

COURT OF APPEALS  
DIVISION II

09 JUL 17 AM 11:18

NO. 37893-1-II

STATE OF WASHINGTON  
BY *LS*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

---

STATE OF WASHINGTON,

Respondent,

v.

TERAPON DANG ADHAHN,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY

---

APPELLANT'S REPLY BRIEF

---

LILA J. SILVERSTEIN  
Attorney for Appellant

SHAWN E. LOVELL  
APR 9 Legal Intern for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

**TABLE OF CONTENTS**

A. ARGUMENT.....1

THE SENTENCING CONDITION PROHIBITING MR.  
ADHAHN FROM HAVING ANY CONTACT WITH HIS  
MINOR CHILDREN IS UNCONSTITUTIONAL BECAUSE IT  
IS NOT NECESSARY TO PROTECT THE CHILDREN  
FROM HARM.....1

B. CONCLUSION.....5

**TABLE OF AUTHORITIES**

**Washington Supreme Court Cases**

In re Smith, 137 Wn.2d 1, 16-19, 969 P.2d 21 (1998)..... 2

**Washington Court of Appeals**

State v. Ancira, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001)..1, 2,  
3

State v. Berg. 147 Wn. App. 923, 198 P.3d 529 (2008) ..... 4

State v. Letourneau, 100 Wn. App. 424, 426, 997 P.2d 436  
(2000) ..... 3

State v. Sanford, 128 Wn. App. 280, 288, 115 P.3d 368 (2005) ..... 2

**United States Supreme Court Cases**

Troxel v. Granville, 530 U.S. 57, 68-69, 120 S. Ct. 2054, 147  
L. Ed. 2d 49 (2000)..... 1

Wisconsin v. Yoder, 406 U.S. 205, 206, 92 S. Ct. 1526, 32 L.  
Ed. 2d 15 (1972)..... 1

## A. ARGUMENT

THE SENTENCING CONDITION PROHIBITING MR. ADHAHN FROM HAVING ANY CONTACT WITH HIS MINOR CHILDREN IS UNCONSTITUTIONAL BECAUSE IT IS NOT NECESSARY TO PROTECT THE CHILDREN FROM HARM

In his opening brief, Mr. Adhahn argued that although the conditions of a sentence may infringe on the fundamental right to parent, the condition imposed in this case was not reasonably necessary to prevent harm to Mr. Adhahn's own children. State v. Ancira, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001). The interference in this case was not narrowly tailored to serve the state interest of protecting minor children; prohibiting all contact with all minor children was too broad. The state interests are adequately served by limiting contact to supervised visits, letters, and phone calls between Mr. Adhahn and his own children.

The only compelling government interest justifying interference with the fundamental right to parent is prevention of harm to the child. Troxel v. Granville, 530 U.S. 57, 68-69, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); Wisconsin v. Yoder, 406 U.S. 205, 206, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972); In re Smith, 137 Wn.2d 1, 16-19, 969 P.2d 21 (1998). A sentence condition restricting or prohibiting a parent's contact with his child must be stricken if it is

not necessary to prevent harm to the child. State v. Sanford, 128 Wn. App. 280, 288, 115 P.3d 368 (2005); State v. Ancira, 107 Wn. App. 650, 654, 198 P.3d 529 (2001). Since the court did not find that Mr. Adhahn posed a risk to his own children, the condition must be removed.

The State tries to distinguish Ancira by claiming the crime was victim “specific.” State’s Response Brief at 9. In Ancira, the crimes of the defendant involved domestic violence against the children’s mother, and nothing in the record suggested the children were subjected to any violence. 107 Wn. App. at 654-55. In Mr. Adhahn’s case, the crimes were also victim “specific,” as they were only committed against female minors, never against male minors or Mr. Adhahn’s own children. The State even concluded in its brief that “[the defendant’s] crimes reveal that any young girl was ‘at risk’ with [Mr. Adhahn],” apparently conceding that Mr. Adhahn’s son, Chad, was not at risk. State’s Response Brief at 10.

Similar to this Court’s decision in Ancira, “some limitations on [the defendant’s] contact with his children, such as supervised visitation, might be appropriate,” but “completely prohibiting him from all contact with his children is extreme and unreasonable given the fundamental rights involved.” Id. at 655. The complete

denial of visitation between Mr. Adhahn and his son is extreme, and he should be allowed to have supervised visitation while he is incarcerated.

Again, the State tries to distinguish State v. Letourneau by claiming the crime was victim “specific.” State’s Response Brief at 9. In Letourneau, the defendant committed sex crimes against a male minor, but the sentence issued only allowed supervised visits with her own children. 100 Wn. App. 424, 426, 997 P.2d 436 (2000). On appeal, this Court found that supervision of the visits was unnecessary because nothing in the record suggested that the defendant would sexually molest her own children. Id. at 427. Although the defendant’s crimes were against a male minor, she was still allowed unsupervised visits with not only her daughter, but also her sons. Id. Although Mr. Adhahn is not seeking unsupervised visitation of his son, as he is incarcerated for life without the possibility of parole, he does wish to have supervised visits. Similar to Letourneau, nothing in the record suggests that Mr. Adhahn would sexually molest his own son. Nor could he, as he will be incarcerated for the rest of his life. The State failed to present any evidence that telephone calls, letters, or supervised visits would ever present a harm to Mr. Adhahn’s child.

The State concedes that this case is analogous to State v. Berg. 147 Wn. App. 923, 198 P.3d 529 (2008). In Berg, the court allowed the defendant supervised visitation with his children even though he had committed multiple rapes of his own stepdaughter. Mr. Adhahn merely seeks the same condition approved in Berg. If the defendant in Berg was allowed supervised contact with his daughter after repeatedly raping his own stepdaughter, then Mr. Adhahn – who never offended against his own children – should be allowed supervised contact with his son.

The State argued in its brief:

While none of defendant's convictions involved male victims, the court did have considerable information from which to conclude that defendant could act out sexually in his preferred manner [anal intercourse] regardless of the sex of his victim.

State's Response Brief at 10-11. However, the court made no such conclusion and indeed did not even find that Mr. Adhahn would pose a threat to his child. At the hearing, the court ruled:

Since all the victims were children and one child was murdered, under these circumstances, it would not be necessary that he might harm his own children, so I will be denying your motion for reconsideration.

6/13/08RP 6; CP 67.

The State contends that restricting Mr. Adhahn from contact with all minors is supported by the compelling state interest of

protecting children from sexual assault and death. State's Response Brief at 11. However, Mr. Adhahn will be spending the remainder of his life in prison. He is currently incarcerated in a maximum-security prison, so the only type of visitation offered would be supervised. Under this strict setting, no risk of sexual assault or death is present. Also, no such threat exists through contact by means of the mail or telephone. The condition prohibiting all contact with minors should therefore be stricken insofar as it applies to Mr. Adhahn's own children.

**B. CONCLUSION**

For the reasons set forth above and in his opening brief, Mr. Adhahn respectfully requests that this Court strike the sentence condition restricting Mr. Adhahn from having any contact with his children.

Respectfully submitted this 16<sup>th</sup> day of July 2009.

  
Lila J. Silverstein – WSBA 38394  
Washington Appellate Project  
Attorneys for Appellant

  
Shawn E. Lovell – WSBA 9111447  
APR 9 Legal Intern

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	NO. 37893-1-II
v.	)	
	)	
TERAPON ADHAHN,	)	
	)	
APPELLANT.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16<sup>TH</sup> DAY OF JULY, 2009, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KATHLEEN PROCTOR	(X)	U.S. MAIL
PIERCE COUNTY PROSECUTING ATTORNEY	( )	HAND DELIVERY
930 TACOMA AVENUE S, ROOM 946	( )	_____
TACOMA, WA 98402-2171		
[X] TERAPON ADHAHN	(X)	U.S. MAIL
968071	( )	HAND DELIVERY
WASHINGTON STATE PENITENTIARY	( )	_____
1313 N 13 <sup>TH</sup> AVE		
WALLA WALLA, WA 99362		

**SIGNED** IN SEATTLE, WASHINGTON THIS 16<sup>TH</sup> DAY OF JULY, 2009.

X \_\_\_\_\_ 

09 JUL 17 AM 11:19  
STATE OF WASHINGTON  
BY  DEPUTY  
COURT OF APPEALS  
DIVISION TWO

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, Washington 98101  
☎(206) 587-2711