

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 65223-1-I
)
 v.) DIVISION ONE
)
 RAMIZ COLAKOVIC,) UNPUBLISHED OPINION
)
 Appellant.) FILED: August 8, 2011

Grosse, J. — Parents have a fundamental right to raise their children without State interference. However, such rights are not absolute and may be restricted by sentencing courts where such restriction is reasonably necessary to further the State’s compelling interest in preventing harm and protecting children. Here, the State plainly had a compelling interest in protecting the children from witnessing continuous domestic violence. Further, the sentencing court’s no contact order permitted modification if the defendant underwent counseling and a trained professional found further contact appropriate. Affirmed.

FACTS

Ramiz Colakovic emigrated from Bosnia with his wife, Esma. Both had been subject to horrific conditions during the war in Bosnia. Colakovic suffered from post traumatic stress disorder (PTSD) as a result. Colakovic and Esma have been married for approximately 12 years and have two children A.C. (7/12/97) and A.C. (3/20/00). There was a pattern of psychological and physical abuse of Esma, manifested by multiple incidents over a prolonged period of time. On March 13, 2009, the police

served Ramiz Colakovic with a no contact order preventing him from being near Esma or her residence. That same day, Esma returned home to find that Colakovic had been in the apartment and left his copy of the no contact order by her front door. Esma called the police later that evening when Colakovic returned to the residence. By the time the police arrived, Colakovic had left.

The next day, Colakovic attacked Esma in the parking lot as she attempted to leave the residence. Colakovic struck Esma several times with a baseball bat. Neighbors and the children observed the attack.

At sentencing, the trial court heard information setting forth the effects the events had on the children. The trial court listened to recorded interviews with the children. Colakovic admitted to a "history and evidence of an ongoing pattern of psychological and physical abuse" against his wife over the years. At sentencing, the social worker addressed the court asserting that Colakovic is symptomatic of PTSD.

Colakovic objected to the imposition of the no contact order. After hearing from the parties and witnesses, the court stated:

There is no doubt in my mind that you love your children, but I don't think that you understand that you are subjecting them to the same kinds of post-traumatic stress syndrome problems that you yourself have. I watched DVDs that contained interviews of both your children, and they are beautiful, wonderful children, and you should be proud of them. They are smart, and they love both their parents, but they do not wish to see you until you receive some kind of treatment for your violence. They are afraid of what you did to their mother, and that should never exist in your family or in any family.

The court limited its order stating:

If you get some counseling, and I have some indication from some trained professionals that it would be appropriate for you to see your children and to have contact with them, then I will consider modifying or quashing the no contact order early. My main consideration is the health of your children. So if someone

tells me seeing you and being in contact with you would be good for your children, then I will change the order.

Colakovic pleaded guilty to second degree assault, domestic violence, domestic violence felony violation of a court order and first degree theft, domestic violence. The sentencing court imposed a no contact order prohibiting Colakovic from contacting his children for 10 years. Colakovic appeals the no contact order contained in the judgment and sentence.

ANALYSIS

Colakovic argues that the no contact order imposed by the trial court infringes upon his due process rights and his constitutional right to parent his children. We disagree. The parties agreed that the circumstances warranted a high end sentence recommendation. RCW 9.94A.505(8) permits a court to “impose and enforce crime-related prohibitions” as part of a sentence. A crime-related prohibition is defined as “an order of the court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.”¹ The trial court’s imposition of crime-related prohibitions such as no contact orders is fact-specific and is therefore reviewed for abuse of discretion.² A criminal sentence case can limit fundamental rights when reasonably necessary to accomplish the essential needs of the State.³ This includes restrictions on the right to parent if the condition is reasonably necessary to prevent harm to the children.⁴ The State has a recognized interest in protecting children from

¹ RCW 9.94A.030(10).

² In re Rainey, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010).

³ State v. Letourneau, 100 Wn. App. 424, 438, 997 P.2d 436 (2000).

⁴ State v. Ancira, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001).

witnessing domestic violence.⁵ Whether a sentencing condition transgresses a constitutional right is a legal question that is subsumed within the abuse of discretion review.⁶ “[T]he interplay of sentencing conditions and fundamental rights is delicate and fact-specific, not lending itself to broad statements and bright line rules.”⁷

Colakovic argues that our holding in State v Ancira⁸ mandates reversal of the no contact order. But in Ancira, the defendant and his wife argued in front of their children. The court entered a no contact order prohibiting Ancira from contacting the children because they were present when he violated the no contact order. There was no evidence in Ancira that restricting contact with the defendant’s biological children was necessary to protect those children from harm. Here, the children were victimized when they witnessed their father’s brutal attack on their mother. Unlike the Ancira court, here, the trial court considered the impact the crime had on the children. The children had gone through eight to ten weeks of counseling and were still scared of Colakovic. The court heard testimony from the children’s mother and a social worker, and reviewed the social worker’s report as well as video recorded interviews of the children. Based on this evidence, the trial court determined that the no contact order was necessary to avoid additional harm to the children. Moreover, the court specifically tailored the order and informed Colakovic that its order could be modified or quashed once the court was presented with evidence that the children were safe from physical or mental harm.

⁵ Ancira, 107 Wn. App. at 653-54; Rainey, 168 Wn.2d at 378.

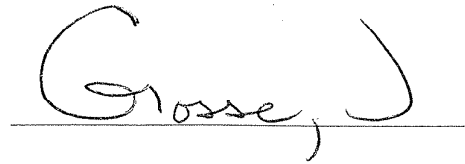
⁶ State v. Valencia, 169 Wn.2d 782, 793 n.4, 239 P.3d 1059 (2010).

⁷ Rainey, 168 Wn.2d at 377.

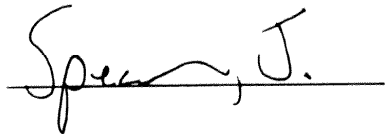
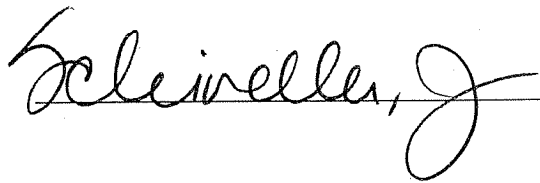
⁸ 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001).

The no contact order impacts Colakovic's right to see his children. But given the circumstances here, including ample evidence of the deleterious effect his crimes had on his children, he has not shown that the trial court abused its discretion in imposing this no contact order. This is particularly true given that the order could be modified or quashed if certain conditions necessary to safeguard against further harm to the children were met. The trial court did not abuse its discretion in imposing the no contact order.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, reading "Spear, J.", written over a horizontal line.A handwritten signature in cursive script, reading "Schweitzer, J.", written over a horizontal line.