STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DENIS RINGLE,

Defendant-Appellant.

UNPUBLISHED
November 18, 2021

No. 352693
Monroe Circuit Court
LC No. 19-245187-FH

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

A jury convicted defendant of three counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (victim under 13 years of age), and one count of accosting a child for an immoral purpose, MCL 750.145a. The trial court sentenced defendant to serve 48 to 180 months' imprisonment for each CSC-II conviction and 24 to 48 months' imprisonment for accosting a child for an immoral purpose, all to be served concurrently, and ordered defendant to submit to lifetime electronic monitoring, as mandated by MCL 750.520c(2)(b). Because the victim was less than 13 years of age, the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*., mandates that defendant register publicly as a sex offender for the rest of his life. MCL 28.725(13); MCL 28.722(u)(*ii*) and (v)(*v*). We affirm.

Defendant was the victim's stepfather. The victim lived with defendant and her mother, defendant's wife, roughly half of the time between the ages of 9 and 12. According to testimony given by the victim at trial, during this period, defendant sexually abused her numerous times. The abuse included forcing her to sit on his lap when she did not want to, intimately telling her he loved her and asking if she loved him back, intimately kissing her in her bed, pinning her down and rubbing his clothed, erect penis against her clothed vagina and grabbing her breasts, forcing her to straddle him while he intimately kissed her and rubbed his clothed, erect penis against her clothed vagina, and placing his hand inside her underwear against the skin between her vagina and stomach. Defendant's behavior eventually ceased when the victim told him that what he was doing was wrong. A few years later, the victim told police officers about defendant's behavior when she was interviewed regarding another matter. Upon questioning, defendant admitted that, while

wrestling with the victim on occasion, his erect penis may have brushed against her and he may have touched her breasts, but maintained any such instances would have been accidental.

A jury convicted defendant as indicated, and defendant now appeals as of right. Defendant raises two issues on appeal: the validity of mandatory lifetime registration as a sex offender and the validity of mandatory lifetime electronic monitoring. Defendant argues first that SORA's mandatory lifetime sex offender registration requirement constitutes cruel or unusual punishment facially and as applied to him under the Michigan Constitution and cruel and unusual punishment facially and as applied to him under the United States Constitution. Defendant next argues that the mandatory lifetime electronic monitoring constitutes cruel or unusual punishment as applied to him under the Michigan Constitution and cruel and unusual punishment as applied to him under the United States Constitution, and also constitutes an unreasonable search under the Fourth Amendment to the United States Constitution. We disagree with all of defendant's arguments.

Defendant did not raise these constitutional issues regarding his sentence in the trial court; therefore, they are unpreserved for appellate review. *People v Bowling*, 299 Mich App 552, 557; 830 NW2d 800 (2013). This Court reviews unpreserved constitutional questions for plain error affecting substantial rights. *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). A defendant seeking relief under plain-error review must establish (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights, i.e., the error affected the outcome of the lower court proceedings. *Id*. at 392-393. "Reversal is warranted only when the error . . . seriously affected the fairness, integrity, or public reputation of judicial proceedings independently of the defendant's innocence." *Id*. at 393.

Turning to defendant's first set of arguments, we hold that requiring defendant to register as a sex offender for the rest of his life is not cruel or unusual punishment facially or as applied to him under the Michigan Constitution nor cruel and unusual punishment facially or as applied to him under the United States Constitution. The Michigan Constitution prohibits cruel or unusual punishment and the United States Constitution prohibits cruel and unusual punishment. Const 1963, art 1, § 16; US Const, Am VIII. A party challenging the constitutionality of a statute has the burden of proving its invalidity. *People v Sadows*, 283 Mich App 65, 67; 768 NW2d 93 (2009). Defendants facially challenging a statute must meet the rigorous standard of proving there is no set of circumstances under which the statute is valid. *People v Wilder*, 307 Mich App 546, 556; 861 NW2d 645 (2014). An as-applied challenge to a statute requires a court to analyze whether the statute led to a denial of a specific right in light of the facts developed in defendant's particular case. *Id*.

It has previously been held that SORA's registration requirement was not a punishment because it was designed to protect the public, not punish the offender. *People v Tucker*, 312 Mich App 645, 681-683; 879 NW2d 906 (2015). As such, the requirement could not constitute cruel or unusual punishment. *Id*. at 683. In resolving whether retroactive application of the 2011 version of SORA violated the ex post facto clause of the United States Constitution, however, the Michigan Supreme Court recently held that the registration requirements under that version of the law are criminal punishments. *People v Betts*, ___ Mich ___, ___; ___ NW2d ___ (2021) (Docket No. 148981); slip op at 29. Defendant was sentenced under the 2011 version of SORA, so it must now be determined whether this registration penalty is cruel or unusual.

Because the Michigan Constitution's protection from cruel *or* unusual punishment is broader than the United States Constitution's protection from cruel *and* unusual punishment, "if a particular punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *Tucker*, 312 Mich App at 654 n 5 (quotation marks and citation omitted). To determine whether a punishment is cruel or unusual, courts assess whether it is "unjustifiably disproportionate" to the offense committed by considering four factors: (1) the harshness of the penalty compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed for other offenses in Michigan, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the goal of rehabilitation. *People v Bullock*, 440 Mich 15, 30, 33-34; 485 NW2d 866 (1992).

Courts considering an as-applied challenge to a punishment under the United States Constitution examine all of the circumstances of a defendant's case to determine if the punishment is "grossly disproportionate" to the offense. *Graham v Florida*, 560 US 48, 60; 130 S Ct 2011; 176 L Ed 2d 825 (2010). The three factors courts consider in this examination are identical to the first three factors under the Michigan test. *Bullock*, 440 Mich at 33-34. When considering whether a punishment is to be categorically barred as cruel and unusual under the United States Constitution, courts first consider objective indicia of society's standards demonstrating whether there is a national consensus against the sentencing practice and, second, whether the punishment violates the United States Constitution, considering the Eighth Amendment's text, history, meaning, and purpose. *Graham*, 560 US at 61.

Although SORA's registration requirement is a criminal punishment, *Betts*, ___ Mich at ___; slip op at 29, defendant has not met his burden of establishing that SORA's mandatory lifetime registration requirement is unconstitutional as applied to him. Looking first at the harshness of the penalty compared to the gravity of the offense, defendant relies on *People v Dipiazza*, 286 Mich App 137; 778 NW2d 264 (2009), to support his contention that lifetime registration is too harsh a penalty compared to his CSC offense. The defendant in *Dipiazza* was an 18-year-old boy who had a consensual sexual relationship with a nearly-15-year-old girl. *Id*. at 140. The defendant was adjudicated under the Holmes Youthful Training Act (HYTA) for attempted third-degree CSC, and was sentenced to probation. *Id*. The defendant was also required to register as a sex offender for 10 years under SORA. *Id*. On appeal, this Court found that the defendant's conduct was not very grave because there was only a minor age difference between the defendant and the adolescent, their relationship was consensual, their parents knew of and approved of the relationship, and the defendant eventually married the adolescent. *Id*. at 154. The Court also found, on the other hand, that the defendant's penalty was harsh when compared to the particular facts of the defendant's case. *Id*. Looking at the other three factors, the Court determined that the defendant's penalty was unique in Michigan and is becoming less common among other states, and that rehabilitation was not served by this penalty because the defendant posed no risk of reoffending and would suffer numerous lasting, negative effects from being on the registry. *Id*. at 154-156. Consequently, the Court held that SORA's 10-year registration requirement was cruel or unusual punishment as applied to the defendant. *Id*. at 156. The facts of defendant's case, however, are so distinguishable from *Dipiazza* that this logic is not persuasive.

Defendant's conduct was much more severe than the defendant's in *Dipiazza*. First, and perhaps most importantly, defendant and his victim were not in a consensual relationship—

defendant was the victim's stepfather and she did not consent to any of the reported incidents. This created a power imbalance that was lacking in *Dipiazza*. Further, there was a significant age difference between defendant, who was a grown man in his thirties, and his victim, who was under the age of 13 at the time of each incident. Consequently, defendant was not eligible for adjudication under HYTA or other similar diversion programs that avoid criminal convictions. The attendant circumstances in defendant's case are also more disturbing than in *Dipiazza*. Much of defendant's conduct often occurred while others were in the house, and at least two of the more intrusive incidents occurred while other children were sleeping in the same room. Notably, as defendant did not independently choose to cease the exploitation of his stepdaughter—he did not cease until his adolescent victim told him what he was doing was wrong—there is no telling how long this conduct would have continued. Even after the victim brought up the incidents to her mother, defendant and the victim's mother continued to allow the victim to spend half her time living in the same home as defendant. Defendant took advantage of a child, and instilled in her lasting fear and distrust. The gravity of defendant's offense should not be discounted merely because he had no prior record, as defendant argues. Considering the gravity of defendant's offense, we do not think mandatory lifetime registration is a disproportionately harsh punishment in defendant's case.

Turning next to defendant's sentence compared to sentences for other offenses in Michigan, lifetime registration is a unique penalty among Michigan offenses, but it is not the only mandatory penalty. Many other offenses have statutorily mandated penalties.[1] Further, the unique circumstances surrounding CSC offenses justify the uniqueness of defendant's lifetime registration requirement. For example, sex offenders tend to recidivate at higher rates than other offenders. See *McKune v Lile*, 536 US 24, 32-34; 122 S Ct 2017; 153 L Ed 2d 47 (2002) (concluding that, based on United States Department of Justice data, sex offenders face a "frightening and high risk of recidivism").[2] Additionally, victims of CSC-II under 13 years of age tend to be more vulnerable victims, especially when related to the defendant, as was the victim here. See *People v Cannon*, 481 Mich 152, 158-159; 749 NW2d 257 (2008) (listing factors demonstrating vulnerability in the context of Offense Variable 10, including the victim's youth, the existence of a domestic relationship, whether the offender abused his or her authority status, and whether the offender exploited a victim by his or her difference in size or strength or both). Thus, SORA's unique lifetime registration requirement is not without justification.

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[1] See, e.g., MCL 750.520b(2)(b) and (c) (mandating minimum terms of imprisonment for a defendant convicted of CSC-I against a victim younger than 13 years of age); MCL 769.12(1)(a) (mandating a 25-year minimum term of imprisonment for certain fourth-offense habitual offenders); MCL 750.227b(1) and (2) (mandating terms of imprisonment for a defendant who possessed a firearm during the commission of a felony); and MCL 750.316(1) (mandating lifetime imprisonment for a defendant convicted of first-degree murder).

[2] Although the Supreme Court recently noted that a growing body of research supports the proposition that recidivism rates for sex offenders may be lower than previously thought, the Court cited the studies only to demonstrate that the efficacy of SORA's asserted public-safety purpose is unclear. *Betts*, ___ Mich at ___; slip op at 27-28.

Turning to CSC sentences in Michigan compared to CSC offenses in other states, it is clear that lifetime registration for sex offenders is not unique.[3] Defendants across the states who engage in conduct similar to defendant are routinely required to register for life, even if defendants in other states are afforded greater latitude to petition for removal from the registry. Thus, SORA's registration requirement is not materially different from sex offender registries in other states.

Finally, turning to the goal of rehabilitation, we acknowledge that SORA's asserted rehabilitative effect is uncertain. As the Supreme Court pointed out, recent studies have demonstrated recidivism rates for sex offenders may be lower than previously thought. *Betts*, ___ Mich at ___; slip op at 27. Nonetheless, lifetime registration is not unjustifiably disproportionate as applied to defendant because the registry may still have a deterrent effect on his behavior. Based on the facts of defendant's case, it is unclear whether his exploitative behavior would have ever ceased if his victim did not finally speak out against him. Thus, being placed on the sex offender registry for life may serve as a deterrent against recidivating. Defendant, however, argues that the stigmatizing effects of lifetime registration will counteract his ability to move beyond this offense and rehabilitate himself. While this argument has some merit, it is unclear whether the stigmatizing effects will result from the public fact that defendant has been convicted of CSC-II or from the registry itself. See *Tucker*, 312 Mich at 661 (citing the United States Supreme Court's reasoning that the negative consequences sex offenders face flow from the conviction itself, not the registry). For these reasons, we find that SORA's lifetime registration requirement is not unjustifiably disproportionate as applied to the grave facts of defendant's offense. *Bullock*, 440 Mich at 30; *Wilder*, 307 Mich App at 556.

We also conclude that defendant abandoned his facial challenge to SORA's mandatory registration requirement as cruel or unusual punishment and, even if not abandoned, defendant failed to meet the rigorous standard of proving there is no set of circumstances under which the statute is valid. *Wilder*, 307 Mich App at 556. Defendant essentially argues that because SORA's mandatory registration requirement is cruel or unusual as applied to him, it is also facially unconstitutional, but he provides no further analysis on that point. A party may not "merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Bosca*, 310 Mich App 1, 16; 871 NW2d 307 (2015) (quotation marks and citation omitted). Because such "[f]ailure to brief an issue on appeal constitutes abandonment," defendant abandoned his facial challenge to SORA's mandatory registration requirement. *People v McGraw*, 484 Mich 120, 131 n 36; 771 NW2d 655 (2009).

Even if defendant did not abandon his facial challenge, he failed to meet the standard of proving that SORA's registration requirement is facially cruel or unusual. Although the Supreme Court recently held that SORA's mandatory requirements were excessive as a civil regulation and determined the requirement was a criminal punishment, the Court made no mention as to whether

[3] See Collateral Consequences Resource Center, *50-State Comparison: Relief from Sex Offense Registration Obligations* <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/> (last accessed September 30, 2021) (comparing sex offense registration obligations across the states).

such mandatory provisions were facially cruel or unusual as criminal punishments. *Betts*, ___ Mich at ___; slip op at 28-29. Defendant argues that because the trial court had no discretion to fit the term of registration to the facts of defendant's case, the mandatory penalty violates Michigan's established principle of individualized sentencing and, therefore, constitutes cruel or unusual punishment. But registration was statutorily mandated for defendant—it was not a discretionary provision under the sentencing guidelines. "Legislatively mandated sentences are presumptively proportional and presumptively valid," *People v Brown*, 294 Mich App 377, 390; 811 NW2d 531 (2011), and "a proportionate sentence is not cruel or unusual," *Bowling*, 299 Mich App at 558. If a statute "is valid under the facts applicable to defendant then it is certainly capable of being upheld against a facial challenge." *People v Hallak*, 310 Mich App 555, 569; 873 NW2d 811 (2015), rev'd in part on other grounds 499 Mich 879 (2016). Because defendant's sentence was constitutional as applied to him, there is at least one set of circumstances under which SORA's mandatory lifetime registration requirement is valid; the provision, therefore, is not facially cruel or unusual. *Id.*; *Wilder*, 307 Mich App at 556. For these reasons, we hold that SORA's lifetime registration requirement is not invalid facially or as applied under the Michigan Constitution.

Because the requirement is not cruel or unusual punishment under the Michigan Constitution's broader protection, it also is not cruel and unusual punishment under the United States Constitution's narrower protection. *Tucker*, 312 Mich App at 654 n 5. Since the test for whether a punishment as applied to a defendant is cruel and unusual under the United States Constitution is identical to the first three factors under the test for whether a punishment as applied to a defendant is cruel or unusual under the Michigan Constitution, we need not repeat our earlier analysis. *Bullock*, 440 Mich at 33-34. Because defendant's registration requirement was not an unjustifiably disproportionate sentence under the Michigan Constitution, it was not a grossly disproportionate sentence under the United States Constitution. *Tucker*, 312 Mich App at 654 n 5.

Similarly, we decline to categorically bar SORA's mandatory lifetime registration requirement as cruel and unusual under the United States Constitution. First, defendant has failed to present sufficient objective indicia of society's standards demonstrating a national consensus against mandatory lifetime registration for sex offenders. Defendant argues only that there is no clear national consensus as to the efficacy of sex offender registries and that only 18 states maintain a sex offender registry. However, as discussed earlier, lifetime registration for sex offenders is not unique to Michigan.[4] Defendants across the states who engage in conduct similar to defendant are routinely required to register for life, even if defendants in other states are afforded greater latitude to petition for removal from the registry. Thus, while sex offender registry requirements vary across states, there exists no national consensus against mandating lifetime registration for sex offenders.

[4] See Collateral Consequences Resource Center, *50-State Comparison: Relief from Sex Offense Registration Obligations* <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/> (last accessed September 30, 2021) (comparing sex offense registration obligations across the states).

Second, defendant has failed to demonstrate that mandatory lifetime registration for sex offenders violates the United States Constitution in light of the Eighth Amendment's text, history, meaning, and purpose. The Eighth Amendment is meant to ensure criminal punishments are proportionate to a defendant's offense. *Graham*, 560 US at 60. Considering the "frightening and high risk of recidivism" among sex offenders and the severity and lasting impact of sex offenses, *McKune*, 536 US at 32-34, as well as the potential deterrent effect of registries, we do not think that a mandatory lifetime registration requirement contradicts the purpose of the Eighth Amendment. For these reasons, we hold that SORA's mandatory lifetime registration requirement does not constitute cruel and unusual punishment in violation of the United States Constitution.

Lastly, we now turn to defendant's second set of arguments, and hold that requiring defendant to submit to electronic monitoring for the rest of his life is not cruel or unusual punishment under the Michigan Constitution nor cruel and unusual punishment under the United States Constitution, nor is it an unreasonable search under the United States Constitution.[5] This Court upheld MCL 750.520c(2)(b) against these same challenges in *Hallak*, 310 Mich App at 571-577. Under the rule of stare decisis, we are obligated to follow *Hallak*. MCR 7.215(C)(2).

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Mark T. Boonstra

[5] While defendant did not specifically clarify whether he is challenging SORA's mandatory monitoring provision facially or as applied to him or both, we need not address the issue because of *Hallak*'s binding effect on the issues. *Hallak*, 310 Mich App at 571-577.