

NO. 47307-1

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER J. LANDRIE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Stanley J. Rumbaugh

No. 14-1-00318-0

**AMENDED BRIEF OF RESPONDENT
(As to Clerk's Papers Citations Only)**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly exercise its discretion when prohibiting the defendant from contact with all minors, including the defendant's biological son, when the prohibition relates to the circumstances of the antecedent crime and is reasonably necessary to further the State's interest in protecting the child from harm?

B. STATEMENT OF THE CASE.

On January 19th, 2015, Christopher Landire violently assaulted J.F., the thirteen year old child of his cohabitating girlfriend, Tara Foulkes, after the victim did not clean his room when asked. CP 20, 109-110. The assault occurred in the home where the defendant and Foulkes were raising Foulkes's two minor children (J.F. and J.F.-F.) and the couple's one-year old biological son (J.U.F.).¹ CP 20, 109-110; RP 18. J.F.-F witnessed the assault. RP 19-20. After the assault, defendant delayed seeking treatment for the victim before finally transporting J.F. to Allenmore Hospital. CP 20, 109. The severity of the victim's injuries was compounded by the defendant's intentional delay in seeking medical treatment. CP 20.

¹ The State has inferred that defendant's biological son is the "1-year-old brother" of the victim referred to in the declaration of probable cause. CP 109-110. The State verified this inference, but had to resort to materials outside the record on review.

The victim arrived at the hospital severely bruised and suffering from an active, traumatic subdural hematoma. CP 20, 75-76, 109-110. The victim was transported to Mary Bridge Children's Hospital to undergo an emergency procedure to relieve the pressure in his brain. CP 20, 109-110. The total cost of the victim's hospital care related to the assault, including subsequent outpatient care, totaled \$954,275.76, subrogated to \$230,387.98. CP 70-71,108; RP 15-16.

The defendant persuaded his girlfriend to provide a false report to the police about his role in the assault. CP 20. The girlfriend initially complied with the defendant's request to lie about the circumstance of the assault, but eventually revealed that the defendant had inflicted the victim's injuries. CP 109-110. The defendant fled from the hospital after initial police questioning. CP 20. A bench warrant was issued for his arrest. CP 111.

Appearing before the Honorable Stanley Rumbuagh, the defendant pleaded guilty to assault of a child in the second degree (Count I), criminal mistreatment in the second degree (Count II), two counts of tampering with a witness (Counts III/IV), two counts of violating a no-contact order (Counts V/VI), and making a false statement to a public servant (Count VII). CP 17-19, 27-28; RP 12. The trial court imposed an exceptional sentence of 120 months on Count I to be served consecutively with a term 60 months on Count II, reflecting the terms of the joint recommendation and stipulated to by the defendant. CP 24, 31-32, 35; RP 24. The court

imposed an additional 43 months each on Counts III and IV, and 364 days each on Counts V and VI, all to be served concurrently with Count II. CP 31-32, RP 24.

The State asked the court to prohibit the defendant from contact with all minors for the duration of his sentence. RP 14. The defendant sought to exclude his one-year old biological child from the no-contact order. CP 109; RP 21-22. All three children formerly in the defendant's household had begun living with Richard Foulkes, the father of Tara Foulkes. RP 15, 19-20. The court refused to exempt the defendant's biological son from the no-contact order, citing concerns for the safety of the child and the potentially severe impact such contact could have on the victim living with the biological son. CP 31; RP 25. The defendant timely appealed. CP 50.

C. ARGUMENT.

1. THE TRIAL COURT ACTED WITHIN ITS DISCRETION WHEN IT PROHIBITED THE DEFENDANT FROM CONTACT WITH ALL MINORS INCLUDING HIS BIOLOGICAL SON.

As part of a sentence, a court can impose "crime related prohibitions" for a term of the maximum sentence of the crime. RCW 9.94A.505(9); *State v. Armendariz*, 160 Wn.2d 106, 112, 156 P.3d (2007). Crime related prohibitions, including no-contact orders, must be related to the circumstances of the crime, but need not be causally linked. RCW 9.94A.030(10); *See, State v. Ancira*, 107 Wn. App. 650, 656, 27

P.3d 1246 (2001) (citing *State v. Llamas-Villa*, 67 Wn. App 448, 456, 836 P.2d 239 (1992)).

Crime related prohibitions are reviewed for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 36–37, 846 P.2d 1365 (1993). A court’s discretionary decision will only be interfered with when it is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State v. Blight*, 89 Wn.2d 38, 569 P.2d 1129 (1977); *State v. Dainard*, 85 Wn.2d 624, 626, 537 P.2d 760 (1975); *See also, State v. Hays*, 55 Wn. App. 13, 16, 776 P.2d 718 (1989); *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001).

Sentencing conditions can restrict fundamental parental rights when the condition is “reasonably necessary to accomplish the needs of the State and public order.” *State v. Warren*, 165 Wn. 2d 17, 32, 195 P.3d 940 (2008). Preventing harm to children is a compelling State interest and the State is obligated to intervene in the parental relationship to protect the welfare of children. *See, Ancira*, 107 Wn. App. at 653-4; *In re Dependency of C.B.*, 79 Wn. App. 686, 690, 904 P.2d 1171 (1995); *In re Rainey*, 168 Wn.2d 367, 377, 229 P.3d 686 (2010). A court can impose sentencing conditions prohibiting contact between a parent and a child when the actions of the parent “seriously conflict with the physical or mental health of the child.” *In re Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980); *See Ancira*, 107 Wn. App at 654; *In re Rainey*, 168 Wn.2d 367, 377, 229 P.3d 686, 690 (2010); *Warren*, 165 Wn.2d at 32. If a

parent's rights and a child's welfare conflict, the welfare of the child takes precedence. RCW 13.34.020; *In re Pawling*, 101 Wn.2d 392, 399, 679 P.2d 916 (1984). In Washington, children have a statutory right to a safe and stable home. RCW 13.34.020.

The defendant was convicted of assault of a child in the second degree, a crime that, by definition, is committed against a minor. RCW 9A.36.130; CP 27; RP 12. Contact with minors is an inherent prerequisite for the defendant's crimes and directly related to the circumstances of the crime. See *Llamas-Villia*, 67 Wn. App at 456. The court was within its discretion to prohibit the defendant from contact with all minors, including his biological son, because the prohibition directly relates to the circumstances of the defendant's crime.

Based on the circumstances of the defendant's crime, the trial court concluded that the defendant possessed a "callous disregard for human suffering," RP 24, and the potential of future child abuse was sufficient to limit his contact with all minors. RP 25. The defendant's actions following the crime demonstrate an absence of remorse and a failure to accept responsibility for his crimes. The intentional delay transporting the victim to the hospital shows the defendant lacked the judgement, empathy, and moral fortitude to seek immediate treatment for a child in a critical state. CP 20. The defendant attempted to avoid responsibility for his

actions by intimidating his girlfriend into providing a false story to law enforcement about the assault, providing a false story himself, and fleeing the hospital after initial police questioning. CP 20, 109-110. The defendant has a history of violent crime to include two prior second degree assault convictions and two prior second degree robbery convictions. CP 22.

When the assault occurred, the defendant was occupying a caregiver role for the victim, the victim's biological sister, and the defendant's biological child. All three children were living in the same home and being raised by the same two adults. CP 109-110; RP 16-18. Regardless of biological or legal relation, the defendant was viewed as a father figure for all three children living in the residence. RP 17-18.

These factors demonstrate that the defendant, an individual with a history of violent behavior and unable to appreciate the severity of his conduct, poses a substantial risk to minor children. His biological son could be at an especially high risk for abuse because he is similarly situated to the victim in the instant case. Both are young children who share a paternal relationship with the defendant. Minors in a similar position as the victim, such as the defendant's biological son, are precisely who the court seeks to protect with the no contact order. RP 24-25.

Even limited contact between the defendant and his biological son poses a risk of harm to the children and deprives them of their right to a safe and stable home. RCW 13.34.020. The defendant argues that letter writing, phone calls, and other limited contact with his biological son while he is in prison would be harmless. Brief of Appellant at 6. However, such contact would allow the shadow of the defendant and his actions to intervene into the household where the victim is living. RP 19-20. Any contact with the biological son could facilitate contact between the defendant and the victim, who is undisputedly protected by the no-contact order. For example, a phone call intended for the biological child initially answered by the victim. Or, the biological child could unwittingly convey messages from the defendant to the victim via letter.

The defendant's limited contact argument becomes even more untenable when considering that the defendant's biological child is an infant. CP 109-110. Until his communication abilities develop, the child will not be able to understand letters or participate on a phone call. When the child does develop the faculties to engage in written or phone correspondence, his youth will make him particularly vulnerable and impressionable.

Therefore, the court reasonably determined that contact between the defendant and his biological son would disrupt the maintenance of a safe and stable environment for all three children. RP 19-20,25.


The crime related prohibition limiting the defendant's contact with minors is related to the circumstances of the crime and reasonably necessary to further the State's interest in protecting children. *Ancira*, 107 Wn. App. at 653-4; *In re C.B.*, 79 Wn. App. at 690; *In re Rainey*, 168 Wn.2d at 377. The trial court acted pursuant to its discretion in imposing the prohibition.

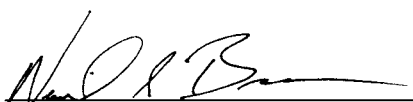
D. CONCLUSION.

The State respectfully requests that the defendant's sentence be affirmed. The defendant has failed to show that the trial court abused its discretion by imposing a no-contact order against all minors.

DATED: September 4, 2015.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9/16/15
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PIERCE COUNTY PROSECUTOR

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