
IN THE MATTER OF

B.J.B.,

A Youth Under the Age of Eighteen.

REDACTED BRIEF OF APPELLANT

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, the Honorable Robert L. Deschamps III, Presiding

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STATEMENT OF THE ISSUE

The Youth Court Act exempts youth from the sexual offender registry unless registration is necessary for the protection of the public and is in the public's best interest. B.B.'s sexual offender evaluation and his probation officer both recommended against registration, and no qualified witnesses testified that registration was necessary for the protection of the public. The district court erred when it imposed a registration requirement in contradiction to the recommendation of the professionals involved in B.B.'s case.

STATEMENT OF THE CASE

In March 2023, the State filed a petition which alleged B.B. to be a delinquent youth based on allegations he had sexual contact with his seven-year-old sister and his six-year-old brother. On June 20, 2023, B.B. admitted to Counts II (Sexual Assault), Count III (Sexual Assault) and Count IV (Incest) in the petition. (District Court Document (DC) 1.) Pursuant to an agreement between the parties, the State dismissed Count I (Sexual Intercourse Without Consent). (DC 16.) The agreement also provided:

The Youth shall complete a psychosexual evaluation prior to the dispositional hearing. If the Youth is designated Level 1 (Low Risk), the parties will recommend that the Court order a commitment to the DOC Pine Hills program, suspended through age 18 on the conditions below, and probation through the Youth Court through age 21. If the Youth is designated Level 2 or 3, the State may recommend a direct Pine Hills disposition;

however, the Youth may argue for a suspended commitment subject to the conditions below. The Youth also may withdraw from this agreement and proceed to trial on the original charges if he is designated Level 2 or 3.

(DC 16.) The agreement also provided that the State may argue for B.B. to register as a sexual offender but B.B. could oppose the registration requirement. (DC 16.)

Prior to disposition, Christopher Quigley, an MSOTA¹ Clinical Member, prepared a Sexual Offender Evaluation and youth court probation prepared a Report to the Court. (DC 19.) At the dispositional hearing, based on the recommendations in the sexual offender evaluation and youth court report, both the State and B.B. argued that the court should sentence B.B. to a suspended commitment to the Department of Corrections (DOC) until age 18, and then he should be placed on probation until age 21. (7/17/23 Transcript (Tr.) pp. 70-71.) The State recommended B.B. be required to register as a sexual offender. (7/17/23 Tr. p. 70.) Mr. Quigley, the youth court probation officer, and defense counsel all argued against registration. (DC 17, 19;

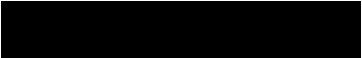
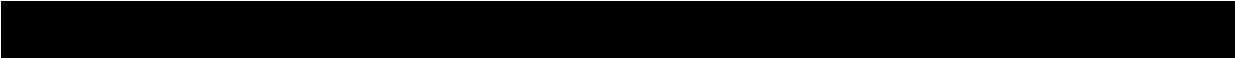
¹ Montana Sexual Offender Treatment Association

7/17/23 Tr. p. 75.) Multiple family members provided statements to the court at the dispositional hearing. (7/17/23 Tr. pp. 15-69.)

The court ordered B.B. committed to the DOC until his seventeenth birthday (approximately two weeks) and then placed on probation until the age of twenty-one. (DC 24). The court further ordered B.B. to pay restitution, in the amount of \$734.00, for the costs of therapy for his sister, plus future therapy costs, until B.B. is twenty-one. (DC 24.) Finally, the court ordered B.B. to register as a tier 2 sexual offender. (A copy of the Dispositional Order is attached as Appendix (App.) A.)

STATEMENT OF THE FACTS

The State filed a petition against sixteen-year-old B.B. in which the State alleged sexual contact by B.B. against his six-year-old stepbrother and seven-year-old stepsister. (DC 1.)

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

² Significant portions of the Statement of Facts come from the Sexual Offender Evaluation or the Youth Court Report to the Court, documents that were ordered to be filed under seal. (D.C. 17, 19.) Section 46-18-113(1), MCA and the M.R. App. P. 10(7) would keep this information confidential on appeal. Therefore, Appellant has redacted, from the public-filed version, portions of the brief citing these documentations.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] B.B. had a goal of graduating from high school and attending culinary school, with career aspirations of becoming a chef. (7/17/23 Tr. p.78.) He told the court that he enjoys video games and cooking as hobbies and had recently taken up bike riding. (7/17/23 Tr. p. 78.) During the summer, B.B. worked for his mother at her Spas Montana store. (7/17/23 Tr. pp. 79-80.)

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[REDACTED]

[REDACTED]

[REDACTED]

The court held a disposition hearing on July 17, 2023. (DC 24.) Family members of Jane Doe and John Doe spoke at the disposition hearing. (7/17/23 Tr. pp. 15-69.) Jane Doe’s therapist, a family friend, mother, maternal grandmother, and maternal grandfather also gave statements in which they described changes in Jane Doe, such as her

experiencing nightmares and difficulty trusting male figures in her life. (7/17/23 Tr. pp. 15-38, 44-69.) They also all requested the court reject the plea agreement and sentence B.B. more severely than the agreement reached by the parties. (7/17/23 Tr. pp. 15-38, 44-69.) They further requested the court order B.B. to register as a sexual offender. (7/17/23 Tr. pp. 17, 36, 52.) John Doe's mother also provided a statement in which she requested the court sentence B.B. more harshly than the agreed upon suspended sentence. (7/17/23 Tr. p. 43).

Both the State and defense counsel jointly recommended a suspended sentence to Pine Hills, followed by probation until B.B. turned twenty-one. (7/17/23 Tr. pp. 70-71.) B.B. stipulated to restitution to Jane Doe's mother to cover the costs of Jane Doe's therapy. (7/17/23 Tr. p. 76.)

The State requested the Court order B.B. to register as a sexual offender. (7/17/23 Tr. p. 70.) B.B.'s defense counsel, referencing Mr. Quigley's evaluation and recommendations, argued against registration. (7/17/23 Tr. pp. 72-76.) Defense counsel explained that B.B. was honest about his sexual history and had expressed shame, guilt and insight about his behavior and was motivated for treatment. (7/17/23 Tr. pp. 72-

76.) B.B. cooperated with law enforcement and pled true to the offenses. (7/17/23 Tr. pp. 74-75.) Subsequently, B.B. completed summer school and worked at his mother's shop. (7/17/23 Tr. p. 75.) Therefore, given B.B. had no previous criminal history and given the recommendations of the professionals involved, defense counsel urged the court to exempt B.B. from sexual offender registration. (7/17/23 Tr. pp. 72-76.)

Despite the recommendations of the professionals, the court ordered sexual offender registration. (DC 24.) Citing only the nature of the crimes and no reasoning specific to B.B. the court held, "this is the kind of crime that I think deserves public warning to the public so that they have an inkling of this." (7/17/23 Tr. pp. 86-87.) The court did not orally specify the length of time B.B. is required to register.³ (A copy of the court's oral ruling regarding sexual offender registration (Tr. pp. 86-87) is attached as App. B.) However, the written dispositional order

³ Pursuant to the Youth Court Act, when a court orders a juvenile to register, the court has the discretion to specify the duration of the registration. Mont. Code Ann. 41-5-1513 (6)(2021) provides, "The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, *except that the court may, based on specific findings of fact, order a lesser duration of registration.*" (Emphasis added.)

requires B.B. to register “pursuant to Mont. Code Ann. § 41-5-1513(1)(d)(ii) and Title 46, Chapter 23, Part 5, MCA.” *See*, App. A. p. 6.

STANDARD OF REVIEW

This Court reviews de novo conclusions of law, including statutory interpretation. *In re. C.D.H.*, 2009 MT 8, ¶ 21, 349 Mont. 1, 201 P. 3d 126. This Court reviews a youth court’s judgment for an abuse of discretion. *C.D.H.*, ¶ 21. The test for an abuse of discretion is “whether the trial court acted arbitrarily, without employment of conscientious judgment, or exceeded the bounds of reason resulting in substantial injustice.” *C.D.H.*, ¶ 21 (citation omitted.)

SUMMARY OF ARGUMENT

Montana law exempts youths from registration unless the district court makes specific findings that the youth has a previous sexual offense or if it is in the interest of justice and needed for the protection of the public. B.B. accepted responsibility for his offenses, sought treatment and abided by pre-disposition conditions. Based on his family support, amenability to treatment, and lack of any criminal history or disciplinary history, the professionals, such as the sexual offender evaluator and the juvenile probation officer, recommended the

court not impose a registration requirement upon B.B. Instead, without any finding specific to B.B., the court ordered lifetime registration for B.B. The district court abused its discretion when it ordered B.B. to register and this condition should be struck from his dispositional order.

ARGUMENT

The Youth Court Act exempts youth from the sexual offender registry unless registration is necessary for the protection of the public and is in the public's best interest. B.B.'s sexual offender evaluation and his probation officer both recommended against registration, and no qualified witnesses testified that registration was necessary for the protection of the public. Did the district court err when it imposed a registration requirement in contradiction to the recommendation of the professionals involved in B.B.'s case?

*It had the effect of a spell, taking her out of the ordinary relations with humanity, and enclosing her in a sphere by herself.*⁴

I. B.B.'s registration requirement amounts to lifelong surveillance and stigmatism.

A. B.B.'s lifetime registration requirements.

B.B. must register for life. *See*, Mont. Code Ann. §41-5-1513(6) (2021) and Mont. Code Ann. §46-23-506(1) (2021). As the court designated B.B. a level 2 tier offender, B.B. cannot petition for removal

⁴ Nathaniel Hawthorne, *The Scarlet Letter*

from the registry for twenty-five years, without a re-offense or failure to register offense. *State v. Hinman*, 2023 MT 116, ¶10, 412 Mont. 434, 530 P. 3d 1271; Mont. Code Ann. §46-23-506(3) (2021). Registrants, such as B.B., must supply law enforcement with DNA samples, email addresses, social media names, vehicle descriptions, license plate numbers, social security numbers, workplace, and school addresses. *Hinman*, ¶¶10, 21, 23 citing Mont. Code Ann. §46-23-504(3) and §46-23-505(1). Law enforcement is empowered to supply most of that information to the public. *Hinman*, ¶10.

Registrants must update their addresses, work, and school information within three days of a change. *Hinman*, ¶10. If the registrant fails to provide these changes within three days, the registrant is in violation of the Sexual and Violent Offender Registration Act (SVORA) and can face new criminal charges. *Hinman*, ¶19. Every six months B.B. must provide verifications and a new photograph, and these verifications must be conducted in-person with law enforcement. *Hinman*, ¶¶10, 19, 23 citing Mont. Code Ann. §46-23-504(3) and §46-23-505(1). Further, any time registrants leave their county of residence for more than ten days, they have to re-register in

whatever county they travel to and re-register upon return. *Hinman*, ¶10.

The Court in *Hinman* described the effect of the registration requirements as “a considerable sacrifice of privacy and a permanent system of state surveillance.” *Hinman*, ¶23. Thus, registration, by design, “implicates a host of collateral consequences and encourages social stigma.” *Hinman*, ¶24. Therefore, registration will place onerous, life-long affirmative restraints on B.B. that will significantly hinder his liberty and deprive him of privacy. *See, Hinman*, ¶24.

B. B.B.’s registration requirement will result in lifetime collateral consequences.

Montana’s initial sexual offender registration act was drafted to address legislative concerns regarding the perceived dangers posed by sexual offender recidivism, wanting to provide safety to the public and to help with law enforcement investigations. *State v. Mount*, 2003 MT 275, ¶44, 317 Mont. 481, 78 P. 3d 829. However, the development of sex offender registries over the past several decades has generated additional collateral consequences that can only be attributed to the registries themselves. *Hinman*, ¶22. For one example, a 2017 federal law requires the U.S. State Department to affix conspicuous identifiers

to the passports of people belonging to sex offender registries. *Hinman*, ¶22 *citing* 22 U.S.C. § 212b. Additionally, federal regulations from the Department of Housing and Urban Development prohibit public housing agencies from admitting into their programs anyone subject to a lifetime sex offender registration requirement. *Hinman*, ¶22 *citing* 24 C.F.R. 982.553(a)(2) (2021). “Thus, the stigma and other collateral effects of the SVORA registry cannot fairly be attributable to the criminal record alone—the registry itself is the cause of these additional consequences. The very point of SVORA's existence is to empower a certain degree of public response that would not occur otherwise.” *Hinman*, ¶22 This Court in *Hinman* described the sexual offender registry as “a probationary surveillance system in perpetuity which is designed to facilitate social ostracism.” *Hinman*, ¶18.

C. Juvenile offenders differ significantly from adults, and the detrimental effects of registration are even more profound for juveniles.

The juvenile justice system was founded on the principles that children should be treated differently than adults and that rehabilitation is a more important consideration than the traditional aims of punishment, like retribution or deterrence. Emily Baker,

Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause, 32 Wm. & Mary Bill Rts. J. 845, 855-856 (March 2024). This Court and the United States Supreme Court have recognized “juveniles are constitutionally different from adults in their level of culpability.” *State v. Johnson*, 2023 MT 167, ¶21, 413 Mont. 202, 534 P. 3d 676 quoting *State v. Keefe*, 2021 MT 8, ¶21, 403 Mont. 1, 478 P. 3d 830 quoting *Montgomery v. Louisiana*, 577 U.S. 190, 213, 136 S. Ct. 718, 736, 193 L.Ed.2d 599 (2016). This Court has acknowledged the “[g]rowing understanding of the psychology and brain development of young people has led the United States Supreme Court to acknowledge that the biological effects of youth include a ‘lack of maturity and an underdeveloped sense of responsibility’ and demand special constitutional protections in criminal sentencing. *Keefe*, ¶39 (Chief Justice McGrath concurring and dissenting) (citations omitted). “[Y]ouths are constitutionally different from adults and, therefore, the characteristics of youth cannot be ignored during a youth’s prosecution.” *Johnson*, ¶22. As Mr. Quigley explained in his evaluation of B.B., “at

the age of 16, when the crime was committed, the client's brain was undergoing significant development.” (DC 17.)

Unlike adult sex offenders, juvenile sex offenders tend to act impulsively to explore their sexuality and are often timid, shy, loner-types. Brittany Enniss, *Quickly Assuaging Public Fear: How the Well-intended Adam Walsh Act Led to Unintended Consequences*, 2008 Utah L. Rev. 697, 708 (2008). Research suggests if a juvenile sex offender has not committed another sexual offense within five years of his first offense, he is unlikely to commit a sexual offense ever again. Enniss, *Quickly Assuaging Public Fear: How the Well-intended Adam Walsh Act Led to Unintended Consequences*, 2008 Utah L. Rev. at 708. Further, based on their unique characteristics, juveniles can be successfully rehabilitated through various sexual offender treatment programs. Enniss, *Quickly Assuaging Public Fear: How the Well-intended Adam Walsh Act Led to Unintended Consequences*, 2008 Utah L. Rev. at 708 *citing* Center for Sex Offender Management, *Understanding Juvenile Sexual Offending Behavior: Emerging Research, Treatment Approaches and Management Practices* (1999).⁵

⁵ Available at <http://www.csom.org/pubs/juvbrf10.html>.

One study found the recidivism rate for juvenile sex offenders to be remarkably low – only two percent. Enniss, *Quickly Assuaging Public Fear: How the Well-intended Adam Walsh Act Led to Unintended Consequences*, 2008 Utah L. Rev. at 708. “Sexually inappropriate behavior by children is wrong – but it requires a response that takes differences between youth and adults into account.” Enniss, *Quickly Assuaging Public Fear: How the Well-intended Adam Walsh Act Led to Unintended Consequences*, 2008 Utah L. Rev. at 707 citing the National Juvenile Justice Network, Fact Sheet on Youth Who Commit Sexual Offenses, http://njjn.org/media/resources/public/resource_626.doc (May 30, 2008).

The scarlet letter effect of sex offender registration can have a severe impact on social relationships and the mental health of the youth on the registries. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 858. In one study, 84.5% of registered youth described negative psychological impacts, because of registration, including depression, isolation, difficulty forming or maintaining relationships and suicidal

ideation. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 858. Registered youth are four times more likely to report a recent suicide attempt compared to non-registered children who have engaged in harmful or illegal sexual behavior. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 858 citing Riya Saha Shah, *Ten Ways Youth Sex Offender Registration Harms Kids*, ABA (Dec. 10, 2018).

Youth sex offenders that are required to register are alienated and face long-term public humiliation and barriers to education and to employment, which exacerbates the mental health difficulties that many youth offenders face. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 858. Children adjudicated of sex offenses can be expelled from public school and prohibited from participating in healthy activities such as sports and youth clubs. Baker, *Fourteen Going on Forty:*

Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause, 32 Wm. & Mary Bill Rts. J. at 859 citing Lisa Ann Minutola & Riya Saha Shah, *A Lifetime Label: Sex Offender Registration*, Del. Law, Winter 2015-2016, at 8, 10. 52.4% of respondents in one study stated that they had experienced severe interruptions in their primary or secondary education because of their registration. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 859.

Additionally, youth report losing their jobs or not being hired when an employer learns of their sex offender status. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 859. Further, lifetime registrants are ineligible for public housing, and many private landlords refuse to rent to those on the sex offender registry. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 859. Given that many sexual offenses committed by juveniles are done

out of immaturity, impulsivity, and sexual curiosity, rather than a predatory intent, a sex offender registration requirement serves a “scarlet letter” not necessarily related to the state’s asserted intent of protecting the public. Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause*, 32 Wm. & Mary Bill Rts. J. at 864-865. “By publicly displaying the photographs of juvenile sex offenders on the registry, therein removing much of the privacy traditionally embraced in juvenile courts, society essentially treats these juveniles more like forty-year-old pedophiles than kids who may indeed be responsive to treatment.” Enniss, *Quickly Assuaging Public Fear: How the Well-intended Adam Walsh Act Led to Unintended Consequences*, 2008 Utah L. Rev. at 708.

II. Montana’s Youth Court Act presumes that youth should not be required to register.

The Youth Court Act provides that for youth that have been adjudicated for a sexual offense, *the youth is exempt from the duty to register as a sexual offender* unless the court makes specific findings. Mont. Code Ann. §41-5-1513 (1)(d) (2021) (emphasis added). Before a court can order a juvenile sex offender to register, the court must find

that the youth has previously been adjudicated for a sexual offense or registration is necessary for protection of the public and that registration is in the public's best interest. Mont. Code Ann. §41-5-1513 (1)(d) (2021). This statute was amended in 2017. *See*, 2017 Montana Laws Ch. 208 (S.B. 17).

Previously the statute provided that courts had to make specific findings to exempt youths from the registration requirement. Mont. Code Ann. §41-5-1513 (1)(d) (2015). The changes came at the behest of proposals generated during the 2016 Law and Justice Interim Committee meetings. During the April 20, 2016, Law and Justice Interim Committee meeting, the committee heard from a panel regarding the SVORA, including a panelist from the Attorney General's Office and Andy Hudak, the legislative chair of MSOTA. (*See*, Agenda April 15, 2016, Law and Justice Interim Committee, 64th Montana Legislature). Mr. Hudak, through written comment, reinforced MSOTA's goals of community protection and sexual abuse prevention through effective treatment. (*See*, Minutes Log, Exhibit 16, April 15,

2016, Law and Justice Interim Committee, 64th Montana Legislature).⁶

In discussing the SVORA, Mr. Hudak acknowledged that registration unnecessarily affects housing, jobs, and access to positive pro-social support people and systems. (See, Minutes Log, Exhibit 16, April 15, 2016, Law and Justice Interim Committee, 64th Montana Legislature). MSOTA supported the changes to the statute which would keep low risk adolescents off the registry, including amending the statute to its current form in which a judge must affirmatively order a youth onto the registry. (See, Minutes Log, Exhibit 16, April 15, 2016, Law and Justice Interim Committee, 64th Montana Legislature). Mr. Hudak explained that the basis for this conclusion was that adolescents have one of the lowest recidivism rates of any category of sexual offenders. (See, Minutes Log, Exhibit 16, April 15, 2016, Law and Justice Interim Committee, 64th Montana Legislature).

⁶ Accessed at <https://archive.legmt.gov/content/Committees/Interim//2015-2016/Law-and-Justice/Meetings/Apr-2016/Exhibits/LJIC-April21-2016-Minutes.pdf>.

III. B.B. should have been exempt from registration.

The amended statute, and the statute at the time of B.B.'s dispositional hearing, mandated that B.B. should be exempt from registration unless the court found that 1) he had a prior sexual offense or 2) registration is necessary to protect the public and in the public's best interest. However, the court made no specific findings as to B.B, only a generalization regarding B.B.'s offenses. *See, App. B.*

[REDACTED]

[REDACTED]

[REDACTED] Thus, Mont. Code Ann. §41-5-1513(1)(d)(i) (2021) is inapplicable to B.B.

It was also not necessary for the protection of the public to order B.B. to register. *See, Mont. Code Ann. §41-5-1513(1)(d)(ii) (2021).* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, B.B. has goals and career aspirations. (7/17/23 Tr. p.78.) At the disposition hearing, B.B. testified as to his interest in cooking and his career goal of becoming a chef. (7/17/23 Tr. p.78.)

[REDACTED]

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[REDACTED] B.B. did not object to these conditions and had already contacted a sex offender treatment provider prior to his disposition hearing. (DC 19; 7/17/23 Tr. p. 76.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The State presented no professional witnesses in support of requiring B.B. to register. (7/17/23 Tr. pp. 15-69.) While friends and family members of the victims supported registration and expressed frustration with the agreed upon disposition, none of these witnesses had any experience with juvenile sexual offenders and juvenile sex offender treatment. (7/17/23 Tr. pp. 15-69.) Although Jane Doe's therapist testified she supported registration for B.B., she conceded she had never met or evaluated B.B. (7/17/23 Tr. pp. 23-24.)

The district court made no mention of characteristics specific to B.B. when it ordered him to register. (*See*, App. B.) The court’s sole basis for the registration requirement was “this crime was a crime that was committed against two defenseless young children.” (*See*, App. B.) B.B. had told the court his passion was cooking, his career goal was to become a chef, and his hobbies were individualized activities such as riding his bike. (7/17/23 Tr. p. 78.) Nonetheless, the court added as a reason for the registration requirement that the public had a right to know in case B.B. became a teacher, coach, boy scout leader, lifeguard “or whatever.” (*See*, App. B.)

In requesting that the court order B.B. to be on the SVORA registry, the State relied upon *C.D.H.* in which this Court held the district court did not abuse its discretion when it required the youth to register as a sex offender. *C.D.H.*, ¶28. (DC 20.) However, contrary to B.B., the statute analyzed in *C.D.H.*, §41-5-1513(1)(d) (2007), required youth to register unless the court determined statutory exceptions applied. *C.D.H.*, ¶24. To the contrary, the statute now exempts youth, such as B.B., from registration unless the court makes a specific finding that registration is necessary for the protection of the public. Here, the

court made no individualized findings specific to B.B. (*See*, App. B.) Rather, the court made a generalized statement regarding the type of offense. (*See*, App. B.) The court then commented that registration was necessary in case B.B. became a coach or another type of youth leader, none of which B.B. indicated he was pursuing. (7/17/23 Tr. pp. 78, 86-87.)

Further, in *C.D.H.*, while his case was pending, C.D.H. accessed pornographic material over the internet, was suspended from school for inappropriate contact of a sexual nature with other students and remained unsupervised for extended periods of time. *C.D.H.*, ¶9. Nonetheless, at C.D.H.'s disposition hearing, the court did not require C.D.H. to register as a sexual offender. *C.D.H.*, ¶11. It was only after the change in the statute that the court retroactively ordered C.D.H. to register. *C.D.H.*, ¶¶11, 24; *Compare*, Mont. Code Ann. §41-5-1513(1)(d) (i) – (iii) (2007) with Mont. Code Ann. §41-5-1513(1)(c) (2005) and Mont. Code Ann. §41-5-1513(1)(d) (2021).

In contrast to the youth in *C.D.H.*, B.B. accepted responsibility, behaved under pretrial supervision, and voluntarily began sexual offender treatment. (DC 17, 19; 7/17/23 Tr. pp. 72-76.) Therefore, given

the current statute that exempts youth from registration, here the district court abused its discretion when it required B.B. to register without specific findings regarding B.B.'s danger to the public.

CONCLUSION

Without any finding specific to B.B., the district court imposed a lifetime registration requirement that will place great burdens on B.B. with regard to school, employment, and freedom of movement. B.B.'s lifetime registration requirement is a scarlet letter that has no forensic or professional support. The district court abused its discretion when it ordered B.B. to register as a sexual offender. This Court should strike this requirement to register.

Respectfully submitted this 4th day of March, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 5,322, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Kristina Neal
KRISTINA NEAL

APPENDIX

Dispositional Order App. A

Oral Ruling regarding Sexual Offender Registration, July 17, 2023
Disposition Hearing Transcripts pages 86-87.....App. B

CERTIFICATE OF SERVICE

I, Kristina L. Neal, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-04-2025:

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