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Court eyes kid games in age of sex crime

Does 'playing doctor' trigger Megan's Law?

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BY ROBERT SCHWANEBERG
Star-Ledger Staff

The New Jersey Supreme Court heard arguments yesterday on whether a teenager who, at age 12, was caught "playing doctor" with his 6-year-old brother must register as a sex offender under Megan's Law.

A state appeals court said no, freeing the 18-year-old, identified only as T.T., from a lifetime obligation to periodically notify police of his whereabouts. It ruled that his crime was not sexually motivated and did not trigger Megan's Law.

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Assistant Warren County Prosecutor Howard McGinn told the justices that the appeals court "erroneously focused on the offender's motivation" rather than his conviction for aggravated sexual assault.

McGinn said his office considers T.T. enough of a threat that it wants to send Megan's Law warning notices about him to schools near his home.

Assistant Deputy Public Defender Carol Sands argued that "would severely undermine his rehabilitation" while doing nothing to "protect the community from sexual predators." She said T.T. was "playing doctor" and "is not likely to repeat his conduct."

According to court records, T.T. told a defense psychologist he was merely "curious" when he used a douche bottle to give his younger half-brother and himself an enema when he was 12. The psychologist, Timothy Foley, administered a test for detecting pedophiles and concluded that T.T. showed no sexual interest "in males or pre-pubescent children."

Justices Barry Albin and James Zazzali asked whether there is any evidence that T.T., who spent 2 1/2 years confined for treatment at the Bonnie Brae School in Bernards Township, poses a threat.

McGinn replied that T.T. had made some calls to a telephone sex line and had been

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ticketed for driving without a seat belt. He said his office is concerned because T.T. is not receiving therapy.

Assistant Attorney General Jessica Oppenheim added, "This was a serious case. This wasn't a matter of a slap on the rear." She argued that T.T. triggered the requirements of Megan's Law by committing an act of "sexual penetration" upon his brother.

The sweeping language of the state's sexual assault law troubled the appeals court that heard the case in October. Appellate Division Judge Lawrence Bilder questioned whether a parent or physician who gave a child an enema could be prosecuted. When McGinn said it depended on the circumstances, Bilder asked, "Wouldn't you be looking to the circumstances to determine motivation?"

Bilder and Appellate Division Judge Melvin Antell concluded that Megan's Law did not apply to T.T. because his act was not sexually motivated.

Yesterday, Justice Roberto Rivera-Soto said the appeals court had "carved out" an exception that lawmakers had not. McGinn argued that having to prove sexual motivation threatens to "greatly complicate Megan's Law hearings."

Albin said the law "just requires an act of penetration, period." But he also asked whether prosecutors and lower court judges are following the high court's mandate, expressed in a 2001 decision, to treat juveniles younger than 14 less harshly than adult sex offenders.

Some judges do, others do not, replied Sands, who added that she has participated in "hundreds" of Megan's Law hearings. She said T.T.'s case is an example of improperly judging children by adult standards. Even though T.T. was younger than 13, a risk assessment designed for adults scored him as a "moderate risk" because his victim also was younger than 13, Sands said. That made T.T. eligible to have a flier with his name, photograph and offense distributed to schools.

As usual, the justices reserved decision.

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