

24619

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 24619

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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The PEOPLE OF THE STATE OF SOUTH DAKOTA
IN THE INTEREST OF Z.B.,

MINOR CHILD,

AND CONCERNING

H.B., MOTHER, AND A.B. FATHER,

RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
BUTTE COUNTY, SOUTH DAKOTA

THE HONORABLE JOHN W. BASTIAN
CIRCUIT COURT JUDGE

APPELLEE'S BRIEF

LAWRENCE E. LONG
ATTORNEY GENERAL

John M. Strohman
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

Attorneys for Minor Child

Francy E. Foral
Attorney at Law
121 W. Hudson Street
Spearfish, SD 57783
Telephone: (605) 722-1552

Attorney for Respondents

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Respondents.

PRELIMINARY STATEMENT

In this brief, the minor child will be referred to as
"Z.B." Appellee, State of South Dakota will be referred to
as "State." References to documents will be as follows:

Settled Record SR
Dispositional Hearing DH
Adjudicatory Hearing AH
Defendant's Brief DB

All documents designated will be followed by their
appropriate page numbers(s).

JURISDICTIONAL STATEMENT

Respondent appeals from the Findings of Fact, Conclusions
of Law and an Order of Adjudication and Decree of

Disposition filed by the Honorable John W. Bastian on May 21, 2007. SR 80-83. The Notice of Entry of Findings of Facts, Conclusions of Law, and Order of Adjudication and Decree of Disposition were filed by the Butte County State's Attorney's Office on July 27, 2007. SR 88. Respondent filed his Notice of Appeal in a timely manner on August 24, 2007. SR 91.

STATEMENT OF LEGAL ISSUES

I

WHETHER THE SOUTH DAKOTA SEX OFFENDER REGISTRY STATUTE VIOLATES THE JURISDICTION OF THE JUVENILE COURTS AS SET OUT IN TITLE 26 OF THE SOUTH DAKOTA CODIFIED LAWS?

The trial court held that Z.B. must register as a sex offender.

Meinders v. Weber, 2000 S.D. 2, 604 N.W.2d 248

SDCL 22-24B-2

II

WHETHER THE APPLICATION OF THE SEX OFFENDER REGISTRY UNDER SDCL 22-24B-2 TO A FIFTEEN-YEAR-OLD AJUDICATED DELINQUENT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, SECTION 2 OF THE SOUTH DAKOTA CONSTITUTION?

The trial court held that Z.B. must register as a sex offender.

Meinders v. Weber, 2000 S.D. 2, 604 N.W.2d 248

In re M.A.H., 20 S.W.3d 860 (Tex. App. 2000)

In re J.R., 341 Ill. App.3d 784, 793 N.E.2d 687
(2003)

III

WHETHER APPLICATION OF THE SEX OFFENDER REGISTRY
UNDER SDCL 22-24B-2 TO A FIFTEEN-YEAR-OLD
AJUDICATED DELIQUENT VIOLATES HIS RIGHT TO EQUAL
PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE
UNITED STATES CONSTITUTION AND ARTICLE VI,
SECTION 18 OF THE SOUTH DAKOTA CONSTITUTION?

The trial court held that Z.B. must register as a
sex offender.

Meinders v. Weber, 2000 S.D. 2, 604 N.W.2d 248

Bergee v. South Dakota Board of Pardons and
Paroles, 2000 S.D. 35, 608 N.W.2d 636

In re M.A.H., 20 S.W.3d 860 (Tex. App. 2000)

State v. Geise, 2002 S.D. 161, 656 N.W.2d 30

IV

WHETHER APPLICATION OF THE SEX OFFENDER REGISTRY
UNDER SDCL 22-24B-2 TO A FIFTEEN-YEAR-OLD
AJUDICATED DELIQUENT CONSTITUTES CRUEL AND
UNUSUAL PUNISHMENT UNDER THE EIGHTH AND
FOURTEENTH AMENDMENT OF THE UNITED STATES
CONSTITUTION AND ARTICLE VI, SECTION 23 OF THE
SOUTH DAKOTA CONSTITUTION?

The trial court held that Z.B. must register as a
sex offender.

Meinders v. Weber, 2000 S.D. 2, 604 N.W.2d 248

Department of Revenue v. Kurth Ranch, 551 U.S.
767 (1994)

STATEMENT OF THE CASE AND FACTS

A petition was filed on January 18, 2007, alleging Z.D. to be a child in need of supervision. SR 2-3. An amended petition was filed on January 23, 2007. SR 11-12. A second amended petition was filed on January 24, 2008, and then a third amended petition was filed on February 21, 2007. SR 17-18, 31-33.

The third amended petition contained the following counts:

Count 1: Child In Need of Supervision.

Count 2: Sexual Contact with a Child Under Sixteen Years of Age, with the victim being G.B.

Count 3: Sexual Contact with a Child Under Sixteen Years of Age, with the victim being K.B.

Count 4: Rape in the First Degree, with the victim being G.B.

Count 5: Rape in the First Degree, with the victim being K.B.

SR 31-32.

An Adjudicatory Hearing was held on March 9, 2007. At the hearing Z.B. admitted to Count 4: First Degree Rape of G.B., and Count 5: First Degree Rape of K.B. AH 2-9. A factual basis was presented upon Z.B.'s admission to both counts. The factual basis in Count 4 maintained that Z.B. was fifteen years old at the time of the rapes. Z.B.

acknowledged that he was naked from the waist down when he saw that his little sister, G.B., was likewise naked from the waist down. AH 5. G.B. was lying on her bed when Z.B. tried to accomplish "full-fledged sexual intercourse and penetration." Id. Since G.B. is his sister, Z.B. had personal knowledge of G.B.'s young age (approximately nine years old). AH 4-5.

The factual basis accepted in Count 5 likewise involved Z.B. pursuing "full-fledged intercourse with . . . penetration of K.B." AH 5-6. Again, since K.B. is Z.B.'s little sister, Z.B. specifically knew of the girl's young age (approximately seven years old). AH 6.

A dispositional hearing was held on May 16, 2007. The Honorable John W. Bastian presided over the hearing. After his review of the file and the predispositional report the court held that "there is only one obvious disposition here and that's D.O.C." DH 6. The court also made Z.B. aware that he had to register as a sex offender. Id. The court then entered its formal Findings of Fact, Conclusions of Law and Order of Adjudication and Decree of Disposition. SR 80-84.

Z.B. does not specify the constitutional rights he claims were violated at the trial court level. His counsel

merely states an opinion that the application of the sex offender registry violates his "constitutional rights."
DH 4-5.

ARGUMENT

A. Standard of Review.

Z.B. raises challenges to the South Dakota Sex offender Registry statutes. Most of his challenges are based on general constitutional grounds. This Court has held that when there is an assertion of a violation of a constitutional right, it is to be reviewed under a de novo standard. State v. Selalla, 2008 S.D. 3, ¶ 18, ____ N.W.2d ____.

Z.B. also questions the rules of statutory interpretation by viewing SDCL 22-24B-2 (sex offender registry) and Title 26 (juvenile code) as conflicting statutes. DB 7-12. The rules of statutory interpretation have been clearly delineated by this Court. Dahn v. Trownsell, 1998 S.D. 36, ¶ 14, 576 N.W.2d 535, 539 states that questions of law, such as statutory interpretations, are reviewed de novo.

There is a strong presumption that a statute is constitutional. State v. Allison, 2000 S.D. 21, ¶ 5, 607 N.W.2d 1, 2. This Court will only declare a statute

"repugnant" to the Constitution when it plainly and unmistakably is shown to be so. Id. at ¶ 5. The Court has set forth that it is not their prerogative to decide whether the "legislative act is unwise, unsound, or unnecessary," but merely to determine the constitutionality. Id. "The purpose of statutory construction is to discover the true intention of the law which is to be ascertained primarily from the language expressed in the statute." Moss v. Guttormson, 1996 S.D. 76, ¶ 10, 551 N.W.2d 14, 17; U.S. West Communications, Inc. v. Public Utilities Commission, 505 N.W.2d 115, 122-23 (S.D. 1993). The intent of a statute is to be determined from what the legislature stated and not what the Court thinks it should have said. Id. The Court's ruling is confined to the language used by the legislature.

Words and phrases in a statute must be given their plain meaning and effect. When the language in the statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed.

Id. In construing statutes together, "it is presumed that the legislature did not intend an absurd or unreasonable result."

B. Introduction.

One case that is absent in Z.B.'s brief is in Meinders v. Weber, 2000 S.D. 2, 604 N.W.2d 248. Meinders holds that the sex offender registry is remedial in nature and not penal. Meinders, 2000 S.D. 2, ¶ 34, 604 N.W.2d at 262. Sex offender registries are adopted to protect the public and especially minors from the threat of "recidivism posed by sex offenders who have been released into the community." In re: Doe ("S.D."), 855 A.2d 1100, 1102 (2004). The Doe court stated that since sex offender registries are remedial and not penal, they "should be liberally construed for the benefit of the class it is intended to protect." Id. This Court has stated that despite the fact that registration subjects "registrants to increase scrutiny, it nonetheless creates no affirmative disability or punitive restraint flowing from the registration requirement itself." Meinders, 2000 S.D. at ¶ 17, 604 N.W.2d at 257.

Z.B. generally maintains that since his matter arose from a juvenile adjudication, he should not be subject to the penal effects of the sex offender registry like an adult. DB 7-8. The precedence set forth in Meinders, that the registry is not penal, transcends most of the issues Z.B. raises.

I

THE SOUTH DAKOTA SEX OFFENDER REGISTER STATUTE, SDCL 22-24B-2, DOES NOT CONFLICT WITH THE JUVENILE COURT PROCEEDINGS SET OUT IN TITLE 26 OF THE SOUTH DAKOTA CODIFIED LAWS.

Much of Z.B.'s brief on this issue sets forth a general outline of the law regarding juvenile proceedings. DB 2-14. The U.S. Supreme Court has recognized that juvenile proceedings are an alternative to a criminal prosecution. In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). The constitutional and statutory rights given to persons charged with crimes are not necessarily available in the juvenile proceeding, which is "conducted solely in the best interest of the child." State v. Jones, 521 N.W.2d 662, 667 (S.D. 1994). Juvenile adjudicatory hearings are governed by the rules of civil procedure with the purpose of the juvenile court to rehabilitate and not punish the juvenile's behavior. Id.

Z.B. attempts to create an unresolvable conflict between the sex offender registry and the juvenile court system. In his brief he states:

The issue here centers on the results of a conflict between two statutory schemes and the evident harm that befalls one child, despite a legislative intent to protect minors, balanced against an intent in another chapter to protect

the public against prospective, hypothetical harm.

DB 7.

Z.B. also argues that there will be stigma attached to him by public disclosure of his whereabouts and the immediate access to the information concerning him as a juvenile sex offender. DB 7, 12. Z.B. summarizes his claim by stating that his registration is an unreasonable means of furthering the State's interest of protecting society against sexual predators. DB 14.

Z.B.'s arguments are not novel. Others have made claims that the sex offender registry is an invasion of privacy that results in increased scrutiny. In Meinders v. Weber it was alleged that dissemination of the sex offender registry data

may result in loss of employment, invasion of privacy, media scrutiny and physical attacks by vigilantes once he [Meinders] is released from prison.

Id. ¶ 11, 604 N.W.2d at 254. Like Z.B., Meinders also claimed that the public dissemination of information is excessive because there were no restrictions on who could access this information and no limit in time that the offender must register. Id. ¶ 11, 604 N.W.2d at 254; DB 11-13. This Court looked at the matter to determine whether

the sex offender registry was punitive or remedial in nature. The decision was based on the principle that if a statute imposes a disability with its intent to punish or deter others, it is penal in nature. Id. ¶ 12, 604 N.W.2d at 255. It is remedial if instead it accomplishes some other legitimate government purpose. Id. The Court's analysis included an examination of the legislative history regarding the sex offender registry. It determined that the legislature's intention was to

accomplish the regulatory purpose of assisting law enforcement in identifying and tracking sex offenders to prevent future sex offenses, especially those against children. Furthermore, the purpose of the public access to registrant information as provided in SDCL 22-22-40 was to alert the public in the interest of community safety, and to prevent and promptly resolve incidents involving sexual offenses.

Id. ¶ 13, 604 N.W.2d at 255. The Court concluded that these are remedial measures, which are similar to warning the community of a potential health hazard. Id.

Z.B. incorrectly claims that SDCL 22-24B-1 is in conflict with the juvenile code. Clearly, the legislature did not set forth that every juvenile sex crime committed in this State would be subject to the sex offender registry. Specifically, SDCL 22-24B-2 sets forth that:

1. Only a juvenile who is fifteen years of age or older who has been adjudicated of either:

- a) SDCL 22-22-7.2 - (who has sexual contact with a person incapable of consenting),
- b) SDCL 22-24B-1(1) - rape as set forth in SDCL 22-22-1;
- c) SDCL 22-24B-1(9) - promotion of prostitution of a minor as set forth in SDCL 22-23-2(2).*

Clearly, the legislature has a rational and legitimate governmental purpose in protecting its citizens from sexual predators regardless of their age. The legislature set fifteen years of age as the baseline in which to start to register some sex offenders who have committed very specific sex crimes. Z.B views himself as a victim but this Court has held that "whether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the 'sting of punishment.'"

Meinders, 2002 S.D. 2, ¶ 14, 604 N.W.2d at 256 (citing Department of Revenue v. Kurth Ranch, 551 U.S. 767, 777 n.14, 114 S.Ct. 1937, 1945 n.14, 128 L.Ed.2d 767, 777 n.14 (1994)). Despite Z.B.'s view that the sex offender registry

* Juveniles who have committed similar offenses in other states or in the federal systems must likewise register. If a foreign jurisdiction requires an adjudicated juvenile to register and they move to South Dakota, they must likewise register here. SDCL 22-24B-2.

is penal in nature, Meinders states otherwise. There is no constitutional conflict between the juvenile court system and the sex offender registry statutes.

II

APPLICATION OF THE SOUTH DAKOTA SEX OFFENDER REGISTRY TO A FIFTEEN-YEAR-OLD ADJUDICATED DELINQUENT DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, SECTION 2 OF THE SOUTH DAKOTA CONSTITUTION.

Z.B. addresses this issue by discussing general concepts of due process and lists various rights of a juvenile such as "if the child is transferred to adult court, the child has a right to a jury trial"

DB 16. Z.B. then attempts to narrow his complaint by stating

[T]he issue in the instant case is whether the implementation of public notification, procedural protections are required beyond those found in these laws in order to assure fairness to children in carrying them out.

DB 17-18. The example he sets forth in support of his argument is that the dissemination of the information identifying him as a sex offender causes people to believe that he is "potentially dangerous." DB 18. This complaint is similar to the one raised in Issue I except that Issue II

now claims that the dissemination of information violates a protectable liberty interest. Id. Z.B. also argues that the State failed to provide notice and opportunity to be heard before his information was published on the public registry. DB 18-19.

A. Analysis.

Z.B. makes the same analytical error that he did in Issue I. The sex offender registry is not penal but remedial in nature. Meinders, 2000 S.D. 2, ¶ 34, 604 N.W.2d at 262. To establish a procedural due process violation, a plaintiff must demonstrate that they have a protected property or liberty interest at stake and that they were deprived of that interest without due process. Osloond v. Farrier, 2003 S.D. 28, ¶ 16, 659 N.W.2d 20, 24. In other words, he must point to a right conferred by state law or the constitution that would justify non-disclosure of the registration information. In re M.A.H., 20 S.W.3d 860, 864 (Tex. App. 2000).

Z.B.'s brief specifically states that it is a liberty interest he is raising. DB 18. He claims that his reputation is a legitimate liberty interest. Id. Other courts have held that harm to one's reputation is not a liberty interest that flows from a right to privacy. Helman

v. State, 784 A.2d 1058, 1070-71 (Del. 2001). The sex offender registry, regardless of length of time published, is not punitive and therefore no liberty interest is implicated. In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003).

Z.B. makes a general claim that the registration act violates due process because it does not condition registration upon a finding that he is a continuing danger to society. This is similar to the issue raised in In re J.R., 341 Ill. App.3d 784, 791, 793 N.E.2d 687 (2003). In re J.R. cited the United States Supreme Court's holding that "due process does not entitle [one] to a hearing to establish a fact that is not material under the Connecticut statute." Connecticut Department of Public Safety v. Doe, 538 U.S. 1, 123 S.Ct. 1160, 1164, 155 L.Ed.2d 98, 104 (2003). The court in In re J. R. held that:

The fact that respondent sought to prove - that he is not currently dangerous - is of no consequence under the Connecticut statute. Regarding the Connecticut statute, the Supreme Court recognizes that "the law's requirements turn on an offender's conviction alone - a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest. Connecticut Department of Public Safety, 538 U.S. at ___, 123 S.Ct. at 1164, 155 L.Ed.2d at 105.

In re J.R., 793 N.E.2d at 698.

Z.B. desires to focus on the singular goal of his rehabilitation instead of the legislature's goal of protecting the public from sexual predators. The Supreme Court of Delaware recognized this when it stated

[A]lthough we are aware that the juvenile justice system place emphasis on the best interest of the child, sex offenders of any age present unique problems. The General Assembly enacted the Sex Offender Registry statute in an effort to protect society from both adult and youthful sex offenders.

Helman, 784 A.2d at 1079.

The Supreme Court in Illinois stated:

Given the shift in purpose and policy of the Juvenile Court Act to include the protection of the public from juvenile crime and holding juveniles accountable, as well as the serious problems presented by juvenile sex offenders, we find no merit to J.W.'s claim that required him to register as a sex offender for life is at odds with the purpose and policy of the Juvenile Court Act.

In re J.W., 204 Ill.2d 50, 70, 787 N.E.2d 747, 759 (2003).

Based on the above, Z.B. has not demonstrated due process violation because he must register as a sex offender.

III

REQUIRING A FIFTEEN-YEAR-OLD ADJUDICATED
DELINQUENT TO REGISTER AS A SEX OFFENDER UNDER
SDCL 22-24B-2 DOES NOT VIOLATE HIS RIGHTS TO
EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT

OF THE UNITED STATES CONSTITUTION OR ARTICLE VI,
SECTION 18 OF THE SOUTH DAKOTA CONSTITUTION.

A. Introduction.

Z.B. acknowledges that the equal protection clause does not require all persons to be treated identically. DB 20. He then makes two specific claims:

1. That an adult could possibly receive a suspended imposition of sentence which could result in their name being removed from the sex offender registry and an adjudicated juvenile cannot. DB 22. Thus, Z.B. claims that he has denied him equal protection because "an adult offender is able to have his name removed from the sex offender registry for the cost of a postage stamp" DB 22.
2. Z.B. also complains of an equal protection violation in that juveniles who are adjudicated of committing violent crimes who are fifteen years of age and younger will have the matter kept confidential, yet a fifteen-year-old adjudicated of certain sex crimes can be put on the sex offender registry. DB 23.

B. Analysis.

Z.B. claims that SDCL 22-24B-2 violates his rights to equal protection under both Article VI, Section 18 of the South Dakota Constitution and the Fourteenth Amendment of the United States Constitution. Z.B. makes a general conclusion that the sex offender registry under SDCL 22-24B-2 is "completely arbitrary and capricious." DB 23.

This Court reiterated the analysis applied to an equal protection claim in Bergee v. South Dakota Board of Pardons and Paroles, 2000 S.D. 35, ¶ 22, 608 N.W.2d 636, 643. An equal protection claim will utilize one of three different tests depending on the specific "interest" involved. If the equal protection claim involves a suspect class or a fundamental right, the Court will apply a strict scrutiny analysis. Id. If instead the claim involves gender or legitimacy, the "substantial relation" test is applied. Id. When the statute does not encompass a fundamental right, a suspect classification, or an intermediate scrutiny classification it is evaluated by the rational basis test. State v. Krahwinkel, 2002 S.D. 160, ¶ 19, 656 N.W.2d 451, 460.

On page 21 of his brief Z.B. states that the test to be applied to his case is "whether there is a rational

relationship between the classification and some legitimate legislative purpose." DB 21. It has been held that sex offenders are not a suspect classification for equal protection purposes and specifically juveniles are not treated as a suspect class for equal protection analysis (citing In re M.A.H., 20 S.W.3d at 866). The Wisconsin Supreme Court stated that neither it nor the United States Supreme Court has recognized minors as having a fundamental right to have their best interests considered in any decision made about them by the State and "neither court has recognized children as a suspect class." In re Jeremy P., 278 Wis.2d 366, 692 N.W.2d 311, 320-21 (2004).

The State would agree with Z.B. that the rational basis test should be utilized. DB 21. The rational basis test involves the following two-prong analysis: (1) whether the statute (SDCL 22-24B-2) sets up an arbitrary classification among various persons subject to it and, if so, (2) whether there is a rational relationship between that classification and some legitimate legislative purpose. Bergee, 2000 S.D. 35, ¶ 22, 608 N.W.2d at 643.

As to the first prong, Z.B. claims on page 21 of his brief that SDCL 22-24B-2 violates equal protection in that the "imposition of different punishments or different

degrees of punishment [upon a juvenile as] 'imposed upon all for like offenses is a denial of such right.'" DB 21.

Again Z.B. makes a fundamental flaw in deciding that the sex offender registry is penal in nature. As cited above, this Court has specifically stated that it is remedial and not penal and similar in nature to warning the community of potential health hazards. Mienders, 2000 S.D. 2, ¶ 13, 604 N.W.2d at 255.

Z.B. also complains that an adjudicated juvenile cannot receive a suspended imposition like an adult. Specifically, he claims equal protection violation because juveniles are not afforded "the same protection as their adult counterparts or other similarly situated juveniles" DB 22.

Obviously not every adult felon has the right to be given a suspended imposition of sentence. An adult who receives a suspended imposition of sentence still must register as a sex offender. They can only be removed if their suspended imposition is formally discharged. SDCL 22-24B-2. Z.B.'s claims that an adult is able "to have his or her name removed from the sex offender registry for the cost of a postage stamp" is an extreme oversimplification. DB 22. As set out above, there are only

three sex offenses, if committed in South Dakota, by a juvenile fifteen years of age or older that result in registration. On the other hand, an adult can be registered for any one of many sex offenses. Most of the adult registerable offenses, if committed by a juvenile in this state, would not result in the juvenile being registered.

The State does not concede that SDCL 22-24B-2 sets up an arbitrary classification. This Court has held that equal protection does not require "that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made." State v. Geise, 2002 S.D. 161, ¶ 32, 656 N.W.2d 30, 41.

Assuming, arguendo, that SDCL 22-24B-2 sets up an arbitrary classification among various persons subject to it, we next go to the second prong of the equal protection test. It is here that it is determined whether there is a rational relationship between the classification and some legitimate purpose. Lyons v. Lederle Lab, 440 N.W.2d 769, 771 (S.D. 1989). This Court has cited the United States Supreme Court case of Skinner v. State of Oklahoma, 316 U.S. 535, 540, 62 S.Ct. 110, 1113, 86 L.Ed. 1655, 1660 (1942) in

pointing out that the State is not required to exercise its police power in such a way as

to ignore experience which marks a class of offenders or a family of offenses for special treatment. Nor is it prevented by the equal protection clause from confining 'its restrictions to those classes of cases where the need is deemed to be clearest.'

State v. Baker, 440 N.W.2d 284, 289 (S.D. 1989).

Z.B. finds no rational reason for registering juvenile sex offenders. But, the particular concerns of law enforcement in public safety with reference to sex offenses caused one court to conclude that,

[T]he despairing treatment afforded juveniles and adult sex offenders, alike, is justified. Because the notification provisions are reasonably related to enhance public awareness that a sex offender may be living in the community, so that appropriate precautions may be taken, we cannot say the notification requirements are irrational. Therefore, this claim must also fail.

In re M.A.H., 20 S.W.3d at 866.

This Court has concluded that the legislature's intention in requiring registration was to accomplish a

regulatory purpose of assisting law enforcement in identifying and tracking sex offenders to prevent future sex offenses, especially those against children. . . . [It is] to alert the public in the interest of community safety, and to prevent and promptly resolve incidents involving sexual offenses.

Meinders, 2000 S.D. 2, ¶ 13, 604 N.W.2d at 255.

Z.B. is wrong when he claims there is no rational relationship when this Court has stated that:

The overriding aim of these statutes is the protection of children from the predations of sex offenders. No society can long last that neglects to secure and preserve its children.

Id. ¶ 14, 604 N.W.2d at 255.

Based upon the above, Z.B. fails to establish an equal protection claim.

IV

A JUVENILE ADJUDICATED AS DELINQUENT AND SUBJECT TO THE SEX OFFENDER REGISTRY OF SDCL 22-24B-2 HAS NOT SUFFERED CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, SECTION 23 OF THE SOUTH DAKOTA CONSTITUTION.

A. Introduction.

Z.B.'s fundamental argument is that "allowing public access to information concerning sex offenders who are children certainly constitutes the infliction of cruel punishment." DB 27. Again, Z.B. does not cite nor address this Court's decision in Meinders, which clearly states that the sex offender registry is not penal in nature. Instead, Z.B.'s brief sets forth law involving the proportionality review of sentences. DB 24. He specifically cites Harmelin

v. Michigan, 501 U.S. 957, 111 S.Ct. 2680, 155 L.Ed.2d 836

(1991). The principles of sentencing review are as follows:

- (1) reviewing courts must grant substantial deference to the legislature's broad authority to determine the types and limits of punishment;
- (2) the Eighth Amendment does not mandate adoption of any one penological theory;
- (3) marked divergences "are the inevitable, often beneficial result of the federal structure"; and (4) proportionality review by federal courts should be informed by objective factors.

State v. Bonner, 1998 S.D. 30, ¶ 15, 577 N.W.2d 575, 580;

State v. Jensen, 1998 S.D. 52, ¶ 61, 579 N.W.2d 613, 623-

624; State v. Milk, 2000 S.D. 28, ¶ 14, 607 N.W.2d 14, 18.

This Court has set forth the following steps in reviewing whether a sentence is cruel or unusual:

[T]o assess a challenge to proportionality we first determine whether the sentence appears grossly disproportionate. To accomplish this, we consider the conduct involved, and any relevant past conduct, with utmost deference to the Legislature and the sentencing court. If these circumstances fail to suggest gross disproportionality, our review ends.

Bonner, 1998 S.D. 30, ¶ 17, 577 N.W.2d at 580; Milk, 2000

S.D. 28, ¶ 14, 607 N.W.2d at 18-19.

Although Z.B. focuses on proportionality of the law, his argument (without authority) is that to require him to "publicly register for life and allowing public access to information concerning sex offenders who are children

certainly constitutes the infliction of cruel punishment."

DB 27. The claimant in Meinders likewise argued that the public dissemination resulting from the sex offender registry was excessive because there were no restrictions on who could access the information and there was no limit on the length of time the offender must register. Meinders, 2000 S.D. 2, ¶ 11, 604 N.W.2d at 254. As referenced above, this Court concluded that the registry was a remedial measure similar to warning the community of potential health hazards. Id. ¶ 13, 604 N.W.2d at 255. Z.B.'s perspective on punishment is not the determining factor. Because "whether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the 'sting of punishment.'" Id. ¶ 14, 604 N.W.2d at 256 (citing Department of Revenue v. Kurth Ranch, 551 U.S. 767, 777 n.14, 114 S.Ct. 1937, 1945 n.14, 128 L.Ed.2d 767, 777 n.14 (1994)).

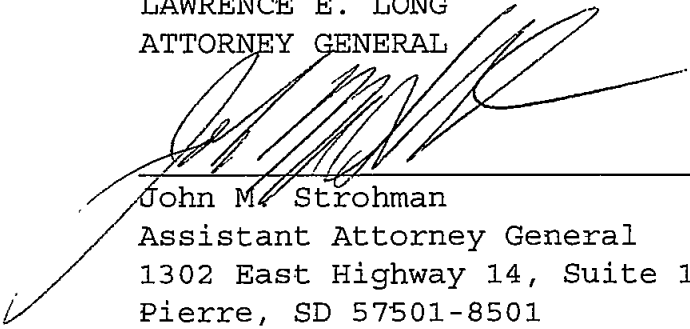
Since the sex offender registry is not penal in nature, Z.B.'s claim that his registration resulted in cruel and unusual punishment is unfounded.

CONCLUSION

Based on the foregoing arguments and authorities, the State would respectfully request that the Court affirm the dispositional order entered against Z.B.

Respectfully submitted,

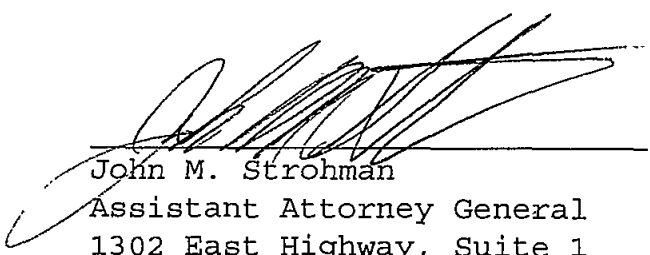
LAWRENCE E. LONG
ATTORNEY GENERAL



John M. Strohman
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of Appellee's Brief in the matter of The People of the State of South Dakota in the Interest of Z.B. Minor Child v. H.B., Respondent Mother and A.B., Respondent Father, were served by United States mail, first class, postage prepaid upon Francy E. Foral, Attorney at Law, 121 W. Hudson Street, Spearfish, South Dakota 57783 on this 22 day of January, 2008.



John M. Strohman
Assistant Attorney General
1302 East Highway, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215