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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-766

Filed: 21 April 2020

Harnett County, No. 99 CRS 667

STATE OF NORTH CAROLINA

v.

ROBERTO CUEVAS

Appeal by Defendant from Order entered 18 March 2019 by Judge C. Winston Gilchrist in Harnett County Superior Court. Heard in the Court of Appeals 5 February 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Brittany Edwards, for the State.*

*Appellate Defender Glenn Gerding and Assistant Appellate Defender Nicholas C. Woome-Deters for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Roberto Cuevas (Defendant) appeals from an Order Denying Petition (Order) entered on 18 March 2019, denying his Motion for Termination of Registration Requirements. The Record before us reflects the following:

STATE V. CUEVAS

*Opinion of the Court*

On 28 June 1998, Defendant was indicted for Taking Indecent Liberties with Children in Harnett County, North Carolina. On 10 September 1999, Defendant entered a plea of guilty to the offense. The trial court ordered a suspended sentence of twenty-one to twenty-six months and thirty-six months of supervised probation. As a condition of probation, Defendant agreed to submit to warrantless searches by a probation officer for stolen goods, controlled substances, contraband, alcohol, and pornography. Defendant was also required to register as a sex offender. Pursuant to another charge of Indecent Liberties with a Child in Cumberland County, North Carolina, Defendant pleaded guilty to this offense on 7 April 1999 and received a concurrent probationary sentence.

On 12 January 2000, the chief probation officer in Cumberland County reported Defendant in violation of his probation after a warrantless search conducted on 11 January 2000 at Defendant's residence returned a computer disk with pictures of child pornography. The search also revealed on Defendant's personal computer, under "FAVORITES," websites containing "TEEN SEX" and Defendant had received emails "advertising pornographic sites that contained 'TEEN SEX' pictures."

On 21 March 2000, a Cumberland County trial court found Defendant violated the terms of his probation and activated his suspended sentence. On 7 January 2003, Defendant was released from prison. In 2004, Defendant was arrested and charged with two counts of First-Degree Sex Offense with a Child. On 14 July 2005, a jury

found Defendant not guilty. On 18 October 2018, Defendant filed a Motion for Termination of Registration Requirements (Petition) pursuant to N.C. Gen. Stat. § 14-208.12A.<sup>1</sup> The trial court conducted a hearing on Defendant's Petition on 25 February 2019 and on 18 March 2019 entered an Order denying Defendant's Motion.<sup>2</sup>

The trial court's Order concluded:

2. The Defendant is not entitled to be removed from the sex offender registry pursuant to N.C. Gen. Stat. [§] 14-208.12A in that: (a) he has been arrested for a crime which would require registration, and (b) he has not complied with federal standards applicable to the termination of a registration requirement in that he did not successfully complete his period of supervised probation and, in fact, his probation was revoked.

3. Finally, the Court is not satisfied, based upon the evidence presented and lack thereof, that the petitioner is not a current or potential threat to public safety, regardless of whether the burden of proof for this issue lies with the Defendant or the State.

In support of these Conclusions, the trial court found:

1. The Defendant was convicted in Harnett County Superior Court of indecent liberties with a child on September 10, 1999. He was sentenced to 21 months minimum and 26 months maximum. This sentence was suspended and the defendant was placed on probation. The parties agree, and the Court so finds, that this is a Tier 1 offense under federal SOR laws.

2. The Defendant was also convicted in Cumberland County Superior Court (File no. 98CRS39415) of indecent liberties with a

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<sup>1</sup> The trial court's Order refers to Defendant's Motion for Termination as a Petition. For consistency, we do also.

<sup>2</sup> The trial court purports to enter its Order "nunc pro tunc" as to 27 February 2019. Designating this Order "nunc pro tunc" is not a proper application of nunc pro tunc and does not retroactively enter the Order as to 27 February 2019. *See Elmore v. Elmore*, 67 N.C. App. 661, 666, 313 S.E.2d 904, 907-08 (1984).

child on April 7, 1999 for actions involving the same child who was the victim in the Harnett County matter. He was placed on probation for that matter also.

3. On February 15, 2000 the Defendant's probation in both matters was revoked based upon a violation report and finding of the court that he violated his probation by having child pornography in his home. These items were found after a probation search of his residence.

4. Additionally, the Defendant was charged with two counts of first degree sex offense with a child on April 2, 2004 in Harnett County. These offenses, if convicted, would require registration, and would carry a sentence of more than one year. On July 14, 2005 the Defendant was found not guilty of these offenses by a jury.

Defendant timely filed Notice of Appeal on 28 March 2019.

### **Issue**

The sole issue on appeal is whether the trial court abused its discretion in denying Defendant's Petition requesting removal from the sex offender registry under N.C. Gen. Stat. § 14-208.12A.

### **Analysis**

"[T]he ultimate decision of whether to terminate a sex offender's registration requirement still lies in the trial court's discretion." *In re Hamilton*, 220 N.C. App. 350, 359, 725 S.E.2d 393, 399 (2012) (citing N.C. Gen. Stat. § 14-208.12A(a1)). "Thus, after making findings of fact supported by competent evidence on each issue raised in the petition, the trial court is then free to employ its discretion in reaching its conclusion of law whether Petitioner is entitled to the relief he requests." *Id.* "A trial

court abuses its discretion if its determination is manifestly unsupported by reason and is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Lasiter*, 361 N.C. 299, 301-02, 643 S.E.2d 909, 911 (2007) (citation and quotation marks omitted).

Defendant petitioned the trial court for early termination of registration requirement under N.C. Gen. Stat. § 14-208.12A, which provides:

(a) Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court to terminate the 30-year registration requirement if the person has not been convicted of a subsequent offense requiring registration under this Article.

. . . .

(a1) The court may grant the relief if:

- (1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,
- (2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and
- (3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

N.C. Gen. Stat. § 14-208.12A (2019).

Here, Defendant contends the trial court abused its discretion in denying his Petition for three reasons. First, Defendant argues the trial court erred by denying his Petition under Section 14-208.12A(a1)(1) because a jury found Defendant not guilty of First-Degree Sex Offense with a Child in 2005. Second, Defendant contends the trial court abused its discretion because Defendant complied with the maximum registration period required under federal law. And third, Defendant argues the trial court abused its discretion because the trial court's finding Defendant violated probation by possessing child pornography, which supported its determination it was not satisfied Defendant was not a current or potential threat to public safety, was not supported by competent evidence.

The requirements of Section 14-208.12(a1), however, are cumulative, meaning Defendant must establish compliance with each of the statute's three criterion. *See In re Bethea*, 255 N.C. App. 749, 755, 806 S.E.2d 677, 681 (2017). In turn, where, as here, the trial court concluded Defendant failed to meet any of the three criterion, in order to prevail on appeal, Defendant must establish the trial court erred in its conclusions as to all three criteria. *Id.* Here, we conclude the trial court did not abuse its discretion in concluding it was not satisfied Defendant was not a current or potential threat to public safety. Consequently, we do not address Defendant's remaining arguments as to the other criteria.

Specifically here, the trial court exercised its discretion under Section 14-208.12A(a1)(3) and concluded “the [trial court] is not satisfied . . . the [Defendant] is not a current or potential threat to public safety[.]” Defendant contends this conclusion is not supported by the trial court’s Findings. Defendant specifically challenges Finding 3 as not supported by competent evidence in the Record. In Finding 3, the trial court found: “On February 15, 2000 the Defendant’s probation in both matters was revoked based upon a violation report and finding of the court that he violated his probation by having child pornography in his home. These items were found after a probation search of his residence.”

“Findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if there is evidence to the contrary.” *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) (alterations, citation, and quotation marks omitted). In the case *sub judice*, the Record reflects on 11 January 2000, a Probation Officer conducted a search at Defendant’s residence pursuant to the conditions of Defendant’s probation. The Violation Report contained in the Record before us reflects the Officer’s search yielded a “computer disk with pictures of child pornography.” The Violation Report further reflects the search revealed on Defendant’s personal computer, under “FAVORITES,” websites containing “TEEN SEX” and that Defendant received emails advertising pornographic sites containing “TEEN SEX” pictures. The Officer submitted this

Violation Report to the Cumberland County Superior Court, which held a revocation hearing where, after the presentation of evidence, the court was satisfied Defendant violated the terms of his probation and ordered Defendant's suspended sentence activated. Accordingly, we conclude Finding 3 is supported by competent evidence in the Record and is therefore conclusive on appeal. *See State v. Williams*, 362 N.C. 628, 632, 669 S.E.2d 290, 294 (2008).

“[A]fter making findings of fact supported by competent evidence on each issue raised in the petition, the trial court is then free to employ its discretion in reaching its conclusion of law whether [Defendant] is entitled to the relief he requests.” *In re Hamilton*, 220 N.C. App. at 359, 725 S.E.2d at 399. Here, the trial court exercised its discretion under Section 14-208.12A(a1)(3) and denied Defendant's Petition on the basis Defendant failed to satisfy the statutory requirements. The trial court's Findings—Defendant violated his probation by possessing child pornography and as to Defendant's prior convictions and subsequent arrest—support the trial court's conclusion it “is not satisfied, based upon the evidence presented and lack thereof, that [Defendant] is not a current or potential threat to public safety[.]” Therefore, the trial court's determination is not “so arbitrary that it could not have been the result of a reasoned decision.” *Lasiter*, 361 N.C. at 301-02, 643 S.E.2d at 911 (citation and quotation marks omitted). Thus, the trial court did not abuse its discretion when it denied Defendant's Petition on this basis.



Consequently, because the trial court need only deny Defendant's petition on one ground under Section 14-208.12A, *see In re Bethea*, 255 N.C. App. at 755, 806 S.E.2d at 681 ("The required findings [in Section 14-208.12A] are cumulative and the court's finding in Petitioner's favor on one, some, or even most of the requirements does not reduce Petitioner's burden to show compliance with *all* requirements." (emphasis added)), we do not reach Defendant's additional arguments on appeal.

**Conclusion**

Accordingly, for the foregoing reasons, the trial court's Order denying Defendant's Petition seeking early termination from the sex offender registry is affirmed.

AFFIRMED.

Judges TYSON and BROOK concur.

Report per Rule 30(e).