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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA,

Plaintiff,

2 CA-CR 2009-0061

vs.

No. CR 2007-2716

JOHN A. CHRISTIAN,

Defendant.

Tucson, Arizona

02/20/09

BEFORE: The Honorable Jane L. Eikleberry, Judge

Appearances:

Carolyn Nedder, Esq.
Appearing for the State

David Michael Cantor, Esq.
Appearing for the Defendant.

Judgment & Sentence

GAIL D. VINSON, CR, RPR
Arizona # 50610
Official Court Reporter
Pima County Superior Court
Tucson, Arizona 85701

1 THE COURT: This is State of Arizona versus
2 John Christian, CR20072716. Would you state your
3 appearances, please?

4 MS. NEDDER: Yes. Good morning, your
5 Honor. Carolyn Nedder appearing on behalf of the
6 State.

7 MR. CANTOR: Good morning, your Honor.
8 David Cantor appearing on behalf of Mr. Christian, who
9 is appearing in court, in custody.

10 THE COURT: Is there any legal cause we
11 can't proceed with sentencing?

12 MR. CANTOR: No, your Honor.

13 THE COURT: Is your true name John
14 Christian?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Is your date of birth
17 August 27, 1953?

18 THE DEFENDANT: Yes.

19 THE COURT: There's been a determination of
20 guilt by jury verdict on November 24, 2008. It is the
21 judgment of this Court that the defendant is guilty of
22 Count 1, sexual conduct with a minor under 15, a
23 dangerous crime against children, a Class 2 felony,
24 nonrepetitive, committed on July 13, 2006.

25 The Court has received and read the

1 presentence report, the Pretrial Services supervision
2 performance report, the mitigation report, the
3 defendant's sentencing memorandum, together with all of
4 its attachments, the report from Dr. Jones, and the
5 victim impact letters from Joyce and Chelsie Gray.

6 What is the State's recommendations?

7 MS. NEDDER: Your Honor, the State is
8 recommending a presumptive sentence. As the Court is
9 aware, we didn't file notice of any aggravators, so we
10 are not asking you to aggravate the sentence. You have
11 the impact statement from the victim. I think it
12 speaks better than I can.

13 I do have some brief remarks with regard to
14 the mitigation materials that were presented to me.
15 One of the things that I wanted to call the Court's
16 attention to is that the suggestion has been made that
17 the victim is making up this allegation, and there are
18 numerous reasons that were given as to why she might
19 have been, both in terms of her upbringing, in terms of
20 her being a liar. And the My Space was particularly
21 referenced, as well as a suggestion that this was being
22 done to get even for the fact that her father was
23 moving from Indiana to Arizona.

24 During the jury trial, the jury heard about
25 a lot of these. The jury did see the My Space pages,

1 and they discounted that. I would ask the Court to
2 realize that the victim in this case E-mailed friends
3 after this happened, the following day, and that E-mail
4 was also part of the exhibits that went back to the
5 jury.

6 She didn't come forward, however, to an
7 adult, specifically her mother, until months later.
8 And so a lot of allegations, or the reasons, the
9 suggestions she might be making it up because her
10 father was moving, she didn't know about that when this
11 first happened and when she made her first disclosure.
12 Her first disclosure happened to be friends. Law
13 enforcement didn't happen to be involved. They did
14 become involved once her mother knew about it.

15 We would ask that you sentence the
16 defendant to the presumptive, and we feel that that's
17 appropriate.

18 THE COURT: Thank you.

19 Having reviewed all the materials, I am
20 inclined to grant a mitigated sentence. Bearing that
21 in mind, Mr. Cantor, what would you like to say?

22 MR. CANTOR: Your Honor, just to clarify,
23 by "mitigated," if you are speaking of 13 years, then I
24 have nothing further to present.

25 THE COURT: I am thinking less than 20. I

1 don't know exactly how many.

2 MR. CANTOR: Your Honor, in that case,
3 specifically the psychosexual evaluation that was
4 presented shows that Mr. Christian on the Static 99 was
5 a 1 out of 12, which is the lowest risk that they have
6 on that determinant. On the Vasr, V-A-S-R, and the
7 Sonar, S-O-N-A-R, both were low range of risk in
8 Mr. Christian's scenario.

9 In regards to -- And I am not sure where
10 the prosecutor was going, but if it's a claim that he
11 is making a claim of innocence, well, obviously he is
12 still allowed to under the Fifth Amendment. And this
13 is not to be used against him as showing some lack of
14 remorse or something like that. The case law would be
15 State versus Tinajero, T-I-N-A-J-E-R-O, and State
16 versus Hardwick. And that would be inappropriate to
17 consider that as a lack of remorse, because he is
18 planning on filing an appeal in this case.

19 In regards to statutory and nonstatutory
20 mitigating factors, we have outlined those in our
21 motion. And I would ask that this Court keep in mind
22 that at 55 years of age, no prior arrests, no prior
23 police conduct, a good record, a former police reserve
24 officer for three years, a former Indiana National
25 Guard reservist, a licensed real estate broker

1 attending Hillcrest Baptist Church, he has served this
2 community for 55 years with no problems whatsoever.

3 In regard to the presentence report, the
4 only recommendation was it appears a prison term is
5 warranted. So there wasn't even a recommendation for a
6 higher or above mitigated term from the presentence
7 report writer.

8 Your Honor, the fact that he is 55 years
9 old, that his wife is here today. He has a young
10 daughter, a minor daughter, that's at home. I believe
11 it wouldn't serve any purpose to keep him in prison
12 longer than his 68th birthday, which is roughly 13
13 years from now. I don't think it serves any purpose.
14 Particularly -- There is a letter written by Tina
15 Christian. I am not sure if you saw that.

16 THE COURT: I did see that.

17 MR. CANTOR: I think that just speaks
18 volumes. Normally, I see these cases, and I see
19 letters, and I see certain things, and I go about my
20 routine. But this letter did hit me, being that I have
21 a 10-year-old daughter and an eight-year-old son. You
22 don't think about it in terms of it's going to have a
23 profound impacted on his child.

24 Given all that, I don't see a purpose here
25 to a sentence beyond 13 years. The punishment is built

1 into the statute. And everything that we've
2 demonstrated is mitigating in this case. As far as,
3 well, here is what happened in the case, well, that's
4 built into the sentence already. And since the State
5 obviously didn't present any aggravators and we've
6 presented mitigators, I do truly believe that a 13-year
7 mitigated sentence is appropriate in this particular
8 case, particularly given his age.

9 THE COURT: Thank you.

10 Mr. Christian, is there anything you would
11 like to say before the imposition of sentence?

12 THE DEFENDANT: I think Mr. Cantor
13 basically said it. Please give me the minimum. I
14 don't want to be too old. My family doesn't live that
15 old. My father just passed away at 76, just about a
16 month ago. So I ask that you minimize my time.

17 THE COURT: All right. Thank you.

18 MR. CANTOR: And, your Honor, can my
19 client's wife make a statement, also?

20 THE COURT: Yes.

21 MS. CHRISTIAN: I pray that the Court find
22 leniency on my husband and our daughter. We plan on
23 waiting on him, and we do plan on appealing. We want
24 him home. Thank you.

25 THE COURT: Thank you.

1 I've considered the impact that
2 Mr. Christian's actions have had on the victim. I've
3 also considered the absence of any criminal record for
4 Mr. Christian, his family support and his community
5 support. Accordingly, I find that a mitigated term is
6 appropriate.

7 It is the judgment and sentence of this
8 Court that the defendant be imprisoned for the
9 mitigated term of 13 years, and thereafter to a term of
10 community supervision. The sentence is to include 89
11 days of presentence incarceration credit.

12 The defendant is assessed \$250 to be paid
13 to the sex offender monitoring fund. The defendant is
14 hereby committed to the custody of the Department of
15 Corrections as of this date.

16 Sir, you have the right to appeal from this
17 sentence and the orders of this Court and have a lawyer
18 represent you. If you cannot afford a lawyer, one will
19 be appointed for you. If you cannot afford a certified
20 copy of the necessary records and transcripts, they
21 will be provided to you at no cost, as well.

22 If you want to file an appeal, you must
23 file your notice of appeal within 20 days from today,
24 or you lose your right to appeal. You must sign for a
25 written copy of these appeal rights.

1 Is there anything further from the State?

2 MS. NEDDER: No, your Honor. Thank you.

3 THE COURT: Mr. Cantor?

4 MR. CANTOR: Yes, your Honor. I have an
5 original of a Notice of Appeal and Designation of
6 Appeal. If I could hand that to the Court?

7 THE COURT: Hand it to the clerk.

8 MR. CANTOR: Thank you, your Honor.

9 THE COURT: Back on the record.

10 Mr. Christian, I neglected to mention that
11 you are required to register as a sex offender.

12 THE DEFENDANT: I'm sorry, your Honor, I
13 didn't hear?

14 THE COURT: I neglected to mention that you
15 are required to register as a sex offender. Thank you.

16 MR. CANTOR: And, your Honor, I think just
17 to clarify, I think the database comes into effect, and
18 I want him to know they will be asking to draw blood.

19 THE COURT: Thank you.

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C E R T I F I C A T E

I, Gail D. Vinson, do hereby certify that as a Certified Court Reporter for the Pima County Superior Court, I reported the foregoing proceedings to the best of my skill and ability, and that the same was transcribed by me via computer-aided transcription, and that the foregoing pages of typewritten matter are a true, correct and complete transcript of all the proceedings had, as set forth in the title page hereto.

GAIL D. VINSON, RPR, CR
Arizona License No. 50610
Pima County Superior Court
Tucson, Arizona