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SUPREME COURT NO. _____
COURT OF APPEALS NO. 41081-8-II

BY _____ *sw*

41081-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

A.G.S.,

Petitioner.

FILED
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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
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PETITION FOR REVIEW

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A. IDENTITY OF MOVING PARTY

Petitioner, A.G.S., the appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

A.G.S. seeks review of the Court of Appeals decision in State v. A.G.S., Court of Appeals No. 41081-8-II, filed on September 4, 2013, attached as an appendix.

C. ISSUE PRESENTED FOR REVIEW

Under the unique dual nature of juvenile court record keeping, juvenile records are divided into two files. The “official juvenile court file” is open to public inspection and the “social file” is confidential. Must Special Sex Offender Disposition Alternative (SSODA) evaluations be filed in the social file and kept confidential to protect the privacy rights of juveniles?

D. STATEMENT OF THE CASE

In 2010, A.G.S. pleaded guilty to child rape and child molestation in juvenile court. CP 4-6, 7-16; 3RP 11-12. The State and the defense ordered separate SSODA evaluations for A.G.S.’s disposition hearing. Supplemental CP 1. The juvenile court considered both evaluations and

determined that they similarly concluded that A.G.S. was amenable to treatment, but noted that the evaluations did not discuss how damaging A.G.S.'s conduct was to the victims. 4RP 30. A.G.S. took responsibility for his actions, admitting fault and expressing regret that he "hurt a lot of people." 4RP 24. He told the court that he wanted to undergo treatment to help himself and "make sure that this never happens again." 4RP 24. The court also heard from the victims' families and denied the SSODA disposition, imposing instead a maximum standard range of 53 to 76 weeks in confinement and 24 to 36 weeks of supervision. 4RP 30-32; CP 17-24.

At the victims' parents' request, the State moved to release the defense's SSODA evaluation to the parents. Over A.G.S.'s objection, the court ordered the defense to prepare a redacted evaluation. 5RP 3-8. The State agreed with the redactions and the court entered an order releasing the evaluation to the parents. 6RP 3-7; CP 25-26. The court granted A.G.S.'s motion to stay the order granting release pending his appeal and entered an order to seal the evaluation. 6RP 7; Supplemental CP 1-3.

On appeal, A.G.S. argued that the trial court erred in ordering the release of the SSODA evaluation because under RCW 13.50.010, 13.50.050, the evaluation is a confidential juvenile record which must be filed in the social file and therefore not open to public inspection. The Court

of Appeals remanded for the trial court to determine whether the evaluation may be released under chapter 13.50 RCW by ascertaining whether it is part of the official juvenile court file or the social file. Slip Opinion at 4-5.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW UNDER RAP 13.4(b)(1)(4) BECAUSE THE COURT OF APPEALS DECISION CONFLICTS WITH A DECISION OF THIS COURT AND PROTECTING THE PRIVACY RIGHTS OF CHILDREN IS AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THIS COURT.

In State v. Sanchez, 177 Wn.2d 835, 306 P.3d 935 (2013), this Court held that juveniles have a statutory right to privacy as provided in chapter 13.50 RCW. Thirteen-year-old Josh Sanchez pleaded guilty to one count of child molestation in juvenile court. The court imposed a SSODA that placed him on probation in a treatment center for two years. Sanchez moved to seal his evaluation but the court authorized the probation department to release it to the sheriff's office. Sanchez, 177 Wn.2d at 842.

On review, this Court concluded that the release of Sanchez's SSODA evaluation to the sheriff's office does not violate "his statutory right to privacy." Sanchez, 177 Wn.2d at 847. This Court explained that Washington classifies records pertaining to a juvenile offense into three categories under RCW 13.50.010(1): the official juvenile court file, which includes court filings, findings, order, and the like; the social file, which

contains reports of the probation counselor; and other miscellaneous records. Id. While the official court file is open to the public unless sealed, all other juvenile offense records are generally confidential. RCW 13.50.050(2)(3). Id. This Court concluded that “[b]ecause it is essentially the SSODA examiner’s report, Sanchez’s SSODA evaluation is part of the social file and is therefore confidential.” Id. However, this Court pointed out that RCW 13.50.050(3) provides an exception for the release of SSODA evaluations to local law enforcement for the purpose of making sex offender risk assessments. This Court therefore held that releasing Sanchez’s evaluation to the sheriff’s office does not violate “the statute’s confidentiality requirement.” Id.

Here, the trial court erred because RCW 13.50.050(3) makes no exception for the release of SSODA evaluations to the parents of victims. As this Court held, SSODA evaluations must be filed in the social file and kept confidential. Consequently, the Court of Appeals decision conflicts with this Court’s holding because it remanded to the trial court to determine whether the evaluation may be released under chapter 13.50 RCW. By leaving it to the trial court to decide whether A.G.S.’s SSODA evaluation is confidential, the Court of Appeals decision falls contrary to the precedent set by this Court in Sanchez. Slip Opinion at 4-5.

Science and social science show that transient rashness, proclivity for risk, and inability to assess consequences lessen a child's "moral culpability" and enhance the prospect that, as the years go by and neurological development occurs, the child's "deficiencies will be reformed." Miller v. Alabama, 132 S. Ct. 2455, 2464-65, 183 L. Ed. 2d 407 (2012). Accordingly, to achieve the goal of reform and rehabilitation, the highly personal and sensitive information revealed in SSODA evaluations should remain confidential.

This Court should grant review to reaffirm that SSODA evaluations are part of the social file and therefore confidential unless an exception applies. A decision from this Court would direct all trial courts to maintain SSODA evaluations in the social file which is not open to public inspection and ensure that the privacy rights of children are protected. This Court should resolve this issue because the protection of the privacy rights of children is a matter of substantial public concern.

F. CONCLUSION

For the reasons stated, A.G.S. requests that this Court grant review.

DATED this 13th day of December, 2013.

Respectfully submitted,


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APPENDIX

methodology and fact finding and that both evaluations concluded that A.G.S. is amenable to treatment. The court also noted, however, that the evaluations did not address the harm A.G.S. had done to the child victims.

Against the backdrop of several statements that family members and counselors of the child victims gave at the hearing detailing this harm, the court declined to give A.G.S. a SSODA disposition, imposing instead the maximum standard range of 53-to-76 weeks' incarceration followed by 24-to-36 months' community custody.

At the victims' parents' request, the State moved for release of the defense's SSODA evaluation to the victims' parents. A.G.S. objected to releasing any information in the evaluation. The court concluded that the victims had a right to information the court considered in making its disposition decision and ordered the defense to redact the evaluation accordingly. The State agreed with the defense's proposed redactions. The trial court entered an order releasing the evaluation based on the following findings of fact and conclusions of law:

Findings of Fact

1. The victims' parents have requested a copy of the Respondent's psycho-sexual SSODA evaluation.
2. The evaluation was used by the Court in determining the Respondent's disposition.
3. The victims' families have a right to know the information considered by the court in making its disposition. This is essential in the open administration of justice.
4. The open and public nature of the courts is central to the administration of justice.
5. The Court finds the following sections of the evaluation were relevant to the Court's disposition decision and related to the particular offense:
 - a. Pages 1-5
 - b. Page 6 down to the section labeled Sexual History
 - c. Page 8 section labeled Millon Adolescent Clinical Inventory
 - d. Page 10, beginning with the section labeled Polygraph Examination, through the end of the report to page 15.

6. The law governing the release of Public Records would not allow the release of the evaluation and the victims do not have another way of obtaining this information of which the Court is aware.

Conclusions of Law

1. The portions of the evaluations [sic] mentioned in Finding of Fact Number 4 [sic] shall be released to the victims.^[2]

Clerk's Papers at 25-26.

The trial court granted A.G.S.'s motion to stay its decision and entered an order sealing the SSODA evaluation for appeal. A.G.S. timely appeals.

In June 2011, we stayed the appeal pending the Washington Supreme Court's opinion in *Koenig v. Thurston County*, 175 Wn.2d 837, 287 P.3d 523 (2012). In February 2013, we granted A.G.S.'s motion to lift the stay, and the parties filed supplemental briefs.

ANALYSIS

I. KOENIG AND THE PUBLIC RECORDS ACT

The Supreme Court's decision in *Koenig* addresses disclosure of an adult sex offender evaluation only under the Public Records Act (PRA).³ A.G.S. is not claiming that the juvenile SSODA evaluation is exempt from disclosure under the PRA, and in any case, *Koenig* and the PRA do not control the result here. Rather, the relevant law is chapter 13.50 RCW, which concerns the disclosure of juvenile records.

We review de novo whether the PRA or chapter 13.50 RCW applies to a particular set of facts. See *In re Dependency of K.B.*, 150 Wn. App. 912, 918-19, 210 P.3d 330 (2009).

² There was only one evaluation, not multiple evaluations, in question here. And the reference to finding of fact 4 is clearly a scrivener's error; the reference should be to finding of fact 5, which mentions the portions of the evaluation to be released.

³ Ch. 42.56 RCW.

“[B]ecause the PRA and chapter 13.50 RCW do not conflict, chapter 13.50 RCW supplements the PRA and provides the *exclusive* process for obtaining juvenile justice and care agency records.” *K.B.*, 150 Wn. App. at 920 (citing *Deer v. Dep’t of Soc. & Health Servs.*, 122 Wn. App. 84, 92-93, 93 P.3d 195 (2004)).

II. CHAPTER 13.50 RCW

A.G.S. argues that the defense’s SSODA evaluation is a confidential juvenile record not open to public inspection. The trial court decided to release the evaluation because it was part of the court’s consideration at disposition. The parties have discussed the PRA and *Koenig*, 175 Wn.2d 837, and have also made policy arguments from various statutory enactments. Because chapter 13.50 RCW controls the evaluation’s release based on where the evaluation was filed, we remand for a determination of whether the evaluation is part of the official juvenile court file. If it is, it may be released.

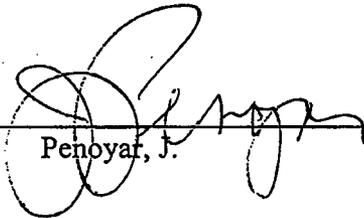
Chapter 13.50 RCW clarifies which juvenile records are confidential. The records in the official juvenile court file—or what chapter RCW 13.50 refers to as the “legal file”—are public: “The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.” RCW 13.50.050(2). “‘Official juvenile court file’ means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders.” RCW 13.50.010(1)(b). In other words, all documents filed with the superior court clerk are public unless sealed by the trial court. On the other hand, the records in the “social file” are confidential: “All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.” RCW

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13.50.050(3); *see also State v. Sanchez*, No. 87740-8, 2013 WL 3761532, at *5 (Wash. July 18, 2013).

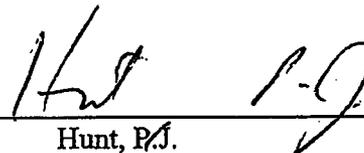
If the evaluation is in the trial court's legal file, the file maintained by the superior court clerk, the evaluation is public and the trial court clearly had authority to release it even if it had been previously sealed. If the evaluation is not in the clerk's file, it is confidential, subject to the exceptions listed in RCW 13.50.050(3). *See Sanchez*, 2013 WL 3761532, at *5-6.

We remand for the trial court to determine whether the evaluation may be released under chapter 13.50 RCW.

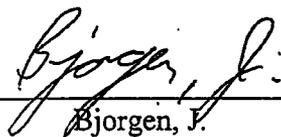


Penoyat, J.

We concur:



Hunt, P.J.



Bjorgen, J.

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the documents to which this declaration is attached to Amie Hunter, Cowlitz County Prosecutor's Office, 312 SW First Avenue, Kelso, Washington 98626.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of December, 2013, in Kent, Washington.


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