

Children's Law Center of Indiana



Delinquency

12/16/2008

In **J.C.C. v. State**, 897 N.E.2d 931 (Ind. 2008), the Court reversed the juvenile court order requiring the juvenile to register as a sex offender, and vacated the unpublished opinion of the Court of Appeals at 878 N.E.2d 544 (Ind. Ct. App. Dec. 28, 2007), except for that portion addressing the juvenile's T.R. 60(B) claim, which the Court summarily affirmed. The juvenile was adjudicated delinquent for nine acts of child molesting, which would be Class B felonies if committed by an adult. He was 14-years-old at the time of the offenses. All the counts resulted from one incident involving three juvenile victims, and generally involved the juvenile compelling the victims to engage in oral and anal sex with him and with each other. The juvenile was adjudicated delinquent and committed to the Indiana Department of Correction (DOC) for two years for placement at the Indiana Boys' School, where he successfully completed a treatment program for sexual offenders in one year and was released. Following his release, the State petitioned to have him register as a sex offender. After an evidentiary hearing, the juvenile court ordered the juvenile to register, and he appealed. The Court of Appeals stayed the registration pending the appeal and allowed the juvenile to pursue relief under Ind. Trial Rule 60(B). The juvenile court denied the T.R. 60(B) motion. On appeal the juvenile raised two claims: (1) the State did not present clear and convincing evidence showing he was likely to re-offend; and (2) the juvenile court abused its discretion when it denied his T.R. 60(B) motion. After the Court of Appeals affirmed the juvenile court's decision in its unpublished decision, the juvenile sought transfer which was granted in **In Re J.C.C.**, 891 N.E.2d 42 (Ind. 2008) (table).

Given the overarching rehabilitative thrust of Indiana's juvenile justice system and the sex offender registry statute's specific requirements that any finding of a juvenile's likelihood to repeat must await discharge from secure detention, and that such finding must be based on clear and convincing evidence, the Court held that an evaluation of whether a juvenile has been rehabilitated while in detention is a prerequisite to finding clear and convincing evidence that the juvenile is likely to repeat. *Id.* at 935-36. Based on an analysis grounded in the specific provisions of the juvenile sex offender registry statute (in effect at the time relevant to this case) and the general purpose of the juvenile code, the Court found the evidence insufficient to conclude that the juvenile is likely to repeat an act that would be a sex offense if committed by an adult. *Id.* at 934. The Court discussed the definitional requirements of a child offender at IC 5-2-12-4(b) (Supp. 2002), which are that the child (1) is at least 14-years-old; (2) is on probation, parole, or is discharged from a "secure private facility," or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be a sex offense if committed by an adult; and (3) is found by a court by clear and convincing evidence to be likely to repeat an act that would be a sex offense if committed by an adult. *Id.* at 933. The Court (1) opined that the legislative intent of this statute was to hold the sex offender registration determination in abeyance so the juvenile has the opportunity to be rehabilitated during detention, and (2) noted that, here, the State never addressed the possibility

that the juvenile's successful completion of the DOC treatment program for sex offenders reduced his likelihood to re-offend, but rather its only evidence to support its request for the "likely-to-repeat" finding was the evaluation of the juvenile's behavior prior to his commitment, by its expert witness, a Ph.D. candidate in clinical psychology with eleven years of experience working with juvenile sex offenders. *Id.* at 934. The Court observed that the State's expert witness (1) did not interview the juvenile prior to testifying and, on cross-examination, testified that "if I had data from the last six months, if I had assessed [the juvenile] myself and got information about the last six months, that would [have] give[n] me more information that I could've used;" (2) did not consider any information about the juvenile's detention, his successful completion of the DOC treatment for sex offenders, or his behavior in the community following release; (3) relied exclusively on his application of risk assessment criteria called the "Estimate of Risk of Adolescent Sexual Offense Recidivism" (ERASOR) and his clinical experience to conclude that the juvenile presented a moderately high risk to repeat a sex offense; (4) assumed all dynamic risk factors in the juvenile's favor, thus, assuming that no dynamic factors existed that would increase the juvenile's risk of re-offending; (5) testified that, in his opinion, the juvenile's successful completion of the DOC treatment program for sexual offenders did not reduce his likelihood to re-offend; and (6) in sum, concluded that the juvenile's offenses were so serious in and of themselves that nothing else – not the fact of his incarceration, nor his successful completion of the treatment program, nor his behavior in the community following release – would lower his risk of committing another sex offense. *Id.* at 933-34.

The Court also noted that, in addition to the statute's mandate that the hearing on likelihood to repeat await the juvenile's discharge, the Legislature has dictated that the State must prove the juvenile's likelihood to repeat by "clear and convincing" evidence, which is an intermediate standard of proof, lying between a preponderance of the evidence and beyond a reasonable doubt, and which establishes a burden of proof greater than that the facts are more probably true than not true. *Id.* at 934. The Court opined that the Legislature dictated this heightened burden of proof in recognition of the serious social consequences of sex offender registration, including loss of employment opportunities, housing discrimination, threats, and violence, and quoted from *B.J.B. v. State*, 805 N.E.2d 870, 873 (Ind. Ct. App. 2004):

the focus of the inquiry, with respect to a juvenile who has been released from a secure facility, is whether the treatment received in that facility has resulted in the juvenile's rehabilitation. If that is the case, there cannot be clear and convincing evidence that the juvenile is likely to re-offend and the juvenile cannot be placed on the sex offender registry. The Court also found it "highly relevant" that the Legislature has articulated that the guiding policy of this State and the purpose behind its juvenile justice system is to "ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment and rehabilitation." IC 31-10-2-1(5). *Id.* at 935.

The Court specifically stated that it did not mean to suggest that expert testimony cannot establish clear and convincing evidence of likelihood to repeat. The Court emphasized that, here, the expert based his opinion solely on the pre-dispositional acts of the juvenile and did not interview him after his completion of the treatment program. The Court stated that, though such an interview is not required, the expert's testimony or other evidence must analyze whether the juvenile has been rehabilitated subsequent to disposition, which did not occur in this case. The Court concluded that without such evidence, it could not find that there was clear and convincing evidence that the juvenile was likely to commit another sex offense. *Id.* at 936.