IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TERAPON DANG ADHAHN, Appellant.	No. 37893-1-II Consolidated with Nos. 37896-5-II / 37903-1-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Terapon Adhahn is a convicted sex offender who pleaded guilty to aggravated murder and multiple counts of kidnapping, rape, and child rape of three preteen and teenage girls. Adhahn challenges the constitutionality of a condition of his sentence that prohibits all contact with his biological children while they are minors. Adhahn argues it is an unconstitutional infringement on his fundamental parenting rights and is unnecessary to prevent harm to his children. In the alternative, Adhahn argues the no-contact order is not narrowly tailored because it restricts contact with his son when all his victims were girls and that he should be allowed to receive letters and phone calls from his children. Because Adhahn sexually assaulted a minor he parented, we affirm Adhahn's sentencing condition prohibiting contact with all minor children, including his biological children, as a valid crime-related prohibition that does

not unduly burden his fundamental parenting rights.

FACTS

Background Facts

On April 7, 2008, Adhahn pleaded guilty to 14 different counts of kidnapping, rape, child rape, and first degree aggravated murder in three separate cases in Pierce County Superior Court. The charges spanned seven years and involved three separate female victims, ages 11 to 16.[1]

On the morning of May 31, 2000, Adhahn abducted an 11-year-old girl, S.R., while she walked to school. After duct taping her wrists, mouth, and eyes, Adhahn drove 30 minutes to a remote area on the Fort Lewis Military Base and raped S.R., vaginally, anally, and orally for approximately one hour. After dressing her, Adhahn abandoned her with her wrists and eyes still duct taped. Several hours later, military personnel found S.R. walking on a highway armed with a stick.

Sometime in 2000, 12-year-old L.T.N. began living with Adhahn in Spanaway, Washington. L.T.N. moved in with Adhahn after being introduced to him by her mother's boyfriend when her mother began having some troubles. From October 2003 until May 2005, Adhahn vaginally, anally, and orally raped L.T.N. 150 to 200 times. At age 16, L.T.N left Adhahn's house and never returned after he raped her at gun point.

On July 4, 2007, Adhahn abducted 12-year-old Zinaida Linnik from the alleyway behind her Tacoma, Washington home. One week later, Adhahn took police to her nude body near Silver Lake outside of Eatonville, Washington and indicated he left her clothes at Tiger Mountain.

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[1] Adhahn also pleaded guilty for failing to register as a sex offender in a fourth related case but he did not include this conviction in his appeal.

An autopsy identified Linnik's cause of death as blunt force trauma to the head and revealed she had been raped vaginally, anally, and orally. A deoxyribonucleic acid (DNA) swab from Linnik's mouth showed a positive match with Adhahn's DNA.

Procedural Facts

On April 7, 2008, Adhahn pleaded guilty to one count of first degree aggravated murder, two counts of first degree kidnapping, five counts of first degree rape (one with a firearm enhancement), three counts of second degree rape, and three counts of third degree child rape. His criminal history includes a 1990 conviction for first degree incest. In 1990, Adhahn picked his stepsister up from work, brought her to his home for lunch, got drunk, and then vaginally and anally raped her. Adhahn's eight-month-old daughter slept and cried in an adjacent bedroom while Adhahn raped his stepsister. For this conviction, Adhahn received a suspended sentence under a special sex offender sentencing alternative (SSOSA) and completed sexual deviancy treatment.

On May 2, 2008, the trial court sentenced Adhahn to life without the possibility of parole for the aggravated murder conviction. The trial court also sentenced Adhahn to the maximum standard sentence for each of his serious violent felonies and ran each of these sentences consecutively. The trial court also ran Adhahn's life sentence consecutive to his serious violent felony sentences. Finally, the trial court imposed concurrent sentences for the second and third degree rape convictions. In total, the trial court sentenced Adhahn to 811 months followed by a life sentence without the possibility of parole.

Additionally, the sentencing court imposed 26 conditions on Adhahn's community custody including two that give rise to this appeal. Condition 17 states, "Do not initiate or prolong

physical contact with children under the age of 18 for any reason." Clerk's Papers (CP) at 59. Condition 26 states, "No contact with minors without prior approval of the Court, [Department of Corrections/Community Corrections Officer] and Sexual Deviancy Treatment Provider." CP at 60. Over Adhahn's objection, the sentencing court applied these conditions to Adhahn's biological children. Also, the sentencing court prohibited Adhahn from receiving a letter written by his son brought to the sentencing trial. Adhahn has four children from three separate relationships, including three daughters who were approximately 1 to 2, 16, and 18 at the time of sentencing and a son who was approximately 11 at the time of sentencing. On June 13, 2008, the trial court denied Adhahn's motion to reconsider the sentencing condition prohibiting contact with minors as applied to his biological children. Adhahn timely appeals the trial court's order denying reconsideration.

ANALYSIS

Standard of Review

Former RCW 9.94A.120(9)(c) (1999) authorizes the trial court to impose "crime-related prohibitions" as part of any sentence for certain serious violent offenses which include Adhahn's May 31, 2000 crimes.[2] "'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

[2] This opinion cites the Sentencing Reform Act of 1981 (SRA), ch. 9.94A RCW, as codified at the time of Adhahn's earliest offense on May 31, 2000. Adhahn's convictions for first degree kidnapping and first degree rape, committed on May 31, 2000, are "serious violent offenses." Former RCW 9.94A.030(34)(a)(vi)-(vii) (1999). For serious violent offenses committed after July 1, 1990, but before July 1, 2000, a trial court can impose "crime-related prohibitions." Former RCW 9.94A.120(9)(b)-(c). For all of Adhahn's other current offenses, the trial court has the authority to impose or enforce crime-related prohibitions. Former RCW 9.94A.505 (2003) (allowing a trial court to impose and enforce crime-related prohibitions on *any* sentence).

convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct." Former RCW 9.94A.030(12) (1999). We review crime-related prohibitions for an abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001).

Parents have a fundamental right to raise their children without State interference. *See In re Custody of Smith*, 137 Wn.2d 1, 15, 969 P.2d 21 (1998) (recognizing a parent's right to rear his or her children without State interference as a constitutionally-protected fundamental liberty interest) *aff'd*, *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); *see also Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923). But "[p]arental rights are not absolute and may be subject to reasonable regulation." *City of Sumner v. Walsh*, 148 Wn.2d 490, 526, 61 P.3d 1111 (2003) (citing *Nunez v. City of San Diego*, 114 F.3d 935, 952 (9th Cir. 1997)). Limitations on fundamental rights must be "reasonably necessary to accomplish the essential needs of the state and the public order." *State v. Riles*, 135 Wn.2d 326, 349-50, 957 P.2d 655 (1998) (concluding that a prohibition on a convicted sex offender's contact with minors was not justified where the victim was not a minor). Sentencing courts can restrict the fundamental right to parent by conditioning a criminal sentence if the condition is reasonably necessary to further the State's compelling interest in preventing harm and protecting children. *State v. Berg*, 147 Wn. App. 923, 942, 198 P.3d 529 (2008); *Ancira*, 107 Wn. App. at 654; *see State v. Letourneau*, 100 Wn. App. 424, 437-42, 997 P.2d 436 (2000); *see also In re Dependency of C.B.*, 79 Wn. App. 686, 690, 904 P.2d 1171 (1995) (stating prevention of harm to children is a

compelling State interest), *review denied*, 128 Wn.2d 1023 (1996).

Crime-Related Prohibition

Adhahn challenges his judgment and sentence only insofar as it prohibits him from contact with his biological minor children during his incarceration and community custody,[3] contending that this prohibition is an unconstitutional infringement on his fundamental parenting rights. Adhahn argues that the sentencing condition is unnecessary to prevent harm to his biological children. Specifically, Adhahn assigns error to the sentencing court's statement that "under these circumstances, it would not be necessary that [Adhahn] might harm his own children, so I will be denying your motion for reconsideration." Report of Proceedings (RP) (June 13, 2008) at 6. The State argues that the prohibition on contact with his biological children is necessary to protect Adhahn's children from harm. We agree with the State and note that the prohibition only applies to Adhahn's children until they reach the age of majority.[4] While the sentencing court incorrectly asserted it is not "necessary that [Adhahn] might harm his own children" for the court to impose a sentencing condition that limits his fundamental right to parenting, because the sentencing condition is reasonably necessary to protect Adhahn's own children, we affirm the prohibition on Adhahn's contact with his own children. RP (June 13, 2008) at 6.

The decision in *Berg* by Division One of this court is instructive, and we note some important similarities with the current case. 147 Wn. App. 923. A jury convicted Berg of third degree child rape and two counts of third degree child molestation after he sexually molested a 14-

[3] Adhahn is serving a sentence of life without the possibility of parole for the aggravated murder conviction and is, therefore, not eligible for community custody on that charge.

[4] Thus, as a practical matter, because at the time of this appeal Adhahn's children are approximately ages 2 to 3, 12 to 13, 17 to 18, and 19 to 20, this case primarily concerns Adhahn's rights with regard to his son (age 12 to 13) and youngest daughter (age 2 to 3).

year-old girl (A.A.) who lived with him. Berg parented A.A. but she was not his biological child. *Berg*, 147 Wn. App. at 927-31. Berg challenged the reasonableness of a no-contact order covering all minor females, including his two-year-old biological daughter (A.B.). *Berg*, 147 Wn. App. at 941. Division One upheld the no-contact order as a reasonable crime-related prohibition, stating:

> A.A. lived in the home where Berg was acting as her parent when the abuse occurred. By allowing Berg to be alone with A.B., who also live[s] in the home as his child, the court reasonably fear[s] that it would be putting A.B. in the same situation that A.A. was in when Berg sexually abused her. Thus, the trial court's order restricting contact was reasonably necessary to protect A.B.

Berg, 147 Wn. App. at 942-43.

Here, Adhahn's sexual abuse of L.T.N. is analogous to Berg's actions. L.T.N. lived with Adhahn from approximately the age of 12 to 16 and referred to him as "dad" to her peers. During this time, Adhahn raped L.T.N. between 150 to 200 times. Just as Berg did, Adhahn abused his parenting role to sexually abuse a minor girl in his care. There is no distinction between Berg's actions and Adhahn's actions and we affirm the no-contact order based on the *Berg* court's analysis. Adhahn attempts to distinguish himself from Berg because Adhahn "did not commit crimes against his own stepchildren." Br. of Appellant at 11. However, a review of *Berg* does not clearly indicate Berg was married to A.A.'s mother at the time of the abuse. Regardless, we decline to distinguish between stepchildren and minors being parented by an individual who is not their biological parent. In both situations, an adult has authority and builds parental trust in the same way. It is the breach of this parental trust and authority that identifies Adhahn's crimes with Berg's. The no-contact order is reasonably necessary to protect Adhahn's children because of his history of using the trust established in a parental role to satisfy his own prurient desire to sexually

abuse minor children. *See Berg*, 147 Wn. App. at 943-44.

In further support of this holding, while Washington courts have been reluctant to uphold no-contact orders with classes of persons different from the victim of the crime, recent statutory changes in our domestic relation laws allow parental rights to be limited when a parent either commits certain sex-based crimes or commits domestic violence against a spouse. *Compare Riles*, 135 Wn.2d at 349-50 (no-contact order with minors was not related to the defendant's rape of a 19-year-old adult woman), *and Ancira*, 107 Wn. App. at 656-57 (no-contact order with children not necessary when a defendant is convicted of domestic violence against his wife), *with* former RCW 26.09.191(2)-(3) (1996) (incorporating by reference domestic violence laws). Under the changes in the domestic relation laws, a parent's residential time with a child can be limited if the parent engages in certain behavior including sexual abuse of a child, a history of domestic violence, or adult convictions of certain sex offenses including third degree child rape. Former RCW 26.09.191(2)(a)(ii)-(iv)(B). Here, Adhahn's criminal history contains incidents falling within each of these categories: (1) Adhahn sexually abused L.T.N., a child he parented; (2) Adhahn's rape of his stepsister likely qualifies as domestic violence under former RCW 26.50.010 (1999); and (3) Adhahn's current convictions include three separate counts of third degree child rape. Each of these reasons alone could result in a limitation on Adhahn's parenting rights under our state's civil laws and we see no reason that a criminal trial court cannot similarly consider such circumstances and serve as a justification of the reasonableness of a limiting contact order with one's own children. But even without relying on comparable domestic relation laws, Adhahn's prohibition on contact with his own children is justified because it relates to one class of his victims. Adhahn's victims include a minor girl whom he parented and as a result one of his

classes of victims is "minors he parents" in addition to "minor girls." Thus, the trial court's no-contact order prohibiting Adhahn from having contact with his biological children is appropriate because they fall within a class of persons he victimized.

Because we apply *Berg* to Adhahn's case, we do not address Adhahn's arguments based on *Letourneau*, *Ancira*, and *State v. Sanford*, 128 Wn. App. 280, 115 P.3d 368 (2005). All are inapposite because Adhahn victimized a child whom he parented; the defendants in the other cases Adhahn cites did not. In *Letourneau*, Division One of this court struck down a no-contact order with biological children because insufficient evidence existed to show it was reasonably necessary to protect her children. *Letourneau*, 100 Wn. App. at 441-42. Letourneau did not have sex with a family member or with a child living in her home and evaluators did not find her to be a pedophile. *Berg*, 147 Wn. App. at 943 (citing *Letourneau*, 100 Wn. App. at 441-42). In *Ancira*, Division One struck down a no-contact order with biological children and in *Sanford*, this court struck down a no-contact order with biological children when the defendants committed domestic violence against their wives and not their minor children. *Ancira*, 107 Wn. App. at 654-57; *Sanford*, 128 Wn. App. at 289. In contrast, some of Adhahn's numerous crimes were perpetrated against a minor he parented.

Accordingly, we affirm Adhahn's sentencing condition prohibiting contact with all minor children, including his biological children, as a valid crime-related prohibition that does not unduly burden his fundamental parenting rights.

Scope of the No-contact Order

In addition to challenging the no-contact order in its totality, Adhahn argues the no-contact order is not narrowly tailored to serve the State's interest in protecting children.

Specifically, Adhahn argues the no-contact order should not apply to his son because all of his victims were girls and that the State's interests are adequately served without eliminating supervised visits, exchanging of letters, and phone calls between him and his children. We disagree.

Sentencing courts can restrict the fundamental right to parent by conditioning a criminal sentence if the condition is reasonably necessary to further the State's compelling interest in preventing harm and protecting children. *Berg*, 147 Wn. App. at 942; *Ancira*, 107 Wn. App. at 654; *see Letourneau*, 100 Wn. App. at 437-42; *see also In re C.B.*, 79 Wn. App. at 690 (stating prevention of harm to children is a compelling State interest). But there "must be 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.

Here, the trial court had ample evidence to apply the no-contact order to all of Adhahn's children regardless of their sex. While the record contains no explicit finding of pedophilia, the State otherwise showed *all* Adhahn's children are at risk. His initial 1990 rape of his stepsister occurred in his own home while his eight-month-old daughter cried in the next bedroom. Adhahn's victims included a child, L.T.N., who lived with him and whom he parented. While the crimes for which Adhahn was convicted involved minor girls, his preferred method of sexual intercourse is not gender specific.[5] Finally, the severity of Adhahn's crimes increased over time beginning with the kidnapping rape of S.R., moving on to the habitual rape of L.T.N. including a

[5] In the trial court's presentencing investigation report, Adhahn's ex-wife, Barbara Harrison, noted his predilection for anal sex and for watching pornographic films depicting anal sex.

final act of rape at gun point, and then escalating to the kidnapping, rape, and murder of Linnik. This escalating harm, the unpredictable nature of his attacks, Adhahn's preferred method of sexual assault, the rape of his stepsister in his own home while one of his children was in the next room, and that he parented one of his victims, sufficiently supports the sentencing court's decision to prohibit Adhahn's contact with all children, not just other people's children and not just his daughters.

Restricting all access, including letters and phone calls, is also reasonably necessary to further the State's interest in protecting Adhahn's children. Adhahn argues that his no-contact order is more restrictive than the one that Division One of this court struck down in *Letourneau*. But the basis for striking down the no-contact order in *Letourneau* was a lack of sufficient evidence to prove she was a threat to her own children. 100 Wn. App. at 441-42. Here, the State presented evidence of a sexual assault against a child, L.T.N., who Adhahn parented—this alone distinguishes *Letourneau.* We hold that under the facts of this case, Adhahn's children are at a real risk of harm from any contact with him while they are minors. Nothing in the record indicates Adhahn has any insight into his children's needs or the damage he has inflicted on them to date; sexual assault and abuse can take many forms beyond mere physical acts with profound long-term impacts when they occur during a child's formative years. Because of the extensiveness and brutality of Adhahn's sexual assault criminal history, there are countless ways in which he could inflict harm on his young children even during supervised visits. The trial court did not abuse its discretion by prohibiting all contact between Adhahn and his minor children.[6]

[6] We note that nothing in our opinion or the trial court's order limits Adhahn's son's ability to petition the court to alter the prohibition on contact and request supervised visits or allowances to send his father letters, copies of school records, etc.

We affirm Adhahn's sentencing condition that prohibits all contact with his children while they are minors.

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.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

VAN DEREN, C.J.