

NO. 70457-5-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PETER ANSELL,

Appellant.

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APPELLATE DIVISION
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PATRICK H. OISHI

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

LISA D. JOHNSON
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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A. ISSUES PRESENTED

1. Did the trial court reasonably conclude that the defendant is an untreated sex offender who has not produced a sexual deviancy evaluation that complies with Washington Administrative Code (WAC) 246-930-320 and has not engaged in sex offender treatment?

2. On remand, did the trial court reasonably balance the State's compelling interest in the protection of children with the defendant's constitutionally based right to parent?

B. STATEMENT OF THE CASE

On May 27, 2008, the defendant, Peter Ansell, was charged by Information with one count of Rape of a Child in the First Degree and one count of Child Molestation in the First Degree for sexual offenses committed against a six year old neighbor who was a playmate of his minor children. CP 220-29. In addition to the charges, the court ordered the defendant to have no contact with his victims or other minor children. CP 234. Upon further investigation of the case, two additional minor children were identified as victims. CP 230-33. These children were also neighbors and friends of the defendant's children, and were ages

four and six. CP 222-28. On May 29, 2009, in exchange for a reduction on the charges involving the original victim, the defendant pled guilty to three counts of Child Molestation in the First Degree. CP 235-67. In his plea agreement, the defendant stipulated to the facts as contained in the Certification for Determination of Probable Cause and the Prosecutor's Summary. CP 262. Those facts include the defendant's acknowledgment that he and his wife shared a babysitting cooperative agreement with two other couples in the neighborhood and that these offenses, against neighborhood children, included multiple acts in which the defendant exposed himself to the children, multiple acts in which he touched their genitals under their clothes and multiple acts in which the defendant made the children touch his genitals, all of which occurred over a period of approximately two years. Based upon the stipulated facts, the defendant also acknowledged that the sexual offenses against one of the victims, E.W., occurred when his own minor son and daughter were in the same house and on at least two occasions were in the same room. He additionally acknowledged that one of his victims reported that he told her that her friendship with his daughter would end if she ever told. CP 222-28.

On June 19, 2009, the Honorable Judge Michael Fox sentenced the defendant to an indeterminate prison sentence of 130 months to life. CP 1-10. In addition to confinement, the sentencing judge ordered the defendant to have no contact with the minor victims as well as no contact with his "own children until they reach the age of majority (18)." CP 6. The sentencing court made no findings to support the no contact provisions with the defendant's own children. At the time of sentencing, the defendant's children were five and seven years old. CP 269.

Following sentencing, the defendant appealed the imposition of the no contact order with his children. In an unpublished opinion, COA 66068-3-I, dated September 12, 2011, this court ordered the sentencing condition prohibiting the defendant's contact with his children stricken and remanded the case back to the trial court to determine whether an absolute prohibition on contact was reasonably necessary to protect the children from harm. CP 20-28.

On April 19, 2013, the Honorable Judge Patrick Oishi (successor to the Honorable Judge Michael Fox) heard argument from the parties as to the parameters of the no contact provisions

related to the defendant's contact with his children. RP 1-24 (4/19/13). In written materials submitted to the court, the defendant acknowledged that he was not yet eligible to receive sex offender treatment while incarcerated but asked permission to have unrestricted phone and written correspondence with his children as well as supervised in person visitation¹. CP 83-91. Alternatively, he asked that the criminal court defer the issue to family court. RP 7, 21 (4/19/13). In support of his request, the defendant submitted written materials from G.C. Harris, Child Protective Services, and his father, Julian Ansell. CP 110-15, 174-75, 177-99. Contrary to the defendant's claim, the State argued for the continued involvement of the criminal court due to the availability of sanctions in the event of violation. CP 181-200. Accordingly, the State proposed an order similar to the order ultimately entered by the court. CP 187. At the conclusion of the hearing, the judge indicated he would issue a written order. RP 23 (4/19/13).

¹ The defendant is currently incarcerated in Washington State with a projected release date of February 24, 2019. CP 168, 181. His children live out of state with their mother and have not seen their father since 2008, which is nearly half their lives. CP 268-72. RP 16 (4/19/13).

On April 25, 2013, Judge Oishi filed written Findings of Fact and Conclusions of Law in support of his Order². CP 201-04.

In addition to the briefing of the parties, among the documents considered by the court were:

1. The unpublished decision of this court dated September 12, 2011 (COA # 66068-3-I);
2. The Certification for Determination of Probable Cause;
3. Statement of Defendant on Plea of Guilty;
4. Letter of Nancy Leonard (mother of the defendant's children);
5. Letters of Michael P. Silva (former brother-in-law and uncle to the defendant's children);
6. Correspondence from G.C. Harris to the defendant.

The court's order struck the previously imposed prohibition on the defendant's contact with his children prior to the age of majority and expanded the parameters of permissible contact to include written communication, but only as approved by a therapist for the children "who gives consideration to the emotional and psychological impact of the contact on the children." The court's

² On May 24, 2013, Judge Oishi entered an order Clarifying and Amending the Order of April 25, 2013, in response to the defendant's motion to clarify whether telephone contact was permissible. In the order of May 24, 2013, the court denied the defendant's motion and specifically held that the "defendant's presumption that "and by telephone" language was not included . . . due to oversight[,] is incorrect." CP 212-14.

order also allows includes for the possibility of subsequent direct in-person contact supervised by an adult with knowledge of the defendant's convictions, as approved by a counselor or therapist, if the written correspondence proceeds with no negative impact on the children. CP 201-04.

C. ARGUMENT

1. THE TRIAL COURT REASONABLY CONCLUDED THAT THE DEFENDANT IS AN UNTREATED SEX OFFENDER WHO HAS NOT PRODUCED A SEXUAL DEVIANCY EVALUATION THAT COMPLIES WITH WASHINGTON ADMINISTRATIVE CODE (WAC) 246-930-320 AND HAS NOT ENGAGED IN SEX OFFENDER TREATMENT.

- a. Sexual Deviancy Evaluation.

The defendant contends that the trial court erred on remand in finding that the defendant has failed to produce a sexual deviancy evaluation that complies with the Washington Administrative Code. The defendant's claim should be rejected. The only document that the defendant relies on is a letter from Dr. G. Christian Harris that indicates he counseled the defendant prior to sentencing. CP 174-75. While the State acknowledges that Dr. Harris is a state-certified Sex Offender Treatment Provider

(SOTP), neither a sexual deviancy nor psychosexual evaluation has been produced during the course of these proceedings. Washington Administrative Code (WAC) 246-930-320 specifically outlines the standards and regulations required of Sex Offender Treatment Providers (SOTP) conducting evaluations. CP 188-92. Not only are Dr. Harris' conclusions unsupported by the clinical data required of an SOTP when conducting an assessment or evaluation, the basis for his conclusions are based entirely upon the defendant's self-report. Dr. Harris does not appear to have reviewed the police reports nor does he appear to have reviewed witness statements. He makes no mention of a sexual history polygraph to rule in or rule out other victims or to verify whether the defendant's children were present during the frequent molestations. He does not appear to have spoken to the defendant's children or their mother. There is no mention of any other psychological testing. Inexplicably, despite this lack of clinical data and despite the fact that the defendant pled guilty to sexual offenses against three separate children, Dr. Harris summarily concludes that the defendant is being truthful when he says he only abused one child.

It is this conclusion as well as Dr. Harris' assessment that the defendant is "not 'into denial' or lieing (sp) to me," that causes him to ultimately conclude that the defendant poses no risk to his children. CP 174-75. Dr. Harris' conclusions are wholly unsupported by any measurable, objective or independent evidence and do not satisfy the requirements of the Washington Administrative Code. CP 188-92.

b. Treatment Following Sentencing.

The defendant further contends that the trial court erred in concluding that the defendant has not engaged in sex offender treatment since ordered by the court as a condition of sentence. The defendant acknowledges however that he is not yet eligible for prison-based sex offender treatment through the Department of Corrections and there is no indication that he has been engaged in any privately funded sex offender treatment since time of sentencing. CP 83-91, 117.

The defendant's status as an untreated sex offender was an appropriate consideration for the court in assessing conditions surrounding the defendant's contact with his children. The court's findings in this respect are supported by the evidence.

2. THE TRIAL COURT REASONABLY BALANCED THE STATE'S COMPELLING INTEREST IN THE PROTECTION OF CHILDREN WITH THE DEFENDANT'S CONSTITUTIONALLY-BASED RIGHT TO PARENT.

The defendant contends that on remand, Judge Oishi failed to apply the proper standard when determining the parameters of contact with his children. This claim should be rejected. Judge Oishi considered the facts of the case, balanced the State's interest in protecting children with due deference to the defendant's constitutional right to parent, in crafting a crime-related prohibition that permitted, but placed restrictions on, the defendant's contact with his minor children.

The defendant argues that the provision of his sentence imposed on remand, permitting only written contact with his children through a therapist or counselor, violates his right to parent. The defendant's claim should be rejected. The defendant was convicted of sexually abusing both female and male children in his home and the no-contact order is narrowly tailored and reasonably necessary to protect his minor children.

This Court reviews sentencing conditions, including crime-related prohibitions, for abuse of discretion. State v. Riley, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993). Under RCW

9.94A.505(8), the court may “impose and enforce crime-related prohibitions” as part of a sentence. A crime-related prohibition means “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). The existence of a relationship between the crime and the condition “will always be subjective, and such issues have traditionally been left to the discretion of the sentencing judge.” In re Rainey, 168 Wn.2d 367, 229 P.3d 686 (2010) (“ . . .because the imposition of crime-related prohibitions is necessarily fact-specific and based upon the sentencing judge’s in-person appraisal of the trial and the offender, the appropriate standard of review remains abuse of discretion”); State v. Parramore, 53 Wn. App. 527, 530, 768 P.2d 530 (1989); Riley, 121 Wn.2d at 28. No causal 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).

Crime-related prohibitions which limit fundamental rights are permissible, provided that the restrictions are reasonably necessary and narrowly drawn. Riley, 121 Wn.2d at 38. A reviewing court considers whether the order prohibits “a real and substantial

amount of protected conduct in contrast to the statute's legitimate sweep." State v. Riles, 135 Wn.2d 326, 346-47, 957 P.2d 655 (1998).

Parents have a fundamental liberty interest in the care, custody and control of their children. At the same time, prevention of harm to children is a compelling state interest and the State has an obligation to intervene and protect a child when a parent's "actions or decisions seriously conflict with the physical or mental health of the child." State v. Ancira, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001), citing In re Summey, 94 Wn.2d 757, 621 P.2d 108 (1980).

A sentencing court has the discretion to impose a no-contact order for a defendant's children when it is reasonably necessary to protect the children from harm and the appropriate nexus exists between the offense committed and the sentencing condition. State v. Berg, 147 Wn. App. 923, 942, 198 P.3d 529 (2008); State v. Ancira, 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001); State v. Letourneau, 100 Wn. App. 424, 441-42, 997 P.2d 436 (2000). "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.” In re Rainey, 168 at 377.

In State v. Berg, 147 Wn. App. 923, 198 P.3d 529 (2008), the defendant was convicted of multiple counts of Rape of a Child in the Third Degree committed against his girlfriend’s 14-year-old daughter. As a condition of sentence, the sentencing court ordered the defendant to have no unsupervised contact with any female minors. Despite the defendant’s claim that the prohibition unreasonably restricted his constitutional right to parent his two-year-old daughter, the Court of Appeals upheld the prohibition reasoning that the abuse was committed in the home and the order restricting his contact with other children in the home was reasonable to protect those children from the same type of harm and to prevent the defendant from fostering the same type of trust relationship which could potentially place them at risk.

Contrary to the absolute prohibition on contact until age 18, imposed at the original sentencing hearing, the order imposed here following remand is narrowly tailored. The defendant is permitted to have contact with his children provided it is written

correspondence approved for content by a therapist or counselor.³ Judge Oishi observed that the defendant's children, who were the same age as the charged victims, were present in the house when the molestations occurred and further considered the position of trust that the defendant violated with respect to both the charged victims as well as his own children. The order here is both sufficiently related to the circumstances of the crime for which the sentence was imposed and appropriately intended to prevent future harm to children. See Llamas-Villa, 67 Wn. App. at 456; State v. Williams, 97 Wn. App. 257, 263, 983 P.2d 687 (1991).

Nonetheless, the defendant claims that the no-contact order is neither narrowly tailored nor necessary to protect his children. The defendant relies primarily on Ancira, however, Ancira is factually distinguishable in several significant ways and does not support the defendant's argument.

In Ancira, supra, the court struck down no contact orders with the defendant's biological children when the act of the violence

³ Regardless of the involvement of the criminal court, there is currently an outstanding order in family court that operates as a total prohibition on the defendant's contact with his children. CP 193-200. The Parenting Plan, Sec. 3.10, which contains restrictions on the defendant's contact with his children, was agreed to by the defendant on June 26, 2009 following sentencing. Until such time that the Parenting Plan is modified, if at all, any relaxation of the terms of contact in the criminal cause will not affect the Parenting Plan and have no practical effect.

the defendant committed was against his wife and not his minor children. Contrary to Ancira, Ansell's crimes were committed against vulnerable children who were friends of his children and the same age as his children. As explained by N.L., the mother of the defendant's two children, the abuse occurred both in her home and during family vacations with the other victims' families. CP 268-72. While she references statements made by the defendant that her children may have been present during the abuse, at a minimum, her children were used as "lures and pawns" to effectuate crimes against other young children. In describing the psychological "torment" that her children have undergone, her plea to the court is to view her children as "deserving of the same protection from contact and abuse that the other victims have received." CP 270. Contrary to the defendant's claim, this case is more analogous to Berg where the restrictions imposed by the court regarding contact with his children were clearly crime-related due to the potential risk of harm to other children.

D. CONCLUSION

This court should affirm the trial court's modification of the no contact order issued upon remand. On remand, Judge Oishi

balanced the defendant's constitutional right to parent with the State's compelling interest in the protection of children; the court reasonably considered the defendant's guilty plea to three counts of Child Molestation, the defendant's acknowledgement that he sexually molested three minor children over a substantial period of time who were "in close proximity" to his own children, the lack of a sexual deviancy evaluation and the defendant's status as an untreated sex offender, in determining the parameters of the defendant's contact with his children.

DATED this 7th day of November, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
LISA D. JOHNSON, WSBA #16336
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Richard Hansen, the attorney for the appellant, at 600 University St., Suite 3020, Seattle, Washington, 98101, containing a copy of the Brief of Respondent, in STATE V. PETER ANSELL, Cause No. 70457-5-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Kathryn L. Mar

Name

Done in Seattle, Washington

11/5/13

Date