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Division II
State of Washington
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No. 54654-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

GEOFF RYAN SAGUN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR

The sentencing condition prohibiting Geoff Sagun from having contact with his 14-year-old biological son violates the sentencing statute and Sagun's fundamental constitutional right to parent.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A sentencing condition prohibiting an offender from contacting his own child must directly relate to the circumstances of the crime, be sensitively imposed, and be reasonably necessary to accomplish the essential needs of the State. Here, Sagun was convicted of first degree child molestation and indecent liberties for having sexual contact with his 10-year-old stepdaughter. No evidence suggests he ever had sexual contact with or otherwise harmed his 14-year-old son. Does the sentencing condition prohibiting Sagun from contacting his son violate the sentencing statute because it is not sufficiently crime-related? Does the condition unreasonably infringe Sagun's constitutional right to the companionship of his son?

C. STATEMENT OF THE CASE

Sagun was charged and convicted by a jury of three counts of first degree child molestation and one count of indecent liberties by forcible compulsion with a person under age 15. CP 9-14. The victim,

AGK, was Sagun's former stepdaughter. CP 34. At trial, AGK testified as to five incidents occurring in 2008 when she was 10 years old. CP 34-35.

Sagun was sentenced on February 21, 2014. The court imposed an indeterminate sentence of 198 months to life for the child molestation counts, and 300 months to life for the indecent liberties count, to be served concurrently. CP 15. The court also imposed a lifetime term of community custody. CP 15. As a condition of the sentence, the court imposed a lifetime no-contact order in regard to the victim, AGK. CP 20, 28, 31.

As an additional condition of the sentence, the court ordered that Sagun have no contact for life with *any* minors. CP 28, 31. Condition number eight provides:

You shall not have any contact with minors. This provision begins at the time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.

CP 28. In addition, in Appendix F, "Additional Conditions of Sentence," the court imposed "No contact with minors under the age of eighteen." CP 31.

Sagun filed a direct appeal which was denied. CP 32-37. He did not challenge the conditions of his sentence. A mandate issued on November 17, 2015.

On February 25, 2020, Sagun, *pro se*, filed a CrR 7.8 “Motion to Modify or Correct Judgment and Sentence.” CP 38-86. Sagun requested that the court modify the judgment and sentence so that he could have supervised visits with his 14-year-old son Tanner “through the Department of Corrections visitation program at Airway Heights Corrections Center.” CP 38-39. Sagun’s father had told him that Tanner wanted to visit him in prison. CP 40, 45. Sagun asserted that allowing such contact between father and son would facilitate Sagun’s rehabilitation. CP 40, 45.

Attached to the motion was an affidavit from Sagun’s father, Michael Sagun. CP 47-48. Michael affirmed that his grandson Tanner had told him and his mother that he wanted to visit his father in prison. CP 47-48. Tanner’s mother had given Michael and his spouse, Dennis Parker, permission to take Tanner to visit his father at Airway Heights, as his mother was unable to do so due to her health conditions. CP 47-48. Such visits would be supervised and granted through DOC procedures. CP 47-48. Michael asserted that it was important for

Tanner and his father to maintain family ties, as doing so would facilitate Sagun's rehabilitation and be beneficial for both father and son. CP 47-48. Michael urged the court to modify the no-contact provision so that Tanner could visit his father. CP 47-48.

In his motion, Sagun suggested that the court's failure to address whether the boilerplate sentencing condition prohibiting any contact with minors applied to Sagun's son was an oversight or omission for which he was entitled to relief under CrR 7.8(a). CP 39. He also argued that the condition unreasonably restricted his constitutional right to parent. CP 39. He pointed out that sentencing courts must make specific findings when restricting a parent's contact with his child, which the court had failed to do. CP 39.

The court summarily denied the motion without calling for a response from the State or holding a hearing. CP 87-88. The court stated that its failure to include Sagun's son as an exception to the condition prohibiting contact with minors was not an oversight. CP 88. But the court did not address Sagun's argument that the condition unreasonably infringed his constitutional right to parent.

Sagun now appeals the court's order denying his CrR 7.8 motion to modify the judgment and sentence.

D. ARGUMENT

The court erred in imposing a sentencing condition prohibiting Sagun from contacting his biological son because it is not sufficiently crime-related and unreasonably infringes Sagun’s fundamental constitutional right to parent.

A court’s authority to impose sentencing conditions is derived wholly from statute. In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980); State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008). An offender may challenge an erroneous sentencing condition for the first time on appeal. Bahl, 164 Wn.2d at 744.

Generally, a court may not order an offender as a condition of the sentence to refrain from engaging in otherwise lawful behavior unless the prohibition is “crime-related.” RCW 9.94A.703(3)(f); State v. Riles, 135 Wn.2d 326, 349-50, 957 P.2d 65 (1998), overruled in part on other grounds by State v. Sanchez Valencia, 169 Wn2d 782, 239 P.3d 1059 (2010). A crime-related prohibition is “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) (emphasis added).

Sentencing conditions must be “reasonably crime related.” State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). The record must

provide a factual basis for concluding a condition is crime-related. State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989) (citing David Boerner, Sentencing in Washington § 4.5 (1985)). Whether a condition is crime-related is reviewed for abuse of discretion in light of the specific facts of the case. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010).

In addition, sentencing conditions must not unreasonably infringe an offender's constitutional rights. If a condition interferes with a fundamental constitutional right, it "must be sensitively imposed" and "reasonably necessary to accomplish the essential needs of the State and public order." Warren, 165 Wn.2d at 32.

This Court carefully reviews conditions that interfere with fundamental constitutional rights. Rainey, 168 Wn.2d at 374. Unlike statutes, sentencing conditions are not presumed to be constitutionally valid. Bahl, 164 Wn.2d at 753. The extent to which a sentencing condition affects a constitutional right is a legal question subject to strict scrutiny. Rainey, 168 Wn.2d at 374 (citing Santosky v. Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

A parent has a fundamental liberty interest in companionship with his child that is protected by the Due Process Clause. Rosenbaum

v. Washoe County, 663 F.3d 1071, 1079 (9th Cir. 2011); Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); U.S. Const. amend XIV; Const. art I, § 3.

This interest occupies a unique place in our legal culture, given the centrality of family life as the focus for personal meaning and responsibility. “Far more precious than property rights,” parental rights have been deemed to be among those “essential to the orderly pursuit of happiness by free men,” and to be more significant and priceless than “liberties which derive merely from shifting economic arrangements.”

Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18, 38, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) (Blackmun, J., dissenting) (quoting multiple Supreme Court cases) (individual citations omitted); see also id. at 27 (majority opinion) (acknowledging that “[t]his Court’s decisions have by now made plain beyond the need for multiple citation that a parent’s desire for and right to the companionship, care, custody and management of his or her children is an important interest” and that infringement on this right “work[s] a unique kind of deprivation”) (internal quotation marks and citation omitted).

Here, the sentencing condition prohibiting Sagun from all contact with minors restricts his fundamental constitutional right to the companionship of his biological son, Tanner. The condition therefore warrants the most careful review. Warren, 165 Wn.2d at 32. This Court

may uphold the condition only if it was “sensitively imposed” and is reasonably necessary to accomplish the essential needs of the State and public order. Id.

Generally, the State has a compelling interest in preventing future harm to the victims of the crime. Rainey, 168 Wn.2d at 377. But at the same time, courts are reluctant to uphold no-contact orders with persons *other* than victims. Id.

Where an offender is convicted of sexually molesting a child, the State has a compelling interest in protecting other children from the risk of harm of molestation by the offender. State v. Letourneau, 100 Wn. App. 424, 439-41, 997 P.2d 436 (2000). But to justify prohibiting the offender from contacting his own biological child who was not a victim of the crime, “[t]here must be an affirmative showing that the offender is a pedophile or that the offender otherwise poses a danger of sexual molestation of his or her own biological children.” Id. at 441-42.

Moreover, the court must also consider whether other options, such as supervised visitation, would jeopardize the goal of protecting the child. Rainey, 168 Wn.2d at 378. The question is, in light of the facts of the individual case, whether prohibiting all contact with one’s

child, including supervised contact, is reasonably necessary to realize the State's compelling interest. Id. at 379.

In Rainey, Rainey was convicted of harassing his wife and kidnapping his daughter and taking her to a foreign country. Id. at 379-80. He had a history of involving his daughter in attempts to gain leverage over his wife, even while he was incarcerated. Id. In light of these specific circumstances, the court concluded that prohibiting Rainey from contacting his daughter was reasonably necessary to serve the State's interest in protecting both the mother and the daughter from Rainey's harmful influence. Id.

By contrast, in Letourneau, the sentencing condition prohibiting Letourneau from contacting her biological children was not reasonably necessary to serve the State's interests. Letourneau, 100 Wn. App. at 441-42. Letourneau, a school teacher, pled guilty to two counts of second degree rape of a child stemming from a sexual relationship she had with a 13-year-old boy in her class. Id. at 426. Letourneau's own children were not victims of the crimes, yet, as a condition of her sentence, the trial court ordered her to have no unsupervised contact with *any* minors. Id. In striking down the condition, the Court noted no evidence suggested Letourneau had ever molested her own children or

any children other than the present victim. Id. at 439. Also, no evidence suggested she was a pedophile. Id. Therefore, prohibiting Letourneau from unsupervised contact with her biological children was not reasonably necessary to protect those children from the risk of harm of sexual molestation by their mother. Id. at 441.

Here, similar to Letourneau, the order prohibiting Sagun from having any contact with his biological child is not reasonably necessary to protect his son from the risk of molestation. Sagun was convicted of molesting his stepdaughter. CP 34. Nothing in the record suggests he ever molested or caused any harm to his son or to any child other than the present victim. No evidence suggests he is a pedophile.

Moreover, the court never considered other options such as the one suggested by Sagun—supervised visitation with his son at the prison. See Warren, 165 Wn.2d at 32. The record contains no evidence to suggest that Tanner would be at risk of molestation by Sagun during a supervised visit at the prison. Further, the record contains no evidence to suggest that Tanner would be at risk if his father were allowed to contact him by mail or telephone.

The trial court erred in prohibiting *all* contact with *all* minors. The court erred in failing to take into account Sagun's fundamental

constitutional right to the companionship of his biological child. The court should have considered other options such as supervised visitation and should have assessed whether contact between Sagun and Tanner posed a specific risk to Tanner under the circumstances.

In sum, the court's order was neither "sensitively imposed" nor reasonably necessary to realize the State's compelling interest in protecting children. See Rainey, 168 Wn.2d at 379. It must be modified to allow contact between Sagun and his biological child.

E. CONCLUSION

The court's order prohibiting Sagun from contacting his biological child is not reasonably crime-related and violates Sagun's fundamental constitutional right to the companionship of his child. The order should be modified to allow supervised visitation between Sagun and Tanner, and contact through letters and telephone calls.

Respectfully submitted this 31st day of July, 2020.

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GEOFF SAGUN,)	
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Appellant.)	

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