

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: August 2, 2013]

STATE OF RHODE ISLAND

:

VS.

:

P.M. No. 12-4129

:

JOSE MOITOSO

:

:

DECISION

LANPHEAR, J. Before the Court is Mr. Moitoso’s appeal of a Superior Court Magistrate’s decision. Mr. Moitoso is appealing the decision of December 14, 2012 relative to his sex offender classification. The Magistrate affirmed the ruling of the classification board and confirmed the board’s determination of Level II notification.

I

TRAVEL

On February 17, 2012, Mr. Moitoso pled nolo contendere to two counts of domestic second degree sexual assault. He was sentenced to seven years at the Adult Correctional Institution, all of which were suspended and running with seven years of probation. He was ordered to complete sexual offender registration and a complete treatment program.

As a result of the conviction, Mr. Moitoso was classified as a sexual offender pursuant to R.I.G.L. § 11-37.1-1 et seq., commonly known as the Sex Offender Registration and Community Notification Act. Pursuant to that Act, the Sex Offender Board of Review had classified Mr. Moitoso as a Level II risk to reoffend under the statute. Mr. Moitoso was provided notice of that classification and objected to the classification through counsel. Pursuant to § 11-37.1-13, Mr. Moitoso requested review of the notification level to the Rhode Island Superior Court. The

Superior Court Magistrate scheduled a hearing for the review of Mr. Moitoso's classification pursuant to §§ 11-37.1-14, 15 and 16. The Magistrate issued a decision on December 14, 2012. Mr. Moitoso then appealed the decision of the Magistrate, and the matter was assigned to this Court on appeal of the Magistrate's decision.

## II

### STANDARD OF REVIEW

The Superior Court Magistrate which provided the review is the Superior Court Drug Court Magistrate, appointed and serving pursuant to R.I. Gen. Laws § 8-2-39.2. The Drug Court Magistrate is empowered to "hear and decide as a Superior Court justice all matters that may come before the Superior Court pursuant to chapter 37.1 of title 11 'Sexual Offender Registration and Community Notification.'" Sec. 8-2-39.2. However, the statute states in a separate subsection:

"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 ordered in the rules of procedure of the court, such review shall be on the record and appellate in nature. The superior court shall, by rules of procedure, establish procedures for reviews of orders entered by a Drug Court Magistrate, and for enforcement of contempt adjudications of a Drug Court Magistrate." R.I.G.L. § 8-2-9.2(f)

The Superior Court has adopted "Rules for Review of Magistrate Proceedings." Superior Court Administrative Order No. 94-12. That Administrative Order states in part:

"(h) Review. The Superior Court [reviewing] 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 [Magistrate]. The justice, however, may not formally conduct a new hearing and may consider the record developed before the [Magistrate], making his or her own determination on that record whether there has been competent evidence upon which the [Magistrate's] judgment, order or decree rests. The justice may also receive further evidence,

recall witnesses or recommit a matter to the [Magistrate] with instructions.”<sup>1</sup>

This Court, therefore, allowed a deferential evidentiary hearing. It permitted the appellant, Mr. Moitoso, to submit briefs and additional testimony. The hearing was held on June 26, 2013, at which point counsel made arguments and Mr. Moitoso testified.

### III

#### ANALYSIS

##### A

#### Jurisdiction

This case comes to the Court with a curious travel. The statute indicates the Magistrate sits “As a Superior Court justice” on such classification appeals. Mr. Moitoso suggests that this Justice, having been referred this case as an appeal, has jurisdiction to review the decision of the Magistrate. Anxious to flesh out the grounds for this appeal, the Attorney General did not object.

This Court may consider its own jurisdiction sua sponte, and now does so. Cabot v. Cabot, 444 A.2d 845, 846 (R.I. 1982). This Justice is without jurisdiction to consider the appeal from a Magistrate on a sexual classification issue. The statute is clearly drafted to empower the Magistrate to sit as a Superior Court Justice, and thereby to render a final decision. See State v. Dennis, 29 A.3d 445 (R.I. 2011); State v. Germane, 971 A.2d 555 (R.I. 2006) where the Supreme Court considered appeals directly from the decisions of Superior Court Magistrates.

The Court need go no further. In deference to the parties, the Court will discuss the other issues raised but finds that this Court lacks jurisdiction to handle the appeal.<sup>2</sup>

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<sup>1</sup> The General Assembly modified the statutes to refer to all Masters and Special Masters as “Magistrates.”

<sup>2</sup> Even if this Court had jurisdiction, the administrative order describing a Justice’s role on a general appeal from a Magistrate directs this Court to “make determination of the portions to which the appeal is directed.”

## B

### The Board met its Statutory Directive, as did the Magistrate

Regardless of the efforts and concerns of Mr. Moitoso to reform, once the State establishes a prima facie case, the statute establishes a limited role for the Court. Determination of sex offender registration and the review thereof is established by § 11-37.1-16, which states in part:

“Application Review – Burden of Production Persuasion. (a) In any proceeding under this chapter, the state shall have the burden of going forward, which burden shall be satisfied by the presentation of a prima facie case that justifies the proposed level of and manner of notification.

(b) For purposes of this section, “prima facie case” means:

(1) A validated risk assessment tool has been used to determine the risk of re-offense;

(2) Reasonable means have been used to collect the information used in the validated assessment tool.

(c) Upon presentation of a prima facie case, the court shall affirm the determination of the level and nature of the community notification, unless it 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.

Nothing in this section shall be construed to prohibit the release of information pertaining to a person who has been convicted of the violations . . .”

At hearing and in his supplemental memorandum, Mr. Moitoso raises two related contentions. First, he contends that the Magistrate’s decision focuses on the report of a therapist rather than Mr. Moitoso’s treatment progress. Secondly, Mr. Moitoso requests that the Court, at hearing, weigh his improvement, ongoing treatment and compliance since his sentencing.

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Administrative Order section (h). Mr. Moitoso failed to direct this Justice to any portion of the Magistrate’s hearing record, or his decision. No error of law is suggested, and no issue of fact is at issue. The facts were clear, and the risk assessments were set in conformity with regulations.

On a review of a Magistrate’s decision on appeal, even if that appeal is by the same court, it is inappropriate for a second judicial officer to second-guess the findings of a first, or to view an earlier determination based on after-acquired information. The statute establishes that the classification board’s findings of compliance are established if the State has submitted a “prima facie” case. See § 11-37.1-16. Mr. Moitoso, at the board level, was obligated to produce evidence to overcome this showing. On appeal, this Court is simply sitting in review of whether or not the Board made proper determinations.

Punishment is not the goal of sex offender classification. By enacting the statutes, the General Assembly intended to establish a civil, non-punitive regulatory scheme.<sup>3</sup> Ensuring public safety role, rather than punishing, is the goal of classification and notification. The Court’s role in the process is not to consider the appropriateness of a criminal sentence but to ensure that the board acted within its permissible scope. The Court must “affirm the determination of the level and nature of the community notification, unless it is persuaded by a preponderance of the evidence that the determination on [the] level of notification ... is not in compliance with this chapter or the guidelines adopted pursuant to this chapter.” Sec. 11-37.1-16(c).

Mr. Moitoso has not demonstrated or established that the Sex Offender Board of Review deviated from its statutory duties and procedures in any manner. The Magistrate’s thorough and well-reasoned decision provides a complete review of Mr. Moitoso’s past, the Sex Offender Board of Review’s travel, the risk assessment tools used, and Mr. Moitoso’s particular risk

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<sup>3</sup> The United States Supreme Court held:

The Act’s rational connection to a non-punitive purpose is a “most significant” factor in our determination that the statute’s effects are not punitive. As the Court of Appeals acknowledged, the Act has a legitimate, non-punitive purpose of “public safety which is advanced by alerting the public to the risk of sex offenders in their community.” Respondents concede, in turn, that “this alternative purpose is valid and rational.” . . . A statute is not deemed punitive simply because it lacks a close or perfect fit with the non-punitive aims it seeks to advance. Smith v. Doe, 538 U.S. 84, 123 S. Ct. 1140, 1152-53 (U.S. 2003) (citations omitted).

assessment. No error of law is alleged—indeed, Mr. Moitoso acknowledges the crime and accepts responsibility.

This Court has minimal, if any, discretion. Its role is limited. The statutes empower the administrative agency (the Sex Offender Board of Review) to determine the appropriate level of community notification. Sec. 11-37.1-6. The statute delineates a rigid, comprehensive procedure to determine the appropriate level.<sup>4</sup> The Court is pleased with Mr. Moitoso's cooperation in treatment and his proclaimed desire to guard against future wrongs and avoid risk-increased situations. Nevertheless, he has already been sentenced and the Board has already established the appropriate level of community notification. This Court has no further role.

While his remorsefulness is commendable, the appeal must be and is denied.

#### IV

#### CONCLUSION

The Court is not convinced by a preponderance of the evidence that the Board's determination of the level of notification or the manner of that notification is not in compliance with the Act, or the regulations adopted thereunder. As the Magistrate found, "The Court can find no error in what the Board did, nor that they are not compliant with the act." Tr. at 23, Dec. 14, 2012. The Magistrate made no errors of law or fact. No such errors were alleged. Further, this Court lacks further jurisdiction to consider this appeal.

The Magistrate's decision of December 2012 (affirming the decision of the Board) is affirmed in its entirety. Any stay of community notification is vacated. Counsel may submit further orders consistent herewith.

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<sup>4</sup> . . . The sex offender board of review will utilize a valid risk assessment instrument and other material approved by the parole board to determine the level of risk an offender poses. . . ." Sec. 11-37.1-6(b).



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

**TITLE OF CASE:** State of Rhode Island v. Jose Moitoso

**CASE NO:** PM-2012-4129

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 2, 2013

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

For Plaintiff: Alison DeCosta, Esq.

For Defendant: Richard K. Corley, Esq.