

Children's Law Center of Indiana



Delinquency

02/08/2007

In **State v. K.H.**, 860 N.E.2d 1284 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's order denying the juvenile's petition for expungement of his delinquency adjudication for committing two acts of child molesting which would be Class C felonies if committed by an adult, and removing the juvenile from the sex offender registry. On August, 2001, the State filed a petition against the juvenile, then age fifteen, alleging that he had committed the two acts of child molesting. At a February 21, 2002 hearing, as a part of a plea agreement, the juvenile admitted to the allegations and the juvenile responded "yes" to his counsel's question: "You understand that you will be required because of these offenses to register for a period of 10 years on the Indiana Sexual Offender Registry?" The juvenile court ordered the juvenile to be placed on the sex offender registry for ten years and noted that the juvenile "agreed to that." On March 14, 2002, at the final disposition hearing, the juvenile was ordered to serve seven days in secure detention. At an October 21, 2003 review hearing, the juvenile court noted that the juvenile had successfully completed the Sexual Abuse Family Treatment Intervention Program (SAFTIP) and discharged him from probation. On January 5, 2006, the juvenile filed a petition for expungement of his delinquency adjudication. At a March 23, 2006 hearing, the juvenile's probation officer recommended that the juvenile be removed from the sex offender registry, but that his delinquency adjudication should not be expunged. The State argued that the juvenile should remain on the registry because he agreed to be placed on the registry as a condition of his probation. The juvenile court subsequently issued an order denying the juvenile's petition for expungement, but granting his request to be removed from the sex offender registry. The juvenile court denied the State's motion to correct error, and the State appealed.

Before a juvenile who has been adjudicated delinquent for committing a sex offense may be ordered to publicly register as a sex offender, a court must find by clear and convincing evidence that the juvenile is likely to commit another sex offense. IC 11-8-8-5(b)(2)(C) (Supp 2006). Thus an evidentiary hearing is required before a juvenile may be ordered to register as a sex offender, and when a juvenile is placed in a secure facility, a sex offender registry hearing can only be conducted after the juvenile has been released from the facility. See In Re G.B., 709 N.E.2d 352, 354 (Ind. Ct. App. 1999); and B.K.C. v. State, 781 N.E.2d 1157, 1169 (Ind. Ct. App. 2003) ("As we have held, a determination that a child offender should register as a sex and violent offender cannot be made as a part of the initial disposition following a true finding. It may not be a part of the decree of disposition.") The Court noted that (1) this scheme helps insure that juveniles who have been rehabilitated during their detention are not required to register; (2) the focus upon release from a secured facility, is whether the treatment has resulted in the juvenile's rehabilitation; and (3) if the juvenile has been rehabilitated, there cannot be clear and convincing evidence that the offender is likely to re-offend and the juvenile cannot be placed on the sex offender registry." K.H. at 1286-87.

The Court noted that, here, the juvenile court (1) failed to hold an evidentiary hearing before ordering the juvenile to register as a sex offender; (2) failed to find by clear and convincing evidence that he was likely to commit another sex offense; (3) and ordered the juvenile to register before he was released from secured detention. Id. at 1287. In response to the State's contention that the "trial court acted outside its authority when it modified [the juvenile's] disposition that was imposed pursuant to the agreement of the State and Juvenile," the Court noted that this agreement was not reduced to writing. Nevertheless, according to the Court, the State's contention was supported by an on-the-record exchange between the juvenile's counsel and the juvenile, and the juvenile court's notation that the juvenile had agreed to being placed on the sex offender registry for ten years. The Court, however, held that it could not say that the juvenile had the requisite level of knowledge to support a waiver of his rights in this regard given the lack of information on the record to indicate that the juvenile was ever informed of the requirements of an evidentiary hearing and a finding by clear and convincing evidence that he was likely to commit another sex offense before he could be placed on the sex offender registry. Id. The Court further opined that the juvenile court's acceptance of the juvenile's agreement to be placed on the registry without the required determination that the juvenile was likely to commit another sex offense was not consistent with the juvenile code's stated goal of rehabilitation, especially under the facts and circumstances presented on appeal. Thus, (1) the juvenile consistently received favorable reports from his probation officer; (2) at several review hearings, the juvenile court indicated that the juvenile should not be placed on the sex offender registry; (3) at the final review hearing, the juvenile court noted that SAFTIP was not recommending that the juvenile be placed on the sex offender registry; and (4) nevertheless, the juvenile remained on the registry after successful completion of his probation. Id. at 1287-88.