

No. 18-7217

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 2018

-----

C.G., (a minor), Petitioner

v.

STATE OF NEW JERSEY, Respondent

-----

RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITIONER'S WRIT OF CERTIORARI

-----

DAVID C. HUMMEL  
Special Deputy Attorney General  
Acting Assistant Prosecutor  
Attorney for Respondent  
The State of New Jersey  
(908) 527-4562

QUESTION PRESENTED

Whether the State's prohibition of jury trials in juvenile proceedings violates the federal constitutional right to a jury trial, due process of law or equal protection.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE.....	1
ARGUMENT.....	6
CONCLUSION.....	15

## TABLE OF AUTHORITIES

**Page:**

### **Cases:**

<i>Doe v. Poritz</i> ,	
142 N.J. 1 (1995) .....	13
<i>In re Registrant J.M.</i> ,	
167 N.J. 490 (2001) .....	13
<i>In the Matter of L.M.</i> ,	
286 Kan. 460, 186 P.3d 164 (Kan. 2008) .....	passim
<i>In the Matter of Registrant J.G.</i> ,	
169 N.J. 304 (2001) .....	passim
<i>McKeiver v. Pa.</i> ,	
403 U.S. 528 (1971) .....	passim
<i>Nieder v. Royal Indem. Ins. Co.</i> ,	
62 N.J. 229 (1973) .....	7
<i>State ex rel. A.C.</i> ,	
424 N.J. Super. 252 (App. Div. 2012) .....	passim
<i>State ex rel. C.V.</i> ,	
201 N.J. 281 (2010) .....	10, 12
<i>State ex rel. J.P.F.</i> ,	
368 N.J. Super. 24 (App. Div. 2004) .....	13
<i>State ex rel. P.M.P.</i> ,	
200 N.J. 166 (2009) .....	8
<i>State in Interest of C.K.</i> ,	
233 N.J. 44 (2018) .....	passim
<i>State in the Interest of J.W.</i> ,	
57 N.J. 144 (1970) .....	8, 9

### **Statutes:**

N.J.S.A. 2A:4A-20 to -92 .....	11
N.J.S.A. 2A:4A-21(b) .....	11
N.J.S.A. 2A:4A-40 .....	3, 6, 8
N.J.S.A. 2A:4A-43(b) .....	12
N.J.S.A. 2C:7-1 to -23 .....	4
N.J.S.A. 2C:14-2(a)(1) .....	1
N.J.S.A. 2C:14-2(b) .....	1
N.J.S.A. 2C:7-2(g) .....	14

### **Rules:**

Pressler & Verniero, <i>Current New Jersey Court Rules</i> ,	
cmt. 1 on <u>R.</u> 5:21-7 (2018) .....	8

### STATEMENT OF THE CASE

On September 27, 2016, the Superior Court, Chancery Division, Family Part, Union County, issued Union County Juvenile Complaint No. FJ-20-202-17, charging juvenile-appellant C.G. for acts which, if committed by an adult, would constitute the crime of first-degree aggravated sexual assault, contrary to *N.J.S.A. 2C:14-2(a)(1)* (count one), and second-degree sexual assault, contrary to *N.J.S.A. 2C:14-2(b)* (count two). (Pet. App. A at 1a-2a).

Petitioner did not request a jury trial and the parties appeared before the Honorable Candido Rodriguez, Jr., J.S.C., for a bench trial on May 1, 2, 3, 4, 8, and 9, 2017. On May 9, 2017, Judge Rodriguez adjudicated the juvenile delinquent as charged. (Pet. App. A at 2a). The evidence at trial established that the victim, A.G., told her babysitter, and subsequently her mother, R.R., that her boyfriend, C.G. made her perform oral sex on him. *Id.* R.R. told the victim's father, Y.G., and they met at the hospital so that A.G. could be examined. *Id.* At that time, the juvenile, seventeen-year-old C.G., lived with his mother, Y.G.'s sister, in Elizabeth, New Jersey.

A.G. testified at trial and, in evaluating the credibility of the victim, Judge Rodriguez found that A.G. never changed her

view that C.G. put his penis in her mouth. "From day one, she indicated it. She indicated at the hospital. She indicated it to her mother. She indicated it to the father. She indicated to the detective. She never one moment changed that." (Pet. App. A at 2a-3a). The judge referenced various consistencies in the victim's testimony that enhanced her credibility. *Id.* The judge found beyond a reasonable doubt that C.G. inserted his genitals in the victim's mouth. *Id.*

On May 31, 2017, the juvenile appeared before Judge Rodriguez for the disposition hearing. (Pet. App. A at 4a). Judge Rodriguez merged count two into count one and sentenced the juvenile to thirty-six months in an intensive, supervised, sexual assault therapy program. *Id.* The judge recommended that the juvenile be placed in a residential fields program, and he ordered that the juvenile comply with Megan's Law. *Id.* The judge further ordered that C.G. complete anger management training, have no contact with the victim or with children under the age of eleven, and pay the requisite fines and penalties. *Id.* C.G. was subject to Megan's Law, N.J.S.A. 2C:7-1 to -23. (Pet. App. A at 5a).

Petitioner appealed his conviction to the Superior Court, Appellate Division, arguing for the first time that New Jersey's blanket ban on jury trials for juveniles deprived C.G. of the

right to a jury trial, due process and equal protection under the United States and New Jersey Constitutions. *Id.* The Appellate Division thoroughly reviewed petitioner's claim and affirmed the adjudication of delinquency. (Pet. App. A at 1a-14a).

The Appellate Division stated in its opinion, that while appellate courts generally decline to address allegations not raised before the trial courts, the court would address petitioner's constitutional challenge because it potentially implicated a substantial public interest. (Pet. App. A at 6a). The court relied upon its recent decision in *State ex rel A.C.*, 424 N.J. Super. 252 (App. Div. 2012), which addressed whether N.J.S.A. 2A:4A-40 violated a juvenile's constitutional right to a jury trial. The court noted that in *A.C.* the Appellate Division recognized the "fundamental differences between th[e] State's adult and juvenile adjudication systems," and rejected *A.C.*'s argument that the juvenile system had become comparable to the adult system. *Id.* The court specifically looked to the fact that in *A.C.*, the juvenile faced up to twenty years in prison if he chose to go to trial as an adult, rather than four years in a juvenile facility if he was tried in the juvenile system. The court reiterated that this stark contrast

illustrated the important distinction between the adult and juvenile systems. (Pet. App. A at 7a).

The Appellate Division also looked to the New Jersey Supreme Court's decision in *In the Matter of Registrant J.G.*, 169 N.J. 304 (2001), in which the Court expressly addressed and reconciled the application of Megan's Law to juveniles. *Id.* The court noted that in *J.G.*, the Court rejected the argument that subjecting juveniles over the age of fourteen to Megan's Law violated the rehabilitative philosophy and purpose of the juvenile justice system. (Pet. App. A at 7a).

The Appellate Division rejected petitioner's request that the court re-consider its decision in *A.C.*, 424 N.J. Super. 252, depart from the New Jersey Supreme Court's holding in *J.G.*, 169 N.J. 304, and be guided by the Kansas Supreme Court's decision in *In the Matter of L.M.*, 286 Kan. 460, 186 P.3d 164 (Kan. 2008) for guidance. (Pet. App. A at 7a).

The court noted that the Kansas Supreme Court found that the Kansas juvenile system had become more aligned with the adult system and no longer comported with the United States Supreme Court's rationale in *McKeiver*, 403 U.S. at 550, which "relied on the juvenile justice system's characteristics of fairness, concern, sympathy and paternal attention in concluding that juveniles were not entitled to a jury trial." (Pet. App. A



at 8a). Moreover, the court noted that it was not bound by the holding in *L.M.* *Id.*

Rather, the court reiterated its holding in *A.C.*, which addressed the same argument raised by petitioner, and found that juveniles do not have the right to a jury trial because of the distinction between the juvenile and adult systems; and that the age restraints on the application of Megan's Law to juveniles harmonizes Megan's Law with the rehabilitative intent of the juvenile system. (Pet. App. A at 9a).

In support of its holding, the court specifically looked to the New Jersey Supreme Court's recent decision in *State in Interest of C.K.*, 233 N.J. 44 (2018). The court reviewed the *C.K.* court's comprehensive analysis of the differences between the juvenile and adult systems. Specifically, the court highlighted that within the New Jersey juvenile system the "*rehabilitation and reformation of the juvenile remain a hallmark of the juvenile system*, as evidenced by the twenty enumerated dispositions available to the family court in sentencing a juvenile adjudicated delinquent." (Pet. App. A at 12a-13a). (Emphasis in original).

The court held that, given the express policy underlying the New Jersey Juvenile Code, petitioner's argument that the Code may be likened to the adult criminal justice process

ignores precedent, which expressly found the introduction of jury trials to be the catalyzing element converting a juvenile matter into an adult criminal prosecution. (Pet. App. A at 13a). The court further held that mandating a jury trial in juvenile matters would not only nullify the rehabilitative and reformatory purpose of the Code, it would deprive the juvenile system of its "flexibility" to achieve its policy goals. For these reasons, the court rejected petitioner's constitutional challenges to *N.J.S.A. 2A:4A-40*. *Id.*

Petitioner filed a petition for certification with the New Jersey Supreme Court, which was denied on September 20, 2018. (Pet. App. B at 1b).

#### ARGUMENT

For the first time on appeal, petitioner claims that the blanket ban on jury trials violated his right to due process of law and equal protection. Petitioner's claim, though, must be rejected where there is no constitutional right to a jury trial in New Jersey, and he never even requested a jury trial in the juvenile court.

1. Petitioner's complaint regarding his right to a jury trial on federal and state constitutional grounds is not properly before this Court since he did not ask for a jury trial or otherwise raise the jury trial issue in the trial court. *See*

*Nieder v. Royal Indem. Ins. Co.*, 62 N.J. 229, 234 (1973). As such, the trial court never had a chance to rule on the issue.

2. This Court has held that a juvenile does not have the Sixth Amendment right to a jury trial. *McKeiver v. Pa.*, 403 U.S. 528, 545 (1971). In *McKeiver*, the Court found the fact that the due process clause of the Fourteenth Amendment imposed the Sixth Amendment right to a jury trial upon the states in certain "criminal prosecutions" did not automatically require a jury trial in state juvenile delinquency proceedings. *Id.* at 545. The Court reasoned that the applicable due process standard was fundamental fairness and, to that end, the Court noted the requirements of notice, counsel, confrontation, cross-examination, and standard of proof in juvenile proceedings. *Id.* at 543. However, the Court determined that the legal system did not always regard a jury as a necessary component of accurate fact-finding and noted that juries were not required in equity, workmen's compensation, probate, or deportation cases. *Id.* The Court concluded that trial by jury in the juvenile court's adjudicative stage was not a constitutional requirement, particularly since requiring a jury trial might remake the juvenile proceeding into a fully adversarial process, complete with the "attendant delay, formality, and clamor of such process, and would effectively end the juvenile system's

idealistic prospect of an intimate, informal protective proceeding." *Id.* at 545-46, 550.

3. Pursuant to the New Jersey Code of Juvenile Justice, "All rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State, except the right to indictment, the right to trial by jury and the right to bail, shall be applicable to cases arising under this act." *N.J.S.A.* 2A:4A-40.

4. New Jersey courts consistently have recognized the fundamental differences between New Jersey's adult and juvenile adjudication systems. *In Re Registrant J.G.*, 169 N.J. 304, 321-25 (2001). Indeed, family part adjudications serve a different purpose than criminal trials, Pressler & Verniero, *Current New Jersey Court Rules*, cmt. 1 on R. 5:21-7 (2018), and both the New Jersey and United States Supreme Courts have held that juveniles are not constitutionally entitled to a jury trial "in the juvenile court's adjudicative stage." *McKeiver*, 403 U.S. at 545; *State in the Interest of J.W.*, 57 N.J. 144, 145-46 (1970); *In Re Registrant J.G.*, 169 N.J. at 338-39; *State ex rel. P.M.P.*, 200 N.J. 166, 174 (2009); Pressler & Verniero, cmt. 1 on R. 5:21-7.

5. In addressing the due process issues raised by petitioner, the New Jersey Superior Court, Appellate Division

first noted that it was bound by the decisions of the New Jersey Supreme Court in *State in the Interest of J.W.*, 57 N.J. 144, 145-46 (1970), and *In Re Registrant J.G.*, 169 N.J. 304, 338-39 (2001), and by the United States Supreme Court's decision in *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971), all of which held that juveniles are not constitutionally entitled to a jury trial "in the juvenile court's adjudicative state." A.C., 424 N.J. Super. at 254.

6. Further, the court correctly found that it had previously rejected the same arguments raised by petitioner in *State ex rel. A.C.*, 424 N.J. Super. 252 (App. Div. 2012). The court noted that in A.C. the Appellate Division addressed the fact that the "fundamental differences between th[e] State's adult and juvenile adjudication systems" have been affirmed by the New Jersey Supreme Court. The court observed that it had rejected A.C.'s argument that the juvenile system had become comparable to the adult criminal system and specifically referenced the vastly different sentencing structure of each system. The court properly observed that "choosing trial as an adult would 'up the stakes' from four years in a juvenile facility to twenty years in prison." *Id.* at 255. The disparity in sentencing "starkly illustrates an important distinction between the adult and juvenile justice systems." *Ibid.* Further

the court looked to the United States Supreme Court's decision in *McKeiver*, 403 U.S. at 545, which stated that if a jury trial was required as a "matter of constitutional precept," the juvenile proceeding would be remade into a fully adversary process and would put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding." *Ibid*.

7. Moreover, there are sound policy reasons justifying the prohibition of jury trials for juveniles. The New Jersey Supreme Court in *State ex rel. C.V.*, 201 N.J. 281, 295 (2010), stated "[t]he [juvenile] Code empowers Family Part courts handling juvenile cases to enter dispositions that comport with the Code's rehabilitative goals." Indeed, the C.V. court stated that the purpose of the Code is to preserve the family unit and rehabilitate juveniles in a manner consistent with the protection of the public. *Id.* at 295-96; *see also S. Judiciary Comm. Statement to Assem.*, No. 641 at 1 (1982).

8. Nonetheless, petitioner asked the court to disregard New Jersey Supreme Court and United States Supreme Court precedent and be guided by the Kansas Supreme Court's decision in *In the Matter of L.M.*, 286 Kan. 460, 186 P.3d 164 (Kan. 2008), which found that a juvenile had a right to jury trial based upon the changed purpose of the Revised Kansas Juvenile

Justice Code ("KJJC"). However, the *L.M.* court's decision was based upon a specific analysis of the law in that state. Indeed, the *L.M.* court recognized that there is 'wide variability in the juvenile offender laws throughout the country," yet the court found that the KJJC, in its "tilt towards applying adult standards of criminal procedure and sentencing, removed the paternalistic protections previously accorded juveniles while continuing to deny those juveniles the constitutional right to a jury trial." *Id.* at 471.

Conversely, the New Jersey Supreme Court in *C.K.*, 233 N.J. 44 (2018) recently revisited the differences between the juvenile and adult systems in New Jersey. The Court noted that "among the purposes of the Juvenile Code, N.J.S.A. 2A:4A-20 to -92, is "to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public." *Id.* at 67, quoting N.J.S.A. 2A:4A-21(b). Though the Court in *C.K.* acknowledged that the protection of the public has become a second purpose in the juvenile justice system, it noted that, nevertheless, "rehabilitation and reformation of the juvenile remain a hallmark of the juvenile system, as evidenced by the twenty

enumerated dispositions available to the family court in sentencing a juvenile adjudicated delinquent." *Id.* at 68; see *N.J.S.A.* 2A:4A-43(b); *State ex rel. C.V.*, 201 *N.J.* 281, 295 (2010). Further, the Court highlighted the fact that the range of dispositional options available to the court in a juvenile proceeding signifies that a "'one size fits all' approach" does not apply in the juvenile justice system. *Id.*, quoting *C.V.*, 201 *N.J.* at 296 (citations omitted). Accordingly the New Jersey juvenile system provides the court with flexibility in determining the suitable disposition for a juvenile offender, taking into account "the complex, diverse, and changing needs of youth" and addressing "the unique emotional, behavioral, physical, and educational problems of each juvenile before the court." *Id.* at 296.

9. Additionally, New Jersey's law prohibiting juvenile jury trials is not in conflict with federal circuit courts or the overwhelming majority of other state jurisdictions. Indeed, even the Court in *L.M.*, the case upon which petitioner relies, recognized the decision of other jurisdictions that have addressed this issue but declined to extend the constitutional right to a jury trial to juveniles. *L.M.*, 286 *Kansas* at 470-71 (citations omitted).



The New Jersey Appellate Division's decision here is consistent with the United States Supreme Court's holding in *McKeiver* as well as with New Jersey case law.

10. Petitioner also argues that a jury trial is necessary because of the application of Megan's Law to juveniles. This argument has also been previously rejected by the New Jersey Superior Court, Appellate Division and the New Jersey Supreme Court. *State ex rel. A.C.*, 424 N.J. Super. at 255-56. As New Jersey Courts have held, "Megan's Law clearly applies to juvenile offenders." *State ex rel. J.P.F.*, 368 N.J. Super. 24, 33 (App. Div. 2004); *In re Registrant J.G.*, 169 N.J. 304, 319 (2001). The purpose behind requiring an offender to register pursuant to Megan's Law is not punitive in nature, but it "is to protect the community from the dangers of recidivism by sexual offenders." *State ex rel. J.P.F.*, *supra*, 368 N.J. Super. at 35; *In re Registrant J.M.*, 167 N.J. 490, 495 (2001). As explained by the New Jersey Supreme Court in sustaining the validity of Megan's Law, "the Constitution does not prevent society from attempting to protect itself from convicted sex offenders, no matter when convicted, so long as the means of protection are reasonably designed for that purpose and only for that purpose, and not designed to punish." *Doe v. Poritz*, 142 N.J. 1, 12 (1995).

Thus, "[t]o achieve that goal, the Legislature established broad registration and community notification procedures, targeting all sex offenders including older juveniles and adult offenders convicted in the Law Division, juveniles adjudicated delinquent, and those charged with sex offenses but acquitted by reason of insanity." *In re Registrant J.G., supra*, 169 N.J. at 339.

Important to note, however, the New Jersey Supreme Court recognized the rehabilitative policy underlying the juvenile justice system and struck down the Megan's Law requirement for "categorical lifetime registration and notification requirements" for juvenile offenders pursuant to N.J.S.A. 2C:7-2(g) on due process grounds. *In re State ex re. C.K.*, 233 N.J. at 68, 75-77. Clearly, the New Jersey Supreme Court understood and maintained the different legislative purposes of the juvenile and adult justice systems.

In this case, the petitioner was sentenced to complete a thirty-six month intensive, supervised, sexual-assault therapy program. His sentence was not designed to be punitive in nature but, rather, it was a clear representation of a rehabilitative-style sentence. Additionally, the requirement to register pursuant to Megan's Law was not designed to be punitive, but its purpose is to protect the public. Thus, the application of

Megan's Law did not trigger a constitutional right to a jury trial, and the juvenile's arguments must be rejected.

CONCLUSION

The petition for a writ of certiori should be denied.

Respectfully submitted,

MICHAEL A. MONAHAN  
Acting Prosecutor of Union County

s/David C. Hummel

By: DAVID C. HUMMEL  
Special Deputy Attorney General/  
Acting Assistant Prosecutor  
Attorney ID No. 014891999

DCH/agh