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No. 66068-3-I

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

King County No. 08-1-04249-5 SEA

STATE OF WASHINGTON,

Respondent,

v.

PETER ANSELL,

Appellant.

APPELLANT'S OPENING BRIEF

ALLEN, HANSEN, & MAYBROWN, P.S.
Attorneys for Appellant

Richard Hansen
600 University Street
Suite 3020
Seattle, WA 98101
(206) 447-9681

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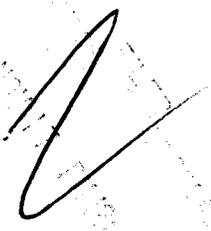


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I. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in prohibiting the Defendant from having contact with his “own children until they reach the age of majority (18),” as a condition of the Judgment and Sentence.

2. The trial court erred in denying Defendant’s Motion to Modify his Judgment and Sentence by either limiting or deleting the condition that the Defendant have no contact with his children until the age of eighteen.

3. The trial court erred in failing to weigh the Defendant’s “fundamental right to parent” against any hypothetical concern that he posed a threat to the welfare of his children before prohibiting any contact with them until they reach the age of eighteen.

B. Issues Pertaining to Assignments of Error

1. Whether there is any basis in fact, or in the record, to impose any restrictions on the Defendant’s contact with his children until the age of 18. (Assignment of Error 1.)

2. Whether there must be some evidence that the Defendant poses a risk to his children’s welfare before a trial court can restrict a defendant’s access to his biological children. (Assignments of Error 1-3.)

3. Whether the duration and scope of the no contact provision was reasonable and necessary based on the evidence in the record about the Defendant and his relationship with his children. (Assignments of Error 1-3.)

4. Whether the trial court recognized the Defendant's "fundamental right to parent" in imposing this condition. (Assignment of Error 3.)

5. Whether the trial judge balanced the importance of the Defendant's relationship to his children against any perceived or hypothetical threat the Defendant poses to the welfare of his children. (Assignments of Error 1-3.)

II. STATEMENT OF THE CASE

A. Procedural Background

On June 19, 2009, the Honorable Michael Fox sentenced the Defendant to a period of 130 months imprisonment based upon the Defendant's guilty plea to three counts of child molestation in the first degree. One of the conditions of that Judgment and Sentence prohibited the Defendant from having contact with the victims or their families for life, and further provided that there be "No contact with the Defendant's own children until they reached the age of majority (18)." CP 33-42, ¶ 4.6 at p. 6.

After the Washington Supreme Court decision, *In re Rainey*, 168 Wn.2d 367, 229 P.3d 686 (2010), the defense filed a motion and supporting memorandum to modify this condition. CP 43, 44-73. At the hearing on that motion, which occurred September 7, 2010, the court had misplaced its file and could not locate the Defendant's motion and supporting documents, which had been filed and served several days earlier. RP (9/7/10) 2-3. However, the court listened to arguments of counsel from the defense and the State, then took the matter under advisement. *Id.* at 13. A few days later, the court issued an order denying the motion to modify without, however, setting forth any reasons. CP 78-79.

The Defendant then obtained an Order of Indigency (CP 82-83) and filed a timely Notice of Appeal. CP 84-87.

B. Factual Background

When sentenced at the age of 44, the Defendant had no criminal history, strong family support, and he had been very involved in his community. He had also been very involved with his wife and children prior to pleading guilty to three counts of child molestation in the first degree. CP 88-135 (Defense Sentencing Memorandum with exhibits attached).

The Defendant graduated from Roosevelt High School and obtained a degree in history from the University of Washington in 1988. CP 90. He enlisted in the U.S. Army Reserves and received an honorable discharge in

1986. He had an excellent work history with various companies, and formed his own business that earned him upwards of \$70,000 to \$90,000 annually. *Id.* He had a normal and healthy upbringing with four siblings and his elderly parents remain happily married. *Id.*

Clifford Thurman, who wrote the presentence investigation, even considered Peter Ansell “a good candidate for treatment as his motivation seems heightened.” CP 90. CPS conducted a complete investigation of Mr. Ansell’s children and found there was no history of abuse, and the evidence presented at sentencing made it clear that he was very involved, in a positive way, in the lives of his children. CP 103-106. Dr. Harris, a psychiatrist with extensive experience treating sex offenders, concluded in his evaluation of Mr. Ansell: “I am quite certain there is no potential for abuse in his relationship with them.” CP 98.

Numerous individuals, including friends and family members with children of their own, wrote extensive letters on behalf of the Defendant, which are attached as exhibits to Defendant’s Sentencing Memorandum. CP 103-133. Each of these individuals had questioned their own children to determine that Peter never interacted inappropriately with any of them. Quite to the contrary, he was described “as a very committed parent.” CP 105.

For more than a year before sentencing, Mr. Ansell had been involved in counseling with G. Christian Harris, M.D., a state certified Sex Offender Treatment Provider (SOTP). Dr. Harris, a psychiatrist, prepared a report which was attached as Exhibit 1 to the Defendant's Sentencing Memorandum. CP 96-98. Dr. Harris had more than 50 sessions with the Defendant "in psychotherapy specifically dealing with his sexual offenses, a treatment modality now characterized as a SOTP, or sex offender treatment program." Dr. Harris observed that "Mr. Ansell has been intensely involved in his therapy" and that he "has displayed great remorse, tearfulness, empathy, and a somewhat relentless and obsessive self-questioning as to what type of regressive cognitive processes may have been involved in the deterioration and erosion of his usual sense of morality." Dr. Harris no longer considered Peter Ansell to be a threat to the community because "he has openly declared his guilt and taken responsibility for his offense behaviors" and he predicts "a rather complete rehabilitation of this individual as he continues in a reasonable sex-offender treatment program." CP 98.

Each of his supporters described Mr. Ansell's dedication to his treatment and rehabilitation with Dr. Harris, stating that he was "taking ownership of his poor choices and their effect." CP 105. As noted by Carol Grant:

He told me he considered all the children involved in coming to his decision to plead guilty. Peter said that his guilty plea would prevent further trauma to the children by avoiding their involvement in trial and testimony. Peter has repeatedly told me he takes full responsibility and recognizes personal deficits that will require ongoing treatment.

CP 105.

Similarly, Christopher Banks, a friend of 30 years, acknowledged that Peter “has shown remarkable strength in facing this and has accepted his responsibility in these matters. He has fully embraced the treatment he has started and he is very eager to continue treatment wherever he is ultimately confined.” CP 118. Mr. Banks also confirmed with his children that Peter Ansell had never acted inappropriately with them.

Steven Ansell, the Defendant’s brother and the principle violist for the Boston Symphony Orchestra, verified that the Defendant had “never treated my children in an inappropriate manner or behaved inappropriately toward them in any way.” CP 111. He, too, commented on the Defendant’s dedication to treatment and the fact that he “has taken responsibility for his actions,” such that “he will never repeat the behavior he is being punished for.” *Id.*

The Defendant’s sister Jody confirmed that Peter had never had any inappropriate contact with her children: “To the contrary, Peter has always been involved with our children in a loving and positive way.” CP 124. She

discussed his “high value on family” and, as with their other siblings, she noted that “he has been a leading advocate among our brothers and sisters for all of us, along with our children and spouses to get together and has done much to organize and coordinate those events. . . . He hosts our parents, all the family who may be available, and others, for family and religious celebrations.” CP 124. She noted: “Because of Peter’s commitment to the therapeutic process and his interest in a broader philosophic understanding, I believe that he has already made great strides down the road to rehabilitation. Peter is a generous and kind individual who has given service to his family, friends, acquaintances and community.” CP 126.

The Defendant’s sister Ellen, a professor at the University of Pittsburgh, verified that Peter had never done anything inappropriate with her children either and observed that “Peter is instrumental in nurturing family connection” because “he initiates and organizes some of our core family gatherings,” which she listed in great detail. CP 130. She stated: “Peter enjoys family bonds and respects family traditions. I know this. Thus, it is cruelly ironic that he will be separated from family for so long.” *Id.*

Peter Ansell’s divorce lawyer, Alan Funk, wrote that “Peter took the high road in the divorce . . . was cooperative and sought to make compromises when appropriate,” including the payment of child support “even though he lost his job.” Mr. Funk described Mr. Ansell as “thoughtful

of others, including his wife and children, and he remained levelheaded under difficult circumstances.” CP 135.

III. ARGUMENT

When the sentencing judge imposed the requirement that the Defendant have no contact with his children until they each reached the age of eighteen, the Court made the following statement:

With regard to his own children, I will provide for no contact until the children reach the age of majority. At that point, it’s up to the children to determine whether or not they want to have contact with their family – with their father and how contact is to be reestablished, if it is. There are individuals who are professionals who can involve and who can be involved in family reconciliation if it is appropriate. But that’s a matter that these children, who are now young, should be capable of exercising when they reach the age of majority and have their own personal sovereignty.

VRP (6/19/09) at 5-6. The judge then sentenced the Defendant to 130 months to life in prison. CP 33-42.

In a recent decision, *In re Rainey, supra*, the Washington State Supreme Court analyzed the rationale for imposing lengthy no contact orders as a condition of a sentence in a criminal case, and set forth detailed guidance for trial courts to follow. In *Rainey*, the defendant filed a personal restraint petition challenging a lifetime no contact order with his daughter, who had been the victim of a first degree kidnapping committed by the defendant. 168 Wn.2d at 372. Rainey had also utilized his daughter as a

means to get even with his ex-wife, the girl's mother, following "a bitter divorce predicated on Rainey's domestic violence and threats," and he even made false allegations of child abuse against his ex-wife's boyfriend. *Id.*

A. Basis for Restrictions

At Rainey's sentencing hearing, family members expressed extreme concern about the risk that Rainey posed to his wife and daughter, and the sentencing judge "noted that domestic violence had 'permeated these offenses.'" *Id.* at 373. Accordingly, the judge "imposed the highest standard range sentence of 68 months" and a lifetime no contact order between Rainey and both his ex-wife and daughter. *Id.*, at 373-74.

At the outset of its analysis, the *Rainey* Court recognized that sentencing conditions are normally reviewed "for abuse of discretion," but that the Court would

more carefully review conditions that interfere with a fundamental constitutional right, such as the fundamental right to the care, custody and companionship of one's children. Such conditions must be "sensitively imposed" so that they are "reasonably necessary to accomplish the essential needs of the State and public order." The extent to which a sentencing condition affects a constitutional right is a legal question subject to strict scrutiny.

Id. at 374 (several citations to *State v. Warren*, 165 Wn.2d 17, 195 P.3d 940 (2008) omitted).

In discussing this "fundamental right to parent," the Court noted that:

A defendant's fundamental rights limit the sentencing court's ability to impose sentencing conditions: "[c]onditions that interfere with fundamental rights" must be "sensitively imposed" so that they are "reasonably necessary to accomplish the essential needs of the State and public order." *Warren*, 165 Wn.2d at 32, 195 P.3d 940.

Id. at 377. However, the Court also recognized that "[t]he State's interest in protecting Kimberly and L.R. is compelling," because

Each of them was a victim of the kidnapping – L.R. because she was abducted from her home and Kimberly because Rainey intended to inflict extreme emotional distress upon her. Generally, the State has a compelling interest in preventing future harm to the victims of the crime. *See Warren*, 165 Wn.2d at 33, 195 P.3d 940 (discussing Washington courts' reluctance to uphold no contact orders with persons *other* than victims).

Id. at 377.

B. Scope of Restrictions

The *Rainey* Court next discussed the scope of the no contact order, and required that it be reasonably necessary and related to a legitimate concern:

As to the "reasonable necessity" requirement, the interplay of sentencing conditions and fundamental rights is delicate and fact-specific, not lending itself to broad statements and bright line rules.

Id., citing *State v. Ancira*, 107 Wn.App. 650, 27 P.3d 1246 (2001) (holding that the State did not show that no contact with the defendant's non-victim children was reasonably necessary to protect their safety) and *State v.*

*Warren, supra.*¹ In this case, the rationale of *Ancira* would apply because there is absolutely no factual basis for the Court to find “that no contact with the defendant’s non-victim children was reasonably necessary to protect their safety.”

The *Rainey* Court concluded that a sentencing court would not be justified in applying a blanket no contact order *even where the subject of the order was a victim of the crime*:

It would be inappropriate to conclude that, simply because L.R. was a victim of Rainey’s crime, prohibiting all contact with her was reasonably necessary to serve the State’s interest in her safety. Rather, we must take a more nuanced look at the State’s interest with respect to L.R. and Kimberly and how a no-contact order serves those interests.

Id. at 377-78. The Court reasoned:

The question is whether, on the facts of this case, prohibiting all contact with L.R., including indirect or supervised contact is reasonably necessary to realize the compelling interests described above.

Id. at 379. This, despite the fact that “the facts of this case could reasonably have convinced the sentencing court that Rainey continued to inflict ‘measurable emotional damage’ on his daughter and that a no contact order was necessary to ‘shield [L.R.] from [Rainey’s] influence.’” *Id.* at 380.

The Court also recognized that “what is reasonably necessary to protect the State’s interests may change over time,” and that “[t]he

¹ Later in its opinion, the Court described this as a “command that restrictions on

restriction's length must also be reasonably necessary." *Id.* at 381 (citations omitted). In conclusion, the Court noted that "[t]he sentencing court in this case provided no reason for the duration of the no contact order, nor did the State attempt to justify a *lifetime* order as reasonably necessary to protect either L.R. or Kimberly." *Id.* at 381 (emphasis in original). The Court remanded the case to the trial court "so that the sentencing court may address the parameters of the no contact order under the 'reasonably necessary' standard." *Id.* at 382.

It is noteworthy that the no contact order was reversed and remanded to the sentencing court in *Rainey*, where L.R. was a victim of a kidnapping, manipulation and other serious misconduct by her father. The *Rainey* Court clearly recognized that, with non-victims (as in this case), the justification must be even stronger. The blanket no contact order herein is exactly the kind that the *Rainey* Court condemned. *See Rainey*, 168 Wn.2d at 374. This is particularly true where the court is restricting a defendant's "fundamental right to parent." *Id.* at 377.

IV. CONCLUSION

On the record in this case, there is absolutely no evidence to support a no contact order since the Defendant has not been shown to be a danger to any of his children, nor is there any evidence that he has ever engaged in any

fundamental rights be sensitively imposed." 168 Wn.2d at 381.

misconduct with them. To the contrary, he successfully engaged in counseling for over a year following his arrest and was no longer deemed to pose a risk to anyone.

Accordingly, this Court should strike the no contact order in its entirety from the Judgment and Sentence, and defer to family court to determine if and when, and under what circumstances, Mr. Ansell should be allowed to have contact with his children.

RESPECTFULLY SUBMITTED this 17th day of November, 2010.

A handwritten signature in black ink, appearing to be 'R. Hansen', written over a horizontal line.

RICHARD HANSEN, WSBA #5650
Attorney for Appellant

PROOF OF SERVICE

Richard Hansen swears the following is true under penalty of perjury under the laws of the State of Washington:

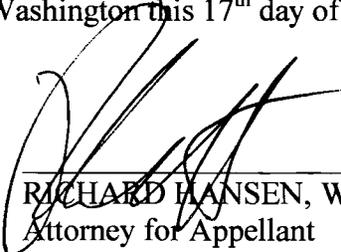
On the 17th day of November, 2010, I sent by U.S. Mail, postage prepaid, one true copy of Appellant's Opening Brief directed to attorney for Respondent:

Appellate Division
King County Prosecutor's Office
King County Courthouse
516 Third Ave., W554
Seattle, WA 98104

And mailed to Appellant:

Peter Ansell, #331217
Appellant
Monroe Corrections Center
P.O. Box 777
Monroe, WA 98272-0777

DATED at Seattle, Washington this 17th day of November, 2010.



RICHARD HANSEN, WSBA #5650
Attorney for Appellant

2010 NOV 17 11:25 AM
KING COUNTY COURTHOUSE
SEATTLE, WA 98104