

29154-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JAMES V. ADAMS, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

STEVEN J. TUCKER  
Prosecuting Attorney

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Deputy Prosecuting Attorney  
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I.

APPELLANT'S ASSIGNMENTS OF ERROR

- A. The criminal court erred when it modified the sentence to allow Mr. Adams to pursue an action in family court, but then usurped the authority of that court by requiring Mr. Adams to effect personal service on the other party in a civil action.
- B. The criminal court erred when it stated it would retain individual responsibility to determine whether proper service had been effect in a civil matter, divesting the entire remaining superior court of jurisdiction in the matter.
- C. The court violated Mr. Adams' du process right of meaningful access to the court when it imposed a criminal court order, restricting action in the family court.
- D. The criminal court abused its discretion by imposing a non-crime related prohibition, that is, requiring Mr. Adams to effect personal service on another party in order to bring an action in family court.

II.

ISSUES PRESENTED

- A. DID THE DEFENDANT MAKE ANY SHOWING THAT THE SENTENCING COURT “USURPED” ANY FAMILY COURT DECISIONS?
- B. DID THE SENTENCING COURT VIOLATE THE DEFENDANT’S DUE PROCESS RIGHTS?

III.

STATEMENT OF THE CASE

For the purposes of this case, the State accepts the defendant’s version of the Statement of the Case.

IV.

ARGUMENT

The defendant asserts error and prejudice because the sentencing court has required personal service on the mother of his daughter as an adjunct to any implementation of a parenting plan in family court. The defendant is currently incarcerated for killing the brother of the juvenile with whom the defendant wants regular contact. Per the defendant’s statement of the case, the sentencing judge placed a lifetime “no contact”

order on the defendant protecting both the wife and any minor children. This was later modified to allow contact with the mother of the child solely for legal matters.

A. THE DEFENDANT HAS NOT SHOWN ANY  
“USURPATION” OF A FAMILY COURT ORDER.

As one of his first assignments of error, the defendant claims that the sentencing court “usurped” the authority of the family court. This claim is interesting from several perspectives. In order to argue usurpation by the sentencing court, the defendant has to assume that the sentencing judge “trumped” a ruling of the family court. The defendant cites no authority for the concept that a criminal sentencing judge, who sentenced the defendant prior to any theoretical appearance in family court, does not have the authority to enforce the sentencing within constitutional limitations and within the sentencing court’s discretion. More to the point, the defendant presents no family court order that has been “usurped.” The defendant is making several *sub silencio* assumptions, one of which is that the family court would allow alternative service of process and allow him visitation with his daughter. The defendant is complaining of a “usurpation” when none has yet occurred.

The sentencing court filed a letter in response to the defendant’s request for contact with his young daughter. CP 25-26. The sentencing

judge granted relief to the extent that the defendant will be allowed to initiate an action in family court to seek contact with the defendant's daughter only. *Id.* So far as can be ascertained from the court file, the defendant has not approached family court nor provided any proof of his attempts to personally serve Ms. Rowe. The defendant claims to be unable to find Ms. Rowe, but has not elaborated on his efforts. The sentencing court even lowered the service standards a bit by permitting non-professional service. If the defense fog is pierced, it is apparent that the defendant is working to place legal burdens on Ms. Rowe without proof that Ms. Rowe knows of the pending action. The sentencing court did specify in a letter:

However, I do require personal service given the facts and circumstances of this case. I believe that substitute serve could clearly prejudice the rights of Jenny Rowe and Laura Adams. I support Mr. Adam's [sic] having his day in family court, however, given the nature of this charge and potential risks to the child, Ms. Rowe must had personal service so the court can hear from all parties before granting Mr. Adam's [sic] requests for contact with his daughter.

CP 25-26

RCW 4.28.100(4) states:

When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the

summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in any of the following cases:

---

(4) When the action is for (a) establishment or modification of a parenting plan or residential schedule; or (b) dissolution of marriage, legal separation, or declaration of invalidity, in the cases prescribed by law;

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RCW 4.28.100(4).

Thus, even the proof of service statute requires certain proofs, including showing that the other party cannot be found in the State prior to proceeding to alternative service. All that the sentencing court is doing in this case is ensuring that the defendant cannot proceed in family court without a thorough effort to serve the mother. The sentencing court has been involved with this defendant for considerably longer than a fresh family court judge who might not have the information about the defendant that the sentencing court has. The sentencing court has not made it impossible for the defendant to proceed in family court. Under the sentencing court's orders, the defendant simply needs to list and document his efforts to locate Ms. Rowe and personally serve her. There is nothing

in the court file other than the defendant's blanket statements that he cannot find Ms. Rowe.

The defendant wishes the courts to hear his motions and presumably rule in his favor, even in the absence of the other affected party, Ms. Rowe. The defendant's arguments on this appeal are illogical. The defendant claims to be unable to determine Ms. Rowe's location. If that is so, then what sense does it make to order Ms. Rowe to make the child available to the defendant in prison?

Since the defendant does not know where Ms. Rowe resides, alternative service only sets up the possibility of Ms. Rowe eventually finding out that the defendant has approached family court and argued his motions with no input from Ms. Rowe. It is clear from the affidavit filed by the defendant that he will seek far more in family court than just permission to have contact. He wishes to set orders in place that would require much inconvenience on the part of Ms. Rowe to comply with the defendant's multiple demands. The defendant's "affidavit" in the court file has a large list of items that would create an onerous burden on Ms. Rowe. The requests below show the large extent to which the defendant intends to argue:

1. The ability to correspond via mail service through electronic means, email, telephone, video greetings (Prison-based program), standard letters by U.S.

Mail, greeting card exchanges, photographic exchanges;

2. To be placed on Mr. Adams' current visitor list so as to participate in prison-based programs tailored for long-distance dads where such policies require visitor approval status to enjoy program opportunities. (physical visitations will be sought at a later date in a family court proceeding requesting such through good cause shown.)
3. Notice to the affiant immediately of any location change in residence, address, county, State, Country, or any other change in location not mentioned that would effect the contact provisions in any way between Mr. Adams and his daughter; (RCW 26.09.430-.480)
4. Reasonable amount of steady, regular, consistent contact provisions to be adhered to where in any case the contact between Mr. Adams and his daughter become obstructed, circumvented, avoided, devoiced [sic], absent, nonresponsive, unreasonable curtailed or otherwise limited uncharacteristically as outlined and authorized under the contact provisions of the parenting plan in place at the time such said conduct occurs, such action would be in direct violation of said parenting plan;
5. Full and equal access to medical and educational records of Laura Lynn Adams. (RCW 26.10.150).

It is the above-mentioned provisions that the defendant apparently will seek for relief in a proposed parenting plan to the Family court at an approval of this court and change of his contact provisions with his daughter, Laura.

CP 16.

Since Ms. Rowe could be anywhere, it is impossible to know whether the defendant's child would need to be transported great distances for jail contact. This is not the more typical situation where the parties can agree upon a location reasonably convenient to both parties.

Since non-professional service was granted by the sentencing court and the defendant asserts that he cannot find Ms. Rowe, it would appear that defendant's family and friends are unwilling or unable to assist the defendant in finding Ms. Rowe and serving her.

The sentencing court placed the defendant in prison for 320 months as a result of the defendant's killing of his infant son. The defendant now wants to have contact with his remaining child with no showing of efforts on his part to locate the child's mother.

In order to comply with the defendant's apparent desires, the defendant's daughter will have to be brought to whatever prison the defendant happens to occupy at any given time. Given the defendant's apparent lack of outside support, it seems that any transportation and other arrangements will need to be dealt with by the child's mother until the child reaches the age of majority. The defendant's original sentence was some 26 years.

B. THE SENTENCING COURT DID NOT VIOLATE THE DEFENDANT'S DIMINISHED DUE PROCESS RIGHTS.

The defendant argues that he has a right to parent his child. Parents have a fundamental right to raise their children without State interference. *See In re Custody of Smith*, 137 Wn.2d 1, 15, 969 P.2d 21 (1998) (recognizing a parent's right to rear his or her children without State interference as a constitutionally-protected fundamental liberty interest), *aff'd*, *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). Trial courts must exercise their discretion consistent with the dictates of due process to afford indigent prisoners a meaningful opportunity to prosecute domestic relations actions. *Whitney v. Buckner*, 107 Wn.2d 861, 869, 734 P.2d 485 (1987).

However, that parental right to parent children is not unlimited. RCW 9.94A.505(8) authorizes the trial court to impose "crime-related prohibitions" as part of any sentence. " '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, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct." Former RCW 9.94A.030(12) (2001). The sentencing court's imposition of crime-related prohibitions is reviewed

under an abuse of discretion standard. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001).

Limitations on fundamental rights must be “...reasonably necessary to accomplish the essential needs of the state and the public order.” *State v. Riles*, 135 Wn.2d 326, 349-50, 957 P.2d 655 (1998) *abrogated on other grounds by State v. Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010). A statute impinging on a fundamental right is constitutional only if it furthers a compelling state interest and is narrowly drawn to meet that interest. *In re Schuoler*, 106 Wn.2d 500, 508, 723 P.2d 1103 (1986).

The prevention of harm to children is a compelling state interest. *In re Dependency of C.B.*, 79 Wn. App. 686, 690, 904 P.2d 1171 (1995), *review denied*, 128 Wn.2d 1023, 913 P.2d 816 (1996).

Sentencing courts can restrict the fundamental right to parent by conditioning 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. 923, 942, 198 P.3d 529 (2008); *State v. Ancira*, 107 Wn. App. at 654.

The defendant has not set forth any sort of statement from prison authorities as to whether a minor child would be permitted to visit the defendant in prison and what sort of limitations the prison imposes. Certainly, the mother of the child or a representative would need to supervise any visits. If the mother was forced to be present, the sentencing court's "no contact" order against Ms. Rowe would be problematic. This is all beside the obvious point that forcing the child to go to a prison to visit the man that killed her brother cannot arguably be in the child's best interest. These visits would continue though the child's minority. In any event, it would be for a family court to investigate and decide these issues. The State's point in mentioning the prison issues is to point out yet another instance wherein the defendant makes silent assumptions and seems to expect this court to accept his positions *en passant*. It would seem that if the prison does not allow minor children to partake in contact visits, the defendant's argument do not show any prejudice from the decisions of the sentencing court.

V.

CONCLUSION

For the reasons stated, the rulings of the sentencing court should be affirmed.

Dated this 6<sup>th</sup> day of May, 2011.

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Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,            )  
  )  
                                  Respondent,    )     NO.   29154-5-III  
                          v.                        )  
  )  
JAMES V. ADAMS,                )  
  )  
                                  Appellant,    )

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I certify under penalty of perjury under the laws of the State of Washington, that on May 6, 2011, I mailed a copy of the Respondent's Brief in this matter, addressed to:

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5/6/2011  
(Date)

Spokane, WA  
(Place)

*Marie J. Trombley*  
(Signature)