

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.**

**SUPERIOR COURT**

**(FILED: June 13, 2014)**

**STATE OF RHODE ISLAND**

**vs.**

**LAURENCE GAGNON**

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**C.A. No. PM-2013-6097**

**DECISION**

**MCBURNEY, M.** The matter of Laurence Gagnon (Petitioner) is here for a decision of the Court. The Petitioner is a convicted sex offender who was classified by the Sex Offender Registration Board (the Board) as a Level 3 risk to reoffend under G.L. 1956 § 11-37.1, commonly known as the Sex Offender Registration and Community Notification Act (the Act).

**I**

**Facts and Travel**

The Petitioner filed a timely objection to the Level 3 classification and requested the Court review the Board’s determination and lower his classification.

The Court received from the Attorney General’s Office the record of the Board and the Attorney General’s motion to affirm the Board’s determination.

The Petitioner, through his legal counsel, filed a memorandum in support of his petition and requested this Court to lower his classification.

All documents provided to the Court by both parties were reviewed and considered by the Court.

A hearing with oral argument was held before this Court on May 9, 2014, and the Petitioner was afforded the opportunity to provide other evidence and testimony to ensure he was granted a meaningful hearing.

The Court would note at the outset of its Decision that Petitioner: On April 16, 2013, pleaded nolo contendere to three counts of second degree child molestation. Each count was associated with a different juvenile male. On each count, the Court imposed concurrent sentences of ten years with one year to serve, the remainder suspended with probation with NCO's, mandatory counseling and sex offender registration.

## II

### Standard of Review

In this proceeding, the State has the burden of presenting a prima facie case that justifies the level and manner of notification. First, the Court must review the record to determine whether a validated risk assessment tool was used to determine the risk of re-offense. Second, the Court must determine whether reasonable means were used to collect the information contained in the validated risk assessment tool. The Act is clear that, after a prima facie case is established, the Court is obligated to affirm the determination of the level and nature of community notification unless it is persuaded by a preponderance of the evidence that the determination by the Board on either the level of notification or the manner in which it is proposed to be accomplished is not in compliance with the Act or the Guidelines which were adopted pursuant to the Act. The Act and Guidelines leave the Board with great flexibility requiring only that the Board use a “validated risk assessment tool and other material” to determine the level of risk. Sec. 11-37.1-6.

The State has previously filed a motion to affirm along with an exhibit list and all of the documents and information the Board used in making its determination that the offender is a Level 3 risk to reoffend. Exhibit 2 in the Court Record contains a copy of the Risk Assessment Report (the Report) that was generated by the Board and acts as a summary of the information the Board reviewed. Included in this Report is a summary of the score the offender received on the Validated Risk Assessment Tools used by the Board as well as a summary of the important factors the Board considered in determining that these tools underrepresented the offender's risk to reoffend. The Board concluded, after examining all the material, that offender was a high risk to reoffend and should be classified as a Level 3.

Exhibits 3(a), (b), and (c) of the Court Record includes the Tally Sheets of the three Validated Risk Assessment Tools used by the Board. An investigator for the Board of Review meets with each convicted sex offender during the classification process and conducts an interview. The investigator asks each offender a set of questions regarding their sex offenses, treatment, and many other factors. The investigator then uses these answers to score each of the three tools. This offender was scored on three tools, including the STATIC-99, STATIC-2002, and the STABLE-2007. On the STATIC-99, the offender received a total score of -1, which placed him in the "low" risk category. On the STATIC-2002, the offender received a total score of 2, which placed him in the "low" risk category. On the STABLE-2007, the offender received a score of 6, which placed him in the "moderate" risk category.

While the tests are the best available tools used by sex offender counselors and professionals, the tests themselves are only considered "moderate predictors" of sexual recidivism rates and should not be considered in a vacuum. The tools cannot consider every factor which can cause a person to reoffend and that is why the Act requires the Board look at

other information in making its determination and does not strictly rely on the scores of these tools. The Rhode Island Supreme Court in State v. Germane noted 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 validated risk assessment tools. 971 A.2d 555, 585 (R.I. 2009). And a "prudent evaluator will always consider other external factors that may influence risk in either direction" because the risk assessment tools do not encompass all factors which may determine risk to reoffend. Id.

The next exhibit is Exhibit 4, which contains a summary of this offender's interview with the Board's investigator. The investigator records the answers given by the offender and provides some exact quotes given by the offender in response to the questions asked.

Exhibit 5 contains a copy of police reports related to the sex offense which places the offender before the Court for review. The offender pled nolo to three counts of second degree child molestation, one count for each of the three male victims. The victims of these offenses were all twelve-year-old male students.

Finally, Exhibits 6 and 7 include the offender's ACI records and Criminal History. It confirms that this case is the offender's only criminal contacts and that he did not have any issues while incarcerated. The Board considered all seven of these exhibits included in the file when making its determination that the offender is a Level 3 risk to reoffend.

### **III**

#### **Analysis**

After reviewing the documents and materials submitted to the Court by the State, the Court finds that the State has met the two prong test required by statute and has, in fact, established a prima facie case. Regarding the first prong, the tests used in this case are nationally

recognized, well-established risk assessment tools. The Court also believes, and nothing was presented to the contrary, that reasonable means were used to collect the information used in the assessment.

Petitioner has been offered an opportunity to persuade the Court that the level of notification established by the Board and the manner of notification was not in compliance with the Act.

The Court will note that the standard of proof that the Petitioner needs to meet—a preponderance of the evidence—is a significantly less demanding showing than either the clear and convincing or beyond a reasonable doubt standards.

Counsel for the Petitioner, in his effort to sustain his burden, presented several arguments to the Court both in his legal brief and at hearing.

First, counsel argues that Petitioner's age, health, current living arrangements, marital status and life history would be indicative of a lower threat of recidivism. He presents that Mr. Gagnon is a seventy-three year old retired teacher and catholic deacon who, upon his release from prison, now lives in a senior community with his wife of fifty years, Janet. Mr. Gagnon is the primary caretaker for his wife, who suffers from numerous physical ailments and is confined to a wheelchair. Mr. Gagnon himself has had multiple heart surgeries, has suffered from cancer, and is presently prescribed several heart medications.

Mr. Gagnon lives in Trailer 21, Tollgate Village, a senior community, at 979 Tollgate Road in Warwick, Rhode Island. He has lived in Rhode Island his entire life and enjoys the full emotional and physical support of his four children and eight grandchildren.

Mr. Gagnon attended St. Joseph's School for grades one through nine and graduated in 1956. He attended Warwick Veterans Memorial High School for grades ten through twelve and

graduated in 1959. After completing the part-time, three-year required curriculum at Our Lady of Providence Seminary, Mr. Gagnon was ordained as a permanent deacon in 1979.

Mr. Gagnon joined the Army in 1959 as a Private (E1) and continued “making rank” up to the rank of First Sergeant (E8), finally retiring in 1990 as a Chief Warrant Officer. While serving in the Army, Mr. Gagnon received many commendations and awards including the Army Commendation Medal, the Army Achievement Medal, the National Defense Service Medal, the Army Reserve Component Achievement Medal with Oak Leaf Cluster, and an Army Service Ribbon.

Mr. Gagnon enjoyed employment as a Personnel Administration Technician from 1966 until retirement in 1990. He worked at St. Joseph’s Church as a Pastoral Assistant from 1990 through his retirement in 2011, and as a full-time homeroom teacher from 1990 through 2006 and again part-time from 2008 through his retirement in 2011.

Mr. Gagnon’s duties as a Pastoral Assistant included assisting with Sunday mass, funerals, baptisms, and weddings and maintaining all parish records for same. Also, Mr. Gagnon directed the Living Stations of the Cross performed by confirmation students for twenty-five years. His duties as a homeroom teacher included organizing students’ days, bus duty, religious instruction, parent conferences, and counseling.

The Petitioner argues that his scores in the STATIC-99, the STATIC-2002 and the STABLE-2007 justify Petitioner being placed in the Level 1 classification, and this Court agrees.

Counsel further argues in Court and in his memorandum that the Court’s consideration of other factors such as:

1. Degree of Violence;
2. Other Significant Crime Considerations;

3. Degree of Sexual Intrusion;
4. Victim Selection Characteristics;
5. History of Sexual Aggression;
6. Criminal History;
7. Substance Abuse History;
8. Degree of Family Support;
9. Personal, Employment, and Educational Stability;
10. Community Supervision; and
11. External Controls

mitigate in favor of a Level I classification and, in that regard, this Court is in agreement.

#### **IV**

#### **Conclusion**

Therefore, this Court, after due consideration, does not believe an application of the facts to the law justifies the Level 3 classification assigned to Mr. Gagnon by the Board. Rather, this Court will enter an order assigning Petitioner as a Level 1 offender for purposes of community notification.