SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4585-16T2

STATE OF NEW JERSEY IN THE INTEREST OF C.G., a minor.

Submitted May 22, 2018 – Decided May 31, 2018

Before Judges Mawla and DeAlmeida.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FJ-20-0202-17.

Joseph E. Krakora, Public Defender, attorney for appellant C.G. (Stephen P. Hunter, Assistant Deputy Public Defender, of counsel and on the brief).

Michael A. Monahan, Acting Union County Prosecutor, attorney for respondent State of New Jersey (Meredith L. Balo, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

C.G. appeals from a May 31, 2017 adjudication of delinquency for acts that, if committed by an adult would constitute first-degree aggravated sexual assault and second-degree sexual assault of A.G., a minor. We affirm.

The following facts are taken from the record. On September 27, 2016, C.G. was charged under a juvenile complaint for acts which, if committed by an adult, would constitute first-degree aggravated sexual assault (count one), N.J.S.A. 2C:14-2(a)(1), and second-degree sexual assault (count two), N.J.S.A. 2C:14-2, of his younger cousin, A.G. The underlying allegations of sexual assault arose when A.G. told her babysitter she had a boyfriend. After A.G.'s mother, R.R., learned what A.G. told the babysitter, she asked A.G. what she and her boyfriend would do together. R.R. claimed A.G. stated her boyfriend was C.G., and that he made "her suck his thing . . . [a]nd that sometimes it tasted bad." R.R. then called A.G.'s father, Y.G., told him what A.G. said, and asked him to meet them at the hospital so A.G. could be examined. An investigation by the Union County prosecutor's office ensued followed by the charges against C.G.

Following a six day bench trial, C.G. was adjudicated guilty of all charges. The trial judge concluded:

> I am convinced beyond a reasonable doubt from reviewing the testimony, particularly the medical records[,] which was done within a relatively short period of time of the alleged event that [C.G.] did insert his penis in the mouth of this child. I must agree that the child has never changed her view on that. From day one, she indicated it. She indicated it at the hospital. She indicated it to her mother. She indicated it to the father. She

indicated to the detective. She never one moment changed that.

I also took in consideration the fact that when the child testified, she indicated on one occasion the juvenile was about to have taken down his pants and that for a moment, the grandmother was going into the room and [he] quickly put up [his] pants. I truly believe that the juvenile saw this and that imbedded it to her mind. There's no reason she would have invented that scenario. She . . . didn't say that he had done anything. He had just mainly at the moment just pulled down his pants. I believe she was telling the truth when that happened.

I believe that, in fact, [C.G.] did insert his . . . genitals . . . in her mouth. I do believe also that she said it tasted bad.

. . . The question is whether or not he, in fact, inserted it. I believe he at least inserted it at least one time, and that's really all I have to determine in order to adjudicate him. I don't have to find that it was two, three, four, six, seven times.

I don't even have to believe for the purposes of the act of sexual penetrat[ion] that he penetrated any other part of her body, her anus or her vagina [as] she indicated. And she said as to the vagina that she was penetrated while at the hospital. She said he put the stuff . . . in my stuff.

Clearly, even if I didn't believe that aspect, it's of no consequences because I believe he at least committed one which is sufficient to find him guilty beyond a reasonable doubt of the penetration on the first[-]degree aggravated sexual assault.

. . . .

> As far as second[-]degree sexual assault, I also find that he, in fact, inserted his finger in her vagina beyond a reasonable doubt. I find her credible to that as well.
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> I find that it doesn't take a very long period of time for someone to commit a touching underneath clothing, and it doesn't take that much to insert a penis . . . into a mouth. There was never any testimony that he ejaculated during any of these alleged offenses. It appeared that it was a very short period of time[,] which in my view gives credence to the testimony of the child.
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> I find that the elements of second[-]degree aggravated assault are satisfied beyond a reasonable doubt. The State must prove that he purposely committed the act of sexual contact with another person, in this case that other person being the child A.G., that he purposely committed the act of sexual contact by touching her in her vagina underneath her clothing.
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> I also find beyond a reasonable doubt that . . . [C.G.] is [four] years older than the . . . victim in this case. I find that he . . . has done it knowingly, and . . . his conduct clearly demonstrated that at least as far as the testimony was concerned.

At the disposition hearing, the trial judge merged count two into count one, and sentenced C.G. to three years of probation in an intensive, supervised, sexual assault therapy program. In addition, the judge recommended C.G. be placed in a residential field program, complete anger management training, have no contact with the victim or with children under the age of eleven, and pay the requisite fines and penalties. As part of his sentence, C.G.

was subject to Megan's Law, N.J.S.A. 2C:7-1 to -23. This appeal followed.

C.G. argues the statutory ban on jury trials in juvenile matters, N.J.S.A. 2A:4A-40, violates his right to due process, trial by jury, and equal protection. C.G. argues Megan's Law, which was enacted after N.J.S.A. 2A:4A-40, has made juvenile cases similar to adult criminal prosecutions, thereby necessitating a juvenile's right to a jury trial rather than a single judge as decision-maker. C.G. also asserts the statutory ban on jury trials in juvenile matters violates the New Jersey Constitution. He argues judges should at least have discretion as to whether a case should proceed before a jury.

The constitutional challenges C.G. raises regarding the method of conducting juvenile trials were not raised before the trial court. Generally, appellate courts will decline to consider allegations not raised before the trial court, unless such an issue concerns substantial public interest. See State v. Robinson, 200 N.J. 1, 20-22 (2009); State v. Arthur, 184 N.J. 307, 327 (2005); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). However, we review the arguments raised in C.G.'s appeal because the constitutional challenge asserted potentially implicates a substantial public interest.

C.G. argues although "our Supreme Court some [forty] years ago upheld the statutory ban on jury trials for juveniles, . . . that Court has yet to address the recent punitive developments of the Juvenile Code and the mandatory imposition of Megan's Law for juveniles in the context of adjudication." C.G. concedes we previously addressed this issue in State ex rel. A.C., 424 N.J. Super. 252 (App. Div. 2012), but suggests we depart from the holding in A.C. because it was decided in a different context, and did not address the constitutional claims he raises here.

In A.C., we addressed whether N.J.S.A. 2A:4A-40 violated a juvenile's constitutional rights to a jury trial. We stated:

> As an intermediate appellate court, we are bound by the decisions of our Supreme Court in State in the Interest of J.W., 57 N.J. 144, 145-46 (1970), and In Re Registrant J.G., 169 N.J. 304, 338-39 (2001), and by the United States Supreme Court's decision in McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971), all of which hold that juveniles are not constitutionally entitled to a jury trial "in the juvenile court's adjudicative state." Ibid.
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> [424 N.J. Super. at 254.]

We noted the "fundamental differences between th[e] State's adult and juvenile adjudication systems" have been affirmed by the New Jersey Supreme Court. Ibid. We rejected A.C.'s argument the juvenile system had become comparable to the adult criminal system. Specifically, we noted the vastly different sentencing structure

of each system. Id. at 255. We stated "choosing trial as an adult would 'up the stakes' from four years in a juvenile facility to twenty years in prison. See N.J.S.A. 2A:4A-44(d)(1)(c); N.J.S.A. 2C:43-6(a)(1). That starkly illustrates an important distinction between the adult and juvenile justice systems." Ibid.

A.C. cited J.G., 169 N.J. 321-27, in which our Supreme Court expressly addressed and reconciled the application of Megan's Law to juveniles. The Court rejected the argument that subjecting juveniles over the age of fourteen to Megan's Law violated the rehabilitative philosophy and purpose of the juvenile justice system. Id. at 334-37. See also State ex rel. J.P.F., 368 N.J. Super. 24, 33 (App. Div. 2004).

C.G. asks us to re-consider our decision in A.C., 424 N.J. Super. 252, depart from J.G., 169 N.J. 304, and instead look to In the Matter of L.M., 186 P.3d 164 (Kan. 2008) for guidance. In L.M., the Kansas Supreme Court overturned a statute, which denied juveniles a jury trial, and held:

> [B]ecause . . . the Kansas juvenile justice system has become more akin to an adult criminal prosecution, we hold that juveniles have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments. As a result, K.S.A. 2006 Supp. 38-2344(d), which provides that a juvenile who pleads not guilty is entitled to a "trial to the court," and K.S.A. 2006 Supp. 38-2357, which gives the district court discretion in determining

> whether a juvenile should be granted a jury trial, are unconstitutional.
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> [186 P.3d at 170.]

The L.M. court reasoned the rationale employed by the United States Supreme Court in McKeiver, 403 U.S. at 550, which "relied on the juvenile justice system's characteristics of fairness, concern, sympathy, and paternal attention in concluding that juveniles were not entitled to a jury trial" was no longer applicable because the Kansas juvenile justice system had become more aligned with the intent of the adult system. L.M., 186 P.3d at 170; see also State ex rel. J.P.F., 368 N.J. Super. 24, 33 (App. Div. 2004).

At the outset, we note C.G. did not seek a jury trial, or raise this issue at all before the trial judge. Notwithstanding, we find little merit to the constitutional challenges raised in this appeal. As we discussed in A.C., juveniles do not have the right to a jury trial because of the distinction between the juvenile and adult systems; and the age restraints on the application of Megan's Law to juveniles harmonizes Megan's Law with the rehabilitative intent of the juvenile system. 424 N.J. Super at 254-55.

Moreover, L.M. is not binding on us, and we previously addressed the same argument raised in L.M. and A.C., and reached

a different conclusion. In A.C., we turned away the same constitutional challenge raised by C.G. here stating "[t]hese concerns may well merit the Legislature's further consideration . . . [but are] policy decision[s] to be addressed by the Legislature." Id. at 256. Indeed, "[w]hen language employed by the Legislature is clear and unambiguous, the interpretive function of the judicial branch of the government is simple and confined. The law should be applied as written." Canada Dry Ginger Ale, Inc. v. F & A Distrib. Co., 28 N.J. 444, 458 (1958). Furthermore, "[i]t is the Legislature's responsibility to create a constitutional system." Robinson v. Cahill, 70 N.J. 155, 159 (1976).

C.G. argues the blanket ban on jury trials for juveniles pursuant to N.J.S.A. 2A:4A-40 deprived him of due process, and violates Article I, Para. 9 of the New Jersey Constitution, which states:

> The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

C.G. further argues our jurisprudence has failed to specifically address the state constitutional provision mandating jury trials,

or engage in "any meaningful analysis regarding the application of that right."

The New Jersey Code of Juvenile Justice (Code) states: "All rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State, except the right to indictment, the right to trial by jury and the right to bail, shall be applicable to cases arising under this act." N.J.S.A. 2A:4A-40. As we noted, the United States Supreme Court has upheld a similar statutory exception, concluding, "trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement." McKeiver, 403 U.S. at 545. The Supreme Court reasoned "that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding." Ibid.

The New Jersey Supreme Court has applied a similar rationale in holding juveniles do not have the constitutional right to a jury trial. See J.G., 169 N.J. at 338; A.C., 424 N.J. Super. at 254; see also In re State ex rel. J.W., 57 N.J 144, 145-46 (1970) (declining to extend the Supreme Court's decision in In re Gault, 387 U.S. 1 (1967) and grant the right to a jury trial to every juvenile, holding: "We will not on our own introduce into the

Juvenile Court a mode of trial we believe will disserve the interests of the juvenile. Nor should we do so on the basis of a speculation that the United States Supreme Court will find that the Federal Constitution mandates that course[.]").

Moreover, there are sound policy reasons justifying the prohibition of jury trials for juveniles. As our Supreme Court has stated, "[t]he Code empowers Family Part courts handling juvenile cases to enter dispositions that comport with the Code's rehabilitative goals." State ex rel. C.V., 201 N.J. 281, 295 (2010). The Court has stated the purpose of the Code is to preserve the family unit and rehabilitate juveniles in a manner consistent with the protection of the public. Id. at 295-96; see also S. Judiciary Comm. Statement to Assem., No. 641 at 1 (1982).

Very recently, the Court reiterated the policy undergirding the Code when it struck down the Megan's Law requirement for "categorical lifetime registration and notification requirements" for juvenile offenders pursuant to N.J.S.A. 2C:7-2(g) on due process grounds. In re State ex rel. C.K., ____ N.J. ___, ____ (2018) (slip op.). In doing so, the Court again noted the differences between the juvenile and adult systems:

> Our laws and jurisprudence recognize that juveniles are different from adults — that juveniles are not fully formed, that they are still developing and maturing, that their mistakes and wrongdoing are often the result

of factors related to their youth, and therefore they are more amenable to rehabilitation and more worthy of redemption. Our juvenile justice system is a testament to society's judgment that children bear a special status, and therefore a unique approach must be taken in dealing with juvenile offenders, both in measuring culpability and setting an appropriate disposition. Indeed, the United States Supreme Court has explained that juvenile courts were created "to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment." Kent v. United States, 383 U.S. 541, 554 (1966).

Among the purposes of the Juvenile Code, N.J.S.A. 2A:4A-20 to -92, is "to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public." N.J.S.A. 2A:4A-21(b). Although rehabilitation, historically, has been the primary focus of the juvenile justice system, a second purpose — increasingly so in recent times — is protection of the public. See State in Interest of K.O., 217 N.J. 83, 92-93 (2014); see also J.G., 169 N.J. at 320-21 (noting that soon after enactment of Megan's Law, Legislature amended Juvenile Code's statement of purpose to include "a range of sanctions designed to promote accountability and protect the public" (quoting N.J.S.A. 2A:4A-21)); State in Interest of M.C., 384 N.J. Super. 116, 128 (App. Div. 2006) (noting that rehabilitation and protection of society are among considerations family court must weigh).

Nevertheless, rehabilitation and reformation of the juvenile remain a hallmark of the

> juvenile system, as evidenced by the twenty enumerated dispositions available to the family court in sentencing a juvenile adjudicated delinquent. See N.J.S.A. 2A:4A-43(b); State in Interest of C.V., 201 N.J. 281, 295 (2010). The range of dispositional options signifies that a "'one size fits all' approach" does not apply in the juvenile justice system. C.V., 201 N.J. at 296 (citing State of New Jersey, Office of the Child Advocate, Reinvesting in New Jersey Youth: Building on Successful Juvenile Detention Reform 16 (2009)). The juvenile system's flexibility in selecting an appropriate disposition for a young offender allows the family court to take into account "the complex, diverse, and changing needs of youth" and to address "the unique emotional, behavioral, physical, and educational problems of each juvenile before the court." Id. at 296.
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> [Id. at 39-41 (emphasis added).]

Given the express policy underlying the Code, we reject C.G.'s argument the Code may be likened to the adult criminal justice process. C.G.'s argument N.J.S.A. 2A:4A-40 violates the New Jersey Constitution ignores our precedent, which expressly found the introduction of jury trials to be the catalyzing element converting a juvenile matter into an adult criminal prosecution. Mandating a jury trial in juvenile matters would not only nullify the rehabilitative and reformative purpose of the Code, it would deprive the juvenile system of its "flexibility" to achieve its policy goals. For these reasons, we reject C.G.'s constitutional challenges to N.J.S.A. 2A:4A-40.

Finally, C.G. argues juveniles should, at a minimum, have the right to request a jury trial, and trial judges should "have the discretion of providing jury trials . . . to juveniles who are charged with criminal acts of first, second[,] or third degree, which presumptively expose[] them to a year or more of incarceration." As we noted, this argument would require us to engraft language onto the statute that does not exist, and instead should be addressed by the Legislature. A.C., 424 N.J. Super. at 256. For these reasons, and because we conclude the ban on jury trials remains constitutional, we decline to further address this argument.

Affirmed.