

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3196-22

IN THE MATTER OF
REGISTRANT A.B.

Argued May 15, 2024 – Decided January 6, 2025

Before Judges Gummer and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. ML-20070081.

Michael C. Woyce, Assistant Deputy Public Defender, argued the cause for appellant A.B. (Jennifer N. Sellitti, Public Defender, attorney; Michael C. Woyce, of counsel and on the brief).

Matthew E. Hanley, Assistant Prosecutor, argued the cause for respondent State of New Jersey (Theodore N. Stephens, II, Essex County Prosecutor, attorney; Matthew E. Hanley, of counsel and on the brief).

The opinion of the court was delivered by

WALCOTT-HENDERSON, J.S.C. (temporarily assigned).

Registrant A.B.¹ is a repeat, violent sexual offender who was adjudicated delinquent on three separate occasions for sexual offenses he committed when he was a juvenile and convicted of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a), as an adult. He appeals from a June 21, 2023 order classifying him as a Tier Three-High Risk offender pursuant to the registration and community notification provisions of Megan's Law, N.J.S.A. 2C:7-1 to -23. A.B. challenges the Registrant Risk Assessment Scale (RRAS)² score imposed under Factor Three, age of victim, and contends he was improperly scored because he was a juvenile at the time he committed his first offense and was otherwise less than four years older than his juvenile victims. For the reasons that follow, we vacate the order and remand for proceedings consistent with this opinion.

¹ We use initials because records relating to child victims of sexual assault or abuse are excluded from public access under Rule 1:38-3(c)(9), and records related to proceedings and hearings required under the Supreme Court's decision in Doe v. Poritz, 142 N.J. 1, 39 (1995), are excluded from public access under Rule 1:38-3(c)(11).

² The RRAS was "designed to provide prosecutors with an objective standard on which to base the community notification decision mandated by [Megan's Law] and to assure that the notification law is applied in a uniform manner throughout the State." In re Registrant C.A., 146 N.J. 71, 100-01 (1996). The RRAS "is used to assess whether a registrant's risk of reoffending is low, moderate or high." In re A.D., 441 N.J. Super. 403, 407 (App. Div. 2015).

In this appeal, we consider whether A.B., now an adult, is entitled to a lower score on the RRAS scale and concomitant lower Tier Rating because he was a juvenile at the time he committed certain offenses and was less than four years older than any of his victims when he committed those offenses.

The relevant facts are undisputed. In September of 1983, ten-year-old A.B. was adjudicated delinquent for second-degree, aggravated sexual assault in violation of N.J.S.A. 2C:14-2, after he followed a ten-year-old boy into a bathroom, threatened him and forced him to perform oral sex. He received a suspended custodial disposition and was placed on two years of probation.

In December of 1985, A.B., then thirteen years old, was charged with aggravated sexual assault after forcing a ten-year-old boy to touch his penis, while threatening him with a screwdriver. The complaint charging A.B. with aggravated sexual assault was dismissed; however, A.B. was adjudicated delinquent for violating the probation disposition related to the prior aggravated assault from 1983.

In January of 1987, A.B., then fourteen years old, was adjudicated delinquent for sexual assault in violation of N.J.S.A. 2C:14-2 for punching and grabbing a fourteen-year-old girl at a local mall and forcing her to perform oral sex, while threatening her with a knife. For this offense, A.B. received a three-

year custodial term at the New Jersey Training School for Boys concurrent to custodial dispositions based on additional delinquency complaints and violations of probation.

In October of 1994, A.B., then twenty-one years old, and two other men robbed, threatened, and forced a twenty-four-year-old woman to perform oral sex. An indictment charged defendant with: first-degree conspiracy to commit aggravated sexual assault, N.J.S.A. 2C:14-2 and N.J.S.A. 2C:5-2 (count one); first-degree conspiracy to commit robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2 (count two); two counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a) (counts three and four); and two counts of first-degree armed robbery, N.J.S.A. 2C:15-2 (counts five and six).

On January 21, 1997, A.B. pleaded guilty to first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a). On April 25, 1997, A.B. was sentenced to ten years' incarceration. One year later, his sentence was vacated, and he was resentenced to five years' probation supervision concurrent with an unrelated federal conviction and ten-year sentence for drug trafficking.³

³ A.B. was convicted of federal drug trafficking. The record does not provide further details of the federal conviction.

On December 26, 2002, at the conclusion of A.B.'s federal sentence, the State petitioned the court to temporarily commit A.B. to the Special Treatment Unit (STU) as a sexually violent predator "until such time as his condition has so changed that he is no longer a danger to society and is not likely to engage in acts of sexual violence if released."⁴ The Law Division granted the State's petition, and A.B. was committed to the STU. In 2005, he was convicted of aggravated assault of a corrections officer while at the STU. He was sentenced to a seven-year term of incarceration in state prison. In 2010, A.B. was released from state prison and returned to the STU.

On June 17, 2020, when he was forty-seven years old, A.B. was conditionally discharged from STU and placed under parole supervision for life with global position system (GPS) monitoring and with the requirement that he register pursuant to Megan's Law subject to the following conditions: abstain from all contact with minors, from social-media websites and applications, and from using intoxicating substances including alcohol and illegal drugs; complete weekly phone calls with "keepsafe buddies" at the STU; attend alcoholics and

⁴ To commit someone to the STU, the State must prove that the alleged predator committed a "sexually violent offense . . . and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment." N.J.S.A. 30:4-27.26.

narcotics anonymous meetings, obtain a sponsor, and establish a home group; attend sex-offender therapy; find parole-approved employment; and keep a 9:00 p.m. curfew.

On May 1, 2023, the State served A.B. with a proposed Megan's Law Tier Classification of Three, high risk sex offender classification, which requires notice to the community and inclusion on the Sex Offender Internet Registry. A.B. submitted written objections to the court and the State challenging the proposed Tier Three classification.

On June 20, 2023, the court conducted the tier hearing. According to the record, the court had received the State's notice of proposed Tier Three classification with inclusion on the internet registry and its RRAS score of eighty-eight, indicating a repetitive and compulsive finding. The RRAS Guidelines provide in pertinent part:

[Factor Three:] Age of victim is related to seriousness of the potential offense. This criterion mirrors statutory age levels. The youngest victim for any offense known is scored. Offense need not have led to conviction if credible evidence exists in the records. For juveniles, a four[-]year[-]age difference between the offender and the victim is needed to score this criterion.

[RRAS Guidelines at 5 (emphasis added).]

A.B. submitted a letter, objecting to the RRAS score in Factor Three, seeking a fifteen-point reduction in his score and placement in Tier Two classification. A.B. argued that the age-of-the-victim factor is scored in only one of two circumstances: 1) when a juvenile offender is more than four years older than the victim; and 2) when the registrant is an adult at the time of the offense. He further argued that because he was not four years or more older than his first victim, the age-of-the victim factor should have been scored at zero because what we will call the "juvenile exception" — granting juvenile offenders an exception, where they are less than four years older than the victims, regardless of the date of the later tier hearing — should be applied to reduce his overall score of eighty-eight by the fifteen points added by the State under Factor Three of the RRAS.

The State asserted that A.B. — then fifty years old — was asking the court to ignore his three violent juvenile sexual offenses. The State further asserted that A.B. was an adult at the time of tiering, and therefore it had correctly used an adult RRAS scale for tiering purposes, not a juvenile scale. The State argued that a review of A.B.'s history of sex assaults as delineated in the RRAS showed that "[e]very one of his sexual offenses involves violence and terror and humiliation of others for his own gratification . . . So pursuant to the [RRAS]

Guidelines[,] an adult RRAS is [the] appropriate scoring template in this case; [fifteen] is the appropriate score for Category [Three] and [A.B.] is appropriately scored as a [T]ier [Three],"⁵ having a total score of eighty-eight.

The court issued a brief oral decision finding by clear and convincing evidence the total score of eighty-eight and concluded that "the Tier [Three designation] with internet [and door-to-door] notification is appropriately supported." The court issued an order on June 21, 2023, memorializing its decision.⁶

A.B. appealed from the court's order and requested a stay of door-to-door notification of A.B.'s presence in the community, which we granted on July 6, 2023. On appeal, A.B. raises a single point:

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION
WHEN IT SCORED FACTOR [THREE], AGE OF
THE VICTIM, AS HIGH RISK WITH A SCORE OF

⁵ "Attorney General Guidelines" refers to the Attorney General Guidelines for Law Enforcement For the Implementation of Sex Offender Registration and Community Notification Laws (rev. February 2007) (RRAS Guidelines), which contain the RRAS that was upheld by the Court in In re Registrant C.A., 146 N.J. 71, 110 (1996). The RRAS Guidelines are an instrument used to determine whether a sex offender's risk of re-offense is low (Tier One), moderate (Tier Two), or high (Tier Three). State v. C.W., 449 N.J. Super. 231, 260 (2017) (citing In re V.L., 441 N.J. Super. 425, 429 (App. Div. 2015)).

⁶ The order is dated July 21, 2023, but that date appears to be an error.

FIFTEEN POINTS, WHERE REGISTRANT WAS A JUVENILE AND LESS THAN FOUR YEARS OLDER THAN THE JUVENILE VICTIMS.

A. The Trial Court Abused Its Discretion In Assessing A High Risk Score To Factor [Three].

"We review a trial court's conclusions regarding a Megan's Law tier designation and determination of scope of community notification for an abuse-of-discretion standard." In re B.B., 472 N.J. Super. 612, 619 (2022). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995). Questions of law are reviewed de novo. State v. Harris, 181 N.J. 391, 420 (2004).

We begin our consideration of the appeal by summarizing the relevant provisions of Megan's Law and the tier-classification process. A court's tier designation and determination of community notification should be made "on a case-by-case bases," founded on all competent evidence available rather than

just on the numerical sums derived by RRAS calculations. C.A., 146 N.J. at 109.

Megan's Law has two components: registration and notification. It requires certain sex offenders, depending on the type and time of offense, to register with local law-enforcement agencies. N.J.S.A. 2C:7-2. Within prescribed time periods, a registrant must notify appropriate law enforcement upon a change of address, job, or school. N.J.S.A. 2C:7-2(d). The second component of Megan's Law is notification to the community of the presence of registrants assessed to be a moderate or high risk to re-offend. In re T.T., 188 N.J. 321, 327 (2006) (citing N.J.S.A. 2C:7-2). Because registration and community notification under Megan's Law has a significant impact upon a registrant's personal liberties, the trial court must balance the registrant's right to privacy against the community's interest in safety and notification. In re Registrant G.B., 147 N.J. 62, 74 (1996). In applying this balancing test, the RRAS Guidelines are a reliable tool. Id. at 81-82.

In assigning a tier rating to a registered sex offender, the court considers thirteen factors across four categories. The four categories are: (a) seriousness of the offense; (b) the offender's history; (c) community support available; and (d) the characteristics of the offender. Id. at 70-71.

The thirteen numbered factors encompassed in the four categories are as follows. "Seriousness of offense" includes consideration of: (1) degree of force, (2) degree of contact, and (3) age of victim. C.A., 146 N.J. at 103. "Offense history" includes: (4) victim selection, (5) number of offenses/victims, (6) duration of offensive behavior, (7) length of time since last offense, and (8) any history of anti-social acts. Ibid.

"Characteristics of offender" and "community support" are considered "dynamic categories, because they are evidenced by current conditions." Ibid. "Characteristics of offender" includes: (9) response to treatment and (10) substance abuse. Id. at 103-04. "Community support" includes: (11) therapeutic support, (12) residential support, and (13) employment/educational stability. Id. at 104.

Each factor is assigned a risk level of low (0), moderate (1), or high (2), and "[t]he total for all levels within a category provides a score that is then weighted based on the particular category." Ibid. A registrant who receives a total factor score below thirty-seven is considered Tier I and a low risk for re-offense. Id. at 83. A registrant who receives a total factor score of more than thirty-seven, but less than seventy-four, is deemed Tier II and a moderate risk for re-offense. Ibid. Finally, a registrant who receives a total factor score of

seventy-four or higher is considered Tier Three and a high risk for re-offense. Ibid. The State ultimately bears the burden of proving—by clear and convincing evidence—a registrant's risk to the community and the scope of notification necessary to protect the community. In re Registrant R.F., 317 N.J. Super. 379, 383-84 (App. Div. 1998).

N.J.S.A. 2C:7-8(c)(1) provides that when risk of re-offense is low, "law enforcement agencies likely to encounter the [registrant]" must be notified of registrant's tier designation, name, and address. See also RRAS Guidelines at 22-24. When risk of re-offense is moderate, "organizations in the community including schools, religious and youth organizations" must be notified in addition to the notice to law enforcement agencies. N.J.S.A. 2C:7-8(c)(2). When risk of re-offense is high, public notice "designed to reach members of the public likely to encounter the [registrant]" is required, in addition to the notification to law-enforcement agencies and community organization. N.J.S.A. 2C:7-8(c)(3). Law enforcement conducts door-to-door community notification by delivering notice of the registrant to an adult member of each household and to a full-time adult supervisory employee in every business located in the area in the scope of community notification. RRAS Guidelines at 42-43. Further, the court may order the information of Tier II offenders to be listed on a public

internet registry. Id. at 23. All Tier Three offenders will be listed on the internet registry. Ibid. State police are required to maintain the internet registry, which includes personal information, including addresses. Id. at 47.

Our Supreme Court has upheld the validity of the RRAS and has permitted the State to use the RRAS "to establish its prima facie case concerning a registrant's tier classification and manner of notification," T.T., 188 N.J. at 328 (citing C.A., 146 N.J. at 110), but has emphasized that although presumptively reliable, the RRAS is "merely a tool" and the ultimate tier classification "is reserved to the sound discretion of the trial court," G.B., 147 N.J. at 78-79. In 2001, however, our Court expressed its concern that the RRAS Guidelines and "the RRAS, in their present form, do not adequately distinguish adult and juvenile offenders and specifically do not take into account the issues unique to juvenile offenders below age fourteen." In re Registrant J.G., 169 N.J. 304, 333 (2001).

In J.G., the Court encouraged the Attorney General to review and modify the RRAS Guidelines and the RRAS "to reflect factors and issues unique to such youthful offenders" because "youthful sex offenders . . . may lack criminal capacity, or even comprehension about the nature and consequences of their actions." Id. at 333-34. The Court expressed its concern that "the [RRAS]

Guidelines and the RRAS, in their present form, do not adequately distinguish adult and juvenile offenders and specifically do not take into account the issues unique to juvenile offenders below age fourteen." Ibid. The Court noted, as an example, "a registrant's RRAS score will be substantially higher if the victim is under age thirteen. Because ten-year-old juvenile offenders such as J.G. are unlikely to accost victims significantly older than themselves, that feature of the RRAS may unfairly inflate the score of younger offenders." Ibid. And, "because youthful sex offenders such as J.G. may lack criminal capacity, or even comprehension about the nature and consequences of their actions, we believe the Guidelines and the RRAS require review and modification to reflect factors and issues unique to such youthful offenders." Ibid.

The sole issue on appeal is whether the court abused its discretion when it scored Factor Three — age of the victim — as high risk with a score of fifteen points despite the fact that A.B. was a juvenile at the time of his first three offenses and less than four years older than any of his juvenile victims. A.B.'s argument is based on the State's recorded score of three in the "age of victim" criterion, which was then multiplied by five as required by criterion within the "seriousness of offense" category, for a total of fifteen points. A.B. seeks to reduce that score to zero in the hope that a reduction of fifteen points in his

overall score of eighty-eight would place him at a score of seventy-three points and in a Tier Two rather than Tier Three classification for community-notification purposes. With a Tier-Two score of seventy-three instead of a Tier-Three score of eighty-eight, a court would have discretion to decide if A.B. would be required to be placed on the internet registry. RRAS Guidelines at 23, 48. In contrast, all Tier Three offenders are required to be listed on the internet registry. Id. at 23.

More particularly, A.B. contends that his score for the age-of-the-victim criterion should be zero because he was a juvenile, aged ten and thirteen respectively, when he sexually assaulted his ten-year-old victims, the youngest victims for any of his offenses. In support of his argument, he also points to the express language contained in the RRAS Guidelines that states, "[f]or juveniles, a four year[-]age[-]difference between the offender and the victim is needed to score this criterion."

A.B. further contends the only way to give meaning to the "for juvenile" language in Factor Three of the RRAS Guidelines is to apply it to the time of the offense. He further argues, "[t]he RRAS is only applied to individuals after they turn eighteen, and there is no sound basis to assert that [his] score should be increased as an adult for conduct which occurred as a juvenile."

Lastly, A.B. argues that "[t]here is an abundance of case law that has recognized scientific and social notions about the unique characteristics of youth and the progressive emotional and behavior development of juvenile and young adults" that should have been considered by the court. He also claims the Attorney General Guidelines "address this issue by granting juvenile offenders an exception, where they are less than four years older than the victims, regardless of the date of the later tier hearing."

The State asserts its Tier Three categorization is correct based on its reading of the RRAS and the JRAS, arguing two main points: (1) the four-year differential in the juvenile exception applies only to juvenile registrants and, thus, does not encompass adult registrants who were juveniles at the time they committed their offenses; and (2) A.B. was properly scored under the RRAS and not its juvenile counterpart, the JRAS, because the JRAS explicitly says it is to be used only for offenders who are under eighteen "at the time of tiering."

We note that the State's argument that the JRAS does not apply to A.B. because he was an adult at the time of scoring, while accurate, does not address A.B.'s primary contention that the plain language of the RRAS juvenile exception — "[f]or juveniles, a four[-]year[-]age difference between the offender and the victim is needed to score this criterion" — applies to offenses

committed by an adult registrant when the adult registrant was a juvenile who was less than four years older than his or her victim.

In response to the Court's supplications, see J.G., 169 N.J. 334, the Attorney General did not revise the RRAS but on June 1, 2006, issued a Juvenile Risk Assessment Scale (JRAS), which provides scoring for juvenile registrants.

See T.T., 188 N.J. at 332.⁷ The JRAS states:

This scale should be used as a tool by prosecutors to tier offenders who are eighteen [] or under at the time of tiering. Prosecutors should continue to use the [RRAS] for all offenders over [eighteen], regardless of the age when the offense was committed. Every case is decided on a case by case basis. There may be some fact sensitive issues which affect the level of risk.

[JRAS at 2.]

Given that language, it is clear the JRAS applies only to registrants who are "eighteen [] or under at the time of tiering" and the RRAS applies to registrants who are "over [eighteen], regardless of the age when the offense was committed." JRAS at 2.

⁷ In contrast with the RRAS, the JRAS considers fourteen factors divided into three areas based on "literature on juvenile sex offending": sex-offense history, antisocial behavior, and environmental characteristics. Juvenile Risk Assessment Scale (JRAS) at 1, 9. The fourteen factors are scaled from low risk to high risk. JRAS at 9.

The RRAS specifically references under Factor Three that for juveniles, a four-year-age difference between the offender and the victim is needed to score this criterion. Because the RRAS applies only to adult registrants, we understand the juvenile-exception language to reference offenses the adult registrant committed as a juvenile.

Thus, we are satisfied that the JRAS applies to juvenile registrants and the RRAS applies to adult registrants, with provisions on how to score offenses the adult registrant committed as an adult and offenses the adult registrant committed as a juvenile. To conclude otherwise would render meaningless the specific juvenile exception included in the RRAS.

We therefore reject the State's argument and note that when the Attorney General issued the new JRAS in 2006, the original RRAS and accompanying RRAS Guidelines were not amended. Thus, the juvenile exception in the RRAS remains in the RRAS post-2006, after the Court observed the shortcomings of the RRAS in its treatment of juveniles in J.G., 169 N.J. at 333, and the Attorney General issued the JRAS. In J.G., the Court held that "the [RRAS] Guidelines and the RRAS, in their present form, do not adequately distinguish adult and juvenile offenders." The Court further observed that "[b]ecause ten-year-old juvenile offenders such as J.G. are unlikely to accost victims significantly older

than themselves, that feature of the RRAS may unfairly inflate the score of younger offenders." Ibid.

In referring to "that feature of the RRAS," the Court was addressing the "age of victim" criterion in the RRAS as the factor specifically addressing registrants who accosted young victims. See RRAS Guidelines at 9. The "age of victim" criterion and the juvenile exception have therefore been a part of the RRAS since its inception in 1998 and remain unchanged today.

Applying the requisite standard, we conclude the court abused its discretion in failing to apply the juvenile exception to A.B.'s score under Factor Three. B.B., 472 N.J. Super. at 619.

For these reasons, we vacate the June 31, 2023 order in which the court tiered A.B. as a Tier Three-High Risk offender based on the court's failure to apply the juvenile exception under Factor Three of the RRAS, resulting in an incorrect overall score of eighty-eight points and we remand the case for the court to conduct a new hearing to rescore A.B., applying the juvenile exception of the RRAS, consistent with this opinion. Pending the outcome of the remand hearing, A.B. shall continue as a Tier Three-High Risk offender and must continue to comply with his annual registration requirement. The stay of the

notification requirements remains in place until the trial court issues a new tiering order after the remand hearing.

Vacated and remanded for further proceedings in accordance with this opinion. 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