

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3588-21

IN THE MATTER OF
REGISTRANT S.K.

Argued April 17, 2023 – Decided May 23, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. ML-97-04-0057.

James H. Maynard argued the cause for appellant S.K. (Maynard Law Office, LLC, attorney; James H. Maynard, on the briefs).

Matthew T. Spence, Assistant Prosecutor, argued the cause for respondent State of New Jersey (Grace C. MacAulay, Camden County Prosecutor, attorney; Matthew T. Spence, on the brief).

PER CURIAM

In this appeal, we hold improper the entry of a June 9, 2022 order denying registrant S.K.'s motion to be terminated—*ab initio*—from Megan's Law.¹ We reverse and remand for the reasons set forth in this opinion.

Over twenty-five years ago, in June 1997, S.K. (then fifteen years old) was charged with sexual assault, N.J.S.A. 2C:14-2(b), and endangering the welfare of a child by engaging in conduct that would impair or debauch the morals of a child, N.J.S.A. 2C:24-4(a), in Camden County. Since that time, S.K. has lived compliantly as a Megan's Law registrant in Burlington County.

In 2020, S.K. was terminated from Megan's Law through a petition filed in Burlington County. While preparing the petition for removal from Megan's Law, he sought adjudication records from Camden Vicinage (i.e., where the juvenile matter was heard) and Burlington Vicinage (i.e., where he was tiered pursuant to Megan's Law). Camden Vicinage responded by informing S.K. his juvenile records had been destroyed. Additionally, the Camden County Prosecutor's Office refused to confirm that it had previously prosecuted S.K.

On the other hand, the Burlington County Prosecutor's Office was able to provide certain materials, none of which contained a juvenile plea form or a juvenile order for disposition. The Burlington Vicinage judge was, however,

¹ N.J.S.A. 2C:7-1 to -23.

able to obtain a copy of an undated audio recording from S.K.'s purported disposition hearing. These materials were sent to S.K., who in turn provided a copy to Camden Vicinage in support of a motion to terminate the application of Megan's Law ab initio. Camden Vicinage transcribed the relevant portion of the audio of S.K.'s purported disposition hearing and reviewed the other materials, which included a juvenile delinquency complaint and various pre-disposition reports.

Relying on these materials, including the transcript of the disposition hearing, the court held the State had proven S.K. had been previously adjudicated delinquent of a Megan's Law eligible offense. It denied his motion to be terminated ab initio from Megan's Law. This appeal followed.

Before us, S.K. argues the State has not produced admissible and materially sufficient evidence of a conviction or adjudication of a Megan's Law registrable offense. He asserts there is no proof that Megan's Law has been lawfully imposed. He also argues the court erred in its attempt to reconstruct the record.

We review a trial court's decision on a motion to terminate obligations under Megan's Law for an abuse of discretion. In re J.W., 410 N.J. Super. 125, 130 (App. Div. 2009). An abuse of discretion occurs when the trial judge's

"decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). However, "when the trial court renders a decision based upon a misconception of the law, that decision is not entitled to any particular deference" and our review is de novo. State v. C.W., 449 N.J. Super. 231, 255 (App. Div. 2017).

We begin with the observation that Megan's Law is a remedial statute, and civil in nature. Doe v. Poritz, 142 N.J. 1, 74 (1995). However, the law is also automatically triggered by a criminal conviction (or adjudication of delinquency) for any offense enumerated in N.J.S.A. 2C:7-2(b). As such, Megan's Law is quasi-criminal, in that it may not be applied to someone without a qualifying conviction.

When a prior conviction is relevant to an offense or proceeding, the State bears the burden of proving the existence of that conviction beyond a reasonable doubt. State v. Bailey, 231 N.J. 474, 490-91 (2018); State v. McBride, 15 N.J. Super. 436 (App. Div. 1951). The analog to a conviction in the juvenile context is an adjudication of delinquency; the official record of such is an order of disposition. R. 5:24-4(a).

In State v. H.G.G., which concerned expungements, we explained "proof of conviction . . . is satisfied by the introduction into evidence of a certified judgment of conviction. The burden is then on the petitioner to prove . . . invalidity." 202 N.J. Super. 267, 273 (App. Div. 1985). While other methods of proving a conviction exist—and will be discussed below—H.G.G. stands for the proposition that the burden is properly placed on the State to prove a conviction first, prior to the burden shifting to defendant to attack its validity. Ibid.

We conclude juveniles should be afforded the same protections, if not greater protections, than those afforded criminal defendants. A signed order of disposition, filed with the court clerk, is generally required to prove prior adjudication. This is consistent with the legal standard for proving a prior conviction of an adult defendant.

That being said, in limited circumstances—where a judgment of conviction or order of disposition is unavailable—a certified transcript of the sentencing or disposition proceeding may also prove a prior conviction or adjudication. However, the transcript must do what a judgment of conviction or an order of disposition does: it must state the exact statute section, paragraph,

and, as appropriate, subparagraph—for which the individual's sentence or disposition is being imposed.

Here, S.K.'s sentence, and the charges to which he pled, were discerned from the disposition transcript. However, that transcript lacks a precise statement by the trial court as to the specific offenses for which S.K. was being adjudicated delinquent. This is insufficient. To be considered the equivalent of a certified order of adjudication, the transcript must clearly announce the Megan's Law-eligible offense upon which the court based its disposition. The transcript before us does not do this. As such, it does not adequately advise as to the legal disposition of the matter, and leaves S.K.'s status in an unresolvable legal limbo.²

² The inability to obtain his disposition has real life consequences to S.K., notwithstanding his having been relieved of his reporting obligation in New Jersey. The statutes, regulations, and laws addressing sex offender registration and notification in all fifty states, the District of Columbia, the five principal United States territories, and over 125 federally recognized Indian Tribes are varied and complex. Each local system makes its own determinations about who is required to register, which crimes are registerable offenses, what information offenders must provide, and what consequences are inherent in the scheme. S.K. cannot comply with these requirements without being able to obtain the proper documentation. See 50-State Survey of Relief from Sex Offender Registration, Collateral Consequences Res. Ctr. (May 14, 2015), <https://ccresourcecenter.org/2015/05/14/50-state-survey-of-relief-provisions-affecting-sex-offender-registration/>. S.K. cannot comply with these requirements without being able to obtain the proper documentation.

Finally, Rule 2:5-3(f) governs reconstructing the record.³ Under that rule, a reconstruction may be a statement of proceedings in lieu of a transcript. R. 2:5-3(f). However, we have previously explained "it becomes the duty of the trial court as a matter of due process entitlement of the parties to reconstruct the record in a manner that, considering the actual circumstances, provides reasonable assurances of accuracy and completeness." State v. Izaguirre, 272

³ Rule 2:5-3(f) provides:

If no verbatim record was made of the proceedings before the court or agency from which the appeal is taken, the appellant shall, within [fourteen] days of the filing of the notice of appeal, serve on the respondent a statement of the evidence and proceedings prepared from the best available sources, including appellant's recollection. The respondent may, within [fourteen] days after such service, serve upon the appellant any objections or proposed amendments thereto. The appellant shall thereupon forthwith file the statement and any objections or proposed amendments with the court or agency from which the appeal is taken for settlement and within [fourteen] days after the filing of the same the court or agency shall settle the statement of the proceedings and file it with the clerk thereof, who shall promptly provide the parties with a copy. If a verbatim record made of the proceedings has been lost, destroyed or is otherwise unavailable, the court or agency from which the appeal was taken shall supervise the reconstruction of the record. The reconstruction may be in the form of a statement of proceedings in lieu of a transcript.

N.J. Super. 51, 57 (App. Div. 1994) (citing State v. Smith, 84 N.J. Super. 452, 456-59 (App. Div.), certif. denied, 43 N.J. 270 (1964)). Under Rule 2:5-3(f), the process by which a permissible reconstruction of the record is forged must be a collaborative effort, which requires the participation of counsel and the trial judge.


This is because "the absence of a verbatim record 'raises a question concerning fairness that must be addressed.'" State v. Casimono, 298 N.J. Super. 22, 26 (App. Div. 1997) (quoting Izaguirre, 272 N.J. Super. at 56). Accordingly, "[i]f a verbatim record made of the proceedings has been lost, destroyed or is otherwise unavailable, the court or agency from which the appeal was taken shall supervise the reconstruction of the record." Id. at 25 (quoting R. 2:5-3(f)).

Here, the reconstructed record is such that it does not provide a reasonable assurance of completeness and accuracy to satisfy due process. See Izaguirre, 272 N.J. Super. at 57. As the verbatim record available lacks the specificity comparable to a properly signed order of disposition, and the underlying records have been destroyed, we must reverse.

Reversed and remanded for the entry of an order granting S.K.'s motion.

We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION