SUPREME COURT NO. 92969-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER LANDRIE,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS,
DIVISION TWO

Court of Appeals No. 47307-1-II
Pierce County No. 14-1-00318-0

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Federal Cases

Statutes

Rules

A. IDENTITY OF PETITIONER

Petitioner, CHRISTOPHER LANDRIE, by and through his attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Landrie seeks review of the March 1, 2016, unpublished decision of Division Two of the Court of Appeals affirming his sentence.

C. ISSUE PRESENTED FOR REVIEW

Landrie pled guilty to second degree assault and mistreatment of his girlfriend's son, and he stipulated to an exceptional sentence of 180 months. As a condition of his sentence, the court prohibited all contact with minors, including Landrie's biological son. Where the sentencing condition is broader than reasonably necessary to prevent harm to the child, must the condition be stricken?

D. STATEMENT OF THE CASE

On January 24, 2014, the Pierce County Prosecuting Attorney charged appellant Christopher Julian Landrie with first degree assault of a child against his girlfriend's son. CP 1-2. The child and his mother, Tara Foulkes, lived with Landrie, as did the Foulkes's older daughter and Landrie's biological son. CP 20. Under the terms of a plea agreement, the information was amended and Landrie pled guilty to second degree assault

of a child, second degree criminal mistreatment, two counts of tampering with a witness involving Foulkes and her daughter, two counts of violating a pre-sentence no contact order, and one count of making a false or misleading statement to a public servant. CP 3-6; 9-20; RCW 9A.36.130; RCW 9A.42.030(1)(a); RCW 9A.72.120(1)(c); RCW 26.50.110(1); RCW 9A.76.175. Landrie stipulated to an exceptional sentence of 180 months. CP 24.

At the sentencing hearing, in addition to no contact orders involving Foulkes and her children, the State recommended that the court prohibit contact with any minors under the age of 18. The State argued that the victim in this case was very young and extremely injured. RP 14.

The defense asked the court to narrow the scope of the no contact order, allowing Landrie to have limited contact with his biological son, who was then two and a half years old. Landrie indicated he would like to be able to write to his son and perhaps, when the child is older, have telephone conversations with him. Counsel argued that there had been no allegations that Landrie had done anything inappropriate to his son, and his ability to have physical contact would be strictly controlled while he was incarcerated, thus there was no real reason to deny the limited contact Landrie was requesting. Any limitations on contact should be decided by a dependency court, not the sentencing court. RP 22-23.

The court adopted the State's proposed recommendation. It stated that it appreciated Landrie's plea to continue contact with his son, but it did not see how that could be achieved while Landrie was in prison. The court found the prohibition on contact with all minors appropriate given the nature of Landrie's crime, stating that although there had been no physical abuse of his son, the potential was there. The court also noted that Landrie's son was now being cared for by Foulkes's father, along with her other two children, and contact between Landrie and his son would be disruptive. RP 24-25.

The judgment and sentence orders Landrie to have "no contact with minors" as a condition of sentence. CP 31. It also includes the no contact order as a condition of community custody, prohibiting all direct or indirect contact with minors. CP 33, 35, 37.

Landrie appealed, arguing that the sentencing condition prohibiting contact with his biological son unreasonably interfered with his fundamental right to parent and should be stricken. In an unpublished opinion issued March 1, 2016, Division Two of the Court of Appeals affirmed Landrie's sentence.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THE COURT OF APPEALS' DECISION CONFLICTS WITH OTHER DECISIONS OF THE COURT OF APPEALS. RAP 13.4(b)(2).

"Parents have a fundamental liberty interest in the care, custody, and control of their children." State v. Ancira, 107 Wn. App. 650, 653, 28 P.3d 1246 (2001) (citing Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982)). While the trial court is authorized to impose crime-related prohibitions[1] as part of any sentence, RCW 9.94A.505(8), when the court imposes conditions which infringe on the defendant's fundamental rights, those conditions must be reasonably necessary to accomplish the essential needs of the State and prevent further criminal conduct. State v. Riles, 135 Wn.2d 326, 350, 957 P.2d 655 (1998) (concluding that prohibition on sex offender's contact with minors not justified where victim was not a minor). Appellate courts review crime-related prohibitions for abuse of discretion. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

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[1] "Crime-related prohibition" is defined as

> an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

RCW 9.94A.030(10).

Careful review is required when sentencing conditions interfere with a fundamental constitutional right. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008), cert. denied, 556 U.S. 1192 (2009). The fundamental right to parent can be restricted by a condition of a criminal sentence only if that condition is reasonably necessary to prevent harm to the child. Ancira, 107 Wn. App. at 654. Both the scope and duration of a no contact order affecting a defendant's parental rights must be reasonably necessary. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 381, 229 P.3d 686 (2010).

In this case, the court prohibited Landrie from having any contact whatsoever with minors. Because this condition restricts Landrie's contact with his biological son, it impacts his fundamental right to parent his child without State interference. Thus, the condition is permissible only if it is reasonably necessary to accomplish an essential need of the State. See Riles, 135 Wn.2d at 350.

Ancira is instructive. In that case, the defendant was convicted of violating a domestic violence no contact order against his wife. The trial court issued a five year no contact order that included his children and prohibited all contact. Ancira, 107 Wn. App. at 652-53. The trial court reasoned that the no contact order was necessary to prevent further harm to the children who had witnessed the abuse of their mother.

On appeal the court considered whether the no contact order was necessary to protect the children from the harm of witnessing domestic violence. Id. The appellate court noted that this particular condition, prohibiting all contact, was a "severe condition" and an "extreme degree of interference with fundamental rights." Id. at 654. Ultimately the court held that while "some limitations on Ancira's contact with his children, such as supervised visitation, might be appropriate, even as a part of a sentence," the no contact order was far too broad and the facts of the case "do not form a sufficient basis for this extreme degree of interference with fundamental parental rights." Id. at 655-56.

Here, as in Ancira, the order prohibiting all contact with Landrie's son was far broader than reasonably necessary to protect the child. Landrie asked the court for an exception to the prohibition on contact with minors allowing him limited contact with his biological son, but the court refused. It found that the nature of Landrie's crime placed his son at risk, and contact between Landrie and his son would be disruptive to his placement. These concerns do not justify the extreme degree of interference with Landrie's fundamental rights.

First, Landrie stipulated to a fifteen year sentence, and there was no possibility of unsupervised physical contact with the child for the duration of that sentence, virtually eliminating any risk related to the

nature of Landrie's crime. Moreover, Landrie did not ask the court to allow physical contact with his son. He asked only to be permitted to write to his son and possibly talk with him on the telephone when he became older.

Second, the court's concern that contact between Landrie and his son would be disruptive to the child's placement is not appropriately addressed in a criminal sentencing proceeding. The family court is the proper forum to resolve such issues.

> It is the business of the family and juvenile courts to address the best interests of minor children with respect to most other kinds of harm that could arise during visitation with a parent who has been convicted of a crime.... To that end, the family and juvenile courts have authority to appoint guardians ad litem to investigate the best interests of minor children and those courts have broad discretion to tailor orders that address the needs of children in ways that sentencing courts in criminal proceedings cannot.

State v. Letourneau, 100 Wn. App. 424, 443, 997 P.2d 436 (2000). And when contact and visitation issues are addressed in the context of dependency proceedings, there are statutory procedures in place to protect the parent's right to procedural due process where the fundamental right to parent is at stake. Ancira, 107 Wn. App. at 655-56.

While the trial court was motivated by legitimate concerns for the welfare of Landrie's son and his placement, it erred in attempting to address those concerns with an overly broad sentencing condition. The

Court of Appeals' decision to the contrary conflicts with the decisions in Ancira and Letourneau, and this Court should grant review. RAP 13.4(b)(2).

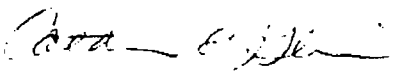
F. CONCLUSION

For the reasons discussed above, this Court should grant review of the challenged sentencing condition.

DATED this 31st day of March, 2016.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



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Connell, WA 99326

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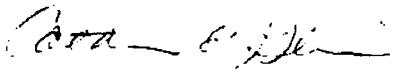

Catherine E. Glinski
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March 31, 2016

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