IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-0005
Dubuque County No. CVCV112810

JOHN FELLER

Petitioner-Appellant
v.
STATE OF IOWA

Respondent-Appellee

**ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR DUBUQUE COUNTY
HONORABLE MICHEAL J. SHUBATT, JUDGE**

APPELLANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED MAY 8, 2024

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CERTIFICATE OF SERVICE

On May 28, 2024, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

John J. Feller
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RESPECTFULLY SUBMITTED,

/s/ Philip B. Mears
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QUESTIONS PRESENTED FOR REVIEW

1. DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT DENIED THE APPLICATION FOR MODIFICATION FOR JOHN FELLER, A VERY LOW RISK PERSON, WHO HAD ONLY WRITTEN LETTERS TO HIS BIOLOGICAL DAUGHTER, WHO WAS A MINOR, WITH PERMISSION OF HIS PAROLE OFFICER AND THE GIRL'S MOTHER?

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STATEMENT SUPPORTING FURTHER REVIEW

On May 8, 2024 the Iowa Court of Appeals affirmed the district court denial of John Feller's request to end his sex offender registry obligation.

There are grounds for further review.

I

The Court of Appeals acceptance that John Feller posed a significant public safety risk, is in conflict with cases from the Iowa Supreme Court and other cases from the Court of Appeals. All Feller did was write letters to his biological daughter, who was not the victim, having first obtained permission from his parole officer who cleared it with the girl's mother.

Further review is necessary because the Court of Appeals decision goes well beyond what the Supreme Court had contemplated in the 2021 cases of Fortune v. State, 957 N.W.2d 696 (Iowa 2021) and Becher v. State, 957 N.W.2d 710 (Iowa 2021).

It is also inconsistent with several other Court of Appeals cases since Fortune, creating a conflict between Court of Appeals cases.

The Court of Appeals found a significant public safety concern when Feller, a low risk offender with a stable life in the community, simply wrote letters every month for years, to his biological daughter, who was not his victim. He wrote those

letter having obtained permission from his parole officer and the daughter's mother.

In this case there is not "substantial evidence" of a "substantial benefit" to public safety in continuing registration.

In 2021 the Iowa Supreme Court decided Fortune and Becher. The court described how the district court should analyze a request under 692A.128. Guidance was given both about reviewing "threshold requirements" as well as exercising the discretion available to district courts.

There is now a significant spilt in the Court of Appeals since those cases. Feller is one of three cases finding a significant public safety concern presented by otherwise low risk applicants. See Evans v.State, 2022 WL 3907741(Iowa Ct. App. Aug. 31,2022) and State v. Larvick, , 2022 WL 610361(Iowa Ct. App. March 2, 2022)

This line of case is in conflict with other Court of Appeals decisions finding an abuse of discretion where individuals who were clearly low risk. See State v. Buck, 2022 WL 951067 (Iowa Ct. App. Mar. 30, 2022) ("Buck I") , State v. Oltrogge, 2022 WL 2824774 (Iowa Ct. App. July 20, 2022) and Buck v Iowa District Court for Grundy County, 2024 WL 1295105 (Iowa Ct. App. March 27, 2024) ("Buck II")

In Feller there was not substantial evidence of a significant public safety concern in that;

1) Since prison Feller had in Judge Blane's words “steadily built a successful life in the community for the last 8 years.” He clearly satisfied the threshold requirements. Indeed he was a "very low risk".

2) A current "danger" was found because Feller wrote letters each month to his biological daughter, who had not been his victim. Recently the letters had not even been opened. **He wrote those letters with the specific permission of his parole office who had obtained the specific consent of the girl's mother.** No one ever told Feller not to write the letters, which had apparently stopped about 6 months before the hearing.

In Judge Blane's own words, writing for the Court of Appeals, "Feller had an understandable desire to reconnect with his daughter."

The judges concluded there was a danger because they equated Feller's letter writing with grooming his victim. But that grooming had taken place when the victim lived in the same household. Moreover the testimony was that the demands on the victim were for sex. Those are so different as to prevent the letters from being substantial evidence of a substantial public safety risk.

Further review is necessary to provide further clarity to our district courts and to the Court of Appeals as to the meaning of a "substantial public safety" concern.

II

This Court should review the Court of Appeals decision that John Feller posed a significant "public safety" risk, when the only arguable risk was to one person, the sister of his victim.

The district court concluded that Feller posed a risk, not so much to the public at large, but specifically to his biological daughter LF. This conclusion was supported by State v. Larvick, , 2022 WL 610361(Iowa Ct. App. March 2, 2022). In that case there was also a concern for the safety of a single person. The Larvick court said a single person was a member of the public, so a concern for a single person was a "public" safety concern.

Judge Blane accepted that reasoning from Larvick. Feller at *4.

These two judges missed the point and are in conflict with the Fortune Supreme Court case.

Fortune says

> "the district court... may consider additional factors that are relevant to the question of whether..... public safety would require the registration regime be continued to provide a degree of control on the offender and provide information to the public. Fortune at 707.

The question is not just whether the applicant presents some level of danger or risk, but whether "public" safety requires continuance of the registry. There are two parts to this argument. First, Feller is not a risk to the public in general. Second, any risk to his daughter is not affected by remaining on the registry.

In both this case and in Larvick there is no logical reason that continuance on the registry would make the daughters any safer.

This Court should grant further review to clarify the extent to which the State must show a risk to the general public and must show a risk that is somehow is affected by continued registration.

Nature of the Case:

John Feller appeals from a denial of an Application to end his registration obligation, brought under 692A.128. The Application had been denied by Judge Michael Shubatt. (App. p. 13) He also denied the Motion to Amend the findings. (App. p. 26)

Notice of Appeal was filed on December 30, 2022. (App. p. 28)

On May 8, 2024 the Iowa Court of Appeals affirmed the District Court decision. Feller v State, 23-0005, 2024 WL 2045430 (Iowa Ct. App. May 8, 2024)

Course of Proceeding on the Modification request:

John Feller filed his Application on December 1, 2021 (App. p. 7). He

filed it in Dubuque County, his county of residence and conviction.

The hearing was on July 13, 2022. The judge was Judge Michael Shubatt. Judge Shubatt had been the judge who had sent Feller to prison back in 2011.

Feller submitted exhibits, including the risk assessment report, Exhibit 1; (Con. App. pgs. 6-13). He filed an affidavit rather than testifying. Exhibit 8; (App. p. 86) The affidavit addressed his life since prison. The State chose not to cross examine him about that affidavit.

At the hearing several witnesses testified for the State.

Ruling denying relief

Judge Shubatt denied relief on October 3, 2022. (App. p. 13) He found that Feller met the threshold requirements.

Judge Shubatt then exercised his discretion and denied the Application. He found there was a substantial benefit to public safety for continuing the registration. (App. p. 16)

Very specifically Judge Shubatt found that Feller presented a public safety risk because he had written letters to his biological daughter L.F. for the past decade. She was the sister to the victim. After discounting the fact he had permission, he denied relief. Here was his reasoning:

> The general tone of the letters is manipulative; Feller constantly pushing his young daughter for a relationship

> she does not want to have. At this time, L.F. wants no communication with Feller. Feller continues to write her nonetheless. J.B. testified that this emotional manipulation and pushiness was the exact same behavior she experienced in the years that Feller groomed her to engage in the sexual acts which eventually led to his incarceration.
> Ruling page 2-3; App.pgs 14-15)

Motion to Amend

Feller filed a Motion to Amend the findings which was denied.(App. p. 26)

Proceedings from the Criminal cases

Feller went to prison for offending with his step-daughter J.B. The particulars of Feller's two cases are important.

4/18/2011 – Complaint filed in FECR095382- Exhibit 9. (App. p. 95)

4/25/2011– Trial Information was filed, charging one count of Lascivious Acts and one count of Third Degree Sexual Abuse. Exhibit 10; (App. p. 96)

7/12/2011– A plea agreement was reached. Feller would plead guilty **to two counts of Lascivious Acts**, the D Felony, with the prosecution recommending a suspended sentence. Exhibit 15; (App. p. 98)

7/14/2011 – Instead of amending the Trial Information, a new case was filed with a separate case number. Exhibit 13; (App. p. 102) The charge was the same Class D Lascivious Acts, committed between 2007-2013 with the victim being J.B. a person 13 years old. Feller did the same thing twice.

8/3/2011 – Feller's criminal lawyer explained what happened. Exhibit 20; (App. p. 91). The prosecutor had intended to amend the original Trial Information to add the new count. Instead, a separate case was filed. Apparently this was done while the prosecutor was out of the office.

The parties did not appreciate the registration consequences of having a second case where the cases were not consolidated.

8/24/2011 – A Guilty Plea was entered.

10/24/2011 – Sentencing occurred. Feller was sentenced to five years in prison for each case of Lascivious Acts with a Child. The sentences wee concurrent. The fines were suspended. There was also the 10-year special sentence. Exhibit 16; (App. 99)

Feller was released from prison on January 14, 2014. He discharged his special sentence on August 18, 2018. Exhibit 8; (App p. 87)

STATEMENT OF FACTS

The Facts Regarding the Criminal Case

The facts of the criminal case are not complicated. Exhibits 11 and 14; (Con. App. pgs. 17-19 and 20-22)

John Feller was married to Kayla Feller, now Kayla Wolter. Kayla Wolter testified. She had a daughter, J.B. born in 1994 from a prior marriage. There was also a daughter, L.F who was born during her marriage to John Feller.

The four of them lived together from 2000-2012. Tr. p. 18 line 25 to page 26 line 6. J.B. would have been 16 years old when the charges were brought in 2011.

Feller sexually abused J.B.

In 2011 J.B. finally told her mother. She immediately confronted John Feller. She ordered him out of the house, changed the locks and removed all his belongings from the home. Exhibit 11, pages 1-2; (Con. App. pgs. 17-18) The criminal complaint was filed a week later.

There was no evidence that John Feller ever did anything to his biological daughter, L.F. who was about 4 years old when Feller went to prison.

Other Facts about John Feller

John Feller did not testify. He set out information about his life since prison by affidavit. Exhibit 8; (App. p. 86)

Judge Blane, writing for the Court of Appeals, concluded that Feller had completed all the threshold requirements for modification and had "steadily built a successful life in the community for the last eight years." Feller at *6.

In response to the argument about the letters Feller submitted the notes from his parole officer between 2014 and 2017. (App. pg. 92)

Those notes show Feller received permission to communicate with L.F. He first asked his parole officer. The parole officer contacted L.F's mother, Kayla. Over the course of those three years, the parole officer and L.F's mother gave John

permission to communicate with L.F. There was even some communication in writing back from L.F. to her father. (App. pg. 92) No one told Feller to stop.

Treatment for John Feller

Feller completed the prison treatment program. He completed treatment and aftercare while on supervision. Aftercare lasted until February 7 2018. Exhibit 1; (Con. App. p. 7) Feller had over 5 years of treatment, both in prison and in the community including the polygraph examination.

Testimony from the State's witnesses at the hearing

The first witness was J.B., now 27 years old. She was the victim in Feller's crime. She was concerned about her sister L.F. and the "contact that Mr. Feller is attempting to make with her". Tr. p. 11. lines 4-12. She described letters Feller had sent through April of 2022. Tr. p.12 lines 1-4.

According to J.B., the letters have a theme. "The theme is very much it is push." p.13 lines 1-2. John Feller was continuously demanding, wanting something. . According to J.B., this was similar to what occurred with her. Tr. p.13 lines 14-15.

She acknowledged however that in her case the pushing by Feller had to with sexual demands. Tr. p.13 lines 19-20.

She also said that L.F. sister lives with their mother. She indicated that her mother had been "absolutely" protective of her and her sister at all times, L.F. Tr.

p.16 lines 18-25.

John Feller's ex-wife Kayla Wolter testified. She had two children from the previous marriage when she married John Feller in 2000. She and John Feller had one child together, who was L.F.

She acknowledged John Feller's parole offer had contacted her to see if it was alright for John to send a letter to L.F. She gave consent, understanding there were limitations on what John could say.

Here is what she said:

> She is now at the age where she makes up her own mind about what kind of communications she wants with her father. She does not want communication with her father. She does not read the letters. She does not open the letters....She is very scared that what happened to her sister will happen to her if she had any contact with him.
> Hearing Tr. p. 21, lines 4-15.

Current Registration Requirements

John Feller has to register for life. His crimes themselves would only have required ten years. Because of a clerical error, he has two cases with convictions for sexual offenses. Exhibit 19; (App. p. 90) Since they are in separate case numbers they count as two cases, even if the sentencing was at the same time, and involved the same victim. See 692A.102(6) and Newton v. Iowa Dept. of Public Safety, 2011 WL 3480993, at *1 (Iowa App.,2011).

Feller is currently a Tier III registrant. He has to report in person four times a year. Feller is subject to the safe zone restrictions in 692A.113 but is not subject to the residency restriction.

John Feller has registered since 2014.

Discussion of Risk Report

All agreed that John Feller was a low risk.

Discussion of Risk assessment

The fact that Feller is low risk satisfies one of the gateway requirements. That factor is not only one of the gateway requirements, it is also an important factor when the court exercises discretion. Indeed it is a "weighty" consideration. Becher v State, 957 N.W. 2d 710, 716 (Iowa 2021)

What is "low" risk?

Section 692A.128 and almost all of these instruments used for the assessment use the terms "low", "moderate", and " high". What do those terms mean?

They mean high or low, in relation to the average. So what is the average?

The Iowa Department of Corrections did a comprehensive study of sex offenders in Iowa in 2010. That study found that the total rate of reoffending for all sex offenders in Iowa was 3.5%. See Exhibit 7 page 4; (App. p. 67) The

"average" rate would be about that number.

Scoring Summary

Here were Feller's risk scores from the different tests. Exhibit 1; (Con. App. p. 6),

Test	Score	Adjusted for Time Free
STATIC 99R	-1 which was Risk Level II- below average	Risk Level I or Very Low Risk
ISORA	Low risk	
ISORA/ STATIC combined	Low risk	
STABLE 2007	Low risk	
STATIC/ STABLE combined	Low risk	
Overall	low	

STATIC 99-R

The tool that is best known for measuring risk is the STATIC 99-R. This is a nationally recognized and validated scoring system for determining risk for sexual reoffending.

The STATIC 99-R test instrument, in 2016, switched from using the terms "low" or "high" to five levels relative to average. The questions did not change. The point system did not change. How that score was described was what was changed.

In Iowa, a score of "-1" is “low”. With the new terminology "low" is now either "below average risk" or "very low risk."

Time free adjustment

The STATIC 99R score is measured from the point the person is released from prison. The score itself it does not take into account behavior since prison.

Research shows that the way to update the risk for the passage of time is to consider offenses since release. See Exhibit 6; (App. p. 63) For every 5 years without a new sex offense, the risk rate is cut in half. If the risk was 3.9% percent upon release, it would be half that after five years of offense free behavior. See Exhibit 1, pages 2-3, (Con. App. p. 6-7),

John Feller scored “-1” on the STATIC-99R test. With offense free time considered, Feller crossed the threshold to Risk Level I in 2017. Exhibit 6; (App. p. 63) His risk would have been cut in half again by 2022.

Individuals who commit family sex abuse have the lowest rate of reoffending

Whether the person is a family member is a factor on the score sheets. See STATIC Factor #8; (Con. App. p. 13) But what is important is that you score points, which raises your Risk Level, if the victim is not a family member. Risk is generally less if the victim was family.

ARGUMENT

THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING JOHN FELLER'S APPLICATION FOR MODIFICATION WHEN ALL HE HAD DONE WAS WRITE TO HIS BIOLOGICAL DAUGHER MONTHLY NOTES/LETTERS, HAVING FIRST GOTTEN PERMISSION FROM HIS PAROLE OFFICER AND THE GIRL'S MOTHER.

Standard of Review:

Assuming the person satisfies the threshold requirements the statute allows the District Court to exercise some "discretion" in considering the application. Here is what Fortune said about that discretion:

> Once the initial threshold is met, the district court may grant modification. Iowa Code § 692A.128(5). .... "An abuse of discretion occurs when a district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Wilson, 878 N.W.2d 203, 210–11 (Iowa 2016). "**A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law."**(citations omitted) Fortune v. State, 957 N.W.2d 696, 703 (Iowa, 2021)

The Fortune case made clear that there were certain reasons for denial that would be an abuse of discretion.

> [T]he district court....**may consider additional factors that are relevant to the question of whether the offender poses a sufficient risk of reoffense or that public safety would require the registration regime be continued to provide a**

degree of control on the offender and provide information to the public.
Fortune v. State, 957 N.W.2d 696, 703 (Iowa, 2021)

What can be derived from these statements about appellate review in Feller's case.

Appellate review of the exercise of discretion is for abuse of discretion. That abuse of discretion standard, particularly in 692A.128, is clearly not a toothless review.

(1) All reasons given must be related to current public safety which in turn is related to the risk posed by the Applicant.

(2) If a proper factor is considered, it must be supported by substantial evidence.

(3) Consideration of an improper factor would be an abuse of discretion.

(4) Failure to consider a relevant factor would be an abuse of discretion.

Preservation of Error:

Error preservation is not an issue.

Argument

A. What do the Supreme Court cases say about reasons for or against modification?

Fortune and Becher had a few generalizations about when “public safety" could justify continuing registration.

(1) A court can consider a factor if there is a "substantial benefit" to public safety. It should be noted that the term is "substantial" benefit. Presumably just a "little benefit" or "some benefit" would not be enough.

(2) The concern about public safety must amount to a "threat to public safety." Fortune at 706. Presumably a threat would come back to "risk."

(3) Denying modification is justified if registration is needed to provide a degree of control on the offender and provide information to the public. Fortune at p. 706.

(4) A "conclusory appeal to public safety" would not defeat a modification application. Fortune at 706. "The threat to public safety must be tied to the individual applicant and the record established in each case." Fortune at p. 706.

(5) District Courts must "take care to ensure that public safety and not punishment provides the lens through which facts are evaluated". Fortune at p. 707.

(6) The results of risk assessment tools should not generally be overridden by "non-validated risk assessments made by the District Court based on the nature of the crime and its apparent relationship to recidivism." Fortune at p. 708.

B. There is a conflict between different Court of Appeals cases since Fortune regarding a court's discretion.

Since Fortune, there have now been several Court of Appeals decisions that

have discussed the District Court's discretion, once the threshold requirements are established. There is a significant split between those cases.

Cases finding denial permitted based on a public safety concern

There are two other cases upholding the denial of modification where a public safety concern was found. There was State v. Larvick, 2022 WL 610361 (Iowa Ct. App. Mar. 2, 2022). It was relied upon by the two courts in Feller.

Larvick had to register for only ten years. Larvick clearly satisfied the threshold criteria for modification. The District Court denied the Application, exercising its discretion. The District Court and then the Court of Appeals found that there was substantial evidence that Larvick currently presented a specific risk to his youngest daughter, who is the younger sister of the victim. He had rekindled his relationship with the mother, who had apparently known of the abuse and was ether unwilling or unable to protect her children.

The Larvick decision found that the risk to just the daughter was enough to satisfy the standard under Fortune. Neither court identified how keeping Larvick on the Registry made his daughter any safer.

The second case is Evans v. State, 2022 WL 3907741 (Iowa Ct. App. Aug. 31, 2022) (Further Review was denied on February 8, 2023). Evans affirmed the District Court's exercise of discretion in denying the modification request.

Evans had explained at the hearing that he had one particular reason for

coming off the Registry, thereby ending his ten-year obligation. He had children who resided with him on weekends as part of his divorce decree. He wanted his children to have a normal life. He wanted his children be able to have friends come over. The strict child endangerment statute made such visitation a potential problem. As long as he was on the Registry he had to make sure he never supervised those friends. To be safe, he had said that no friends could visit.

The District Court found that, because the parents of those other children would want to know about Evans being on the Registry, there was a substantial interest in public safety. The request was denied.

The Court of Appeals agreed, finding the case to be similar to the Larvick case. The Court found that the case fit into the Fortune language that there was a "substantial benefit to public safety" in Evans being on the Registry.

Cases reversing the District court's discretion

Christopher Buck has been to the Court of Appeals twice in his effort to be modified. In State v. Buck, 2022 WL 951067 (Iowa Ct. App. Mar. 30, 2022), (Buck I) the Court of Appeals reversed the District Court denial of modification for two reasons. First, the Court determined that the District Court had improperly found that Buck was not low risk.

The Court in Buck went further to address the exercise of discretion by the District Court. At the hearing one victim testified along with family members.

Testimony focused on the nature of the crimes, which testimony was given some weight by the District Court.

Here is what the Court of Appeals had to say:

> Family members of the children who were abused testified against modification of the sex offender registry requirement. Some of the testimony focused on the nature of Buck's crimes. The district court relied on this testimony...
>
> *3 Because the focus here was on past crimes and past patterns of behavior, we sustain the writ and remand for consideration of the modification application in light of *Fortune*.[2] (footnote omitted)
> State v. Buck, 2022 WL 951067, at *2–3 (Iowa Ct. App. Mar. 30, 2022).

Next is State v. Oltrogge, No. 21- 0776, 2022 WL 2824774 (Iowa Ct. App. July 20, 2022). In Oltrogge, the Court of Appeals reversed the District Court's denial of relief. The Court in its ruling said a number of things that are relevant.

A. The Court of Appeals noted that the fact that Oltrogge was low risk to re offend as measured by DCS, while not "determinative," was "weighty evidence on the modification issue." State v. Oltrogge, No. 21-0776, 2022 WL 2824774, at *4 (Iowa Ct. App. July 20, 2022).

B. The Supreme Court in Becher had stated that significant time in the community without reoffending was a positive factor.

C. The appeal court noted that Oltrogge's lack of criminal involvement was a positive factor and it should have been considered by the Court. State v. Oltrogge, No. 21-0776, 2022 WL 2824774, at *4 (Iowa Ct. App. July 20, 2022).

The language from Oltrogge has some relevance in our case. Past misbehavior can be relevant to Fortune considerations. But Fortune would only allow consideration of past behavior *if it is related to present behavior*.

Finally there is the second Buck case. Buck v. Iowa District Court for Guthrie County, 2024 WL 1295105 (Iowa Ct. App. March 27, 2024). (Buck II)

The District Court on remand again denied relief. The judge found Buck presented a current public safety risk because he played in a band that performed in some local coffee shops, festivals, or even parties where children might be present.

The Court of Appeals in Buck II concluded that the concerns about Buck being around children while playing music was not a significant public safety concern which justified the denial of modification.

> "Buck also contends that his band activities do not present a significant public safety concern that justifies his continued registration as sex offender. The district court found this activity presents a public safety risk to the children attending any events at which Buck is playing music. But these concerns can be applied to any sex offender who is at times in an area where children are present. (citation omitted) They are not specific to Buck, whose probation officer approved the activity while he was on supervised release. Buck v. Iowa District Court

for Grundy County., 2024 WL 1295105, at *2 (Iowa Ct.App., March 27, 2024)

It is worth noting that the Court observed that the activity was approved by his probation officer.

C. There was not substantial evidence that Feller presented a current risk to his non victim daughter, when all he did was write her letters, with permission.

In order to override the "weighty evidence" that Feller was low risk to re-offend, the District Court had to find a "substantial risk to public safety". The judge found Feller posed that risk because he wrote letters to L.F. He wrote those letters after having gotten permission to do so from his Parole Officer and L.F.'s mother.

There are quite a number of reasons why this conclusion should be rejected as not supported by substantial evidence.

1. Feller wrote letters or cards. There is no evidence that there was ever anything more than that. Feller had permission from his parole officer and the child's mother to send the letters. See Exhibit 21; (App. p. 92); See testimony at hearing from Kayla Wolter. Tr. p 19 line 24 to p.20 line 25. Indeed, sometime near the beginning of the letters, L.F. wrote back. Judge Blane characterized this is having "an understandable desire to reconnect with his daughter." Feller at *6.

2. There is no indication that Feller was ever told to stop. After some

point the letters were not answered, that is not disputed. Indeed there is no indication that the recent letters were even opened. They certainly were not opened or read by L.F.

3. The judges equated sending a periodic letters with the grooming that took place with J.B. That is just too much of a stretch. The "grooming" took place when Feller and J.B. were living in the same household. Moreover, J.B. described that behavior as pushing for sexual matters. Tr, p. 13, lines 1-24. There is absolutely no indication that Feller had any contact whatsoever with the younger daughter outside of these occasional letters. There certainly is nothing sexual in any of the letters. This is not a "pattern" that should be recognized by Fortune.

4. The judges found that Feller's case was similar to that presented in Larvick v State, 2022 WL 610361 (Iowa 2022) . The judge overlooked the contrast between the mothers in Larvick and in Feller. In Larvick, the mother had provided no protection at all to her children. This was in stark contrast with the protection offered by Kayla Wolter. When she was told of the abuse she immediately removed Feller from the home, and changed the locks. J.B. described her mother as "absolutely" protecting her children. Tr. p. 16 to p. 17, line 6, There would be no threat to L.F. as long as Kayla Wolter is around.

5. There was no evidence continuing Feller's registration provides any protection to L.F. She already knows about his conviction and behavior. Neither

the prosecutor, nor his witnesses or the judge ever explained how keeping John Feller on the registry will provide any more protection to L.F. than if he were off.

D. There was no threat to the community, aside from a concern for L.F.

Judge Shubatt's concern was a concern for reoffending with the L.F. Fortune and Becher make clear, as does the statute, that the registry is designed to protect the public in general.

The only evidence that Feller posed a threat to the public was the thinking of the victim and her mother that if Feller was a risk to L.F. he would be a risk to the community at large. If he did it to one person, he might do it to another.

Fortune cautioned against allowing such non validated risk conclusions to override the results of the validated risk tools. Fortune at 708.

John Feller is very low risk to re-offend. Individuals who commit abuse within the family are the least likely to re-offend of any group of sex offenders.

There is State v. Larvick, 2022 WL 610361 (Iowa 2022) In that case there was also a threat just to one person, his other daughter. The Court of Appeals said that daughter was a member of the public and protecting one person is consistent with the statute.

That part of the Larvick opinion should be rejected. The purpose of the statute is to protect society. The purpose of the statue is to inform the general public. If there is no threat to them, there is no need for the registry.

Conclusion

In 2021 the Iowa Supreme Court described how district courts should evaluate modification cases. District courts could in some fashion take into consideration "public safety." In this case, the judges have justified denying relief to Feller based on that "public safety" rationale.

After considering how the district judge reached that conclusion, this Court should grant further review and give further guidance as to what kind of public safety consideration can justify a denial.

The Iowa Supreme Court used the term "substantial benefit" to public safety.

This Court should find that the judge abused his discretion. There was not substantial evidence of a substantial benefit to public safety by keeping John Feller on the registry for life.

The case should be returned to the district court for direction to grant the application.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This application complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 5,354, excluding the parts of the brief exempted by Iowa Rs. App. P. 6.903(1)(f)(1)

/s/ Philip B. Mears
Signature

May 28, 2024
Date