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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge
Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRELL DENARD KNIGHTNER,

APPELLANT

APPELLATE CASE NO. 2020-001018

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in placing Mr. Knightner on the sex offender registry, where good cause was never shown by the solicitor as required by South Carolina law, such that Mr. Knightner should never have been required to register?

STATEMENT OF THE CASE

On July 20, 2016, a Richland County grand jury indicted Mr. Knightner on criminal sexual conduct in the third degree. R. 1. Represented by Robert Bank, Mr. Knightner appeared before the Honorable L. Casey Manning on December 13, 2016 for a plea. R. 3. Sandra Mosier appeared on behalf of the state. Mr. Knightner pled to assault and battery in the first degree following a waiver of presentment. R. 5, l. 24 – 7, l. 5; R. 8, l. 14 – 9, l. 2.. The state recommended sex offender counseling and suggested that Mr. Knightner would not have to register as a sex offender if he successfully completed counseling. Id.; R. 13, 11, ll. 1 – 13. The facts giving rise to the charge, as alleged by the solicitor, were as follows:

Mr. Knightner and Stacy Robinson began a relationship after meeting on an internet dating website. R. 16, l. 13 – 16, l. 17. While dating, they had consensual sex. Id. At some point in January 2013, they ended the relationship. On January 17, 2013, Mr. Knightner invited Ms. Robinson over to his house. They watched television together. After Ms. Robinson announced that she was leaving, Mr. Knightner supposedly pushed her onto the bed. Id. According to the solicitor, "[a]t some point, her pants came off" and "a sexual assault of some sort [ ] occurred." Id.

After Ms. Robinson filed a police report, Mr. Knightner "did make some statements, although **he did deny any sort of sexual conduct** with [Ms. Robinson]." Id. (emphasis added). Via text message, Mr. Knightner later apologized. Id.

Mr. Knightner had no prior record. R. 18, ll. 18 – 19. When the plea judge inquired to plea counsel as to whether the solicitor's recitation was correct, counsel stated "I think there is a dispute about how much physical force was used…" R. 18, l. 20 – 19, l. 3. Plea counsel was

interrupted by the plea judge who asked the same question again but then received an affirmative response. Id.

The plea judge found a substantial factual basis for the plea and concluded it was entered freely, voluntarily, knowingly, and intelligently. R. 19, ll. 4 – 10. The plea was therefore accepted. Id. Plea counsel advised the court of Mr. Knightner's "lifelong and ongoing medical condition where he has a shunt in his head … that prevents some fluid and swelling issues." Tr. 17, ll. 12 – 19. Counsel requested a probationary sentence. Tr. 17, l. 20 – 18, l. 16.

The plea judge sentenced Mr. Knightner to three years' incarceration, suspended to three years' probation, to include sex offender counseling. Tr. 19, l. 22 – 21, l. 4. At the request of the probation agent, a separate sentencing order was signed to memorialize the plea judge's impositions. R. 26.

An arrest warrant was issued on or about August 29, 2018, over twenty months later. R. 27. Mr. Knightner's probation agent alleged that he violated conditions of his probation. Id. In advance of a probation revocation hearing, counsel for Mr. Knightner filed a Motion to Order Evaluation to Determine Fitness for Probation. R. 29.

A probation revocation hearing was held on May 31, 2019 before the Honorable DeAndrea G. Benjamin. R. 31. Morgan Drapeau represented Mr. Knightner, and an agent appeared on behalf of the Department of Probation, Parole and Pardon. Judge Benjamin revoked probation, sentenced Mr. Knightner to sixty' days incarceration, and ordered him to register as a sex offender. R. 45, ll. 10 – 22. This was memorialized in an Order signed the same day as the hearing. R. 54.

Counsel for Mr. Knightner filed a Motion to Reconsider. R. 55. A hearing was held before the Honorable L. Casey Manning on June 27, 2019. Morgan Drapeau again represented Mr. Knightner. R. 60. The transcript indicates Anna Browder appeared on behalf of the state.

Judge Manning granted defense counsel's motion to reconsider without prejudice. R. 61, ll. 10 – 19. An Order to this effect was signed the same day. R. 64. As a result, Mr. Knightner was removed from the registry. Id.

Soon thereafter, the state filed its own Motion to Reconsider. R. 65. The state contended that "[t]he Solicitor's Office was not notified of this hearing to argue the relative portion as to whether or not Judge Manning should place the defendant on the registry." R. 66

A fourth hearing in this case was then held on January 14, 2020, again before the Honorable L. Casey Manning. R. 67. Morgan Drapeau represented Mr. Knightner. Anna Browder appeared on behalf of the state, and Lee Ann Evers attended on behalf of the Department of Probation, Parole and Pardon Services.

Judge Manning took the matter under advisement. R.. 81 ll. 11 – 25. On February 7, 2020, he issued an Order granting the state's motion to reconsider. R. 84. This Order effectively rescinded Judge Manning's June 27, 2019 decision and reinstated Judge Benjamin's order requiring Mr. Knightner to register as a sex offender.

A notice of appeal and accompanying statement of basis for appeal was filed with this Court on July 21, 2020. This brief follows.

STANDARD OF REVIEW

"A [sentencing court] has broad discretion in sentencing within statutory limits." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). "A [sentencing court] must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant." Id. The sentence imposed will not be overturned on appeal absent an abuse of discretion. Id. An abuse of discretion occurs when the sentence imposed was based on either an error of law or a factual conclusion not supported by evidence in the record. Id.

ARGUMENT

The circuit court erred in placing Mr. Knightner on the sex offender registry, where good cause was never shown by the solicitor as required by South Carolina law, such that Mr. Knightner should never have been required to register.

Relevant facts

Terrell Knightner is not a dangerous individual nor does the record contain any evidence that he is likely to reoffend. Outside of the allegations giving rise to his original charge, there have been no contentions that Mr. Knightner is dangerous. The rationale given for placing him on the registry does not rise to the level of good cause and therefore does not justify placement on the registry.

He was destined for failure, however, thrust into a system designed to test individuals' ability to comply with both societal norms and additional conditions of probation. Mr. Knightner suffers from an intellectual disability, hydrocephalus, which made compliance nearly impossible:

> Hydrocephalus is a disease that causes damage to brain tissues and a range of impairments in brain function... Mr. Knightner graduated from A.C. Flora High School, but not with a diploma, rather a Certificate of Participation. He always had an Individualized Education Plan (IEP) while attending school and was in Special Education Classes. Mr. Knightner's only ability to find employment is through the Babcock Center, a non-profit organization that helps individuals with supportive employment opportunities. Mr. Knightner has to have a case manager and job coach for his employment. Mr. Knightner's Hydrocephalus has worsened as he's gotten older and greatly diminishes his capacity to understand the rules, regulations and repercussions of Probation.

R. 29.[1]

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[1] The Babcock Center is "a private, non-profit corporation based in Columbia that provides housing and other services for people with autism, mental retardation, head or spinal injuries, or related disabilities." Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 131, 638 S.E.2d 650, 654 (2006)

The procedural history of this case, convoluted as it is, contains no findings of good cause such that Mr. Knightner should have ever been placed on the registry, nor was there a suggestion that he was likely to reoffend.

At the time of the hearing which resulted in placement on the registry, Mr. Knightner was thirty-five years old. R. 48. His mother, Sandra Knightner, advised the examiners in a Joint Department of Disabilities and Special Needs / Department of Mental Health that Mr. Knightner "met his developmental milestones (e.g., sitting up, talking, walking, etc.) later than expected." R. 48. The educational history portion of the evaluation underscores the realization that although he was found to be competent, his rationale and functions may differ from others:

> Mr. Knightner reported he completed the 12th grade and received a certificate. He explained that he was in self-contained classes but was not sure why he received special education resources. Records indicate he was served in a self-contained class for the educable mentally disabled (now referred to as intellectually disabled) and also received speech therapy, occupational therapy, and physical therapy.

R. 49 (Joint Evaluation).

At ages 10 and 12, Mr. Knightner was scored on the Wechsler Intelligence Scale ("WISC").[2] According to the Stedmans Medical Dictionary, the Wechsler intelligence scales are "continuously revised and updated standardized scales for the measurement of general intelligence in preschool children (Wechsler preschool and primary case of intelligence), in children (Wechsler intelligence scale for children), and in adults (Wechsler adult intelligence

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2 A special education placement in school is usually preceded by the administration of at least one individually administered, standardized test, such as the Wechsler Intelligence Scales for Children (WISC), the Wechsler Primary Pre-School Scale of Intelligence (WPPSI), or the Stanford-Binet. These individually administered tests provide the best measure of intellectual functioning in the pre-school or grammar school years. 93 Am. Jur. Trials 1 (Originally published in 2004)

scale)." 798440 Wechsler intelligence scales, Stedmans Medical Dictionary 798440. His scores revealed a less-than-average IQ.[3]

After he received his WISC score in 1997 at the age of 12, Mr. Knightner was "determined eligible for services under the intellectually disabled category by the Richland-Lexington Board." R. 52. This information was obtained from the South Carolina Department of Disabilities and Special Needs "Consumer Data Support System" and showed that Mr. Knightner was a "DDSN consumer." Id.

"The South Carolina Department of Disabilities and Special Needs (DDSN) is the state agency that plans, develops, coordinates and funds services for South Carolinians with the severe, lifelong disabilities of intellectual disability and related disabilities, autism spectrum disorder, traumatic brain injury, spinal cord injury and similar disability."[4] According to a recent eligibility determination document promulgated by the DDSN, for individuals like Mr. Knightner who were suffering from an intellectual disability prior to age 22:

> There must be concurrent deficits in intellectual and adaptive functioning that fall approximately two (2) or more standard deviations below the mean (approximately 70 or below) on standardized measures in order to meet criteria for diagnosis of Intellectual Disability.

DDSN Eligibility Determination Form 100-30-DD.[5]

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3 See United States v. Davis, 611 F. Supp. 2d 472, 477 (D. Md. 2009) (When the defendant was twelve, he was given a number of neuropsychological tests, some administered at his school, and some at Children's National Medical Center. On the Wechsler Intelligence Scale for Children (WISC), his full scale IQ was 75, which placed him in the borderline range of intellectual functioning.)

4 South Carolina Department of Disabilities and Special Needs "About Us" https://ddsn.sc.gov/about-us (last accessed June 22, 2021).

5 https://www.ddsn.sc.gov/sites/default/files/Documents/Quality%20Management/Current%20Directives/100-30-DD%20-%20Revised%20%28031418%29.pdf (last accessed June 22, 2021).

"Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. S.C. Code Ann. § 44-20-30. Mr. Knightner received similar scores on the Vineland Adaptive Behavioral Scales.[6] R. 51

At the time of his plea, Mr. Knightner's attorney advised the court that "at the time of this incident, he didn't have a tremendous amount of experience with mature relationships, and this was obviously something that never happened before and has never happened since." R. 19, l. 25 – 18, l. 4. Mr. Knightner did not have a criminal record. R. 18, ll. 18 – 19.

The factual recitation provided by the solicitor at the plea did not offer a great level of detail. The solicitor simply stated that "there was a sexual assault of some sort that occurred." R. 17, ll. 18 – 21. Mr. Knightner did admit to committing an assault and battery, but there is no clear indication as to how the statutory elements were met. R. 16, ll. 13 – 18. The solicitor even admitted that when Mr. Knightner was confronted with the police report, "he did deny any sort of sexual conduct." R. 18, ll. 1 – 5. Mr. Knightner's attorney attempted to clarify to the plea judge a fact regarding the use of force but was interrupted. R. 18, ll. 20 – 24.

The plea judge found a factual basis for the plea and accepted it. R. 19, ll. 4 – 10. However, there was no reference to any sort of good cause as required by S.C. Code Ann. § 23-3-430.[7] Further, there were no allegations of improper conduct with minors. As a result, the **only way** Mr. Knightner could be required to register was through section D:

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6 The Vineland comprises a series of questions addressed to the true care providers of the person whose functioning is at issue. It is designed to provide a measure of habitual or typical behavior by interviewing a person familiar with the individual's ability to adapt in his or her environment. United States v. Nelson, 419 F. Supp. 2d 891, 900 (E.D. La. 2006).

7 Assault and battery in the first degree is not a charge that requires automatic registration under this provision.

Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person by included in the sex offender registry if good cause is shown by the solicitor.

S.C. Code Ann. § 23-3-430(D).

The resulting sentencing order contained conditions of probation which included "[t]hat [Mr. Knightner] is not to be placed on the sex offender registry unless there is a violation of these terms." R. 26. The order did not suggest that Mr. Knightner "shall be" placed on the registry if he violated.

Almost twenty-one months after Mr. Knightner's plea, beyond the minimum time required, on average, to complete the sex offender counseling class, an arrest warrant was issued for Mr. Knightner.[8] The probation agent claimed Mr. Knightner accessed an application called Snapchat, watched pornography, deleted information from his phone, failed to "actively participate" in sex offender counseling "having been terminated on 8/13/2018," failed "to refrain from having contact with minors, having confessed on a polygraph examination to having contact with his two minor-aged niece and nephew without prior permission from his supervising agent," and failed to pay various fees.[9] R. 27

As mentioned, counsel for Mr. Knightner sought to have him evaluated prior to the revocation hearing. R. 29. The evaluation was made a court's exhibit at the hearing before the Honorable DeAndrea G. Benjamin on May 31, 2019. Morgan Drapeau represented Mr. Knightner at this hearing; an agent from the South Carolina Department of Probation Parole and Pardon appeared opposite Ms. Drapeau. The unnamed probation agent indicated at the outset

8 Plea counsel indicated that the class typically lasts "about 18 to 24 months." R. 6, ll. 9 – 10 Revocation counsel stated her understanding was that the classes take "about six to eight months." R. 35, ll. 18 - 24.

that Mr. Knightner was current on all fines and fees and was therefore not in arrears. R 35. 5, ll. 2 – 5.

The probation agent's recommendation was to allow Mr. Knightner to re-enroll in the counseling class:

> My recommendation was to revoke 60 days and continue on supervision and to PTUP after successful completion of the sex offender counseling. He will have to reenroll, so he will have to start over the process. And, of course, it is your discretion if he is on the sex offender registry or not.

R. 35, ll. 7 - 15 (May 31, 2019 hearing).

Counsel noted how Mr. Knightner's intellectual disability delayed his completion of the course. R. 35, l. 18 – 36, l. 4. The violation stemming from communication with minors was also explained:

> Judge, the communication with his niece and nephew, while we understand that is a violation, his charge was not anything to do with criminal sexual conduct with minors, and the communication with the niece and nephew was with his mother, who is in the courtroom. She was present during that, and he was always supervised during those times.
>
> He lives in the house behind them, which has been approved by probation, from my understanding. And so one day when she was ill and needed him to cook dinner, and that is when he was in the house, and the kids came running down.

R. 36, ll. 5 – 16.

Regarding the registry, Judge Benjamin mischaracterized Judge Manning's order based on her mistaken belief that placement on the registry was automatic following a violation of the probation conditions:

> I'm reading the [sentencing] order, but I don't know anything about the underlying case for me to decide whether or not he needs to be on the registry or not on the registry, other than Ms. Drapeau said it had nothing to do with children. So, frankly, y'all can take it back to Judge Manning. I mean, the way the order is written is that if he violates, he goes on the registry. But that is not my order.

R. 38, ll. 14 – 25. Counsel pointed out how "it was expected that he was going to be done with probation within about six to eight months and not be continuously on these classes for a year and a half." R. 40, l. 23 – 41, l. 1.[10] The probation agent advised Judge Benjamin that the classes were "pretty much self-paced." R. 41, l. 24.

Judge Benjamin, believing she had no discretion, determined that Mr. Knightner would have to register. R. 42, l. 16 – 43, l. 1. An order to this effect was signed following the hearing. R. 54. Judge Benjamin ruled that Mr. Knightner would have to serve sixty days' incarceration, over the course of thirty consecutive weekends, in addition to registering. Id.

Counsel for Mr. Knightner filed a Motion to Reconsider on June 7, 2019. R. 65. At a hearing dated June 27, 2019 before the Honorable L. Casey Manning, the defense's motion was granted without prejudice. A one-page order was signed by Judge Manning the same day signifying that Mr. Knightner was to be removed from the registry. R. 64.

The state filed its own Motion to Reconsider on or about July 3, 2019. R. 65. It claimed the solicitor's office was not notified of the June 27, 2019 hearing "to argue the relative portion as to whether or not Judge Manning should place the defendant on the registry." R. 65.

A fourth hearing in this matter was then held before the Honorable L. Casey Manning on January 14, 2020. Morgan Drapeau again represented Mr. Knightner. Anna Browder and Lee Ann Evers appeared on behalf of the state. Less than a month after the hearing, Judge Manning signed an order granting the state's motion to reconsider. R. 84. The two-page order contained no reference to South Carolina law, statutory, case law, or otherwise.

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10 According to Judge Manning's sentencing order, "probation may terminate upon completion of sex offender counseling." R. 26.

Discussion

Due to arbitrary and unnecessary guidelines put in place by his probation agent, Mr. Knightner was not allowed to visit his mother at her house even though he lived on the same piece of property as her. At the time of Mr. Knightner's plea, he was not required to register as an offender. There was no good cause offered by the solicitor, and Mr. Knightner received a sentence with no active prison time. He was required to take a self-paced class seemingly without any assistance; he understandably struggled as a result. Without additional resources similar to those he was provided in the twelve or so years of public school, Mr. Knightner was held to a strict standard that results in probation violations even for his normative peers. Regardless, however, he should not have been placed on the registry.

It bears repeating: no good cause was shown by the solicitor. There was no discussion as to whether Mr. Knightner was likely to reoffend. In fact, no evidence was placed on the record at the plea. The undersigned does not contend that pleas can never result in registry placement; however, in this case, the muddled factual recitation by the solicitor was insufficient to validate registry placement.

As noted, following a guilty plea, "the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor." S.C. Code Ann. § 23-3-430(D). At the time of filing of this brief, there are eight published opinions referencing this statute that contain the words "good cause": Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320 (2003); In re Kevin R., 409 S.C. 297, 762 S.E.2d 387 (2014); Interest of Christopher H., 432 S.C. 600, 854 S.E.2d 853 (2021) (petition pending); Powell v. Keel, Op. No. 28033 (S.C. Sup. Ct. filed June 9, 2021) (Shearouse Adv. Sh. No. 19 at 9); State v. Davis, 375 S.C. 12, 649 S.E.2d 178 (Ct. App. 2007); State v. Fuller, 425 S.C. 468,

822 S.E.2d 910 (Ct. App. 2019); State v. Hicks, 377 S.C. 322, 659 S.E.2d 499 (Ct. App. 2008); and State v. Hicks, 382 S.C. 370, 675 S.E.2d 769 (Ct. App. 2009) (vacated by State v. Hicks, 387 S.C. 378, 692 S.E.2d 919 (2010)).

In State v. Hicks, 377 S.C. 322, 659 S.E.2d 499 (Ct. App. 2008), good cause existed in the form of confrontational gestures towards the victim's father, living arrangements within a half-mile of many girls of similar age to the victim, and sex with the fourteen-year-old victim. On the other hand, in this case, Appellant interacted with his niece and nephew, viewed pornography, and deleted data from his phone. His underlying charge did not involve a minor, and his remaining acts resulted in no harm.

A person required to register on the sex offender registry "is required to register biannually for life." S.C. Code Ann. § 23-3-460(A). "The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit." S.C. Code Ann. § 24-21-440. In State v. Davis, this Court held that a probation revocation judge was not authorized to order placement on the sex offender registry as a condition of probation. 375 S.C. 12, 649 S.E.2d 178. Davis was indicted for criminal sexual conduct with a minor and pled no contest to assault and battery of a high and aggravated nature. Id. at 13-14, 649 S.E.2d at 178-9. He was sentenced to six years imprisonment suspended upon the service of two years' probation. Id. Additional conditions included sex offender counseling and "not be required to register as a sex offender." Id.

After the counselor contended that Davis was not meaningfully participating in the sessions, Davis was brought before the circuit court for a probation revocation hearing. Id. at 14, 649 S.E.2d at 179. His probation was revoked and placement in the sex offender registry was

mandared. Id. at 15, 649 S.E.2d at 179. Davis successfully argued that under S.C. Code Ann. § 23-3-430(D), placement in the registry as a condition of sentencing is only allowed when the solicitor has shown good cause. Id.

Much like in Davis, no good cause was shown at the probation revocation hearing in Mr. Knightner's case. Although the sentencing order contained a provision that failure to comply with probation conditions may trigger a revocation hearing and possible placement on the registry, there was no good cause shown. R. 26 (Sentencing order). The plea judge specifically ordered that Appellant not be required to register as a sex offender. In requiring that Mr. Knightner register as a sex offender, the probation revocation judge abused her discretion. Good cause was not shown in this instance at any point in the record.

> The purpose of the sex offender registry has nothing to do with retribution, and any deterrent effect of registration derives from the availability of information, not from punishment. Instead, the purpose of the registry and the electronic monitoring requirement is to protect the public and aid law enforcement.

In Interest of Justin B., 419 S.C. 575, 583, 799 S.E.2d 675, 679 (2017)

If the purpose of the sex offender registry is meant to protect the public from a sex offender, then the intent of the Legislature is not being served when placement on the registry is being imposed when a person violates a non-sexual related condition of probation. Mr. Knightner's underlying charge was not so severe as to warrant placement on the registry initially. If the public did not need protection in the form of placement on the registry after the initial charge, then it is highly unlikely that the public needed protection after Mr. Knightner spent time with his family and used his phone in an otherwise lawful manner. The registry may not be punitive, but in this instance it is being used as a punitive tool.

The state offered no indication that Mr. Knightner was at a risk to reoffend, as required by In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010). In that case, the South Carolina Supreme

Court held "that a finding of good cause in this context means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually." Id. at 327, 692 S.E.2d at 542. The Court held that the lower court did not abuse its discretion in requiring M.B.H. to register, where the solicitor showed good cause:

> At the dispositional hearing, the solicitor introduced the [Coastal Evaluation] Center's evaluation report to support the request for Appellant to be placed on the private sex offender registry. The judge relied on the professional findings and recommendations in that report in concluding good cause existed for placing Appellant on the registry. The record is clear that the judge considered all of the facts and circumstances of this case, both aggravating and mitigating, in determining that there is a risk of sexual reoffense. Such a determination is supported by the evidence in the record.

Id. at 327, 692 S.E.2d at 542-43.

In the matter at hand, there is no evidence in the record suggesting that Mr. Knightner was at a risk to reoffend. Prior to his original charge, he had no criminal record. For all the stages of his life for which data has been provided, Mr. Knightner received assistance from others. This was not done out of goodwill; rather, it was necessary in order to help Mr. Knightner live in a world where he is at a disadvantage. In the case before this Court, there is insufficient evidence supporting placement on the registry.

CONCLUSION

Based on the foregoing, Mr. Knightner would respectfully request that this Court reverse the circuit court's determination that he should be required to register.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of December, 2021.