IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JEFFREY BRANDON KNUDTSON, Appellant.	No. 41583-6-II UNPUBLISHED OPINION

Armstrong, J. – Jeffrey Brandon Knudtson appeals a community custody condition imposed after he pleaded guilty to first degree child molestation. More specifically, Knudtson challenges the condition prohibiting him from having physical contact with minors, arguing that it interferes with his parenting rights. In a pro se statement of additional grounds, Knudtson raises additional claims of error. We affirm.

Facts

In April 2009, 16-year-old V.D. disclosed to a school counselor that Knudtson had raped her 10 years earlier when he was married to her mother.[1] According to V.D., Knudtson made her bathe afterward and threatened her and her family with harm if she ever told anyone. At the time of V.D.'s allegation, Knudtson was living in New York and, in a handwritten statement to law enforcement there, he admitted to having intercourse with the 6-year-old V.D. He blamed her for initiating the sexual contact and commented that it had made the two closer.

After the State charged Knudtson with first degree child rape, he pleaded guilty to the

[1] The probable cause declaration describes V.D. as Knudtson's stepdaughter, but subsequent information in the record describes her as his niece. For purposes of this appeal, we rely on the probable cause declaration, as do both parties in their appellate briefs.

reduced charge of first degree child molestation. Under an *Alford/Newton* plea,[2] Knudtson denied committing the crime but acknowledged that the State's evidence revealed a substantial probability of conviction.

The trial court accepted the plea and entered a finding of guilt. Knudtson subsequently moved to withdraw his plea on the following grounds: (1) he had recently learned that another man in V.D.'s life had behaved in a sexually inappropriate manner around her, and her recent behavior indicated that she might not be credible; (2) when he was granted a request for a new attorney, he should have been assigned an attorney who was not also employed by the Department of Assigned Counsel; (3) the police report from New York State concerning his confession was falsified; and (4) his trial counsel did not adequately represent his interests.

After considering these assertions, the trial court denied Knudtson's motion to withdraw the plea. The trial court then sentenced him to a standard range sentence of 63 months of confinement, followed by 36 months of community custody. The community custody conditions included the following:

> 16. Do not initiate, or have in any way, physical contact with children under the age of 18 for any reason.
> . . .
> 19. Avoid places where children congregate. (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.)
> . . .
> 24. No contact with any minors without prior approval of the DCO/CCO and Sexual Deviancy Treatment Provider.

Clerk's Papers at 106-07. When defense counsel asked whether these conditions included Knudtson's minor children, the trial court replied affirmatively and denied his request for a

[2] *See N. Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

modification.

Analysis

I. Crime-Related Prohibitions

Knudtson argues at the outset that the condition prohibiting him from physical contact with minors improperly infringes on his parental rights.

As a condition of sentence, the trial court may impose crime-related prohibitions and prohibit conduct that relates directly to the circumstances of the crime for which the offender has been convicted. *State v. Berg*, 147 Wn. App. 923, 942, 198 P.3d 529 (2009). We review sentencing conditions for abuse of discretion, and such conditions are usually upheld if reasonably crime related. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

Although parents have a fundamental right to raise their children without state interference, parental rights are not absolute and may be regulated. *State v. Corbett*, 158 Wn. App. 576, 598, 242 P.3d 52 (2010). In criminal cases, a sentencing court may impose limitations on parenting rights when reasonably necessary to further the State's compelling interest in protecting children. *Berg*, 147 Wn. App. at 942; *see also State v. Letourneau*, 100 Wn. App. 424, 438, 997 P.2d 436 (2000) (limits on fundamental rights during community custody terms that help prevent the defendant from committing further criminal conduct during his sentence are constitutional).

Our decision in *Corbett* is instructive here. Corbett was convicted of raping his six-year-old stepdaughter, and the sentencing conditions prohibited his contact with all minors, including his biological children. *Corbett*, 158 Wn. App. at 586. On appeal, he argued that barring contact

with his children was not a valid crime-related prohibition because the State had failed to show he was a danger to his sons. *Corbett*, 158 Wn. App. at 597. We rejected that argument, noting that his crimes were perpetrated against a minor he had parented:

> Corbett's crime establishes that he abuses parental trust to satisfy his own prurient interests. The trial court's no-contact order prohibiting Corbett from having contact with his biological children is directly related to his crime because they fall within a class of persons he victimized.

Corbett, 158 Wn. App. at 601.

As support, we relied in part on *Berg*, 147 Wn. App. at 942-43, where the defendant had molested his stepdaughter in their home. Consequently, an order restricting his contact with other female children in the home was reasonable to protect his biological daughter from the same type of harm. *Berg*, 147 Wn. App. at 943. Furthermore, there was no evidence that Berg was not a danger to his daughter. *Berg*, 147 Wn. App. at 943-44.

Here, too, there was no evidence that Knudtson was not a danger to his biological children. More significantly, however, the no-contact order was directly related to Knudtson's crime and included a class of persons he had victimized. He had acted as a parent to V.D. when he was her stepfather and had abused the corresponding position of trust.

Knudtson relies on decisions that are factually distinguishable. In *Letourneau*, 100 Wn. App. at 442, Division One struck a community custody condition barring the defendant from having unsupervised in-person contact with her minor children. Her offenses had not involved children in her home, and her evaluators agreed that she was not a pedophile. *Letourneau*, 100 Wn. App. at 441. Consequently, there was no evidence that she posed any danger to her children, and the condition restricting contact was not reasonably necessary to protect them from the harm

of sexual molestation by their mother. *Letourneau*, 100 Wn. App. at 441-42.

Knudtson also relies on *State v. Ancira*, 107 Wn. App. 650, 27 P.3d 1246 (2001), where Division One again struck a no-contact condition barring the defendant's contact with his children. Ancira had been convicted of violating a domestic violence no-contact order concerning his wife. *Ancira*, 107 Wn. App. at 652-53. Division One reasoned that because he was already barred from contacting his wife, the provision barring contact with his children was not reasonably necessary to prevent them from the harm of witnessing further domestic violence. *Ancira*, 107 Wn. App. at 655.

By contrast, the no-contact provision at issue is related to the circumstances of Knudtson's crime and reasonably necessary to prevent his children from the harm of sexual abuse by their father. The trial court did not abuse its discretion in imposing the crime-related prohibition barring Knudtson's physical contact with minors during his term of community custody.

II. Pro Se Issues

Knudtson raises several additional issues in his pro se statement of additional grounds. RAP 10.10. He argues initially that his first trial attorney represented him ineffectively by failing to request a CrR 3.5 evidentiary hearing.[3] To prove a claim of ineffective assistance, a defendant must show that his attorney's performance was deficient and that the deficiency was prejudicial. *State v. Grier*, 171 Wn.2d 17, 32-33, 246 P.3d 1260 (2011). Knudtson cannot show deficient performance based on his attorney's failure to request a CrR 3.5 hearing because he waived the

[3] The trial court apparently appointed a new attorney because of Knudtson's personal conflict with his initial court-appointed counsel.

right to challenge the admissibility of evidence by pleading guilty. *In re Pers. Restraint of Bybee*, 142 Wn. App. 260, 267-68, 175 P.3d 589 (2007).

Knudtson next challenges his attorney's representation on the ground that he was kept in the jury room during several court appearances. There is no support in the record for this claim, and we will not review it further. *See Grier*, 171 Wn.2d at 29 (when ineffective assistance of counsel claim is raised on appeal, reviewing court may consider only facts within the record).

Knudtson also challenges his attorney's failure to subpoena V.D.'s medical records. He claims to know their contents but does not describe them or explain how he was prejudiced by this alleged failure. *See State v. Martinez*, 161 Wn. App. 436, 442, 253 P.2d 445 (defendant establishes prejudice by showing that but for counsel's alleged deficiency, he would not have pleaded guilty), *review denied*, 172 Wn.2d 1011 (2011).

Knudtson further alleges that two weeks before trial, his attorney was not prepared, thereby requiring him to request a new attorney. Because this request was granted, Knudtson again fails to demonstrate prejudice.

Finally, Knudtson complains that his former attorney failed to challenge his confession after Knudtson informed him that it had been altered and was not in Knudtson's handwriting. In his motion to withdraw his plea, Knudtson asserted that he told both his attorneys about the alleged alteration before he pleaded guilty. Knowing of that alleged alteration, he still acknowledged in his plea statement that there was sufficient evidence to support his conviction. Consequently, he does not establish that the failure to challenge his confession affected his decision to plead guilty and was prejudicial.

Knudtson maintains that his new trial attorney was similarly ineffective because he used the notes and information from his former attorney and "[r]efused the same items as previous council [sic]." Statement of Additional Grounds (SAG), at 1. This claim lacks sufficient specificity to support a claim of ineffective assistance. Knudtson also argues that his new attorney again was unprepared two weeks before trial. There is no support for this claim in the record, and it does not support a claim of prejudice given Knudtson's decision to plead guilty.

Knudtson argues further that both his new attorney and the trial court failed to inform him that his plea would give him "two strikes." *See State v. Keller*, 143 Wn.2d 267, 274, 19 P.3d 1030 (2001) (defining "strikes" that may qualify defendant as persistent offender). But Knudtson had no prior criminal history that would have rendered his current offense a second strike. This claim has no merit.

Knudtson also contends that "[a]ll parties involved in [his] case" overlooked the fact that his alleged crime occurred in 1999. SAG, at 2. This fact was not overlooked. Rather, it was referenced in the original and amended information, his statement on plea of guilty, and his judgment and sentence.

Finally, Knudtson alleges that he pleaded guilty because the prosecutor threatened to add new charges if he went to trial. Here again, there is no support for this contention in the record. To the contrary, the record shows that (1) Knudtson denied during the plea hearing that he was coerced into pleading guilty, (2) his signed plea statement declared that he had not been coerced, and (3) his motion to withdraw his guilty plea made no mention of coercion. We decline to address this issue further.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.