

FILED
COURT OF APPEALS
DIVISION II

NO. 41583-6

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

STATE OF WASHINGTON, RESPONDENT

v.

JEFFREY BRANDON KNUDTSON, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff, Judge

No. 09-1-04367-3

BRIEF OF RESPONDENT

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

1. Did the court abuse its discretion at sentencing by ordering that the defendant have no contact with any minor children during his term of community custody when the defendant raped a minor child to whom he was a stepfather to?

B. STATEMENT OF THE CASE.

1. Procedure

The Pierce County Prosecutor's Office ("State") charged Jeffrey Knudtson ("Defendant"), on January 1, 1999, with the crime of rape of a child in the first degree. RCW 9A.44.073. CP1.

On October 19, 2010, defendant filed a statement of defendant on plea of guilty to reduce his charge to first degree child molestation. CP 49, 50, 51-62. Defendant entered an *Alford/Newton*¹ plea where he did not admit to committing the crime, but agreed to allow the court to review the declaration for determination of probable cause dated September 29, 2009 for making a factual finding. 10-19-2010 RP 6-11²; CP 2-3.; CP 51-

¹ See *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

² There are two RPs. The 10/19/2010 RP is in regard to the guilty plea and 12/10/2010 RP is in regard to the motion to withdraw the guilty plea.

62. The court found the defendant guilty as charged. RP 11 on October 19, 2010.

On December 10, 2010, the defendant filed a motion to withdraw his guilty plea. 12/10/2010 RP 4. The court denied the motion to withdraw the plea. 12/10/2010 RP 21. The court imposed a standard range sentence of 63 months of confinement, followed by 36 months of community custody. 12/10/2010 RP 21; CP 105-107. In addition, the defendant was ordered to have no contact with the victim. 12/10/2010 RP 21. Court also required defendant to have psychosexual evaluation and follow-up treatment. 12/10/2010 RP 21; CP 105-107.

2. Facts

The facts are taken from the declaration for determination of probable cause. CP 2. In April of 2009, the Puyallup Police Department was notified of molestation that had occurred in a Puyallup apartment in 1999. CP 2. The defendant was born on October 20, 1969, and the victim was born on September 12, 1993. CP 2. At the time of the rape, the defendant was married to the victim's mother. CP 2. The victim had disclosed to a school counselor that the defendant raped her and then had her bathe afterward. CP 2. The defendant also threatened the victim that if she ever told anyone the defendant would come after her and her family. CP 2. In a handwritten statement, the defendant admitted to having

intercourse with the 6-year-old victim. CP 2. Defendant blamed the victim for initiating the sexual contact. CP 2. Defendant commented that the intercourse made the two closer. CP 2.

C. ARGUMENT.

1. THE SENTENCE CONDITION OF NO CONTACT WITH MINORS WAS WITHIN THE COURT'S DISCRETION.

An appellate court reviews sentencing conditions, including crime-related prohibitions for abuse of discretion. *State v. Riley*, 121 Wn. 2d 22, 37, 846 P.2d 1365 (1993). As a condition of a sentence, the trial court may impose crime-related prohibitions and prohibit conduct that directly relates to the circumstances of the crime for which the offender has been convicted. *State v. Berg*, 147 Wn. App. 923, 942, 198 P.3d 529 (2008). Determining whether a relationship exists between the crime and the condition is subjective, and such issues have traditionally been left to the discretion of the sentencing judge. *Id.* at 942.

Abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Corbett*, 158 Wn. App. 576, 597, 242 P.3d 52 (2010). No causal link need be established between the crime and the prohibition, so long as the condition relates to the circumstances of the crime. *State v. Warren*, 134 Wn. App. 44, 70, 138 P.3d 1081 (2006).

Sentencing courts can restrict even the fundamental right to parent by imposing a condition in a criminal sentence if the condition is reasonably necessary to further the State's compelling interest in preventing harm and protecting children. *State v. Berg*, 147 Wn. App. at 942.

The decision in *Berg* is similar to the facts in this case. A jury convicted Berg of third degree child rape and two counts of third degree child molestation after he sexually molested a 14-year-old girl (A.A.) who lived with him. *Id.* at 926. Berg parented A.A., but she was not his biological child. *Id.* at 927-31. Berg challenged the reasonableness of a no-contact order covering all minor females, including his two-year-old biological daughter (A.B.). *Id.* at 941. The court found that the no contact order restricting contact with other female children who lived in the home was reasonable to protect those children from the same type of harm. *Id.* at 943. By prohibiting Berg from having any unsupervised contact with his daughter, the sentence condition prevented Berg from fostering this kind of trust and putting his daughter in the same kind of risk. *Id.* at 944. In addition, there were no records indicating that Berg was not a threat to his daughter. *Id.* at 943.

Similarly, a jury convicted defendant in *Corbett* of first degree child rape after he raped his six-and-a-half year old step daughter. *Corbett*, 158 Wn. App. at 581. Corbett served as the primary care-giver

while the victim's mother was at work. *Id.* at 582. Corbett challenged the sentencing conditions that prohibited his contact with all minors, including his two biological sons, ages 10 and 14. *Id.* at 597. Corbett argued that the no contact order was not narrowly tailored to protect the State's interest because the no contact order applied to his sons when his victim was a girl. *Id.* at 600.

This Court upheld the no-contact order as being reasonably necessary to protect Corbett's children because of his "history of using trust established in a parental role to satisfy his own prurient desire to sexually abuse minor children." *Id.* at 599. The State proved that all of Corbett's children were at risk because Corbett's victim was a child that he parented. *Id.* at 600. The trial court's no-contact order prohibiting Corbett's direct contact with his biological children was directly related to his crime because they fall within a class of persons he victimized. *Id.* at 601. Therefore, this Court did not find that the trial court had abused its discretion by imposing a prohibition on contact with all minor children, including his own. *Id.* 601.

In the present case, the defendant sexually abused his step daughter. Defendant was in a parenting position of the victim. The defendant lived with the victim. The court had the discretion to decide that violation of trust in a parenting relationship between the defendant

and the victim was grounds to prohibit contact with all children, including his biological children. In addition, similar to *Berg*, there are no records indicating that the defendant is not a risk to his children.

State v. Letourneau, 100 Wn. App. 424, 997 P.2d 436 (2000) is distinguishable from the present case. Letourneau pleaded guilty to two counts of second degree rape of a child. *Id.* at 426. Part of Letourneau's sentence was a no contact order with minor children, including her own biological children. *Id.* at 426. The court found that the no contact order was not reasonably necessary to protect her children from sexual molestation. *Id.* at 441. Evaluators were unanimous with concluding that Letourneau was not a pedophile. *Id.* at 441. This Court held that there must be an affirmative showing that the offender is a pedophile or that the offender otherwise poses the danger of sexual molestation of his or her own biological children to justify such State intervention. *Id.* at 442. In addition, Letourneau did not have sex with a family member or with a child living in her home. *Id.* at 433.

State v. Ancira, 107 Wn. App. 650, 27 P.3d 1246 (2001) cited by the defendant (App. Brief at 6), is also distinguishable. Ancira was charged with a felony in violation of a domestic violence no-contact order as prohibited by RCW 10.99.040(4). As part of the sentence, pursuant to RCW 9.94A.120(20), the trial court ordered that Ancira have no contact with his wife or his two children for the maximum term of five years. *Id.* at 654-653. The appellate court held that the State failed to prove that the

no contact order was reasonably necessary to prevent the children from witnessing domestic violence. *Id.* at 654.

Berg, 147 Wn. App. 923, distinguished itself from *Letourneau* and *Ancira*. In both *Letourneau* and *Ancira*, there was insufficient evidence to prove that the prohibitions were reasonably necessary to protect those children from harm. *Id.* at 943. In *Letourneau*, the victim was not a family member and did not live in the home. *Id.* at 943. Letourneau's evaluators were also unanimous that she was not a pedophile and nothing in the record suggested she posed a threat to her own children. *Id.* at 943. In *Ancira*, the order prohibiting contact was based solely on the children's having witnessed domestic violence between the defendant and their mother, without a showing that the no-contact order was reasonably necessary to protect the children from the harm of witnessing future domestic violence. *Id.* at 943.

The court in the present case did not abuse its discretion by imposing a condition that prevents the defendant from interacting with all minor children because courts have the right to limit the fundamental right of being a parent if the condition is reasonably necessary to prevent harm and to protect children. Defendant admitted in a written statement to raping his 6-year-old step daughter. Defendant admitted in a written statement that he thought that the incident made them closer and that the

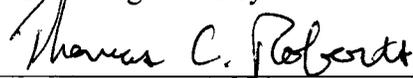
victim came on to him. Defendant took his step child's trust in him as a parental figure and violated it. It is reasonably necessary to protect all minors from the same type of harm.

D. CONCLUSION.

For the reasons argued above, the State respectfully requests that the Court affirm his convictions.

DATED: June 13, 2011.

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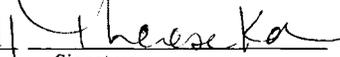
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Certificate of Service:

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.

6-14-11 
Date Signature

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CLERK OF SUPERIOR COURT
COUNTY OF PIERCE
TACOMA, WASHINGTON