

## ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-1297

R.R.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** October 20, 2010

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. JV-2004-85]

HONORABLE RHONDA K. WOOD,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

---

**M. MICHAEL KINARD, Judge**

R.R. appeals from an order requiring him to register as a sex offender. R.R.'s attorney filed a motion to withdraw as counsel and a no-merit brief, but R.R. did not file any pro se points for reversal. We affirm and grant counsel's motion to withdraw.

In 2005, R.R., then fifteen years old, was adjudicated delinquent for raping his younger cousin. He had also admitted to the same behavior with another younger cousin. R.R. underwent a Community Notification Risk Assessment on September 16, 2008, after which the assessor estimated that R.R. exhibited a moderate risk for sexual re-offense and inappropriate sexual behavior. On July 8, 2009, the State moved to require R.R. to register as a sex offender pursuant to Arkansas Code Annotated section 9-27-356(d).

During the hearing on the State's motion, no objections or motions were raised by either party. The circuit court found by clear and convincing evidence that R.R. should register as a sex offender. In its order entered on August 18, 2009, the circuit court made written findings as to each of the factors required by Arkansas Code Annotated section 9-27-356(e). R.R. filed his notice of appeal on September 16, 2009. R.R.'s attorney then filed his no-merit brief and motion to withdraw, pursuant to *Anders v. California*, 386 U.S. 738, 744-45 (1967) and Arkansas Supreme Court Rule 4-3(k). R.R. did not submit any pro se points for reversal.

As R.R.'s counsel correctly points out in his no-merit brief, there were no adverse rulings in the proceeding below other than the decision to require R.R. to register as a sex offender. Because R.R. did not move for directed verdict at the close of evidence, R.R. failed to preserve a challenge to the sufficiency of the evidence with regard to his requirement to register. *See* Ark. R. Crim. P. 33.1(c) (2010); *see also* Ark. Code Ann. § 9-27-325(f) (Repl. 2009) (stating that the Arkansas Rules of Criminal Procedure apply to all delinquency proceedings).

However, even if the issue had been preserved for review, we would affirm. In deciding whether to require a juvenile to register as a sex offender, the circuit court must consider the following factors:

- (i) the seriousness of the offense;
- (ii) the protection of society;
- (iii) the level of planning and participation in the alleged offense;

- (iv) the previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses;
- (v) whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
- (vi) the sex offender assessment and any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (vii) any other factors deemed relevant by the court.

Ark. Code Ann. § 9-27-356(e)(2)(A) (Repl. 2009). The circuit court must then find by clear and convincing evidence that the juvenile should or should not be required to register. *Id.* § 9-27-356(f)(2). Clear and convincing evidence is the degree of proof that leads the fact-finder to a firm conviction as to the allegation sought to be established. *L. W. v. State*, 89 Ark. App. 318, 322, 202 S.W.3d 552, 554 (2005). When factual findings require clear and convincing evidence, the appellate court considers whether the trial court's findings are clearly erroneous, with deference to the trial court's superior opportunity to judge the credibility of the witnesses. *Id.* Where there are two possible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous. *Id.*

In this case, the circuit court found that the true finding for rape of a younger cousin was a serious offense that weighed in favor of registration. The court also found that R.R., who was twenty years old at the time of the registration hearing, was still behaving sexually inappropriately and expressed concern that R.R. was still a risk to society. With regard to the level of planning and participation involved in the sexual offense, the circuit court noted that R.R. admitted to grooming his older victim by showing him homosexual pornography. R.R.

also forced his younger victim to perform oral sex. The court found that, if enough restrictions were placed on him, R.R. would be less likely to re-offend.

The circuit court went on to find that R.R.'s history of repeated sexual offenses with multiple victims weighed in favor of registration. As for rehabilitative facilities or programs, the court found that, despite having completed a treatment program through the Division of Youth Services, R.R. had since been removed from a placement due to accessing pornography on the Internet. This led the court to believe that R.R. had not been rehabilitated, and there were no further treatment options available. The circuit court also found that R.R.'s rating of "moderate risk to re-offend" on his Community Notification Risk Assessment was highly probative of the need to register. Finally, the court considered R.R.'s social history of pornography, stealing, truancy, cruelty to animals, fire-setting, running away, and physical aggression, as well as R.R.'s admission that not participating in outpatient sex-offender counseling made him more likely to re-offend, and found that these factors weighed in favor of registration.

Because the circuit court thoroughly considered each required factor and determined that each factor weighed in favor of registration, we cannot say that the court clearly erred in ordering R.R. to register as a sex offender. Therefore, we affirm the circuit court's order and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

PITTMAN and GLADWIN, JJ., agree.