

IN THE
COURT OF APPEALS OF INDIANA

CAUSE NO. 76A03-1711-MI-2681

NATHAN HEALEY,
Appellant-Petitioner,

v.

ROBERT CARTER, *et al.*,
Appellees-Respondents.

Appeal from the Steuben Circuit
Court,

Case No. 76C01-1705-MI-116

The Hon. Allen N. Wheat,
Judge.

BRIEF OF APPELLEE

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TABLE OF CONTENTS

Table of Authorities 3

Statement of the Issue..... 4

Statement of the Case 4

 Nature of the Case 4

 Course of Proceedings 4

 Disposition..... 5

 Course of Appellate Proceedings 5

Statement of the Facts 5

Summary of the Argument..... 6

Argument 7

 Standard of Review 7

 I. Healey is a sex or violent offender whose victim is younger than 12 years
 of age, and he must register for life..... 7

 II. The trial court properly relied on the *Nichols* case 8

 III. Healey’s Sixth Amendment argument lacks merit..... 11

Conclusion..... 12

Certificate of Filing and Service..... 13

TABLE OF AUTHORITIES

Cases

Apprendi v. New Jersey, 530 U.S. 466 (2000) 7, 11

Blakely v. Washington, 542 U.S. 296 (2004) 7, 11

Chaidez v. United States, 568 U.S. 342, 133 S.Ct. 1103 (L.Ed.2d 149
2013)..... 11

City of Indianapolis v. Hicks, 932 N.E.2d 227 (Ind. Ct. App. 2010),
trans. denied 7

D.A. v. State, 58 N.E.3d 169 (Ind. 2016) 11

Gonzalez v. State, 980 N.E.2d 312 (Ind. 2013) 11

Jensen v. State, 905 N.E.2d 384 (Ind. 2009) 11

Nichols v. State, 947 N.E.2d 1011 (Ind. Ct. App. 2011) 6, 8, 9, 10

Statutes

Ind. Code chapter 11–8–8 (2017) 11

Ind. Code § 11-8-8-5(a)(12) 6, 7, 8

Ind. Code § 11-8-8-19(c) 10

Ind. Code § 11-8-8-19(c)(2)..... 6, 8

Ind. Code § 11-8-8-19(e)..... 9, 10

Ind. Code § 35-42-2-1(2)(b) 6

Ind. Code § 35-42-3-2 8

Ind. Code § 35-42-3-3 6, 8

Ind. Code § 35-42-3-3(a)(1) 4

Ind. Code § 35-42-3-3(b)(1) 6, 8

STATEMENT OF THE ISSUE

Nathan Healey pleaded guilty to criminal confinement under Indiana Code Section 35-42-3-3(a)(1), which does not set forth the age of the victim as an element of the offense that the State must prove beyond a reasonable doubt. It is undisputed that Healey's victim was in fact younger than 12 years of age. Indiana law provides that a person convicted of criminal confinement of a victim under 18 years of age is a sex and violent offender, and that the person must register for life if the victim is less than 12 years of age.

The issue on appeal is whether the trial court properly denied Healey's request that he not be required to register as a sex offender.

STATEMENT OF THE CASE

Nature of the Case. Healey is appealing the trial court's denial of his verified petition for declaratory judgment in which he asked to be relieved of his duty to register as a sex offender.

Course of Proceedings. Healey filed his verified petition for declaratory relief on May 3, 2017 (App. 10).¹ On July 10, 2017, the Respondents filed a motion to dismiss or, in the alternative, response in opposition to Healey's verified petition for declaratory judgment (App. 14). The parties submitted a stipulation of facts on August 28, 2017 (App. 21). That same day Healey filed his brief in support of the petition for declaratory judgment (App. 32).

¹ All record cites are to Volume 2 of the Appellant's Appendix.

Brief of Appellee
Robert Carter

Disposition. On September 6, 2017, the trial court entered an order that denied the Respondent's motion to dismiss, and denied Healey's verified petition for declaratory judgment (App. 39). The court found that Healey did not contend he was unaware of his victim's age (App. 41 ¶ 8). "In accordance with existing Indiana law the moment the trial court entered judgment upon Healey's plea of guilty to the crime of criminal confinement his fate was sealed regarding whether he was or was not required to register as a sex offender ..." (App. 42 ¶ 14).

Healey filed a motion to correct error on September 28, 2017, to which the Respondents filed a response in opposition on October 4, 2017, and Healey replied on October 11, 2017 (App. 43, 47, 52). The trial court denied the motion to correct error on October 18, 2017 (App. 57).

Course of Appellate Proceedings. Healey filed a notice of appeal on November 17, 2017. The notice of completion of clerk's record was issued on November 21, 2017. No transcript was requested. An amended notice of completion of clerk's record was issued on March 14, 2018. By order entered March 21, 2018, the Court directed Healey to file his brief and appendix by April 9, 2018. Healey filed the Brief of Appellant on April 9, 2018. He also submitted his appendix, but a notice of defect was issued. His appendix was filed April 20, 2018. The Brief of Appellee now is due May 9, 2018.

STATEMENT OF THE FACTS

On July 5, 2007, Healey was charged as follows in the Steuben Superior Court:

Brief of Appellee
Robert Carter

- Count I: Criminal Confinement Against a Child, I.C. 35-42-3-3(b)(1)
- Count II: Battery Against a Child, I.C. 35-42-2-1(2)(b)

(App. 21 ¶ 1). Count III, Criminal Confinement under I.C. 35-42-3-3, was added on December 30, 2008 (App. 27).

Count I indicates that the victim, whose name was redacted, was four months old (App. 25). The victim in Count III is identified as “Z.M.” (App. 27). Both criminal confinement charges relate to conduct that occurred on July 4, 2007, and apparently involved the same victim (App. 25, 27). Healey pleaded guilty to Count III on May 11, 2009, and Counts I and II were dismissed (App. 22 ¶ 5).

Effective July 1, 2007, a person convicted of Criminal Confinement was defined as a “sex or violent offender” if the victim is less than 18 years of age, and the person who confined the victim is not the victim’s parent or guardian. I.C. 11-8-8-5(a)(12). A sex or violent predator whose victim is less than 12 years of age must register for life. I.C. 11-8-8-19(c)(2).

SUMMARY OF THE ARGUMENT

Healey must register as a sex offender for life because he committed the offense of criminal confinement and his victim was younger than 12. The trial court properly relied on the *Nichols* case to determine that neither the trial court nor the DOC had any discretion related to Healey’s registration requirement. In *Nichols* this Court determined that the duty to register resulted from the operation of the sex offender registration act itself.

Brief of Appellee
Robert Carter

Healey complains that imposing a duty to register on him violates his Sixth Amendment right to trial by jury. He says the DOC found facts that the State should have proved to a jury beyond a reasonable doubt. But the operative Sixth Amendment cases on which Healey relies, *Apprendi* and *Blakely*, only apply when a court imposes a sentence above the statutory maximum based on facts to which the defendant did not admit or that a jury did not determine beyond a reasonable doubt. Healey's Sixth Amendment claim fails because the duty to register is not a part of his sentence. It is a collateral consequence for which the right to trial by jury is not implicated.

ARGUMENT

Standard of Review

The issue in this appeal involves matters of law exclusively, so this Court reviews the trial court's decision *de novo*. *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 230 (Ind. Ct. App. 2010), *trans. denied*.

ARGUMENT

I.

Healey is a sex or violent offender whose victim is younger than 12 years of age, and he must register for life.

It appears from the available record, and Healey does not dispute, that the criminal confinement victim was four months old. This is much younger than the 18 years provided in the sex or violent offender definition related to criminal confinement. I.C. 11-8-8-5(a)(12). And it is younger than the 12-year age limit in the statute providing for a lifetime registration requirement of persons convicted of

Brief of Appellee
Robert Carter

criminal confinement. I.C. 11-8-8-19(c)(2). Healey must register for life because his criminal confinement victim was younger than 12 years of age.

It does not matter that he pleaded guilty to a crime that did not include an age limit that would affect his sex offender registration status. The definition of sex or violent offender includes a person who is 1) convicted of criminal confinement under Indiana Code Section 35-42-3-3, and 2) the victim is younger than 18. I.C. 11-8-8-5(a)(12). This statute does not cite the specific part of the criminal confinement statute that elevates the offense to a Class C felony if the victim is less than 14 years of age. I.C. 35-42-3-3(b)(1). Instead, it cites the entire criminal confinement statute. If Healey's victim were more than 18 years old, he would not be a sex or violent offender. And if his victim were more than 12 years of age, he would not have to register for life.

As discussed below, when the DOC, which is responsible for maintaining the sex offender registry, received information about the age of Healey's criminal confinement victim, the law required the DOC to determine that Healey had to register for life.

II. The trial court properly relied on the *Nichols* case.

The trial court properly rejected Healey's argument "that requiring him to register as a sex offender is a penalty or punishment that is based upon a fact to which he did not plead guilty" (App. 41 ¶ 9). The court quoted the following from *Nichols v. State*, 947 N.E.2d 1011 (Ind. Ct. App. 2011):

Brief of Appellee
Robert Carter

The Sex Offender Registration Act requires that the DOC maintain a registry of sex offenders, and requires that offenders register with the Department. Placement on the Registry is mandatory, and the Act affords neither the trial court nor the DOC any discretion in the matter of the registration requirements. ... Plea agreements “have no effect on the operation of the act.”

(App. 42 ¶ 13, quoting *Nichols*, 947 N.E.2d at 1015 (internal citations omitted)).

Offender Nichols had pleaded guilty to two counts of child molesting in a Hamilton County case, and one count of child molesting in a Tipton County case. The cases had been consolidated in the Hamilton Circuit Court, which entered a sentencing order that, among other things, required Nichols to register as a sex offender for ten years. The DOC subsequently determined that Nichols had to register for life because he was convicted of two unrelated offenses, as provided in Indiana Code Section 11-8-8-19(e). Nichols filed a motion to correct error, which the trial court denied.

This Court affirmed, finding that “[t]he DOC’s decision in Nichols’s case was a correct application of the reporting requirements to Nichols’s conviction for the DOC’s administrative purposes ...” *Nichols*, 947 N.E.2d at 1017. The Court noted that the DOC is required by statute to maintain sex offender registry information, based on information received from the probation office, presentencing report, sentencing order, “and any other information necessary for the DOC to properly populate and maintain the Registry.” *Id.* The Court disagreed that DOC had effectively “overruled” the trial court. *Id.* “Whether the reporting period is ten years or for a lifetime is instead a consequence of the operation of the Act itself.” *Id.*

Brief of Appellee
Robert Carter

Similarly, in this case the trial court correctly found that “[i]n accordance with existing Indiana law the moment the trial court entered judgment upon Healey’s plea of guilty to the crime of criminal confinement his fate was sealed regarding whether he was or was not required to register as a sex offender ...” (App. 42 ¶ 14). Under *Nichols*, Healey’s duty to register as a sex offender after pleading guilty to criminal confinement of a victim under 12 years of age resulted as “a consequence of the Act itself.”

Healey attempts to distinguish *Nichols* by arguing that the court in *Nichols*, unlike the court in his case, addressed *how* the DOC reached its decision that the offender must register for life (Appellant’s Br. 17). There was no dispute in *Nichols* that he would be required to register for life if he was convicted of two unrelated offenses, but the parties did dispute the meaning of “unrelated offenses,” an undefined term in Indiana Code Section 11-8-8-19(e). This Court treated the issue as a question of law, and found that *Nichols*’s offenses were unrelated because there were two different victims in two different counties and in different periods of time. Here, however, Indiana Code Section 11-8-8-19(c) applies, and it only involves the factual issue whether the victim is younger than 12 years of age. That issue is not disputed in this case.

Accordingly, when the DOC received the information about Healey necessary for it to populate and maintain the sex offender registry, “the operation of the Act itself” resulted in the DOC having to inform the trial court and Healey that he must register for life.

III.
Healey's Sixth Amendment argument lacks merit.

The Sixth Amendment to the United States Constitution guarantees the right to trial by jury. At page 18 of his brief Healey argues that the DOC's determination that he must register for life was based upon extra-judicial fact-finding by the DOC in violation of his Sixth Amendment rights. He refers to his petition, where he cited the *Blakely* and *Apprendi* opinions for the proposition that, under the Sixth Amendment, a criminal defendant's sentence may not be enhanced above the statutory maximum based on a fact to which the defendant did not admit or that was found by a jury beyond a reasonable doubt (App. 11 ¶ 7). See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Blakely v. Washington*, 542 U.S. 296, 303 (2004).

Healey's Sixth Amendment argument fails because the requirement that he register as a sex offender is not part of his sentence. Instead, when the legislature imposes restrictions on people convicted of certain crimes, those restrictions are not part of a sentence, but are collateral consequences. See *D.A. v. State*, 58 N.E.3d 169, 173 (Ind. 2016). Sex-offender registration itself is thus a collateral consequence. *Chaidez v. United States*, 568 U.S. 342, 349 n.5, 133 S.Ct. 1103, 185 (L.Ed.2d 149 2013); see generally Ind. Code ch. 11-8-8 (2017) (imposing sex-offender registration requirements). The legislature can, for example, impose a lifetime registration requirement even after a sentence has been fully served. See *Gonzalez v. State*, 980 N.E.2d 312, 315 (Ind. 2013); *Jensen v. State*, 905 N.E.2d 384, 394-95 (Ind. 2009).

Brief of Appellee
Robert Carter

Accordingly, requiring Healey to register as a sex offender does not implicate his right under the Sixth Amendment to trial by jury.

CONCLUSION

For the foregoing reasons, Appellee respectfully requests this Court to affirm the trial court's denial of Healey's request that he not be required to register as a sex offender.

Respectfully submitted,

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Brief of Appellee
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CERTIFICATE OF FILING AND SERVICE

I certify that on May 9, 2018, I electronically filed the foregoing document using the Indiana E-filing System. I also certify that on May 9, 2018, the foregoing document was electronically served upon the following via IEFS:

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