

ORIGINAL

FILED *ES*
DOCKETED BY: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2009 NOV -4 PM 3: 39

IN AND FOR THE COUNTY OF APACHE

SUE HALL, CLERK
APACHE COUNTY SUPERIOR COURT

In re the Matter of:)
)
CHRISTIAN RYAN ROMERO)
)
A person under 18 years of age)
)
)
)

CASE NO. JV2008-065

TRANSCRIPT OF DISPOSITION HEARING

October 22, 2009

BEFORE THE HONORABLE MICHAEL P. ROCA

Lynne McSeaton
Certified Electronic Reporter and
Transcriber No. 00281

E-Court Transcription Service
30379 N. Coral Bean Drive
San Tan Valley, Arizona 85143
(602) 300-3249

APPEARANCES

FOR THE STATE: MICHAEL WHITING, ESQ.
Apache County Attorney
P.O. Box 637
Saint Johns, Arizona 85936

FOR THE JUVENILE: RONALD D. WOOD, ESQ.
Wood Law Office
201 South White Mountain Road
Show Low, Arizona 85901-0001

THE GUARDIAN AD LITEM: MARSHA A. GREGORY, ESQ.
Law Offices of Marsha Gregory, P.C.
P.O. Box 818
Springerville, Arizona 85938-0818

FOR THE PARENT OF
THE JUVENILE: STEVE WILLIAMS, ESQ.
Riggs & Ellsworth, P.C.
240 N. White Mountain Road, Suite A
Show Low, Arizona 85901

ALSO PRESENT: CHRISTIAN RYAN ROMERO, Juvenile

ERYN BLOOMFIELD,
Parent/Guardian of the Juvenile

Juvenile Probation Department

P R O C E E D I N G S

(Proceedings commenced at 9:33:31 a.m.)

THE COURT: ... (audio not provided) record in JV2008065. Let the record show no presence of minor.

Minor's being escorted into the room. Mr. Wood is present on his behalf. Mr. Whiting is here on behalf of the State, Mr. Williams on behalf of the minor's mother. Ms. Gregory is here, the Guardian Ad Litem.

Before we get started, Mr. Whiting, that AP article, does that misquote you?

MR. WHITING: Judge, I haven't looked at it or read it. I don't know.

THE COURT: Oh. Would you mind taking a look?

MR. WHITING: What's that?

THE COURT: Would you mind?

MR. WHITING: Reading it?

THE COURT: I'm letting you know if you're misquoted or not.

MR. WHITING: I -- you know what, Judge? I just got this handed to me. I have no idea. Do you want me to read it right now?

THE COURT: Please, if you'd like; or offer me a view without having read it. I don't know that that is -- that's a good idea.

1 (Pause.)

2 MR. WHITING: Judge, there's a couple that are
3 correct. Most of the rest are incorrect.

4 THE COURT: Okay. Which ones are correct?

5 MR. WHITING: The one that's correct, Judge, is
6 where it says, "We're trying to do the best we can for this
7 kid."

8 THE COURT: Okay. That's the last quote?

9 MR. WHITING: Yeah, the last quote down at the very,
10 very bottom.

11 THE COURT: Okay. All right. Thank you very much.

12 Okay. This is the time that was -- to which the
13 disposition was continued by virtue of the Court's order of --
14 I believe it was September 16th, which itself -- excuse me.
15 The September 22nd hearing was itself a continuation of a
16 prior hearing. It doesn't appear that we are ready to go
17 forward with the disposition at this time either for more than
18 one reason.

19 Upon review, however, of the evaluations by Dr.
20 Scialli and Dr. Uram and the evaluation by Dr. Gibson, in
21 conjunction with the Community Mental Health referral that was
22 made by the Adult Probation Department, upon review further of
23 the Adult Probation Department's report in this matter and the
24 victims' families' expressions in letters to the Court, copies
25 of which have been made available to the parties, after

1 conference with probation office personnel, specifically Mr.
2 Colwell, Mr. O'Brien, and having had the opportunity to confer
3 with them over time, it is the Court's inclination to reject
4 the disposition stipulations of the admission agreement that
5 was previously entered.

6 If this matter were to proceed at this time, the
7 Court would, if permitted by the agreement and the parties,
8 order commitment, but without specifying any minimum stay in
9 secure care. That last is to allow -- or would be to allow
10 the Department of Corrections the maximum flexibility in
11 crafting a program for the minor.

12 A reasonable respect for the views of the public
13 suggests that the Court should state at some length its
14 reasons for this position. If this matter were to go forward
15 as stipulated with the minor placed on probation under
16 juvenile intensive probation supervision, it is apparent that
17 the Court would be obligated to order the minor into a
18 treatment program of some duration and significant intensity.

19 The suggestion in some places that community-based
20 treatment is and would be appropriate strikes me as wishful
21 thinking at best; at worst, irresponsible. Community-based
22 treatment implies a community. For the minor, this community
23 is, in many respects, pure poison at this point.

24 So we're talking about a move. I cannot order, I
25 think, lawfully the minor's mother to, as it were, leave town.

1 I cannot -- I could not, even if she were on probation, banish
2 her as a condition of probation. I certainly can't do it as
3 -- cannot lawfully do it as a condition of the minor's
4 probation.

5 Likewise, the situation continues if the minor were
6 to be placed on probation to this Court under juvenile
7 intensive probation supervision. Therapeutic intervention is
8 clearly called for. Consequences are clearly called for. But
9 the Court also has an obligation not only to the security of
10 the community, but to the victims for closure and the
11 imposition of a consequence and also to the minor for the
12 minor's security and safety. So that's the starting point.

13 There's been some discussion. I believe Mr. Whiting
14 has been misquoted in some respects regarding whether this is
15 a money issue. I don't see it as a money issue. I see it as
16 an issue of not having a place to spend the money.

17 The money issue, in that respect, is a red herring.
18 Early on, I received the commitment from the presiding judge
19 of this Court to commit the entire treatment budget of this
20 Court to Christian Romero, essentially leaving the rest of the
21 kids in the County with nothing. But his situation, his case
22 is so important that he's worth it just in terms of doing
23 justice.

24 Early on, this Court received the assistance, the
25 commitment, the assistance of the Administrative Office of the

1 Courts. They stepped up early, they stepped up often, they
2 have provided personnel, they have provided guidance, they
3 have provided referrals, they have committed to assistance in
4 securing funding, they have, even at one point, commenced the
5 process of clawing back grant reversions from prior years.

6 Simply put, there is no program anywhere on the
7 horizon that addresses security for the community, security
8 for the minor, necessary intervention. The money existence is
9 not the problem. It's a problem of no place to spend it.

10 The Department of Corrections stepped up early and
11 often as well. They have provided consultation at every turn.
12 Mr. Colwell and others from the Probation Department have
13 conferred with personnel from the Department of Corrections
14 about this case, about options and availabilities.

15 Bluntly put, the Department of Corrections' access
16 to a skill pool is substantially wider than that of our
17 Probation Department. Our Probation Department is, in my
18 view, second to none, and that's without the qualifier of it
19 being for a county of this size or for a department of this
20 size. But, although I don't think it's any deeper, DOC's
21 skill pool and access to facilities is wider than ours, and,
22 thus, they have, money aside, greater options than we do, and
23 they have greater options beyond the strictures of intensive
24 probation supervision.

25 That said, I share the expressed frustration that

1 Mr. Whiting is quoting -- quoted as having expressed with
2 other agencies. If you'll recall, one of the earliest things
3 done in this case was to direct the initiation of dependency
4 proceedings. Those dependency proceedings were dismissed on
5 motion of the Department of Economic Security's attorney.

6 Likewise, the Adult -- or the Juvenile Probation
7 Department reached out to the Regional Behavioral Health
8 Authority. The Regional Behavioral Health Authority has the
9 -- has the discretion to say no, and indeed they said no. I
10 don't fully agree with why they said no, but they said it.

11 So yes, there has been some frustration; yes, there
12 has been an ongoing process in an attempt to find solutions
13 appropriate for this case, for the minor, for the victims, for
14 the interest of justice. The answer is no, it doesn't strike
15 me that we are able to go forward with a satisfactory solution
16 with the strictures posed by the stipulations in this case.

17 Mr. Wood, knowing what the alternative is with some
18 specificity, I would suspect you would like the opportunity to
19 confer with your client. I can't imagine that clairvoyance is
20 such as to have provided you with an appropriate answer or to
21 have allowed you and the minor to reach a conclusion that you
22 feel is best for him in advance. Has it?

23 MR. WOOD: I have -- well, first I will have to
24 explain the Court's question to my client and then talk to him
25 about what his answer --

1 THE COURT: Okay.

2 MR. WOOD: -- might be.

3 THE COURT: All right. I would propose to reset
4 this for a status conference on November 10th, 1:30 in the
5 afternoon. At that time, I would like to have, if at all
6 possible, an answer from the defense as to whether the defense
7 chooses to go forward with the plea as entered but without the
8 guaranty of intensive probation supervision, as embodied, and
9 with the clear understanding that the Court's intention is to
10 order commitment but without a specification of a minimum stay
11 in secure care.

12 MR. WOOD: Essentially what the Court's saying is
13 that you want to send Christian to the Arizona Department of
14 Juvenile Corrections because you don't believe that there's
15 any other alternative --

16 THE COURT: There is no --

17 MR. WOOD: -- that's available?

18 THE COURT: -- apparent alternative available to
19 this Court as the Court acting through the Probation
20 Department. The Department of Corrections, I think, is not
21 only in a better position, but has, as I said, access to a
22 much wider skill pool and a much greater inventory of
23 facilities than is available to a county probation department.

24 I don't see the need to restate it. Do you?

25 MR. WOOD: One of the things that Mr. Whiting and I

1 had talked about was whether or not the Arizona Juvenile
2 Department of Corrections had a procedure in place similar to
3 the Adult Department of Corrections where they would do a pre-
4 disposition analysis of the individual. Under the Arizona
5 Revised Statutes, the Court can ask the Department of
6 Corrections to do an evaluation of a specific adult, and they
7 will do that and then give the Court some insight as to what
8 they might do with that particular individual.

9 There are no specific juvenile statutes that
10 parallel that, but my understanding is Mr. Whiting contacted
11 the officials at the Department of Corrections, and they
12 indicated they would meet with us and talk to us specifically
13 about what sort of program they might impose, particularly in
14 light of the fact that initially when we talked to the Arizona
15 Juvenile Department of Corrections, they said they wouldn't
16 take Mr. Romero because he was too young. They apparently,
17 according to an off-the-record meeting we had with the
18 presiding judge, have changed that position, and I would
19 imagine that you are aware of that because of a comment that
20 you made this morning. Clearly, you wouldn't say that --

21 THE COURT: Which comment was that?

22 MR. WOOD: That they would take him because I --

23 THE COURT: They don't have any choice.

24 MR. WOOD: I just don't believe that you -- if you
25 believe that they wouldn't take him, you would say that

1 sending him there was the best disposition.

2 So they're willing to talk to us about what they'll
3 -- what they'll do with him. I'd like to meet with them, if I
4 can, and perhaps we can do that before November the 10th, but
5 I'd like to do that.

6 My inclination, at this point in time, would simply
7 to be to recommend to my client to withdraw from the plea,
8 seal all the reports, ask for a different judge, move the case
9 to a different county and proceed with the motions that we've
10 got filed and litigate the issues for a while and see where we
11 are. But I have to talk to my client about that. So I'll
12 take till the 10th, and we'll see if we can work that out, and
13 I'll also talk to the Juvenile Department of Corrections.

14 THE COURT: Okay. Mr. Whiting, are you available on
15 the 10th of November?

16 MR. WHITING: Judge, I am, or someone from my office
17 will be. And I do think it would be helpful if the Court
18 issued an order requesting that the Department of Juvenile
19 Corrections meet with the parties and Mr. Romero; that they be
20 able to look at the sealed records and documents, let their
21 staff and their people perform some type of evaluation. I
22 think it would be helpful for Mr. Wood to know what they have
23 in mind, what the outline of their intentions are. I think
24 that may add to his --

25 THE COURT: It is ordered that --

1 MR. WHITING: -- security.

2 THE COURT: -- the sealed evaluations of Doctors
3 Johnson, Cady, Scialli, Uram and Gibson be made available to
4 the Department of Juvenile Corrections. It is further
5 requested that DOJC -- DJOC -- they've changed the name so
6 many times -- meet and confer with counsel for the defense and
7 State and counsel for the mother and the Guardian Ad Litem.

8 MR. WHITING: I would object to that, Your Honor.

9 THE COURT: Why?

10 MR. WHITING: For the example, the motion we had
11 filed yesterday by the mother's attorney. I don't know if the
12 Court wants me to go through the reasons for that, but I would
13 object; not for the Guardian Ad Litem. I think she needs to
14 be involved.

15 THE COURT: This Court's jurisdiction ceases in nine
16 years. She's going to be his mother for the rest of his life.
17 She's got an interest.

18 MR. WHITING: I understand, Your Honor.

19 THE COURT: Mr. Wood, do you have any objection to
20 counsel for the minor (sic) participating in discussions with
21 DOJC?

22 MR. WOOD: No. I think it'll let the -- I mean,
23 clearly my discussions with my client will involve his mother
24 because it has to.

25 THE COURT: Uh-huh.

1 MR. WOOD: And so I'm going to talk to her about
2 what we talk to them about anyway.

3 THE COURT: Okay.

4 MR. WOOD: I don't -- I don't care one way or the
5 other. I understand Mr. Whiting's objection, and, at the same
6 time as a practical matter, Ms. Bloomfield's going to be in
7 the loop anyway.

8 THE COURT: Okay. Ms. Gregory, is that
9 satisfactory?

10 MS. GREGORY: Yes, Your Honor.

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: Your Honor, we'd like to be involved
13 in as much as we can. It's well settled law that a parent has
14 both a natural and a legal right to the custody of their
15 child. And while there are stipulations where they can lose
16 that right --

17 THE COURT: Let me short circuit this. Are those
18 provisions satisfactory? Can you be here --

19 MR. WILLIAMS: Yes.

20 THE COURT: -- November 10th?

21 MR. WILLIAMS: We can live that. Yes.

22 THE COURT: Can you participate in discussions with
23 DOJC?

24 MR. WILLIAMS: Yes, Your Honor.

25 THE COURT: Okay. Scheduled by others?

1 MR. WILLIAMS: Yes, Your Honor.

2 THE COURT: Okay. Thank you.

3 MR. WOOD: Did you say at 1:30 on the 10th?

4 THE COURT: 1:30 --

5 MR. WHITING: 1:30.

6 THE COURT: -- November 10th.

7 Okay. The minor's residence. Where is he living
8 right now, and what are we going to do about school? This is
9 stalled. This minor needed to be in school.

10 Mr. Brewer is correct. Now, he needs to be in
11 school. What are we going to do about it?

12 MR. WOOD: Well, I would imagine that if we wanted
13 to do something about it, the Court could simply order him to
14 begin attending school. And then -- and then we would go
15 through another round of litigation with the school lawyers
16 about why they -- or you'd get letters from the voters about
17 why you shouldn't do that.

18 THE COURT: Uh-huh.

19 MR. WOOD: My understanding is he continues to
20 attend school at the school that's available here --

21 THE COURT: Uh-huh.

22 MR. WOOD: -- at juvenile detention, and he lives at
23 the same place he lived before.

24 THE COURT: Mr. Whiting?

25 MR. WHITING: Judge, I think instead of throwing gas

1 on the fire, we let it run its course at least to November
2 10th. Let us meet with the JDOC, see what they say. They may
3 have treatment alternatives that satisfy everybody.

4 THE COURT: Okay.

5 MR. WHITING: And we may able to proceed in that
6 route. If we start the school issue again, we're going to be
7 tied up in civil litigation for six months to a year.

8 THE COURT: Okay. Assuming for the moment that the
9 minor does withdraw from the agreement and this litigation
10 goes on on a protracted basis, between now and November 10th,
11 let me pose the additional assignment for counsel: Be
12 thinking of what we need to -- what can be done to get the
13 minor educated; to get him back on track as far as regular
14 schooling for a substantial -- a much greater portion of a day
15 than is now in place. Okay?

16 Anything else we need to address at this point?

17 MR. WOOD: I have. Just on that issue, I've
18 contacted the two private schools in Navajo County, one in --
19 well, both of them are in Show Low -- and asked if they would
20 be willing to let Mr. Romero attend there while this matter is
21 pending.

22 THE COURT: And...?

23 MR. WOOD: They both unequivocally said no.

24 THE COURT: This doesn't militate against continuing
25 to try; does it?

1 MR. WOOD: No. No, but the "no" was pretty clear.

2 THE COURT: I understand. No is a shorter word than
3 yes.

4 MR. WOOD: Right.

5 THE COURT: Okay. Anything else we need to address
6 today?

7 MR. WOOD: No.

8 MR. WHITING: No, Your Honor.

9 THE COURT: Okay. Let's talk about this on November
10 10th.

11 MR. WHITING: Thank you, Judge.

12 THE COURT: We're in recess.

13 THE CLERK: All rise.

14 (Whereupon, the proceedings were concluded at
15 9:55:49 a.m.)

16 * * * * *

17

18

19

20

21

22

23

24

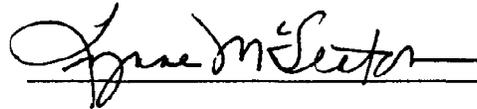
25

C E R T I F I C A T E

I, LYNNE McSEATON, CERT, do hereby certify that the foregoing pages numbered 1 through 16 constitute a full, true, and accurate transcript from a copy of the electronic recording of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties and that I am not in any way interested in the outcome thereof.

SIGNED and dated this 29th day of October, 2009.



Lynne McSeaton

Certified Electronic Court Reporter
and Transcriber No. 00281