STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: February 26, 2013)

STATE OF RHODE ISLAND	:	
	:	**C.A. No. PM-2012-2126**
v.	:	
NORMAND BEAULIEU[1]	:	

DECISION

GIBNEY, P.J. Before this Court is Normand Bedford's ("Bedford") appeal of an October 2, 2012 decision (the "Decision") of Drug Court Magistrate Flynn (the "Magistrate"), affirming the Level II sex offender classification order issued by the Rhode Island Sex Offender Board of Review (the "Board"). On appeal, Bedford argues that he should be classified as a Level I sex offender pursuant to the Rhode Island Sexual Offender Registration and Community Notification Act (the "Act"), G.L. 1956 § 11-37.1-1 et seq. Jurisdiction is pursuant to G.L. 1956 § 8-2-39.2(j).

I

Facts and Travel

Bedford was convicted by a jury of one count of first degree child molestation and one count of second degree child molestation on July 10, 1998.[2] This Court, Clifton J.,

[1] The defendant legally changed his last name from "Bedford" to "Beaulieu" on September 4, 1991, but resumed using "Bedford" during the pendency of his criminal appeal. See Pawtucket Probate Court Decree, Sept. 4, 1991 at 1-2; Criminal Docket Sheet, P1-1997-1715A at 1. The official caption continues to bear the defendant's name from the time this case was originally filed.

[2] The facts underlying Bedford's conviction are as follows. On December 27, 1996, Bedford and the victim, the eleven-year-old daughter of Bedford's then live-in girlfriend,

sentenced Bedford to a forty-year prison term, with twenty years to serve and twenty years probation. Bedford thereafter moved for post-conviction relief, and our Supreme Court vacated his sentence and granted him a new trial. On October 3, 2011, Bedford pled nolo contendere to one count of first degree child molestation and was sentenced by this Court, Krause J., to twenty-five years in prison, with fourteen years to serve and eleven years probation.[3]

Due to the nature of his crime, Bedford was required by § 11-37.1-3 to register as a sex offender with local authorities upon his release from prison.[4] Bedford was also referred to the Board for sex offender classification pursuant to § 11-37.1-12 and the Rhode Island Parole Board Sexual Offender Community Notification Guidelines (the "Guidelines"). The Board is required by § 11-37.1-6(b) to "determine the level of risk an offender poses to the community . . ." when the offender is due for release from prison. The Guidelines provide for three classification levels based upon the "level of danger to

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were lying on Bedford's bed and watching a movie when Bedford switched the television to the "Playboy" channel and placed the victim's hand onto his erect penis. Bedford directed the victim to move her hand "up and down" on his penis. He then pulled up the victim's shorts and underwear and attempted to digitally penetrate her. The victim later testified that Bedford had attempted to digitally penetrate her on one prior occasion; she further testified that Bedford once masturbated to ejaculation in front of her. The victim also stated that she and Bedford had engaged in "French" kissing and similar inappropriate contact more than twenty times prior to the December 27, 1996 incident.

[3] Bedford received credit for significant time served during the pendency of his criminal appeal and spent little additional time incarcerated. See Judgment at 1.

[4] Section 11-37.1-3 provides for sex offender registration. Among other requirements, it mandates that "[a]ny person who, in this or any other jurisdiction . . . has been convicted of a criminal offense against a victim who is a minor" is required to register his or her current home address with local law enforcement authorities. Sec. 11-37.1-3(a). Such persons include those convicted of first degree child molestation. Sec. 11-37.1-2(e)(3). These offenders are "required to register annually for ten years after the date of conviction and to verify their addresses quarterly for the first two years after the date of conviction." State v. Germane, 971 A.2d 555, 563 (R.I. 2009); see § 11-37.1-4(a).

the community" that the offender represents upon release. Guidelines § 1.13 at 7. Level I offenders pose a "low" risk of re-offense; Level II offenders pose a "moderate" risk; and Level III offenders pose a "high" risk of re-offense. See id. at §§ 1.13.1-1.13.3.

The Board completed Bedford's Risk Assessment Report (the "Board Report") on December 30, 2011 and classified him as a Level II offender for community notification purposes.[5] Pursuant to § 11-37.1-14, Bedford timely appealed the Board's classification order and requested a hearing before a justice of the Superior Court on March 19, 2012. In response, the State moved on April 24, 2012 to affirm Bedford's classification.

The Magistrate held a hearing on October 2, 2012 and affirmed the Board's classification order. Bedford then timely appealed the Magistrate's Decision to this Court on October 23, 2012, pursuant to Administrative Order 94-12(b).

II

Standard of Review

Superior Court review of Drug Court Magistrate decisions is governed by § 8-2-39.2(j):

> "A party aggrieved by an order entered by the Drug Court Magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules

[5] Level I sex offenders are subject to the fewest notification requirements: victim, witness, and local law enforcement agency notification. See Guidelines § 5; § 11-37.1-12(b)(1). Level II sex offenders are subject to Level I sex offender notification standards along with additional requirements: notification to public and private education institutions, daycare facilities, and any establishments and organizations catering to children. See Guidelines at § 7; § 11-37.1-12(b)(2). Notification standards for Level III sex offenders include the Level I and Level II sex offender notification standards and also empower local law enforcement agencies to provide additional disclosure to myriad other community groups which may come into contact with the sex offender. See Guidelines at § 9; § 11-37.1-12(b)(3).

> of procedure, establish procedures for review of orders entered by the Drug Court Magistrate, and for enforcement of contempt adjudications of the Drug Court Magistrate."

(Emphasis added.) In Administrative Order 94-12, the Presiding Justice of the Superior Court promulgated procedures by which a Superior Court justice may review a magistrate's decision:

> "The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject or modify, in whole or in part, the judgment, order or decree of the Master. The justice, however, need not formally conduct a new hearing and may consider the record developed before the Master, making his or her own determination based upon that record whether there is competent evidence upon which the Master's judgment, order or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter to the Master with instructions."[6]

Administrative Order 94-12(h). Thus, the Superior Court justice conducts a de novo review of the portions of the record appealed. See Paradis v. Heritage Loan & Investment Co., 678 A.2d 440, 445 (R.I. 1996) (recognizing that Administrative Order 94-12 gives a Superior Court justice "broad discretion in his or her review of the master's decision" and finding that "the trial justice's de novo review of the master's decision, based solely on the record, was proper"); see also 66 Am. Jur. 2d References § 44. The record on appeal includes "[t]he original papers and exhibits filed with the clerk of the Superior Court, the transcript of the proceedings, and the docket entries." Administrative Order 94-12(f).

[6] The term "Master" was amended to "Magistrate" by P.L. 1998, ch. 442 § 1.

III

Discussion

On appeal, the State carries the burden of presenting "a prima facie case that justifies the proposed level of and manner of notification." Sec. 11-37.1-16(a). To carry this burden, the State must show that "[a] validated risk assessment tool has been used to determine the risk of re-offense" and "[r]easonable means have been used to collect the information used in the validated assessment tool." Sec. 11-37.1-16(b)(1)-(2). The Magistrate must affirm the Board's findings when the State presents a prima facie case unless he or she "is persuaded by a preponderance of the evidence that the determination on either the level of notification or the manner in which it is proposed to be accomplished is not in compliance with this chapter or the guidelines adopted pursuant to this chapter." Sec. 11-37.1-16(c). As such, the appellant is given an opportunity to present evidence and testimony challenging the State's prima facie case. See Germane, 971 A.2d at 580-81.

A

The Hearing Before the Magistrate

The Magistrate determined at the October 2, 2012 hearing that the State successfully presented a prima facie case justifying Bedford's Level II classification. First, he found that the State demonstrated that the Board utilized three valid actuarial risk assessment tools—the STATIC-99R[7], the STATIC-2002[8], and the STABLE-2007[9]

[7] It is widely acknowledged that the STATIC-99R is a revised version of the nationally-recognized validated actuarial risk assessment test, the STATIC-99. See U.S. v. Hall, 664 F.3d 456, 464 (4th Cir. 2012). The Board provided a detailed description of the STATIC-99R test in the Board Report:

tests—to calculate Bedford's classification level. (Hr'g Tr. at 4, 7.) The Magistrate further found that the State established that the Board utilized "reasonable means" to gather and analyze the information used to calculate Bedford's classification level. Id. at

> "[T]he STATIC-99R . . . is an actuarial measure of risk for sexual offense recidivism. This instrument has been shown to be a moderate predictor of sexual re-offense potential . . . There have been a large number of studies examining the sexual recidivism rates associated with STATIC-99R scores . . . In these samples recidivism was defined as charges in about half the cases and as convictions in the other half. These recent studies found that the ability of the STATIC-99R to rank offenders according to relative risk is reasonably consistent across samples and settings."

(Board Report at 1-2.)

[8] The STATIC-2002 is another nationally-recognized actuarial recidivism risk assessment tool often utilized to determine sex offender classifications. See U.S. v. Hunt, 643 F. Supp. 2d 161, 171-72 (D. Ma. 2009); see also U.S. v. Wetmore, 766 F. Supp. 2d 319, 334 (D. Ma. 2011). According to the Board, the STATIC-2002 test

> "is an instrument designed to assist in the prediction of sexual and violent recidivism for sex offenders. Hanson and Thornton (2003) developed this risk assessment instrument based on follow-up studies from Canada, the United States and the United Kingdom . . . STATIC-2002 demonstrated moderate to large accuracy in the prediction of sexual, violent, and general recidivism . . . . [It] consists of 14 items and produces estimates of relative risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are grouped into five domains: age, persistence of sex offending, deviant sexual interests, relationship to victims, and general criminality."

(Board Report at 5.)

[9] The STABLE-2007 test is also a nationally-used and validated actuarial risk assessment test. See In re Interest of D.H., 281 Neb. 554, 566-67 (2011); see also Hunt, 643 F. Supp. 2d at 178. In the Board Report, the Board explained that the STABLE-2007 test utilizes six "dynamic risk factors" to calculate a sex offender's risk score: negative social influences, intimacy defects, problems with self-regulation, attitudes tolerant of sexual crimes, lack of cooperation with supervision, and problems with general self-regulation. See Board Report at 2-3.

7. The Magistrate noted that such means included review of Bedford's criminal, institutional, and probation/parole records, Bedford's treatment and supervision information, and the underlying police reports. Id. at 4-5.

The Magistrate provided Bedford with an opportunity to present evidence and testimony supporting his challenge to his Level II classification. Id. at 7. The Magistrate noted that Bedford was required by statute to prove by at least a "preponderance of the evidence" that the Board erred in classifying him as a Level II offender. Id. at 7-8.

Bedford proffered an eight-page brief with twenty-five pages of exhibits, and his attorney presented argument. Id. at 2, 8. First, Bedford argued that the Board disregarded his "low" actuarial test scores and impermissibly considered additional information in calculating his classification level. Id. at 8. The Magistrate rejected this argument because he found that the Board is expressly authorized by § 11-37.1-16(b) to consider "other material in addition to" the actuarial risk tests when calculating a sex offender's risk level. Id. at 7, 8.

Second, Bedford posited that because he has consistently attended sex offender treatment classes ("SOTC") and shown improvement, he is not a risk to the community and should be classified as a Level I offender. Id. at 8. The Magistrate disagreed. Although Bedford attended more counseling meetings than the four sessions recognized by the Board in the Board Report and proffered twenty-five pages of counseling reports showing that "some progress has been [made]" because his continued risk to the community had improved from "serious concern to concern," id. at 9, Bedford's counseling progress was mitigated by the fact that he was still working through the first of five counseling stages and had much more progress to make before he reached the

final, "advanced [stage of] treatment" and completing the program.[10] Id. at 10. The Magistrate also noted our Supreme Court's recent sex offender jurisprudence,[11] the procedures for Level II community notification,[12] and the particular facts of Bedford's crime, which involved a minor victim and included more than twenty instances of inappropriate contact.[13] Id. at 10-11. Ultimately, the Magistrate affirmed Bedford's Level II classification because he found that it adequately protected the public from the continued risk posed by Bedford without punishing him. Id. at 11.

B

The Appeal of the Magistrate's Decision

On appeal, Bedford argues that the Magistrate erred in affirming his Level II classification. Bedford contends that the Board improperly disregarded his "low" actuarial risk assessment test scores when classifying him as a Level II offender. Bedford further asserts that he is not a danger to the community because he has faithfully attended

[10] The Magistrate noted that Bedford scored only "6" points out of 100 points on the counselor's progress-measuring chart. (Hr'g Tr. at 9-10.)

[11] In particular, the Magistrate cited State v. Germane, 971 A.2d 555 (R.I. 2009) and In re Richard A., 946 A.2d 204 (R.I. 2008) for the proposition that "the purpose of the Act is to protect the safety and general welfare of the public[,] not to punish the defendant." (Hr'g Tr. at 10.)

[12] The Magistrate noted that Level II community notification procedures include "[i]n addition to Level I notice . . . notice to schools, to daycare centers, to youth organizations and many groups where children are present." (Hr'g Tr. at 10.) He found that these procedures are "in line with the purpose of protecting vulnerable parties from sex offenders." Id.

[13] The Magistrate also noted that while Bedford attended a thirty-day SOTC introductory program while incarcerated, Bedford did not complete the program because he refused to admit his guilt as was required. (Hr'g Tr. at 8-9.) The Magistrate did "not draw any conclusions adverse to [Bedford] for [this refusal and his failure to complete the program]." Id. at 9.

SOTC and has shown marked progress. Bedford maintains that had the Board conducted the proper analysis, it would have classified him as a low-risk Level I sex offender.

IV

Analysis

A

The Risk Assessment Test Scores

Bedford argues that his STATIC-99R, STATIC-2002, and STABLE-2007 test scores all indicate that he poses a "low" risk of recidivism to the community upon release from prison.[14] He contends that the Board improperly disregarded these scores in classifying him as a Level II sex offender and should have based its decision solely on these test scores and classified him at Level I.

The Magistrate found that the Board is specifically empowered by statutes and internal procedures to consider materials and information other than the actuarial test scores to classify a sex offender. (Hr'g Tr. at 7, 8.) The Magistrate affirmed the Board's classification of Bedford because he found that Bedford failed to proffer any evidence showing that the Board must rest its classification determinations solely on an offender's actuarial test scores. Id. at 11.

The Magistrate's decision is amply supported by competent evidence. See State v. Dennis, 29 A.3d 445, 450 (R.I. 2011) (holding that a reviewing court will not disturb the findings of a justice sitting without a jury when "the record indicates that competent

[14] Bedford scored "0" total points on the STATIC-99R test, "2" total points on the STATIC-2002 test, and "3" total points on the STABLE-2007 test. (Board Report at 1.) All three scores place Bedford in the lowest recidivism risk category. See id.

evidence supports the [justice's] findings"); School Committee of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 648-49 (R.I. 2009) (finding same).[15] Our Supreme Court has consistently noted that "[r]isk assessment is not an exact science, and a certain amount of judgment and even intuition must be exercised by the [Board] and the reviewing magistrate." Dennis, 29 A.3d at 450-51 (quoting Germane, 971 A.2d at 589).[16] The fundamentally opaque nature of such assessments obligates reviewing bodies to exercise their professional discretion in assessing the risk that a sex offender poses to the public upon release from prison. See Dennis, 29 A.3d at 451 (recognizing that "[t]he classification of an individual's future risk of sexual recidivism is not a one-size-fits-all application"). The Board's mandate necessarily requires it to consider a wide range of information to properly assess a sex offender's risk of recidivism in a given case. See Germane, 971 A.2d at 585 (quoting Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 10 (R.I. 2005) and holding that "the board of review's ability to consider dynamic factors beyond the static factors analyzed by the STATIC-99 . . . has a 'substantial relation to the public health, safety, morals, [and] general welfare'").

Both the Act and the Guidelines contain affirmative, mandatory language requiring the Board to consider both the actuarial test scores and outside factors in

[15] In Rhode Island, "legally competent evidence is marked 'by the presence of 'some' or 'any' evidence supporting the [judge's] findings.'" State, Office of the Secretary of State v. R.I. State Labor Relations Bd., 694 A.2d 24, 28 (R.I. 1997) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I.1993)).

[16] The difficulty and uncertainty posed by the task of sex offender risk assessment perhaps explains why the Legislature mandated in § 11-37.1-6(1)(a) that the Board shall be composed of "eight (8) persons including experts in the field of behavior and treatment of sex offenders . . . ." Section 11-1-37.1-6(1)(a) further provides that "[a]t least one member of the [Board] shall be a qualified child/adolescent sex offender treatment specialist."

determining the appropriate classification level for a given sex offender. See Dennis, 29 A.3d at 451 (finding that the "statutory language, paired with the guidelines, suggests that a sexual offender assessment should not . . . solely rest on the results of the risk assessment tools"). For example, § 11-1-37.1-6(b) requires that "the [Board] will utilize a validated risk assessment instrument and other material approved by the parole board to determine the level of risk an offender poses to the community . . . ." (Emphasis added.) Section 11-37.1-6(2)(i) mandates that "[t]he [Board] shall within thirty (30) days of a referral of a person conduct the validated risk assessment, review other material provided by the agency having supervisory responsibility and assign a risk of re-offense level to the offender." (Emphasis added.) Section 11-37.1-6(4) further requires that "the [Board] shall have access to all relevant records and information in the possession of any state official or agency . . . relating to the juvenile and adult offenders under review by the [Board]." Sec. 11-37.1-6(4). (Emphasis added.)

"Addendum 1" in the Guidelines' "Appendix" provides that "each risk of re-offense assessment decision shall be made on the basis of the facts of each individual case, after review of appropriate documentation." Guidelines, Addendum 1 at 27. (Emphasis added.) "Addendum 1" also contains a list of fifteen enumerated factual categories that the Board must consider in determining a sex offender's classification level.[17] Id. at 27-28. Of the fifteen enumerated factual categories, the use of validated

[17] Specifically, "Addendum 1" contains the following fifteen factual categories: "Actuarial Risk Score; Degree of Violence; Other Significant Crime Considerations; Degree of Sexual Intrusion; Victim Selection Characteristics; Known Nature and History of Sexual Aggressions; Other Criminal History; Substance Abuse; Presence of Psychosis, Mental Retardation or Behavioral Disorder; Degree of Family Support of Offender Accountability and Safety; Personal, Employment and Educational Stability; Incarceration Community Supervision Record; External Controls; Participation in Sex

actuarial risk assessment tools, like the STATIC-99R, STATIC-2002, and STABLE-2007 tests, is listed only in the first category. Id. at 27. Therefore, fourteen of the fifteen factual categories considered by the Board entail outside factors in addition to the sex offender's actuarial test scores. See Germane, 971 A.2d at 585 (recognizing that "the board of review is required, pursuant to its own guidelines, to review a number of case-specific facts in addition to an individual offender's score on the STATIC-99").

The creators of the risk assessment tools also acknowledge that their tests should not be used as the only risk assessment devices when classifying sex offenders. In the STATIC-99 Coding Rules, which apply to both the STATIC-99 and STATIC-99R tests, the test's creators note that

> "The STATIC-99 utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99 can be thought of as a baseline of risk for violent and sexual reconviction . . . The strengths of the STATIC-99 are that it uses risk factors that have been empirically shown to be associated with sexual recidivism and the STATIC-99 gives explicit rules for combining these factors into a total risk score . . . The weaknesses of the STATIC-99 are that it demonstrates only moderate predictive accuracy . . . and that it does not include all the factors that might be included in a wide-ranging risk assessment . . . [A] prudent evaluator will always consider other external factors that may influence risk in either direction."

Id. at 585. (Emphasis added.) Accordingly, our Supreme Court has found that it is "not only reasonable, but . . . also in accordance with the express recommendation of the STATIC-99's creators," for the Board to consider both the actuarial test scores and

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Offender Specific Treatment Program; [and] Response to Sex Offender Specific Treatment/Admission of Guilt, Acceptance of Responsibility for Crimes, Commitment to Ongoing Safety, Recovery and Sex Offender Treatment." See Guidelines, Addendum 1 at 27-28.

additional outside factors when calculating a sex offender's classification level. Id. Bedford has not presented any evidence showing that the Board must confine its analysis to the actuarial risk assessment tests when determining an offender's risk level. See § 11-37.1-16(c) (requiring that the appellant support his or her challenge to the Board's findings by at least a "preponderance of the evidence"). Finding that the record contains competent evidence supporting the Magistrate's determination that the Board correctly considered "other materials" beyond the risk assessment tests when calculating Bedford's Level II classification—see Dennis, 29 A.3d at 450; Bergin-Andrews, 984 A.2d at 648-49—this Court "accepts" this part of the Magistrate's Decision. Administrative Order 94-12(h).

B

Sex Offender Treatment Classes

Bedford argues that his faithful attendance at, and significant progress in, SOTC also supports reduction of his classification level. Bedford explains that he consistently attended SOTC for six months before pleading nolo contendere on October 3, 2011, and has resumed regular classes since his recent release from prison. Bedford believes he has shown marked progress in these classes and has overcome many of the problems that his Board interviewer noted in the Board Report. Such evidence, Bedford contends, demonstrates that he is not a risk to the community and should be classified as a Level I sex offender.

The Magistrate rejected this argument. (Hr'g Tr. at 11.) He found that Bedford had demonstrated "some progress" at his counseling sessions. Id. at 9. However, the Magistrate further found that Bedford was still working through the first of five

counseling levels and had much more progress to make before completing his counseling program. Id. at 9-10. The Magistrate also noted the particular facts of Bedford's case—that he engaged in more than twenty incidents of inappropriate contact with the minor victim before the December 27, 1996 incident. Id. at 10-11. Analyzing these facts in light of our Supreme Court's holdings in recent sex offender cases and the applicable community notification procedures, the Magistrate affirmed Bedford's Level II classification because he found that it protected the public from the risk posed by Bedford without punishing him. Id.

This Court finds that the record contains competent evidence supporting the Magistrate's affirmation of the Board's findings regarding Bedford's SOTC attendance and progress. See Dennis, 29 A.3d at 450; Bergin-Andrews, 984 A.2d at 648-49. The record reflects that the psychological and counseling center attended by Bedford utilizes a 100-point scoring system called "R.U.L.E." to assess the progress of its patients. See Appellant's Br., Ex. A at 1-3. Counselors calculate and graph each patient's progress scores once a month to track that patient's improvement, if any.[18] See id. In his first counseling report, dated December 2011, Bedford scored "0" points out of 100 points on "R.U.L.E." and was classified as a "Serious Concern" by his counselor. See id. at 19-21. By June 2012, the most recent report noted in the record, Bedford scored "6" points out

[18] The "R.U.L.E." system tracks a patient's progress scores using a five-stage method. For example, patients scoring between "0" to "20" points fall within the "beginning" stage of counseling, patients scoring between "21" to "40" points, "41" to "60" points, and "61" to "80" points fall within the middle three stages, respectively, and patients scoring between "81" and "100" points fall within the "advanced" stage of counseling. See Appellant's Br., Ex. A at 2.

of 100 points and was reclassified as a lower-level "Concern" patient.[19] This change in scoring indicates that Bedford was showing improvement by June 2012 but was still in the "beginning" stage of counseling. See id. at 1-2.

The Board is empowered by the Guidelines to consider an offender's counseling attendance and progress when calculating his or her classification risk level. In particular, the Board may analyze "Factors Concerning Treatment/Psychotherapy Progress," including such "factors" as "[p]articipation in sex offender specific treatment program [and] [r]esponse to sex offender specific treatment/[a]dmission of guilt, [a]ccepting of responsibility for crimes, [and] [c]ommitment to ongoing safety, recovery and sex offender treatment." Guidelines, Addendum 1 at 28. On December 30, 2011, the day on which the Board compiled Bedford's Board Report, it had access only to Bedford's December 2011 counseling report. See Board Report at 4. Bedford's Level II classification reflects, in part, his lack of counseling progress in December 2011 and does not take into account the improvement indicated in his June 2012 report. See id.

However, under the Guidelines, the Board also considers thirteen other factors in addition to the SOTC-specific factors when calculating an offender's classification level. See Guidelines, Addendum 1 at 27-28. In the instant case, the Board noted and analyzed eight factors adverse to Bedford in classifying him as a Level II sex offender.[20] See Board Report at 3-4. For example, the Board found that Bedford "forced [the victim] to

[19] Bedford had also scored "6" points out of 100 points on his April and May 2012 counseling reports as well. See Appellant's Br., Ex. A at 3.

[20] Specifically, the Board considered: "[the] [d]escription of the offense; [d]egree of sexual intrusion; [v]ictim selection characteristics; [s]ubstance abuse history; [p]resence of psychosis, mental retardation, or behavioral disorder; [d]egree of family support of offender, accountability and safety; [p]ersonal, employment, and educational stability; [and] [e]xternal [c]ontrols." (Board Report at 3-4); see Guidelines, Addendum 1 at 27-28.

place her hand on [Bedford's] penis and move her hand back and forth." Id. at 3. The Board further noted that Bedford thereafter attempted to digitally penetrate the victim, and on one other occasion, he masturbated to ejaculation in front of her. Id. The Board also noted that the victim was the eleven-year-old minor daughter of Bedford's then live-in girlfriend, Bedford had abused drugs for fifteen years, and Bedford has been disabled and out of work since 1990 with depression-related illnesses. Id. 3-4. Thus, assuming that the Board had considered Bedford's positive June 2012 counseling report when it calculated Bedford's classification level, such mitigating evidence would have been outweighed by the other eight, adverse factors noted by the Board. See Germane, 971 A.2d at 566-68 (affirming the magistrate's determination that the Board properly considered a number of adverse factors in classifying the defendant as a Level III sex offender despite evidence of the defendant's participation in SOTC). Bedford has not produced any evidence to the contrary. See § 11-37.1-16(c). This Court therefore finds that the record contains competent evidence supporting the Magistrate's findings—see Dennis, 29 A.3d at 450; Bergin-Andrews, 984 A.2d at 648-49—and this Court "accepts" this part of the Magistrate's Decision. See Administrative Order 94-12(h).

V

Conclusion

Based on a de novo review of the entire record on appeal, this Court finds that there is competent evidence in the record supporting all of the Magistrate's findings concerning Bedford's claims of error. This Court "accepts" all parts of the Magistrate's Decision affirming the Board's classification of Bedford as a Level II sex offender.

Counsel shall prepare an appropriate Order for entry.