

70146-1

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NO. 70146-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANDRE WATTS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LORI K. SMITH

BRIEF OF RESPONDENT

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JAN 13 PM 12:11

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A. ISSUE PRESENTED

Crime-related prohibitions imposed by a trial court at sentencing must directly relate to the circumstances of the crime. The trial court ordered the defendant to have no contact with minors, including his biological children, after he was convicted of incest in the first degree with his daughter who was 17 years old when the sexual relationship began. Did the court err in imposing this crime-related prohibition?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged the defendant Andre Watts with two counts of incest in the first degree. CP 1-2, 24-25. Watts pleaded guilty to one count of incest in the first degree. CP 9-23. At Watts' sentencing hearing, the court imposed various conditions as a part of its sentence, including no contact with minors. CP 50.

2. SUBSTANTIVE FACTS

Andre Watts is the biological father of T.D. CP 6-7. T.D.'s mother raised her to believe another man was her biological father. CP 4-5. When she was 17 years old, T.D. learned Watts was her

biological father. CP 4-5. T.D. was also 17 years old when she met Watts and engaged in oral sex with him. CP 5. T.D. lived with Watts at his home on and off again after meeting him initially. CP 6. Watts had oral sex and sexual intercourse with his daughter from the time she was 17 years old until she was 22 years old. CP 4-5. Watts engaged in sexual relations with T.D. at his home as well as other locations. CP 4.

The State charged Watts with two counts of incest in the first degree. CP 1-2. On January 10, 2013, Watts pleaded guilty to one count of incest in the first degree. CP 9-22. In the Felony Plea Agreement, Watts and the State stipulated to real and material facts contained in the certification for determination of probable cause and the prosecutor's summary for the purposes of sentencing. CP 31.

Prior to the sentencing hearing, Watts filed a pre-sentencing recommendation. CP 37-42. In his pre-sentencing recommendation, Watts informed the court that he had four children under 18 years of age. CP 39. Watts also informed the court that his fiancé was pregnant with his child and that he planned on living with her upon his release from custody. CP 39.

At Watts' sentencing hearing, the State recommended the court impose a no-contact order for minors. RP 4; CP 35-36. The State recommended Watts have no contact with any minors without the supervision of a responsible adult who had knowledge of the conviction and order. CP 36. The State further recommended that Watts may have supervised contact with his biological children, unless his sex offender treatment provider concluded such contact is not in the best interest of his treatment. CP 36.

At the sentencing hearing, Watts again informed the court that he had several children. RP 8, 10. Watts asked the court to refrain from imposing a no-contact order with minors in part because after his 2009 communication with a minor for immoral purposes conviction, Watts had difficulty securing Department of Corrections approved housing. RP 8. Prior to imposing Watts' sentence, the court considered the defendant's criminal history. RP 11; CP 32-33. The court sentenced Watts to a standard-range period of confinement. CP 49.

As a part of Watts' sentence, the court imposed an order prohibiting contact with minors. CP 50. In imposing the order prohibiting contact, the court stated, "A no-contact order will be entered as the state proposes; I don't have a problem with

something in it indicating that he can reside in a home where the other adults are aware of this case and he's to not be left alone with children. I don't think this is an automatic he can't live in the home with children; he just can't be alone in the home with children." RP 12.

In section 4.6 of the judgment and sentence, the court ordered, for the maximum term of 10 years, that the defendant shall have no contact with "any minors without supervision of a responsible adult who has knowledge of this conviction. Defendant may have supervised contact with his biological children unless sex offender treatment provider concludes such contact is not in the best interests of defendant's treatment. An adult who has knowledge of this conviction resides there also but the defendant may not be alone with minors in that residence at any time. The court is not denying the opportunity for a future motion to modify the no-contact order." CP 50.

C. **ARGUMENT**

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN IMPOSING AN ORDER PROHIBITING CONTACT WITH ALL MINORS AND THE CONDITION WAS NARROWLY TAILORED TO FURTHER A COMPELLING STATE INTEREST.

1. The Order Prohibiting Contact With Minors Was Directly Related To The Crime Because The Victim Was A Minor When Sexual Relations Commenced.

A trial court is authorized to order persons convicted of felony offenses to comply with crime-related prohibitions during the period of community custody following release from total confinement. RCW 9.94A.505(8). "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted. RCW 9.94A.030(10). Although the conduct prohibited during community custody must be directly related to the crime, it need not be causally related to the crime. State v. Llamas-Villa, 67 Wn. App. 448, 456, 836 P.2d 239 (1992). Determining whether a relationship exists between the crime and the condition "will always be subjective, and such issues have traditionally been left to the discretion of the sentencing judge." State v. Parramore, 53

Wn. App. 527, 530, 768 P.2d 530 (1989) (quoting David Boerner, *Sentencing in Washington* § 4.5 (1985)).

A trial court's imposition of a crime-related prohibition is reviewed for an abuse of discretion. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State v. Ancira, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001).

Where there is no relation between the crime victim and the trial court's crime-related prohibition at sentencing, imposition of such a prohibition constitutes an abuse of discretion. State v. Riles, 135 Wn.2d 326, 349-52, 957 P.2d 655 (1998), abrogated on other grounds, State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010). In Riles, one of the defendants was convicted of raping a 19-year-old woman. 135 Wn.2d at 349. The trial court ordered him not to have contact with "any minor-aged children." Id. The Washington Supreme Court found the record did not show that minors were at risk and required special protection from him. Id. As a result, the court struck that condition of his sentence. Id.

Although courts have been reluctant to uphold no-contact orders with classes of person different from the victim of a crime,

such no-contact orders have been upheld. State v. Warren, 165 Wn.2d 17, 33, 195 P.3d 940 (2008). In Warren, the defendant was convicted of multiple counts of rape of a child in the second degree and one count of child molestation in the first degree. 165 Wn.2d at 23. As a condition of his sentence, Warren was prohibited from having contact with his wife for life. Id. at 31. The trial court imposed the no-contact order because Warren's wife's children were the crime victims and the defendant displayed controlling behavior over her actions. Id. at 32. The Washington Supreme Court upheld the no-contact order because it was directly related to the crimes: she was the mother of the victims; the defendant attempted to induce her not to cooperate; and she testified against him. Id. at 33.

Unlike in Riles, where the defendant was convicted of raping an adult and the record contained no evidence that the defendant was a threat to minors, in this case, there is a direct factual connection between the crime and the no contact with minors condition. Watts was convicted of one count of incest in the first degree for having sexual intercourse with his biological child. CP 9-22, 46-57. Watts stipulated to real facts for the purposes of his sentencing hearing. Although the victim, T.D., was no longer a

minor during the charging period, T.D. was a minor when Watts first engaged in sexual intercourse with her. Therefore, the trial court's imposition of a no-contact order with minors as a condition of his sentence is a crime-related prohibition directly related to the crime. In light of the fact that T.D. was a minor when Watts first engaged in sexual intercourse with her at his home, the trial court did not abuse its discretion in ordering Watts have no contact with minors in general, just as the trial court did not abuse its discretion in prohibiting the defendant's contact with the victims' mother in Warren.

2. The Court's Condition Of Sentence Is Narrowly Tailored To Further A Compelling State Interest, Namely, Preventing Harm To Children.

Parents have a fundamental right to raise their children without State interference. In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998) (recognizing a parent's right to rear his or her children without State interference as a constitutionally-protected fundamental liberty interest), aff'd, Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054 (2000); see also Meyer v. Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625 (1923). However, parental rights

are not absolute and may be subject to reasonable regulation.

Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438 (1944).

Prevention of harm to children is a compelling state interest. In re Dependency of C.B., 79 Wn. App. 686, 690, 904 P.2d 1171 (1995). The State is obligated to intervene and protect a child when a parent's "actions or decisions seriously conflict with the physical or mental health of the child." In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). Limitations on fundamental rights are constitutional only if they are "reasonably necessary to accomplish the essential needs of the state." State v. Riles, 135 Wn.2d 326, 350, 957 P.2d 655 (1998). The fundamental right to parent can be restricted by a condition of a criminal sentence if the condition is reasonably necessary to prevent harm to the children. State v. Letourneau, 100 Wn. App. 424, 439, 997 P.2d 436 (2000). Here, the record supports the proposition that prohibiting Watts from unsupervised contact with his biological children is reasonably necessary to protect them from harm by Watts.

Trial courts may impose orders prohibiting contact with a defendant's minor biological children even when those children are not the charged victims. State v. Berg, 147 Wn. App. 923, 198 P.3d 529 (2008). In Berg, the defendant was convicted of rape of a

child in the third degree and two counts of child molestation in the third degree. 147 Wn. App. at 930. The 14-year-old victim was not Berg's biological daughter, but the daughter of a woman Berg lived with and with whom Berg had a 2-year-old daughter. Id. at 926. At sentencing, the trial court prohibited Berg from having contact with all female minors unless supervised by a responsible adult who has knowledge of the conviction. Id. at 930. The Court of Appeals affirmed the order prohibiting contact, holding that an order restricting contact with other female children who lived in the home was reasonable to protect those children from the same type of harm that befell the victim. Id. at 944. In support of its holding, the Court of Appeals noted that Berg lived with the victim and committed the abuse in the home. Id. at 944.

The Court of Appeals has affirmed similar orders prohibiting contact in other cases. State v. Corbett, 158 Wn. App. 576, 242 P.3d 52 (2010). In Corbett, the defendant was convicted of four counts of rape of a child in the first degree for offenses against his stepdaughter. 158 Wn. App. at 582-86. The trial court ordered the defendant have no contact with minors without prior approval of a Department of Corrections Community Corrections Officer. Id. at 586. The Court of Appeals affirmed the order prohibiting contact

with Corbett's biological children regardless of gender, in part because the offenses occurred in his home while he was parenting the victim. Id. at 600.

In this case, the order prohibiting unsupervised contact with minors, including Watts' biological children, is reasonably necessary to prevent harm to those children. T.D. was 17 years old when Watts first engaged in sexual intercourse with her. T.D. lived with Watts in his home and they engaged in sexual relations in Watts' home. Therefore, the record supports the conclusion that Watts engaged in a sexual relationship with his minor daughter while they lived together in his home. Furthermore, the trial court was aware of Watts' previous conviction for a sex offense involving minors. Watts' counsel alerted the trial court to this conviction, for communication with a minor for immoral purposes, when arguing against imposition of the no-contact order. RP 8.

The prohibition in this case is narrowly tailored to serve the State's compelling interest in protecting children. The no-contact order in this case is not a blanket prohibition. Rather, the order affirmatively authorized Watts to live with his biological children so long as another adult with knowledge of this conviction resides there as well. Watts is only prevented from having unsupervised

contact with minors. In light of the facts of this case and Watts' criminal history, which includes a conviction for communication with a minor for immoral purposes, the condition is narrowly tailored to mitigate the impact on Watts' right to parent while still furthering a compelling State interest, namely the prevention of harm to children.

In Riles, the Washington Supreme Court noted that it would be logical for a sex offender who victimizes a child to be prohibited from contact with that child, as well as from contact with other children. 135 Wn.2d at 350. In this case, the trial court's imposition of a crime-related prohibition of no contact with minors, including Watts' biological children, is directly related to the offense for which Watts was sentenced. Preventing harm to children is a compelling interest of the State, and the trial court's prohibition is reasonably necessary to accomplish this. The condition is narrowly tailored to further the State's compelling interest, while also limiting the interference with Watts' right to parent. The condition is a proper exercise of the trial court's discretion.

D. CONCLUSION

The trial court's imposition of a crime-related prohibition of no contact with minors, including Watts' biological children, is factually related to the offense for which Watts was sentenced because T.D. was a minor when Watts initiated sexual relations with her. The no contact condition is reasonably necessary to prevent harm to children, which is an essential need of the State. The State's concern for the safety of minors is supported not only by the facts of this case, but by Watts' prior conviction for communication with a minor for immoral purposes. Furthermore, the no contact condition is narrowly tailored to limit interference with Watts' parental rights. For these reasons, this Court should affirm the trial court's crime-related prohibition.

DATED this 13TH day of January, 2014.

Respectfully submitted,

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