

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR..... 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT..... 3

The court imposed a no contact order that impermissibly restricts Mr. Sampson’s constitutional right to have a relationship with his own children..... 3

1. Mr. Sampson has a constitutional right to have a relationship with his own children 3

2. The sentencing order barred Mr. Sampson from having any contact with his own children even though this was not the court’s expressed intent and without considering reasonable alternatives..... 5

3. The remedy is to strike the lifetime no contact order and impose only reasonably necessary orders involving contact with others 8

E. CONCLUSION..... 9

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

In re Pers. Restraint of Rainey, 168 Wn.2d 367, 229 P.3d 686 (2010). 4,
7, 8, 9

State v. Armendariz, 160 Wn.2d 106, 156 P.3d 201 (2007)..... 8

Washington Court of Appeals Decisions

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

State v. Letourneau, 100 Wn.App. 424, 997 P.2d 436 (2000) 5, 6, 7

United States Supreme Court Decisions

Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599
(1982)..... 3

Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49
(2000)..... 3

A. ASSIGNMENT OF ERROR.

The court impermissibly imposed a lifetime no contact order between Marcel Sampson and his children.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

A court may not use its sentencing authority to impose a no contact order restricting a parent's right to see or communicate with his own child unless the court conducts a fact-specific inquiry and finds the particular needs of the child make such restrictions reasonably necessary. The court barred Mr. Sampson from having any contact whatsoever with the mother of his young child and permitted him only supervised in-person contact with any minors, including his own children. When Mr. Sampson's children were not victims in the case, did the court's order deny Mr. Sampson the ability to contact his own children without finding the restrictions are reasonably necessary to protect the children?

C. STATEMENT OF THE CASE.

At Marcel Sampson's sentencing, the judge stated that she did not intend to prohibit Mr. Sampson from having some contact with his own biological children. 10/28/2011RP 24-25. The prosecution agreed that Mr. Sampson's own children "were not victims in this case" and

told the court it must “be careful” in barring him from contacting his own children. *Id.*

The court entered an order barring Mr. Sampson from having contact with eight named individuals who were complainants in the charges against him or who had testified at trial for the prosecution. CP 26. This order was of lifetime duration and prohibited any contact, direct or indirect, and through third parties, by way of any means of communication. CP 26. None of the named individuals were Mr. Sampson’s children, but the order prohibited Mr. Sampson from having any contact for life with Fuhyda Rogers, who is the custodial parent of Mr. Sampson’s young child. CP 26; Supp. CP _, sub. no.188 (State’s Trial Memorandum, p. 10); 7/20/11RP 67.

The court also ordered that this same lifetime no contact prohibition applied to any minor children without supervision of a responsible adult who has knowledge of this conviction, including Mr. Sampson’s children. CP 26.

Mr. Sampson asked the court to reconsider its no contact order because it effectively barred him from contacting his child with Ms. Rogers since he could not even indirectly contact the mother who cared for the young child and it unreasonably impaired his ability to contact

his own children from prison. CP 52-53. The court denied the request without further explanation. CP 51.

In a recent appellate decision, this Court reversed several of Mr. Sampson's convictions. COA 67868-0-I. However, two convictions were not reversed, tampering with a witness and felony violation of a no contact order, both of which are Class C felonies. CP 22-23; Slip op. at 15-16.¹ The sentence for these remaining convictions includes the no contact order challenged herein.

D. ARGUMENT.

The court imposed a no contact order that impermissibly restricts Mr. Sampson's constitutional right to have a relationship with his own children.

1. *Mr. Sampson has a constitutional right to have a relationship with his own children.*

A parent has a fundamental liberty and privacy interest in the care, custody and enjoyment of his child. *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *State v. Ancira*, 107 Wn.App. 650, 653, 27 P.3d 1246 (2001). A sentencing

court may not impose a no-contact order between a defendant and his biological child as a matter of routine practice. *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 377-82, 229 P.3d 686 (2010). Before imposing an order that restricts contact between a parent and child, the court must consider whether the order barring all contact is “reasonably necessary in scope and duration to prevent harm to the child.” *Id.* at 381. Both the duration of the order and the restrictions on contact must be reasonably necessary to protect the child. *Id.*

As part of Mr. Sampson’s sentence, the court imposed a lifetime order barring Mr. Sampson from having contact with “any minors without supervision of a responsible adult who has knowledge of this conviction.” CP 26. It also barred Mr. Sampson from lifetime contact “direct or indirect, in person, in writing, by telephone, or through third parties” with Fuhya Rogers. CP 26.

Mr. Sampson is the biological father of a young child born to Fuhya Rogers. 7/20/11RP 167. He has “minor children” who were not complaining witnesses in the prosecution against him. 10/28/11RP 24.

¹ Because the direct appeal of the judgment and sentence was filed before Mr. Sampson asked the court to reconsider the no contact order, this Court decided against consolidating these two appeals and ordered that they proceed separately. COA 67868-0-I, Order dated May 14, 2013.

At Mr. Sampson's sentencing hearing, the court expressed the intent to permit Mr. Sampson to have contact with his own children. 10/28/11RP 25. However, the court's no contact order effectively barred contact between Mr. Sampson and his children.

2. *The sentencing order barred Mr. Sampson from having any contact with his own children even though this was not the court's expressed intent and without considering reasonable alternatives.*

Even a parent who is convicted of a sexual offense involving a child is not automatically prohibited from having contact with his own children, including a limitation on only supervised contact. *State v. Letourneau*, 100 Wn.App. 424, 441, 997 P.2d 436 (2000). A lifetime no contact order is a draconian prohibition that must be justified by the State. *Rainey*, 168 Wn.2d at 381. When imposing a no contact order as part of a criminal sentence, the order may not impact a parent's right to contact his children unless the State presents evidence and the court finds the limitations are reasonably necessary to protect the child from harm. *Rainey*, 168 Wn.2d at 381; *Letourneau*, 100 Wn.App. at 441.

In *Letourneau*, the court rejected a no-contact order entered as sentencing condition that permitted only supervised contact between a mother and her minor children. 100 Wn.App. at 437. The defendant

was convicted of two counts of rape of a child in the second degree for her illicit relationship with a minor student, but she was also the mother of three young children whom she had not been accused of mistreating. *Id.* at 442.

While recognizing the State's interest in preventing harm to Letourneau's children, the court found the restriction allowing only supervised contact was not reasonably necessary. *Id.* at 441. The *Letourneau* court further noted there are "more appropriate forums than the criminal sentencing process to address the best interests of dependent children" with respect to their contact with their parents, such as family court for dissolution issues and juvenile court for dependency matters. *Id.* at 443. In these more appropriate forums, a guardian ad litem could investigate the children's needs regarding their relationship with their mother, or offer the children "professional intervention" as the individual circumstances required. *Id.***Error!**

Bookmark not defined. at 442. In sum,

[i]t is the business of the family and juvenile courts to address the best interests of minor children with respect to most other kinds of harm that could arise during visitation with a parent who has been convicted of a crime, including psychological harm that might arise from that parent's communications with the children regarding the crime. To that end, the family and juvenile

courts . . . have broad discretion to tailor orders that address the needs of children in ways that sentencing courts in criminal proceedings cannot. Sentencing courts in criminal proceedings must necessarily operate within the limitations on court discretion contained in the SRA.

Id.

Similarly to *Letourneau*, the prosecutor acknowledged that Mr. Sampson has children who were not involved in the offenses for which he was convicted. 10/28/11RP 24. But the court's no contact order prohibited even indirect third party contact with Ms. Rogers, who was the custodial parent of Mr. Sampson's child. CP 26. This lifetime no contact order effectively barred Mr. Sampson from arranging any contact with his child because he could not have any contact with the custodial parent, even indirectly. CP 26. By only permitting supervised contact, the court barred Mr. Sampson from sending letters or having telephone calls with his children, which are far easier to arrange from prison than in-person contact. The court gave no reason for the lifetime duration of the order barring unsupervised contact with Mr. Sampson's children, which undermines the lawfulness of the court's order. *See Rainey*, 168 Wn.2d at 381.

The court's stated intent at sentencing was to permit supervised contact between Mr. Sampson and his children. 10/28/11RP 24-25.

However, even this restriction may not be ordered without the State demonstrating it is reasonably necessary to realize a compelling state interest. *Rainey*, 168 Wn.2d at 381-82. Because the sentencing condition implicates Mr. Sampson's fundamental constitutional right to parent his children, the State must show that no less restrictive alternative would prevent harm to those children. *Id.* Any limitations must be narrowly drawn. *Id.*

3. *The remedy is to strike the lifetime no contact order and impose only reasonably necessary orders involving contact with others.*

Recently, this Court reversed Mr. Sampson's two convictions for offenses with a statutory maximum of life. COA 67868-0-I, Slip op. at 15-16. Its opinion left stand two remaining felony convictions for Class C felonies, which have a statutory maximum of 60 months. CP 22-23. Any no contact order may not exceed the statutory maximum. *See State v. Armendariz*, 160 Wn.2d 106, 120, 156 P.3d 201 (2007). Accordingly, judgment and sentence must strike the lifetime duration of the no contact order.

Additionally, any order that limits Mr. Sampson's ability to exchange letters, telephone calls, or have visits with his own children must be predicated on proven findings regarding necessary limitations

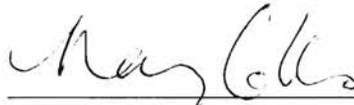
on Mr. Sampson's contact with his own children. The order barring any unsupervised contact between Mr. Sampson and his children for a lifetime duration should be stricken and, at a new sentencing hearing, the court should consider the reasonable alternatives after conducting the necessary fact-specific inquiry regarding the needs of Mr. Sampson's children. *Rainey*, 168 Wn.2d at 382.

E. CONCLUSION.

For the reasons stated above, Mr. Sampson respectfully asks this Court to reverse the no contact order imposed as part of his sentence and permit him to have reasonable contact with his children.

DATED this 6th day of August 2013.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 70161-4-I
v.)	
)	
MARCEL SAMPSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 6TH DAY OF AUGUST, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 6TH DAY OF AUGUST, 2013.

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