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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re OMAR F.

No. 1 CA-JV 16-0126, 1 CA-JV 16-0135
(Consolidated)
FILED 11-1-2016

Appeal from the Superior Court in Maricopa County
No. JV558791
The Honorable James P. Beene, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By Jennifer Ceppetelli
Counsel for Appellant

Maricopa County Attorney, Phoenix
By Andrea Kever
Counsel for Appellee

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Thomas C. Kleinschmidt joined.¹

T H O M P S O N, Judge:

¶1 Appellant Omar F. (Omar) appeals from the juvenile court's order requiring him to register as a sex offender until his twenty-fifth birthday. For the following reasons, we affirm the decision of the juvenile court.

FACTUAL AND PROCEDURAL HISTORY

¶2 When Omar was fourteen years old, he engaged in sexual conduct with a four-year-old. The state filed a petition alleging Omar was a delinquent child. Omar entered into a plea agreement and pled delinquent to one count of attempted sexual conduct with a minor. The juvenile court adjudicated Omar delinquent, dismissed another count, put Omar on probation, and deferred its ruling on whether he would be required to register as a sex offender. Omar began intensive outpatient sex-offender treatment in May 2013.

¶3 In October 2013, the state filed two separate petitions alleging that Omar violated his probation.² Omar entered into another plea agreement, and the juvenile court dismissed one of the petitions, dismissed

¹ Pursuant to Article VI, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, to sit in this matter.

² The petitions alleged Omar violated his probation by having contact with a child under the age of thirteen, by entering onto or traveling past the victim's residence, by failing to successfully complete sex offender treatment, by using the internet without permission of his probation officer, by possessing pornography, and by failing to abide by surveillance rules.

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three counts of the second petition, and found that Omar was in violation of his probation. The court made Omar a ward of the court and ordered him detained until a placement in a therapeutic group home opened up. The court again deferred the issue of sex offender registration. Omar was placed in a therapeutic group home in January 2014 and lived there for about a year. Subsequently, the juvenile court modified Omar's conditions of probation to allow him to live with his grandmother and ordered him to complete sex offender aftercare.

¶4 Within a few months, in April 2015, the state filed a petition alleging that Omar had again violated his probation.³ He entered into another plea agreement and the juvenile court dismissed four counts of the petition, found him in violation of his probation, and ordered him to undergo any assessments recommended by the juvenile probation department. The court ordered Omar committed to the Arizona Department of Juvenile Corrections (ADJC) until his eighteenth birthday or sooner released pursuant to law. The court set a hearing on the issue of sex offender registration.

¶5 While in ADJC, Omar participated in a sex offender treatment program. Shortly before the March 2016 hearing regarding sex offender registration, and just before his eighteenth birthday, Omar was released from ADJC. After the hearing, the juvenile court ordered Omar to register as a sex offender until the age of twenty-five.⁴ Omar filed a motion for reconsideration, which the court denied. Omar timely appealed.⁵ After the

³ This petition alleged that Omar violated his probation by associating with another juvenile probationer without permission of his parole officer, by having contact with young children, by watching HBO, by using a cell phone to text and send and receive pictures, and by dating without permission of his parole officer.

⁴ At the hearing, defendant's attorney and the state's attorney recommended he not be ordered to register as a sex offender. The juvenile probation department appeared at the hearing and did not provide a formal recommendation but expressed concerns about Omar's risk assessment and the lack of a detailed relapse prevention plan.

⁵ Omar filed separate notices of appeal from the court's order that he register as a sex offender and the order denying his motion for reconsideration regarding sex offender registration, resulting in two

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entry of appealable orders, we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §12-120.21(A)(1) (2016).

DISCUSSION

¶6 The juvenile court ordered Omar to register as a sex offender pursuant to A.R.S. § 13-3821(D) (2010), which provides that the court may require a juvenile who has been adjudicated delinquent for certain offenses, including attempted sexual conduct with a minor, to register as a sex offender until the juvenile reaches the age of twenty-five. We review the juvenile court's order requiring a juvenile to register as a sex offender for an abuse of discretion. *In re Nickolas T.*, 223 Ariz. 403, 404, ¶ 4, 224 P.3d 219, 220 (App. 2010). We review the trial court's denial of a motion for reconsideration for an abuse of discretion. *Tilley v. Delci*, 220 Ariz. 233, 238, ¶ 16, 204 P.3d 1082, 1087 (App. 2009). "[T]rial courts have broad discretion in imposing sentences that are within statutory limits unless 'the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice.'" *State v. Davis*, 226 Ariz. 97, 102, ¶ 23, 244 P.3d 101, 106 (App. 2010) (quoting *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983)).

¶7 Omar argues that the juvenile court abused its discretion by ordering him to register as a sex offender because he successfully completed sex offender treatment at ADJC and no longer posed a danger to the community, and because Dr. Katrina Buwalda, the psychologist who completed his updated psychosexual evaluation in February 2016, recommended that he not be ordered to register.⁶ Omar further argues that the juvenile probation officer's concerns were "outdated and irrelevant."

¶8 In this case, the juvenile court evaluated Omar for over three years before ordering him to register as a sex offender. Although Dr. Buwalda recommended that Omar not be required to register, she also recommended that he be placed on intensive probation "with close monitoring for contact with minors, pornography, substance use, and negative peer associations." Omar was not on probation, however, and could not be placed on intensive probation. Dr. Buwalda's evaluation also indicated that Omar was still sexually interested in preschool age girls and

separate appeals. He then filed a motion to consolidate the appeals, which this court granted in May 2016.

⁶ Dr. Buwalda did one evaluation of Omar but submitted an addendum report and a one-page supplemental report in March 2016.

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boys. At the hearing, the juvenile probation officer expressed concern that Omar's probation "was violated on two occasions partially due to contact with minors, and lack of supervision by his guardians" and that "the risk assessment [indicated] that Omar still has sexual interest in preschool aged girls and preschool boys." The probation officer further noted that the reports showed Omar was "in the contemplative state of change" and lacked a detailed relapse prevention plan. Based on the entire record, the juvenile court concluded that Omar still presented a significant risk to the community. The court noted:

[Dr. Buwalda's] report was confusing to me, and I have a statutory duty to protect the community, and he's a mild to moderate risk for sexual reoffending. And again, the Doctor then states that she wants him on intensive probation, which isn't possible, "for close monitoring for contact with minors, pornography and substance abuse." And then I added the portion [regarding Omar being] ambivalent to change in the contemplative state of change about . . . changing his sexually offending behaviors. That shows . . . me that he's still a significant risk to the community.

Because the record below supported the juvenile court's determination that Omar should register as a sex offender until he is twenty-five, we find no abuse of discretion.

¶9 Omar further argues that the juvenile court abused its discretion by denying his motion for reconsideration because Dr. Buwalda's March 29, 2016 supplemental report clarified that her recommendation for intensive probation "was only for the purpose of ensuring continued compliance and the initiation of additional treatment." We find no abuse of discretion. Dr. Buwalda consistently recommended that Omar not be required to register as a sex offender in all three of her reports. The juvenile court was free to conclude otherwise based on the record, and it did so. Dr. Buwalda's supplemental report, which backed off of the recommendation for intensive probation⁷ (which was an

⁷ Dr. Buwalda's March 29, 2016 supplemental report provided, in relevant part, "Clarification regarding recommendations in a previous report dated 03/03/16 was requested. In the previous report intensive

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impossibility in any event), does not make the juvenile court's decision here an abuse of discretion.

CONCLUSION

¶10 For the foregoing reasons, the juvenile court's order that Omar register as a sex offender until his twenty-fifth birthday is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA

probation was recommended for Omar in case of early release prior to the age of 18. This would allow for close monitoring by probation to ensure continued compliance and the initiation of additional treatment. By Omar engaging in outpatient treatment, it is hoped that he perceives treatment as beneficial and continues once he turns 18."