

IN THE SUPREME COURT OF IOWA

22-1967

Polk County No. CVCV063809

Daniel Murrillo,

Applicant-Appellant,

vs.

State of Iowa,

Respondent-Appellee.

APPEAL FROM THE DISTRICT

COURT FOR POLK COUNTY

HONORABLE SAMANTHA GRONEWALD

DISTRICT COURT JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW

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QUESTIONS PRESENTED FOR FURTHER REVIEW

Did The Iowa Court of Appeals err when it determined the applicant did not complete his court ordered sexual offender treatment programing and did the Iowa Court of Appeals err when it agreed the applicant should not be removed from the sexual offender registry.

Furter review should be granted by the Iowa Supreme Court.

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STATEMENT SUPPORTING FURTHER REVIEW

The Iowa Court of Appeals erred when it determined the applicant did not complete his court ordered sexual offender treatment programming.

The Iowa Court of Appeals erred when it agreed the applicant should not be removed from the sexual offender registry.

Further review should be granted by the Iowa Supreme Court.

BRIEF

Course of Proceeding and Disposition Below:

On June 6, 2022, Daniel Murrillo filed his application to be removed from the sex offender registry. (Application, App. P. 6) The matter was scheduled for hearing for September 30, 2022. (Scheduling order, App. P. 9) On September 27, 2022, the State of Iowa filed a resistance questioning if the applicant completed his sexual offender treatment while in prison. (Resistance, App. P. 11) The hearing was held, and the court required briefing by the parties. (Other Order, App. P. 13) Both the State and Mr. Murrillo filed their post-hearing briefs. (Applicant's & State of Iowa's brief, App. P. 15 & 21) On November 21, 2022 the Court denied Mr. Murrillo's application. (Order for Judgment, App. P. 24) Mr. Murrillo filed a timely notice of appeal on November 29, 2022, (Notice of Appeal, App. P. 29) The Iowa Court of Appeal on February 21, 2024 denied the

applicant's appeal. (Attached Iowa Court of Appeals Opinion) The applicant now seeks further review.

Facts

Mr. Murrillo resides in West Des Moines, Polk County, Iowa, 50265. (Application, App. P. 6) On August 19, 2005, Mr. Murrillo pleaded guilty to sexual abuse in the third degree in violation of Iowa Code sections 709.1 and 709.4(1) in Polk County Case No. FECR192930. (Application & Order of Judgment, App. P. 6, 24) The criminal court on October 7, 2005, sentenced Mr. Murrillo to an indeterminate term of incarceration not to exceed 10 years and was ordered to pay fines, surcharges, court costs and restitution if any.¹ (Application & Order of Judgment, App. P. 6, 24) Mr. Murrillo was also ordered to register as a sex offender. (Order of Judgment, App. P. 24)

Also, as part of his sentence, Mr. Murrillo was ordered to complete Sex Offender Treatment Programming. (Order of Judgment, App. P. 24) Mr. Murrillo successfully completed all required sex offender treatment programs. (Certificate of Completing Sex Offender Treatment, exhibit 2, Confidential App. P. 13) After completing his sex offender treatment, Mr. Murrillo was released from prison. (Application, App. P. 6)

¹ At the time of Mr. Murrillo's conviction he was required to register as a sex offender for 10 years, however the statute was amended and now requires Mr. Murrillo to remain on the registry for his lifetime.

After his release from prison, Mr. Murrillo registered as a sex offender as required and has continued to register as required by law. (Application, App. P. 6) The Iowa Code classified Mr. Murrillo's conviction as a Tier III offense requiring lifetime registration. See Iowa Code Chapter 692A. Mr. Murrillo has been on the sex offender registry for at least 12 years. (Application, App. P. 6)

On or about December 2, 2020, a sex offender risk assessment was performed on Mr. Murrillo. The assessment classified Mr. Murrillo as low risk for reoffending. (Risk Assessment, Exhibit 1, Confidential App. P. 11)

Argument

The Iowa Court of Appeals erred when it determined the applicant did not complete his court ordered sexual offender treatment programming. The Iowa Court of Appeals also erred when it agreed the applicant should not be removed from the sexual offender registry.

Standard of Review

Iowa Code section 692A.128 provides that the district court may consider modification of the sex offender registration obligation if certain criteria are met. This initial threshold determination is reviewed for correction of errors at law. *State v. Iowa Dist. Ct.*, 843 N.W.2d 76, 79–80 (Iowa 2014).

If the applicant meets the threshold statutory requirements, the district court proceeds to the second step, namely, determining, in its discretion, whether the

registration requirements should be modified. In this second step, the district court should consider the statutory factors and any other factors that the district court finds relevant to the modification issue. This second-step determination is reviewable on appeal for abuse of discretion. *Fortune v. State*, 957 N.W.2d 696, 705 (Iowa 2021).

Iowa Code section 692A.128 (2021) governs removing a sex offender for the registry. Because Mr. Murrillo is not under the supervision of the Iowa Department of Corrections the following requirements must be shown before the court can remove Mr. Murrillo from the Iowa sex offender registry. “..... 2. An application shall not be granted unless all of the following apply: a. The date of the commencement of the requirement to register occurred at least two years prior to the filing of the application for a tier I offender and five years prior to the filing of the application for a tier II or III offender. b. The sex offender has successfully completed all sex offender treatment programs that have been required. c. A risk assessment has been completed and the sex offender was classified as a low risk to reoffend. The risk assessment used to assess an offender as a low risk to reoffend shall be a validated risk assessment approved by the department of corrections. d. The sex offender is not incarcerated when the application is filed.” See Iowa Code 692A.128 (2021).

The appellate court and trial court erred when they determined that Mr. Murrillo did not complete his court ordered sexual offender treatment. The evidence presented at

trial clearly demonstrated Mr. Murrillo completed all court ordered sexual offender treatment programming. Upon completing his treatment program at the prison, he was given a certificate of completion which is part of the record. Mr. Murrillo completed his treatment program at the Mount Pleasant Correctional Facility. Mr. Murrillo completed the treatment program including completing polygraph examinations. He completed his book work, his individual sessions, and his group therapy. There is no proof he did not complete his treatment. Mr. Murrillo testified that he completed the treatment programming, and no witness was offered to show he did not. There was no evidence presented by the State of Iowa that Mr. Murrillo did not complete his treatment but offered instead speculative conjecture of his evaluator. If the evaluator's concerns are accurate, then why would the evaluator find Mr. Murrillo a low risk to reoffend. In other words, if he believes Mr. Murrillo did not complete treatment, he could not have determined his risk level to be low. Even after making this unfounded accusation regarding completion of the treatment program, the evaluator found Mr. Murrillo to be at low risk to reoffend. One of the large factors in any risk assessment performed on a sex offender is the issue of treatment. No sex offender treatment professional would ever recommend someone to be low risk to reoffend if sexual offender treatment was not completed. This is why the Iowa Code requires treatment to be completed as a requirement for removal. If Mr. Murrillo had not completed treatment, there is no possible way any evaluator could or would determine Mr. Murrillo is a low risk to reoffend. The appellate court erred when

it opined that there is a subjective component to the evaluation. The complete evaluation report is in the record and there is no subjective concerns raised in the report by the evaluator. The evaluator did not conclude he was not at low risk. The report clearly shows Mr. Murrillo as low risk and the Iowa Court Appeals conclusion that Mr. Murrillo did not complete his treatment are contrary to the facts in the record.

Mr. Murrillo has completed all sexual offender treatment as ordered. Mr. Murrillo testified he completed all treatment requirements and has entered his certificate of completion in the court record. Mr. Murrillo has completed all required sexual offender treatment and meets the requirements for removal from the registry.

The appellate court erred when it determined Mr. Murrillo did not meet the requirements to be eligible for removal from the sex offender registry because the evidence presented shows he met the threshold requirements and further review should be granted.

The trial and appellate court also erred when the court determined that Mr. Murrillo was a risk to the community. The discretionary segment of the statute requires an abuse of discretion standard to be applied by the court.

The Iowa Supreme Court has stated the following:

“[W]e conclude the district court should consider only those factors that bear on whether the applicant is at low risk to reoffend and there is no substantial benefit to public safety in extending the registration requirements. We note that “low risk” does not mean *no risk*. As noted by one authority, “professional norms

prohibit psychosexual evaluators from making ‘statements asserting that [an individual] is no longer at any risk to reoffend.’” Logan, 2015 Wis. L. Rev. at 232 (quoting Ass'n for Treatment of Sexual Abusers, *Practice Standards and Guidelines for the Evaluation, Treatment, and Management of Adult Male Sexual Abusers* 22 (2005)); see also *Patterson v. Foote*, 226 Or.App. 104, 204 P.3d 97, 102 (2009) (“The requirement that the petitioner prove that he or she no longer poses a ‘threat to the safety of the public’ likewise provides no support for the state's insistence upon proof of a complete and total absence of a risk of reoffense.”). And, conclusory appeals to public safety do not defeat a modification application. The threat to public safety must be tied to the individual applicant and the record established in each case.

18 In considering relevant factors, the district court has broad discretion, but that discretion is not unlimited. As Fortune suggests in his alternate argument, the discretionary regime in the modification statute has some similarities with criminal sentencing. Though the purposes of criminal sentencing and a modification are distinctly different (one to punish the offender, the other to protect the public), both permit the district court to consider a wide range of potentially relevant factors, *707 provided those factors are rationally related to the underlying goals of the discretionary regime. See *State v. Roby*, 897 N.W.2d 127, 138 (Iowa 2017). In a modification proceeding, once the statutory requirements have been met, the district court, in addition to compliance with the statutory requirements, 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. Specifically, a district court commits an abuse of discretion when it fails to consider a relevant factor, or considers an improper or irrelevant factor, on the question of whether the ongoing risks of danger from the sex offender justifies continuation of the registration requirements. See *Roby*, 897 N.W.2d at 137. In the exercise of discretion under Iowa Code section 692A.128, the district court must take care to ensure that public safety, and not punishment, provides the lens through which facts are evaluated. See *State v. Pickens*, 558 N.W.2d 396, 400

(Iowa 1997) (“[T]he statute was motivated by concern for public safety, not to increase the punishment.”). Where only proper factors have been considered, we find an abuse of discretion only where there is a clear error of judgment. *Roby*, 897 N.W.2d at 137. The district court's stated reasons for a decision on modification must be sufficient “to allow appellate review of the trial court's discretionary action.” *Cf. State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010) (applying the principle to a sentencing case).” *Fortune v State*, 957 N.W.2d 696, 706-707 (Iowa 2021).

During his prison term Mr. Murrillo completed his sexual offender treatment programming. After Mr. Murrillo was discharged from his sentence and was released from prison, Mr. Murrillo has consistently and lawfully registered as a sex offender for almost 13 years. Mr. Murrillo had been working consistently until he injured his back and now is fully disabled. There have been no reports of inappropriate sexual conduct and no new allegations made against him. At the time of the hearing, there were no additional criminal charges. He has demonstrated he can live a lawful lifestyle and does not poses a danger to the community.

Mr. Murrillo has lived in the community since his release from prison and is not incarcerated.

Mr. Murrillo has completed his assessment with Dr. Anthony Tatman and a report was issued in December of 2020. Dr. Tatman has been designated by the 5th Judicial District Department of Corrections as the evaluator of the risk assessments. Dr. Tatman concludes ‘Based on the information obtained in this evaluation it is my opinion that

Examinee's risk falls in the Level 1 category, which would be consistent with a "low risk" determination pursuant to 692A.128(2)c."

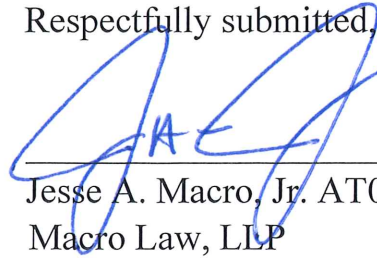
At no time during Mr. Murrillo's testimony did he ever testify he was innocent. He testified it is difficult for him to acknowledge he hurt another individual that he cared for. He never testified or claimed he was innocent. He took full responsibility for his actions and has since demonstrated he is a changed person.

Mr. Murrillo has completed the requirement to be removed from the registry. He has lived in the community for a long time. He has worked consistently until he injured his back and now is fully disabled. There have been no reports of inappropriate sexual conduct and no new allegations of inappropriate sexual crime made against him. He is at low risk of reoffending. The Iowa Code contemplates removing low risk offenders from the registry when appropriate. Mr. Murrillo should have been removed from the registry and further review should be granted.

CONCLUSION

For the reasons and arguments stated above, the Applicant-Appellant, Mr. Murrillo, hereby requests the court grant further review and request any relief afforded under the law.

Respectfully submitted,



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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this contains 2798 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. app. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 14-point Times New Roman font.

s/ Jesse Macro Jr.
Jesse A. Macro, Jr.

3-12-24
Date

ATTORNEY’S COST CERTIFICATE

I, Jesse A. Macro, Jr., hereby certify that the actual cost of reproducing the necessary copies of the Final Brief was \$1.50 and that the amount has actually been paid in full by me.

s/ Jesse Macro Jr
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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 12th day of March, 2024, I served this document through the EDMS system.

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I further certify that on the 12th day of March, 2024, I filed this document with the Clerk of the Iowa Supreme Court at the Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, IA 50319 by the EDMS system.

s/ Erin Richey