

STATE OF MICHIGAN
COURT OF APPEALS

In re BRIAN HOWARD.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

BRIAN HOWARD,

Respondent-Appellant.

UNPUBLISHED
October 12, 2010

No. 292982
Macomb Circuit Court
LC No. 95-040939-DL

Before: BORRELLO, P.J., and CAVANAGH and OWENS, JJ.

PER CURIAM.

Respondent appeals by delayed leave granted the denial of his petition to reduce the registration requirement imposed by the Sex Offender Registration Act (“SORA”), MCL 28.721 *et seq.* We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On December 18, 1995, respondent pleaded guilty to second-degree criminal sexual conduct involving a person under 13 years of age, MCL 750.520c(1)(a). Respondent was 13 years old at the time, whereas the victim was nearly 11 years old. The police report indicates that respondent kissed the victim, “grabbed [her] on the butt”, “pulled her pants down enough to grab her in the crotch area”, and said he would make up lies about the victim if she said anything about what happened.

Respondent was required to register under SORA. On November 7, 2006, a Nevada attorney retained by respondent sent a letter to a circuit court judge requesting that respondent’s juvenile criminal record be cleared, and noting that respondent had to register every time he moved to a new city. Respondent filed a petition to reduce the registration requirement on March 11, 2009. The procedural requirements for such a petition are set forth in MCL 28.728c, which provides in pertinent part:

(1) An individual described in subsection (15) [MCL 28.728c(15), which includes an individual convicted of second-degree criminal sexual conduct where the individual was 13 years of age or older but less than 17 years of age and not more than 3 years older than the victim,] who is convicted before October 1, 2004 of a

violation described in that subsection may petition the court under this section for an order allowing him or her to register under this act as provided in section 8d(1) [MCL 28.728d(1)].

* * *

(3) *This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. . . .*

(4) *A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. A petition filed under subsection (1) shall be filed before October 1, 2007 or within 3 years after the individual is discharged from the jurisdiction of the juvenile court or, if the individual was assigned to youthful trainee status, within 3 years after he or she has successfully completed youthful trainee status, whichever is later, and, except as otherwise provided in this subsection, the court shall not consider a petition filed by the individual after that date. A petition filed under subsection (2) shall not be filed before the individual's seventeenth birthday or after the individual's twentieth birthday. . . . [Emphasis added.]*

Respondent acknowledges that in his case, the petition had to be filed by October 1, 2007. However, he maintains that the 2006 letter substantially complied with the statutory requirements for a petition, and asserts that his 2009 petition should be treated as an amended petition. The trial court concluded that the 2006 letter was not a petition, noting that the Nevada lawyer who sent the letter could not have filed it in a Michigan court. Whether the petition was procedurally adequate presents a question of law. Review is therefore de novo. *People v Wilder*, 485 Mich 35, 40; 780 NW2d 265 (2010).

The trial court did not err in concluding that respondent failed to satisfy the procedural requirements, albeit for different reasons. Preliminarily, respondent does not address the requirement that a petition be filed before his twentieth birthday. Respondent was born on December 4, 1981; thus, he could not file a petition after December 4, 2001. Regardless of whether the November 6, 2006, letter could be construed as a petition, it was not timely.

Apart from the age restriction, respondent's letter and/or petition would not have otherwise qualified under MCL 28.728. The November 7, 2006, letter was a request to have respondent's juvenile criminal record cleared. It did not address sex offender registration. Thus, apart from the trial court's concern that the Nevada attorney would have had no authority to file a SORA petition in Michigan, there was no basis for treating the letter as a SORA petition. Accordingly, the March 11, 2009, petition cannot be construed as an amended petition.

Affirmed.

/s/ Stephen L. Borrello
/s/ Mark J. Cavanagh
/s/ Donald S. Owens