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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.: 1996[redacted]

[redacted],

Defendant.
_____/

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

This case came before the Court on Defendant's Petition for Removal of the Requirement to Register as a Sexual Offender ("petition"), filed on March 13, 2024. Defendant was adjudicated guilty of the offense (principal to sexual battery) that required him to register as a sexual offender by the Circuit Court of the Fifth Judicial Circuit, in Marion County, Florida; therefore, this Court has jurisdiction to hear this petition pursuant to §943.0435(1)(a)2.a. On April 10, 2024, Defendant filed a motion to schedule his Petition for hearing. The Court scheduled the hearing for December 12, 2024, the earliest date upon which the parties could all be present. On December 12, 2024, the Court held an evidentiary hearing on the petition. The State was duly noticed as required by §943.0435(1)(a)3.

At the hearing, the State and Defendant stipulated that Defendant was eligible to have his registration requirement removed based upon (1) Defendant having been convicted of an offense for which removal was permitted, (2) Defendant having lived without being arrested for the requisite amount of time[1] since his release from confinement, supervision, or sanction, and (3) Defendant's removal from registration requirements not violating federal law. Therefore, the only question that remained for this Court to decide is whether the Court is "satisfied that the offender is not a current or potential threat to public safety."

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] Some question remains whether the controlling statute is the one in effect at the time these crimes were committed (which requires a twenty (20) year arrest-free period) or the one presently in effect (which requires a twenty-five (25) year arrest-free period). For the purpose of the Court ruling on this motion, the parties stipulated that the 20-year arrest-free period applied.

information concerning sex offenders ... to the public." §943.0435(12), Fla. Stat.; see generally §775.21(3) ("[S]exual offenders who prey on children are sexual predators who present an extreme threat to public safety.") 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 and the findings of fact that underpin this order.

At the hearing, the Court received as evidence the testimony of Michael Steven Gray, the defendant. The Court also received the arrest affidavit and police report associated with the case. The Court also retrieved from the Clerk's archives and reviewed the court file in the cases of Mr. [redacted] codefendants, Dallas [redacted] (1997-CF-976) and Thomas [redacted] (also 1997-CF-976). The review of those files included the Court's review of those portions of the transcript from Mr. [redacted] jury trial that contained the testimony of the victim of this offense as well as Defendant's own testimony.

The Court has also reviewed the evaluation and risk assessment prepared by Dr. Larry W. Neidigh, Ph.D. The Court finds that Dr. Neidigh 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. Dr. Neidigh's opinion was that Defendant was at a low risk to reoffend.

The Court also reviewed the polygraph examination report prepared by Joseph Larry Jerald, a polygrapher and retired Marion County Sheriff's Office Major, which indicated that Defendant has not, since ending probation in 2001, had any sexual contact with any juvenile.

Lastly, the Court has reviewed letters from Defendant's family and community members. While these letters would be insufficient standing alone to convince the Court that Defendant did

not pose a threat to public safety, they do corroborate the other evidence introduced in support of the petition.

As noted above, Defendant was convicted of principal to sexual battery. The conduct upon which his conviction was based was that, in 1996, he drove two of his friends and a teenage girl to a dead-end street where his friends engaged in sexual activity with her outside of the vehicle. The Court would be remiss if it did not point out a few things about this offense, the nature of the charge of which Defendant was convicted, and what the elements of that offense were in 1996. First, the name of the offense ("sexual battery") carries with it the connotation that the sexual act was not consensual. However, the victim's non-consent was not an element of the offense of which Defendant was convicted. Based upon the statutes cited in the Information, and the language of the Information itself, Defendant was actually charged with "Lewd, Lascivious, or Indecent Assault or Act Upon or In Presence of a Child," which he was alleged to have committed by aiding or abetting others (i.e., [redacted] and [redacted]) in their commission of an act defined as "sexual battery" on a child under the age of 16 years. §800.04(3), Fla. Stat. (1995). In turn, the "sexual battery" committed by [redacted] and [redacted] also did not require proof of the victim's non-consent, only that they engaged in an act where their sexual organ penetrated or united with the vagina of a person under the age of 16. §794.011(1)(h), Fla. Stat. (1995) ("Sexual battery means oral, anal, or vaginal penetration by, or union with, the sexual organ of another by any other object."). This distinction is very important to this Court. Had Defendant been convicted of a crime whose elements included a lack of consent by the victim (i.e., had he been convicted of driving his friends somewhere so they could rape a 13-year-old girl), this Court would not have been inclined to grant his petition. However, Defendant was never convicted of having done that. He was only convicted of having driven his friends to a place where they had consensual sexual activity with the girl. While his conduct was nonetheless worthy of punishment – which has been imposed and completed – this distinction is a very important to this Court in attempting to determine whether Defendant poses a risk to public safety in the future.

Additionally, it should be noted that at no time did Defendant participate in sexual activity with the victim or have any type of physical contact with her whatsoever.[2] Having reviewed the

[2] This was made clear by the victim's testimony at Mr. Hartline's trial where her testimony barely mentioned Defendant or his role in this series of events.

trial testimony, it would be reasonable to conclude that, while Defendant was aware that his friends were engaging in sexual activity with the victim, Defendant believed that the sexual activity was consensual. It is apparent that Defendant recognized the wrongfulness of his actions, first as evidenced by his attempts to distance himself from the criminal episode, but later by his willingness to cooperate with the State of Florida in the prosecution of Messrs. [redacted] and [redacted], including his providing testimony at Mr. [redacted] trial, which helped ensure [redacted] conviction. Also, at the hearing on this petition, Defendant expressed remorse for his actions and the Court finds that he was sincere in this regard.

In closing, in considering the evidence introduced at the hearing, as well as this Court's review of the court file, the Court is satisfied 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**. [redacted] shall no longer be required to comply with the requirements for registration as a sexual offender.

Done and ordered on January 13, 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 January 13, 2025 by E-Service Delivery:

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

Deborah Zeak, Judicial Assistant