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NO. 50398-1

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CLIFF JONES, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Garold Johnson

No. 15-1-05135-2

Brief of Respondent

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

1. Did the trial court properly exercise its discretion by prohibiting defendant from contact with all minors, including defendant's biological children, where the prohibition relates to the circumstances of the crime, defendant's children are in the same class of persons as his victims, and the prohibition is reasonably necessary to further the State's interest in protecting the children from harm?

B. STATEMENT OF THE CASE.

1. PROCEDURE

On December 23, 2015, the State charged Cliff Jones, hereinafter "defendant," with two counts of attempted first degree child rape. CP 69-70. Those charges were filed while defendant was out on bail pending two counts of first degree child molestation, charged July 7, 2015. CP 67-68.[1] Defendant received persistent offender notice on December 24, 2015. CP 71.

On March 8, 2017, defendant entered into a global plea agreement by way of ***In re Personal Restraint of Barr***[2] to an amended information,

[1] Superior Court #15-1-02630-7
[2] 102 Wn.2d 265, 684 P.2d 712 (1984).

charging three counts of second degree child molestation and one count of second degree child assault. 3-8-17 RP 160-62.[3] The plea agreement spared defendant from serving two life sentences without the possibility of parole had he been convicted of the original charges. 3-8-17 RP 161-64; CP 2-15. The court stated that it read the declaration for determination of probable cause and reviewed the case carefully and found there was "a factual basis to support the original charges." 3-8-17 RP 175. The court accepted defendant's guilty plea, finding it was made "knowingly, voluntarily, and intelligently." 3-8-17 RP 175, 179.

Sentencing occurred on April 28, 2017. 4-28-17 RP 183. Defendant filed a motion to withdraw his guilty plea the same day. 4-28-17 RP 183; CP 42-46. Defendant wrote and signed the motion himself; neither of his attorneys endorsed it. *Id.* The court struck defendant's motion and proceeded to sentencing. 4-28-17 RP 187.

The court imposed an agreed sentence of 348-360 months in custody, along with an exceptional 120 months of community custody. 4-28-17 RP 193-94, 198; CP 20-31. Written findings of fact and conclusions of law for the exceptional sentence were entered on April 28, 2017. CP 20-23. As part of defendant's judgment and sentence, the court ordered

[3] The Verbatim Report of Proceedings (RP) are contained in six separate folders. Some folders contain multiple hearing dates. They are referred to by date and page number.

defendant to have no contact with minors. CP 38. As stated in its oral ruling, this included contact with defendant's biological children. 4-28-17 RP 195-98. However, the trial court stated it was not "barring bringing a motion at a later time." 4-28-17 RP 198. A motion has yet to be filed. Defendant timely appeals. CP 47-48.

2. FACTS

On December 15, 2015, defendant responded to a Craigslist ad posted by the Missing and Exploited Children's Task Force (MECTF) that read:

> young family fun, no RP lets meet – w4mw looking for a crazy fun time. Only serious need respond, no solicitations. Single mom with 2 daus and 1 son.

CP 67-68; *see* 3-6-17 RP 82. In an e-mail from "cliff jones," defendant responded, "Hello, married couple in the Tacoma area looking for some unique fun. Your ad turns us on. Hope to hear from ya." *Id.* Acting as the fictitious mother from the ad, Det. Sgt. Rodriguez informed defendant that her children were 13, 11, and 8, with the two youngest being girls. *Id.* Defendant told Det. Sgt. Rodriguez that his first wife had a sister that was eight and he enjoyed having threesomes with them. *Id.* Det. Sgt. Rodriguez asked, "is that what you want with us hun? Tell me what you desire and we will see." *Id.* Defendant responded,

> I would love to play with you and your girls while watching your son play with them too. I want to watch your son fuck you, and fill you full of his cum. Id love to fill your girls with my cum.
> . . .
> I want to play. I want to see you and your girls naked. I'd love to taste all 3 of you. I am just freighted of legal problems. How do you meet up.

Id.

The text conversation proceeded to a phone call. *Id.* Defendant expressed interest in the two young girls and asked if they had been with other men. *Id.* The fictitious mother informed defendant that the girls had not because she was looking for the "perfect person." *Id.* Defendant replied, "Hopefully I can be that person." *Id.* Defendant continued,

> I'm very, you know, I mean, I, I uh, got away with lots of sexual relations with little girls when I was, before I got caught because my wife had a little sister that really liked me and we would always sneak away and do things together.

Id. Defendant stated the youngest he had been with was five years old. *Id.* Defendant said that he would "enjoy trying to penetrate" the 11-year-old. *Id.*

The "mom" told defendant she would be in the room watching to make sure everything was okay. *Id.* Defendant responded, "That is, oh yeah. That's, that's an even bigger turn on." *Id.* Washington State Patrol Trooper Anna Gasser, playing the part of one of the young girls, spoke to

defendant on the phone as well. *Id.* Defendant inquired whether she "would like to have a guy to have some intimate time with[.]" *Id.*

On December 23, 2015, defendant agreed to meet Det. Sgt. Rodriguez, whom he believed to be the mother, at the Lakewood Target. CP 87-07; 3-6-17 RP 82. Law enforcement arrested him upon arrival. *Id.* Defendant was transported to the Lakewood Police Department where he agreed to speak to detectives. *Id.* Faced with the prospect of serving two life sentences without the possibility of parole, defendant decided to plead guilty to three counts of second degree child molestation and one count of second degree child assault. 3-8-17 RP 160-64; CP 2-15.

Prior to sentencing, the court ordered a pre-sentence investigation (PSI). 3-8-17 RP 179; CP 145-59. Defendant requested the court not consider multiple parts of the PSI that he claimed were inappropriate. 4-28-17 RP 189-91; CP 145-59. Those included details regarding defendant's 2000 conviction for first degree child molestation. 4-28-17 RP 190; CP 145-59. The State had no objection to defendant's request, and the court agreed not to consider those portions. 4-28-17 RP 191.

The PSI provided some detail as to defendant's then-pending child molestation case. On April 2, 2015, Lakewood Police contacted H.W.'s mother at her home regarding a report of sexual abuse. CP 145-59. The mother said that H.W. disclosed that defendant inappropriately touched

her over the past several weeks. *Id.* During a forensic interview, H.W. disclosed two incidents where defendant touched her "pee-pee" under her jeans but over her underwear. *Id.* Both incidents occurred at defendant's house, while H.W. was in defendant's bedroom, sitting on defendant's bed. *Id.* During one incident, H.W. was playing the "Snail Bob" video game; during the other, she was watching a "Zig & Sharko" television show. *Id.* H.W. explained that she did not tell anybody about what defendant did because she was scared. *Id.*

At the combined sentencing hearing for both cases, defendant requested that he be permitted to send his children letters. 4-28-17 RP 196. The State objected to defendant's request:

> At this point the state would object to any kind of contact with minor children given his history, given the facts in these two cases.
>
> If he got some treatment in prison and he later made a motion and there was some type of proof of steps he had taken, that may be a different story.
>
> But at this point, I mean, especially in the case involving Craigslist, I mean, he was seeking a mom with kids, and there was some discussion about how old his children were. And I understand they were too young at the time, and I understand there wasn't anything explicit. But given his – his target of children, at this point the state would object to that.

4-28-17 RP 196.

After hearing from both sides, the trial court stated:

> Victims of these crimes never recover. They never recover. I suppose there may be one or two that do, but percentage-wise it's very, very low. It's a lifetime. It's a horrific kind of conduct that affects families for generations that involve the next generation sometimes and the generation after that.
>
> So while it does seem maybe on one level an extraordinary amount of time, on another level it really isn't at all.
>
> The recommendation being made was worked out by counsel very, very hard to find the right result in this case.
>
> Given all the different legal factors and all the different legal issues and all the different needs to protect someone from having to testify under these circumstances, to not victimize them again, all of that has to be taken into consideration, and it was taken into consideration for sure…
>
> There will be no contact with children. I'm not barring bringing a motion at a later time… I don't want that to be presumed… I don't want it to be considered res judicata[.]

4-28-17 RP 197-98. Defendant appeals the trial court's order prohibiting contact with all minors.

C. ARGUMENT.

1. THE TRIAL COURT ACTED WITHIN ITS DISCRETION WHEN IT PROHIBITED DEFENDANT FROM CONTACT WITH ALL MINORS, INCLUDING DEFENDANT'S BIOLOGICAL CHILDREN.

The Sentencing Reform Act of 1981 (SRA) authorizes a trial court to impose "crime-related prohibitions" as a condition of sentence. RCW 9.94A.505(8); ***State v. Warren***, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). A

"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). "A no contact order is a crime-related prohibition." ***State v. Howard***, 182 Wn. App. 91, 101, 328 P.3d 969 (2014).

A court may impose a condition affecting one's fundamental right to the care, custody, and companionship of one's children if it is reasonably necessary to prevent harm to a child. ***Howard***, 182 Wn. App. at 101; ***In re Personal Restraint of Rainey***, 168 Wn.2d 367, 374, 229 P.3d 686 (2010). "'Prevention of harm to children is a compelling state interest, and the State does have an obligation to intervene and protect a child when a parent's 'actions or decisions seriously conflict with the physical or mental health of the child.'" ***Howard***, 182 Wn. App. At 101 (*citing* ***State v. Ancira***, 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001) (footnote omitted) (*quoting* ***In re Welfare of Sumey***, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)).

Imposition of crime-related prohibitions are reviewed for abuse of discretion. *Id.* at 374-75. A court's discretionary decision will only be interfered with when it "relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law." ***State v. Lord***, 161 Wn.2d 276,

284, 165 P.3d 1251 (2007). "Reviewing courts must analyze the scope and duration of no contact orders in light of the facts in the record." ***Howard***, 182 Wn. App. at 101.

Defendant was originally charged with two counts of attempted first degree child rape and two counts of first degree child molestation. CP 67-70. Defendant pleaded guilty to three counts of second degree child molestation and one count of second degree child assault. 3-8-17 RP 162-75; CP 7-15. These crimes, by definition, are committed against minors. RCWs 9A.44.086, 9A.36.130; *see also* ***State v. Llamas-Villia***, 67 Wn. App. 448, 456, 836 P.2d 239 (1992) (holding that there need not be a causal link between the crime committed and the condition imposed, so long as the condition relates to the circumstances of the crime). The trial court did not abuse its discretion when it prohibited defendant from contact with minors, including his biological minor children.

In re Rainey, 168 Wn.2d 367, 370, 229 P.3d 686 (2010), involved a challenge to a no-contact order between Rainey and his ex-wife and daughter after he was convicted of first degree kidnapping and telephone harassment. The no-contact order was to remain for the statutory maximum for Rainey's crime: life. *Id.* However, the Washington Supreme Court struck the no-contact order because the sentencing court failed to consider whether the <u>lifetime</u> duration of the order was

"reasonably necessary to serve the State's interests[.]" *Id.* at 371. Similarly, in ***State v. Howard***, 182 Wn. App. 91, 102, 328 P.3d 969 (2014), Division III remanded a lifetime no-contact order to the trial court to determine whether the duration of the order was reasonably necessary to protect the defendant's four biological children. The appellate court held that while it could "discern from the record that a no contact order against Mr. Howard's children is needed to protect their emotional welfare while they remain young[,]" it could not discern why a lifetime order was necessary. *Id.* The defendant there was convicted of attempted first degree murder for attempting to shoot his wife in the presence of their children. *Id.* at 95.

This case is distinguishable in multiple ways. First and foremost, the sentencing court did not impose a lifetime no-contact order. The court's order specifically stated it would not bar a motion to modify the order at a later time, and its reasons can be discerned from the record. 4-28-17 RP 198; CP 2-15, 145-59. The court made a record, stating

> Given all the different legal factors and all the different factual issues and all the different needs to protect someone from having to testify under these circumstances, to not victimize them again, all of that has to be taken into consideration, and it was taken into consideration for sure… There will be no contact with children. I'm not barring bringing a motion at a later time… I don't want that to be presumed… I don't want it to be considered res judicata[.]

4-28-17 RP 197-98. Additionally, unlike ***Rainey*** and ***Howard***, defendant here was convicted of sex crimes involving children.

This case is more like ***State v. Landrie***, where Division II upheld the trial court's prohibition on Landrie having contact with his biological son because his son was "in the same class of persons as Landrie's victim and present[ed] a similar need for protection from harm." ***State v. Landrie***, 192 Wn. App. 1057 (2016), *review denied*, 185 Wn.2d 1041, 377 P.3d 764 (2016).[4] There, Landrie was convicted of second degree assault of a child and second degree criminal mistreatment for assaulting his girlfriend's five-year-old child, with whom he lived. *Id.* at *1. The trial court imposed a sentencing condition prohibiting defendant from contact with his victim and all minors, including Landrie's biological son. *Id.* Landrie argued that this violated his fundamental right to parent and was not reasonably necessary to protect the child because he did not inflict injury on his own child and was not seeking unsupervised visits. *Id.* At *1-3.

This Court disagreed. *Id.* Based on the facts that (1) Landrie's son belonged to "the same class of persons as Landrie's victim[;]" (2) Landrie's son presented a similar need for protection from harm; (3)

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[4] GR 14.1 allows citation to unpublished opinions of the Court of Appeals filed on or after March 1, 2013. The unpublished decision cited above has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.

Landrie demonstrated disregard for appropriate behavior with those entrusted to his care; and (4) Landrie's son lived with the victim; this Court held that the trial court did not abuse its discretion by prohibiting Landrie's contact with his minor child. *Id.* at *2.[5] The condition was crime-related and reasonably necessary to further the State's interest in protecting Landrie's minor son. *Id.* Although the defendant "did not inflict injury on his minor child, Landrie seriously injured his girlfriend's minor child, who was living with Landrie and who was entrusted to Landrie's care as a parent." *Id.* Given the similarities between Landrie's victim and Landrie's biological son, the prohibition was reasonably necessary to protect Landrie's son, and the trial court did not abuse its discretion. *Id.* at *2.

For reasons similar to those in ***Landrie***, the trial court here did not abuse its discretion by prohibiting defendant from contact with all minors, including defendant's biological children. While neither H.W. nor the fictitious Craigslist victims lived in the same house as defendant, H.W. was in defendant's house and under his care when defendant molested her,

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[5] The court found a defendant's minor children to be in a different class of persons than the victim in ***State v. Ancira***, 107 Wn. App. 650, 27 P.3d 1246 (2001), where the defendant committed domestic violence upon his wife in front of his children with there being "no indication that the violence the children witnessed their mother suffer would be turned upon them." *See* ***Landrie***, 192 Wn. App. at *3.

and defendant sought to fill a similar caregiver role with respect to the fictitious Craigslist victims. CP 67-68, 145-59.

In the Craigslist case, defendant told the "mother" that he wanted to be the "perfect person" for her daughters. CP 67-68. Defendant said he enjoyed having threesomes with his first wife and her eight-year-old sister, and that he would like to watch the "mother" have sex with her "son." *Id.* Defendant said it would be "an even bigger turn on" to have the mother in the room watching while defendant had sex with the daughters. *Id.* Defendant's attempt to involve a parent in the commission of his crimes was designed to corrupt the trusting relationship inherent between a parent and child. Defendant constructed the crime so he could be perceived by the children as someone they could trust, enabling him to perpetuate a pattern of abuse. Defendant's apparent attraction to incestual sexual activity could be another reason why a no-contact order was necessary to prevent defendant's children from harm. Like ***Landrie***, defendant here demonstrated a disregard for appropriate behavior with those entrusted to his care or the care expected of a parent. Prohibiting contact between defendant and his minor children was necessary to protect them.

When the sexual molestation of H.W. occurred, defendant was occupying a caregiver role for H.W. by supervising her in his home. CP 145-59. The two molestations described in the PSI occurred while H.W.

was at defendant's house, in defendant's bedroom, sitting on defendant's bed. *Id.* Both times, defendant went over to H.W. and touched her vaginal area. *Id.* H.W.'s mother sated that she had known defendant for seven years and that they would spend time with each other and their respective children. CP 145-59. Defendant ultimately abused his position of trust and authority with H.W.

The sentencing court ordered defendant not to have contact with "minors." CP 38. Defendant does not challenge that order. Rather, defendant challenges the court's failure to make an exception for contact with defendant's own minor children. But defendant's children should not be deprived of the same protections received by other minors merely because they are biologically related to defendant. Being similar in age and circumstance to H.W. and the fictitious Craigslist victims, defendant's children belong to the "same class of persons."[6] *See* ***Landrie***, No. 47307-1-II, 2016 WL 900147, at *2 (Wash. Ct. App. March 1, 2016) (unpublished). The crime-related prohibition is reasonably necessary to protect defendant's children here, where defendant has a history of using the trust established in a caregiver role to satisfy his desire to sexually abuse minor children. *See* ***State v. Corbett***, 158 Wn. App. 576, 242 P.3d

[6] The PSI indicates that defendant's children were four and five years old as of April 17, 2017. CP 154.

52 (2010) (upholding no-contact order between the defendant and his biological son where the defendant sexually abused his step-daughter, for whom he performed in a "parental role").

This prohibition furthers the State's interest and obligation to protect children. ***Howard***, 182 Wn. App. At 101 (*citing* ***Ancira***, 107 Wn. App. at 653-54) (footnote omitted) (*quoting* ***In re Welfare of Sumey***, 94 Wn.2d at 762). Thus, the sentencing court acted within its discretion by imposing the prohibition.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests this Court affirm defendant's conviction and sentence below, including the

crime-related prohibition limiting defendant's contact with all minors, including defendant's biological children.

DATED: August 17, 2018

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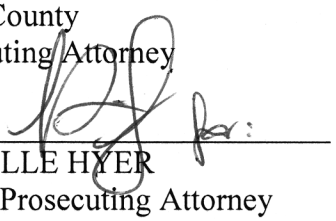

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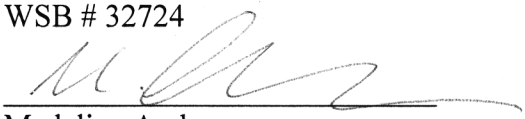

Madeline Anderson
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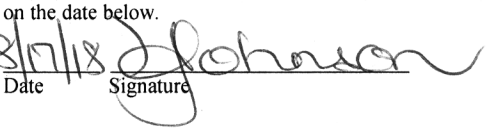
8/17/18 
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PIERCE COUNTY PROSECUTING ATTORNEY

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