No. _____

In The
Supreme Court of the United States

Christopher Lee Holloway,

Petitioner,

vs.

State of Minnesota,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-2723

Christopher Lee Holloway

Petitioner - Appellant
v.
State of Minnesota
Respondent - Appellee

Appeal from U.S. District Court for the District of Minnesota (0:20-cv-02334-MJD)

JUDGMENT

Before BENTON, ERICKSON, and GRASZ, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

September 21, 2021

Order Entered at the Direction of the Court: Clerk, U.S. Court of Appeals, Eighth Circuit.

United States District Court
District of Minnesota

Case No. 20-cv-2334 MJD/BRT

Christopher Lee Holloway,

Petitioner,

v.

State of Minnesota,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Report and Recommendation by United States Magistrate Judge Becky R. Thorson dated May 17, 2021. [Doc. No. 11] Petitioner has filed an objection to the recommendation that this Court deny his petition, and the recommendation that the Court not issue a certificate of appealability.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, and in consideration of the applicable law, the Court will adopt the Report and Recommendation in its entirety.

I. Equal Protection Challenge

A. Procedural History

Petitioner was convicted of one count of third degree criminal sexual conduct for engaging in sexual penetration with a victim who is at least 13 but less than 16 years of age in violation of Minn. Stat. § 609.344, subdiv. 1(b) and one count of fourth degree criminal sexual conduct for engaging in sexual contact with a victim being at least 13 but less than 16 years of age in violation of Minn. Stat. § 609.345, subdiv. 1(b). These statutes provide for a mistake-of-age defense only to those who are no more than 120 months older than the victim. Minn. Stat. §§ 309.344, subdiv. 1(b) and 609.345, subdiv. 1(b)[1]. At the time of the offense conduct, Petitioner was 44 years old and the victim was 14 years old. Because he was more than 120 months older than the victim, he could not assert the mistake-of-age defense.

Petitioner appealed his convictions and asserted the statutes of conviction violated his equal protection rights by limiting the mistake-of-age defense to those offenders less than ten years older than the victim. The Minnesota Court of Appeals affirmed his convictions, and after applying a rational basis review, rejected his argument that the statutes of convictions violated his equal protection rights. State v. Holloway, 905 N.W.2d 20, 22 (Minn. Ct. App. 2017) ("Holloway I").

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[1] Prior to 1975, Minnesota did not permit a mistake-of-age defense regarding sexual conduct with a person not of the age of consent. In 1975, however, the statutes were amended to permit a narrow mistake-of-age defense when the victim was at least 13 but less than 16 years old and the defendant was not in a position of authority. Holloway II, 916 N.W.2d at 345. In 2007, the statutes were again amended to further limit the defense to defendants who are no more than ten years older than the victim. Id.

Petitioner then appealed to the Minnesota Supreme Court, where he again asserted his claim that the statutes of conviction violated his equal protection rights. State v. Holloway, 916 N.W.2d 338, 347 (Minn. 2018) ("Holloway II"). The court determined that Petitioner's equal protection claim was subject to a rational basis standard, and further determined that "Minnesota's rational basis test is 'a more stringent standard of review' than its federal counterpart." Id. at 348 (citing In re Durand, 859 N.W.2d 780, 784 (Minn. 2015)).

The court then addressed the three requirements of Minnesota's rational basis test:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Id. at 349-350.

The court first determined that the State had a legitimate State interest in protecting minors, and that the legislative history of the amendment limiting

the mistake-of-age defense shows there were two purposes for limiting the defense.

> First, the Legislature sought to protect children by eliminating the defense for certain adults, and especially for adults who prey upon younger children. Second, by preserving the defense for teenagers and the youngest adults, the Legislature sought to protect from prosecution those defendants who might make a bona fide mistake during a romantic relationship. These are undoubtedly purposes that the Legislature can legitimately seek to achieve.

Id. at 349.

The court next determined whether the 120-month limitation on the mistake-of-age defense is manifestly arbitrary, noting that "[i]f the classification has some reasonable basis, it does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality." Id. (citation omitted). The court found there was a reasonable basis for the classification. First, it noted that the mistake-of-age defense is not available to anyone who engages in sexual contact or penetration with a child under 13. Id. Next, the court noted that when the child is between 13 and 16 years old,

> there is a limited mistake-of-age defense if the actor is close in age to the child, not in a position of authority, and not in a "significant relationship" with the child. See Minn. Stat. §§ 609.344–.345 (also stating that the maximum sentence the actor may face in these circumstances is

> 15 years imprisonment). Engaging in sexual conduct with a 16- or 17-year-old child may not be considered a criminal act, but if the child is 16 or 17 and the actor is in a position of authority or has a significant relationship with the child, the actor is guilty of criminal-sexual conduct, cannot assert a mistake-of-age defense, and faces a maximum sentence of 15 years imprisonment. *See* Minn. Stat. § 609.344, subd. 1(e).
>
> This statutory framework shows that the Legislature determined that the younger the child, the greater the legal protection needed. As the legislative history to the 2007 amendment reflects, the Legislature recognized that an actor who is an older teenager or young adult might, in good faith, mistake a 15-year-old for a 16- or 17-year-old while pursuing a romantic relationship. Allowing only a limited mistake-of-age defense balances these legitimate interests, and furthers the overarching purpose of the criminal-sexual-conduct statutes in a manner that is not manifestly arbitrary.

Id.

Finally, the court found that for the reasons discussed above, the classification was genuine and relevant to the purposes of the law. Id. at 350. "The 'actual, and not just theoretical,' effect of the 120-month limitation is to deny a mistake-of-age defense to certain adults, thereby affording more protection to younger children, a valid statutory goal." Id.

"Because Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b), satisfy all three requirements of Minnesota's active-rational-basis test, we conclude that these statutes do not violate the state constitution's guarantee of equal protection. Because Minnesota's rational-basis test is 'a more stringent standard of review,' than the federal rational-basis test, the federal test is also satisfied." Id. (citation omitted).

B. Post-Conviction Petitions

Petitioner sought and was denied state postconviction relief because the equal protection claims were decided on direct appeal. Holloway v. State, No. A19-1410, 2020 WL 1517966 at *2 (Minn. Ct. App. Mar. 30, 2020) rev. denied (Minn. June 16, 2020) ("Holloway's postconviction petition is based on grounds that he raised in his direct appeal and that he knew about at the time of his direct appeal. His petition is therefore procedurally barred.").

Petitioner now brings this petition pursuant to 28 U.S.C. § 2254. Pursuant to § 2254(d),

> [a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established

> Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Petitioner argues that the statutes of conviction violate the Equal Protection Clause by permitting one group of offenders the right to assert a mistake-of-age defense but denying the defense to others similarly situated, and that the Minnesota Supreme Court's rejection of his equal protection claim involved an unreasonable application of clearly established federal law. Specifically, Petitioner argues that there is no rational relation between the classification at issue in this case – the limitation of the mistake-of-age defense based on the age of the offender and the victim – and any legitimate State goal.

Petitioner argues that the Minnesota Supreme Court did not even identify or apply any governing principles under federal law because it concluded the Minnesota standard was more stringent, therefore rendering a separate analysis under federal law superfluous. Holloway II, 916 N.W.2d at 350.

This Court notes that the Minnesota Supreme Court did in fact identify the governing principles of a federal equal protection claim. See Holloway II, 916 N.W.2d at 348, n.7 ("Under the federal constitution, the rational basis test is satisfied if 'the classification drawn by the statute is rationally related to a legitimate state interest.' The key difference between the federal and state tests is that, under the state constitution, we are 'unwilling to hypothesize a

rational basis to justify a classification' and instead require a reasonable connection between the actual ... effect of the challenged classification and the statutory goals."). In addition, the Eighth Circuit has similarly recognized that the Minnesota rational basis standard is stricter than the Minnesota standard. See Walker v. Harford Life and Accident Ins. Co., 831 F.3d 968, 976 (8th Cir. 2016) (noting that Minnesota's three requirements under its rational basis test is a "stricter formulation" than the federal test).

Petitioner next argues that under the federal rational basis test, there is no rational relation between the classification drawn in this case and any legitimate State goal.

> Under federal rational-basis review, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. [An equal protection] claim fails if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. We afford the challenged classification [ ] a strong presumption of validity, which Walker, as the one attacking the rationality of the legislative classification, can only overcome by negating every conceivable basis which might support it.

Walker, at 976 (internal citations omitted). The goals identified by the Minnesota Supreme Court were to protect children by eliminating the mistake-of-age defense for certain adults, and to preserve the defense for teenagers and the youngest adults who may make a bona fide mistake during a romantic relationship. Holloway II, at 349.

It is Petitioner's position that the challenged classifications do not rationally relate to the goal of protecting children. However, there were two goals identified by the Minnesota Supreme Court behind the classification–the protection of children and the preservation of the mistake-of-age defense for teenagers and the youngest adults who may make a bona fide mistake during a romantic relationship. Prior to the 2007 amendment that created the classification based on age, the mistake-of-age defense was available to any defendant that was not in a position of authority. The classification was created to protect more children aged 13 to 16 from sexual abuse, while maintaining the defense for teenagers and young adults that made a bona fide mistake during a romantic relationship. Holloway II, at 347 (rejecting defendant's substantive due process claim, finding that "precluding a mistake-of-age defense for certain adults is neither arbitrary nor capricious, and is a reasonable means to achieve a permissible objective"). The Minnesota Supreme Court, under the stricter Minnesota standard, found these were legitimate State goals, and that the classification at issue was "genuine or relevant" to the purpose of the law. Holloway II, at 349-350. In other words, the classification is rationally related to the statute's purposes.

Petitioner argues that limiting the mistake-of-age defense to those less than ten years older than the victim has nothing to do with a legitimate State interest, but instead is based on social disapproval of notable age disparities in sexual relationships, and compares the classification to society's disapproval of

sodomy, homosexuality or miscegenation – which clearly serve no legitimate interests.

The Court disagrees. The classification at issue is a defense to a criminal charge – it does not seek to generally decriminalize sexual relationships involving children 13 to 16 years old and those less than ten years older, while criminalizing sexual relations between children 13 and 16 years old and those older than ten years. As such, the classification at issue does not reflect society's disapproval of age disparities in sexual relationships, rather it recognizes the State's interest in protecting children between 13 and 16 from sexual abuse while at the same time recognizing that offenders that are teenagers or the youngest adults may have made a bone fide mistake while in a romantic relationship with the victim. Under the federal law, "[the rational-basis standard] is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy." Dallas v. Stanglin, 490 U.S. 19, 26-27 (1989) (internal citations omitted).

The Minnesota Supreme Court found that the classification did serve legitimate State interests in protecting children from sexual abuse, while maintaining the defense for those closer in age to the victim. Under the federal standard applied to claims under the Equal Protection Clause, this Court finds that the determination of the Minnesota Supreme Court is not contrary to or an unreasonable application of clearly established federal law.

C. Certificate of Appealability

With regard to the procedural rulings in this Order, the Court concludes that no "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right;" nor would "jurists of reason ... find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). With regard to the decision on the merits, the Court concludes that no "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. Accordingly, the Court will not issue a certificate of appealability.

IT IS HEREBY ORDERED that:

1. Petitioner Christopher Lee Holloway's Petition under 28 U.S.C. § 2254 [Doc. No. 1] is DENIED and

2. No Certificate of Appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: June 30, 2021

s/Michael J. Davis
MICHAEL J. DAVIS
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Christopher Lee Holloway,
Petitioner,
v.
State of Minnesota,
Respondent.
Civ. No. 20–2334 (MJD/BRT)

REPORT AND RECOMMENDATION

Daniel L. Gerdts, Esq., counsel for Petitioner.
James E. Haase, Olmsted County Attorney's Office, counsel for Respondent.

This matter is before the Court on Christopher Lee Holloway's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. (Doc. No. 1, Pet.) For the reasons discussed below, this Court recommends denying the Petition.

I. BACKGROUND

A. Conviction and Direct Appeal

The facts of this case are not in dispute.

> Forty-four-year-old Christopher Holloway met 14-year-old J.D. on a social media application designed to facilitate meetings between homosexual men. The two began exchanging messages, and J.D. told Holloway that he was 18 years old. They agreed to meet. Holloway went to J.D.'s house in

> the middle of the night in December 2014. He engaged sexually with J.D. The next night Holloway went there again. He sexually penetrated J.D. in his basement bedroom. J.D.'s mother heard noises and walked in. She found Holloway naked in bed with her son and called the police. Holloway fled. Police soon found and arrested him.

State v. Holloway, 905 N.W.2d 20, 22 (Minn. Ct. App. 2017) (*Holloway I*).

The State of Minnesota charged Holloway with two counts: (1) third-degree criminal sexual conduct for "engag[ing] in sexual penetration with . . . [a] victim who is at least 13 but less than 16 years of age," Minn. Stat. § 609.344, subd. 1(b); and (2) fourth-degree criminal sexual conduct for "engag[ing] in sexual contact with . . . [a] victim, being at least 13 but less than 16 years of age," Minn. Stat. § 609.345, subd. 1(b). Each statute provides a mistake-of-age defense only to actors who are "no more than 120 months older than the complainant." Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b). For all other actors, "mistake as to the complainant's age shall not be a defense." Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b). Prior to trial, Holloway moved to declare the statutes unconstitutional on substantive due process and equal protection grounds because he was prevented from asserting a mistake-of-age defense. *State v. Holloway*, 916 N.W.2d 338, 343 (Minn. 2018) (*Holloway II*). Holloway's motion was denied and he was convicted. *Id.*

Holloway appealed and, relevant here, asserted that the two statutes violate his equal protection rights by limiting the mistake-of-age defense only to defendants who are no more than 120 months older than their victims. *Holloway I*, 905 N.W.2d at 23. The Minnesota Court of Appeals applied rational-basis review, noting "Minnesota tends to apply a different rational-basis test to equal protection challenges than federal courts apply." *Id.* at 27. It found the statutes at issue satisfied the Minnesota-specific-three-pronged test and affirmed Holloway's conviction. *Id.* at 29.

Holloway appealed to the Minnesota Supreme Court. Relevant here, Holloway argued "that his right to equal protection was violated because the statutes permit an actor 'no more than 120 months older than the complainant' to raise a mistake-of-age defense, but prevent him from raising that same defense." *Holloway II*, 916 N.W.2d at 344. The Minnesota Supreme Court reiterated that "Minnesota's rational-basis test is a more stringent standard of review than its federal counterpart." *Id.* at 348 (quotations omitted). Minnesota's rational-basis test has three requirements:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of

> the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Id. (quoting *State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991)). The court found the two statutes satisfied all three requirements and, thus, does not violation the state or federal constitutions. *Id.* at 350.

B. State Postconviction Petitions

Holloway sought state postconviction relief. Holloway asserted his denial of his requested mistake-of-age defense violated the equal protection clause. *Holloway v. State*, No. A19-1410, 2020 WL 1517966, at *1 (Minn. Ct. App. Mar. 30, 2020). The postconviction court denied Holloway's petition, finding it procedurally barred because it raised claims already decided on direct appeal. *Id.* at *2. The Minnesota Court of Appeals affirmed. *Id.* at *3. Holloway appealed and the Minnesota Supreme Court denied review. (Doc. Nos. 9-21, 9-22.)

C. Federal Habeas Petition

Holloway, through counsel, filed his Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody on November 16, 2020. He raises a single ground for relief: the statutes of conviction violate the Equal Protection Clause by permitting one group of defendants the right to

assert a reasonable mistake-of-age defense but deny it to another similarly situated group. (Pet. at 5.)

II. ANALYSIS

A. Legal Standard

The Antiterrorism and Effective Death Penalty Act of 1996 governs a federal court's review of habeas corpus petitions filed by state prisoners. Section 2254 is used by state prisoners alleging they are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A federal court may not grant habeas corpus relief to a state prisoner on any issue decided on the merits by a state court unless the proceeding "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or it "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

B. Timeliness

Respondent asserts Holloway's Petition is untimely. A one-year statute of limitations applies to applications for a writ of habeas corpus pursuant to the judgment of a state court, running from the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. 28 U.S.C. § 2244 (d)(1)(A). That one-year period starts to run when "the availability of direct appeal to the state courts,

and to [the Supreme Court], has been exhausted." *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009) (citations omitted). A writ for certiorari to review a judgment entered by a state court of last resort is timely when it is filed with the Clerk of the Supreme Court within 90 days after entry of the judgment. Sup. Ct. R. 13.1. The time during which a properly filed application for state postconviction relief is pending is not counted toward the one-year statute of limitations. 28 U.S.C. § 2244 (d)(2). But the same 90-day period for seeking a writ of certiorari from the United States Supreme Court is not allotted for the postconviction process. *Jihad v. Hvass*, 267 F.3d 803, 805 (8th Cir. 2001); *Snow v. Ault*, 238 F.3d 1033, 1035 (8th Cir. 2001).

The Minnesota Supreme Court affirmed Holloway's conviction on August 1, 2018, and Holloway's time for seeking a writ of certiorari expired on October 30, 2018, ending the direct appeal process. Thus, Holloway's one-year deadline to file for federal habeas relief began to run starting October 31, 2018.

Holloway filed his first state petition for postconviction relief on May 13, 2019. (Doc. No. 9-9.) That petition was denied by the state district court on July 3, 2019. (Doc. No. 9-10.) Holloway filed four more postconviction petitions in early August 2019. (Doc.Nos. 9-11, 9-12, 9-13, 9-14.) Holloway appealed the denial of his initial postconviction petition on September 5, 2019. (Doc. No. 9-15.) While the appeal was pending, Holloway's August 2019 petitions were denied on November 25, 2019. (Doc. No. 9-17.) Holloway filed another postconviction petition on December 10, 2019. (Doc. No. 9-18.) The Minnesota

Court of Appeals affirmed the district court on March 30, 2020. Holloway appealed to the Minnesota Supreme Court, which denied review on June 16, 2020. (Doc. Nos. 9-21, 9-22.) Holloway's December 2019 petition was denied in the interim, on April 9, 2020. (*See* Doc. No. 9-23 at 3.)

Respondent argues that the time between the July 3, 2019 denial and the August 5, 2019 petition filing should count against Holloway's statute of limitations. Respondent asserts the postconviction petition filed on August 1, 2019 was improperly filed because it was not signed, so it cannot toll the statute of limitations as a "*properly filed* application for State post-conviction or other collateral review." 28 U.S.C. § 2244(d)(2) (emphasis added). But even then, Respondent argues, tolling from August 1, 2019 still makes the federal Petition untimely. This argument is unavailing. The May 13, 2019 postconviction petition and the district court's denial thereof clearly served as the basis of Holloway's postconviction appeal. (Doc. No. 9-15 at 2–3 (Holloway's appellate brief discussing his May 13, 2019 postconviction petition and the district court's July 3, 2019 order).) The State of Minnesota's response brief covers the same ground, urging the Minnesota Court of Appeals affirm the denial of Holloway's May 13, 2019 postconviction petition. (Doc. No. 9-16.) There is no reason Holloway's subsequent postconviction filings should undo the previous filing or its legal effect on the AEDPA clock. Thus, the May 13, 2019 postconviction petition, and the subsequent appellate process, tolled the one-year statute of limitations. Accordingly, the time from May 13, 2019, to June 16, 2020, is tolled and does not count towards Holloway's one-year deadline.

Holloway filed his Petition on November 16, 2020. All in all, the time between (1) October 30, 2018 to May 13, 2019, and (2) June 16, 2020 to November 16, 2020, counts against Holloway's one-year deadline. This time is 195 days for the period between direct appeal and state postconviction filing, and 153 days between state postconviction proceedings terminating and the federal petition being filed. Thus, approximately 348 days have elapsed, meaning Holloway's Petition is timely.

C. Equal Protection

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440. "The general rule gives way, however, when a statute classifies by race, alienage, or national origin." *Id.* Such classifications are "subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest." *Id.* "[A]ge is not a suspect classification under the Equal Protection Clause." *Kimel v. Fla. Board of Regents*, 528 U.S. 62, 83 (2000). Thus, "[s]tates may discriminate on the basis of age without offending the Fourteenth Amendment

if the age classification in question is rationally related to a legitimate state interest." *Id.*

The two conviction statutes, Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b), are age-based. The Minnesota Supreme Court agreed. *Holloway II*, 916 N.W.2d at 347. Through these statutes, Minnesota's legislature "has divided the universe of defendants into two classes—those who may assert a mistake-of-age defense, and those who may not." *Id.* This division is plainly age-based, and is "based on an arithmetic calculation—the defendant's age relative to the age of the complainant. Both classes are subject to criminal liability for engaging in identical conduct—sexual penetration or sexual contact with a minor—and the elements the State has to prove are the same." *Id.* Essentially, Minnesota's statutory rape laws have a sliding scale of when the mistake-of-age defense phases out. It is never available for persons 28 years of age and older, while it is sometimes available for persons under 28 years old depending on the age of the victim.

Under the federal equal protection analysis, the State of Minnesota need only show that this age-based classification is rationally related to a legitimate state interest. *Kimel*, 528 U.S. at 83. As the Minnesota Supreme Court noted, "Holloway's counsel conceded that there is a 'compelling state interest' in protecting minors." *Holloway II*, 916 N.W.2d at 349. Likewise, as the Minnesota Supreme Court found, that interest "is reflected in [Minnesota's] case law." *Id.* In making that statement, the court cited *State v. Muccio*, 890 N.W.2d 914, 928 (Minn. 2017), a case involving a

First Amendment challenge to Minn. Stat. § 609.352, subd. 2a(2), which criminalizes electronic communications with a child describing sexual conduct. Following that citation, the *Muccio* court described the "legitimate sweep" of that statute is "to protect children from sexual abuse and exploitation and from exposure to harmful sexual material." *Id.* The *Muccio* court cited two United States Supreme Court opinions for support: *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 ("The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of decent people."); and *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) ("We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors. This interest extends to shielding minors from the influence of literature that is not obscene by adult standards."). The Minnesota Supreme Court relied not only on its own precedent in finding a state interest, but also United States Supreme Court precedent confirming such an interest. Thus, Minnesota has a legitimate state interest in protecting minors from sexual abuse.

To tie this legitimate state interest to the statutes in question, the Minnesota Supreme Court cited the legislative history, noting it showed two purposes. First, "the Legislature sought to protect children by eliminating the defense for certain adults, and especially for adults who prey upon younger children." *Holloway II*, 916 N.W.2d at 349. Second, "by preserving the defense for teenagers and the youngest adults, the Legislature sought to protect from prosecution those defendants who might make a bona fide mistake during a romantic

relationship." *Id.* Under the federal equal protection analysis, this is sufficient justification to survive rational-basis review. Minnesota has a legitimate state interest in protecting minors from sexual abuse and, to accomplish this interest, it eliminated the mistake-of-age defense for adults significantly older than those minors.Thus, the age-based classification is rationally related to a legitimate state interest.

An analogous case is *United States v. Ransom*, 942 F.2d 775 (10th Cir. 1991). Ransom was charged with violating 18 U.S.C. § 2241(c), which criminalizes "knowingly engag[ing] in a sexual act with another person who has not attained the age of 12 years, or attempt[ing] to do so" within the special maritime or territorial jurisdiction of the United States. *Id.* at 776. Ransom was charged with engaging in sexual intercourse with a female minor under the age of 12 at Fort Sill Military Reservation in Oklahoma. *Id.* Ransom moved for permission to assert a defense of reasonable mistake of age of the victim, which was denied. *Id.* Ransom appealed, arguing that "the statute denies him equal protection of the laws because it arbitrarily denies him a defense of mistake of age while providing such a defense to those accused of engaging in sexual relations with minors twelve years or older." *Id.* at 777. The Tenth Circuit found "no difficulty in concluding that the distinction to which appellant objects is a permissible legislative choice." *Id.* at 778. The court continued: "[T]he statute legitimately furthers the government's interest in protecting children from sexual abuse. To say that the distinction drawn by the statute is based upon experience is an understatement; it reflects a judgment based upon centuries of insight concerning

human nature." *Id.* Like *Ransom*, Holloway's federal equal-protection challenge fails.

Minnesota courts and the Eight Circuit alike recognize that Minnesota "applie[s] a stricter formulation of the rational-basis test under the Minnesota constitution." *Walker v. Hartford Life and Accident Ins. Co.*, 831 F.3d 968, 976 (8th Cir. 2016) (citing *State v. Garcia*, 683 N.W.2d 294, 298–99 (Minn. 2004)). As Minnesota courts frame it, "[t]he key distinction between the federal and Minnesota tests is that under the Minnesota test 'we have been unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires.'" *Garcia*, 683 N.W.2d at 299 (quoting *Russell*, 477 N.W.2d at 889). Rather, Minnesota courts "require[] a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Id.* (quoting *Russell*, 477 N.W.2d at 889). Minnesota applied its stricter rational-basis test to Holloway's equal protection challenge to Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b), and found the statutes to be constitutionally sound.[1] This Court cannot say that determination was contrary to or an unreasonable application of clearly established Federal law, particularly where the statutes would survive the more lenient federal rational-basis test. 28 U.S.C. § 2254(d)(1). As such, Holloway is not entitled to federal habeas relief.

[1] The Minnesota Court of Appeals has followed *Holloway II* to likewise reject another equal protection challenge to the same statutes. *See State v. Elmi*, 2018 WL 4055663, *2 (Minn. Ct. App. Aug. 27, 2018).

III. Certificate of Appealability

A § 2254 habeas petitioner cannot appeal a denial of his petition unless he is granted a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA cannot be granted unless the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A "substantial showing of the denial of a constitutional right" requires a demonstration "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)(quotation omitted).

This Court finds that Holloway's Petition does not make a substantial showing of the denial of a constitutional right. Holloway's equal-protection claim was rejected by a unanimous Minnesota Supreme Court. Prior to 1964, "it was the universally accepted rule in the United States that a defendant's mistaken belief as to the age of a victim was not a defense to a charge of statutory rape." 46 A.L.R. 499 (5th ed.). But even after the California Supreme Court held in *People v. Hernandez*, 61 Cal. 2d 529 (1964), that a good-faith and reasonable belief that a victim was over the age of consent and had voluntarily engaged in sexual intercourse was a defense to the offense of statutory rape, "the majority of jurisdictions whose higher courts have considered the issue have declined to follow *Hernandez* and allow a reasonable-mistake defense." 46 A.L.R. 499. Minnesota providing a limited mistake-of-age

defense does not mean it is constitutionally infirm, particularly where the decision to limit the defense's applicability is rationally related to the unchallengeable government interest in protecting minors. Simply put, "[t]here is no clearly established Supreme Court precedent holding that a criminal defendant has a constitutional right to present a mistake of age defense to a charge of lewd conduct with a minor." *Atrian v. McEwen*, 2012 WL 3150576, at *3 (C.D. Cal. May 7, 2012). Thus, challenges like Holloway's have not found traction. *Ransom*, 942 F.2d 775; *United States v. Juvenile Male*, 211 F.3d 1169, 1171 (9th Cir. 2000) ("The court had no difficulty concluding that the distinction to which Ransom—and Doe—object is a permissible legislative choice, as it legitimately furthers the government's interest in protecting children from sexual abuse."); *People v. Maloy*, 465 P.3d 146, 157–58 (Col. Ct. App. 2020) (rejecting equal-protection challenge to not allowing a mistake-of-age defense in child prostitution laws). As such, this Court recommends that Holloway not be granted a COA in this matter.

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. Petitioner Christopher Lee Holloway's Petition under 28 U.S.C. § 2254 forWrit of Habeas Corpus by a Person in State Custody. (**Doc. No. 1**) be **DENIED** and this matter be **DISMISSED WITH PREUJUDICE**; and

2. No certificate of appealability be issued.

Date: May 17, 2021
*s/ Becky R. Thorson*_____
BECKY R. THORSON
United States Magistrate Judge

916 N.W.2d 338
Supreme Court of Minnesota

STATE of Minnesota, Respondent,
v.
Christopher Lee HOLLOWAY, Appellant.

A16-1489
|
Filed: August 1, 2018

OPINION
LILLEHAUG, Justice.

Appellant Christopher Lee Holloway was charged with third- and fourth-degree criminal sexual conduct for engaging in sexual penetration and sexual contact with J.D., a 14-year-old boy. Before trial, Holloway brought a motion to declare Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b) (2016), unconstitutional. These provisions prohibit, respectively, sexual penetration and sexual conduct where "the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant." Minn. Stat. § 609.344, subd. 1(b); Minn. Stat. § 609.345, subd. 1(b) (applying to actors "more than 48 months older than the complainant"). The statutes provide a mistake-of-age defense, but only to actors who are "no more than 120 months older than the complainant." Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b).

Before trial, Holloway brought a motion to declare the statutes unconstitutional, arguing that, by

preventing him from asserting a mistake-of-age defense, they violated the guarantees of substantive due process and equal protection under the federal and state constitutions. The district court denied Holloway's motion, and a jury convicted him on both counts. The court of appeals affirmed Holloway's conviction, holding that the statutes did not violate substantive due process or equal protection, and that the statutes did not impose strict liability. State v. Holloway, 905 N.W.2d 20, 29 (Minn. App. 2017).

We affirm.

FACTS

On December 21, 2014, Rochester police responded to a phone call from the mother of J.D.—a 14-year-old boy—after she found J.D. in bed with appellant Christopher Lee Holloway, a 44-year-old man. J.D. and Holloway were naked, and Holloway fled after being discovered. J.D. was taken to the hospital, where he told police that he had met Holloway on "Grindr," a dating application on his cell phone. J.D. told police that he and Holloway had exchanged text messages on Grindr for several hours, and that Holloway then asked J.D. if he could come over. Holloway came to J.D.'s mother's house in the middle of the night. In J.D.'s bedroom, Holloway and J.D. engaged in anal and oral sex. Officers later obtained a warrant to search Holloway's cell phone, and this search produced evidence that (1) J.D. and Holloway had also engaged in sexual acts on December 20, and (2) while messaging on Grindr, J.D. had told Holloway that he was 18 years old.[1]

Respondent State of Minnesota charged Holloway with two counts—(1) third-degree criminal sexual conduct for "engag[ing] in sexual penetration with ... [a] victim who is at least 13 but less than 16 years of age," Minn. Stat. § 609.344, subd. 1(b); and (2) fourth-degree criminal sexual conduct for "engag[ing] in sexual contact with ... [a] victim, being at least 13 but less than 16 years of age," Minn. Stat. § 609.345, subd. 1(b). Each statute provides a mistake-of-age defense only to actors who are "no more than 120 months older than the complainant." Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b). For all other actors, "mistake as to the complainant's age shall not be a defense." Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b).

Before trial, Holloway—being 30 years older than J.D.—brought a motion to declare sections 609.344, subdivision 1(b), and 609.345, subdivision 1(b), unconstitutional because they prevented him from asserting a mistake-of-age defense. The district court denied Holloway's motion, concluding that the statutes violated neither substantive due process nor equal protection. The trial proceeded, and the jury found Holloway guilty on both counts.

Holloway appealed, and the court of appeals affirmed his conviction. Holloway, 905 N.W.2d at 22. First, the court relied on State v. Wenthe, 865 N.W.2d 293 (Minn. 2015), to conclude that the statutes did not unconstitutionally impose strict liability. Holloway, 905 N.W.2d at 24. Second, the court concluded that, applying rational-basis review, "Holloway's substantive due process rights were not violated by his inability to raise a mistake-of-age defense." Id. at 26. Third, applying Minnesota's rational-basis test, the

court concluded that Holloway's equal protection claim failed. Id. at 27.

We granted Holloway's petition for review.

ANALYSIS

Holloway raises three issues for us to decide. Each concerns the constitutionality of Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b).

Section 609.344, subdivision 1(b), makes it a crime to engage in "sexual penetration"[2] if:

> [T]he complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. Consent by the complainant is not a defense....

Minn. Stat. § 609.344, subd. 1(b). Section 609.345, subdivision 1(b), is identical in all relevant parts, except that it prohibits unlawful "sexual contact."[3]

Holloway first argues that his right to substantive due process was violated because these statutes prevent him from raising a mistake-of-age defense. Second, Holloway argues that his right to equal protection was violated because the statutes

permit an actor "no more than 120 months older than the complainant" to raise a mistake-of-age defense, but prevent him from raising that same defense. Third, he argues that the statutes are unconstitutional because they impose strict liability. We address each argument in turn.[4]

I.

Holloway first argues that Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b), violate substantive due process by limiting a mistake-of-age defense to defendants who are no more than 120 months older than the complainant.

"Whether a law or government action violates substantive due process is a constitutional question, which we review de novo." State v. Rey, 905 N.W.2d 490, 495 (Minn. 2018). "Minnesota statutes are presumed constitutional and ... our power to declare a statute unconstitutional must be exercised with extreme caution and only when absolutely necessary." Hamilton v. Comm'r of Pub. Safety, 600 N.W.2d 720, 722 (Minn. 1999).

The federal and state constitutions provide that the government shall not deprive any person of "life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. The due process protection provided under the state constitution is "identical to the due process guaranteed under the Constitution of the United States." Sartori v. Harnischfeger Corp., 432 N.W.2d 448, 453 (Minn. 1988). These provisions "prohibit 'certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to

implement them.' " Boutin v. LaFleur, 591 N.W.2d 711, 716 (Minn. 1999) (quoting Zinermon v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990)).

Substantive due process analysis "depends on whether the statute implicates a fundamental right." State v. Bernard, 859 N.W.2d 762, 773 (Minn. 2015). If a fundamental right is implicated, we apply strict-scrutiny review, and will only find a statute constitutional if it "advance[s] a compelling state interest" and is "narrowly tailored to further that interest." SooHoo v. Johnson, 731 N.W.2d 815, 821 (Minn. 2007). If a statute does not implicate a fundamental right, rational-basis review applies, which "requires only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective." Boutin, 591 N.W.2d at 716.

A.

Holloway argues that sections 609.344, subdivision 1(b), and 609.345, subdivision 1(b), are unconstitutional because they deny him the fundamental right to have a fair trial and to present a complete defense. Thus, he argues that strict scrutiny should apply. The State argues that no fundamental right is implicated, and that rational-basis review should apply. We agree with the State.

A fundamental right is one that is "objectively, deeply rooted in this Nation's history and tradition." Washington v. Glucksberg, 521 U.S. 702, 720–21, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (citations omitted) (internal quotation marks omitted). Fundamental

rights are " 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.' " Id. at 721 (quoting Palko v. Connecticut, 302 U.S. 319, 325–26, 58 S.Ct. 149, 82 L.Ed. 288 (1937)). When claiming that a fundamental right exists, a party must provide "a 'careful description' of the asserted fundamental liberty interest." Id. (quoting Reno v. Flores, 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993)). Cf. Montana v. Egelhoff, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996) ("Respondent's task ... is to establish that a defendant's right to have a jury consider evidence of his voluntary intoxication in determining whether he possesses the requisite mental state is a 'fundamental principle of justice.' "). It follows that Holloway bears the burden to establish that his right to raise a mistake-of-age defense in the criminal-sexual-conduct context implicates a fundamental principle of justice.

The United States Supreme Court has stated that the "primary guide in determining whether the principle in question is fundamental is, of course, historical practice." Egelhoff, 518 U.S. at 43, 116 S.Ct. 2013. Minnesota historically has not permitted a mistake-of-age defense. What has been known as statutory rape—sexual conduct with a person not of the age of consent—has been a crime in Minnesota since it was first organized as a territory. See State v. Rollins, 80 Minn. 216, 83 N.W. 141, 142 (1900). For more than 130 years, the statutes prohibiting "sexual intercourse with a child" and "indecent liberties" did not permit a mistake-of-age defense. See Minn. Stat. § 609.295 (1974); Minn. Stat. § 609.296, subd. 2 (1974); Minn. Stat. § 617.02 (1965); Minn. Stat. § 617.08 (1965); Minn. Gen. Stat. ch. 98, § 8656 (1913); Minn.

Gen. Stat. ch. 98, § 8663 (1913); Minn. Gen. Stat. ch. 92a, § 6524 (1894); Minn. Rev. Stat. (Terr.) ch. 100, § 40 (1851). In 1975, the criminal-sexual-conduct statutes were amended to permit a narrow mistake-of-age defense when the complainant was "at least 13 but less than 16 years of age and the actor ... [was] not in a position of authority." See Act of June 5, 1975, ch. 374, § 5, 1975 Minn. Laws 1243, 1247–48 (codified as amended at Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b) (1976)). In 2007, however, the Legislature amended the criminal-sexual-conduct statutes to limit the defense to actors who are "no more than 120 months older than the complainant." See Act of May 7, 2007, ch. 54, art. 2, § 4–5, 2007 Minn. Laws 1, 235, 237 (codified as amended at Minn. Stat. §§ 609.344, subd. 1(b), 609.345, subd. 1(b) (2008)).

Thus, in the 160-year history of the state, the mistake-of-age defense that Holloway seeks was available for only 32 years. It cannot be said that Minnesota has a historical practice of recognizing a mistake-of-age defense in statutory rape cases.

A second factor in determining whether a claimed right is fundamental is whether it has "uniform and continuing acceptance" across the nation. Egelhoff, 518 U.S. at 48, 116 S.Ct. 2013. That factor is not present here. In fact, the majority of states expressly prohibit raising any mistake-of-age defense in statutory rape cases. See, e.g., Gaines v. State, 354 Ark. 89, 118 S.W.3d 102, 109 (2003); State v. Tague, 310 N.W.2d 209, 212 (Iowa 1981); Collins v. State, 691 So.2d 918, 923 (Miss. 1997) (collecting cases); Jenkins v. State, 110 Nev. 865, 877 P.2d 1063, 1067 (1994); State v. Vandermeer, 843 N.W.2d 686,

691 (N.D. 2014); Commonwealth v. Robinson, 497 Pa. 49, 438 A.2d 964, 967 (1981).

In sum, Holloway has failed to show that he was deprived of a fundamental right. See Morissette v. United States, 342 U.S. 246, 251 n.8, 72 S.Ct. 240, 96 L.Ed. 288 (1952) (stating that statutes that criminalize "sex offenses ... in which the victim's actual age was determinative despite defendant's reasonable belief that the girl had reached the age of consent" have long been recognized). As the United States Court of Appeals for the Tenth Circuit put it, "[t]he long history of statutory rape as a recognized exception to the requirement of criminal intent undermines [the] argument that the statute in question [precluding a mistake-of-age defense] offends principles of justice deeply rooted in our traditions and conscience." United States v. Ransom, 942 F.2d 775, 777 (10th Cir. 1991).[5]

B.

Having concluded that Holloway does not have a fundamental right to assert a mistake-of-age defense, we apply the rational-basis test to his substantive due process challenge. The challenged statutes are constitutional if they "provide a reasonable means to a permissible objective." Boutin, 591 N.W.2d at 716.

We have previously held that "protect[ing] children from sexual abuse and exploitation" is a legitimate legislative objective. State v. Muccio, 890 N.W.2d 914, 928 (Minn. 2017). The United States Supreme Court, and many other courts, recognize that government has a legitimate interest in protecting

children from criminal sexual activity. See, e.g., New York v. Ferber, 458 U.S. 747, 757, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982) ("The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance."); United States v. Malloy, 568 F.3d 166, 175 (4th Cir. 2009) ("The government has a compelling interest in protecting even children who lie about their age."); Gilmour v. Rogerson, 117 F.3d 368, 372 (8th Cir. 1997) ("The State may legitimately protect children from self-destructive decisions reflecting the youthful poor judgment that makes them, in the eyes of the law, 'beneath the age of consent.' ").

Plainly, it is not irrational for the Legislature to provide a mistake-of-age defense for only some, but not all, adults. Indeed, one of the purposes of the criminal-sexual-conduct statutes is to protect children from being subjected to sexual penetration or sexual contact with adults, a permissible objective. A reasonable way to deter or sanction such conduct—and thereby protect children—is to preclude a mistake-of-age defense for certain adults.

Because precluding a mistake-of-age defense for certain adults is neither arbitrary nor capricious, and is a reasonable means to achieve a permissible objective, we hold that Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b), do not violate substantive due process under the federal or state constitutions.

II.

We turn next to Holloway's equal protection argument. He argues that Minnesota Statutes §§

609.344, subd. 1(b), 609.345, subd. 1(b), violate equal protection because, based on the ages of the defendant and the complainant, they allow the mistake-of-age defense for some defendants, but not for others, such as Holloway.

The federal constitution guarantees "equal protection of the laws" to all persons within its jurisdiction. U.S. Const. amend. XIV, § 1. The state constitution guarantees that "[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2.

We review alleged violations of equal protection de novo. Back v. State, 902 N.W.2d 23, 28 (Minn. 2017). "In the equal protection context, we presume Minnesota statutes are constitutional when they do not involve a fundamental right or a suspect class." State v. Johnson, 813 N.W.2d 1, 11 (Minn. 2012).

A.

"The threshold question in an equal protection claim is whether the claimant is treated differently from others to whom the claimant is similarly situated in all relevant respects." Johnson, 813 N.W.2d at 12; see also State v. Cox, 798 N.W.2d 517, 521 (Minn. 2011) ("[T]he Equal Protection Clause ... keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." (citation omitted) (internal quotation marks omitted)). "[T]he Equal Protection Clause does not require that the State treat persons who are

differently situated as though they were the same." Johnson, 813 N.W.2d at 12.

Holloway, a member of the class of defendants who are not permitted to raise a mistake-of-age defense, argues that, except for the factor of age, he is similarly situated to the class of defendants who are permitted to raise a mistake-of-age defense. We agree.

In the criminal-sexual-conduct statutes, the Legislature has divided the universe of defendants into two classes—those who may assert a mistake-of-age defense, and those who may not. See In re Welfare of Child of R.D.L., 853 N.W.2d 127, 133 (Minn. 2014) (concluding that, despite "differences" between two groups of parents, the groups were "similarly situated" relative to "the best interests of the children"). The classification is based on an arithmetic calculation—the defendant's age relative to the age of the complainant. Both classes are subject to criminal liability for engaging in identical conduct—sexual penetration or sexual contact with a minor—and the elements the State has to prove are the same.[6] See Cox, 798 N.W.2d at 522 (stating that two classes may be similarly situated where "the two statutes prohibit the same conduct"). Accordingly, defendants like Holloway are similarly situated to defendants who are allowed to raise a mistake-of-age defense.

B.

Having concluded that Holloway crosses the "similarly situated" threshold, we must next consider whether his equal protection rights have been violated. As with his substantive due process claims, the level of scrutiny applied to his equal protection

claim depends on the nature of the challenged statute. Strict scrutiny applies if the challenge "involves a suspect classification or a fundamental right." Greene v. Comm'r of Minn. Dep't of Human Servs., 755 N.W.2d 713, 725 (Minn. 2008). Age classifications, such as the one here, are not subject to strict scrutiny, but are instead subject to rational basis review. Bituminous Cas. Corp. v. Swanson, 341 N.W.2d 285, 289 (Minn. 1983); see also Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 83, 120 S.Ct. 631, 145 L.Ed.2d 522 (2000) ("[A]ge is not a suspect classification under the Equal Protection Clause.").

Holloway brings his equal protection claim under both the federal and state constitutions. Because age is not a suspect class, and because Holloway's claim does not implicate a fundamental right, we apply rational basis review to his claim.

Unlike substantive due process, Minnesota's rational-basis test is " 'a more stringent standard of review' than its federal counterpart." In re Durand, 859 N.W.2d 780, 784 (Minn. 2015) (quoting State v. Russell, 477 N.W.2d 886, 889 (Minn. 1991)). Minnesota's rational-basis test has three requirements:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident

> connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Russell, 477 N.W.2d at 888 (quoting Wegan v. Village of Lexington, 309 N.W.2d 273, 280 (Minn. 1981)).[7] We apply our rational-basis test here. See State v. Frazier, 649 N.W.2d 828, 830 (Minn. 2002).

1.

We first consider whether the state can legitimately attempt to achieve the purpose of the statutes. At oral argument, Holloway's counsel conceded that there is a "compelling state interest" in protecting minors. Indeed, this is reflected in our case law. See, e.g., Muccio, 890 N.W.2d at 928. The legislative history[8] of the 2007 amendment limiting the mistake-of-age defense shows clearly that the amendment had two purposes. First, the Legislature sought to protect children by eliminating the defense for certain adults, and especially for adults who prey upon younger children.[9] Second, by preserving the defense for teenagers and the youngest adults, the Legislature sought to protect from prosecution those defendants who might make a bona fide mistake during a romantic relationship. These are undoubtedly purposes that the Legislature can legitimately seek to achieve.

2.

We next consider whether the 120-month limitation on the mistake-of-age defense is "manifestly arbitrary." Wegan, 309 N.W.2d at 280. We

have previously stated that "[i]f the classification has some reasonable basis, it does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality." Guilliams v. Comm'r of Revenue, 299 N.W.2d 138, 143 (Minn. 1980) (citation omitted) (internal quotation marks omitted). Put another way, "[t]he United States and Minnesota Constitutions do not require the Legislature to devise precise solutions to every problem." Rey, 905 N.W.2d at 495.

The limited mistake-of-age defense is not manifestly arbitrary. It fits logically in the statutory framework prohibiting criminal-sexual conduct.

Specifically, no mistake-of-age defense is available for any actor who engages in sexual contact or penetration with a child under the age of 13, and the actor may be imprisoned for up to 30 years. See Minn. Stat. §§ 609.342–.343 (2016). If the child is between the ages of 13 and 16, there is a limited mistake-of-age defense if the actor is close in age to the child, not in a position of authority, and not in a "significant relationship" with the child. See Minn. Stat. §§ 609.344–.345 (also stating that the maximum sentence the actor may face in these circumstances is 15 years imprisonment). Engaging in sexual conduct with a 16- or 17-year-old child may not be considered a criminal act, but if the child is 16 or 17 and the actor is in a position of authority or has a significant relationship with the child, the actor is guilty of criminal-sexual conduct, cannot assert a mistake-of-age defense, and faces a maximum sentence of 15 years imprisonment. See Minn. Stat. § 609.344, subd. 1(e).

This statutory framework shows that the Legislature determined that the younger the child, the greater the legal protection needed. As the legislative history to the 2007 amendment reflects, the Legislature recognized that an actor who is an older teenager or young adult might, in good faith, mistake a 15-year-old for a 16- or 17-year-old while pursuing a romantic relationship. Allowing only a limited mistake-of-age defense balances these legitimate interests, and furthers the overarching purpose of the criminal-sexual-conduct statutes in a manner that is not manifestly arbitrary.

3.

The final requirement of Minnesota's rational-basis test is that "the classification must be genuine or relevant to the purpose of the law." Russell, 477 N.W.2d at 888. For the reasons discussed, the limited mistake-of-age defense satisfies this requirement. The "actual, and not just theoretical," effect of the 120-month limitation is to deny a mistake-of-age defense to certain adults, thereby affording more protection to younger children, a valid statutory goal. See id. at 889.

Because Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b), satisfy all three requirements of Minnesota's active-rational-basis test, we conclude that these statutes do not violate the state constitution's guarantee of equal protection. Because Minnesota's rational-basis test is "a more stringent standard of review," Russell, 477 N.W.2d at 889, than the federal rational-basis test, the federal test is also satisfied.

III.

Lastly, Holloway argues that Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b), are unconstitutional because the statutes impose strict liability. Because the statutes describe crimes of general intent, we disagree.

State v. Wenthe, 865 N.W.2d 293 (Minn. 2015), is dispositive here. In Wenthe, we reiterated the well-established rule that "[g]enerally, criminal sexual conduct offenses require only an intent to sexually penetrate, unless additional mens rea requirements are expressly provided." Id. at 302; see also State v. Bookwalter, 541 N.W.2d 290, 296 (Minn. 1995) (stating that criminal sexual conduct in the first degree requires "the general intent to sexually penetrate the victim").

The primary clause in section 609.344, subdivision 1, provides that "[a] person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree" if certain circumstances exist. Section 609.345, subdivision 1, has an identical primary clause, except the wrongful act is "engag[ing] in sexual contact." In Wenthe, we observed that "this structure suggests that mens rea attaches to the act described in the primary clause ... and not to the 'attendant circumstances' described later in the statute." 865 N.W.2d at 303. It follows that the statutes require the actor to have the general intent to engage in sexual penetration or sexual contact with the complainant.

Further, by their plain language, the statutes do not impose any additional mens rea requirement to the element that "the complainant is at least 13 but

less than 16 years of age." Minn. Stat. § 609.344, subd. 1(b); Minn. Stat. § 609.345, subd. 1(b). By contrast, the Legislature provided additional mens rea requirements elsewhere in the criminal-sexual-conduct statutes. See Minn. Stat. § 609.344, subd. 1(d) (providing the attendant circumstance that "the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless" (emphasis added)); Minn. Stat. § 609.345, subd. 1(d) (same). As we said in Wenthe, such drafting "caution[s] us against adding an implicit [mens rea] requirement in other[provisions], because the Legislature could, and has, included a mens rea term when one was intended." Wenthe, 865 N.W.2d at 304.

Accordingly, we hold that Minnesota Statutes §§ 609.344, subd. 1(b), 609.345, subd. 1(b), do not impose strict liability, but instead require proof beyond a reasonable doubt that the actor had a general intent to engage in sexual penetration or sexual contact with the complainant.[10]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

THISSEN, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

Notes

[1] J.D. testified at trial that, before any sexual activity occurred, he told Holloway that he was only 14. Holloway denied that this conversation took place.

[2] "Sexual penetration" is defined, in relevant part, as: "any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs: (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or (2) any intrusion however slight into the genital or anal openings: (i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose." Minn. Stat. § 609.341, subd. 12 (2016).

[3] "Sexual contact" is defined, in relevant part, as: "any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent: (i) the intentional touching by the actor of the complainant's intimate parts, or ... (iv) ... the touching of the clothing covering the immediate area of the intimate parts, or (v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body." Minn. Stat. § 609.341, subd. 11(a) (2016).

[4] Holloway also raised a novel legal argument that a 2014 order from Hennepin County became "binding state law when Hennepin County failed to appeal," and that it was thus error for the Olmsted County district court not to follow that "binding" law. Because Holloway's attorney withdrew this issue at oral argument, we do not consider it here.

[5] Holloway's argument that the mistake-of-age defense is an essential part of his right to present a complete defense is meritless. Because the State did not need to prove that Holloway had knowledge of J.D.'s age, a mistake-of-age defense does not rebut an element of the offense. See United States v. Malloy, 568 F.3d 166, 177 (4th Cir. 2009) ("Evidence of a particular type of defense—here, reasonable mistake of age—can be properly excluded by the court without infringing on the general right of a defendant to present a defense."); see also Egelhoff, 518 U.S. at 42, 116 S.Ct. 2013 ("[T]he proposition that the Due Process Clause guarantees the right to introduce all relevant evidence is simply indefensible.").

[6] Actors who engage in sexual penetration in violation of Minn. Stat. § 609.344, subd. 1(b), and are more than 48 months older than the complainant are subject to a maximum penalty of 15 years imprisonment, a $30,000 fine, or both. Id., subd. 2(1). For actors who are between 24 and 48 months older than the complainant, the maximum penalty is 5 years imprisonment, a $30,000 fine, or both. Id., subd. 2(2). Actors who engage in sexual contact in violation of Minn. Stat. § 609.345, subd. 1(b), and are more than 48 months older than the complainant are subject to a maximum penalty of 10 years imprisonment, a $20,000 fine, or both. Id., subd. 2.

[7] Under the federal constitution, the rational basis test is satisfied if "the classification drawn by the statute is rationally related to a legitimate state interest." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). The key difference between the federal and state tests is that, under the state constitution, we are "unwilling to

hypothesize a rational basis to justify a classification," and instead require "a reasonable connection between the actual ... effect of the challenged classification and the statutory goals." Russell, 477 N.W.2d at 889.

[8] See Hearing on S.F. 1144, S. Jud. Comm., 85th Minn. Leg., April 13, 2007 (audio recording) (part 2).

[9] The defense is not available at all when the complainant is a child under the age of 13. See Minn. Stat. §§ 609.342, subd. 1(a), 609.343, subd. 1(a) (2016).

[10] Holloway also argues that the jury instructions lacked an instruction on intent, and thereby "constituted plain error mandating reversal." But the jury instructions did contain an instruction on intent, accurately stating that "criminal intent does not require proof of knowledge of the age of a minor." Further, the instructions on criminal sexual conduct in the third and fourth degree included, respectively, proof that "the defendant intentionally engaged in sexual penetration" and that "the defendant's act was committed with sexual or aggressive intent."