitioner's supervision was scheduled to end on July 1, 2017.

Petitioner filed his pending Motion on February 22, 2017, requesting that he be relieved from any and all sex offender registration and notification requirements as set forth in 11 *Del. C.* § § 4120 and 4121.

The State filed its Response on March 30, 2017 opposing Petitioner's request.

The Court held a hearing on Petitioner's Motion on May 22, 2017. Petitioner appeared represented by counsel Michael Abram, Esq. Present on behalf of the State was Deputy Attorney General Rebecca Anderson, Esq. The evidence presented during the hearing is discussed below.

DISCUSSION

Pursuant to 11 *Del. C.* § 4121(d)(2)(a), any person convicted or adjudicated delinquent of Unlawful Sexual Contact in the Second Degree shall be designated by the Court to Risk Assessment Tier II. Any juvenile who has been registered as a sex offender and does not fit the criteria set forth in 11 *Del. C.* § 4123(c)(1) may petition the Family Court for a registry review hearing.² The hearing shall be held at either the conclusion of treatment or two years from the date of adjudication, whichever comes first.³ The Family Court may maintain the petitioner's current tier designation for the adjudicated offense or, where it appears by a preponderance of the evidence after consideration of the factors set forth in paragraph (c)(2) of section 4123 that modification will not pose a threat to public safety, the Court may relieve the person of all registration and notification requirements or assign the person to a lower tier.⁴

² See 11 *Del. C.* § 4123(d).

³ *Id.*

⁴ *Id.*

As a preliminary matter, the Court notes that Petitioner does satisfy the criteria set forth in 4123(c)(1).⁵ Because the victim of Petitioner's offense was under five years old, Petitioner was required to register pursuant to 11 *Del. C.* § 4123(c)(1). The Court had no discretion to relieve Petitioner of this requirement at the time of sentencing.⁶ However, upon further review of the applicable statutes and correspondence between the Court and the parties, the Court finds that Petitioner is still eligible to petition the Court for relief from his registration and notification requirements pursuant to 11 *Del. C.* § 4123(d).

Subsection (d) of 11 *Del. C.* § 4123 directs that:

Any juvenile who does not fit the criteria set forth in paragraph (c)(1) of this section above and has been registered as a sex offender, may . . . petition Family Court for a registry review hearing. . . Provided, however, that the prohibition involving offenses where the victim was 5 years old or younger shall not apply to this section.

The Court interprets this provision to mean that, in cases, such as Petitioner's, where the sex offender meets the criteria of 4123(c)(1) solely because the victim of the offense was under five years old, that offender is not prohibited from requesting relief from registration requirements pursuant to 4123(d). Subsection (d) directs that offenders who satisfy the criteria of 4123(c)(1) may not petition the Court for relief from registration requirements. However, offenders who satisfy the criteria of 4123(c)(1) solely because of the prohibition that the victim was five years old or younger are not barred from requesting relief from the Court. If Petitioner's offense satisfied any of the other prohibitions listed in 4123(c)(1), for example he was convicted of one of the enumerated offenses listed, in addition to the victim being under five years old, then the Court would not be permitted to relieve Petitioner of his registration and notification requirements. However, because the only prohibition Petitioner's offense meets in 4123(c)(1) is the prohibition against offenses where the victim was under five years old, and that provision is stated as not barring an offender from petitioning the Court for relief under 4123(d), the Court finds that Petitioner is eligible to petition the Court for relief, and that the Court may grant such relief upon a finding, by a preponderance of the evidence, that modification of Petitioner's status will not pose a threat to public safety.

In making its determination of whether the juvenile poses a threat to public safety, the Court must consider: (a) the risk the juvenile poses to the victim, the community and to other potential victims; (b) the nature and circumstances of the offense; (c) the impact on the victim, including the effects of registration and community notification; (d) the comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of 11 *Del. C.*

⁵ Petitioner was not adjudicated delinquent of conspiracy, attempt, or any of the offenses enumerated in Section 4123(c)(1). However, the victim of Petitioner's Unlawful Sexual Contact in the Second Degree adjudication was four years old. See 11 *Del. C.* § 4123(c)(1).

⁶ See 11 *Del. C.* § 4123(c)(1).

§ 4123; (e) the likelihood of successful rehabilitation, if known, and (f) the adverse impact of public registration on the juvenile and the rehabilitative process.⁷

The Court will now review the factors of Section 4123(c)(2), as follows:

a. the risk the juvenile poses to the victim, the community and to other potential victims;

A comprehensive evaluation, risk assessment, and treatment recommendation was performed pursuant to Section 4123(b) on June 19, 2015 by Dr. Teresa Dunbar.

Dr. Dunbar's evaluation concluded that Petitioner was at a low risk for future inappropriate sexual offending behaviors. Factors supporting Petitioner's low risk level were his caregiver consistency, supportive family system, no previous juvenile history, ongoing academic success, and no antisocial attitudes or behaviors. Petitioner had not engaged in previous sexual acting out, is mostly well behaved, is socially engaging, and is motivated to have a successful life. Additionally, Dr. Dunbar's evaluation found that Petitioner's actions were likely the result of a sexually naïve, situational, one-time incident, motivated by experimentation with new sexual feelings.

Petitioner has no evidence of current or past deviant sexual interest or compulsive behavior. He has successfully completed sex-offense specific treatment and he will be released from supervised probation July 1, 2017.

b. The nature and circumstances of the offense;

On May 20, 2015, Petitioner was adjudicated delinquent of one count of Unlawful Sexual Contact in the Second Degree. The victim of the offense is Petitioner's stepsister. Petitioner was fourteen years old and the victim was four years old when the incident occurred.

The victim communicated to her mother, and during a CAC interview, that Petitioner touched her vagina twice and that she touched Petitioner's penis. After initially denying these allegations, Petitioner stated that he intentionally touched his stepsister once "in the heat of the moment."

c. The impact on the victim, including the effects of registration and community notification;

During the May 22, 2017 hearing, both Petitioner's probation officer and family support therapist testified to Petitioner's current relationship with his stepsister, the victim.

Petitioner has had visits with his stepsister and no concerns have been raised about Petitioner's interactions with his stepsister. The visits go well and a safety plan

⁷ 11 Del. C. § 4123(c)(2)(a-f).

has been put in place. Petitioner has completed day and overnight visits at his mother's home with his stepsister and recently began having weekend visits there.

Petitioner's counselor is in communication with Petitioner's stepsister's counselor and no concerns by either counselor have been observed with Petitioner and his stepsister's interactions. According to Petitioner's therapist, Petitioner's mother is appropriate to supervise Petitioner's interactions with his stepsister.

Though Petitioner is in the process of reunifying with his stepsister, no set date has been established for when reunification will be completed. The end goal is for Petitioner to return home and live with his stepsister again. Petitioner's therapist would like this goal to be reached by the end of June 2017.

d. The comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section;

Dr. Dunbar's June 19, 2015 evaluation concluded that Petitioner is at a low risk of sexual reoffending.

Since his charge, Petitioner has resided with his maternal grandparents in Georgetown, Delaware. Petitioner stated that there are no problems in the home and that they all get along well with one another. Petitioner's mother lives nearby with her paramour and daughter - the victim of the offense. Petitioner's mother is supportive of Petitioner's treatment. Petitioner's father has never been involved in his life. Petitioner stated he and his mother have a good relationship. Petitioner reported that he hated his father because he was a drug addict and was often in jail. Petitioner indicated he only had brief visual contact with his father. Petitioner considers his grandfather to be a strong male role model for him.

Petitioner has had no significant illnesses or injuries during his life thus far, and he is not currently taking any medications. Petitioner's mother communicated to Dr. Dunbar that she generally did not have any problems or concerns with Petitioner as a child and Petitioner never exhibited sexually inappropriate behaviors within the home, school or community. Petitioner generally receives good grades in school, has had no behavioral problems in school, and has never repeated a grade. Petitioner communicated to Dr. Dunbar that he struggled to be accepted by his peers at school and that they made fun of him and called him "ugly." Now, however, Petitioner stated that he associates with the "more popular kids" and that they support him if others try to pick on him.

Petitioner has never engaged in illegal substance use or abuse.

Petitioner has no previous juvenile charges.

In 2004, the Division of Family Services (“DFS”) investigated an allegation of sexual abuse of the Petitioner by his stepfather. The case was eventually closed as “unsubstantiated with concern.” Petitioner never received counseling for this incident. During his June 19 assessment, Petitioner stated that he did not remember anything about this incident. Petitioner denied ever being physically abused.

On or about February 10, 2015, Petitioner began counseling at People’s Place with therapist Stuart Johnson, LPCMH. During his sessions with Mr. Johnson, Petitioner communicated that his relationship with his mother was somewhat strained and distant, and that he was concerned that he was no longer living at home so he could protect his stepsister. Petitioner was vague about his feelings concerning the sexual touching of his stepsister and claimed to be tired the morning of the incident. Petitioner reported to Mr. Johnson that he knew everything about sex from his health class. Petitioner avoided processing any emotions.

During his evaluation with Dr. Dunbar, four months later, Petitioner stated that he had two sexual education classes in seventh grade and one in fifth grade. Petitioner did not remember any sex education that his mother shared with him and communicated that most of what he knew he learned “by just growing up.” Petitioner indicated that he had girlfriends in the past but had never engaged in intercourse. Petitioner did not know the meaning of “consent.”

Petitioner was administered an Abel screening which indicated that he showed no sexual interest toward younger children and would be a candidate for community-based treatment without undue risk to the community.

During Dr. Dunbar’s evaluation of Petitioner, Petitioner exhibited clear thinking with no psychotic symptoms. He seemed to struggle in some areas of being socially accepted. Petitioner’s responses suggested that he used avoidance to overcome unpleasant situations and had limited skills with expressing feelings. Petitioner could not recall any traumatic events that have affected his life.

Regarding the incident with his stepsister, Petitioner denied being motivated by sexual desires and reported that he touched his stepsister’s vagina after she complained that it hurt. Petitioner stated that instead he should have asked his grandmother to look at it. Petitioner denied that he put his fingers inside his stepsister or that he allowed her to touch his penis. Petitioner stated he did not know how his actions affected his stepsister and reported that he was not angry with her for saying things about him. Petitioner stated that he forgave his stepsister. Petitioner stated that, before he touched his stepsister, he knew it was against the law to sexually touch a minor.

Since the incident, Petitioner has learned to stop and think about certain behaviors before he engages in them. He reported being calmer, being more understanding, and “taking things more seriously.”

Petitioner sees himself as being devoted to school and family responsibilities. Petitioner frequently pursues activities that signify maturity and discipline. An MACI test suggested that Petitioner has a tendency to be self-centered and to believe that he was more knowledgeable than his peers. When such behavior irritated others, Petitioner was likely to respond by being dismissive of their complaints or project blame onto someone else in order to maintain his self-assurance. The MACI indicated that Petitioner does struggle with his sexual thoughts and feelings, is preoccupied by the conflict and tension surrounding such impulses, and is uncertain as to how to incorporate these emotions into his life.

The ACS-R and PSAQ tests indicated that Petitioner was aware of some appropriate sexual behaviors and expressed uncertainty about female behaviors, feelings, and experiences. At the time the test was administered, Petitioner was still at the beginning stages of puberty and his responses appeared normal for his age.

Dr. Dunbar's assessment indicated that Petitioner was at a low risk for sexual reoffending.⁸ Petitioner exhibited some cognitive distortions as to what his stepsister said he did. However, according to Dr. Dunbar, denial is common and can be processed when Petitioner feels safe within a therapeutic milieu.

Dr. Dunbar's assessment findings suggest that Petitioner's actions were similar to the typology of a naïve experimenter. Such youth are sexually naïve, usually engage in a single event on a young victim, the incident is usually situational, does not include threat or force, and is motivated by experimentation with new sexual feelings.

Dr. Dunbar concluded that Petitioner does need education as to how his behaviors affect others, understanding risk-taking situations, and more thorough age-appropriate sexual information and decision-making. Dr. Dunbar recommended community-based treatment. Specifically, Petitioner was determined to be a good candidate for the ISB Unit and for counseling with a trained ISB therapist. Dr. Dunbar further recommended Petitioner become involved in structured peer activities to develop age-appropriate social skills and friendships. Finally, though Petitioner indicated he changed since acquiring his charge, he continues to make poor decisions as a means of coping. Therefore, Dr. Dunbar noted that Petitioner continues to need ongoing supervision regarding the choices he makes and the use of technical devices.⁹

As of the May 22 hearing, Petitioner had completed all required sex-offense specific treatment and continues to participate in reunification therapy. Petitioner is stable and functioning in the community and shows growing maturity.

⁸ See *infra* pg. 4.

⁹ Specifically, Dr. Dunbar referenced that Petitioner admitted to text messaging girls to find a girlfriend for the summer. According to Dr. Dunbar, such a desire was likely based on his inappropriate actions with his stepsister and wanting to prove that he was attracted to same age peers.

e. The likelihood of successful rehabilitation, if known; and

Petitioner's probation officer, J---- S-----, testified that she has had no issues with Petitioner and he is scheduled to complete supervised probation July 1, 2017. Ms. S----- - testified that Petitioner would have been discharged from probation early. However, he was not discharged early so that Petitioner's interactions with his stepsister could continue to be monitored.

Petitioner has successfully completed group, family, and individualized counseling for sexually inappropriate behaviors. Petitioner's family support therapist, A--- W----, testified that no additional counseling is necessary for Petitioner at this time.

Petitioner has been seeing a family support therapist for over one year. Currently, they are working on reunification between Petitioner and his stepsister. Petitioner's visits with his stepsister have gone well and no additional issues have been raised with those visits.

Ms. W---- testified that Petitioner has successfully completed sex offense treatment conducive to his charge. Petitioner understands his risks and a relapse prevention plan has been implemented. Petitioner has been able to demonstrate that he can use the skills and tools he has learned. However, according to Ms. W----, Petitioner still needs to be monitored at this time.

Petitioner's family has been involved in his rehabilitation process.

f. The adverse impact of public registration on the juvenile and the rehabilitative process.

Ms. W---- testified that Petitioner's status as a registered sex offender can be an issue for Petitioner with regard to his relationships with peers, if they discover he is a registered sex offender. Ms. W---- stated that some children have caused issues for Petitioner at school stemming from his status as a sex offender. However, Ms. W---- stated that Petitioner has learned how to handle himself appropriately and how to communicate his status to.

Petitioner asserts in his Motion that he has faced several challenges directly related to his placement on the Sex Offender Registry. Specifically, Petitioner has been bullied by other students at school. Also, Petitioner anticipates that his status will affect his ability to obtain employment in the future. Though the chance of recidivism is low, Petitioner faces several chances of being charged with felonies for failing to register, verify addresses, and obey residency restrictions. Petitioner argues that he should not have to face these restrictions and requirements because his potential to do well outweighs his risk to do harm.

Finally, Petitioner's name is searchable through the National Sex Offender Public Website.

CONCLUSION

The State is opposed to Petitioner's Motion. The State believes that Petitioner still poses a risk to the community because only two years have passed since the offense occurred. The State does not believe two years is enough time to determine whether or not Petitioner still poses a risk to other victims. Further, Petitioner has not yet completed the full two years of his probation. Also, the State asserts that the nature and circumstances of the incident weigh against Petitioner as the offense was a repeated event and occurred against his stepsister; someone he had easy access to and was trusted with. It is unclear the impact this event had on his stepsister given her young age. The State expressed concern that a new CAS evaluation was not completed. Finally, the State does not feel that Petitioner has shown any impact that registration has had on himself aside from bullying by peers. Yet, Petitioner indicated in the 2015 evaluation that he associates with the "popular kids."

The Court finds that, though Petitioner does fit the criteria set forth in 11 *Del. C.* § 4123 (c)(1), he is eligible for relief pursuant to 11 *Del. C.* § 4123(d).¹⁰ The Court further finds, by a preponderance of the evidence, that Petitioner is not likely to pose a threat to public safety if relieved of sex offender registration and community notification requirements. Of significance to the Court's decision is Dr. Dunbar's determination that Petitioner is at a low risk of reoffending. Petitioner's actions were made out of curiosity and naivety; Petitioner has successfully completed all his required treatment and his relationship with his stepsister continues to be monitored by his probation officer and mother; Petitioner has not sexually reoffended; the issues addressed by Dr. Dunbar in 2015 to be problems for Petitioner have been addressed through his counseling; Petitioner understands his risk factors for reoffending and a relapse prevention plan has been implemented. There is no evidence of Petitioner engaging in any deviant sexual interests or compulsive sexual behavior.

Though the State contends that two years is not enough time to adequately measure Petitioner's improvement, at the time his evaluation was completed in 2015 Petitioner was already determined to be at a low risk of reoffending. Since then he has completed all recommended treatment, almost completely reunified with his stepsister, and would have been discharged early from probation had continued observation of Petitioner's visitations with his stepsister not been necessary.

The Court agrees with the State's position that Petitioner has alleged minimal adverse effects that sex offender registration has placed on him. However, Petitioner has only been required to register for two years and is still a minor. The impacts of being placed on the registry will undoubtedly increase as Petitioner gets older and upon reaching adulthood. Specifically, registration will likely impede his ability to enroll in college and obtain gainful employment. The adverse effects of registration is one of six factors which the Court must consider. When considering all factors combined, the

¹⁰ See *infra* pg. 3.

evidence establishes, by a preponderance of the evidence, that Petitioner does not pose a threat to public safety.

Finally, the Court notes that the Motion for Relief was filed in the county in which Petitioner's case was adjudicated and the registry review hearing occurred after Petitioner completed his treatment.¹¹

Accordingly, the Motion for Relief from/Modification of Registration and Community Notification Requirements is hereby **GRANTED** and, pursuant to 11 *Del. C.* § 4123(d), the Petitioner is relieved from any and all registration and notification requirements of 11 *Del. C.* §§ 4120 and 4121.

IT IS SO ORDERED this 21st day of June 2017.

PETER B. JONES, JUDGE

PBJ/drd

¹¹ Petitioner's probation is set to be completed on July 1, 2017.