

IN THE IOWA SUPREME COURT

NO. 20-0353
CIVIL

DENNIS BECHER
APPLICANT-APPELLANT
v.
STATE OF IOWA
RESPONDENT-APPELLEE.

APPEAL FROM THE IOWA DISTRICT COURT OF DUBUQUE COUNTY
HONORABLE MICHAEL J. SHUBATT

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE ISSUES

- I. THE DISTRICT COURT IMPROPERLY INTERPRETED THE LEGISLATIVE PURPOSE OF IOWA CODE SECTION 692A.128, APPLIED AN IMPROPER LEGAL STANDARD IN CONSIDERING AND DENYING MR. BECHER'S REQUEST FOR SEX OFFENDER REGISTRY MODIFICATION AND THEREFORE ABUSED ITS DISCRETION.

Iowa Code Section 692A.128

Iowa Code Section 692A.128(2)(a-e)

In re A.J.M., 847 N.W.2d 601, 605 (Iowa 2014)

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- II. EVEN IF THE DISTRICT COURT APPLIED THE PROPER LEGAL STANDARD ITS CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE COURT THEREFORE ABUSED ITS DISCRETION IN DENYING MR. BECHER'S APPLICATION TO MODIFY.

State v. Valin, 724 N.W.2d 440 (Iowa 2006)

State v. Gomez Garcia, 904 N.W.2d 172, 177 (Iowa 2017)

ROUTING STATEMENT AND REQUEST FOR ORAL ARGUMENT

The issues raised are important issues of first impression for this Court. The text of Iowa Code Section 692A.128 provides no guidance for a district court's exercise of its discretion in considering a sex offender's application to modify his/her registration requirements. The district court said as much in its Ruling. There is no appellate caselaw on the matter either. The Iowa Supreme Court should retain this case, interpret the legislative purpose behind Iowa Code Section 692A.128 and determine the proper legal standard district courts should employ in exercising their discretion under Iowa Code Section 692A.128¹. Appellant Dennis Becher, therefore requests that the Supreme Court retain jurisdiction. Mr. Becher additionally requests 15 minutes per side at oral argument.

¹ Undersigned Counsel litigates many of these cases every year and this issue consistently arises.

STATEMENT OF THE CASE

A. Nature of the Case

Mr. Becher appeals from rulings denying his Application to Modify Sex Offender Registration Requirements and his Motion to Reconsider and Enlarge the Court's Ruling.

B. Course of Proceedings and Disposition in District Court

Mr. Becher filed his Application to Modify (hereinafter Application) on October 29, 2019. He filed a Motion to Seal his Sex Offender Modification Evaluation on October 31, 2019. That Motion was granted on November 4, 2019. The Department of Correctional Services Evaluation was filed on November 6, 2019. The State filed a Resistance to the Application on December 4, 2019. Hearing on the matter was held on January 3, 2020. The Court denied the Application on January 14, 2020. Mr. Becher filed a Motion to Enlarge on January 15, 2020. Resistance to that Motion was filed on January 24, 2020. The Motion to Enlarge was denied January 29, 2020. A timely Notice of Appeal was filed on February 25, 2020.

STATEMENT OF THE FACTS

At age 33², Dennis Becher pled guilty to and was convicted of two counts of Sexual Abuse in the Third Degree on June 2, 2000 (less than three months after he was charged) for touching his step-daughter. Mr. Becher was sentenced to consecutive terms of ten-years imprisonment, for a term of twenty-years. Mr. Becher discharged his sentence while in prison on May 10, 2009. (CA³5-9). He was subsequently released. While in prison Mr. Becher participated in and completed at least fifteen (15) treatment programs⁴. Id. His prison discharge report stated as follows:

The offender has done well at MPCF. He has worked as an offender clerk for over four years. He has done an above average job in treatment. In eight years of incarceration, he has not received any disciplinary reports. The offender has some connections to the Chapel and church groups in the area. He was able to balance God and treatment. He poured himself into treatment just as hard as he poured himself into church and his religious classes. Offender did complete a correspondence course in religious studies that is equivalent to an AA degree.

Id. After discharging his prison sentence, Mr. Becher became required to register as a sex offender with the State of Iowa Sex Offender Registry. (CA5-9). He has

² Mr. Becher is now age 53.

³ “CA” refers to the Confidential Appendix in this matter.

⁴ The evaluation further notes that he completed all required treatment. See Iowa Code Section 692A.128(2)(b).

been on the registry since June 2, 2009 and has never committed a violation of his registration requirements. Id.

In preparation for filing his Application, Mr. Becher obtained a clinical evaluation and risk assessment from the 1st Judicial District Department of Correctional Services, as designee for the Department of Corrections, as required by Iowa Code Section 692A.128(2)(c). Id. This evaluation was completed on September 4, 2019. The risk assessment portion of the Evaluation utilized three “static” risk assessments; the Static-99R, the ISORA and the Stable 2007. Id. Static risk assessments are risk assessments whose questions never change. The only thing that can change is the answers/data inputs.

The Stable 2007 is a risk assessment developed by Dr. Karl Hanson and Andrew Harris from their clinical research in the Dynamic Supervision Project. Mr. Becher scored a low risk to reoffend on this risk assessment tool. Id. When this tool is combined with the Static-99R, discussed infra, for a more comprehensive risk profile, Mr. Becher also scored as a low risk to reoffend. Id.

The ISORA is a risk assessment that was developed by the Iowa Division of Criminal and Juvenile Justice Planning Office and normed and validated in Iowa, using Iowa registrants/offenders. Id. This is the only risk assessment tool normed and validated in Iowa, by the State of Iowa, for Iowa offenders. Mr. Becher again scored in the low risk level to reoffend. When the ISORA is combined with the

Static-99R for a more comprehensive risk profile, Mr. Becher again scores as a low risk to reoffend. Id.

The Static-99R is a risk assessment that was developed in Canada and has been validated across a number of jurisdictions, including Iowa. Id. The risk levels in the Static-99R include Level IV(b) – well above average risk, Level IV(a) – Above average risk, Level III – average risk, Level II – below average risk and Level I – very low risk. Id. Thus, there is not a “low risk” category for the Static-99R. Id. Additionally, the Static-99R coding book, requires an evaluator to look at time an offender has spent offense free in the community in assessing a person’s overall risk. Id. This is because the Static-99R is ONLY validated for offenders at the time of release (from prison) into the community. Id. For every five years in the community offense-free, the offenders risk halves. Id. Thus, while Mr. Becher scored a zero (0) on the Static-99R, placing him the “below average risk” category, when his Static-99R score is considered in light of his time offense free in the community (ten years), his actual risk of reoffending falls to the very low risk category. Id. As the psychologist noted in the Evaluation: “Using the Years Sexual Offense Free in the Community (graph attached), Mr. Becher’s score of 0 on the Static-99R, though unchanging (static) actually reflects a risk Level I when considering the amount of time that has passed since his offense release.” Id. Mr.

Becher therefore, scores a “very low risk” to reoffend on the Static-99R when considered in light of his time offense free in the community.

At the hearing on the Application, Mr. Becher and his friend/mentor, Ed Bateman were the only witnesses. Mr. Becher testified that he spent nine-years and two months in prison. (CA16). He testified that he completed all required treatment in prison and a polygraph. (CA16). He further testified that he is a Tier III registrant and has been on the Sex Offender Registry since 2009. (CA15). He also testified he lives in Dubuque County, Iowa. (CA24).

Moreover, Mr. Becher testified that he has been gainfully since his release from prison. (CA18). He testified that he has not committed any new criminal offenses, of any variety, since his underlying sex offense. (CA18). He testified that he was married for eight years from 2009 to 2017 and that his wife was aware of his registration status. (CA14-15). He is also currently engaged to a woman he has been involved with for over seventeen (17) months and she is aware of his registration status. Id.

Next, Mr. Becher testified that he learned a great many things from his treatment in prison. (CA16-18). Mr. Becher learned about empathy, his anger and resentment from childhood and how those things contributed to his offense. Id. He also learned positive ways of coping with those feelings. Id. He was able to openly talk about what he did and express that his victim is still a victim even today.

(CA27-28, 32). Mr. Becher also testified that he does not have any desire to reoffend. (CA36). Mr. Becher also testified that his mental health is stable, he has a great support system and knows how to handle times when he is feeling depressed. (CA36-37).

The only other witness to testify was Ed Batemen. Mr. Bateman worked with Mr. Becher as his pastor, counselor and teacher while in prison and they are now close friends. (CA40-42). Mr. Batemen is eighty-seven years old and continues to work as a volunteer chaplain in the Iowa Prison system. (CA39). Mr. Bateman had good things to say about Mr. Becher and was emphatic that of all the inmates he had worked with over fifty to sixty years, he had no doubt Mr. Becher would not reoffend. (CA43). In fact, he would bet his life on it. Id.

ARGUMENT

I. THE DISTRICT COURT IMPROPERLY INTERPRETED THE LEGISLATIVE PURPOSE OF IOWA CODE SECTION 692A.128, APPLIED AN IMPROPER LEGAL STANDARD IN CONSIDERING AND DENYING MR. BECHER'S REQUEST FOR SEX OFFENDER REGISTRY MODIFICATION AND THEREFORE ABUSED ITS DISCRETION.

The district court, in its order denying Mr. Becher's Petition, found that, "The language of §692A.128 is discretionary and provides no guidance as to what the Court should consider in making its decision." This is not entirely correct. There are criteria set forth in §692A.128 the district court must consider in making

its modification decision. §692A.128(2)(a-e). Moreover, even if the decision is largely discretionary, the “absence of statutory guidelines” does “not permit the discretion to be based on an erroneous interpretation of application of the statute.” In re A.J.M., 847 N.W.2d 601, 605 (Iowa 2014). Though, no case exists which interprets how the Court is to wield the discretion given it in §692A.128, the analogous juvenile waiver provision in §692A.103(3), as interpreted in In re A.J.M., provide an excellent analytical framework for interpreting §692A.128. Mr. Becher argues here, as he did in the district court, that the overall purpose of Chapter 692A is protection of the public, the legislative purpose is to relieve the requirements of registration for individuals not likely to reoffend, and that the legal standard the court must apply is to determine whether an individual is likely to reoffend. Thus, a proper interpretation of §692A.128, in accord with the legislative purpose of the statute and application of the correct legal standard, requires the district court to first consider whether the threshold criteria in §692A.128(2)(a-e) have been satisfied and then consider whether Mr. Becher is likely to reoffend in light of all the evidence presented.

A. Standard of Review

The standard of review in this case is two-fold. When the interpretation of a statute is at issue the standard of review is for correction of errors at law. State v. Coleman, 907 N.W.2d 124 (Iowa 2018). When the district court is engaged in an

exercise of its discretion the review is for an abuse of that discretion. State v. Valin, 724 N.W.2d 440 (Iowa 2006). Moreover an, “Abuse of discretion occurs when a district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law.” State v. Gomez Garcia, 904 N.W.2d 172, 177 (Iowa 2017)(citations omitted).

B. Error Preservation

Error was preserved by the filing of the Petition, hearing on the Petition and by the filing of the Motion to Reconsider and Enlarge the Court’s Ruling⁵.

C. The Iowa Supreme Court’s Interpretation of the Juvenile Waiver Provision in §692A.103(3) Informs the Legal Standard for Modification in §692A.128.

In, In re A.J.M., the Iowa Supreme Court interpreted the purpose of legal standards to be employed, in the juvenile waiver provision under §692A.103(3)⁶. A.J.M. involved a challenge by the State, to the juvenile court’s waiver of A.J.M.’s requirement to register. Id. at 602. The State claimed on appeal that the juvenile court abused its discretion in waiving the registration requirement. Id. at 604. That

⁵ Specifically addressing the statutory interpretation issues raised herein.

⁶ §692A.103(3) states: A juvenile adjudicated delinquent for an offense that requires registration shall be required to register as required in this chapter unless the juvenile court waives the requirement and finds that the person should not be required to registers under this chapter.

statute, like the one at issue here, does not contain any “specific guidelines” for courts to employ in exercising their discretion, *Id.* at 605. However, the Court noted that the lack of specific guidelines does not mean the court’s discretion is “unbridled.” *Id.* That discretion must be based on a proper “interpretation or application of the statute.” *Id.* Thus, the Court determined to construe the statute and the applicable legal standards, “in light of the legislative purpose” of the statute. *Id.*

The Court begins by noting that the “paramount purpose of the sex offender registry requirement is to protect society from sex offenders after they have been released back into society following disposition of their case.” *Id.* at 604 (citations omitted). The Court then goes on to interpret the specific legislative purpose of the waiver provision. *Id.* at 605. The Court discusses research regarding recidivism risks for juveniles before concluding that,

It is reasonable to conclude that our legislature would have considered this research as the purpose for enacting the waiver provisions. While sex offender registration exists to protect the public from reoffenders, protection can also be achieved by the lower risk of recidivism for juveniles. Thus, the purpose of the statutory waiver of registration is to relieve juveniles who are not likely to reoffend of the requirement to register as a sex offender.

Id. at 605-06. Having interpreted the legislative purpose of the statute the Court goes on to set forth the legal standards for courts to apply,

Accordingly, the legal standard for waiver under the statute is guided by public protection. Waiver is available when the juvenile court

“finds” in its discretion that the eligible juvenile is not likely to reoffend. If an eligible juvenile is not initially granted a waiver under this standard, the juvenile may then move to modify or suspend to obtain relief from the consequences of registration. *See id.* 692A.103(5). In this way, juveniles who must register can still minimize or alleviate some of the consequences of registration.

In applying these standards, it is important to recognize it is possible for any juvenile sex offender to reoffend. Yet, the mere possibility of reoffending does not preclude waiver or subsequent modification. The standard intended by our legislature is built on a likelihood of reoffending. This means the risk of reoffending would be “probable or reasonably to be expected.” *Cf. In re Foster*, 426 N.W.2d 374, 377 (Iowa 1988) (considering the word “likely” in a statute to mean “probable or reasonably to be expected”). While the standard is not exact, neither is the protection registration affords the public. Registration does not eliminate the risk for an offender to reoffend. There is much at stake for both the juvenile and the public in the analysis, which explains the discretion given to juvenile courts to make the decision by balancing all considerations.

Id. at 606–07. Thus, the purpose of the juvenile waiver statute is to relieve juveniles who are not likely to reoffend of the requirements to register. This is consistent with the overarching purpose of Chapter 692A, protection of the public, because only persons with a low likelihood of re-offense are waived. The legal standard, consistent with the purpose of the statute, a court must employ is exercising its discretion to waive a juvenile, is whether or not the juvenile is likely to reoffend. The district court’s failure to employ this standard is an error of law and constitutes a per se abuse of discretion.

D. The Legislative Purpose of §692A.128, Like §692A.103(3), is to Relieve Those Persons who are Not Likely to Reoffend, from the Requirement to Register.

The Iowa Supreme Court is clear that the overarching purpose of Chapter 692A is protection of the public; something the district court correctly noted in its ruling. *Id.* at 604. (A⁷6-8). However, that is where the district court stopped its analysis of the legal standards it must employ in exercising its discretion. The district court, noting that the statute offers no specific guideline for the exercise of its discretion, made no attempt to discern the specific legislative purpose of §692A.128 to inform its exercise of its discretion. This is where the rails went off the track.

The district court's application of its discretion cannot be based on an incorrect interpretation or application of the statute. *A.J.M.*, 847 N.W.2d at 605. It is true that §692A.128 does not contain specific guidelines on the ultimate exercise of the court's discretion. However, unlike §692A.103(3) it does set forth a number of initial criteria the Court must consider in making its modification determination. This criteria, contained in §692A.128(2)(a-e), are almost all geared toward the likelihood of re-offense⁸. In evaluating the legislative purpose of the statute, these criteria are important. That all of the initial considerations for modification

⁷ "A" refers to the Appendix in this matter.

⁸ §692A.128(2)(a) – time on the registry, (b) successful completion of treatment, (c) risk assessment, (d) incarceration.

surround the likelihood of re-offense, makes it highly probable that the purpose of the statute is to provide those individuals who are a low risk to reoffend, relief from the registration requirements.

This legislative purpose is bolstered by the academic research regarding recidivism generally, and as offered by the evaluator in the evaluation. It is well known that recidivism rates decline for those who have successfully completed treatment. It is also well known that this is the reason treatment is required for sex offenders. In fact, the legislature even prohibits the earning of good time credits for sex offenders until after they have completed sex offender treatment. Iowa Code Section 903A.2(1)(a)(2). Thus, successful completion of treatment, a requirement for modification, results in a lower likelihood of re-offending.

Moreover, according to Mr. Becher's evaluation, the research shows that the more time a person is offense free in the community, the lower their recidivism rate⁹. A person on the registry cannot apply immediately to be removed. Lower level offenders (Tier I) must wait two years and more serious offenders (Tiers II and III) must wait five years from release to apply. Thus, the longer a person is on the registry, offense free, the lower the likelihood of reoffending.

⁹ Presumably, just as the Court found it reasonable to assume that the legislature was cognizant of the research presented in A.J.M., so too is it reasonable to presume the same in this case.

Unlike §692A.103(3), the legislature spells out primary considerations modification – the likelihood of reoffending. Thus, it stands only to reason that the purpose of this statute is to relieve those persons who are not likely to reoffend from the requirement to register. In fact, the Iowa Court of Appeals said as much, in an unrelated constitutional challenge to Chapter 692A.

The district court ruled that the current statutory scheme in Iowa Code chapter 692A does not violate Cox's constitutional right to due process as the 2009 enactment includes section 692A.128, which provides Cox with the ability to file an application with a court requesting relief from the lifetime sex offender registration requirement.⁷ Since Cox has this remedy available through the district court, he is not subjected to lifetime registration as a sex offender; if he complies with the statutory requirements, which do not appear to be onerous, he may have his registration requirement lifted by the court. The requirements set out in section 692A.128(2)(a)-(e) include completion of sex offender treatment and a risk assessment of likelihood to reoffend. These requirements appear reasonably related to the purpose of the statute, both in requiring registration of sex offenders and in making an individualized assessment whether the person is no longer a risk to the community and need no longer register.

State v. Cox, 908 N.W.2d 882 (Table), *5 (Iowa Ct. App. 2017)(unpublished opinion). The legislative purpose of §692A.128 is to relieve those persons who are not likely to reoffend from the requirement to register.

E. The Legal Standard the District Court Must Apply in Exercising Its Discretion Under §692A.128 is to Determine Whether the Applicant is Likely to Reoffend.

If the purpose of the statute is to relieve those not likely to reoffend from the registration requirements, then like the juvenile waiver provision, the legal standard must be to determine whether the applicant is likely to reoffend. In this case, the district court employed a nebulous, persuasive reason standard, without explaining how its standard is related to the legislative purpose of the statute. The court seems, without explanation, to have required Mr. Becher to offer some unknown, but “persuasive reason” to be relieved of his requirement to register¹⁰, regardless of his likelihood of reoffending. The dangers of this approach are clear in the district court’s ruling.

In its ruling, the district court finds that Mr. Becher has not had a difficulty complying with the registration requirements and that the requirements have not seriously impacted his Mr. Becher’s life¹¹. (A6-8). These facts, one would generally think to be considered positive factors, weighing in favor of modification. These facts indicate Mr. Becher is compliant, socially adjusted and capable of following the rules without consternation. However, the district court

¹⁰ Even if undersigned counsel had known this would be the legal standard the district court would employ, he still would have no idea what constitutes a persuasive reason in the court’s mind.

¹¹ Though Mr. Becher contests that these findings are fully supported by the record.

used these facts to conclude that Mr. Becher essentially, has not been oppressed by the registration requirements and therefore should not be modified¹². But consider the converse: Had Mr. Becher had a difficult time complying with the registration requirements, such that he had a scattered work history, did not own a home, etc. the district court surely would have found those facts to weigh against modification. To permit a court to assign inherently positive facts as reasons to deny modification, perverts the purpose of the statute.

In any case, the persuasive reason standard applied by the district court in this case does not reflect the legislative purpose of the statute. The evidence presented in this case is that Mr. Becher had a low risk - risk assessment, has faithfully complied with all registration requirements, completed all treatment and made a life for himself, in spite of the hardships registration confers. His likelihood of re-offense is low, and he is exactly the type of individual for whom, as evidenced by the legislative purpose, this statute exists. In considering Mr. Becher's Petition, the district court applied an improper legal standard in exercising its discretion and therefore abused that discretion. This decision of the district court must be reversed. Applying the correct legal standard, whether Mr.

¹² Undersigned makes the professional statement that has received multiple rulings, in other cases, from different district courts, with similar conclusions.

Becher is likely to reoffend¹³, the record is clear that Mr. Becher's Petition should have been granted.

F. Application of the Proper Legal Standard, Whether Mr. Becher is Likely to Reoffend, to Mr. Becher's Petition

a. The Threshold Considerations of Iowa Code Section 692A.128

§692A.128 contains a number of requirements the Court must consider and which must be satisfied before the Court can grant a modification. These criteria set forth in §692A.128(2) are the threshold criteria the Court must considering in exercising its discretion and making its modification decision. Under §692A.128(2)(a) five years must have passed before a Tier III registrant such as Mr. Becher is granted a modification. Under §692A.128(2)(b) Mr. Becher must have completed all required sex offender treatment. §692A.128(2)(c) requires to Court to consider whether Mr. Becher has completed a risk assessment, validated by the Iowa Department of Corrections and is deemed a low risk to reoffend. Mr. Becher must not be incarcerated per §692A.128(2)(d). Finally, §692A.128(2)(e) is not applicable because Mr. Becher is not currently under supervision. Iowa Code Section 692A.128(6). See, State v. Iowa Dist. Court ex rel. Story County, 843

¹³ In this case, Mr. Becher has asked to be removed from the Registry altogether. Thus, the inquiry is the likelihood of re-offense generally. It is possible to ask for a narrower modification, such as to be relieved of the various distancing requirements. The standard in such a case would be the likelihood of re-offense absent those requirements.

N.W.2d 76 (Iowa 2004)¹⁴. In this case the district court abused its discretion in its consideration of the criteria listed in §692A.128(2)(c) & (e) – that Mr. Becher must have completed a risk assessment and been determined to be a low risk to reoffend and that the Department of Correctional Services stipulate to the modification.

Firstly (in reverse order), the district court noted in its reason for denial of the Petition that the Department of Correctional Services had not stipulated to the modification. (A7). The district court apparently misapprehends the criteria. As noted above no such stipulation is required when the registrant is no longer under supervision. Mr. Becher, therefore, is not required to obtain a stipulation from the Department of Corrections and it is not mention in the evaluation.

As for §692A.128(2)(c) there is simply no way to read the Department’s evaluation and conclude Mr. Becher is not a low risk. With due respect to the district court, the court cherry picked one risk assessment, the Static-99R, out of the three (not even including the combined scores), took it out of its proper context and relies on it to suggest Mr. Becher is not a low risk. (A6-8). The Static-99R scored Mr. Becher in the Level II or “below average risk category”. (CA5-9). The only lower category is the Level I – “very low risk” category. *Id.* However, Mr. Becher’s Static-99R score does not account for time offense free in the community,

¹⁴ The risk assessment/evaluation indicates that all criteria have been satisfied. (CA5-9).

as the Static-99R is only normed and validated at the time of release from prison. Id. Thus, even the coding manual for the Static-99R says a person's actual risk must be measured in conjunction with time offense free in the community. Risk levels halve for every five-years offense free in the community and in this case, having been ten-years offense free in the community, Mr. Becher's score is actually a "Level I – very low risk" Id. Additionally, Mr. Becher scored "low risk" on the ISORA, the Stable 2007 and all of the combined assessment measurements. Id. Finally, the district court's conclusion directly contradicts the evaluator's conclusion that Mr. Becher is a low risk and satisfied this requirement for modification. Thus, the district court abused its discretion in finding Mr. Becher was not a low risk to reoffend. (CA5-9, A6-8). Mr. Becher satisfied the threshold considerations and is eligible for modification.

b. Whether Mr. Becher is Likely to Reoffend in Light of All the Evidence

Mr. Becher is not likely to reoffend in light of all of the evidence. The only evidence in this case consisted of the risk assessment evaluation, Mr. Becher's testimony and Mr. Bateman's testimony. The record is rather short and the testimony, as detailed above in the facts, demonstrates that the evidence supports Mr. Becher's Petition. Twenty-years have passed since Mr. Becher's offense. (CA5-9). He has lived offense free in the community for ten years. (CA5-9). He completed all required treatment. (CA5-9). His

thorough evaluation conducted by the First Judicial District Department of Correctional Services demonstrates that he is unlikely to reoffend based on the most current academic literature. (CA5-9). Mr. Becher has been gainfully employed since his release from prison. (CA18). He has an established support system. (CA36-37). Mr. Becher was able to verbalize what he learned from his treatment and expressed sincere remorse. (CA16-18). Importantly, he still views his victim as a victim, even today. (CA27-28, 32).

Simply put, no evidence was presented that Mr. Becher is anything other than unlikely to reoffend. The State¹⁵, offered no affirmative evidence. It cross examined both Mr. Becher and Mr. Bateman but elicited no evidence that Mr. Becher was likely to reoffend¹⁶. The State did not call the evaluator. It did not question the propriety of the risk assessment tools nor the evaluator's conclusions. The State did not elicit, offer nor establish any contradictory testimony or evidence. If such existed, that was the State's burden to produce in resisting the Petition. Thus, when considered in light of all the evidence, the district court abused its discretion in denying Mr. Becher's Petition.

¹⁵ §692A.128 does not authorize the State's intervention in these cases. However, that issue was not raised nor preserved for review.

¹⁶ A.J.M. defines likely as "probable or reasonably to be expected." Id. at 606.

II. EVEN IF THE DISTRICT COURT APPLIED THE PROPER LEGAL STANDARD ITS CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE COURT THEREFORE ABUSED ITS DISCRETION IN DENYING MR. BECHER'S APPLICATION TO MODIFY.

A. Error Preservation

Error was preserved by the filing of the Petition, hearing on the Petition and by the filing of the Motion to Reconsider and Enlarge the Court's Ruling.

B. Standard of Review

When the district court is engaged in an exercise of its discretion the review is for an abuse of that discretion. State v. Valin, 724 N.W.2d 440 (Iowa 2006).

Moreover an, "Abuse of discretion occurs when a district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law." State v. Gomez Garcia, 904 N.W.2d 172, 177 (Iowa 2017)(citations omitted).

C. The District Court's Findings are Not Supported By Substantial Evidence and Therefore, the District Court Abused Its Discretion

The district court's basis for denying Mr. Becher's Petition is set forth in the final full paragraph of the Order Denying:

In this case, the Court heard no persuasive reason as to why Becher should not be required to continue to adhere to sex offender registration requirements. The director of the department of correctional services does not stipulate to the modification. The

assessment that was performed indicates that the risk of him reoffending is “below average” as opposed to “very low.” The registration requirement has not prevented Becher from living his life; he has been able to purchase a home, travel and find employment. The Court will not remove the protection that the registration requirement affords the community simply because Becher, who put himself in this position by sexually abusing a child, is a “below average” risk to reoffend.

As detailed in section I(F)(a) supra, the Court’s finding regarding the stipulation and level of risk are not supported by the evidence, let alone substantial evidence.

Additionally, as detailed in section I(E) supra, the fact that Mr. Becher has been able to find employment and a home are not factors that weigh in favor of continuing registration. It is untenable for a court to rely on the fact that an individual has made a decent life, and become a contributing, productive and well-adjusted member of society, as a basis for denying modification. These are persuasive reasons why registration is no longer needed.

Thus, all that is left is the nature of the offense itself. If that nature of the offense is a proper consideration on which to base the court’s exercise of its discretion, then it would be almost impossible for any individual to be modified. All sex crimes are heinous. The legislature did not except certain crimes from modification. It established a framework based on risk, not on the type of sex crime. Reliance on the underlying crime is therefore, untenable. Thus, the district court abused its discretion in denying Mr. Becher’s Petition and its ruling should be reversed.

III. CONCLUSION

For all of the aforementioned reasons, the district court erred in its application of law and abused its discretion in denying Mr. Becher's Petition. The district court should be reversed and an Mr. Becher's Petition should be sustained on the record presented.

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CERTIFICATE OF FILING

The undersigned does hereby certify that she electronically filed Appellant's Final Brief with the Clerk of the Iowa Supreme Court by using the EDMS filing system on the 1st day of October, 2020.

CERTIFICATE OF SERVICE

On the 1st day of October, 2020, the undersigned party served Appellant's Final Brief on all other parties to this appeal by using the EDMS filing system.

John Lundquist

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS
AND TYPE-VOLUME LIMITATION FOR BRIEFS**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in Times New Roman in 14 point font size and contains 5,343 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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