IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR MARION COUNTY

STATE OF FLORIDA,

v. Case No.: 1995-CF-1929-A-Z

[redacted]

Defendant.
_____/

ORDER ON DEFENDANT'S PETITION FOR REMOVAL OF THE REQUIREMENT TO REGISTER AS A SEXUAL OFFENDER

This Court (through predecessor Circuit Judge Victor Musleh) withheld adjudication of guilt and sentenced Defendant for the offense (sexual battery) that requires him to register as a sexual offender. On October 31, 2024, Defendant filed his Petition for Removal of the Requirement to Register as a Sexual Offender ("Petition"). This Court has jurisdiction to hear this petition pursuant to §943.0435(1)(a)2.a., Fla. Stat.

On December 23, 2024, the Court held an evidentiary hearing on the petition. The State was noticed as required by §943.0435(1)(a)3, Fla. Stat. (2024). On January 15, 2025, the Court entered an order granting the petition. On February 10, 2025, FDLE filed a motion to vacate the Court's order on the grounds that FDLE was not provided with notice of the hearing.[1] On July 1, 2025, nunc pro tunc, June 19, 2025, the Court entered an order granting FDLE's motion and setting aside its January 15, 2025 order. The Court also set Defendant's Petition for hearing on October 30, 2025.

On October 30, 2025, the Court held a hearing at which the State, FDLE, and Defendant appeared. At the hearing, the Court received the following testimony and evidence: (1) The testimony of [redacted] the defendant; (2) The testimony of [redacted] the victim; and (3) A Sex Offender Risk Assessment report, completed by Dr. Michael Brannon, Psy.D., along with Dr. Brannon's *curriculum vitae*. The Court has reviewed and considered this evidence.

The stated purpose of sexual offender registration laws is the "protection of the public from sexual offenders" and to further that paramount government interest by "[r]eleasing

[1] Between the date the Petition was filed and the date the hearing was held, the law changed to require FDLE be provided with notice of the hearing.

information concerning sex offenders ... to the public." §943.0435(12), Fla. Stat. It is axiomatic that the threat posed to the public by sex offenders can be lessened by making the public aware that somebody is a sexual offender. This allows members of the public to take precautions around such persons and to proactively restrict sexual offenders from having contact with children or others whom they may be inclined to victimize. See generally Johnson v. State, 795 So. 2d 82 (Fla. 5th DCA 2000). Although the statute governing removal of sexual offenders from reporting requirements contains no reference to a burden of proof (i.e., beyond a reasonable doubt, clear-and-convincing evidence, etc.), this Court considers Defendant's burden in this matter to be extraordinarily high. This is especially so considering the Court must be satisfied that Defendant does not pose even a potential threat to public safety. With that said, the Court will now turn to its consideration of the merits of Defendant's petition.

At the hearing, the State, FDLE, and Defendant agreed that Defendant had lived without being arrested for twenty-five (25) years since his release from confinement, supervision, or sanction for the offense that required him to register as a sexual offender. The parties also agreed that, if the Court found the offense that subjected Defendant to registration requirements involved consensual sexual activity, that Defendant would, for the purposes of §943.0435(11), Fla. Stat., be deemed to have been convicted of an offense for which removal was permitted. The parties also agreed that if the Court found the offense was consensual that the removal of Defendant from his registration requirements would not violate federal law. Therefore, the Court must first consider the circumstances of the offense (sexual battery[2]) of which Defendant was convicted (Or, more accurately, for which adjudication of guilt was withheld.)

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[2] The name of the offense ("sexual battery") of which Defendant was convicted carries with it the connotation that the sexual act between Defendant and the victim was not consensual (i.e., that it was what is commonly referred to as "rape"). However, the victim's non-consent was not an element of the offense of which Defendant was convicted. Based upon the statute cited in the Information (i.e., §800.04(3), Fla. Stat. (1995)), and the language of the Information itself, Defendant was actually charged with the offense of "Lewd, Lascivious, or Indecent Assault or Act Upon or In Presence of a Child." That statute provides that a person commits a lewd, lascivious, or indecent assault against a child when they engage in "sexual battery" with a person under the age of 16. In turn, "sexual battery" is defined as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another by any other object." As such, the charge against Defendant was devoid of any allegation that the sex was anything but consensual.

Furthermore, the Court will also note that the charge of burglary (based upon Defendant entering the house without permission), for which he was arrested, was ultimately dismissed.

The conduct upon which Defendant's conviction was based occurred on June 13, 1995. Defendant was then 18 years of age and had not yet graduated from high school. He lived in New York and was visiting his grandparents in Ocala, Florida. On that date, he went to the house of a neighbor and family friend, Jennifer Anderson ("victim"). While there, he engaged in sexual intercourse with her. The victim was 14 years of age at the time. The matter was reported to law enforcement and the victim stated that Defendant entered her house without permission and raped her. As a result of these allegations, Defendant was arrested for burglary and sexual battery. Defendant admitted to law enforcement and her mother that he had sex with the victim, but Defendant maintained it was consensual. The record in the instant case did not conclusively establish whether the act of sexual intercourse between Defendant and the victim was consensual or not consensual.

Given that the record in the instant case did not establish whether the sexual act between Defendant and the victim was consensual or non-consensual, the Court must make its determination based upon the evidence presented at the October 30, 2025 hearing. To that end, the Court received the testimony of Defendant and the victim. The Court has considered their competing accounts of what occurred, their demeanor, and the totality of the circumstances presented to the Court.[3] Based upon those considerations, the Court finds that the act of sexual intercourse that occurred between Defendant and the victim was consensual.[4] With that finding

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Defendant was never convicted of (or had adjudication withheld as to) that offense. He is therefore presumed innocent of that crime. Coffin v. U.S., 156 U.S. 432 (1895) (In holding that the presumption of innocence "lies at the foundation of the administration of our criminal law," the Supreme Court traced the history of this presumption from the Book of Deuteronomy, through Roman law, canon law, English common law, and the common law of the United States.); See also Taylor v. Kentucky, 436 U.S. 478 (1978) (The presumption of innocence requires one to "put away from [his mind] all the suspicion that arises from the arrest, the indictment, and the arraignment," and to reach conclusions "solely from the legal evidence adduced.")

[3] Given that thirty (30) years have passed since the interaction between these two persons that gave rise to this case, it is not surprising that their respective recollection of events lacked the clarity it would have had at a hearing in 1995. Had the Court been able to consider the testimony of these persons closer in time to when the offense is alleged to have occurred, the Court may well have reached a different conclusion.

[4] This is very important to this Court in rendering its decision in this matter. Had Defendant been convicted of a crime whose elements included a lack of consent by the victim (i.e., a violation of §794.011, Fla. Stat. 1995) (i.e., had Defendant been convicted of raping a 14-year-old child), this Court could not (and would not) have granted his petition. However, Defendant was never

made, the only question that remains for this Court to decide is whether the Court is "otherwise satisfied that the offender is not a current or potential threat to public safety."

The Court will first consider the evaluation and risk assessment prepared by Dr. Brannon. The Court finds that Dr. Brannon was provided with the appropriate materials necessary to conduct a risk assessment and performed the testing necessary to provide this Court with a well-formed and reliable opinion as to Defendant's future risk. The Court also finds that there were no materials with which Dr. Brannon should have been provided which he was not provided. Dr. Brannon also administered appropriate psychological tests in rendering his opinion. Therefore, the Court finds that Dr. Brannon's conclusions are reliable and gives great weight to Dr. Brannon's opinion that Defendant was at a low risk to reoffend. (Neither FDLE nor the State retained any person to perform an evaluation or risk assessment of Defendant.)

FDLE made argument that Defendant was a danger to the community, pointing to his prior drug use, procurement of prostitutes, and various facts about his life. The Court will address them in turn:

1. Defendant has used illegal drugs. He has used marijuana (which is legal[5] in New York, where he lives.) He also used mushrooms and cocaine, many years ago and in a manner that could fairly be characterized as experimental. FDLE argued that Defendant posed a danger of committing sexual offenses because he had used drugs in the past while with other persons. Aside from anecdotal argument that the Court cannot lawfully consider in its decision, there was no evidence presented to support this argument. The Court therefore rejects this argument.
2. Approximately twenty (20) years ago, while visiting Amsterdam, Defendant procured the services of prostitutes. Prostitution is legal in Amsterdam and there was no evidence presented that Defendant committed a crime by hiring prostitutes in a country where his acts did not violate local laws. [6] The Court attaches very little weight to Defendant's act of procuring prostitutes in Amsterdam.

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convicted of having done that. To the contrary, all that Defendant was actually convicted of was engaging in consensual sexual intercourse with a 14-year-old girl when he was 18 years old.

[5] The Court recognizes that marijuana remains illegal under federal law.

[6] FDLE argued that Defendant – as a U.S. citizen – was bound by this country's laws while abroad and that his hiring of a prostitute in Amsterdam was violative of those laws. The Court rejects this argument. While some federal laws, like 18 U.S.C. §2423 criminalize a U.S. citizen engaging in

3. FDLE also argued that a constellation of other facts about Defendant's life, when taken together, form a picture of somebody who was at heightened risk to commit sexual crimes. These facts include that Defendant was not married,[7] did not have children,[8] had not held a single job for more than five (5) years, and had a robust sexual history (i.e., having had upwards of 60 sexual partners and having engaged in sexual activity with multiple partners at a time). There was no evidence adduced in support of the argument that these things are associated with a heightened risk of committing sexual crimes. The Court does not find these arguments credible. (The arguments about Defendant's marital status, lack of children, and employment being indicative of a heightened proclivity towards committing crimes of a sexual nature is particularly far-fetched.)

In assessing whether to remove the requirement that Defendant comply with sex offender reporting requirements, the Court has also considered the relative ages of Defendant and the victim at the time of the offense. Defendant (whose date of birth is September 17, 1976[9]) was 18 years and 9 months old. He had just graduated from high school a few days earlier. The victim (whose date of birth was January 5, 1981) was 14 years and 5 months old. She would have just finished the 9th grade. In essence, then, this is a case where a high school senior had consensual sexual intercourse with a high school freshman. This case is materially different from other scenarios that are criminalized by the same law, including those where a 30 or 40-year-old has sex

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sexual acts with minors while abroad, this Court is unaware of any similar law that criminalizes an American's procurement of adult prostitutes.

[7] Defendant is a 49-year-old black male. According to the Pew Research Center, forty-six percent of black males at the age of forty (40) have never been married. See Pew Research Center, https://www.pewresearch.org/short-reads/2023/06/28/a-record-high-share-of-40-year-olds-in-the-us-have-never-been-married/ (last visited October 30, 2025.)

[8] According to the Pew Research Center, twenty percent (20%) of adults age 50 or over have never had children. See Pew Research Center, https://www.pewresearch.org/social-trends/2024/07/25/demographic-and-economic-characteristics-of-adults-50-and-older-without-children/#:~:text=One%2Din%2Dfive%20U.S.%20adults,Center%20analysis%20of%20government%20data.&text=Not%20having%20children%20is%20more,than%20those%20in%20their%2070s (last visited October 30, 2025).

[9] The Information filed in this case – and the arrest affidavit and other documents in the court file – erroneously give Defendant's years of birth as "1967." This is incorrect and is a result of the investigator having juxtaposed the last two digits and this error then being repeated again and again.

with a teenager, or even cases where a college freshman or sophomore had sex with a middle school student.

Crimes of the type committed by Defendant are different and the Florida Legislature recognized them as such by enacting a "Romeo and Juliet Law" in 2007. See §943.04354, Fla. Stat. As was noted by the Florida Senate Committee on Criminal Justice a few years after the law's enactment:

> Florida's "Romeo and Juliet" law was created during the 2007 Legislative Session to address concerns about high school age youth being labeled as sexual offenders or sexual predators as a result of participating in a consensual sexual relationship. The stigma and consequences that come with that classification have lifelong consequences that affect things such as an offender's future employment opportunities, an offender's ability to attend his or her own child's school functions, and where an offender can live. The registry provides no clear distinction between the young "Romeo and Juliet" sex offenders who had consensual sex and the offenders who harm children and pose a real risk to society.

Fla. S. Comm. on Crim. Just., Examine Florida's "Romeo and Juliet" Law, at 1, Issue Brief 2012-214 (2011), https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-214cj.pdf. Under the "Romeo and Juliet Law," one of the criteria that must be met for removal from the registry is that the age difference between the Defendant and the victim cannot be more than 4 years. In the instant case, Defendant and the victim were 4 years and 4 months apart in age; thus, he is not entitled to the benefits of this law.[10]

Notwithstanding, this Court would be remiss if it did not recognize that this law – like all laws – embodies the values and will of the people of the State of Florida as expressed through the Legislature. Reynolds v. Sims, 377 U.S. 533 (1964) (Legislatures are "bodies collectively responsive to the popular will."); Silvio Membreno and Florida Ass'n of Vendors Inc. v. City of Hialeah, 188 So. 3d 13 (Fla. 3d DCA 2016). Under the Romeo and Juliet Law, if this crime was committed today, and if Defendant was 2 months younger and the victim was 2 months older (thus bringing them each within 4 years of the other's age), it would not even be necessary for Defendant to register as a sexual offender at all, much less for thirty (30) years, as Defendant has faithfully done. So, although Defendant falls outside the 4-year age gap window provided for in the Romeo and Juliet Law, it is clear to this Court that Defendant is the exact type of person (i.e., a high school age youth who engaged in consensual sexual activity with another high school age youth) who the

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[10] Had Defendant been so entitled, he could have petitioned for removal from the registry 18 years ago.

Florida Legislature believes should have the opportunity to be relieved of the stigma and consequences that come along with a conviction (or withheld adjudication) for a sexual offense.

Based upon the foregoing, this Court is satisfied and hereby **FINDS** that Defendant no longer poses a current or potential threat to public safety. Accordingly, Defendant's Petition for Removal of the Requirement to Register as a Sexual Offender, is hereby **GRANTED**.

Done and ordered on November 3, 2025, nunc pro tunc, October 30, 2025, in Ocala, Marion County, Florida.

TIMOTHY T. McCOURT
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this order was served upon the following parties on November 3, 2025:

1. State Attorney's Office, via e-service
2. Gilbert Schaffnit, Esq., via e-service
3. Florida Department of Law Enforcement, via e-service

Deborah Zeak, Judicial Assistant