

NO. 44528-0-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

KAREN ELIZABETH LOFGREN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz

No. 12-1-00662-0

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
BRIAN WASANKARI
Deputy Prosecuting Attorney
WSB # 28945

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUE PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 1

 1. Whether the trial court properly and constitutionally imposed the no contact orders and conditions prohibiting the defendant from contacting her children where these orders and conditions are appropriate crime-related prohibitions that are reasonably necessary to prevent harm to the children. 1

B. STATEMENT OF THE CASE. 1

 1. Procedure 1

 2. Facts..... 5

C. ARGUMENT..... 11

 1. THE TRIAL COURT PROPERLY AND CONSTITUTIONALLY IMPOSED THE NO CONTACT ORDERS AND CONDITIONS PROHIBITING THE DEFENDANT FROM CONTACTING HER CHILDREN BECAUSE THOSE ORDERS AND CONDITIONS ARE APPROPRIATE CRIME-RELATED PROHIBITIONS THAT ARE REASONABLY NECESSARY TO PREVENT HARM TO THE CHILDREN. 11

D. CONCLUSION. 23

Table of Authorities

State Cases

<i>In re Sumey</i> , 94 Wn.2d 757, 762, 621 P.2d 108 (1980)	12, 13
<i>State v. Ancira</i> , 107 Wn. App. 650, 653, 27 P.3d 1246 (2001)	12, 13, 18, 22, 23
<i>State v. Armendariz</i> , 160 Wn.2d 106, 114, 156 P.3d 201 (2007) .	12, 19, 22
<i>State v. Berg</i> , 147 Wn. App. 923, 198 P.3d 529 (2008).....	12
<i>State v. Foster</i> , 128 Wn. App. 932, 938, 117 P.2d 1175 (2005).....	12
<i>State v. Letourneau</i> , 100 Wn. App. 424, 438, 997 P.2d 436 (2000)	13
<i>State v. Llamas-Villa</i> , 67 Wn. App. 448, 456, 836 P.2d 239 (1992)	13
<i>State v. Riles</i> , 135 Wn.2d 326, 350, 957 P.2d 655 (1988)	13
<i>State v. Riley</i> , 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993).....	12
<i>State v. Warren</i> , 165 Wn.2d 17, 35,195 P.3d 940 (2008).....	17, 19

Statutes

Former RCW 9.94A.120(20).....	12, 19
RCW 13.34	21
RCW 13.34.180	20
RCW 13.34.180(3)(c).....	20
RCW 13.34.190	20
RCW 13.34.190(1)(a)(iv)	20
RCW 13.34.190(1)(b).....	20
RCW 13.34.200	21

RCW 9.94A	21
RCW 9.94A.030(10).....	12, 22
RCW 9.94A.505(8).....	11, 22
RCW 9.94A.703(3)(b).....	12, 19, 22
RCW 9A.20.021(a).....	19
RCW 9A.28.020(3)(a)	19
RCW 9A.28.030(2).....	19

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

1. Whether the trial court properly and constitutionally imposed the no contact orders and conditions prohibiting the defendant from contacting her children where these orders and conditions are appropriate crime-related prohibitions that are reasonably necessary to prevent harm to the children.

B. STATEMENT OF THE CASE.

1. Procedure

On February 24, 2012, the State filed an information charging Karen Elizabeth Lofgren, hereinafter referred to as “Defendant,” in the alternative with conspiracy to commit first degree murder and solicitation to commit first degree murder. CP 1-2.

The State alleged that the defendant contacted a man about hiring someone to kill her estranged husband, Tom Hardin, between January 23 and February 23, 2012. CP 3-4.

On December 7, 2012, the State filed an amended information charging one count of solicitation to commit second degree murder. CP 9. The defendant pleaded guilty as charged in that amended information the

same day. CP 11-19; RP 3-10. In her statement of defendant on plea of guilty, she stated:

The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: Between 1/1/12 and 2/24/12 I entered into discussion with another person and ultimately offered to give money and property to another to have him arrange to have another commit the murder of my husband, Todd Hardin. The acts occurred in Pierce County, Washington.

CP 11-19 (statement of defendant on plea of guilty, paragraph 11); RP 7.

The court scheduled sentencing for January 25, 2013, RP 8-10, CP 424-36, and both parties filed sentencing memoranda. CP 258-396 (State's sentencing memorandum), 22-33 (Defendant's sentencing memorandum).

In its memorandum, the State recommended that the court impose 165 months in total confinement, the high end of the standard sentencing range. CP 258-396. It also recommended that the court, among other conditions, impose no contact orders preventing the defendant from contacting L.H. and R.H. CP 258-296. To its memorandum in support of this recommendation, it attached transcripts of recorded conversations between the defendant and the man she approached to find an assassin to kill her husband. CP 258-396 (attachments A, B, C, D, E, F, & G). The State also attached a transcript of a February 21, 2012 recorded conversation between the defendant and the undercover detective whom

the defendant believed was the assassin she was hiring to kill her husband.
CP 258-396 (attachment H).

At the sentencing hearing, the defendant's husband, Todd Hardin, told the court that the defendant allowed a man "she thought was capable of finding someone to murder [him] over to [the] family residence where [his] children lived." RP 15. He said the defendant "even informed the [putative] hit man of where [his] girls go to school" and gave him "the time and the name of the school." RP 17. Hardin told the sentencing court that "[i]t was only because of the no-contact order preventing [the defendant] from seeing the children that they [the children] were allowed to remain in th[eir] private Christian school." RP 17. Mr. Hardin closed his remarks by stating

I beg you: I beg you to keep the no-contact order in place so that my children and I will, at least, have a chance at some sort of normal life. I support the State's recommendation. Thank you.

RP 18.

The State recommended a sentence which included 165 months in total confinement. RP 29. The State also argued for provisions preventing the defendant from contacting her children. RP 29. In arguing for the no contact provisions, the deputy prosecutor noted that the defendant had given the putative assassin the "times when [Hardin] was at the school of her children" and thereby "placed her children at risk, too." RP 29. This,

the State noted “is why the no-contact order between the children and the defendant is, absolutely, vital.” RP 29.

The State also indicated that the transcripts submitted to the court showed that the defendant was willing to inflict emotional distress on her children:

This is a woman who’s willing to have the father of her children killed. For children as young as the defendant and the victim’s children to lose a parent, in and of itself, would be traumatic even if it was to natural disease or a car accident or something of that nature. To lose a parent to a violent death is even more tragic and traumatic for these children, and she was willing to inflict that on her children but then to take it even a step further and to know that your sole, remaining parent was the one at whose hands your other parent died. She was willing to put her children through that. She was willing to inflict that level of pain and trauma on those two little girls, and that is the depth of the depravity that the defendant represents in this case.

RP 30-31

The defendant asked the court to impose an exceptional sentence “well below the guidelines or, in any event, no more than the low end of the guidelines.” CP 22-33. At the sentencing hearing, the defendant urged the court to impose no more than two years in total confinement. RP 42.

Although the defendant’s sentencing memorandum was silent as to no contact provisions or orders, *see* CP 22-33, the defendant indicated in her statement of defendant on plea of guilty that she intended to argue for contact with her children. CP 11-19; RP 5. At the sentencing hearing

itself, the defendant argued against the no contact provisions preventing her from having contact with her children. RP 43-44.

The court denied the motion for an exceptional sentence below the standard range and imposed a standard range sentence of 165 months in total confinement and 36 months in community custody. RP 49-51. The court also imposed conditions of sentence that prohibited the defendant from having contact with her children. RP 51, 53; CP 418-36. With respect to the no contact provisions, the court stated

She [i.e., the defendant] tried to have her children's father killed. The burden that would have been placed on those children was immense, if she had managed to succeed in that plan. To lose a parent when you're a small child – I have friends who lost a parent. It is with them forever; and to have to live with the fact that your mother paid someone to kill your father would be a burden that I would place on no child, she chose that line. She chose to do it.

RP 51-52.

On February 14, 2013, the defendant filed a timely notice of appeal. CP 437-52.

2. Facts

On August 16, 2002, the defendant and Todd Hardin were married. CP 258-396. The couple had two children, L.H., date of birth 11/14/2003, and R.H., date of birth 06/13/2006. CP 258-396. However, the couple's relationship deteriorated and defendant filed a dissolution petition in early,

2011. CP 258-396. A reconciliation resulted in that petition's dismissal, but in June, 2011, Hardin filed a second petition for dissolution in Pierce County Superior Court cause number 11-3-02193-8. CP 258-396.

Sometime thereafter, the defendant contacted Darrel Burgess, who was under federal probation, to help her hire someone to kill Hardin. CP 3-4, 258-396.

The defendant told Burgess that there was a one-million-dollar life insurance policy on her husband, and indicated that she would give Burgess half of the insurance money should he find someone to kill Hardin. CP 3, 258-396. Burgess told the defendant that it would cost \$25,000 to arrange to "get the guys up here," but the defendant replied that her money was tied up in a trust. CP 3.

On January 23, 2012, Burgess reported this to his probation officer, who in turn, contacted the Pierce County Sheriff's Department. CP 3, 253-396. Sheriff's Department detectives then spoke with Burgess, who reported that the defendant informed him that she and her husband were divorcing and told him that if her husband were gone all of her problems would go away. CP 3. The defendant told Burgess that she really wished he would do something about it, and told him, "I need you to do this." CP 3.

Beginning February 17, 2012, using court-authorized surveillance, detectives recorded conversations between the defendant and Burgess, and, on February 21, between the defendant and an undercover sheriff's department detective posing as the "hit man." CP 3-4.

On February 17, 2012 at 11:20 a.m., they recorded a telephone call during which Burgess told the defendant that after he terminated the call, he would call the assassin, who would then come to Washington to kill Hardin, but that he wanted to make sure that the defendant was "good with this." CP 256-396 (Attachment A). The defendant, who was getting ready to take her daughters to ballet, responded, "I'm good." CP 256-396 (Attachment A). Her only concern was that when she met with the assassin, they talk about the contract to kill her husband in terms of hiring a person to paint her house. CP 256-396 (Attachment A). During their conversation, the defendant was interrupted by her daughter R.H.:

[The Defendant] Just a minute. Okay. Hold on. R[.H.], why did you do that[?] Hold on, I'm sorry, hang on. Okay. Don't do anything like that any more, okay, sweetheart, please? Okay. Sorry. Okay, you guys, I need to, I need to close this door so I can talk, okay? Give me just one minute[.] It's okay, can I discuss it with you in a minute

please? Okay. But why, what do I have to say to him? I have to just talk about painting?

CP 256-396 (Attachment A).

When Burgess called back to tell the defendant that he had just spoken with the assassin, she indicated that the only thing she feared was that the assassin may be a police officer. CP 256-396 (Attachment B).

On February 18, 2012, the two spoke again, and the defendant asked if, when she met with the assassin, they could “just talk in metaphor? Can we, can we say that we’re just gonna be talking about paint?” CP 256-396 (Attachment C). When informed that the assassin would want some details such as how she would like the homicide to appear to others, the defendant asked Burgess to tell him that she wanted the homicide to look like a “[r]obbery gone wrong.” CP 256-396 (Attachment C).

During that same conversation, Burgess again questioned whether the defendant “wanted to go through with this,” and the defendant replied that she did. CP 256-396 (Attachment C). She said that she had “dreamt about this for years.” CP 256-396 (Attachment C). The defendant stated that her “biggest fear” at the time was “that it’s not gonna happen.” CP 256-396 (attachment C, p. 19).

Finally, on February 21, 2012, the defendant met with Burgess and an undercover detective posing as the assassin. CP 256-396 (Attachment H). She provided the detective with a photograph of Hardin and diamond earrings for which she had paid \$5,000. CP 256-396 (Attachment H). The defendant described Hardin's appearance for the detective and informed him that Hardin did not have any firearms. CP 256-396 (Attachment H). The following exchange then occurred between the defendant and the detective:

DS Okay. And that's where he's staying right now?
This address?

KL Um-hm.

DS Okay. And what does he do for a living? Where does he...

KL Nothing.

DS What does, what time does he wake up in the morning?

KL I don't know. I haven't talk...

DS *I mean does he leave the house? I need, if you can tell me, the more you can tell me the cleaner it's gonna be.*

KL *He, well tomorrow he'll be at the girls' school, which is Lighthouse Christian School. And he works there in the morning, like at 9:30 and he usually stays for lunch.*

DS *He works there?*

KL *No, he works in the classroom, he volunteers.*

DS *At the school.*

KL *Yeah, he volunteers at the school.*

DS *Okay, and then what does he do after that?*

KL *And then tomorrow, I don't know what he does after that. And then tomorrow night he will have the girls, he will pick the girls up from school at 2:45, and then he gives them back to me at 7*

o'clock at night. We meet at the police station in Gig Harbor.

- DS** *So he's gonna have the kids with him all day?*
KL Not all day. They'll be at school and then at 2:45 he picks them up.
DS That I don't want kids around....
KL No, no, no, no, no, no, no...
DS When this happens.
KL No, no, no, no, no.
DS Okay. And you know I'm pretty, pretty particular about kids. I don't want kids anywhere close by...
KL No, I don't, I don't either, I don't either.

CP 258-396 (emphasis added) (Attachment H).

The detective asked the defendant if she knew she would owe him another \$20,000 after the job was done, and the defendant confirmed that she did. CP 258-396 (Attachment H). When the detective asked what she wanted her husband's death to "look like," she rejected the idea of an accident, and asked if she could just have Burgess tell him. CP 258-396 (emphasis added) (Attachment H). The defendant told the detective that in her "dream world" her husband would "get Leukemia and just drop." CP 258-396 (emphasis added) (Attachment H). When the detective told the defendant that he couldn't "make that dream come true," the defendant stated, "I don't want to say anything out loud right now because I am, I'm, I'm worried." CP 258-396 (emphasis added) (Attachment H).

When the detective told the defendant that he needed to know that that she was sure she wanted him to kill her husband, the defendant shook

her head up and down, but then said she was worried that he was with law enforcement. CP 258-396 (emphasis added) (Attachment H), When he again asked her if she was sure, she responded affirmatively by saying “um-hm.” CP 258-396 (emphasis added) (Attachment H). She then confirmed that the photograph and address of her husband she had given the detective were current. CP 258-396 (emphasis added) (Attachment H).

On February 23, 2012, sheriff’s deputies arrested the defendant. CP 4.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY AND CONSTITUTIONALLY IMPOSED THE NO CONTACT ORDERS AND CONDITIONS PROHIBITING THE DEFENDANT FROM CONTACTING HER CHILDREN BECAUSE THOSE ORDERS AND CONDITIONS ARE APPROPRIATE CRIME-RELATED PROHIBITIONS THAT ARE REASONABLY NECESSARY TO PREVENT HARM TO THE CHILDREN.

“As part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions.” RCW 9.94A.505(8). A “crime-related prohibition” is “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.” RCW 9.94A.030(10).

The Washington State Supreme Court has concluded that these statutes together confer “the more specific authority to ‘prohibit[] the offender from having any contact with other specified individuals or a specific class of individuals.’” *State v. Armendariz*, 160 Wn.2d 106, 114, 156 P.3d 201 (2007) (quoting former RCW 9.94A.120(20)). See also RCW 9.94A.703(3)(b).

The imposition of such crime-related prohibitions is generally reviewed for abuse of discretion and “[a]buse of discretion occurs when the decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *State v. Berg*, 147 Wn. App. 923, 198 P.3d 529 (2008) (quoting *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001)); *State v. Riley*, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993).

Although, “[p]arents have a fundamental liberty interest in the care, custody, and control of their children,” *State v. Foster*, 128 Wn. App. 932, 938, 117 P.2d 1175 (2005), a parent’s constitutional right does “not afford an absolute protection against State interference with the family relationship,” *In re Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980).

Sentencing courts may impose limitations on fundamental rights when reasonably necessary to accomplish the essential needs of the State. *State v. Ancira*, 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001); *State v. Letourneau*, 100 Wn. App. 424, 438, 997 P.2d 436 (2000); *State v. Riles*, 135 Wn.2d 326, 350, 957 P.2d 655 (1988).

Moreover, “[c]ourts have recognized prevention of harm to children to be a compelling state interest,” *Letourneau*, 100 Wn. App. at 445, and that “the State has a *parens patriae* right and responsibility to intervene to protect the child.” *Sumey*, 94 Wn.2d at 762; *Ancira*, 107 Wn. App. at 654.

Therefore, “[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.” *State v. Ancira*, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001) (citing *State v. Letourneau*, 100 Wn. App. 424, 439, 997 P.2d 436 (2000)). “No casual link need be established between the condition imposed and the crime committed, so long as the condition relates to the circumstances of the crime.” *State v. Llamas-Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992).

In the present case, Defendant argues that the no-contact orders and sentencing conditions prohibiting her from contacting her children should be vacated because she contends that the State “did not show that

prohibition of all contact was reasonably necessary to serve a compelling interest.” Brief of Appellant (BOA), p. 14-32. The record shows otherwise.

At sentencing, the State referenced a recorded conversation between the defendant and an undercover detective whom the defendant believed she was hiring to kill her husband. RP 28-29. That transcript had already been included in the record before the sentencing court as an attachment to the State’s sentencing memorandum. CP 258-396. Included in that transcript is the following exchange between the defendant (K.L.) and the undercover detective (D.S.), in which the defendant provides a description of her husband and his activities to the man she believes to be an assassin:

DS Okay. And that’s where he’s staying right now?
 This address?
KL Um-hm.
DS Okay. And what does he do for a living? Where
 does he...
KL Nothing.
DS What does, what time does he wake up in the
 morning?
KL I don’t know. I haven’t talk...
**DS I mean does he leave the house? I need, if you can
 tell me, the more you can tell me the cleaner it’s
 gonna be.**
**KL He, well tomorrow he’ll be at the girls’ school,
 which is Lighthouse Christian School. And he
 works there in the morning, like at 9:30 and he
 usually stays for lunch.**
DS He works there?

KL *No, he works in the classroom, he volunteers.*
DS *At the school.*
KL *Yeah, he volunteers at the school.*
DS *Okay, and then what does he do after that?*
KL *And then tomorrow, I don't know what he does after that. And then tomorrow night he will have the girls, he will pick the girls up from school at 2:45, and then he gives them back to me at 7 o'clock at night. We meet at the police station in Gig Harbor.*
DS *So he's gonna have the kids with him all day?*
KL Not all day. They'll be at school and then at 2:45 he picks them up.
DS That I don't want kids around....
KL No, no, no, no, no, no, no...
DS When this happens.
KL No, no, no, no, no.
DS Okay. And you know I'm pretty, pretty particular about kids. I don't want kids anywhere close by...
KL No, I don't, I don't either, I don't either.

CP 258-396 (emphasis added) (Attachment H).

Thus, the defendant gave the name of her children's school and the times at which her children would be there with their father, to a man she believed she was hiring to kill their father. She did this after communicating to Burgess, who she believed had retained the assassin, that she wanted the homicide to look like a "[r]obbery gone wrong." CP 256-396 (Attachment C).

The deputy prosecutor highlighted this at sentencing, by arguing that the defendant "did everything that she could, including giving [the putative assassin] times when [the children's father] was at the school of

her children.” RP 29. She argued that, by so doing, the defendant “placed her children at risk, too.” RP 29. The deputy prosecutor went on to argue that it was for this reason that “the no-contact order between the children and the defendant is, absolutely, vital.” RP 29.

The deputy prosecutor was correct. Contrary to the defendant’s present assertion, there was evidence that the defendant’s daughters “were in danger of future harm.” Brief of Appellant (BOA), p. 22. By giving a putative assassin detailed information as to her children’s schedule so that this assassin may kill their father, the defendant placed her children in harm’s way. This may be considered particularly true given that the defendant had earlier specified that she wanted the homicide to look like a “[r]obbery gone wrong.” CP 256-396 (Attachment C).

However, because the defendant is now prohibited by the no contact orders and provisions from contacting her children, she is less aware of their daily schedules. She therefore cannot provide such detailed information regarding those schedules to others who might be hired in the future to kill their father, others who, in an effort to kill their father, may not share the detective’s disinclination to harm children. Thus, these no-contact orders and provisions are necessary to keep the children out of the line of fire of potential assassins, and are therefore, necessary to prevent harm to these children.

Moreover, these no-contact orders and provisions are apparently important in allowing the children to continue attending their school of choice. Hardin told the court that his “children’s private school has been on high alert while [Defendant] has been out of jail,” that “[m]any parents have expressed fear that [Defendant] might show up and do something unthinkable to [his] children in a vindictive attempt to get at [him],” and that “[i]t was only because of the no-contact order preventing [defendant] from seeing the children that they were allowed to remain in this private Christian school.” RP 17. If those no contact orders and provisions were not in place, the children may no longer be able to attend their school.

The State also has a compelling interest in the protection of Mr. Hardin, the victim of the crime to which defendant pleaded guilty. *See State v. Warren*, 165 Wn.2d 17, 35, 195 P.3d 940 (2008). The defendant’s children are residing exclusively with Mr. Hardin, and therefore, must have intimate knowledge of his daily routine and whereabouts. If the defendant is allowed contact with Mr. Hardin’s children, she will be able to glean information from them regarding his whereabouts and routine, which she could then disclose to a future assassin for purposes of facilitating his homicide. By prohibiting contact with the children, the court foreclosed this possibility. Thus, the no-contact orders and condition were reasonably necessary to accomplish the State’s compelling interest in

crime prevention and the protection of Mr. Hardin, who was the victim in this case.

In short, the no contact orders and conditions prevent the defendant from gaining information about the schedules of both the children and their father, which could, as defendant sought to do in this case, be given to a hired assassin. Without these orders and conditions, both the children and their father would be in potential physical danger.

Thus, the no-contact orders and conditions are “reasonably necessary to prevent harm to the children,” *Ancira*, 107 Wn. App. at 654, and, as a result, do not unconstitutionally infringe on Defendant’s fundamental right to parent.

Therefore, the sentencing court did not err in imposing them, and their imposition should be affirmed.

Although the defendant makes several arguments to the contrary, they are unsupported by the record.

First, the defendant argues that the “[l]ifetime [d]uration” of the no contact orders and conditions is “erroneous.” BOA, p. 25-27. The record shows otherwise.

Sentencing courts may impose crime-related prohibitions, such as no contact orders, “for a term of the maximum sentence to a crime, independent of conditions of community custody.” *State v. Warren*, 165

Wn.2d 17, 32, 195 P.3d 940 (2008); *Armendariz*, 160 Wn.2d 106 at 112-14, 156 P.3d 201 (2007) (*quoting* former RCW 9.94A.120(20)). *See* RCW 9.94A.703(3)(b).

The maximum sentence for the crime of solicitation to commit second degree murder is life. RCW 9A.28.030(2) (providing that “criminal solicitation shall be punished in the same manner as criminal attempt”); RCW 9A.28.020(3)(a) (providing that “[a]n attempt to commit a crime is a: (a) Class A felony when the crime attempted is... murder in the second degree”); & RCW 9A.20.021(a) (providing that the maximum sentence for a class A felony is “a term of life imprisonment”).

In the present case, the defendant pleaded guilty to one count of solicitation to commit second degree murder. CP 11-19. Because the maximum sentence for that crime is life, RCW 9A.28.030(2), RCW 9A.28.020(3)(a), RCW 9A.20.021(a), the sentencing court could properly impose no contact orders and conditions for life. *Warren*, 165 Wn.2d at 32.

Therefore, the sentencing court did not err in imposing such orders and conditions for life in this case, and its imposition of those orders and conditions should be affirmed.

Second, the defendant argues that “where a parent has been convicted of a qualifying serious offense against another parent, the state

may not terminate parental rights unless it first initiates dependency proceedings and provides notice, a meaningful opportunity to be heard, and establishes that “[s]uch an order is in the best interests of the child.” BOA, p. 2-27. The defendant argues that “[b]ecause none of this occurred here, the trial court’s orders violate due process.” BOA, p. 27 (*citing* RCW 13.34.190(1)(b), 13.34.190(1)(a)(iv), *and* 13.34.180(3)(c)).

She cites RCW 13.34.180 and 13.34.190 for the proposition that the State must provide notice, a meaningful opportunity to be heard, and proof that termination is in the best interests of the child before terminating parental rights.

The flaw in Defendant’s argument, is that neither the State nor the sentencing court were seeking to “terminate parental rights” in this case, and therefore, the statutory and decisional law upon which Defendant relies is inapposite.

RCW 13.34.180 details the requirements for “[a] petition seeking termination of a parent and child relationship” and RCW 13.34.190 provides the circumstances under which a court “may enter an order terminating all parental rights to a child.” However, neither statute is relevant to the present case because the State was not seeking and the court did not order termination of the parent-child relationship between the defendant and her daughters.

While the Defendant states that the no contact orders and conditions “amount[ed] to the [S]tate’s expedited termination of parental rights,” BOA, p. 26, they were in fact *not* orders terminating her parental rights. *Compare* CP 418-36 *with, e.g.*, RCW 13.34.200. While parental rights extend well beyond contact with one’s children, RCW 13.34.200, these orders terminated only the defendant’s right to contact. CP 418-36. They were not, therefore, in form or effect, orders terminating parental rights.

As a result, the provisions of RCW 13.34 are inapplicable to the imposition of the no contact orders and conditions in this case, and the court was not bound by such provisions. Therefore, the court could not have violated due process by failing to comply with those provisions, and its imposition of the no contact orders and conditions should be affirmed.

Finally, the defendant argues that the family court is in a better position than a criminal sentencing court “to make informed and fair determinations as to which parent’s claims are truthful, and what amount of parent contact is in the children’s best interests.” BOA, p. 28-32.

Even assuming for purposes of argument that this statement is generally true, it would not relieve a sentencing court of the authority vested in it by the RCW 9.94A, the Sentencing Reform Act (SRA).

RCW 9.94A.505(8) and RCW 9.94A.030(10) confer “authority to ‘prohibit[] the offender from having any contact with other specified individuals or a specific class of individuals’” for a period of time up to the maximum allowable sentence, *Armendariz*, 160 Wn.2d at 114, *see* 9.94A.703(3)(b), and “[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.

This is true regardless of whether the superior court is better positioned to parse through competing parental claims when it sits as a family court than it is when it sits as a criminal sentencing court.

In this case, although the superior court was sitting as a criminal sentencing court, it had before it undisputed evidence that the defendant placed her children in harm’s way by giving a putative assassin detailed information as to their schedule so that this assassin could kill their father. CP 258-396 (Attachment H).

Given such evidence, the no contact orders and conditions are reasonably necessary to prevent the defendant from learning detailed information of her children’s future schedules, which could then be provided to others who might be subsequently hired to kill their father, and who in the process of so doing, might put these children in physical danger.

Thus, these no-contact orders and provisions were and are “reasonably necessary to prevent harm to the children,” *Ancira*, 107 Wn. App. at 654, and, as a result, do not unconstitutionally infringe on Defendant’s fundamental right to parent.

Therefore, they should be affirmed.

D. CONCLUSION.

The trial court properly and constitutionally imposed the no contact orders and conditions prohibiting the defendant from contacting her children because these orders and conditions are appropriate crime-related prohibitions that are reasonably necessary to prevent harm to the children.

Therefore, the trial court’s imposition of these orders and conditions should be affirmed.

DATED: October 17, 2013

MARK LINDQUIST
Pierce County
Prosecuting Attorney


BRIAN WASANKARI
Deputy Prosecuting Attorney
WSB # 28945

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~U.S. mail~~ ^{certified} 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.

10/13/13
Date Signature

PIERCE COUNTY PROSECUTOR

October 17, 2013 - 11:21 AM

Transmittal Letter

Document Uploaded: 445280-Respondent's Brief.pdf

Case Name: State v. Karen Lofgren

Court of Appeals Case Number: 44528-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:
bromane@nwattorney.net