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SC COURT OF APPEALS

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIUS CURTIS MCKIE,

APPELLANT

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The Trial Court erred in placing Appellant on the sex offender registry pursuant to S.C. CODE ANN. § 23-3-430 for life without allowing Appellant to present a full defense on the issue, including the testimony of a doctor who evaluated him, where (1) Appellant's procedural due process rights were violated; and (2) the Act specifically provides that certain findings must be made by the trial court prior to placing a defendant convicted of indecent exposure on the registry.

STATEMENT OF THE CASE

On November 7, 2011, Julius Curtis McKie was indicted by the Lexington County Grand Jury for indecent exposure in a public place in violation of S.C. CODE ANN. § 16-15-130. R.*.

A trial was held before the Honorable Clifton Newman and a jury on June 19-20, 2012. Tr. 1. McKie was represented by Bennett E. Casto, and the State was represented by Assistant Solicitor Laura Suzanne Mayes. Tr. 1.

On June 20, 2012, the jury found McKie guilty of indecent exposure. Tr. 267, ll. 10-13. Judge Newman sentenced McKie to three years imprisonment and ordered McKie to be placed on the sex offender registry pursuant to S.C. CODE ANN. § 23-3-430. Tr. 315, ll. 5-8; 321, ll. 6-8.

McKie timely filed and served his Notice of Appeal on June 26, 2012.

ARGUMENT

The Trial Court erred in placing Appellant on the sex offender registry pursuant to S.C. CODE ANN. § 23-3-430 for life without allowing Appellant to present a full defense on the issue, including the testimony of a doctor who evaluated him, where (1) Appellant's procedural due process rights were violated; and (2) the Act specifically provides that certain findings must be made prior to placing a defendant convicted of indecent exposure on the registry.

Appellant McKie was convicted following a jury trial for indecently exposing himself at the Irmo branch of the Lexington County Public Library. Tr. 267. Following the jury's verdict, the State requested the trial court to place McKie on the sex offender registry pursuant to S.C. CODE ANN. § 23-3-430. Tr. 272, l. 22 – 273, l. 8. The trial court heard arguments with respect to this issue from the State and defense counsel, as well as testimony from McKie, his fiancée Shanese Myers, and Deputy Timothy Keith Anglin, the investigating officer. Tr. 273, l. 12 – 317, l. 24.

McKie requested the trial court to allow him to present the testimony of Dr. Donna Schwartz-Watts and hold in abeyance the decision on whether to place McKie on the sex offender registry until the trial court heard her testimony. Tr. 278, ll. 15-21; 279, ll. 5-22; 280, ll. 21-24; 313, ll. 15-18.

Dr. Schwartz-Watts conducted a battery of tests on McKie, including a psychosexual analysis, and analyzed issues bearing upon his likelihood to re-offend and whether with some sex education classes he could rehabilitate himself. Tr. 279, ll. 5-22; 284, ll. 2-23; 298, l. 15 – 299, l. 13; 313, ll. 15-18. She would have testified that she did not believe McKie was a sexual predator and that he should not be required to register with the sex offender registry. Tr. 284, ll. 6-14. She would have also testified as to his developmental delays due to his being incarcerated from his youth into his adulthood for an armed robbery charge. Tr. 278, l. 7 – 279, l. 22; 298, ll. 15-24.

The trial court ultimately declined to hear the testimony of Dr. Schwartz-Watts prior to ordering that McKie be placed on the sex offender registry. Tr. 320, ll. 17-20.

The trial court erred for two reasons in placing McKie on the sex offender registry pursuant to § 23-3-430 without affording McKie the opportunity to present a full defense on the issue, including the testimony of Dr. Schwartz-Watts. First, McKie's procedural due process rights were violated when the trial court did not allow him to present all of his witnesses on the issue of whether he should be placed on the sex offender registry for life. Second, the Act itself provides that certain findings must be made prior to placing a defendant convicted of indecent exposure on the registry, and McKie should have been permitted to present evidence relating to those findings.

Under § 23-3-430, a person convicted of indecent exposure in violation of § 16-15-130 is not automatically placed on the sex offender registry. Rather, a person convicted of indecent exposure is not required to register unless "the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender" or if "good cause" is shown by the solicitor. § 23-3-430(C)(14), (D).

"Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. . . . The fundamental requirement of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a meaningful way, and judicial review." Harbit v. City of Charleston, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009). A denial of a claim of due process must be analyzed with a two-part inquiry: "(1) whether the interest involved can be defined as a 'liberty' or 'property' interest within the meaning of the Due Process Clause; and if so, (2) what process is due in the circumstances." State v. Binnarr, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012).

Under the sex offender registry act, McKie is now required to “register biannually for life” “in each county where he resides, owns real property, is employed, or attends any public or private school” § 23-3-460(A). Absent a reversal or vacation of his sentence, McKie can never be removed from the registry. § 23-3-430.

McKie further faces the possibility of imprisonment if he fails to timely register. § 23-3-470. This State’s Supreme Court has recognized that being subject to a “term of imprisonment for failing to register” can constitute “a great deprivation of liberty.” Binnarr, 400 S.C. at 165, 733 at 895. Therefore, being placed on the sex offender registry deprives McKie of a constitutionally protected liberty interest.

Having a protected property interest, McKie was entitled to be heard in a meaningful way. Harbit, 382 S.C. at 393, 675 S.E.2d at 781. In fact, an indecent exposure conviction does not automatically place a defendant on the sex offender registry. Instead, a defendant convicted of indecent exposure is not required to register unless “the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender” or if “good cause” is shown by the solicitor. § 23-3-430(C)(14), (D).

The purpose of the Act is to protect communities from sex offenders who “pose a high risk of re-offending.” § 23-3-400. McKie intended to offer testimony from Dr. Schwartz-Watts which would have shown he did not have a risk of re-offending and could be rehabilitated.

This case is inapposite of Connecticut Dep’t of Public Safety v. Doe, 538 U.S. 1 (2003) which held the plaintiffs were not entitled to a hearing under the Due Process Clause to determine whether they were likely to be “currently dangerous” before being placed on the sex offender registry where that particular factor was not relevant under the statutory scheme. Here, McKie requested to offer testimony that would have been directly relevant to the purpose of the Act – the

risk of re-offending. See State v. Dykes, No. 2010-160047, 2013 WL 2242768 (S.C. Sup. Ct. May 22, 2013) (holding lifetime satellite monitoring without consideration of the likelihood of re-offending violated a defendant's due process rights).

Furthermore, the Act specifically provides that McKie should not be placed on the registry unless the circumstances warranted the placement or "good cause" was shown by the solicitor. Therefore, beyond due process considerations, McKie should have been permitted under the provisions of the Act to offer a full defense, including the testimony of the doctor who evaluated him, before being placed on the registry for life. He was especially prejudiced by the trial court's denial to let him present a full defense where the State offered the testimony of Deputy Anglin who testified: "He's a monster. I fought for this county to put people like him, so they wouldn't victimize more people. He's going to hurt a child or he's going to hurt somebody else that we all love. . . . He is a monster." Tr. 311, ll. 14-23. McKie was entitled to reply to the State's evidence.

Accordingly, McKie requests a new hearing on whether he should be placed on the sex offender registry under § 23-3-430.

CONCLUSION

Based upon the foregoing arguments, Appellant Julius Curtis McKie requests this Court to reverse his placement on the sex offender registry pursuant to S.C. CODE ANN. § 23-3-430 and remand for a new hearing on whether he should be required to register pursuant to § 23-3-430.

Respectfully submitted,



Carmen V. Ganjehsani

Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of May, 2013.