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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re S.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.C.,

Defendant and Appellant.

G047045

(Super. Ct. No. DL006346)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Douglas Hatchimonji, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Tony Rackauckas, District Attorney, and Elizabeth Molfetta, Deputy District Attorney, for Plaintiff and Respondent.

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S.C. appeals from the juvenile court's order granting the district attorney's petition to disclose to local law enforcement agencies portions of S.C.'s juvenile record documenting child sex offenses, including oral copulation of five boys as young as six years old at a swimming club and touching a four-year-old boy's penis during Sunday school. (See Welf. & Inst. Code, § 827, subd. (a)(1) & (2) [providing for confidentiality of juvenile case files except upon petition and court order]; all further statutory references are to this code unless noted.) The district attorney sought the disclosure after concluding recent Supreme Court authority would prevent him from enforcing lifetime sex offender registration following S.C.'s 2012 release on probation. (*In re C.H.* (2011) 53 Cal.4th 94, 97-98 (*C.H.*)) S.C. agreed with the district attorney that registration could not be enforced, but did not file a motion or otherwise seek to be relieved from his registration obligation. Given these circumstances, S.C.'s admitted sex acts against 40 children and two animal victims, and a mental health evaluation concluding S.C. remained a dangerous pedophile, the juvenile court did not abuse its discretion by ordering the limited disclosure of S.C.'s juvenile file. We therefore affirm the juvenile court's order.

I

FACTUAL AND PROCEDURAL BACKGROUND

The juvenile court in June 2001 sustained two delinquency petitions against 14-year-old S.C. when he admitted in a written plea six instances of lewd acts on minors under age 14 (Pen. Code, § 288, subd. (a)) and multiple misdemeanor counts of child molestation (Pen. Code, § 647.6, subd. (a)). The juvenile court placed S.C. on probation with terms including 30 days' confinement in juvenile hall followed by residential sex offender treatment.

Over the next three years, S.C. failed four separate sex offender treatment programs and was removed from each of his residential treatment placements for behavior that included sexually and physically assaulting peers and staff, refusal to participate in therapy, viewing child pornography on a smuggled computer disk, disregard for program rules, and sex acts with fellow minor wards. The probation department concluded S.C. had “exhausted local forms of behavior/sexual offender modification programs,” and after a continual pattern of further probation violations, the juvenile court in February 2004 committed S.C. to the California Youth Authority (CYA), now known as the Division of Juvenile Justice’s (DJJ) Division of Juvenile Facilities (DJF).

S.C. completed his GED at age 20 in 2007, but made minimal progress in the DJF sex offender treatment program, completing only four of 10 steps in his first six years in custody, when all 10 steps generally required 24 months to complete. By 2011, S.C. “had step[ped] up on his treatment” and was “moving in the right direction” according to DJF records, but he still had completed only five of the 10 steps, spending “most of his daytime hours engaging in non-treatment related activities (i.e., watching television and reading fantasy novels).”

In late 2011, the DJJ conducted a mental health evaluation in anticipation of S.C.’s mandatory release from juvenile court supervision by his 25th birthday in June 2012. (§ 1769, subd. (b).) The psychologist conducting the evaluation noted that “[w]ithin the last 7 days of this report, [S.C.] created an incident with another pedophilic ward, where they orally copulated each other while watching video of nude . . . and partially clothed babies and children.” S.C. admitted fantasizing about sex with the children. The psychologist concluded S.C. “remains dangerous at this time” because of

his impulsivity “[c]oupled with pedophilia.” S.C. explained he became “addicted to sex” after he was molested repeatedly by his older brother beginning at age five. S.C. reported that he, in turn, abused “over 40 sexual victims” including two animals, and he admitted his grandmother “was a victim of his voyeurism and his masturbation fantasies.”

Nevertheless, DJF’s sex offender treatment team determined S.C. “did not meet the criteria” for continued commitment beyond his 25th birthday under section 1800 as a person “physically dangerous to the public” based on a “mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior” (§ 1800, subd. (a).) Consequently, DJF did not request that the district attorney petition the juvenile court to commit S.C. under section 1800.

S.C.’s March 2012 probation report cautioned that upon his pending release, “Great care must be made to ensure that [S.C.] is not exposed to younger children in his future employment.” The report noted “Sex Offender Counseling, Individual Therapy, Anger Management, Substance Abuse Counseling and testing are indicated,” and recommended “the ward should be expected to secure gainful employment following his release,” with “counseling in order to assist with any concerns that may arise from re-entry.” At S.C.’s final court hearing before his release, the juvenile court imposed a lifetime sex offender registration requirement and a host of probation terms and conditions. The juvenile court released S.C. to the custody of his parole officer on March 9, 2012, with probation to terminate a few months later in June 2012 on his birthday.

In May 2012, the district attorney initiated this matter, petitioning the juvenile court under section 827 to release S.C.’s juvenile adjudication files to local law

enforcement agencies in Orange County. The district attorney sought the disclosure after concluding the holding in a recent Supreme Court case, *In re C.H.*, *supra*, 53 Cal.4th 94, would prevent enforcement of S.C.'s obligation to register as a sex offender. Specifically, *C.H.* held the juvenile court lacks authority to commit a ward to the DJF "if that ward has never been adjudged to have committed an offense described in section 707(b), even if his or her most recent offense alleged in a petition and admitted or found true by the juvenile court is a sex offense set forth in Penal Code section 290.008(c)" (*C.H.* at pp. 97-98.) Penal Code section 290.008 requires that a juvenile must register as a sex offender if he or she commits an enumerated offense, including lewd conduct with a child (Pen. Code, § 288), but the registration requirement takes effect by its terms upon discharge or parole from the DJJ, and therefore a valid commitment to the DJJ or its predecessor, the CYA, is a condition precedent for registration. Thus, for example, the court in *In re Bernardino S.* (1992) 4 Cal.App.4th 613 explained, "By its plain words, Penal Code section 290 requires registration of juvenile wards only when they are discharged or paroled from the Youth Authority after having been committed for one of the enumerated offenses." (*Id.* at pp. 619-620.)

Here, the juvenile court in the initial delinquency hearing did not determine S.C. committed *forcible* lewd acts with any of his child victims, and therefore as reflected in his plea agreement, his felony offenses fell under Penal Code section 288, subdivision (a), instead of subdivision (b). Forcible lewd conduct with a child under age 14 (Pen. Code, § 288, subd. (b)) is among the crimes that section 707, subdivision (b), identifies as the most serious juvenile offenses, but the ordinary lewd conduct reflected in S.C.'s plea (Pen. Code, § 288, subd. (a)) is not. Because the Supreme Court in *C.H.* concluded an offense described in section 707, subdivision (b), is

required for commitment to the DJJ, and valid commitment to the DJJ is a condition precedent for sex offender registration (*In re Bernardino S.*, *supra*, 4 Cal.4th 613), the district attorney concluded he could not compel S.C. to register as a sex offender, and therefore sought disclosure under section 827 of S.C.'s juvenile file as an alternative means to alert the police of the potential danger S.C. posed.

S.C.'s counsel below agreed with the district attorney's analysis of *C.H.*, but did not ask the juvenile court strike its sex offender registration order or otherwise seek to relieve S.C. of his registration obligation. Rather, counsel objected to the scope of the document release and to the release of *any* portion of S.C.'s juvenile file because it would subject S.C. to harassment and undue monitoring by police officials. For example, counsel objected to the juvenile court's tentative inclination to order disclosure of an 11-page report prepared by DJJ officials before S.C.'s discharge, arguing, "That report is full of inaccuracies, things that we have never been able to litigate, dispute. It talks about things that happened at DJJ, they talk about hearsay accusations. And to just give these to the police as though they were true would be totally inappropriate." Regarding disclosure generally, counsel emphasized S.C. committed his adjudicated offenses "12 years ago," when he was only 13. Counsel acknowledged, "I can understand if he was a suspect and the police had some information and they wanted to come here and get it, then there is a particularized reason to have this information," i.e., S.C.'s juvenile court file. But S.C. opposed the release absent any evidence he had committed new offenses.

The juvenile court implicitly concluded new victims were not required before it could order disclosure of the files. The court explained it was "not simply looking at the offense that was committed back at the time of the original disposition," but "all of the events that have occurred subsequent to his conviction in this case." The

court observed that “[s]ince then there were a number of probation violations” that “were not in my mind ‘[t]echnical social violations,’ but involved potentially serious offenses.” The court also “considered what appears to be [S.C.]’s current progress and lack thereof with respect to the sex offender treatment” program. The court reconsidered its tentative ruling and declined to order disclosure of the 11-page DJJ document. Instead of disclosing the “entire file” as the district attorney requested, the juvenile court ordered four documents disclosed: S.C.’s plea forms including his factual statement underpinning his plea, the court’s June 4, 2011 dispositional order, S.C.’s March 2, 2012 probation reentry report, and a page consisting of four photographs of S.C. S.C. now appeals.

II

DISCUSSION

Section 827, subdivision (a)(1), establishes that records pertaining to juvenile wards and dependent children are confidential, and therefore juvenile “case file[s] may be inspected only by” enumerated groups of adults working with them (*id.*, subparts (A) - (O)) or by “other person[s] who may be designated by [juvenile] court order upon filing a petition” (*id.*, subpart (P)). (See *In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541 [“Section 827 governs the granting of access to confidential juvenile records by individuals and the public”].) While a “strong public policy of confidentiality of juvenile proceedings and records has long been recognized,” it “is not absolute.” (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 231.)

Rather, the juvenile court retains “exclusive authority to determine the extent to which juvenile records may be released to third parties.” (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 778, 781.) California Rules of Court, rule 5.552(e)(4)

provides: “In determining whether to authorize the inspection or release of juvenile case files, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.” Specifically, “[t]he court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.” (*Id.*, rule 5.552(e)(6).) We review the juvenile court’s determination under the deferential abuse of discretion standard. (*In re Elijah S.*, *supra*, 125 Cal.App.4th at p. 1541.)

We cannot say the juvenile court erred by releasing to local law enforcement agencies limited portions of S.C.’s juvenile court file. The juvenile court gave careful weight to S.C.’s privacy interests and ordered disclosure of only four documents, instead of the “entire file” as the district attorney requested. The four documents consisted of photographs of S.C. enabling police to identify him, plus his plea forms and probation report to alert them of the danger he posed. With this information, officers could respond appropriately, as the district attorney explained, if they received notice he was working with or loitering around children.

The juvenile court reasonably could conclude the disclosure was “necessary” and “relevan[t]” (Cal. Rules of Court, rule 5.552(e)(6)) to the police agencies’ responsibility to protect the public, given the ample evidence S.C. posed a high danger of reoffending. As the court explained, it did not “simply look[] at the offense that was committed back at the time of the original disposition of the case,” but instead considered “all of the events that have occurred subsequent[ly].” With this history in mind, the juvenile court reasonably could order disclosure in the interest of public safety

because S.C. continued to act out sexually with minor children following his initial adjudication and performed poorly in his sex offender treatment program. Indeed, his mental health evaluator concluded he “remains dangerous at this time” because of his impulsivity “[c]oupled with pedophilia,” a prediction grounded in S.C.’s history, including his recent sex acts with another pedophilic ward while viewing a video depicting babies and children.

The juvenile court struck a balance between public safety and S.C.’s interest in confidentiality by not allowing the district attorney to disseminate the records to the public or to a public agency, but only to the police, only locally within Orange County, and with express directions to the police agencies not to divulge the information to others. The court’s measured response attempted to replicate disclosure of much of the information for registered sex offenders ordinarily released to law enforcement (Pen. Code, § 290.6 [requiring disclosure to local law enforcement of registered sex offender’s name, address, physical description, and conviction information]), while preventing the public disclosure of information that accompanies sex offender registration. (See Pen. Code, §§ 290.45, subd. (a)(1) [“any designated law enforcement agency may provide information to the public about a person required to register as a sex offender”], 290.46, subd. (b)(1) [requires Internet publication of sex offender’s photograph and other details].)

The court’s order not to publicly disclose the documents protected S.C. from the more obtrusive disclosure authorized under Penal Code section 290. For example, after the trial court earlier ordered S.C. to register as a sex offender under Penal Code section 290.008 when he was released on probation, a sheriff’s deputy contacted S.C. According to S.C.’s attorney, the deputy “held out a poster that was already

prepared saying: We are going to post this picture of you saying ‘Registered sex offender living down your street.’” The juvenile court prevented any similar public use of the documents disclosed to law enforcement in this proceeding, expressly ordering that “the documentation that they receive cannot be disseminated to any person or organization beyond the particular law enforcement agency”

Despite these measures, S.C. complains that the juvenile court did not do enough on his behalf. S.C., however, switches horses on appeal. He does not focus on the juvenile court’s discretionary release under section 827, which he opposed categorically below. Instead, he implies the court should have rescinded the sex offender registration requirement the juvenile court entered three months earlier at the hearing granting his probation release. S.C. suggests that by failing to strike the lifetime sex offender registration requirement, the court abused its discretion by also ordering the disclosure to law enforcement the district attorney requested. As S.C. phrases it, “being subject to both 290 registration and to disclosure pursuant to the [P]eople’s 827 petition” is “fundamentally unfair.”

The flaw in S.C.’s position is that he did not petition the court or otherwise seek to have his registration requirement stricken. As the juvenile court observed, “There is no request before the court to in any way[to] modify the terms and conditions of probation that were originally ordered in this case. The court is making no ruling in that regard.” Even assuming the juvenile court could have stricken on its own motion S.C.’s sex offender registration requirement, he is not entitled to reversal. Our limited role on appeal provides only for review and correction of trial error, and a lower court does not err “in failing to conduct an analysis it was not asked to conduct.” (*People v. Partida*

(2005) 37 Cal.4th 428, 435; see Cal. Const., art VI, § 13 [reversal requires prejudicial error].)

With his sex offender registration requirement still in place, S.C. insists the juvenile court placed him “in the untenable position” in which he had the choice of “not complying with the 290 registration” to avoid its rigors, or abiding by the requirement, which would render the disclosure order duplicative and therefore an abuse of discretion. Not so. S.C. had other choices besides simply ignoring registration, including seeking a court order to eliminate the requirement, which would prevent routine law enforcement disclosure of his public registration status.

More to the point, S.C. does not provide any explanation or citation to authority *why* or *how* the release of information under section 827 concerning his predatory tendencies compromised his privacy interests. True, the information may have duplicated information released under Penal Code section 290, but that alone does not establish an abuse of discretion. The registration requirement already thoroughly compromised S.C.’s privacy interests, and he does not argue the disclosure did anything more than duplicate the same information. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived”]; see also, e.g., *Overhill Farms, Inc. v. Lopez* (2010) 190 Cal.App.4th 1248, 1271 [appellant must affirmatively demonstrate error through reasoned argument].)

Moreover, the juvenile court’s disclosure order cannot be deemed arbitrary or capricious given the district attorney’s stance he could not prosecute a failure to register. Only S.C. knew whether he would choose to register or not and, having committed himself to the position S.C. could not be compelled to register, the

district attorney was not obliged to await S.C.'s failure to do so, which could occur at any time and leave law enforcement in the dark about his whereabouts and the danger he posed. Based on S.C.'s history of acting upon his sexual impulses with young children and his inability or unwillingness control or seek treatment for those impulses, the juvenile court was not required to leave to his discretion whether local law enforcement would be informed of his location or dangerous proclivities. If a court later determines S.C. is not subject to sex offender registration, then the juvenile court's order disclosing his juvenile records is supported by the record. If S.C. remains subject to registration, S.C. has not suffered prejudice from the court's limited disclosure of records that duplicate the information law enforcement will receive when S.C. registers as a sex offender. The juvenile court did not abuse its discretion by ordering limited disclosure to law enforcement of the four documents in S.C.'s juvenile court file.

III

DISPOSITION

The juvenile court's section 827 disclosure order is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.