

NO. 37893-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

TERAPON DANG ADHAHN,

Appellant.

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STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

FILED  
COURT OF APPEALS  
DIVISION II

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

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APPELLANT'S OPENING BRIEF

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LILA J. SILVERSTEIN  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ASSIGNMENT OF ERROR

The trial court violated Terapon Adhahn's Fourteenth Amendment right to parent – as well as the rights of his children – by refusing to exempt Mr. Adhahn's own children from the sentencing conditions prohibiting all contact with minors.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The right to parent is a fundamental liberty interest and as such may be infringed only as necessary to prevent harm to the child. Terapon Adhahn never committed crimes against his own children or in their presence, and wishes to continue to have contact with them. His 11-year-old son, with the support of the child's mother, wants to continue to have contact with his father through supervised visits and letters. Did the trial court violate Mr. Adhahn's fundamental right to parent by imposing sentence conditions prohibiting all contact with minors, and refusing to carve out an exception for his own children?

C. STATEMENT OF THE CASE

In three consolidated cases, Terapon Adhahn pled guilty to 14 crimes against teenage and preteen girls. CP 18-30, 106-120, 182-202. At the end of the plea hearing, the court entered an order permitting Mr. Adhahn's 11-year-old son, Chad, in the company of

Chad's mother Caroline Afleje, to visit Mr. Adhahn at the Pierce County Jail . CP 100; 4/7/08 RP 22. Sentencing was scheduled for May 2, 2008.

Mr. Adhahn was sentenced to life without the possibility of parole on count one. CP 209-223. For the other crimes, the court sentenced him to various terms of incarceration followed by community custody. CP 37-51, 58-63, 125-139, 146-48, 209-223, 230-32.

Mr. Adhahn objected to the proposed sentence conditions prohibiting contact with all minor children, arguing there should be an exception for contact with his own children. In particular, he wished to continue supervised contact with Chad. 5/2/08 RP 14, 17, 21-23. The court denied the request, even refusing to allow Chad to give Mr. Adhahn a letter he had already written. 5/2/08 RP 25.

Mr. Adhahn filed a motion to reconsider the conditions prohibiting contact with his own minor children. CP 64-66. The prosecutors noted that they had not proposed the condition, and that the court appeared to have drawn it from a DOC recommendation. 6/13/08 RP 3, 4. Mr. Adhahn argued that the condition was improper under several of this Court's cases,

because the condition was not necessary to prevent harm to the defendant's own minor children. The sentencing court denied the motion, stating:

Since all the victims were children and one child was murdered, under these circumstances, it would not be necessary that he might harm his own children, so I will be denying your motion for reconsideration.

6/13/08 RP 6; CP 67. Mr. Adhahn timely appeals. CP 68-82, 153-167, 239-253.

D. ARGUMENT

THE SENTENCING COURT VIOLATED MR. ADHAHN'S  
FUNDAMENTAL CONSTITUTIONAL RIGHT TO  
PARENT BY PROHIBITING CONTACT WITH HIS OWN  
MINOR CHILDREN.

a. The fundamental right to parent, and the right of a child to have a relationship with his parent, may be infringed only when necessary to protect the child from harm. As part of any sentence, the court may impose and enforce crime-related prohibitions. RCW 9.94A.505(8). Sex offenders may also be ordered to avoid "direct or indirect contact with the victim of the crime or a specified class of individuals" while on community placement. RCW 9.94A.700(5)(b).

But the court's statutory authority to impose sentence conditions is circumscribed by the Constitution. Where a fundamental right is at stake, a sentence condition infringing that

right must pass strict scrutiny. In re C.A.M.A., 154 Wn.2d 52, 57, 109 P.2d 405 (2005). That is, the condition in question must be narrowly tailored to further a compelling government interest. Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), aff'd sub. nom. Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); Roe v. Wade, 410 U.S. 113, 155, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). A “compelling interest” means “only for the most powerful reasons.” In re Seago, 82 Wn.2d 736, 738, 513 P.2d 831 (1973). In other words, “an extremely substantial justification” is required, particularly where the deprivation is permanent. In re Sumey, 94 Wn.2d 757, 763, 621 P.2d 108 (1980).

The right to parent one’s children is a fundamental liberty interest protected by the Due Process Clause. Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); U.S. Const. amend. XIV. Washington courts have described this right as “sacred,” In re Hudson, 13 Wn.2d 673, 685, 126 P.2d 765 (1942), and “more precious to many people than the right to life itself.” In re J.D., 42 Wn. App. 345, 347, 711 P.2d 368 (1985) (quoting In re Gibson, 4 Wn. App. 372, 379, 483 P.2d 131 (1971)).

Children also have a special interest in the preservation of the parent-child relationship. See, e.g., Santosky v. Kramer, 455

U.S. 745, 760, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (“the child and his parents share a vital interest in preventing erroneous termination of their natural relationship”); Moore v. Burdman, 84 Wn.2d 408, 411, 526 P.2d 893 (1974) (recognizing child’s interest in “the affection and care of his parents”). Even where a parent does not have physical custody of a child, complete termination of contact should be avoided if at all possible, due to the negative mental and emotional impact on the child. In re J.D., 42 Wn. App. 345, 350, 711 P.2d 368 (1985). “It is no slight thing to deprive a . . . child of the protection, guidance, and affection of the parent.” In re Dependency of T.L.G., 126 Wn. App. 181, 198, 108 P.3d 156 (2005).

Accordingly, the only compelling government interest justifying interference with the fundamental right to parent is prevention of harm to the child. Troxel, 530 U.S. at 68-69; Wisconsin v. Yoder, 406 U.S. 205, 206, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); Smith, 137 Wn.2d at 16-19. A sentence condition restricting or prohibiting a parent’s contact with his children must be stricken if it is not necessary to prevent harm to the children. State v. Sanford, 128 Wn. App. 280, 288, 115 P.3d 368 (2005); State v. Ancira, 107 Wn. App. 650, 654, 198 P.3d 529 (2001). Otherwise,

the condition violates both the parent's fundamental constitutional rights and the child's right to a relationship with his parent.

b. The sentence condition prohibiting Mr. Adhahn and his minor children from having any contact with each other is unconstitutional because it is not necessary to protect the children from harm. The conditions prohibiting Mr. Adhahn and his minor children from having any contact with each other is not necessary to prevent harm to the children, and therefore must be stricken.

The sentencing court erred as a matter of law when concluding:

Since all the victims were children and one child was murdered, under these circumstances, *it would not be necessary that he might harm his own children*, so I will be denying your motion for reconsideration.

6/13/08 RP 6 (emphasis added).

State v. Letourneau, 100 Wn. App. 424, 997 P.2d 436 (2000), is on point. There, as in this case, the defendant was convicted of sex crimes against a minor child who was not her own. Id. at 426. The sentencing court allowed the defendant and her own children to exchange letters, but directed that in-person contact with any minor children, including the defendant's own, be supervised. Id. Even though the sentencing court merely limited contact between the defendant and her children, rather than prohibiting it altogether,

this Court struck the condition as unconstitutionally restrictive. The Court explained, “We strike the provision that requires Letourneau’s in-person contact with her own minor children to be supervised because there is insufficient evidence in the record that such a restriction is reasonably necessary to prevent Letourneau from sexually molesting her children.” Id. at 427.

If the provision in Letourneau was unconstitutional, the condition here is as well. Mr. Adhahn merely seeks the limited contact with his children that this Court held was too restrictive in Letourneau. Mr. Adhahn’s contact with his children would never be unsupervised, because he is incarcerated for life. The State presented no evidence that telephone calls, letters, or supervised visits would harm Chad. And the determination of Chad’s best interest must be left not to a sentencing court, but to the child’s mother. See Smith, 137 Wn.2d at 20-21 (State may not override fit parent’s visitation decisions unless necessary to prevent harm to the child); Letourneau, 100 Wn. App. at 427 (where parents disagree regarding child’s best interest, family court, not criminal court, should resolve dispute). Under Letourneau, the condition prohibiting contact between Mr. Adhahn and his son must be

stricken because it is not narrowly tailored to serve the compelling government interest in prevention of harm to the child.

Several other decisions of this Court are also instructive. In State v. Sanford, as in Letourneau, this Court struck a condition that limited a defendant's contact with his child to supervised visits. 128 Wn. App. at 289. Even though the defendant in Sanford was allowed some contact, the condition requiring supervision of that contact was unconstitutional because there were no allegations that the defendant ever committed or threatened any violence against his own children. Id. There are similarly no allegations that Mr. Adhahn ever committed or threatened violence against his own children. Accordingly, if it was unconstitutional to limit parent-child contact in Sanford, it is unconstitutional to deny it altogether in this case.

In State v. Ancira, the defendant was convicted of felony violation of a no-contact order after spending time with his wife, who was the protected party and a victim of domestic violence perpetrated by the defendant. Ancira, 107 Wn. App. at 652. The sentencing court ordered the defendant to have no contact with his wife for five years, and also prohibited the defendant from contacting their mutual children. Id. at 652-53. This Court struck

the portion of the order that applied to the children, because it unconstitutionally infringed on the defendant's fundamental right to parent. The children had not been direct victims of the domestic violence perpetrated against their mother, and there was "no evidence that prohibiting Ancira from all contact with his children for a lengthy period [was] reasonably necessary to prevent them from the harm of witnessing domestic violence." Id. at 654-55. It is true that "some limitations on [the defendant's] contact with his children, such as supervised visitation, might be appropriate," but "completely prohibiting him from all contact with his children is extreme and unreasonable given the fundamental rights involved." Id. at 655.

The same is true here. Mr. Adhahn did not perpetrate crimes against his own children, and there is no evidence that they ever witnessed their father's crimes against others or that contact with their father would otherwise harm them. To the contrary, Chad obviously wanted to continue a relationship with his father, as indicated by his pre-sentencing jail visit and his request (which the court denied) to have a letter delivered to his father after sentencing.

Even if the State had identified some potential harm to Chad, which it did not, the appropriate course of action would be to limit contact, not forbid it altogether. See Ancira, 107 Wn. App. at 655. As discussed above, Mr. Adhahn's contact with his children would necessarily be limited to supervised visits, letters, and telephone calls. Such contact must be permitted under the Due Process Clause. Id.

Even cases affirming familial no-contact orders support Mr. Adhahn's position. See State v. Warren, 165 Wn.2d 17, 195 P.3d 940 (2008); State v. Berg, 147 Wn. App. 923, 198 P.3d 529 (2008). In Warren, the Court upheld a sentence condition prohibiting the defendant from contacting his wife, because she was the mother of the crime victims and she testified against the defendant at trial. Id. at 33-34. Furthermore, there was "nothing in the record to suggest that [the wife] objects to the no-contact order," in contrast to Mr. Adhahn's case, in which his son has repeatedly sought contact through letters and jail visits. CP 100; 4/7/08 RP 22; 5/2/08 RP 25. And notably, the defendant in Warren was *not* prohibited from contacting his own biological child, even though he had committed sex crimes against his two stepchildren. Id. at 32.

In Berg, the defendant was convicted of multiple sex crimes against his own stepdaughter. 147 Wn. App. at 929-30. This Court upheld the condition prohibiting unsupervised contact with “any female minor,” including the defendant’s biological daughter, because it was reasonably necessary to protect the child from the same fate suffered by her stepsister. Id. at 943. The defendant in Berg was not prohibited from contacting male children, because his victim was female. Id. at 942.

As in Berg, Mr. Adhahn’s victims were exclusively female, so at a minimum he should be allowed contact with his son, Chad. But unlike in Berg, Mr. Adhahn did not commit crimes against his own stepchildren, and therefore any condition prohibiting all contact with his children is improper. Finally, as in Sanford and Letourneau, the sentencing court in Berg did not disallow *all* contact; it merely required supervision. Berg, 147 Wn. App. at 943. If the defendant in Berg was allowed supervised contact with his daughter after repeatedly raping his own stepdaughter, then Mr. Adhahn – who never offended against his own children – should be allowed supervised contact with his son.

In sum, the condition prohibiting all contact between Mr. Adhahn and his children must be stricken because it is not narrowly

tailored to serve the compelling government interest of preventing harm to the children. A condition affecting a fundamental right cannot be upheld unless there is “no reasonable alternative way to achieve the State’s interest.” Warren, 165 Wn.2d at 34-35. Here, even if the State had shown a risk of harm, which it did not, the reasonable alternative way to achieve the State’s interest would be to limit contact to supervised visits, letters, and telephone calls. The condition prohibiting contact altogether must be stricken.

E. CONCLUSION

For the reasons set forth above, Mr. Adhahn respectfully requests that this Court strike the sentence conditions preventing Mr. Adhahn and his own children from having any contact with each other.

DATED this 2nd day of March, 2009.

Respectfully submitted,

  
Lila J. Silverstein – WSBA 38394  
Washington Appellate Project  
Attorneys for Appellant

