

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MATTHEW JAMES CAMPBELL, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CASE NO. 3AN-11-2205 CR

ORDER

For the reasons set forth on the record, this case is remanded to Judge Volland for sentencing.

Dated at Palmer, Alaska, this 13<sup>th</sup> day of May 2013.



ERIC SMITH  
SUPERIOR COURT JUDGE

I certify that on 5-14-13  
 a copy of this document was sent to:  
 CSJED                       Attorney(s) of Record *DA PD*  
 Plaintiff                       Defendant  
 Other Judge Volland / Judge Stephens / Judge McLean  
 At the address(es) of record: Old  
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 Deputy Clerk

In the Superior Court for the State of Alaska at Anchorage

Media No.: 30

Judge: E. Smith  
A. Moran  
T. Stephens

Date: Friday, May 10, 2013

Clerk: E. Gomez

Plaintiff: SOA vs.

Defendant's Name:  
Matthew J Campbell

Case No:  
3AN-11-02205CR

DOB:  
6/20/1978

Address:

Type of Proceedings: Sentencing (3 Judge Panel)

Counsel Present: Plaintiff: Jenna Gruenstein, Assistant District Attorney  
Defendant: Zachary Brown, Public Defender  
Michael Schwaiger, Public Defender

Defendant: Present/ In Custody

Bail Set/Continues:	Continues	
Transport Order:		
Other Court Orders:		
Next Court Date(s) and Time(s):	Type of Hearing(s):	Location:

**Summary of Proceedings:** Court finds that the Defendant has proven by clear and convincing evidence that he has normal prospects for rehabilitation. Court also finds that the Defendant has NOT met the burden by clear and convincing evidence or a preponderance of evidence whether it would be manifestly unjust not to sentence him below the presumptive term. The Panel REMANDS the case back to Judge Volland for Sentencing.

1:58:19 PM On record  
Court identifies case and parties

1:58:53 PM **Witness Sworn/Affirmed:**

Mark Zelig

1:59:21 PM **Direct Examination by Mr. Brown**

(clinical and forensic psychologist  
(licensed since 1985

(focused on forensic for the last 15 years

(Witness relates training experience

(was a police officer took a leave of absence and went to the University

(did an internship for the last 4 years

2:01:24 PM (education has continued, doctorate in 1982

(risk assessment courses

(from 1998 -2011 chair of police psychology section of American Psychological Association

(Witness relates qualifications



(Witness relates job duties  
 (have been called upon to testify in criminal cases  
 (testify about once a month over last 3 years  
 (got involved in this case was called by Public Defender agency  
 (was explained that they was a new appellate decision and felt it was important to get a risk assessment

2:04:06 PM (do risk assessments a great deal in my practice  
 (work with criminal Defendants, police, and the state  
 (have done thousands of risk assessments in all forums  
 (have been found qualified in the past

2:05:50 PM Mr. Brown  
 Move to qualify Dr. Zelig as an expert

2:05:52 PM Ms. Gruenstein  
 No Objection

2:05:58 PM **Court** – Witness accepted as an expert

2:06:06 PM (did perform risk assessment on Mr. Campbell  
 (first was to find out if had a viable argument  
 (that was the initial goal  
 (once gave that information the next step was to develop a report to provide to the court  
 (was my opinion that Mr. Campbell is low risk  
 (significantly lower than the average sex offender  
 (went through the charging material  
 (looked at demographics, charging documents, and conviction history  
 (went to the jail and met with Mr. Campbell  
 (recorded the forensic evaluation

2:08:50 PM (recording helps with my credibility  
 (don't have a perfect memory or take perfect notes  
 (there are many reasons why do the recording  
 (psychopathy checklist  
 (even the best tools have limitations tried to select three that work together well  
 (all have high levels of research done where can understand validity and error rate

2:11:17 PM (first one in the report is a structured test where need to look at someone's life patterns  
 (try to describe what is this person's patterns  
 (Witness refers to pg. 13 in report  
 (psychopathy checklist 2<sup>nd</sup> edition revised  
 (becomes a predictor  
 (classic psychopaths don't learn from their mistakes they are not likely to benefit from treatment or deterrence, really good people to have in person, important here because want to look at possible rehabilitation  
 (coding manual was applied to Mr. Campbell there were some areas where wished had some more information

2:14:52 PM (put a #1 next to the items that felt had the least support for  
 (Mr. Campbell informed me he had some behavior problems in school where he was suspended  
 (did not have any documentation from school  
 (raw scores of 30 is where someone is found to have  
 (Mr. Campbell pg. 15 raw score is 15  
 (another use of this test is applied to sex offenders  
 (the most predictive scores are those on factor 2 and 5



2:17:34 PM (both of these scores were below average on Mr. Campbell  
 (based on this one measure demonstrates that he is low risk  
 (low risk for recidivism  
 (did more than one test  
 (the second test is the static 99  
 (Witness refers to pg. 16 of report  
 (been revised this test was developed was developed from a large scale meta-analysis  
 (wanted to look at sex offenders who repeat and others that do not  
 2:20:04 PM (didn't include any items if there wasn't any research to support them  
 (this was the easiest test to conclude could have done so without meeting Mr. Campbell  
 (his absolute score was a zero  
 (he will be 35 years old next month  
 (when get a score like this am able to describe someone's relative risk to other offenders  
 (someone with the score of zero has half the risk of the average sex offender a low score  
 (performed the other test because there are always limitations to different tests  
 (psychopathy is a good was to determine someone's risk of offending  
 2:23:29 PM (tells me what group this person belongs too  
 (issue have here is that is one person in the courtroom  
 (last risk assessment test  
 (there were some other tests  
 (sexual bygones test 20 developed in the 1990's  
 (20 different issues that felt would be helpful from determining sexual offenders  
 (based on structures behavioral judgment  
 (Cites Kansas vs. Hendricks  
 (sexual violence 20 is something that can accommodate  
 2:26:26 PM (Mr. Campbell went through the 20 items and there were some items that felt he had some risk  
 (sexual deviation was concerned with the investment in pornography although was adult  
 (didn't see any evidence where there this person was a pedophile  
 (the man is married and seems that he was more comfortable looking at pictures rather than  
 being with his partner  
 (suffered some serious abuse at the hands of a step parent  
 (there were other factors where didn't find anything such a mental illness  
 (has been able to be in relationships, a protective factor  
 (item #17 denies any criminal conduct with the victim  
 (the position I take is honor the findings of the court  
 (see the minimization and denial  
 2:29:36 PM (marked that but did explain because believe that that factor would be taken out once it is revised  
 (rated him low to moderate risk  
 (low risk means that not treatment is needed  
 (there is some research that if you put low risk people into treatment that can increase risk of  
 recidivism  
 (felt that there was some things that he could work on  
 (concern that have  
 (would be surprised of the pedophilia  
 (the relationships that he had with women beginning with his mother  
 (pattern is that women are not to be trusted and they will cheat on you  
 (has a bad back and not able to perform as well sexually because of that fact  
 2:32:22 PM (this man does not have a good  
 (his trust level is so low on women and not a big stretch to see him being inappropriately  
 comfortable with a younger girl like a stepfather  
 (believe that he can be treated in society  
 (needs to learns some new pattern



2:35:14 PM (if that were to be addressed along with some other things believe that he could be successful  
(Mr. Campbell is at low risk and able to be safely rehabilitated in society  
(people that are in denial or minimize the situation do not benefit from treatment  
(the science is so weak on that  
(comes down to a coin flip am disappointed  
(have done other reports for the Public Defender Agency  
(was willing to testify

2:36:47 PM **Cross Examination by Ms. Gruenstein**  
(did record the conversation did note that in report  
(Witness refers to pg. 3 on overview of assessment 3<sup>rd</sup> paragraph  
(did not provide a copy of the recording  
(have only had my recordings requested about 1/30 times  
(most of the report is based on what Mr. Campbell told me  
(did not listen to the testimony at trial  
(did review the charging document and the transcript of Alaska Cares video of the victim Grace  
(did not review the transcript of her testimony  
(didn't talk to Jill his ex-wife

2:39:18 PM (conducted other tests  
(biographical measures  
(short intelligence test  
(was told the focus was risk and rehabilitative potential  
(know that there are some times where someone does not want me to write a report  
(would not advocate for a case where believe that someone need to be locked up  
(the more up to date version of the test  
(there was a meta-analysis that showed that the 99 was better  
(the 2002 had more items on it such as persistence of sexual offences

2:42:30 PM (Witness refers to report  
(use the static 1999 because this table is very confusing  
(still scores a zero on that  
(the persistence score is based on 3 categories of behavior  
(prior sentencing for sexual offending, juvenile convictions for sexual offending, and rate of sexual offending  
(the goal is that no one becomes a more than first time offender  
(this was the one test that could have scored without meeting him  
(a lot of first time offenders are not first time offenders

2:45:56 PM (relate risk compared to large development sample placed him at low risk whether or not used the static 99 or 2002  
(has a dynamic risk factor was concerned about was that would hope that could be with a therapist that could change his template with women  
(that all future intimacy needs would be geared towards someone who could consent  
(absence of criminal records  
(believed that the chronic back problems could be reason for drug use

2:49:14 PM (sexual intimacy with his last two partners was difficult  
(hard to be intimate with people don't trust  
(back injury was in 2004 got with Jill after that  
(sounded to me that things were well when me and Jill were dating and things grew apart  
(alienation occurred because she got addicted to video games  
(reason why didn't gather more information about why couldn't perform sexually nearly as important as looking to his relationship with women

2:52:38 PM (did read the Presentence Report  
(was more concerned more with his inability to connect with women



(is important to be honest with a provider if want to get through treatment faster  
 (the dose most important to get through the problem  
 (honesty is important is a complicated area  
 (sometimes people are just saying what they think needs to be said  
 2:55:35 PM (people that are remorseful or genuine vs. the ones in denial  
 (a lot of things need to happen in therapy but don't know if needs to include admitting that they  
 have done  
 (cited two studies regarding people that were in denial that conflicted each other  
 (will continue to get outcomes of this  
 (aware that this hearing is not only looking at treatment  
 (purpose of sentencing is broader than just rehabilitation  
 2:59:22 PM (Mr. Campbell has difficulty taking responsibility for the things that have gone on in his life  
 (would always give a reason why or blame others short comings  
 (common sense can be very wrong  
 (Mr. Campbell has some short comings and his life would be easier if sometimes he was less  
 defensive but he also has a lot of strengths  
 (was within normal limits to being reflective and accepting to treatment  
 (if was doing treatment here would accept him into my program  
 (the labels are descriptive  
 3:02:26 PM (look at my coding book under that factor  
 (Witness reads portion of report 2 paragraphs  
 (violence in this measure is defined as any type of sexual behavior as hands on  
 3:05:19 PM Mr. Brown  
 Objection  
 Was not convicted of using hands under the clothing  
 3:05:31 PM Ms. Gruenstein  
 Can still ask about allegations even if wasn't convicted at trial  
 The 4<sup>th</sup> count the allegation was that he was attempting to put his hands down Grace's shorts and  
 that she was pushing him away and saying "no"  
 3:06:10 PM **COURT:** *Instructs Counsel*  
 3:06:15 PM (don't want to confuse grossly inappropriate behavior with escalation  
 (the initial behavior was bad and irreprehensible  
 (violence is not as common with abusing minors  
 (the reason why stick to the definition is because there may have been other thin  
 (trying to be as objective as can  
 (had a question mark for lack of realistic plans  
 (ask Mr. Campbell regarding his  
 (he told me that he would go in front of a 2 judge panel where he would be exonerated by his  
 charges and needed this report because was going to start a business  
 3:09:41 PM (was glad that he actually had goals and that they were way better than others  
 (willing to accept that he had some limitations due to his back injury  
 (was unsure about his ability to maintain stable employment  
 (conflict in this work history with dealing with supervisors and the politics in the work place  
 (there were letters from employers that valued him  
 (amount of adult pornography on the computer  
 (look at this by looking at normal male sexual  
 (when there are women that were made to look young is a far cry from pre-pubescent girls  
 3:12:54 PM (did look at the literature that explained that the pornography that look is what is interested in



(just have to go back to the science  
 (did find it interesting  
 (there was child erotica on the computer and that stroke me as concerning  
 (was concerned that his sexual preference was to watch pornography rather than engaging with his  
 (what the child report was mirrored in the specific child erotica on the computer  
 (Mr. Campbell mentioned that there was one time that the victim eavesdropped on him  
 3:15:46 PM (investigator explained that it was not child pornography but was child erotica  
 (don't know the difference between child erotica and child pornography  
 (did not seek further clarification  
 (did state that did not appear that he was sexually interested in children  
 (with most pedophiles there are mostly children depicted  
 3:18:16 PM (feeling is that over a period of time the boundaries dissolved  
 (found himself with a relationship with a child as he became alienated from his spouse  
 (was a 3 year period and does not play into analysis because that is typical  
 (don't want to over simplify this  
 (was a combination of measures and goes back to why he is a treatable person  
 (did not seek out this women because she had a child that he was able to molest  
 (did not question what the jury found  
 (the repetitive behavior  
 (the whole behavior is atrocious  
 3:21:17 PM (none of the tests are foolproof  
 (these tests are not only based on what he told me  
 (my observations of him  
 (on the static 99 he scored a zero  
 (one weakness with risk assessment is with the most consistent information that you have  
 (the sexual violence risk tests the information came from Mr. Campbell  
 (low risk individuals should not treat  
 (thought that some of this evolved from long stand alienation going back from dealing with a drug addict mother  
 (a therapist might be able to help him with that  
 (most of the focus would be on trying to develop an appropriate relationship with women  
 3:25:01 PM (is an issue here  
 3:25:13 PM Witness excused  
 3:25:18 PM Defendant Rests Case-in-Chief  
 3:25:26 PM **COURT:**  
 Have all read the sentencing memos  
 3:25:35 PM Mr. Brown  
 Mr. Campbell's capacity for rehabilitation  
 Happy to go into Collins don't know how much the panel wants to hear from that case  
 The record before the court and the report overwhelming demonstrates that he is not the typical sexual offender and has good prospects for rehabilitation  
 talking about whether he has better than the typical sexual offender  
 Has the support of his family, education and work background, and ability to be treated  
 He is an A-typical sex offender  
 Cites AS 12.55.175(c)  
 The treatment can be conducted outside in society through guidelines that can be enforced by this court and/ or probation conditions

Was not the type of sex offender that the legislature was referring to when changed the law in 2006

Sentencing him to the 5-15 years would be injustice

Should sentence him to the below presumptive range

This is what the Court of Appeals was talking about in Collins and why it is important

Can impose any sentence

3:28:12 PM

**COURT:**

Can impose a definite term or one consistent with general sentence

Need to impose a flat sentence if did anything

Otherwise there would be no reason to have subsection (e)

3:29:09 PM

Mr. Brown

When the panel is referred because of the Collins decision

3:29:26 PM

**COURT:**

Have been wrestling with this for a while

*Cites Subsection C*

That section in turn .015 constrains the ability to go below the presumptive term cannot go below than half, the whole mitigator point

Added subsection E

Court of Appeals ruled that in fact could go below half the presumptive term and that was overruled

Have generally interpreted the statute to say if going to go with a definite term of imprisonment that have agreed to go with a flat sentence

3:31:19 PM

Mr. Schwaiger

Understand that the panel has made rulings on this issue in the past

Would like to work with the statute together know that has been the source of confusion

Position that we have today is that a definite term of imprisonment include any numerical term

*Explains different types of definite term of imprisonment*

The flat sentence could be imposed under subsection C would see a different term "active"

Indicating a wide variety of possible terms

Appreciate the notion that a person gets the potential of a bigger break under C than under E

Collins is not a non-statutory mitigator

*Cites Belts Case*

*Gives hypothetical*

There are differences between a manslaughter and assault with a deadly weapon for example

There are certain types of cases and offenders that fall outside of general ideas

3:35:14 PM

**COURT:**

What does the phrase "or to any sense" 12.55.015 mean

Seems to be the general sentencing statute

That's where are limited

Would all agree that it would be nice if the statute was rewritten and it was clear what they were up to

3:36:03 PM

Mr. Schwaiger

In 015 believe that other normal things such as imposing fines are things that the court can do

Under this theory could impose a totally suspended sentence

3:37:01 PM

**COURT:** *Inquires*



3:37:08 PM Mr. Schwaiger  
That is the case with the differences with Collins  
what the legislature thought...what is the typical offender  
that doesn't mean that the avenue ought to be closed  
important to remember that is the statute is ambiguous than the requirement is to rule in favor of  
the Defendant  
the term definitive term of imprisonment could include a completely suspended sentence  
now have definite terms of imprisonment so that the parole board will know exactly when  
someone will be able to be released on mandatory parole or when able to go on discretionary  
parole

3:39:07 PM **COURT:** Judge Moran  
Am a bit confused because AS 12.55.015 speak about actual imprisonment  
*Cites subsection 3, 4 and (d) (e)*  
Definitive term of imprisonment is the actual term not including the suspended time is what my  
understand is

3:40:08 PM Mr. Schwaiger  
A definite term because is numerically fixed  
A flat sentence would be called active time  
That is our position and could also go into presumptiveness

3:40:46 PM Mr. Brown  
Want to address the state's argument that the panel shouldn't allow Collins govern his sentence  
*Cites Perry v. State*  
*Cites Maluten*  
Mr. Campbell is here one of 3 children  
34 years old and has the support of his family here in Alaska  
May not want to be believe he is capable of the acts that he committed  
Mr. Campbell was on 3PC for over one year and did not violate once  
Respects his father  
A loving family that want their brother and son back  
Judge Volland heard ample evidence about Mr. Campbell's family and took this into consideration  
when he forwarded the case to your honors  
Just because they don't agree with the conviction does not mean they won't commit to his  
rehabilitation  
They do not want to see him fail  
Mr. Campbell is employable and has held numerous jobs regardless of his medical issues  
Can get out and get a job when he is released  
Has the support of former employers that are willing to re hire  
No prior history what so ever  
No juvenile history this is his first conviction  
Not youthful but young enough to move past this  
Can be successful on probation  
Wants to be a part of his biological daughter's life  
Can be rehabilitated successful while in the community  
Mr. Zelig report speaks volumes and Mr. Campbell is at low risk of reoffending  
Can be rehabilitated and is far from the typical sex offender  
In line with the Jackson standard

3:44:56 PM Can be treated inside society  
Court should fashion a sentence below the presumptive term

3:45:17 PM

Ms. Gruenstein

*Cites Totemoff v. State*

Collins at this point is at minimal if any prejudicial matter

The question that was raised in my mind is the problem that there is no mention of the legislative findings that have just happened a month ago

That is where Totemoff comes into play

Don't think that this is an appropriate mitigator and had not been signed into law yet

A judge can't use it to push it forward to a 3 judge panel

There is some persuasive panel

Not the correct application of a mitigator

3:48:33 PM

**COURT:** *Inquires*

3:52:22 PM

Even under Collins still believe that this case should be remanded back to Judge Volland for sentencing in the presumptive range

Won't spend much time on the rehabilitation part

Mr. Zelig stated that Mr. Campbell is not the typical sex offender

These tests are subjective

Defendant bears the burden of proof that this will not happen again and that has not been met

Knowing why it happened is critical and we just don't have any idea

Mr. Zelig said that it was because of the problems with his wife

There is no remorse and acceptance of what he has done and that should concern the court

Dr. Zelig said that people who do not accept their actions can be rehabilitated but that it would

take longer and those are not the people that we want to be giving shorter sentences to

The nature of the conduct is what the legislature was looking at

This was not a Collins situation where a 20 year old got drunk and made a mistake

This was an ongoing problem

With Mr. Collins it was a one-time event and he was very young

This is a case when there was ongoing abuse

There were serious allegations that this was not a one-time thing

3 years between the 2 convictions

a habit or behavior type

there were serious allegations and they can be considered

Grace mentions other allegations and the way they disclose is typical of children

Her testimony at Alaska Cares and some of her testimony can be used to determine how this was an ongoing situation

This is not the truly one time out of nature thing that Collins was talking about

3:55:50 PM

Important to note the legislative findings and the fact that Mr. Campbell tried to control Grace

Trying to make her not tell the secret and threatened her

Still don't have the manifest injustice

Judge Volland did not find that there was a manifest injustice

He didn't think that 5 years or more would be manifestly injustice based on his findings

There are 2 different standards

5 years for the 2 convictions that are separated by 3 years it does not shock the conscious

He violated that parental relationship when he violated his step daughter

He touched her with his hand first then with his hands and then with a vibrator

5 years for continual abuse is not in that same realm as shocking when looking at the sentencing

The impact that this had on Grace and this was very difficult for her came from Glennallen

And that testimony is available

3:58:46 PM

This changed her and she became a different person she acted out at home

She was scared for a long time even after she told



Only the fact that he was in jail and not able to get to her, her sister, or anyone else  
Looking at the Chaney criteria that is a very important point  
The restoration to the victim and look at what this has done to her  
Her Guardian ad litem is here although she will not testify  
Rehabilitation is not the end all be all  
Community condemnation with this case must go far and can't go far enough  
Have to establish that these crimes will not be tolerated  
This was a serious crime even within this category  
Isolation needs to be a critical part of any sentence that is crafted  
Important to keep him away from potential victims  
Important for deterrence  
The nature of the conduct a sentence within the presumptive range  
The only thing that is truly shocking about that it can be that low for that type of contact  
18 months to serve for that contact is beyond shocking to the conscious  
Does not rise to the level of manifest injustice  
Ask that the case be remanded back to Judge Volland

4:01:43 PM

Mr. Brown

Don't want to get confused on what the court's analysis should be  
No one thinks that this is not a serious crime  
The analysis is not to look at the facts but to look at the offender and whether or not he meets the  
criteria that the legislature was referring to

4:02:13 PM

**COURT:** Judge Smith

There are 2 steps: whether he has met the criteria and if meeting the criteria and imposing a  
sentence would be manifestly unjust  
Can have an and still get sent back to the trial court

4:02:36 PM

Mr. Brown

Has proved that he can be safely rehabilitated to the community  
Isolation is not necessary to reaffirm society norms  
The victim may feel more safe with Mr. Campbell in prison but he is not going to be in there  
forever  
Alaska has held that sentencing goals are rehabilitation  
Dr. Zelig has found that can be rehabilitated with the right kind of treatment  
Does he need treated from Department of Corrections or in the community  
Have shown that can do the treatment in the community

4:03:48 PM

**COURT:** Judge Stephens

have had a number of these Collins cases and have never seen a trial judge, state, or defense  
construe  
*References pg. 797 of the Collins Decision*  
always construed it to mean prospects of rehabilitation for all felony offenders not limited to sex  
offender  
wondering why read that differently

4:05:37 PM

Mr. Brown

Think this is because of the context of the case and the reason that the legislation increased the  
presumptive ranges for sex offenders so dramatically in 2006

4:06:01 PM

**COURT:** Judge Smith

Think what they are saying is that have a category for sex offenders and we treated them

differently in the 2006 legislation because we have made findings for these people who commit these types of offenses

So if you're not one of those people and have normal prospects for rehabilitation while being another offender

Never had any attorney argue that those "other types of offenders" was referring to other sex offenders

4:06:12 PM

Mr. Brown

Think that is because the sentences for other offenders do not reach the level of isolation that sex offenses do

What the legislature was referring to an extent that a non sex offender does typically pose a normal prospect for rehabilitation

Sex offenders for some reason based on the findings of the legislature in 2006 do not pose those same characteristics

4:07:00 PM

Mr. Schwaiger

The analysis like in Belts

Not the typical offender or offense but can still go in front of the panel if they don't fit assumptions that the legislature crafted when they made their presumptive ranges or terms

A litany on factual findings was used when crafting the presumptive ranges for sex offenders  
Creates the possibility that a person who does not fit the assumptions may be subject to an even greater injustice

4:08:24 PM

**COURT:** Judge Stephens

*Cites Collins pg. 797*

4:08:59 PM

Mr. Schwaiger

They assume that sex offenders have such horrible prospects for rehabilitation if a sex offender comes before the court with the prospects for rehabilitation that a property offender has that's ex offender can get to the panel

4:09:29 PM

**COURT:** Judge Stephens

That is how have interpreted it

4:09:37 PM

Ms. Gruenstein

Think that was what we said in front of Judge Volland

Judge Volland actually ruled that he thought that the way the ruling was set up that it was only applying to sex offenders

Was offenders as a whole and that our argument was that this was an even higher challenge before the court

4:10:32 PM

Mr. Schwaiger

Think that is a comparison to general offenders but a contrast to sex offenders

4:10:48 PM

**COURT:** Confirms that Mr. Campbell does not wish to address the court

4:10:55 PM

Off record

4:34:17 PM

On record

Court identifies case and parties

4:34:28 PM

**COURT:** Judge Smith



First issue is whether or not the Defendant has proven by clear and convincing evidence that he has normal prospects for rehabilitation

Our finding is that he has met that burden

The testimony from the expert was clear is that Mr. Campbell is amendable to treatment and has an extensive support network once he gets out

Those factors taken together indicate that he is like anybody else and would have a normal prospect for rehabilitation upon conviction of an offense

And the 2<sup>nd</sup> issue is whether it would be manifestly unjust not to sentence him below the presumptive term

Finding that he has not met that burden by clear and convincing evidence

There were two crimes here that are 3 years part we can't say what happened in the interim because we were not at the trial but we do recognize that he was acquitted

The second part was quite egregious involving the vibrator

Given the nature of the crime, the space over which the crime occurred, and the age of the victim, community condemnation is an important factor here and is adequately reflected by the presumptive term

There are also some significant control issues involved here and that issue was addressed by the legislature in 2006

In this case Mr. Campbell talked his step daughter into recanting

The control issue was a significant factor for us so give all of that we find that would not shock the conscious to sentence Mr. Campbell to the presumptive term or the low end of the presumptive term

Cannot speak as to what Judge Volland will do

5 years does not shock the conscious

For those reasons will remand the matter back to Judge Volland for sentencing

Thanks all the parties for their through preparation and argument it was helpful

4:36:51 PM

Mr. Brown

Defense position that it is not the have clear and convincing evidence standard that we have to meet in order to prove that it would be manifestly unjust to sentence him within the 5-15 years presumptive range

Once we meet the burden it would be a lower standard of proof the preponderance of the evidence to show that it would manifestly unjust to sentence him in the presumptive range

Want to put that on the record

4:38:05 PM

**COURT:**

Agree that the statute is vague on that point so will make an alternative finding that it wasn't proven by a preponderance of the evidence either

4:39:42 PM

**Off record**