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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-767

Filed: 21 April 2020

Harnett County, Nos. 05 CRS 56915-18, 56253

STATE OF NORTH CAROLINA

v.

ANTHONY LEE JOHNSON

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. Woomer-Deters for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Anthony Lee Johnson (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:

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On 17 June 2006, a Harnett County grand jury indicted Defendant on seven counts of Statutory Sexual Offense with a Minor in violation of N.C. Gen. Stat. § 14-27.7.¹ On 11 May 2006, Defendant entered a plea of guilty to five counts of Taking Indecent Liberties with a Minor in violation of N.C. Gen. Stat. § 14-202.1. Pursuant to Defendant's plea agreement, the trial court dismissed the charges of Statutory Sexual Offense with a Minor. The trial court imposed five consecutive suspended sentences of sixteen to twenty months and ordered thirty-six months of supervised probation. The trial court entered special conditions on Defendant's probation and required Defendant to register as a sex offender. On 11 May 2009, after satisfactorily completing his period of probation as ordered by the trial court, Defendant was discharged from probation.

On 18 October 2018, Defendant filed a Motion for Termination of Registration Requirements (Petition) pursuant to N.C. Gen. Stat. § 14-208.12A.² 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.³ The trial court's Order concluded:

¹ This statute was recodified in 2015 at N.C. Gen. Stat. §§ 14-27.31, -27.32. 2015 N.C. Sess. Law 181 §§ 13(a), 14(a) (N.C. 2015).

² The trial court's Order refers to Defendant's Motion for Termination as a Petition. For consistency, we do also.

³ 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).

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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 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 as to this issue lies with the Defendant or the State.

In support of this Conclusion, the trial court found:

5. [Defendant] testified that he did not know how old the girl was that he offended. He testified that she told him she was 18 but he later found out she was 16. However, the record and court file reflect that the victim was, in fact, 13 years old at the time of the offense and that he was 25 years old. Additionally, he was in a “relationship” with the victim, was charged with five counts of statutory sex offense (and was convicted of five counts of indecent liberties).

6. Based upon the evidence presented, the testimony of the defendant and the court file, the Court finds that the defendant’s testimony is not credible.

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 for early 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,

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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

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- (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).

In the present case, the trial court exercised its discretion under Section 14-208.12A(a1)(3) and denied Defendant's Petition on the basis "the [trial court] is not satisfied . . . the [Defendant] is not a current or potential threat to public safety[.]" Here, Defendant contends the trial court abused its discretion in denying his Petition, arguing Findings 5 and 6 are not supported by competent evidence in the Record and do not support the trial court's conclusion.

"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). "If different inferences may be drawn from the evidence, the trial court decides which inferences to draw and which to reject." *State v. Icard*, 363 N.C. 303, 312, 677 S.E.2d 822, 828 (2009). Furthermore, "[i]t is well-settled that the trial court determines the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn therefrom." *State v. Fields*, ___ N.C. App. ___, ___, 836 S.E.2d 886, 891 (2019) (citations and quotation marks omitted). In the case *sub judice*, the trial court found:

5. [Defendant] testified that he did not know how old the girl was that he offended. He testified that she told him she was 18 but he later found out she was 16. However, the record and court file

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reflect that the victim was, in fact, 13 years old at the time of the offense and that he was 25 years old. Additionally, he was in a “relationship” with the victim, was charged with five counts of statutory sex offense (and was convicted of five counts of indecent liberties).

6. Based upon the evidence presented, the testimony of the defendant and the court file, the Court finds that the defendant’s testimony is not credible.

Defendant contends these Findings are unsupported by evidence in the Record because he did not specifically testify he did not know how old the victim was and there was no evidence he was in a “relationship” with the victim. Defendant claims, then, in the absence of these facts, the trial court’s credibility determination lacks any factual basis.

Although it is true Defendant did not expressly state he was unaware of the age of the victim or the exact nature of his relationship with the victim, the evidence supports these findings. The Record reflects: Defendant was arrested and charged with seven counts of Statutory Sex Offense, and Defendant later pleaded guilty to five counts of Indecent Liberties. This fact alone supports the trial court’s finding Defendant had engaged in some form of ongoing relationship with the victim. Moreover, Defendant’s testimony reflects he was, at best, unclear as to the age of the victim.

At Defendant’s Petition hearing, Defendant testified:

[State:] And at the time that this happened, you were twenty-five?

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[Defendant:] Yes, sir.

[State:] And she was thirteen?

[Defendant:] No, sir. She was sixteen.

[State:] Now, if the indictment in this case says something different, says that she was in fact thirteen, you wouldn't contest that, would you?

[Defendant:] No, sir. I just know what I was told at the time with -- with going to court.

[State:] Okay. Because if she was sixteen, it wouldn't be a crime for her to have sex. Do you know that?

[Defendant:] Yes, sir, I do.

[State:] Okay. Then you wouldn't have been charged with anything if she was sixteen.

Defendant's testimony thus supports a finding he did not know the age of the victim.

Furthermore, the trial court's finding Defendant's testimony was not credible in Finding 6 is a matter reserved for the trial court; however, it is similarly supported by Defendant's evasive testimony and the Record before us. In addition, in response to the trial court's inquiry as to whether Defendant "learned from what happened," Defendant responded only: "Yes . . . [t]he biggest one is don't believe what you see. If they show you an ID, don't believe it." This further reflects some level of failure by Defendant to accept his own responsibility for his prior actions thereby potentially undermining his credibility in the eyes of the trial court. Accordingly, considering the totality of Defendant's testimony and the Record before us, the core of Finding 5

and the whole of Finding 6 are supported by competent evidence and are conclusive on appeal.⁴ 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. The defendant bears the burden of demonstrating he is not a current or potential threat to public safety. See *In re Bethea*, 255 N.C. App. 749, 755, 806 S.E.2d 677, 681 (2017) (“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)). For the trial court to abuse its discretion, the determination must be “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).

In the present case, the trial court exercised its discretion pursuant to Section 14-208.12A(a1)(3) and denied Defendant’s Petition. The trial court’s findings, including Findings 5 and 6, support the trial court’s conclusion “Defendant is not entitled to be removed from the sex offender registry pursuant to N.C. Gen. Stat. [§]

⁴ Although there is no competent evidence supporting the second sentence of Finding of Fact 5, its elimination does not impact the rest of that finding, Finding of Fact 6, or the trial court’s ultimate conclusion.

14-208.12A in that 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,” and, consequently, is not “so arbitrary that it could not have been the result of a reasoned decision.” *Id.* Thus, the trial court did not abuse its discretion when it denied Defendant’s Petition on this basis.

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).