

FILED
Court of Appeals
Division II
State of Washington
2/1/2018 4:01 PM
No. 50398-1-II

IN THE STATE OF WASHINGTON
COURT OF APPEALS DIVISION II

STATE OF WASHINGTON, Respondent

v.

CLIFF JONES, Appellant

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY
THE HONORABLE JUDGE GAROLD JOHNSON

BRIEF OF APPELLANT

Marie J. Trombley, WSBA 41410
PO Box 829
Graham, WA
253-445-7920

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR 1

II. STATEMENT OF FACTS 1

III. ARGUMENT 4

 The Trial Court Violated Mr. Jones' Fundamental Right To
 Parent When It Entered a No Contact Order Preventing Him
 From Having Contact With His Children..... 4

IV. CONCLUSION..... 8

TABLE OF AUTHORITIES

Washington Cases

In re Rainey, 168 Wn.2d 367, 229 P.3d 686 (2010)..... 5

In re Welfare of Sumey, 94 Wn.2d 757, 621 P.2d 108 (1980) 5

State v. Ancira, 107 Wn.App. 650, 27 P.3d 1246 (2001) 4

State v. Howard, 182 Wn. App. 91, 328 P.3d 969 (2014) 6

State v. Torres, 198 Wn.App. 685, 393 P.3d 894 (2017). 7

State v. Warren, 165 Wn.2d 17,195 P.3d 940 (2008) 4

Federal Cases

Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49
(2000) 4

Constitutional Provisions

Const. Art. 1 § 3 4

Const. Art. 1 § 7 7

Statutes

RCW 9.94A.505(9) 4

I. ASSIGNMENT OF ERROR

- A. The Trial Court Violated Mr. Jones' Fundamental Right To Parent When It Entered a No Contact Order Preventing Him From Contact With His Children.

Issue Pertaining to Assignment of Error

Without determining whether the order was reasonably necessary to serve a compelling state interest, did the trial court err when it interfered with Mr. Jones's constitutional right to parent his minor children by imposing a no-contact order?

II. STATEMENT OF FACTS

On December 23, 2015, Pierce County prosecutors charged Cliff Jones with two counts of attempted rape of a child first degree, based on a law enforcement sting operation utilizing a craigslist ad. CP 69-70. On February 16, 2017, the state filed an amended information adding two counts of attempted child molestation first degree and one count of communication with a minor for immoral purposes. CP 84-86.

On March 8, 2017, Mr. Jones entered into a global plea resolution for two separate cause numbers¹ under an *In re Barr* plea. To avoid a potential life sentence without the possibility of parole, Mr. Jones pleaded guilty to three counts of child molestation in the second degree and one count of assault of a child in the second degree. RP 162-175; CP 7-15. The court stated it had read “the declaration of determination of probable cause, and I have reviewed the case carefully. There's a factual basis to support the original charges.” RP 175. After a colloquy, the court accepted the plea. RP 179.

In a motion dated April 24, 2017, Mr. Jones sought to withdraw his guilty plea. CP 42-46. The motion was stamped as having been filed in open court on April 28, 2017, the date of sentencing. CP 42. The alleged errors included withholding of exculpatory evidence by his trial attorney, the filing of a deficient *Knapstad* motion, failure to provide a copy of the *Knapstad* motion until after the motion had been denied, and refusal to interview witnesses on his behalf. CP 42-46. Neither the court nor the parties addressed the motion at the sentencing hearing.

¹ Cause number 15-1-02630-7 preceded the charges in cause number 15-1-05135-2, the subject of this appeal.

On April 28, 2017, the court sentenced Mr. Jones to the agreed sentence of 348-360 months, along with an exceptional 120-month community custody. RP 193; CP 20-31.

At allocution, Mr. Jones told the court:

“[his] main concern is all this time get done is I’ll be able to have some contact with my own children...where I can write them and receive letters from them, pictures, and maybe even contacts in the prison with them...And you know, this is, you know, basically it takes me out for the rest of my life almost...I would ask that you please, you know, allow me some type of contact with my children.”

RP 195.

Defense counsel told the court that if the prison opened mail before it was sent, then counsel would bring a motion that would allow him to write to his children. RP 196. The court orally ruled there would be no contact with minor children, but was not barring a motion at a later date². RP 199. The court entered a no contact with minors order as part of the sentence and judgment. CP 38.

Mr. Jones makes this timely appeal. CP 47-48.

² To date, no motion has been filed to allow Mr. Jones to have contact with his children.

III. ARGUMENT

A. The Trial Court Violated Mr. Jones' Fundamental Right To Parent When It Entered a No Contact Order Preventing Him From Contact With His Children.

Parents have a fundamental liberty and privacy interest in the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *State v. Ancira*, 107 Wn.App. 650, 653, 27 P.3d 1246 (2001). The constitution requires a fair process before limiting a parent's rights and prohibits government intrusion absent a compelling state interest that must be as narrowly tailored as possible. *Troxel*, 530 U.S. at 65; Wash. Const. Art. 1 §§ 3,7.

RCW 9.94A.505(9) authorizes a trial court to impose crime-related prohibitions as sentencing conditions. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). The Court reviews crime-related prohibitions, including no-contact orders for abuse of discretion. *Ancira*, 107 Wn.App. at 653.

Sentencing conditions which interfere with the right to a parent-child relationship are more closely scrutinized to ensure they are "sensitively imposed" and "reasonably necessary to accomplish the essential needs of the State and public order." *Warren*, 165

Wn.2d at 32. A court abuses its discretion where it applies the wrong legal standard. *In re Rainey*, 168 Wn.2d 367, 229 P.3d 686 (2010).

The court must analyze the scope and duration of the prohibition in light of the court record under the ‘reasonably necessary’ standard. *Rainey*, 168 Wn.2d at 381-82. If a trial court fails to address the issue using the proper standard, a reviewing Court strikes the no-contact order and remands to either affirm or amend the provision as necessary. *Id.*

Here, the trial court imposed a no-contact order, preventing Mr. Jones from having any contact with his children, including sending mail to them. The restriction implicates his fundamental right to the care, custody, and companionship of his children. For the sentencing condition to be valid, there must be no reasonable alternative way to achieve the State's interest. *Rainey*, 168 Wn.2d at 379.

The State has a compelling interest in protecting children from harm and an obligation to intervene and protect children when a parent’s “actions or decisions seriously conflict with the physical or mental health of the child.” *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). However, reviewing courts must

analyze the scope and duration of the no-contact orders in light of the facts of the record. *Rainey*, 168 Wn.2d at 378-82.

In *Rainey*, the Supreme Court determined that a trial court should have addressed Mr. Rainey's argument that a lifetime no-contact order with the young daughter he had abducted would be detrimental to her. *Rainey*, 168 Wn.2d at 382. The Court remanded to the trial court to address the length of the no-contact order under the 'reasonably necessary' standard. *Id.*

Similarly, in *Howard*, the trial court imposed a lifetime no-contact order prohibiting contact with Howard's wife and children. *State v. Howard*, 182 Wn. App. 91, 328 P.3d 969 (2014). Howard was convicted of first degree attempted murder of his wife. *Id.* The Court concluded there was no on the record explanation as to why a lifetime no-contact order was necessary to accomplish the State's interest, other than "generally recognizing the impact on the children when Mr. Howard discharged his weapon." *Id.* at 102. The Court remanded to the trial court to reconsider the scope of the order under the "reasonably necessary" standard. *Id.* at 105.

Here, the court imposed the condition but stated it would be open to a motion in the future. The court did not address the reasons for the order. The record does not show how old Mr.

Jones's children were, but he had been involved in their lives and lived in the same home with them before his arrest. RP 10. There was no allegation of improper behavior toward the children. The trial court should have addressed whether it would be detrimental to the children's interest to not have any contact with Mr. Jones, either through supervised mail, visits to the prison, or video chats. Because the sentencing prohibition implicated his right to parent, the State must show there is no less restrictive alternative that would prevent harm to the children. The State did not show that less draconian measures would jeopardize its goal.

Whether a crime-related prohibition satisfies the “reasonably necessary” standard is a fact-specific inquiry. The court here did not conduct a reasonably necessary analysis. This was error, even under a deferential abuse of discretion standard. *State v. Torres*, 198 Wn.App. 685, 690, 393 P.3d 894 (2017). This Court should strike the sentencing condition prohibiting Mr. Jones from having contact with his children, and remand for further proceedings. The trial court should be directed to address whether a no-contact order is reasonably necessary in light of the state’s interests in protecting children. If it is, the court should be carefully and narrowly tailor the

order, both in terms of scope and duration. *Id.* at 690; *Ancira*, 107 Wn.App. at 654-55.

Any order that limits Mr. Jones' ability to exchange letters, phone calls, or have visits with his children must be based on proven findings regarding necessary limitations on contact. As the Court in *Torres* held:

On remand, the trial court should keep in mind that a sentencing proceeding is not the ideal forum for addressing parenting issues. *Ancira*, 107 Wash.App. at 655 Our juvenile and family courts are better equipped to resolve custody questions, including whether restrictions should be placed on parent-child contact. See chs. 13.34, 26.09, 26.10, 26.26 RCW. Outside the context of the procedural protections provided in dependency and child custody cases, our legislature has directed that a parent-child no-contact order should not last longer than one year, unless specifically renewed. RCW 26.50.060(2). This legislative context should be taken into account when determining the necessity of a no-contact order on remand.

Torres, 198 Wn.App. at 691.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Jones respectfully asks this Court to reverse the no contact with minors order imposed as part of his sentence and direct the trial court to

conduct the necessary analysis on the record and consider the reasonable alternatives regarding the needs of his children.

Rainey, 168 Wn.2d at 382.

Respectfully submitted this 1st day of February 2018.

Marie Trombley

WSBA 41410
PO Box 829
Graham, WA 98338
marietrombley@comcast.net
253-445-7920

CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Cliff Jones, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Appellant's Opening Brief was sent by first class mail, postage prepaid on February 1, 2018 to the following:

Cliff Jones DOC /DOC#815938
Monroe Correctional Complex-WSR
PO Box 777
Monroe, WA 98272

And by electronic service by prior agreement between the parties to:
PCPatcecf@co.pierce.wa.us
Pierce County Prosecutor's Office

Marie Trombley
Marie Trombley
WSBA 41410
PO Box 829
Graham, WA 98338
253-445-7920
marietrombley@comcast.net

MARIE TROMBLEY

February 01, 2018 - 4:01 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50398-1
Appellate Court Case Title: State of Washington, Respondent v. Cliff Jones, Appellant
Superior Court Case Number: 15-1-05135-2

The following documents have been uploaded:

- 503981_Briefs_20180201155722D2207594_8148.pdf
This File Contains:
Briefs - Appellants
The Original File Name was JONES AOB 503981.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@co.pierce.wa.us

Comments:

Sender Name: Marie Trombley - Email: marietrombley@comcast.net
Address:
PO BOX 829
GRAHAM, WA, 98338-0829
Phone: 253-445-7920

Note: The Filing Id is 20180201155722D2207594