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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JOHN EDWIN PAGE, JR.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E054062

(Super.Ct.Nos. RIC1109690 &
RIF1100862)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Gary B. Tranbarger,
Judge. Petition granted.

Gary Windom, Public Defender, and Joseph J. Martinez, Deputy Public Defender,
for Petitioner.

No appearance for Respondent.

Paul Zellerbach, District Attorney, and Alan D. Tate, Deputy District Attorney, for Real Party in Interest.

Petitioner seeks to be relieved of the requirement to register as a sex offender under Penal Code section 290 et seq.¹ We agree that the trial court erred in denying his petition for writ of mandate insofar as it found that there was no denial of equal protection in applying the mandatory registration requirement to him. Accordingly, we grant the petition for writ of mandate and direct the trial court to conduct a new hearing to determine whether the discretionary registration requirement should be applied to him.

FACTUAL AND PROCEDURAL BACKGROUND

In 1993, petitioner pleaded guilty to a violation of section 288a, subdivision (b)(2), oral copulation of a person under 16 years of age by a person over the age of 21. According to the police reports, petitioner was 35 at the time of the incident and the victim was 14.

Petitioner alleges that he has been in no further trouble until now. A felony complaint has been filed charging him with failing to register under section 290.

Petitioner then filed a petition for writ of mandate based on *People v. Hofsheier* (2006) 37 Cal.4th 1185 (*Hofsheier*) and *People v. Picklesimer* (2010) 48 Cal.4th 330 (*Picklesimer*), contending that the mandatory registration requirement for the section 288a, subdivision (b)(2) conviction violates equal protection. He further argued that the court should not require discretionary registration in his case.

¹ All further statutory references are to the Penal Code.

The trial court noted a conflict in the Courts of Appeal whether *Hofsheier* applies to section 288a, subdivision (b)(2) convictions. The trial court believed the *Manchel*² decision was better reasoned, followed it, and denied the petition for mandate.

Petitioner filed the instant petition for mandate to challenge the trial court's denial and has sought a stay of the criminal prosecution. We summarily denied the petition, believing that he had an adequate remedy at law because the trial court's ruling was directly appealable, and because the criminal prosecution would not necessarily be mooted if relief were granted. (See *In re Watford* (2010) 186 Cal.App.4th 684.) However, the Supreme Court has granted review and directed us to vacate our denial and issue an alternative writ, thus, determining that petitioner does not have an adequate remedy available to him.

DISCUSSION

In *Hofsheier, supra*, 37 Cal.4th 1185, the Supreme Court held that imposition of mandatory lifetime sex registration on a defendant convicted of a violation of section 288a, subdivision (b)(1), for voluntary oral copulation with a 16- or 17-year-old minor violated equal protection because a defendant convicted of engaging in sexual intercourse with such a minor under section 261.5 was not subject to the mandatory requirement. (*Hofsheier*, at pp. 1206-1207.) The Supreme Court explained that persons convicted of the two offenses were similarly situated, and there were no rational grounds for treating them differently. (See *People v. Garcia* (2008) 161 Cal.App.4th 475, 481

² *People v. Manchel* (2008) 163 Cal.App.4th 1108 (*Manchel*).

(*Garcia*), overruled on another ground by *Picklesimer, supra*, 48 Cal.4th 33 at p 338, fn. 4.) In determining the appropriate remedy, the court rejected out of hand the option of declaring the mandatory lifetime registration provisions invalid. It also refused the other option of extending the mandatory requirement to persons convicted of unlawful intercourse under section 261.5. The court concluded that “where mandatory registration violates the equal protection clause, the proper remedy is to hold a hearing to determine whether the defendant should be subject to discretionary registration as a sex offender under former subdivision (a)(2)(E) of section 290.^[3] [Citation.]” (*Garcia*, at pp. 478-479; see also *Hofsheier*, at pp. 1208-1209.)

Hofsheier has been applied to convictions for other crimes subject to mandatory registration, including convictions under section 288a, subdivision (b)(2). (*Garcia, supra*, 161 Cal.App.4th 475.) The court in *Manchel, supra*, 163 Cal.App.4th 1108, came to a contrary result where the defendant was 10 years older than the 15-year-old victim. The court noted that the defendant could have been prosecuted under section 288, subdivision (c) and, therefore, subject to mandatory registration whether he engaged in oral copulation or sexual intercourse with the victim. The court reasoned that because the defendant’s sexual conduct fell within statutes that provide for mandatory registration, he could not establish that he was similarly situated to another group of offenders who were not subject to mandatory sex offender registration. (*Manchel*, at p. 1115.) Thus, the

³ Former section 290, subdivision (a)(2)(E) is now section 290.006.

order requiring him to register as a sex offender did not violate the equal protection clause. (*Ibid.*)

Subsequent case law criticizes *Manchel* for improperly basing its decision on the fact that the defendant could have been convicted of a section 288, subdivision (c)(1) crime (lewd acts involving a child 14 or 15 years old), when the defendant actually pled guilty to violating section 288a, subdivision (b)(2). (*People v. Luansing* (2009) 176 Cal.App.4th 676; *People v. Ranscht* (2009) 173 Cal.App.4th 1369.) We agree with that criticism. *Manchel* “would have us completely ignore the crime of which a defendant is convicted and look instead to all of the crimes of which a defendant *could have* been convicted based on his conduct. This holding overlooks *Hofsheier*’s plain language, which focused on ‘persons who are *convicted* of voluntary oral copulation . . . , as opposed to those who are *convicted* of voluntary intercourse with adolescents in [the] same age group.’ [Citation.] [¶] Consistent with *Hofsheier*, we think the more appropriate course is to focus on the offense of which the defendant was *convicted*, as opposed to a hypothetical offense of which the defendant *could have* been convicted based on the conduct underlying the charge. ‘This approach jibes with the mandatory registration statutes themselves, which are triggered by certain convictions . . . , and not by the underlying conduct of those offenses per se.’ [Citations.]” (*Ranscht*, at pp. 1374-1375.)

For these reasons, we reject the reasoning of *Manchel* and conclude that subjecting defendant to mandatory sex offender registration violated his equal protection rights.

While petitioner is not subject to the mandatory registration requirement, he has not established a right to relief from registration as a matter of law because he may be subject to discretionary registration under section 290.006. The trial court must reconsider this matter and conduct a new hearing to determine whether the defendant must continue to register as a sex offender. (*Picklesimer, supra*, 48 Cal.4th at pp. 336-341, 343; see also *Lewis v. Superior Court* (2008) 169 Cal.App.4th 70, 77-78.) To require registration under this statute, “the trial court must engage in a two-step process: (1) it must find whether the offense was committed as a result of sexual compulsion or for purposes of sexual gratification, and state the reasons for these findings; and (2) it must state the reasons for requiring lifetime registration as a sex offender. By requiring a separate statement of reasons for requiring registration even if the trial court finds the offense was committed as a result of sexual compulsion or for purposes of sexual gratification, the statute gives the trial court discretion to weigh the reasons for and against registration in each particular case.” (*Hofsheier, supra*, 37 Cal.4th at p. 1197.) In exercising its discretion, the trial court’s focus is to determine based on all relevant information whether petitioner is likely to commit such offenses in the future. (*Lewis*, at pp. 78-79).

DISPOSITION

Having served its purpose, the alternative writ of mandate is discharged, the previously ordered stay is lifted, and the petition for writ of mandate is granted. Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to set aside its denial of the petition for writ of mandate and to conduct a new hearing to

determine whether petitioner is subject to the registration requirement under section 290.006.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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CODRINGTON
Acting P. J.

We concur:

HOLLENHORST
J.

McKINSTER
J.