

SUPERIOR COURT, STATE OF WASHINGTON, ADAMS COUNTY

No.97-1-00049-1

App. No.17779-3-III

Ritzville, Washington August 24, 1998

STATE OF WASHINGTON, Plaintiff

Vs.

MANUEL BELIZ, Defendant

VERBATIM REPORT OF PROCEEDINGS

SENTENCING

Before the Honorable Richard W. Miller Superior Court Judge

APPEARANCES

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE COURT: Are the parties ready in the matter of the State of Washington vs. Manuel Beliz?

PROSECUTOR: Your Honor, the prosecution is ready to Proceed.

MR. MORGAN: Defense is ready also your Honor.

THE COURT: All right. The matter is before the Court this morning for sentencing pursuant to previous order of the Court.

First of all, Mr. Morgan, have you reviewed the Presentence Investigation?

MR. MORGAN: I have, Your Honor.

THE COURT: Are there any factual matters set forth in that particular document which you take exception and which you would require the State to prove?

MR. MORGAN: Yes, Your Honor. And essentially the State --Mr. Scott and I have discussed the PSI, and there are errors in it. It's our position, or my position at least that I'm going to point those errors out to the Court this morning and leave it to the Court's discretion, though I would make the request that it be redrafted this becomes a permanent part of Mr. Beliz's record and we'd like it to be as accurate as possible.

THE COURT: Well, I noticed initially that the number of crimes that he was convicted --I mean, that's probably the most glaring thing. It's not accurate. And it seems to me that was also contained in one of the State's earlier memoranda.

MR. MORGAN: I believe --

PROSECUTOR: That is correct, Your Honor.

MR. MORGAN: --that's correct, Your Honor.

PROSECUTOR: Counts 1 and 2, my recollection is, Your Honor, were dismissed. We renumbered the

jury verdict in order to make sense to the jury without having any comment on what had happened. And, of course, that was a document the community corrections officer received, and I'm sure from that drafted. And I also agree with Mr. Morgan that there are --there's that error at least insofar as the PSI is concerned. And without stealing Mr. Morgan's thunder insofar as a delineation of what that is, my thought, Your Honor, was to perhaps continue the sentencing until Friday for two reasons. Taking statements that are appropriate today to take, and then continuing the matter till Friday. The first is 7.1(c) says that if you're going to offer new evidence there needs to be three days notice, and also we need to receive the PSI report within ten days of the date of the sentencing and that would be this coming Friday, if I count from the date of receipt.

So practically speaking it just seems easier to perhaps ask the Court to continue the sentencing until Friday. We have a new amended PSI and a record that accurately reflects what it is we're doing.

I don't know. I make that statement pretty blindly, Your Honor, without knowing either what my schedule is or yours, or Mr. Morgan's either.

I look at my calendar and I see that it's blank for the entire week, and I know that has to be wrong, but then one never knows.

THE COURT: Okay. I had not planned on being here Friday.

MR. MORGAN: And, Your Honor, I believe it can be handled today with a direction from the court to the Department of Corrections

THE COURT: Supplement the file?

MR. MORGAN: Supplement or redraft the report based on whatever the Court determines today is correct. And what I'd like to do is go through the PSI page by page and point out where I believe there are errors. Mr. Olin (phonetic) will probably take some notes and make those notes right on his copy of the PSI.

So starting on page 1, which is the identification of information form, under the section entitled Crime, Counts 1 and 2 were dismissed and should therefore be removed from that particular section. The same applies to the next portion where it says RCW, again Counts 1 and 2 should be removed.

The next section which says Date of Offense, the 1/1/89 through 12/31/89 should be removed because that covered Counts 1 and 2. And as far as that first page, those are the only corrections that I noted.

Then with regard to page 2, which is the Criminal History Summary, the first paragraph does not appear to need any corrections. The second paragraph, again we have --

THE COURT: Well, how about at the top?

MR. MORGAN: Oh, at the top, that's correct. Counts 1 and 2 again need to be removed under the identification of crime.

The second paragraph, we need to change January 1, '89 to January 1, '90. Remove Count 1.

Then the section relating to --that begins in the summer of 89, since that was dismissed, that paragraph, or those next one, two, three, four, five sentences all relating to 1989 should be removed.

In the third paragraph, Count 2 should be removed.

The next paragraph, based upon the Real Facts Doctrine, and that will be a ruling by the Court, should be excluded.

PROSECUTOR: I'm sorry, Your Honor, on what page, which paragraph?

MR. MORGAN: That's still on the Criminal History Summary, the last paragraph, beginning there are two other alleged victims. And that goes through the top of page 3 to Victim Impact.

Then we're over on the last portion of the Criminal History Summary, Your Honor, and again Counts--Count 1 needs to be stricken under Offender Score Calculation.

THE COURT: Okay, what page is that?

MR. MORGAN: That would be page 4 of the report up at the top, Offender Score Calculation.

THE COURT: Okay.

MR. MORGAN: Count 1 should be stricken. The offender score calculations are incorrect based upon the fact that Counts 1 and 2 are included. They should be halved to reflect offender scores of two and three, which would then change the sentencing ranges. I didn't look up the change on the one. The one that now cites 146 to 194 should be 102 to 136.

THE COURT: Okay, just a minute before we go any further so I don't get too confused here.

Mr. Scott, do you agree with the offender score that Mr. Morgan indicates?

MR. SCOTT: I do, Your Honor, that is correct.

THE COURT: So the offender score in—for Counts 3 and--

MR. MORGAN: It would be Counts 3 and 5, your Honor.

THE COURT: Okay, it's got "X" here.

MR. MORGAN: Well, no, it would be—

THE COURT: Wait a minute, that's—

MR. MORGAN: Counts 3 and 4 were the 90 prior to August 1, and Counts 5 and 6 were August '90.

THE COURT: Okay. Excuse me just a minute. That should be for Counts 3 and 4.

MR. MORGAN: Right.

THE COURT: It had Count 10 there so I --

MR. MORGAN: Oh, no, that's the seriousness level, Your Honor, the "X."

THE COURT: Oh, all right. And then Count 5 --

MR. MORGAN: Five and six. 11 THE COURT: --and 6.

MR. MORGAN: That was August of 1990.

THE COURT: Okay, and that offender score should be nine?

MR. MORGAN: No, three.

THE COURT: Okay, three.

MR. MORGAN: Seriousness level 11, offender score of three.

THE COURT: And then offender score of three on the above, also?

MR. MORGAN: No, two.

THE COURT: Two?

MR. MORGAN: Because there was a change in the multiplier at the same time period.

THE COURT: Okay.

MR. MORGAN: That's where a lot of this confusion comes in because we had some major changes in '89 and '90.

THE COURT: Yeah, okay. And now what are the ranges then?

MR. MORGAN: On Counts 5 and 6 would be 102 to 136. and—

THE COURT: Let's see, which implication manual is that?

MR. MORGAN: That would be the 1990 implementation manual.

COURT: Okay, I don't have it here on the bench.

MR. SCOTT: Actually it's the '89-'90.

THE COURT: Have you got one?

MR. MORGAN: I think it's attached to the back of my memorandum, the scoring sheet, Your Honor, if you need to refer to it.

MR. SCOTT: And, Your Honor, I can approach with the—

THE COURT: Well, why don't you just tell me what it is. If you can agree, I'll just note it here.

(Inaudible discussion between attorneys.)

MR. SCOTT: Offender score of three, Your Honor, however—well, yes offender score of three.

THE COURT: Okay, that's on Counts 5 4 and 6, right?

MR. SCOTT: Five and six.

THE COURT: Okay. And that's 102 to 136?

MR. MORGAN: Right.

THE COURT: How about on 3 and 4.

MR. MORGAN: That would be 62 to 82, Your Honor?

THE COURT: Do you agree? Do you agree with the range, 62 to 82?

MR. SCOTT: Yes.

THE COURT: Okay. Let's go to the next page then.

MR. MORGAN: The next page I don't see any corrections, Your Honor.

THE COURT: All right.

MR. MORGAN: The next page would be under Sentence Options where it refers to three counts, it would be two counts. That's in the first line in two places, two counts of rape of a child in the first degree, two counts of child molestation in the first degree.

Under Sentence Considerations, Standard Range, Counts --where it says Count 1 on the second line, and Count 1 on the third line, Count 1 should be stricken. There would be a correction on the offender score to two, and the range 62 to 82. Count 3 refers to January 1, '89. It should say January 1, '90.

And then down near the last line of that paragraph it should be an offender score of three instead of six, standard range 102 to 136.

THE COURT: All right.

MR. MORGAN: The next to the last paragraph it starts, "The victim alleges," again we've got three counts listed in the second line on that. It should be two in those two locations.

Then flipping over to the next page, again standard range should change to 102 to 136 which is the --for the more serious of the crimes.

THE COURT: And then we need another recommendation apparently.

MR. MORGAN: Apparently. I can't change that, Your Honor, or ask that it be changed.

Then we flip to the recommendations under the confinement. That will be up to Mr. Olin to make that change. He may be ready to make a different recommendation today. I don't know.

Under Monetary Obligations, I was retained so there would be no attorney's fees entered there. And I believe based upon my review, those were the major errors or corrections to be taken care of.

Mr. Beliz has indicated --I'd given him a copy of this last week, Your Honor, and he wants to talk to me just a little bit about it. Could we have maybe five minutes?

COURT: We'll take a five-minute recess.

(recess taken)

CLERK: Superior Court is now reconvened. You may be seated.

COURT: Mr. Morgan?

MR. MORGAN: Sorry for taking so long.

COURT: No, that's all right.

MR. MORGAN: There was one other section that I had missed. Turn to page 5 under Sentence Considerations. If you look at the top of the page under Presentence Investigation there are subheadings, and it just says Sentencing Consideration, then drops down to Sexual Behavior.

THE COURT: Okay.

MR. MORGAN: Under that one the fourth and fifth sentences are also in violation of the Real Facts Doctrine, and we'd object to those being included.

THE COURT: Okay. Starting with—

MR. MORGAN: There are at least 2 additional victims.

THE COURT: Okay.

MR. MORGAN: That I believe—

MR. SCOTT: I'm sorry, Your Honor, I'm not—

MR. MORGAN: I believe that covers all of the areas that I had previously addressed in my sentencing memo, Your Honor, that we feel are inaccurate or should not be considered.

THE COURT: Mr. Scott, do you want to respond at this point in time?

MR. SCOTT: I did, Your Honor, and I'm going to just make a short comment and then defer to my brother at the bar perhaps to talk about some of the legal issues for which he's better acquainted than I.

THE COURT: Okay.

MR. SCOTT: I look at the 1990 implementation manual, Your Honor, and I'm at page, I guess it would be Roman numeral 1-12. It talks about multiple offense scoring steps, and it appears to me that under subheading "A" that it's discretionary with the Court whether or not you determine that the same criminal conduct, and you can run those concurrently or consecutively.

Now, Counsel pointed out to me in his brief the Tinkum (phonetic) case, I believe. The Dolen case, excuse me, where the Court had said, well, not necessarily is that an option that the

Court has. And that's what the Court considered in conjunction with what Counsel is going to address the Court on.

There are some comments to offer from the victim in the case, Ms. Rodriguez, Your Honor. In that context I'd ask to address the Court again after her comments.

THE COURT: Does she wish to address the Court?

MR. SCOTT: She does, Your Honor.

THE COURT: I'll --Do you want to make your recommendations now for the record, or did you --

MR. SCOTT: We're asking, Your Honor, that the Court consider an exceptional sentence in this case, and I'm going to defer to counsel on that.

COURT: For the reasons indicated?

MR. SCOTT: For the reasons indicated. Now when I say that, Your Honor, we're not asking—as defense attorney I've stood before the Court a number of times and said there's no magic to the number of days, months, years, and I suppose that philosophy carries over here, too, Your Honor, in terms of a specific recommendation about what an exceptional sentence should be. Leaving that rather to your good consideration and to spout off some number, which is probably going to be meaningless in the context of the adversarial process that MR. MORGAN and I are involved in, so.....

COURT: All right. Did Mr. DeYoung was he going to address the Court at this point?

DEYOUNG: Yes, Your Honor, I'd like to address--

COURT: Go ahead.

DEYOUNG: I'd like to address the matter of seeking an exceptional sentence. The statute allows for an exceptional sentence when substantial and compelling reasons exist. And the State believes that such reasons are present, and defense counsel has stated that the Real Facts Doctrine has some application in this, and we'd like to bring to the Court's attention that there is Facts Doctrine at 9.94A.372.

THE COURT: Okay. What page is that on your brief here?

MR. DEYOUNG: Which is beginning at the bottom of page 4 in the brief, Your Honor.

THE COURT: Did you quote the statute there? I can't recall right off the top of my head? Yeah.

MR. DEYOUNG: And continuing on to page 5 it says: Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in RCW 9.94A.932 (c), (d), (f) and (g). And (g) relates to an ongoing pattern of sexual abuse. So this is, Your Honor, an exception to the Real Facts Doctrine. And in this case we do have evidence on the record, and it doesn't say that it has to be with the charged crime, as I understand this statute, and

Evidence shows that this pattern of sexual abuse began sometime near the age of five of the victim and continued on through the age of 11.

And on another issue we seek an exceptional sentence, and this has to do with particular

vulnerability of the victim. And the State --we've looked at defense counsel's brief, and we agree that there is no case of extreme youth in this case, but instead we argue that there is, in fact, the disability or its type of mental condition which the defendant puts on the victim and one of --

THE COURT: Isn't that, isn't that the type of --excuse me for interrupting you, first, but

isn't that the type of conduct that would require testimony from a medical professional or a

psychologist? I don't really think that's the kind of thing the Court could accept an argument absent some professional testifying about that, unless I'm mistaken. If I am, I guess you can convince me of it.

MR. DEYOUNG: Yes, it is possible, Your Honor. We do not have any direct Washington law on

the case. All we have is one case where a victim was 22 wearing a leg cast, and the leg cast did not contribute to the victim's injuries, and that's all we have.

I drew on Minnesota law, which has a similar wording of their statute as to ours, which mental condition may apply.

But we're willing to move on from that. Another issue that we believe applies here is abuse

of trust. And the Court made an evidentiary ruling that stated that the defendant was acting in loco parentis in certain situation. They babysat the victim, and that he disciplined her, and that he got her ready for school. And as another exception to the Real Facts Doctrine, which doesn't apply here, the defendant points out that in most cases there always is some type of trust which is involved in these situations. But here we have a type of trust which is higher than that required for the crime and as thus it could be used for the basis for an exceptional sentence.

Another issue we're arguing is the lack of remorse of defendant that under State v. Russell, a criminal defendant's lack of remorse constitutes an aggravating factor for sentencing purposes if it is of an aggravated or egregious character.

And defense counsel has stated that defendant's simple silence or lack of any statements simply can't be used as a lack of remorse, but depending upon how the PSI is changed, the defendant has made some statements on the PSI, so the defendant has not remained silent. So the State believes this could be considered as a factor for aggravated sentence, an aggravated factor for an exceptional sentence.

And similar with future dangerousness, that depending upon the findings of Mr. Olin, he's already stated in the initial PSI that he has evidence that the defendant might not be amenable to treatment. The defendant has made some statements stating possibly some culpability, but then has retracted them and gone back on them. So we believe that there's a great possibility that he may present some danger to the community.

THE COURT: All right, the Post case, in fact I have it here, indicates the two factors that would substantiate a finding of future dangerousness. One, that the history of a similar

conduct. And I think in the Post case, I believe he had a series of convictions, prior convictions. And then, secondly, that there was a professional who testified. I can't remember if it was a psychologist or a treatment professional who testified that the defendant was not amenable to treatment, which suggests to the Court that it would require some type of expert testimony following an examination to fit within the rule of State vs. Post unless

MR. DEYOUNG: Yes, Your Honor.

THE COURT: --you disagree with me.

MR. DEYOUNG: Well, what the state was seeking to do was to introduce evidence of the two sisters who had alleged suffered some abuse from the defendant. And depending upon the Court's ruling of the application of the Real Facts Doctrine, that's how that evidence was planned to be introduced

MR. SCOTT: Your Honor, if I might add, I understand the (inaudible) choice that Mr. Morgan was put to, but we had asked Dr. David Bott, M.D., Ph.D., in psychiatry, to meet with Mr. Beliz to determine that very issue. And Dr. Bott primarily testifies for defense. As a matter of fact I can't recall an instance when he has been called as a witness for the State, although I may be mistaken. So I felt he was fair and balanced, but nonetheless Mr. Beliz has a constitutional right not to speak with the doctor.

Whether or not the Court in a sentencing context can take into account the fact that the appraisal was offered but not taken advantage of is another issue for the Court to decide, but we merely raise that for your perhaps benefit.

THE COURT: Okay, I think it would be an unusual situation where the Court would, because in essence what I'm being asked to do is select an alternate punishment which is greater than the

standard range based upon and using as a factor the defendant's exertion of his right to remain silent.

MR. DEYOUNG: If the Court were to consider both factors as being necessary in order to find an exceptional insofar as future dangerousness is concerned, then it becomes merely a fortuitous choice whether or not defendant, because of a mistake on the part of himself or counsel has such evidence to offer to the Court that's adverse to him.

THE COURT: Well, I think that's always a dilemma --

MR. DEYOUNG: Yes.

THE COURT: --in this type of case defense counsel to --particularly if there's some thought of asking the Court for SOSA (phonetic).

MR. DEYOUNG: Right.

THE COURT: And, of course, then you have to submit to an examination, and that, depending on what comes out, may very well be used to a disadvantage of the defendant. I realize the dilemma defense counsel are always put in in that particular type of case.

MR. SCOTT: In this case he--he wouldn't have qualified. But the only point I wanted to make, Your Honor, is that it seems that that kind of testimony is wholly in the hands of defendant, whether or not the Court is to consider that as a reason for an upward adjustment. And I don't know whether or not the law contemplates that.

Mr. Morgan has put us on notice that there will be an appeal, and sometimes the idea might be, Your Honor, to tell the Court: Well, if we're in for a penny, we're in for a pound, fly at it, Judge. Of course, we do expect more and then in the case of Your Honor have no reason to anticipate anything other than a fair and balanced judgment. But with that thought in mind I offer it up just to make a record.

THE COURT: Okay.

MR. DEYOUNG: And, Your Honor, especially on these two bases, the ongoing sexual activity, which is a clear exception to the Real Facts Doctrine, and the abuse of trust, which is readily apparent in the record, that an exceptional sentence be considered. It's within the discretion of this Court. Thanks you.

COURT: Mr. Morgan, did you want to respond to that argument?

MR. MORGAN: Yes, please.

COURT: Go ahead.

MR. MORGAN: I think it's better to take these things one step at a time today because of the complexity of issues that are going to be before the Court.

Mr. Scott started this off by pointing out the paragraph in the 1990 Sentencing Guidelines with regard to discretion on the part of the Court. I believe those have been superseded by the Dolen Case, which now says that these particular counts merge and, therefore, they are not discretionary, where it is the one continuous act. And if the court will recall the testimony at trial, Ms. Garza very explicitly indicated that these just kind of went from one right to the next act. There was no hesitation on her part with regard to that.

Now, as far as exceptional sentences go, the Court's well aware that you need substantial and compelling reasons outside of the normal considerations that are put into the establishment of the sentencing guidelines. And what the State has set forth for the court with regard to --I counted five basically areas that they think an exceptional sentence would apply. I don't believe they are sufficiently substantial and compelling to allow the Court to go outside the standard sentencing range.

First of all, with regard to the issue of lack of remorse, the Court --or the State recognizes in its own brief that lack of remorse must be of an aggravated or egregious character. In this particular instance, Mr. Beliz exercised his Fifth Amendment rights, declared his innocence throughout, and what there was with regard to any type of admission occurred during the initial police investigation by the Othello Police Department, and has not changed. That's the same language that is used in the PSI at this time, that touching--if touching occurred was over the clothing and in retaliation for what Mr. Beliz believed was an unlawful touching of his own daughter. That I don't believe is within the framework of aggravated or egregious character.

Then we have the question of future dangerousness, and I believe the Court has adequately addressed that in its questioning of the State's counsel, and I believe it's also adequately addressed in my Memorandum of Authorities insofar as the particular factors that need to be established in order to consider that particular element.

My supplemental brief on Tinkum indicates Mr. Beliz's position with regard to what would occur in the event the Court did order an examination. He would want counsel present. He would be exercising his Fifth Amendment right with regard to any inquiries that would have potentially exposed him to increased punishment or additional charges.

On the issue of particular vulnerability, the State's argument is rather unique as far as its interpretation of the word "disability." And since the word "disability" is not defined in any of the sentencing statutes or in the Sentencing Guidelines themselves, we fall back on the old rule of thumb, you go to the common definition contained in the dictionary. The common definition contained in the dictionary is "an incapacity." And in this particular instance

there was a physical disability that would apply. If there was a mental disability that would apply. If there was an age disability, that would apply. We're talking about what are normally recognized as discriminatory type practices with regard to age, social position, physical disabilities, Americans With Disabilities Act, those type of things. In this particular instance to claim that because you're a friend of the defendant's daughter and he utilized that friendship because it created a disability in the mind of the complaining witness I think is stretching things a bit and is basically also drawing in not only abuse of trust, which is the next area I'm going to address, but also some other factors that really don't have any viability with regard to determining whether or not an exceptional sentence should apply. I don't deny that Minnesota could be used as a guideline here. Minnesota cases could be used as a guideline because it's my understanding that our Sentencing Guidelines evolved from the Minnesota Sentencing Guidelines.

THE COURT: That's correct.

MR. MORGAN: So Minnesota has always been looked to as being an area where we can get some guidance. In this particular case the one citation to authority out of Minnesota really doesn't have any application to what's before the Court.

Now, on abuse of trust it's kind of unique, Your Honor, because what we have on the abuse of trust evolved from the economic abuse of trust which was initially one of the aggravating factors to be used. Then the courts, through interpretation have expanded that into noneconomic crimes, sexual offenses.

Our position with regard to abuse of trust, Your Honor, I think is essentially that that particular aspect could be considered by the Court, but probably should not be considered by the court under the facts and circumstances of this case.

The citation that we have is on 13A Washington Practice, and Ferguson and Fine there indicate, and I think the Court can take into account its experience both as a prosecuting attorney and as city judge, that in most cases of child sexual abuse or claims of child sexual abuse you have a known factor between the alleged perpetrator and the complaining witness. And that is because normally they know one another, and normally there's already in existence some type of a position of trust. And what Ferguson and Fine basically tell us is because of that the real exceptional areas are the ones where there is no position of trust.

In this particular instance the position of trust --and the Court did rule on that with regard to the issue of testimony 4 Mrs. Beliz --that Mr. Beliz was basically in a guardian type relationship. Under all of the circumstances here, Your Honor, I don't believe again that the facts are such that they are outside the normal course of what occurs when there is a violation of a position of trust.

And Ferguson and Fine caution that when you look at the published cases, they're really not the ones that you need to consider because most of the cases are either resolved on a guilty plea or a plea bargain, and that's where the facts are. And we really don't know what the facts are in the unpublished cases.

So they're basically telling the trial courts use your own experience in determining whether or not this is an exceptional type case. I don't believe it is under these facts and circumstances.

THE COURT: Well, I think it's interesting to note the State, at least in a roundabout way, may not disagree with you in the press release that was issued by the prosecutor that is attached to one of your memorandums there's a quotation that I assume is intended to be from the prosecutor that statistics show 90 percent of all girls under the age of 12 who are sexually abused are abused by a friend or relative.

MR. SOTT: That, of course, is not this prosecutor, Judge.

THE COURT: No. Well, it is in the record.

MR. SCOTT: And I would speak to that issue when MR. Morgan is done.

MR. MORGAN: Then finally, Your Honor, we have the ongoing pattern of sexual abuse. And where I differed with the State on this, Your Honor, is it appeared to me that the State was trying to bring in the other two alleged victims in to this ongoing pattern of sexual abuse, which would be in direct violation of the Real Facts Doctrine. And I think the Court is fully aware of the Real Facts Doctrine as it exists now in the State of Washington, which basically derives from the State vs. Tierney case, which gives you a very comprehensive analysis of the Real Facts Doctrine, what the Court should consider and how it should be applied.

Since the State seems now to be saying we want you to consider the ongoing pattern of sexual abuse strictly with regard to Ms. Garza, our position with regard to that is, yes, Your Honor, you can consider that issue only insofar as anything occurred after May 11th of 1989.

THE COURT: Which is when the statute of limitations runs.

MR. MORGAN: That's correct. And we cite a case that basically says that statutes of limitation are a limitation upon the power of the sovereign to act. The sovereign being the State. The Court being part of the State. If a particular crime is outlawed by the statute of limitations, then it should not be used as a factor in increasing punishment for what a defendant is being convicted of.

In this particular case, because May 11, 1989, is the cutoff point with regard to the statute of limitations for any crime occurring prior 19 to that time, anything prior to that date should not be considered by the Court. That we feel also comes within the parameters of the Real Facts Doctrine.

We urge the Court to if it intends to consider the ongoing pattern of sexual abuse, to limit itself to the time period indicated. And under all the facts and circumstances, Your Honor, we do not feel an exceptional sentence is warranted in this case. Sentencing should be within the standard range.

THE COURT: All right. Mr. Scott?

MR. SCOTT: Your Honor, with regard to the Real Facts Doctrine, I think that the law presumes that you do have the power to consider evidence under the Real Facts Doctrine and yet not be swayed or influenced as far as the sentencing considerations are concerned to punish for other uncharged crimes. And I think that's really what we're talking about, and that's what the thrust of the Real Facts Doctrine is all about.

And in that context I think that the Court certainly can consider the fact that there were other uncharged offenses with other victims that this Court can consider. Notwithstanding any press release which may have come out. I'll point this out.

You heard the evidence, and you are the better judge of what that evidence was at the time of trial that I or Mr. Morgan. It appears to me that the testimony, my recollection from Erica was that she didn't report it because she was afraid to because she would lose the friendship of her buddy, of her girlfriends. Not that she was worried about losing the trust and love of Mr. Beliz. And that, of course, is different thing altogether, and I think that that's the distinction I would ask that the Court look at when you consider whether or not this was an abuse of trust.

If, in fact she were to have testified to that, well, I didn't want to lose his love and affection or his trust or his guardianship, then I think the Court would be well within its discretion to rule adversely to it, but she didn't say that.

She said: I didn't want to lose my friends. I didn't want to break up the families, and that's something different than I didn't want to lose his love and affection, or admiration, or any of the things we hear that are necessarily contemplated within the crime itself when it's charged.

That's really what it comes down to is does the charging offense really, when it comes time for punishing, satisfactorily punish the fence as has been charged. I think in this case the Court can find exceptional reasons to {inaudible} down the guidelines.

THE COURT: Well, wouldn't it be more compelling if the reason for not disclosing would be

fear of loss of that relationship with the perpetrator?

Wouldn't that be more of a reason than fear of loss of the relationship with someone else, for instance a family member?

A. Well, when we talk about whether there is a motivation or a compulsion to nondisclosure, I think that the one--I guess it's all gradations of grade, Your Honor, what the reasons are, and perhaps it's unfair to ask you to make that gradation. But nonetheless the legislature has asked you to do it.

I think that it is --he is more a stranger to the relationship than in loco parentis. And I may be arguing against my brother when I say that, but he is more of a stranger. There wasn't any testimony at all that he was --that she was afraid of retaliation from him in terms of lawsuit and the things we normally think of when we talk about a five-to eleven-year-old girl.

THE COURT: No, I think my recollection of the testimony was the closeness of the two families, and the fact that the family units themselves were almost inseparable for a number of years.

MR. SCOTT: Indeed.

I think we're prepared then for Mrs. Rodriguez's testimony.

THE COURT: All right. Would you like to come forward and be sworn, please?

(ERICA RODRIGUEZ was sworn on oath)

THE COURT: Please be seated.

MR. MORGAN: Just a clarification for the record, Your Honor. It is my understanding that the state is putting on testimony now from Ms. Garza with regard to victim impact only, and that it will have no bearing whatsoever has already occurred insofar as the trial is concerned.

MR. SCOTT: Your Honor, I don't have in my repetition of the testimony that we already heard for a day-and-a-half.

THE COURT: All right.

MR. SCOTT: We'll confine our comments merely to the effects that this has had on Ms. Rodriguez.

DIRECT EXAMINATION OF ERICKA RODRIGUEZ

BY MR. SCOTT:

Q.- Erica, you and I have talked briefly, and you've talked with other members of the prosecuting attorney's office with regards to the impact that this has had on your life, have you not?

A.- Yes.

Q.- Can you tell this Court what kind of impact this has had?

A.- Well, he took away my childhood, everything I remember about my past is being molested. I

look at my past and I can't remember the good things. All I remember is Manuel molesting me.

When I was growing up, same thing, I couldn't respond to men as a regular young teenager would. It took me very long to be able to get with my husband because --or to even be with him as a boyfriend because it was just really hard for me to get close to any man because of an intimate, sexual kind of relationship, because my first sexual experience was with Manuel again.

I know that he has put me in my own prison for the past 15 years because he has traumatized me. Every day, every minute in my life I know that I was molested, and that always has an impact on what I decide to do in my life.

Q.- Could you explain that to the Court. I didn't want to interrupt your train of thought, but you say it has a daily impact on your life. Can you tell the Judge how that evidence is itself? Of you go to the market, or if you see people interacting with children, do you have a reaction to that?

A. Yes. It's hard when I see --I'm a nanny. I take care of little kids, and I won't let them go with anybody but me because I don't trust anybody. And I know I'm fair to them, and I hate that. I won't let them, but the closest person to me in my life, my second family was Manuel's

Family. So when I think of letting them go with their friends, well, I think, hey, if somebody that was so close to me is the one who did it, then what makes me think that somebody else, their friends, the friends, the fathers or the mothers or, you know, the families of their friends won't be abusive like my second family was, like my second--like Manuel was to me.

I know when I have children, maybe it's going to be unfair to them, but I would never trust anybody, not even my closest friends.

Q. Do you feel as if you can trust your husband completely in that context? A hard question.

A. You know, it is hard because Manuel was like my father, was like my second father, so it was—it's hard, and it has taken me very long to even get close to him to be completely open with him about everything. And I can't really say because I know I don't have children, but I know with the kids I take care of, yeah, I trust my husband. But I always have it in the back of my head that anybody, anybody could do it. I mean if Manuel did it for me, anybody could do it because he was like my father.

Q.- Now, in terms of your religious community, has it had an impact in that capacity? You are Jehovah's Witness; is that true?

A.-- Yes. Unfort- --

Q.- Could you tell the Court that's --Could you tell the Court that relationship, your religious relationship?

A.- Since Manuel had a very high position in the religion and he had a lot of trust, everybody trusted him because he was in a very high position. When he would do the things he did, and when he—I don't know how to explain it. As the high position that he did have, now for me it's really hard. I did separate myself a little. Spiritually, I went down a lot.

Q.- Do you feel that for one reason or another that the church made a choice between you and Mr. Beliz?

A.- There was certain things that didn't go right, and I don't know if it was because of the lies or it was because he had such a high position in the organization the yeah, certain things weren't fair about it, but--and I think maybe that's why spiritually he had killed me in a way.

Q.- He was disfellowshipped, was he not?

A.- Yes.

Q.- Which in terms of the Jehovah's Witnesses means that he is, in effect, excommunicated from the church; that not true?

A.- Yes.

Q.- Just prior to his daughter's marriage?

A.- Yes.

Q.- And how long was he within that disfellowship period of time, do you know?

A.- I can't remember. I think it was a little under a year, or around a year.

Q.- Now, rightly wrongly, I don't mean to suggest that either one way or another, but was your perception then that the church was not supportive of you?

A.- When he was at fellowship I thought they were, but when they got reinstated, I don't know why. I don't understand. I --

Q.- Has that had an impact on you insofar as your religious convictions are concerned?

A.- Yeah.

Q.- Now, how about in terms of the rest of your family and your interactions with them, particularly your mom and your dad. Has it had an impact as far as you and they are concerned?

A.- It affected them a lot. My dad and my mom got really depressed, and they had to go away for awhile. And right now they're not around, but it affected us a lot.

My dad got really depressed, and my mom did, too. She got really sick because of it, and it affected them a lot. And he has traumatized all of us, not only me but my family, my friends, and I'm sure his family too.

Q.- Now, your mom and your dad are also members of the Jehovah's Witness community in Othello; is that correct?

A.- In Sacramento, yes.

Q.- And prior to that in Othello; is that correct?

A.- Yes.

Q.- And has it had the impact on their participation in their religious activities?

A.- Yes.

Q.- How so?

A.- They felt like they were protecting a child molester.

Q.- Now, you've heard Kelsey from Mr Beliz say that—and you've also had a chance to read the Presentence Investigative Report, have you not? And then you notice that Mr. Beliz said he did this in retaliation for your father hadn't touched his daughter. Do you believe that?

A.- No.

Q.- Does that have an impact on you?

A.- I don't understand how somebody would do it in retaliation. I mean, if my dad—when my dad found out Manuel molested me, his reaction wasn't to go (inaudible) somebody else. His reaction was to go kick somebody's butt. I mean, it was never too—in retaliation because you don't do stuff like that in retaliation.

Q.- Is there anything else you want this Judge to know about your situation and how this has impacted you?

A.- (No response.)

Q.- There have been some financial considerations, have there not? Flying back and forth and losing work?

A.- My husband lost his job because of the child. He as out of work for quite awhile, he couldn't leave work and so he said I'm going to—support my wife, I'm not going to not go. So he lost his job. I've missed so many weeks of work.

Financially-wise, yeah, there been stuff, yeah. My parents, you know, if you asked if I wanted to know anything, Manuel has traumatized me since I was the tender age of five, and everything then till now. Everything I do is affected by what Manuel has done to me. And everything I will do for the rest of my life, which hopefully is another 60 years or somewhere around there, he is always going to traumatize me. And all my decisions I make in my life are going to be related to what he did to me. When I have kids. When I got married. I have nightmares every night. Very often I lose a lot of sleep and, like I said, he has put me in my prison and I will be in this prison for the rest of my life till the day I die. And I just want you to know that. It is something that is always there, and it's something that I will never forget. And he has traumatized me and put me in my prison till the day I die.

Q.- And respective --if I can over dramatize—Mr. Beliz is looking at something in the neighborhood of ten years in prison. Do you think that's a fair trade?

A.- Well, I've been in my own prison for already 15 years. It kind of seems odd that he would only get ten years for what he did. And if I'm going to be in my prison for the rest of my life, if what he did is going to traumatic me until the day I die, well, it seems like its unfair.

Q.- Do you recall the police officer testifying who said that after he had given Mr. Beliz his constitutional rights and he asked him about this incident, Mr. Beliz said to the officer that if the Judge asked him, he guessed he'd have to admit to doing these things.

Now, if it were possible for Mr. Beliz either because of lack of a legal reason why not, or some other reason, if it was possible for him to say anything to you now, what is it you'd like to have him tell you about all these incidents? What is it you'd like to hear?

A.- I know he's not sorry for what he did, so I know if he gets up and says he's sorry, it's not going to mean much. Because I gave him the opportunity to say he was sorry, and he didn't say it. And I told him –

Q.- How's that.

A.- One of our conversations, I can't remember exactly the date, I was recorded by an Officer, Officer Flopp (phonetic). And I told him, if you apologize, and I told Melissa Beliz, his daughter, if he apologizes this is it. I won't take him to court. And he wouldn't. I said I will have him arrested. He didn't apologize, and if he didn't apologize back and decided to go through all this, then an apology really--it wouldn't do much because he's not sorry.

Manuel can't say anything right now to me that is going to erase what he did to me, that's going to make me feel any better. He can't say one word that's going to make me feel better.

MR. SCOTT: Thank you. Your Honor, I'll pass the witness.

MR. MORGAN: No questions, your Honor.

EXAMINATION OF ERICA RODRIGUEZ

BY THE COURT:

Q.- Is it your hope that regardless of how much time Mr. Beliz does in prison that he will obtain the type of assistance, counsel, to allow him to get past this type of conduct for that period of time when he eventually does come back out into the—

A.- If I would want him to get assistance? Yes.

THE COURT: Thank you.

MR. SCOTT: Your Honor, it was my thought that at the conclusion of Erica's statement to the Court that I might offer my own thoughts on it. But I think that there's really more that I can add that hasn't already been said to you, so I'll prepare.

THE COURT: Is the Department of Corrections going to have a recommendation on this matter? And if you're not ready to do it now, my thought would be since it is during the lunch time, we could recess, come back after lunch and it will give you a chance to think about it if you're so inclined. I realize you're going to have to do so in writing, but it might be helpful to the Court if you'd be able to give me an opinion, at least an oral one.

MR. SCOTT: Well, I can probably make changes that --and I apologize to the Court for the way this presentment has turned out, but I was not aware those two counts had been dropped. I had no information that that had happened. So that's why the scores were the way they were.

THE COURT: No, I understand that. We who were involved in the trial probably understand it, but if you just took a quick look at the file it's a little bit confusing and it might certainly lend itself to the conclusion that you reached.

MR. SCOTT: Well, even with the changes, and there's coring changes, I would feel at 125 months on the things that he would have ample time to go through treatment if treatment is needed and necessary.

THE COURT: Essentially it's a presumptive recommendation, middle of the range approximately.

MR. SCOTT: Well, yeah, almost. Well, it's 102 to 136 months, so it's beyond the middle. It's 11 months shorter than the max {inaudible}. I feel comfortable with that at this point.

THE COURT: Mr. Morgan?

MR. MORGAN: Your Honor, I'm not sure what the Court wishes would be. There's several people that would like to speak on Mr. Beliz's behalf, and he's got his right of elocution and—

THE COURT: Yeah, if that's the case I think it would be appropriate to take a break for lunch and come back instead of dragging this through lunch hour.

Okay, do you want to reconvene about 1:15?

MR. MORGAN: That would be fine, Your Honor.

THE COURT: I have some other matters this afternoon, but those have to wait until we finish.

(Lunch recess taken.)

CLERK: Adams County Superior Court is now reconvened. You may be seated.

THE COURT: Mr. Morgan?

MR. MORGAN: Yes, Your Honor. It's my understanding the following individuals wish to speak on Mr. Beliz's behalf. That would be his wife, his daughter Melissa, his son Gabriel, and John White. I'm not sure what order. I have advised them they can speak here from the rostrum, or if you'd rather have them up on the witness stand.

THE COURT: That's fine. From the rostrum is fine.

For the record, even though I know very well, but for the record would each of you that is going to speak announce your name, please?

MR. WHITE: Yes. My name is John White.

THE COURT: Go ahead.

MR. WHITE: I guess I'm speaking on behalf of Manuel Beliz, but I'm also speaking on behalf of Erica. I knew Manuel in 1970 when I moved to this area, and when he was a teenager. And I knew Erica from the day she was born. They both happen to be members of the congregation where I attended. So for all the time that Erica was here I saw her several times a week, and the same with Manuel Beliz. So I do have knowledge of them.

In the 1980s Manuel Beliz obtained a certain position that Erica mentioned. He was what's known to us as a ministerial servant. Not an elder, but he had certain duties dealing with—I can't remember what his were, maybe dealing with our literature, how it's distributed in the congregation, something like that. And I noted in the 1980s that he was hot and cold. And many people are that way, and we don't know why, if they don't take it seriously.

Anyway, at the end of the 1980s, I don't know if he resigned or maybe it was a mutual understanding that he left that position. He was removed. We had no idea what, if any, were the problems.

Then in the 1990s then we saw him come back to life in a spiritual sense. He became useful again to us, and it wasn't until 1996 in the summer when I received a phone call from some elders in Erica's congregation in Sacramento that --we had no idea of this problem. So for the first time we found out about it.

We have our own judicial system, and this matter was taken care of within, I don't know, so many months time. Sometimes we're able to do something within a few weeks. Sometimes not for a

year, depending on how we can gather information. So this particular matter was dealt with in the congregation, certain discipline was given. And I have to say that Mr. Beliz disfellowshipped for a year-and-a-half, and he couldn't remember how long it was. That's how long it was.

And then he was admitted to the congregation because the same judicial body that disciplined him in the first place, we're satisfied that he was repentant and could be admitted back to the congregation again. So he was.

But I --it puzzled me in the 1980's as to what the problem was because he was useful, he was not useful. He was there, he wasn't there. But in the 1990's we saw a change, for whatever his problems were that he was dealing with we thought, well, he has taken care of them. And after that in the 1990's I just see another man.

So I don't have any comment on the judge, the sentence, because I'm not really that knowledgeable of the law. If you feel that he must be disciplined, you will be disciplining the man that he was at that time. It's just that I'm satisfied that he did change. Whatever his problems were he seemed to come to grips with them in 1990 onward. And to us we don't see a problem.

If there's a --For example, I think Erica said, too, that she was afraid we were protecting a child molester. If he were actually a child molester now and lately, we have no problem with anything, disciplining him any way you wanted to. We would, too. But we don't protect child molesters, rapists, murderers, liars, slanderers. They all have to pass through our judicial system, as does Manuel Beliz.

So I just wanted that to be on the record that I don't want the impression that our congregation in some way was protecting a child molester. We weren't. He was processed in our due time, and the matter was taken care of for our satisfaction. So when he was reinstated then evidently the committee that disciplined was satisfied. And as far as Erica being satisfied I can't say much about that. That's, that's a problem that she herself knows.

I would love to know anything more that we don't know that we should know. I know what Erica has said. I know what Manuel Beliz has said I wish that the Heavens would open up and a voice would say, "This is what actually happened." Because no matter what you do, we have a need to administer justice within ourselves.

So we're hoping that one of these days if more facts come out in the case then we'll do what we need to do, because the congregation has to be a safe place. In other words, we don't want dangerous people in it. And to that end we have a judicial system that ensures that. Not perfect, as I'm sure your system isn't perfect, but we do quite well.

So what I'm saying basically about Manuel Beliz is I know he had problems in the 1980's, and until 1996 in the summer I didn't have clue as to what it was. But after that we dealt with it. But in the 1990's we saw a different person, and so he was dealt with. He was forgiven. I guess that's the word.

Oh, and one other thing I would like to say, as I mentioned when I was on the stand, in a deposition I saw Erica say Manuel called and he said he was sorry. I think those are her words. So all those things were taken into consideration.

Oh, and one other thing I do—in case this comes up, I understand that Mimi Cortez, Vanita Cortez's youngest daughter, implicated my daughter, said that Manuel Beliz molested my daughter.

So we called to my daughter and said, listen, this is the accusation. And I understand that Mr. Sandhaus has had her subpoenaed. And we kept calling and saying, well, have you been served the subpoena? And she said, no, no. So in the end of the matter she said, no, I'm going to call. I'm going to call Mr. Sandhaus to tell him that there's nothing to that, what Mimi said.

And so she did, and I know she talked to Mr. Sandhaus. And I wanted that to be in the record

that that particular accusation by Mimi is -- there was nothing to it. And those types of

things we'll deal with, but I did want you, the Court, to know if it enters into this matter

that there was really nothing to it.

I had several conversations with Mr. Sandhaus. I told him, as I say here, I respect what he

does. He said to me, this man is a monster. e must be taken off the --you know, we must

protect the young girls in Washington state. If I thought that that were true, that he really

was a monster, I wouldn't say that I thought he has changed, or whatever his problem was was

taken care of like from 1990 onward. I would say lock him up, throwaway the key. I don't feel

that way, but so that I can sleep at night I had to say that today.

I don't know what his problems are, all the problems in the 1980s, but I think that from 1990 onward however he was able to do it he did make an adjustment.

I think that's all, Your Honor. I appreciate the—I talked to Steve Clay's department, Tom, and I --I mean, I wanted to talk to Tom, but he didn't feel it was necessary because I've known both of these two, and that really makes me sad to see them both here in court. It shouldn't be necessary.

And I think the elders down there, talked to them several times when they were first dealing with this case, they gave a lot of attention to Erica and offered all the help they could, and we communicated quite a bit, so I know they were attentive and they were interested in helping her to make sure her trauma, her problems could be helped, you know, to the point that they could.

I think that's all, Your Honor. I appreciate you listening to me.

THE COURT: Thank you.

MR. GABRIEL BELIZ: My name is Gabriel Beliz.

THE COURT: Go ahead.

MR. GABRIEL BELIZ: I didn't plan anything to say or practice anything. What I have to say is from my heart. I feel my dad is a great loving, and caring man. I have seen a transformation he has. This man I am very proud to have as my father. He has helped so many people, I can't even begin to count.

Many people wished they could be here. I speak for behalf of them when I say they miss him, they wish he could be back with them. They don't understand, I guess, law situations.

But if I had children, I know I most likely will, I would completely entrust them with my father. You know, I would completely trust their health, their safety, their lives in my dad's hands, and I would even go as far as to say that of other children, or children of other parents. I would bet my life that he would take care of them, and he would not be a threat to them or anybody in the world. And that's basically all I have to say.

He's a good man. He's loving. He'd give the shirt off his back to anybody that needed it. And I hope, I hope whatever the situation is that this family is able to recuperate from whatever trauma they have suffered.

I hope only the best for everyone, and I think my father feels the same way. In fact, I know he doesn't wish harm upon anybody. He hopes everyone can come out being friends after all this.

That's it.

THE COURT: Thank you.

MR. GABRIEL BELIZ: Thank you.

MS. GONZALEZ: My name is Melissa A. Gonzalez, and I'm speaking on my dad's behalf.

THE COURT: Okay.

MS. GONZALEZ: I just have to say the same as my brother. He's a great dad. He's made our family strong and united. I would trust him. When I have kids I'm going to trust him with my kids. It hurts me because she was my best friend, and it hurts me. I know these are lies, that's what hurts me the most. But my father is a good, loving father, and I totally trust him with my kids.

That's all I have to say.

MS. KATHLEEN BELIZ: Kathleen Beliz. Your Honor, I hadn't planned to be up here speaking because I didn't know that we could. I was told that we wouldn't be able to. When we went in for the pretrial investigation – no, presentence investigation, I asked and it was indicated that the only one that would be willing would be probably be Manuel, so...

My thoughts are with this. I agree with what John said. I lived with him. I knew that sometime in the '80s something was not right. But I also know that in the '90s things were totally, totally different. And it was, as John said, he was a different man, and he worked extremely hard to rebuild our family. So by the time all this came up in the 1990s frankly we had a very --we were prospering, and I'm not talking about economically, but we were prospering as a family. And even now, frankly, I would say that as a family we have a real sense of spiritual being, and it's basically because of the rebuilding work that he did.

He made up for anything he ever did in the '80s. He's totally trustworthy. And I would like to add one thing, too. Excuse me, Your Honor. Just before all this came forward in the last year in May, it was May 5th that he was arraigned. From October, which is when Erica filed it, until April and May, her mother, they were very --they spearheaded an investigation among our friends.

They contacted some friends in Othello, and they asked them based on the fact that there were

more victims. They asked them to find more victims. And in the words of one of the persons that was doing the investigation, she said we were so happy we found no victims.

What I'm speaking about is they interviewed all the little girls that had come to our house. And I know this is true because—and they made sure that all of our friends knew about it.

I remember going into a place and our friends were sitting, and the little girl is turning around to stare at us with knowledge in their eyes, so I knew that they all knew about it.

But I thought of interest, perhaps, to the Court is the fact that not one of those little girls came forward and said I was victimized like Erica. They were girls that were like five, six, seven, eight years old. None of them came forward or told their parents I was victimized.

So I already know that in my heart that he doesn't do those things, but it was in a way it was like a reinforcement of it. All of these children that knew about it, all these parents that knew about it, nobody came forward because there are no more victims.

So I felt --I just to let you know that we trust him. We trust him with our hearts. We trust him with the facts that we see. We hope that you take this into consideration, Your Honor. Thank you.

THE COURT: Anyone else in the family wish to be heard, or friends for that matter? Yes?

MR. LUPE VERDES: Could I go?

THE COURT: Certainly.

MR. LUPE VERDES: My name is Lupe Verdes, and also I'm Manuel's brother. And all I want to say is, you know, we're deeply—also as a member of our congregation, as an elder, and not being able to be involved in the judicial matters because of, you know, being related.

But although I trust very hardly on our judicial committee that handled the matters to the best of their abilities. And we know that in these circumstances, Your Honor, just like any person can, no matter how much grey hair we have on our head, how much knowledge we have, anybody can lie to us or change a story around. But in this case, it happens in courts, it happens in our judicial committee matters when we get a --when we try to (inaudible) wrongdoing such as this one.

The only thing I'd like to say is we work hard, and we do the best we can to apply the

local principles no matter how serious the wrongdoing is. And in this case we feel very hurt.

Like John White said, you know, we feel very hurt that this whole matter reached to this

climax here. But we are --our hearts go for Erica and her family, and we wish them the best and God help them in a speedy recovery in their spirituality, and that somehow, someday they continue, continue forward.

And we know that it's a rough road for Erica. We sincerely --we mean it. We want you to be with your husband and your entire family to have God's blessing and continue forward serving. As well as for Manuel, whatever the outcome is, whatever your decision may be on the whole matter, and we also wish him the best, and he can do what he can under whatever circumstances he's going to be under.

And both families are great families. We've known them for many years. Again, I've known

Erica before she was born and, of course, Manuel all my life. But that doesn't really change much other than we hope that all --both families, one way or the other, continue ahead and manage to mend things up, up in the future. Thank you.

THE COURT: Anyone else?

MS. MELANIE BELIZ: I'd like to say something, Your Honor.

THE COURT: Okay, step up here.

MS. MELANIE BELIZ: And actually I found the --I didn't even know --this just came up to me. As regards this --

THE COURT: Would you state your name, please?

MS. MELANIE BELIZ: My name is Melanie Beliz.

THE COURT: Okay.

MS. MELANIE BELIZ: As regards to the Garza family, I've never known them, and when these accusations occurred I didn't know the Beliz family. I've been recently married, and to tell you the truth I haven't got to spend a lot of time with my father-in-law, but in the short amount of time that I've ever had to talk to him I know that he's a wonderful person.

He loves his children with his whole heart, his whole soul, everything he has. He loves

his wife. And, you know, you only need a few really good people in your life, and I know he's one of the best people I've ever met.

And, you know, my parents, they couldn't be here today to support him, but my father loves him like a brother. And we would give anything to take the pain away right now.

I just briefly wanted to state that he's one of the best men that my family has ever known, and we truly do love him, and we do hope the best for the other families also. We don't wish any harm to anyone.

But I just wanted to speak on Manuel's behalf to tell you what a good person he is in the short time that I've known him. And that's all I really had to say.

THE COURT: Thank you.

MS. MELANIE BELIZ: Thank you.

THE COURT: Anyone else? Yes.

MR. GONZALES: Flores (phonetic) Gonzales is my name. I'd like to speak on my own behalf.

I came into this family not even knowing Manuel, and I understand his situation. And we couldn't really have a really—the judicial, the justice or whatever happened in the congregation, the disfellowship thing doesn't really allow him to have association with the congregation, and I'm part of the congregation.

So I wasn't really --didn't really have the relationship that we should have had. But I know Manuel, after he got reinstated, and he helped us out through our marriage --or through our

courtship, and he was a very loving father, I know that. And he tried his hardest to do the best, and as much as he could do for us.

And as far as these accusations, I can't say that I believe them because of the person that I've known between the time that I met Manuel and when we got married, and even now when I talk to him. He wants us --He wants me, he tells me all the time to --because I'm staying with their family now --he wants me to watch over them and he wants me to encourage them with their faith and to be strong. And that's all he talks to me about, and I know that's, that's what I got to do. And I just trust Manuel, and whenever I have kids I know I could leave them with Manuel.

That's all I wanted to say.

THE COURT: Okay, thank you.

MR. GONZALES: Thank you.

THE COURT: Anyone else? Yes, ma'am.

MS. RUTH RENOSO: I'm Ruth Renoso (phonetic), Manuel's sister. I grew up with my brother, and I have to admit that my brother was—is, in fact one of my favorite brothers of all the six brothers that I have.

Manuel was more like me, reserved, shy, bashful. I guess that's why I loved him so much because we have so much in common. I've left my children with my brother, and my son Andrew has never said anything about my brother touching him, abusing him. In fact, my Andrew, he's five years old, he even asked when his Uncle Chatto {phonetic} --he calls him Chatto for his nickname --when he's coming home. I said, well, I hope soon. I hope very soon.

I know he's a loving man. He's a loving father. I have friends that knew my brother. We used to go bike riding with my brother Manuel, and they can't believe these accusations have arised because {inaudible}. Actually they're grateful because Manuel taught them how to drive. And they said that nothing ever happened to them, you know. And they support us and I'm very glad for that.

But I know that if --Well, I know I feel like my brother is dead right now because we're going to lose a very loving brother, but I hope that --well, God's with us, and I just hope he gives us, you know, the strength as well as Erica's family, too. It happened, and you know, I just hope everything—God is forgiving, and I hope that he will forgive my brother. And I know he has because my brother has been reinstated in the congregation.

And that's all I have to say.

THE COURT: Thank you. Anyone else?

Mr. Beliz, you have a right to address the Court before I impose sentence. Is there anything you'd like to say to me?

MR. MANUEL BELIZ: Yes, sir.

THE COURT: Go ahead.

MR. MANUEL BELIZ: First of all, Your Honor, I realize what I did back then, about nine years ago. I was a Christian. I was motivated by my conscience to do what was right, to make peace with the Garzas. I did everything within my power to make things right for them, too. But as far as to pay for whatever treatment I even offer them anything and send the money to pay for whatever debts.

But I'd also like to say, Your Honor, I've been residing here in Othello 30 years. Out of those 30 years I've been self-employed 20 years. I've been providing my business in the Othello area for the past 20 years, and during those 20 years from providing my business into that area I always run into two or three officers every day on those 20 years. So pretty much they knew where I was at most of the time during this 20 years. But as long as a copy was at City Hall, 18 years next to the police station, so most of them knew who I was, where I was providing my business, my service in the Othello area. And during those 20 years I believe 12 or 15 I had another job during the day, so I had two jobs going for a long time providing for my family. Now, another thing I'd like to add is that the evenings or nighttime me and my wife would do our walking. And, again, there was one or two (inaudible) always run up to us. So what I'm saying, Your Honor, that I was exposed to the community all this time, but again I did my best to make peace.

Now, I'm still a connected member of Jehovah's Witnesses. You've heard all the --coming from each one of them is true.

So what I'm asking you, Your Honor, is that you please reconsider these sincere efforts. I also like to say that I'm still willing to do everything to make things right up to this minute.

And I also like to say that at no time, Your Honor, I'm not a sex offender or a predator. And

One of the things that I do like to mention, since my case was released about a year ago through the newspaper, not just in Othello, but Moses Lake, all the way up to Tri-Cities, there's not been a single person that has come forward and said, yes, this guy is a sex offender. I know that for a fact.

So what I'd like to say, Your Honor, I'm not a threat to society, Thanks you, Your Honor.

MR. MORGAN: If I may address just one issue, Your Honor.

THE COURT: Go ahead.

MR. MORGAN: That was raised during Ms. Garza's testimony, and that's with regard to the call from the Sacramento Police Department, which had been excluded by the Court based upon the motion in limine. I did not to interrupt her at that time, but that call, Your Honor, was basically a ruse call, and I think the Court needs to take that into consideration under the circumstances.

It was not a call to be made to ask for an apology, but it was a call that was set up by police in order to see if they could get an admission from Mr. Beliz during the course of that conversation.

MR. SCOTT: Your Honor, if I might offer one or two closing remarks with the Court's permission?

THE COURT: Go ahead.

MR. SCOTT: A couple of things, Your Honor. I was blessed with having a client who was a Jehovah's Witness, as well as having met these folks, all of them, and so I felt like I had an interest in what was going on, and I spoke with my client with regard to the process by which the church does its disciplining, and I discovered this.

Three people are appointed, and they meet with the person who is to be disciplined by the church. Disfellowship is the consequence of that meeting. And you recall we had quite a bit of testimony about how much of that would be admissible and not admissible, and that's really not the point here. The point is that in order to be readmitted he had to have admitted to the commission of the offense, and he had to have apologized to the victim and made some form of compensation, emotional compensation primarily.

And Erica points out to me that the apology was given to the parents. It was never given to her. The reason that I bring that to the Court's attention is because, of course, you've heard that he was reestablished within the church, which meant that he had to have represented to the church that he did these things. And I was not part of that procedure I cannot speak to what his representations were, but I suspect that the representations perhaps were not entirely honest.

I did some reading, also, at the direction of the client that I spoke of earlier, and I find out a couple of things. And that is that for Jehovah's Witnesses the process of punishment is two tier actually. That on the one hand the church will inform and administer their own punishment and discipline, but that they make it very clear in their writings that that --the consequence from, shall I say from a lay standpoint, from our standpoint, from the sectorial standpoint that nonetheless it is clearly stated that the person is subject to the Court's discipline as well, and that they're advised in their writings that that is a consequence which flows naturally, and the church does not interfere with that process one bit. As a matter of fact, they go so far as to approve of it. Approve of it in terms of saying that's the natural consequence, and that's—there's God's punishment, and that's administered through the church, and then there's temporal punishment and that's through you, Your Honor, and that that's all well and good insofar as the church is concerned. I respect Mr. White, and I think he'd agree with me that that's pretty much the status of the church on that.

And far be it from me to act as an expert. I speak from the other end of the spectrum altogether so far as that's concerned, but the fact that the church may have been satisfied with whatever it was that Mr. Beliz did, I think perhaps speaks of the good faith, but I don't know whether or not it does anything to ameliorate the punishment that I think is appropriate under the circumstances.

Apparently, Your Honor, in terms of the report, the Presentence Investigation report that was given out, there was a statement in the last paragraph, Your Honor, and I'm --for the life of me have been looking for page numbers on this thing, and it's got a fax page number, and I just --it's page 3.

THE COURT: They're so small down at the bottom that even with my reading glasses I have a hard time finding it.

MR. SCOTT: I got my AARP card in the mail the other day and innocently threw the glasses away. I figured one insult was enough.

But it says at the bottom there that two other victims noted in the police reports was not charged. The sisters live in Yakima, only one of whom was able to talk to the police about her encounters with the defendant.

So I hear what Mr. Beliz says and the rest of the families say insofar as their scouring of the community to see whether or not there are other incidences, but there is an instance that's mentioned in the PSI that talks specifically about other victims involved in this matter.

And, Your Honor, I think that it would be the unusual case were that not so, were there not other victims.

Then, Your Honor, I come of the matter of the trial itself, and I recall that Mr. Beliz has perhaps today for the first time acknowledged that what you told the officer earlier that if the Judge asked me if I did these things, then I guess I'll have to say they're true. And for that I give him credit.

On the other hand, Your Honor, I noticed the interactions of the parties during the trial, and I'm sure you did, too, and one of interactions that sticks most in my mind, Your Honor, is the fact that Mrs. Beliz went to jail. And that was after consulting with Mr. Beliz and not Mr. Morgan

about whether or not her testimony should be offered up to the jury or not. And I can't tell you the context under which that conversation took place. I only observed Mrs. Beliz consulting with him, and the decision was no, not to testify

That, of course, is his legal choice. But in the broader scheme of things, Your Honor, I see that the harm which has been caused by this gentleman's conduct, not only to his own family, and the Garza family, but way beyond that. And it is that conduct, your Honor, that I think is reprehensible in this case.

I dare not call him a monster. I don't believe that's a term that fits here. But by the same token, Your Honor, I'm not going to say that he is a mistaken gentleman who has now seen the light and has for 10 or 15 years been a good man. His own church states that he must be punished for his crimes, and we ask that you punish him. We also ask that you impose an exceptional sentence in this case.

For his own family sake, as I say I do not know the context of the conversation, but I saw family members punished as a result of the conduct, and I see family members of his own punished as a result of the refusal to make an admission. And for that reason, Your Honor, I think that that bespeaks his attitude more than anything else.

THE COURT: The Court has considered all of the information I've been presented today. I've also taken into consideration the memoranda that counsel filed in support of their various positions and also the Court inherently takes into consideration the evidence that's presented in the Court.

Before I announce my sentence I'm going to make a couple of comments. Mr. Scott indicates that the --Mr. Beliz's conduct back in the 1980's and as late as, I believe, 1990, has caused damage to not only his family, but also obviously the victim and her family, and I think that's quite clear from those who have appeared here today. That is not--these types of cases tend to impose that type of a broad range of punishment on all of those that are near and dear to not only the victim, but also the defendant, which is inherent in this type of case.

It's not particularly unusual for a defendant to fail to admit the act as I'm sure counsel and the Court are aware, those others in the courtroom may not be. Most of you probably haven't had to deal with this type of case before, but it's a fairly common situation where the perpetrator is in denial.

And I think those of us that have gone to seminars and treatment experts, et cetera, indicate that that's very common and is also one of the more difficult things to get past before we can get to effective treatment.

So this case doesn't offer anything that is unusual. And by saying that I don't intend to lighten in any fashion the---what has occurred here and what the jury found occurred here, but I would point out to all of you, and I'm sure it doesn't make you feel any better but I will do it anyway, that the scenario that's played out here is fairly common in these type of cases.

With reference to the State's request for an exceptional sentence, I think we're all aware that for the court to impose an exceptional sentence the Court must find substantial and compelling reasons. The reason that is the test is because under our sentencing standards now as set forth by our legislature, most of the conduct, for instance, that people---lay persons particularly---would find so reprehensible is taken into consideration in determining what the offender score is. And I think clearly---and what the sentencing range is.

And that's clearly the case here. We've seen over time a fairly significant increase in the sentence from when this occurred until today. The legislature has on more than one occasion revisited the sexual assault of children and seen fit, reasonably so, I think, to increase the penalty.

The argument pertaining to the particular vulnerability I just don't think applies in this case. Clearly that's intended for a person of fairly tender years. The State makes a novel argument, I think, but clearly this victim is not a disabled person as any of us would understand that term to mean.

There is no question that there is some testimony to suggest that there was a --this occurred over a fairly significant point in time. However, the jury heard testimony and found four incidents, basically both of them occurred on the same day. In other words, the molestation and the rape of a child occurred as one ongoing type of incident.

The lack of remorse, it seems to me, also is a bit of a red herring for the Court. To apply that argument it seems to me anyway that it would apply in almost every case where a defendant plead not guilty and required the State to prove the case beyond a reasonable doubt.

I think lay persons have a problem sometimes with that issue simply because they don't understand it. A plea of not guilty is not necessarily a denial. A plea of not guilty is basically a challenge to the State to prove their case beyond a reasonable doubt.

I doesn't necessarily mean the person didn't do it, and they certainly have a right, a constitutional right to take that position. And clearly I think it would be inappropriate to hold that against any defendant for standing on the rights that each of us has as a result of our living here in the United States of America.

There is no question that there is an abuse of trust as we have come to understand that term. The interrelationship of the families are clearly a factor, but as I indicated to counsel for the State here, it appears to me that that is more of a significant factor in the inverse situation.

I don't find any lack of remorse here, not as that's been analyzed by our various appellate courts. For the reasons I previously indicated, clearly remaining silent and standing on the constitutional rights is not an inappropriate reason enhance a sentence. Future dangerousness, I've already talked about.

Clearly that is not available here absent the Post, State vs. Post case seems to suggest, at least the facts of that case indicate prior convictions, plus an expert testifying about the defendant not being amenable to treatment. We don't have either of those factors here.

The bottom line on an exceptional sentence, and it's what the courts are supposed to but I suspect don't always consider, is taking into consideration the particular facts of this case, is case so significantly more egregious that it would justify the Court going outside of the standard sentencing range? I think in this particular case answer to that question must be no.

And, again, that's not to suggest that the facts of this case are not serious. I think they are. But in cases of this nature they always are, there's no question about that.

And the Court --just to point out the fact that most of these cases are decided by a sentence within the standard range, absent some egregious circumstances --took a look at the Sentencing Guidelines Commission's St Summary for 1997, and I see that out in the state of 134 sentences in the State of Washington last year 7/90 through 7/27/97 commission date---there were 12 above 10 percent; and pre-1970, which is partially this case, on rape of a child in the first degree

there's one out of six or 16 percent.

With reference to child molestation, the numbers are even less. A post-7/90 child molestation in the first degree there are, let's see, 199 cases last year and only eight are there exceptional sentences. The pre-1970 there were eight, and only one.

So I think this points out, reiterates to this Court and, I think, hopefully to those present that an exceptional sentence is not something to be taken lightly. It needs to be viewed in light of all of the cases in the state of Washington, and only if you can say the facts of this case are so egregious that they exceed all but a few percentage points, or a few cases decided in the entire state of Washington. And in this case I don't believe that the Court can honestly say that.

The sentencing range on Counts 3 and 4 is 62 to 82 months. The sentence on Counts 3 and 4 will be 82 months. The sentencing range on counts 4---or, excuse me, 5 and 6 are 102 to 136 months. And the Court's going to impose 136 months. These counts run concurrently.

In addition, the Court will impose those additional conditions, crime-related prohibitions and sentencing requirements and conditions of community placement 1 through 10 as indicated and requested in the Presentence Investigation. In addition, there will be 24 months of community placement.

I would urge the defendant to seek the treatment that the State of Washington has available at the institution. The Court's been there. I've taken part in seminars involving the treatment process, and it has been remarkably successful. It is your option, however, and I can't make you do it, but I would suggest it would be very advantageous for you to do so.

In addition, there will be a \$500 victim--restitution to be determined at a later date. I don't believe the State has any of that information now, do you?

MR. SCOTT: We do not, Your Honor. We haven't done it---45 days, Your Honor --I'm sorry.

THE COURT: 180 now.

There will be no fine and court costs will be the normal plus witness fees, which I'll authorize the clerk to total that amount and place in the Judgment and Sentence.

Do you have a Judgment and Sentence?

MR. SCOTT: I apologize, Your Honor, I do not. I don't think that Mr. Sandhaus placed one in the file.

THE COURT: Okay.

MR. SCOTT: I know the defendant will have to be present at the time we execute it, and I will dash downstairs and see if we can get that accomplished.

THE COURT: I'd like to get that taken care of today, for a number of reasons, not the least of which is in the past we've had situations where if we didn't get it done on that day, then it just kind of got put on the back burner, and a month or so later we still didn't have a Judgment and Sentence in the file. And I don't want that to happen because obviously before Mr. Beliz can be transported, we have to have the Judgment and Sentence.

Mr. Olin, you were going to redo the Presentence Investigation?

MR. OLIN: Yes.

THE COURT: Okay.

MR. OLIN: We will correct the date and try to get it back to you by tomorrow afternoon.

THE COURT: fine.

MR. SCOTT: And, Your Honor, I'll make sure the Judgment and Sentence gets done.

THE COURT: Now, before we go any further, Mr. Beliz, I want to advise you that you have a right to appeal. Unless a notice of appeal is filed with the Clerk of the Court within 30 days from entry of the Judgment or the Order appealed from, you will be deemed to have irrevocably waived your right of appeal.

If you do not have a lawyer to file a notice of appeal for you, the Clerk of Court will, if requested by you, file a notice of appeal on your behalf.

If you cannot afford the cost of an appeal, you have the right to have a lawyer appointed, to represent you on appeal and to have such parts of the trial record as are necessary for review of errors assigned transcribed for you, all at public expense.

Do you understand that?

MR. BELIZ: Yes.

THE COURT: All right. If you do, I'm handing down a notice of advice of right to appeal, and I'd like to have you and your attorney sign that please.

MR. MORGAN: As I hand this back to the Court, Your Honor, I'm going to hand up also a motion and affidavit for order of indigency on proposed order.

THE COURT: Right.

MR. MORGAN: As the Court's aware, I was retained on this case, but at this point in time Mr. Beliz has basically expended all available funds and he's asking the Court to consider appointment to the---court-appointed counsel for the appeal, and I would stay on this case if the Court so directs me under all the facts and circumstances.

THE COURT: Well, I think that would be appropriate. Clearly you are the most familiar with the case and the numerous issues that we have visited during the course of the pretrial motions and this---the trial in this matter, and also the sentencing procedure.

So think that would be appropriate, and I have signed the order.

MR. MORGAN: If I may approach again, then, I will hand up the notice of appeal at this time.

And I know even though the Judgment and Sentence has not been signed, Your Honor, in order to

avoid, I guess, coming back several different times, I had filed a motion and affidavit for an

order granting release on appeal along with an accompanying memorandum of authorities.

Now, I don't know whether Mr. Scott's provided that or not, or where he is as far as s concerned. The Court may not be willing to address that today either.

THE COURT: I may not. I believe I suggested the possibility on Friday when we had that emergency phone conference that if the State was going to respond they might want some additional time to respond. Is that the case?

MR. SCOTT: Of course, Your Honor, I wasn't present at that.

THE COURT: Yeah, I suspected that.

MR. SCOTT: And so what I did was I picked up 10.64.025, which is what the Court had applied at the time of the conviction, and I have not had the benefit of having a chance to review counsel's brief, and would like to at least do that before I respond. But my initial take on it is, Your Honor, that the statute is --the words aren't precatory at all. It seems to me they're pretty clear, and means in custody.

MR. MORGAN: And what---because Mr. Scott hasn't had the benefit of the memorandum, I point out in there that when that law was enacted it was tied to a funding provision which said it would be null and void if the funding provision didn't pass. So I--- he may want to do some more research on that, Your Honor. So what I'd ask---

MR. SCOTT: The bottom line is it's still at your discretion, Your Honor---

MR. MORGAN: Yeah, that's correct.

MR. SCOTT: --and I think under any set of circumstances --

THE COURT: I'm sure that it is.

MR. MORGAN: Yeah.

MR. SCOTT: Under any set of circumstances, Your Honor, when it's --when there has been a conviction and the sentence is incarceration and prison that there should be some compelling reason why the defendant should not commence to serve his term. And dare I say, Your Honor, I think that one of the perhaps unsaid considerations of the Court might be success on appeal.

I understand there was some issues I was not involved in, Your Honor, but I think you in your good judgment cured most of the problems that Mr. Morgan complained about, perhaps unfortunately so.

THE COURT: Well, let's hope that I did.

MR. SCOTT: And so that I --I would argue that there certainly is a flight risk when there is a sentence that has been imposed, as this Court has. I think any rational person would at least have that cross their mind. And one who's subject to that incarceration might be a bit more emboldened (phonetic) than another. So I see that as an issue.

It particularly relevant in terms of the appeal that the defendant be handy to Mr. Morgan in terms of doing the appeal, because that of course, comes off the record, at least initially. And I have in mind the fact, Your Honor, that it seems to me that the errors that were committed, if any, prior to my involvement in the case in the trial were cured by you, and that was -- I am cognizant of the comments you made at the time those rulings were made.

And my take on it would have been, had they been directed at me I would have been ducking, 11 but I think you did cure it.

MR. MORGAN: Your Honor, I could argue today but I think it would only be fair to the State, since Mr. Scott has not had the opportunity to read the memo, to put this issue off to a later date.

The only thing I would ask would be that when the Court sets the date that the jail at least be directed at this time not to send Mr. Beliz to Shelton on the transport until we've had this

decision, because it would just be doubling up to have to bring him back again.

MR. SCOTT: I think, Your Honor, we're going to prepare a Judgment and Sentence now, and I think there's probably someone in the office that can do that while I read the brief, and then we can come back and address it this afternoon, if the Court---

THE COURT: That's fine. If you want to do that, that's fine. I would give you some additional time if you think you need it.

MR. SCOTT: Well, I'll take the Court's advice on that.

THE COURT: Mr. Beliz is remanded to the custody of the Adams County Sheriff.

MR. MORGAN: One other issue that I think the Court took under advisement, and I'm not sure where the Court is on that, was the request for attorney fees on a CR-11 motion that the Court had reserved pending outcome of the trial and sentencing. So I just wanted to remind the Court that that was still sitting there.

THE COURT: you had to do that, didn't you? Okay.

MR. MORGAN: I think we argued it at the time, and you took it under advisement, Your Honor, and I'll await the Court's decision on that, but it's my duty to raise that if it looks like---

THE COURT: I understand.

MR. SCOTT: I think, Your Honor, that given the high feeling that ran, that I at least was aware of, that the events of the trial pressed by contrast were smooth, and that should benefit the State in that instance. And that may be pretty fortuitous, but nonetheless it is the case.

And I think if the Court were to wish to punish contumacious conduct that that might pull the rest of the rug out from under Mr. Morgan's appeal, but nonetheless I think that the problem has cured itself, at least in the context of this case.

I know this Court would not have a view towards future conduct, but perhaps past conduct.

THE COURT: Well, I think really the conduct that Mr. Morgan complained of, in essence, of the prosecutor clearly involved foolish conduct. I'm not so sure it was frivolous.

I think some things that occurred pretrial were --didn't make much sense, but in light of what occurred and in light of the Court's efforts to try and get this case where it needed to be, I would be somewhat reluctant to find that those actions were frivolous.

MR. MORGAN: I'd ask that the State prepare an appropriate order then, Your Honor, so that if after consultation with Mr. Beliz he wishes to address that issue on appeal we may do so also.

THE COURT: Right. So ordered. Thank you.

(Hearing was concluded.)

STATE OF WASHINGTON) COUNTY OF SPOKANE)

I, Terry Sublette, Notary Public in and for the State of Washington;

DO HEREBY CERTIFY: That the foregoing is a transcription to the best of my ability of the electronic four-channel recording of the hearing held on the date and place as shown on page one hereto;

That the witnesses were sworn upon oath by the Court to tell the truth, the whole truth and nothing but the truth, and did thereafter make answers as appear herein;

That I am not related to any of the parties to this litigation and have no interest in the outcome of said litigation;

Witness my hand and seal this 25th day of March, 1999.

Notary Public for the Washington, residing

My commission expire: 8/22/02

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