

NO. 37893-1 (Consolidated No.)

COURT OF APPEALS  
DIVISION II

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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

STATE OF WASHINGTON  
BY cm  
DEPUTY

STATE OF WASHINGTON, RESPONDENT

v.

TERAPON ADHAHN, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Rosanne Buckner

No. 02-1-03671-8

No. 07-1-03768-5

No. 07-1-03840-1

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly deny a motion for reconsideration alleging abuse of discretion in the imposition of a crime-related prohibition that prohibited defendant from having any contact with minor children, including his biological children, when the condition was imposed to protect all children from a violent pedophile who had committed fourteen crimes, including rape, kidnapping and murder, all against child victims?

B. STATEMENT OF THE CASE.

On August 7, 2002, the Pierce County Prosecutor's office charged a "John Doe," who had a particular DNA profile, with kidnapping in the first degree and three counts of rape in the first degree in Pierce County cause number 02-1-03671-8. CP 1-5. The declaration for determination of probable cause alleged that the victim of these crimes was an 11 year-old girl, S.R., who had been abducted while walking to school, driven to a remote location on Fort Lewis, stripped and repeatedly raped – vaginally, anally, and orally- for over an hour, then left in that remote location, naked and bound with duct tape over her eyes and around her hands. CP 4-5. Almost five years later, the prosecutor filed a corrected information

identifying the "John Doe" as appellant, Terapon Adhahn (defendant). CP 6, 7-11.

On July 18, 2007, the Pierce County Prosecutor's office charged defendant with one count of rape in the first degree, three counts of rape in the second degree and three counts of rape in the third degree in Pierce County cause number 07-1-03768-5. CP 90-93. The declaration for determination of probable cause alleged that the victim of these crimes, L.T.N, was a young girl who had been left in the care of defendant in 2000, when she was 12 years old, and who lived with him until she ran away from him at the age of 15 or 16. During that time she was repeatedly raped by the defendant, who was viewed as her father; she estimates that there were 150 -200 incidents of forced vaginal, anal, and oral intercourse. CP 94-96.

On July 23, 2007, the Pierce County Prosecutor's office charged defendant with aggravated murder in the first degree, kidnapping in the first degree, and rape in the first degree in Pierce County cause number 07-1-03840-1. CP 175-176. The declaration for determination of probable cause alleged that the victim of these crimes, Zinaida Linnik, was a twelve year old girl who had been abducted from the alleyway behind her house on July 4, 2007. CP 177-179. Defendant led investigators to her body which was found in a location near Eatonville many days later.

DNA taken from a swab of the victim's mouth at autopsy matched the defendant's. *Id.*

On April 7, 2008, defendant entered a guilty plea on all three cause numbers before the Honorable Rosanne Buckner. CP 18-30, 106-120, 182-190, 191-202; 4/7/08 RP 2-22. In the 2002 cause number, defendant pleaded guilty to one count of kidnapping in the first degree and three counts of rape in the first degree. CP 18-30; 4/7/08 RP 8-12. In Cause No. 07-1-03768, he pleaded guilty to one count of rape in the first degree, with a firearm enhancement, three counts of rape in the second degree, and three counts of rape in the third degree. CP 106-120, 4/7/08 RP 12-18. Finally, in Cause No. 07-1-03840-1, he pleaded guilty to aggravated murder in the first degree, kidnapping in the first degree, and rape in the first degree. CP 182-190, 191-202; 4/7/08 RP 2-7.

These matters<sup>1</sup> came before the court for sentencing on May 2, 2008. The presentence report (PSI) indicated that defendant had a prior 1990 conviction for incest in the first degree stemming from the vaginal and anal rape of his sixteen year old step-sister. CP 261-278, 281-299, 302-319. The PSI indicates that this attack came unexpectedly after defendant had picked his step-sister up from work and taken her to his

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<sup>1</sup> Defendant was also sentenced on the crime of failure to register as a sex offender that same date, but it is not before this court for review. 5/2/08 RP 1-20.

apartment for lunch. *Id.* Defendant's eight month old daughter was in the apartment at the time of the attack. *Id.* Defendant received a suspended sentence under a special sex offender sentencing alternative (SSOSA) and completed sexual deviancy treatment in July 1997. Defendant also had a 1992 conviction for intimidation with a weapon. *Id.* The PSI author indicated that defendant reported that his older brother had sexually assaulted him between the ages of seven and nine. *Id.*

The PSI also indicated that defendant had several biological children: 1) two daughters from a former marriage, who would have been approximately eighteen and sixteen years old at the time of sentencing; 2) a son, aged eleven at the time of sentencing, from his relationship with Caroline Affleje; and 3) a child "Tera," approximately one to two years old at the time of sentencing, from his relationship with Dom Souriyachack. CP 261-278, 281-299, 302-319.

The court imposed standard range sentences on all convictions. 5/2/08 RP 1-22. Defendant received a sentence of life without the possibility of parole on his conviction for aggravated murder; the sentences he received on his convictions for rape in the second and third degree would run concurrently with this sentence. CP 125-139, 146-148, 209-223, 230-232. All of his remaining current offenses were serious

violent offenses resulting in consecutive sentences. CP 37-51, 58-61<sup>2</sup>, 209-223, 230-232. In total, defendant was sentenced to 811 months to be served consecutively to his sentence of life without the possibility of parole. CP 37-51, 58-61, 125-139, 146-148, 209-223, 230-232.

The court also ordered that defendant was to have no contact with minor children and specified that this also applied to his biological children. 5/2/08 RP 2-26. This restriction was reduced to judgment in Cause No. 02-1-03671-5, by inclusion in Appendix H, which was incorporated by reference in the judgment, as a condition that would be in effect as a term of community placement or custody. CP 58-63. In Cause Nos. 07-1-03768-5 and 07-1-03840-1, it was listed within the judgment as a condition of community custody as well as in Appendix H. CP 125-139, 146-148, 209-223, 230-232. Defendant objected to this condition and his attorney later brought a motion for reconsideration of inclusion of this restriction as it applied to his biological children. 5/2/08 RP 16-17, 22-26; 6/13/08 RP 1-6; CP 64-66, 149-151, 235-237. The court denied the motion for reconsideration. CP 67, 152, 238; 6/13/08 RP 1-6.

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<sup>2</sup> There are two documents entitled "Judgment and Sentence Appendix H" in the court file. Both were filed on May 2, 2008 and both are part of the record on review. CP 58-60, 61-63. They are identical except that only one of these was signed by the trial court. It is not possible to tell from the index which numbers refer to the signed document. In order to ensure citation to the signed document, the State will reference these two documents as if they were a single document, as "CP 58-63."

Defendant filed a timely notice of appeal from entry of the order denying reconsideration. CP 68-82, 153-167, 239-253.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED THE MOTION FOR RECONSIDERATION CHALLENGING THE IMPOSITION OF A SENTENCING RESTRICTION PROHIBITING DEFENDANT FROM CONTACT WITH MINORS, INCLUDING HIS OWN CHILDREN, AS THE STATE'S INTEREST IN PROTECTING CHILDREN FROM DEFENDANT'S PEDOPHILIA AND VIOLENT BEHAVIOR WAS SUFFICIENTLY COMPELLING TO OUTWEIGH HIS RIGHT TO PARENT.

Generally, a sentencing judge may impose and enforce crime-related prohibitions and affirmative conditions. *State v. Cayenne*, 165 Wn.2d 10, 14, 195 P.3d 521 (2008); RCW 9.94A.505(8). A crime-related prohibition is statutorily defined as “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(13). Conduct prohibited during community custody need not be causally related to the crime. *State v. Llamas-Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992). Crime-related prohibitions may extend for a period of time not to exceed the statutory maximum for the defendant's crime and can be independent of the conditions of community custody. *State v. Armendariz*, 160 Wn.2d 106, 112, 118-20, 156 P.3d 201 (2007). A sentencing court may also prohibit a criminal defendant from having

contact with a specific class of people as a condition of sentence. RCW 9.94A.700(5)(b), RCW 9.94A.712(1)(a)(i), and (6)(a). When a defendant has been convicted of a sexual crime against a child, the court may reasonably restrict the defendant from having contact with minors during the community custody period. *State v. Riles*, 135 Wn.2d 326, 347, 957 P.2d 655(1998). A convicted defendant's "freedom of association may be restricted if reasonably necessary to accomplish the essential needs of the state and public order." *State v. Riley*, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993) (quoting *Malone v. United States*, 502 F.2d 554, 556 (9th Cir.1974), *cert denied*, 419 U.S. 1124, 95 S. Ct. 809, 42 L. Ed. 2d 824 (1975)).

A parent's right to rear his or her children without State interference is a constitutionally-protected fundamental liberty interest. *State v. Letourneau*, 100 Wn. App. 424, 438, 997 P.2d 436 (2000). The prevention of harm to children, however, is a compelling state interest. *State v. Ancira*, 107 Wn. App. 650, 653-654, 27 P.3d 1246 (2001); *In re Dependency of C.B.*, 79 Wn. App. 686, 690, 904 P.2d 1171 (1995). Thus, "[t]he fundamental right to parent can be restricted by a condition of a criminal sentence if the condition is reasonably necessary to prevent harm to the children." *Ancira*, 107 Wn. App. at 654.

In *Ancira*, Division I of this Court analyzed a sentencing court's decision to completely prohibit an offender from contacting his children. *Id.* at 654-55. *Ancira* had been convicted of a violation of a no-contact

order requiring him to stay away from his wife. The court ordered the prohibition to last five years and prohibited both direct contact and “indirect contact with the children by telephone, mail, e-mail, etc.” *Id.* The appellate court decided this complete prohibition was “extreme and unreasonable given the fundamental rights involved[.]” It noted that family and juvenile courts are generally better equipped to handle visitation issues than criminal courts. *Id.* at 655 (citing *Letourneau*, 100 Wn. App. at 443).

Even so, the court in *Ancira* explained that some limitations on Ancira’s contact with his children might be appropriate conditions of a criminal sentence. *Id.* The court specifically set out “supervised visitation” as a potential example of a limitation reasonably necessary to prevent the children from witnessing domestic violence. *Id.*

In *State v. Letourneau*, 100 Wn. App. 424, 997 P.2d 436 (2000). Letourneau was convicted of two counts of rape of a child in the second degree. The victim was not one of her children. The mental health professionals who had evaluated Letourneau for sexual deviancy were unanimous in their determination that she was not a pedophile and there was nothing in the record to suggest she posed a threat to her own children. On review, the appellate court held that the sentencing court could not restrict Letourneau’s contact with her own children unless there was “*an affirmative showing that the offender is a pedophile or that the offender otherwise poses the danger of sexual molestation of his or her*

own biological children to justify such State intervention.” *Letourneau*, 100 Wn. App. at 442 (emphasis added).

In both *Ancira* and *Letourneau*, the crimes committed by the defendants could be described as victim “specific.” While Letourneau was not a pedophile, she was completely obsessed with her victim. Similarly, Ancira’s relationship with his wife was contentious but there was little reason to believe allowing him contact with his children, in the absence of his wife, would result in their further exposure to domestic violence.

Appellate courts review the imposition of crime-related prohibitions for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993). Abuse of discretion occurs when no reasonable person would take the position adopted by the trial court or when the decision is exercised on untenable grounds or for untenable reasons. *State v. Berg*, 147 Wn. App. 923, 942, 198 P.3d 529 (2009), *State v. Rehak*, 67 Wn. App. 157, 834 P.2d 651 (1992). If the record shows that it is reasonably necessary to prevent harm to the children, a court can impose a sentence condition that restricts a defendant's fundamental right to parent. *State v. Berg*, 147 Wn. App. 923, 198 P.3d 529 (2008) (restriction barring defendant’s contact with biological daughter upheld where conviction was for sex offense against minor child that was living in his home and to whom he was in a parental role).

In the case before the court, the nature of defendant's offenses and the surrounding circumstances differ significantly from the facts in *Letourneau* and *Ancira*. Defendant's crimes reveal: 1) he is a violent rapist who attacks without warning, 2) who chooses teens or preteens as his victims, and 3) without regard to whether his victims are family members or complete strangers. His criminal history showed that his first victim was his step-sister, whom he attacked while his infant daughter was in the next room. The victims of his current offenses included a young girl, entrusted to his care for an extended period of time, to whom he was acting as a father, and two complete strangers who were, literally, snatched off the street. These crimes reveal that any young girl was "at risk" with the defendant.

All of defendant's current offenses occurred after he "successfully" completed his court ordered treatment for sexual deviancy stemming from his 1990 conviction for incest. Despite treatment, his crimes became progressively more life-threatening to his victims, finally resulting in the death of a young girl. Compare CP 261-278, describing facts underlying the incest conviction, with CP 4-5, 94-96, and 177-179. The risk defendant posed to minors was no longer just of sexual abuse, but of death.

The information before the court in the PSI indicated that defendant had anally raped his victims and that he had a preference for anal intercourse. CP 261-278, 281-299, 302-319. Defendant self-reported

he had been sexually abused during his youth by his older brother. *Id.* While none of defendant's convictions involved male victims, the court did have considerable information from which to conclude that defendant could act out sexually in his preferred manner regardless of the sex of his victim.

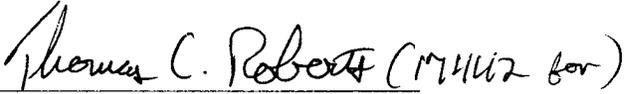
This case is more analogous to *Berg* than *Letourneau*. Defendant had already shown himself capable of raping a child that was left in his care and for whom he was acting as a parent. CP 94-96, 106-120. Because the information before the court showed that defendant was a pedophile, the trial court did not abuse its discretion by restricting defendant's contact with all minors, including his biological children. The court was protecting children from sexual assault and risk of death, which is a compelling state interest. It should be noted that the court imposed no limitation on petitioner's contact with his children once they reach the age of majority; it is not a lifelong restriction, but one of limited duration, while his children are at risk. The prevention of harm to children is a compelling state interest and the facts before the sentencing court justified this restriction on his parental rights. As the trial court did not err in imposing the condition, it did not err in denying the motion for reconsideration seeking to modify the restriction.

D. CONCLUSION.

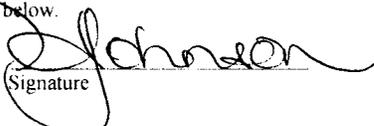
For the foregoing reasons, the State asks this court to affirm the trial court's denial of the motion for reconsideration of the sentencing restriction barring defendant's contact with minor children, including his own.

DATED: June 18, 2009.

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Certificate of Service:  
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

6/18/09   
Date Signature

CO JUDGE PT 6:08  
STATE OF WASHINGTON  
BY   
DEPUTY  
COUNTY CLERK  
PIERCE COUNTY