



Delinquency

11/17/2005

In **A.O. v. State**, 837 N.E.2d 219 (Ind. Ct. App. 2005), the Court reversed the juvenile court's order that the juvenile register with the state Sex Offender Registry. The juvenile was adjudicated delinquent upon his admission to one count of what would be child molesting if committed by an adult. He had been charged with two such acts. The juvenile court conducted a dispositional hearing and ordered that the juvenile be committed to the Muncie Juvenile Correctional Facility for thirty days and register as a sex offender. At a review hearing six days later, the juvenile court suspended the balance of the juvenile's commitment, but left in place all other aspects of its dispositional order, including the requirement that the juvenile register as a sex offender. At the dispositional hearing the deputy prosecutor argued that the juvenile should be required to register, and the probation officer recommended that he be required to register "based upon the statements of the [] prosecutor." The juvenile court ordered that the juvenile register "because of the repetitive nature of this case shows the court that you are likely to [] commit [] this until you get this counseling straightened out." On appeal, the juvenile argued that the State failed to establish by clear and convincing evidence that he is likely to be a repeat sex offender as required by I.C. 5-2-12-4(3). *Id.* at 220-21.

The Court held that, even if it were to assume that the initial dispositional hearing met the requirement of B.J.B. v. State, 805 N.E.2d 870, 873 (Ind. Ct. App. 2004) that a full evidentiary hearing be held before a juvenile may be placed on the sex offender registry, under the facts and circumstances here, the State presented insufficient evidence to establish under the clear and convincing standard of proof that the juvenile was likely to repeat a sex offense, as required by I.C. 5-2-12-4(b)(3). A.O. at 222. The Court noted that I.C. 5-2-12, the Sex Offender Registration Act, requires an offender to register with local law enforcement authorities in the area where the offender resides, and that I.C. 5-2-12-4(b) defines an "offender" as:

A child who has committed a delinquent act and who:

- (1) is at least fourteen (14) years of age;
 - (2) is on probation, is on parole, or is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in [I.C.] 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) 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 an offense described in subsection (a) if committed by an adult.

Id. at 220-21. The Court further (1) noted that, in B.J.B. at 873-74, the Court had held that there must be an inquiry at a full evidentiary hearing before a juvenile may be placed on the sex offender registry, and that 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; (2) cited In Re G.B., 709 N.E.2d 352, 354 (Ind. Ct. App. 1999) for this proposition and for its holding that, “This statutory scheme helps insure that juveniles who have been rehabilitated by virtue of their detention are not required to register as a sex offender;” and (3) cited B.K.C. v. State, 781 N.E.2d 1157, 1169 (Ind. Ct. App. 2003) for its holding that “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 find.... It may not be a part of the decree of disposition.” A.O. at 221-22.

In making its finding here, the Court cited three cases in which the appeals court noted the testimony of expert witnesses that the juvenile was likely to re-offend when it required the juveniles to register as sex offenders, and noted that, at the dispositional hearing in this case, no expert witnesses testified regarding the juvenile’s propensity to repeat a sex offense. The Court also stated, “More importantly, no evidentiary hearing was conducted after the juvenile’s release from the [juvenile correctional facility].” Id. at 222.

Judge Baker concurred in the result with an opinion in which he disagreed with the majority’s “assertion that a full evidentiary hearing is required to be held only after he had been released from the facility.” Judge Baker reads the statute to require that the juvenile may not be labeled an offender for the purposes of the sex offender registry until all three conditions of I.C. 5-2-12-4(b) are met, but it does not require that the conditions occur in the order in which they are listed. Id. at 222-23.