

IN THE
SUPREME COURT OF OHIO

IN RE D.R. : NO. 2021-0934
A Minor-Appellee : On Appeal from the Hamilton County
Court of Appeals, First Appellate
District
Court of Appeals
Case Number C-1900594

REPLY BRIEF OF PLAINTIFF-APPELLANT

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INTRODUCTION

In response to the state's proposition of law, D.R. claims that the procedure provided in R.C. 2152.84 is fundamentally unfair because it does not allow his Tier I sex offender classification to be removed at the completion-of-disposition hearing. Regardless of the goals and procedures set forth in the entire statutory scheme for the classification of juvenile sexual offenders, D.R. argues that he has a liberty interest in his reputation and he is therefore constitutionally entitled to a specific remedy. D.R.'s argument—like the court of appeals' decision—relies upon the misplaced theory that in order for a hearing to be meaningful, there must be a particular remedy available at the conclusion of the hearing. This argument and analysis is more akin to substantive due process than procedural due process. There is simply no due process right (substantive or procedural) to have a sex offender classification removed at the completion-of-disposition hearing.

Amicus Curiae, Office of the Ohio Public Defender, cites to a myriad of social science articles and “scientific data” in support of its contention that R.C. 2152.84 is fundamentally unfair. While the information in these sources may be useful to the General Assembly in crafting or amending legislation, they do not provide the support necessary for this Court to declare R.C. 2152.84 unconstitutional.

The General Assembly's intent in precluding the removal of the classification of a specific group of juvenile sexual offenders (those with priors and those who were 16 or 17 years old at the time of the offense) at the R.C. 2152.84 review hearing should be preserved. The State of Ohio's proposition of law should be accepted and the First District Court of Appeals' opinion should be reversed.

REPLY IN SUPPORT OF APPELLANT'S PROPOSITION OF LAW

D.R. and his amicus set forth a recurring theme that D.R. is actually victimized by R.C. 2152.84 and it is fundamentally unfair to him because of the potential injury to his reputation as he enters adulthood. The statutory provision for community notification does not even apply to D.R. as it is only applicable to certain Tier III juvenile offender registrants for whom the juvenile court has specifically imposed the requirement. R.C. 2950.11(F). Furthermore, D.R. relies upon Ohio's constitutional provision for due course of law which guarantees a right to remedy, not a substantive right to reputation. Article I, Section 16, Ohio Constitution. This Court has clearly determined that "[a] favorable reputation is not a protected liberty interest." *State v. Williams*, 88 Ohio St.3d 513, 526, 2000-Ohio-428, 728 N.E.2d 342, citing *Paul v. Davis*, 424 U.S. 693, 711-712, 96 S.Ct. 115 (1976).

D.R. and his amicus also boldly claim that R.C. 2152.84 interferes with the unique rehabilitative process of the juvenile justice system. A clear understanding of the factual scenario involved in D.R.'s offense is important here. D.R. was age 16 years and 11 months when the offense was committed. The victim was age 12 years and 2 weeks. (T. 4/5/2018 p.5; Juvenile Court Docket T.d. 1) At D.R.'s initial classification hearing, he described the offense as involving miscommunication and "not getting a clear signal" from the victim "that she meant for it to stop." (T. 8/17/18 p.25) At D.R.'s review hearing 9 months and 21 days later, he presented a report indicating that he told his mom he had "gained insight" to the victim's perspective as to why she did not say "no" more seriously. (T. 6/7/2019 p. 5-6; Exhibit 1) It should stand out as striking in the record before this Court the fact that the age span between D.R. and the victim is simply not addressed. It is disingenuous to surmise that D.R.'s "rehabilitation" was complete in

the time between the two classification hearings. Juvenile dispositions require a “system of graduated sanctions and services.” R.C. 2152.01(A). The gradual loosening of community-control restrictions is not a violation of due process. *In re R.B.*, 2021-Ohio-2112, 174 N.E.3d 480, ¶12 (1st Dist.). The Tier I registration requirements are part of the disposition, and R.C. 2152.84’s continuation of those registration requirements beyond the completion-of-disposition hearing for older juveniles and those with prior sexual offenses is an important part of the graduated approach to their juvenile dispositions. The ability of D.R. to petition the juvenile court pursuant to R.C. 2152.85 sometime this year for termination of his Tier I classification and registration duties should not be removed from the equation.

It is also important to note that subsequent to the State of Ohio submitting its merit brief in the present case, the Fifth District Court of Appeals refused to follow the First District Court of Appeals’ finding that R.C. 2152.84 violates “the due process rights of mandatory Tier I registrants.” *In re N.D.*, 5th Dist. Licking Nos. 21CA0040 & 21CA0041, 2021-Ohio-4512, ¶38. Mindful of the substantive due process issue within the appellant’s procedural due process argument, the Fifth District found “R.C. 2152.84 does not violate his right to procedural due process because we do not find that appellant has a substantive due process right to removal of the Tier I classification at the R.C. 2152.84 completion-of-disposition hearing.” *Id.* at ¶44. The court of appeals further recognized that R.C. 2152.84 “does not eliminate all meaningful discretion from the juvenile court” because there are other instances of discretion within the statutory scheme, and the legislature may replace the juvenile court’s special discretion with a directive without rendering the statute unconstitutional. *Id.* at ¶45-46.

CONCLUSION

The Ohio General Assembly specifically provided for the continuation of classification and registration beyond the completion-of-disposition hearing for those juveniles who were 16 or 17 years old at the time of the offense and those with prior offenses. There is not a due process right for removal of the classification at the R.C. 2152.84 completion-of-disposition hearing. Therefore, the court of appeals should not have found that R.C. 2152.84 violates the right to procedural due process, and this Court must reverse the judgment of the court of appeals.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the Reply Brief of Plaintiff-Appellant via email, addressed to Jessica Moss at *JMoss@hamiltoncountypd.org*, Lauren Hammersmith at *lauren.hammersmith@opd.ohio.gov*, Katherine Sato at *katherine.sato@opd.ohio.gov*, Steven L. Taylor at *taylor@ohiopa.org*, Dave Yost, Benjamin M. Flowers, and Samuel C. Peterson at *benjamin.flowers@OhioAGO.gov*, this 7th day of February, 2022.

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