

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RYAN COX, )  
 )  
 Defendant. )

Case No. 3PA-08-01354CR

**ORDER REFERRING SENTENCING TO THREE-JUDGE PANEL**

Following a jury trial, the defendant, Ryan Cox, was convicted of four counts of sexual abuse of a minor. Prior to sentencing, Cox's sentencing memorandum included a request to refer sentencing to the three-judge panel. The court held sentencing hearings regarding the request on June 20, 2012, and July 24, 2012.

For the reasons stated below, the court refers sentencing in this matter to the three-judge panel on the basis that sentencing Cox within the presumptive range for the offenses convicted would be manifestly unjust.

I. FACTS

Conduct Relevant to Count 1 – Sexual Abuse of a Minor in the 1<sup>st</sup> Degree (T.W.)

In early April 2008, T.W.'s mother, Paula, reported that her son had been abused by his uncle, Cox. In an interview with Investigator Nieves in April 2008, T.W. stated that approximately two months earlier Cox had pulled down both of their shorts and Cox had partially penetrated with his penis T.W.'s anus. T.W. stated he rolled away from Cox but Cox pulled him back and partially penetrated T.W. again. Additionally, sometime between May and September 2006, Cox put his penis between T.W.'s legs and in a separate instance partially penetrated T.W.'s anus with his penis.

Conduct Relevant to Counts 2-4 – Sexual Abuse of a Minor in the 3<sup>rd</sup>/4<sup>th</sup> Degree (B.L. and S.L.)

During the summer/fall of 2005, Cox worked for Sterling, the father of S.L and B.L. B.L. stated that Cox exposed his penis to B.L. and S.L. and Cox asked if he could

suck their penises. B.L. stated that he let Cox rub his exposed penis while B.L. rubbed Cox's penis. B.L. stated that this occurred while Cox also rubbed S.L.'s penis. B.L. stated this occurred every day for approximately a week.

S.L. stated that while with his brother B.L., Cox exposed his penis to them and asked them to give him a blow job. S.L. stated he let Cox rub his exposed penis while S.L. rubbed Cox's penis. S.L. also stated that Cox sucked on his penis. S.L. stated that this conduct occurred every two to three days for approximately two weeks. S.L. stated that Cox also tried to put his penis inside S.L.'s anus.

#### State's Proposed Sentencing

For Count 1, Sexual Abuse of a Minor in the First Degree, Cox faces a presumptive term of 25-35 years. For Count 2, Sexual Abuse of a Minor in the Third Degree, Cox faces a presumptive term of 0-2 years. For Counts 3 & 4, there are no presumptive terms.

For Count 1, Sexual Abuse of a Minor in the First Degree, the State recommends a sentence of 30 years with 5 years suspended. For Count 2, Sexual Abuse of a Minor in the Third Degree, the State recommends a sentence of 2 years with 1 year suspended. For Counts 3 and 4, Sexual Abuse of a Minor in the Fourth Degree, the State recommends a sentence of 6 months each. The State proposes a composite sentence of 32.5 years to serve with 6 years suspended. Cox would not be eligible until serving almost 18 years. II. ANALYSIS

A sentencing judge must impose a sentence within the applicable presumptive range unless permitted to go outside the presumptive sentence pursuant to an aggravating or mitigating factor.<sup>1</sup> If the court finds by clear and convincing evidence that manifest injustice would result from the failure to consider non-statutory aggravating or mitigating factors, or from imposition of a sentence within the presumptive range, the court shall transfer sentencing to a three-judge panel.<sup>2</sup> When a case is referred to the three-judge panel based on a finding of manifest injustice from imposition of a sentence within the presumptive range, the three-judge panel need not also find extraordinary potential for

---

<sup>1</sup> AS 12.55.155(c), (d).

<sup>2</sup> AS 12.55.165(a).

rehabilitation.<sup>3</sup> Before a sentencing judge can properly characterize a presumptive term as “manifestly unjust,” the judge must articulate specific circumstances that make the defendant significantly different from a typical offender within that category or that make the defendant's conduct significantly different from a typical offense.<sup>4</sup>

A. Cox's Youthfulness

There are several factors for why a sentence within the presumptive range would be manifestly unjust. First is Cox's youthfulness. Cox's first committed sexual abuse when he was 15. Cox again committed sexual abuse occurred when he was 16. Finally, Cox last committed sexual abuse occurred when he was 17. Additionally, Cox would not be eligible for parole until a served nearly 18 years of his sentence. Given Cox's youthfulness, injustice would result from having served such a lengthy period before becoming eligible for parole.

Dr. Aron Wolf, a psychiatrist who interviewed Cox post-conviction, testified that while Cox may be chronologically an adult (21 at the time of interviewing), he is emotionally at an age of 16 or 17. Also, Dr. Wolf reported that Cox had been sexually abused over a period of time starting when he was six. Dr. Wolf reported that the abuse against Cox significantly affected his psycho-social functioning. Youth is a time when a person may be most susceptible to psychological damage.<sup>5</sup> Imposing a sentence within the presumptive range is manifestly unjust because it would not take into consideration Cox's reduced emotional development and any psychological impacts that occurred during his youth. It would be plainly unfair to Cox if sentencing was not able to consider these unique circumstances.

B. Cox is Significantly Different Than a Typical Offender and His Conduct is Significantly Different From a Typical Offense

It would be manifestly unjust to impose a sentence within the presumptive range because Cox is significantly different than a typical offender. Additionally, Cox's conduct is significantly different from a typical offense. Compared with recent Palmer

---

<sup>3</sup> *Luckart v. State*, 270 P.3d 816, 819 (Alaska App. 2012).

<sup>4</sup> *Beltz v. State*, 980 P.2d 474, 480 (Alaska App. 1999).

<sup>5</sup> *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).

cases for sexual abuse of a minor in the first degree, Cox's conduct does not warrant a similar sentence.

For example, in *State v. Nicholas Jacks*, 3PA-10-2903CR, Jacks was sentenced on January 3, 2012, to 40 years with 10 years suspended for sexual abuse of a minor in the first degree. Nicholas Jacks, who was approximately 23 years old, pled guilty to sexually abusing his 8 year old stepdaughter. During the first two years of abuse, Jacks engaged in multiple instances of touching his stepdaughter's genitals and having her touch his penis. During the next three years, Jacks engaged in multiple instances of vaginal and anal sex with his stepdaughter. Jacks also forced her to perform oral sex on him and Jacks performed oral sex on her. The last conduct occurred when the stepdaughter was 13 years old.

Next, in *State v. Mario Paradiso*, 3PA-07-3526CR, Paradiso was sentenced on August 7, 2009, to 33 years with 5 years suspended for sexual abuse of a minor in the first degree, and 10 years with 3 years suspended for sexual abuse of a minor in the second degree. Paradiso, who was 55 years old, was convicted of sexually abusing his 5 year old and 7 year old granddaughters at a hotel in Wasilla one evening. Paradiso rubbed his 5 year old granddaughter's vagina with his hand and penis, and also penetrated her vagina with his hand and penis. Paradiso also rubbed his 7 year old granddaughter's vagina and buttocks with his hands.

Finally, in *State v. Justin VanDyke*, 3PA-08-3587CR, VanDyke was sentenced on June 28, 2010, to a composite sentence of 34 years with 10 years suspended, 15 years to serve, for three counts of sexual abuse of a minor in the first degree. VanDyke, who was approximately 31 years old, pled guilty to sexually abusing his 8 year old daughter. The abuse involved penetration and touching with VanDyke's penis. The abuse occurred approximately 10-15 times over several months.

These cases reflect two features of a typical sexual abuse of a minor offense. First, the abuse occurs multiple times over a regular period. The Jacks and VanDyke cases were cases of abuse that occurred on a consistent basis. Compared to those cases, Cox's abuse occurred in isolated incidents, albeit over a two and a half year period. The first incident of abuse occurred in the fall/summer of 2005. The next incident occurred

during the spring/summer of 2006. Finally, the last incident occurred in early 2008. The infrequent abuse is significantly different from that of a typical offense.

The penetration that occurs in a sexual abuse case typically involves full penetration. Jacks, Paradiso and VanDyke all involved full penetration. Cox's conduct involved only partial penetration. His conduct is significantly different from that of a typical offense.

Cox is also significantly different from that of a typical offender. The age difference between the offender and the victim is typically significant. Jacks (15 year difference), Paradiso (48-50 year difference) and VanDyke (23 year difference) were cases featuring a significant age difference. The age difference between Cox and the victims were all approximately 5-6 years. The typical offender is not a juvenile and Cox is significantly different.

By sentencing Cox within the presumptive range, Cox would receive a similar sentence for conduct that is significantly different. Under the State's proposed sentence, Cox is to receive 30 years with 5 years suspended for the sexual abuse of a minor in the first degree conviction. Manifest injustice would result by sentencing Cox within the presumptive range because the conduct and the characteristic of the offender are not typical.

#### C. Criminal History

Due to Cox's lack of a significant criminal history, it would be manifestly unjust to sentence him within the presumptive range. Absent a juvenile adjudication in 2006 for Criminal Mischief in the Fourth Degree, Cox has had no other involvement in the criminal system. A sentence of 26.5 years for a first time, juvenile, felony offender is plainly unfair. Also, his lack of criminal history demonstrates that his actions are less likely to be "evidence of irretrievable depravity" and shows that he is more capable to reform.<sup>6</sup>

#### D. Potential for Rehabilitation

Finally, it would be manifestly unjust to sentence Cox within the presumptive range given his extraordinary potential for rehabilitation. First, however, the court will

---

<sup>6</sup> See *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012).

address the State's argument that Cox's sentencing cannot be referred to the three-judge panel because the jury found a "most serious" statutory aggravator. The jury found that the statutory aggravator AS 12.55.155(c)(10) ("most serious" offense) applied to Count 1, sexual abuse of a minor in the first degree.

Under AS 12.55.165(b) a judge may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that an aggravating factor set out in, e.g., AS 12.55.155(c)(10) is present. The court is not referring this case to a three-judge panel based solely on Cox's potential for rehabilitation. Rather, the court is referring this case due to the manifest injustice that would occur by imposing a sentencing within the presumptive range. Cox's potential for rehabilitation is one factor, among several, that supports a manifest injustice finding. Moreover, without considering Cox's extraordinary potential for rehabilitation, there would remain a sufficient basis for referring to the three-judge panel. The court finds that AS 12.55.165(b) does not limit its authority to refer this case to a three-judge panel due to an overall finding of manifest injustice.<sup>7</sup>

While the court is not referring this case solely due to Cox's potential for rehabilitation, the court finds that it is important to look at Cox's potential for rehabilitation. The U.S. Supreme Court has stated that "[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults."<sup>8</sup> A juvenile's character is not as "well formed" as an adult's and a juvenile's traits are "less fixed."<sup>9</sup> Juvenile offenders are most in need of and most receptive to rehabilitation.<sup>10</sup>

Supported by Dr. Wolf's testimony and report, Cox has extraordinary potential for rehabilitation. First, Cox's age is significant. Dr. Wolf testified that unlike an adult, Cox has not hardened into a way of functioning. Due to his young age, Cox's character is more capable of changing through rehabilitation.

---

<sup>7</sup> See *Luckart*, 270 P.3d at 819 (the three-judge panel is not required to find extraordinary potential for rehabilitation if sentencing is referred on the basis that imposing a sentence within the presumptive range would be manifestly unjust)

<sup>8</sup> *Graham v. Florida*, 130 S.Ct. 2011, 2026 (2010).

<sup>9</sup> *Miller*, 132 S.Ct. at 2464.

<sup>10</sup> *Graham*, 130 S.Ct. at 2030.

Second, Dr. Wolf testified that due to the abuse Cox suffered as a child, his behavior toward others mirrored some of the abuse in which he was the victim. Dr. Wolf indicated that adolescents who have been abused can get beyond the abuse and the repetitiveness of that, if addressed at an early age. Dr. Wolf also testified teenager to teenage sexual abuse offenders have a higher prospect for rehabilitation and are more amenable to sex offender treatment. Cox himself has indicated that he is amenable to sex offender treatment. In the pre-sentence report, Cox indicated he would be willing to comply to participate in sex offender treatment and follow all recommendations made by the treatment provider.

Third, Dr. Wolf testified that Cox is a good prospect for rehabilitation because Cox became involved in an intimate heterosexual relationship after he committed the abuse. Dr. Wolf testified this relationship demonstrates that Cox is not focused on inappropriate sexual activity. Cox is able to engage in a healthy, peer relationship. This conduct was different than reverting to the type of behavior for which he was convicted. Moreover, Cox engaged in this peer relationship on his own which demonstrates that he is capable of moving away from his conduct.

Finally, at the sentencing hearing, Cox showed remorse for the victims. Showing remorse for the victims is an important step in working toward rehabilitation. While during the litigation Cox had denied that he took advantage of the young boys, his comments at the sentencing hearing demonstrate he is actively addressing his actions, taking responsibility and moving forward in his rehabilitation process.

/

/

/

/

/

/

/

/

/

/

III. CONCLUSION

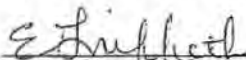
The court finds by clear and convincing evidence that sentencing Cox within the presumptive range would be manifestly unjust. Manifest injustice would result due to Cox's age, that Cox and his conduct is significantly different from a typical offender and offense, Cox's lack of significant criminal history and finally his extraordinary potential for rehabilitation. Therefore, for the reasons stated above, the court refers Cox's sentencing to the three-judge panel.

Dated at Palmer, Alaska on this 1<sup>st</sup> day of August 2012.

  
\_\_\_\_\_  
Gregory L. Heath  
Superior Court Judge

I certify that on 8/16/12 a copy of this order was ~~mailed~~/faxed/  
hand-delivered to counsel at their address of record.

DA  
Parvin

  
\_\_\_\_\_  
E. Griffeth, Judicial Assistant



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA,

Plaintiff,

v.

RYAN COX,

Defendant.

Case No. 3PA-08-01354CR

**ADDENDUM TO ORDER REFERRING SENTENCING TO THREE-JUDGE  
PANEL**

The court referred sentencing in this matter to the three-judge panel on August 16, 2012. In the referral order, the court did not take into consideration Ryan Cox's medical records. Having now received both filings of Cox's medical records, the court provides the following addendum to the order referring sentencing to the three-judge panel.

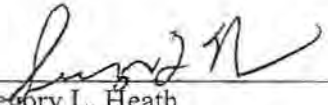
Cox has been dealing with mental health issues since a young age. Starting at age 10, Cox was diagnosed with and received medication for ADHD. Cox had regularly seen Dr. David Holladay since Cox was 10, to address Cox's ADHD and any other mental health issues. Cox last met with Dr. Holladay in January 2007. Subsequent to meeting with Dr. Holladay, Cox had met with Mat-Su Health Services and Christi Hill, Advanced Nurse Practitioner. During Cox's meetings with Ms. Hill, his Global Assessment of Functioning (GAF) score ranged from 55-68 with the higher range being assessed at his latest meetings.

The court finds that Cox's medical records additionally support the court's initial finding of manifest injustice. First, the medical records support the court's initial finding that Cox is significantly different from a typical offender. Cox has been dealing with mental health issues from a young age. Moreover he has been taking medication during his entire adolescence. Second, the medical records support Dr. Wolf's assessment that Cox's maturity level has not yet developed to a level consistent with Cox's age. Cox's GAF score indicates that he has some mild symptoms or some difficulty in a social, occupational or school setting which has likely affected his emotional development.

Finally, Cox's willingness to engage in consistent treatment for his mental health issues bolsters Cox's extraordinary potential for rehabilitation. It shows that Cox is amenable to treatment and capable of addressing the issues that contributed to his acts of sexual abuse.

The above mentioned medical information supports a finding that manifest injustice would occur if Cox was sentenced within the presumptive range and therefore the court issues this addendum to the order referring sentencing to the three-judge panel.

Dated at Palmer, Alaska on this 22 day of August 2012.

  
\_\_\_\_\_  
Gregory L. Heath  
Superior Court Judge

I certify that on 8-22-12 a copy of this order was mailed/faxed/hand-delivered to counsel at their address of record. DR, Parvin

C. L. Griffee  
~~E. Griffee~~, Judicial Assistant