

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 51028-2023
Plaintiff-Respondent,)	
)	BINGHAM COUNTY NO. CR06-21-6676
v.)	
)	
PEDRO AYALA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

HONORABLE DARREN B. SIMPSON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Nineteen-year-old Pedro Ayala pleaded guilty to battery with intent to commit lewd conduct after admitting that years earlier, he abused his two younger sisters. The district court sentenced him to prison for twenty years, with six years fixed, and entered a no contact order prohibiting him from having *any* contact with those sisters *or his parents*.

The district court agreed with Mr. Ayala that his parents are not victims. However, and without further findings, the district court denied Mr. Ayala's request to remove them from the no contact order, stating that the prohibition as to Mr. Ayala's parents will "remain in place through any period of imprisonment or parole." (Tr., p.20, Ls.20-23.) Mr. Ayala asserts the denial of his request to remove his mother and father from his no contact order should be reversed. He respectfully asks this Court to vacate the district court's no contact order, in part, to allow him to have contact with his parents.

Statement of Facts and Course of Proceedings

In November of 2020, Q.A. and Y.A. reported to a school counselor that their 17-year-brother, Mr. Ayala, had been sexually molesting them in their home for several years. (R., p.16; Conf.Exs., p.19.) Following an investigation, the State charged Mr. Ayla with seven counts of lewd conduct with a minor under the age of 16, naming Q.A. and Y.A. as the victims. (R., pp.16, 43.) The State also obtained a no contact order prohibiting Mr. Ayala from having any contact with the two sisters and with his parents. (Conf.Exs., p.1.)

In April of 2023, Mr. Ayala agreed to plead guilty to a single count of battery with intent to commit a serious battery, lewd conduct, and to allow both Q.A. and Y.A. to make a victim impact statement for the purposes of sentencing. (R., pp.99-112, p.125.) The district court accepted Mr. Ayala's guilty plea. (R., pp.99-112, 125, 177; Tr., p.12, Ls.13-19.) The court also granted the State's motion for a no contact order, entering an order naming Q.A., Y.A., and Mr. Ayala's mother and father as "protected persons," to expire on the date of sentencing. (Conf.Exs., p.45.)

Prior to sentencing, Mr. Ayala filed a motion to modify the contact order to remove his mother and father,¹ asserting his parents are not victims in this case and that he should be allowed contact with them for his own familial relationship and well-being. (R., p.129.) The State opposed the request. (Tr., p.22, Ls.3-8.) At the hearing, the State advised that the older victim was emancipated from her parents, but the younger sister was still a minor and living at home. (Tr., p.23, Ls.2-7.) The State pointed out that the younger victim had previous suicide attempts. (Tr., p.22, Ls.6-8.) The State further claimed, without presenting evidence, that "the parents are continually pressuring her and blaming her for what's occurred. So there's a case under review for charges against the parents." (Tr., p.22, Ls.4-8; *see generally* Conf.Exs., pp.1-200.) The State asserted the parents were "clearly on the defendant's side" and that allowing them to have contact

¹ Mr. Ayala did not seek to remove Q.A. or Y.A. from the order. (Tr., p.20, Ls.19-20.)

with Mr. Ayala “could impact [the younger] child’s decision to submit a witness impact statement.”² (Tr., p.23, Ls.1-12.)

The district court agreed that Mr. Ayala’s parents are “not victims,” “but they are the parents of the victim and so at this point I’m going to leave the no contact order in place,” and maybe revisit some of the issues at sentencing. (Tr., p.23, L.24 – p.24, L.4.)

At sentencing, Mr. Ayala renewed his request to remove his parents from the no contact order, adding that he missed them and wanted his parents to have contact with his children, who are their grandchildren. (Tr., p.43, Ls.1-4, p.45, Ls.4-5.) Although both victims had submitted impact statements, the State continued to oppose the request, asserting *all* contact with the parents should remain prohibited, including conversations outside the presence of the younger victim, who was 15 years old at the time; the State claimed that allowing Mr. Ayala to communicate with his parents would place that victim “in a terrible situation.” (Tr., p.60, L.17 – p.61, L.7.)

The district court sentenced Mr. Ayala to prison for 20 years, with six years fixed, without retaining jurisdiction, and ordered that a no contact order “as to the parents will remain in place through any period of imprisonment or parole.” (Tr., p.73, Ls.20-23; R., p.199.) The district court entered the judgment of conviction on July 12, 2023, and on July 14, 2024, entered a no contact order prohibiting Mr. Ayala from communicating with his parents “in any manner, including ... in writing or through any electronic means, including telephone, email, text,” and with “no

² Both Q.A. and Y.A. submitted written victim impact statements. (Conf.Exs., pp.100, 101; Tr., p.38, Ls.16-22.)

exceptions,” for the next 20 years, i.e., until the year 2043, when the younger victim will be 35 years old. (Conf.Exs., p.199.)

On August 8, 2023, Mr. Ayala filed a timely notice of appeal. *See* I.A.R. 17(e)(1)(C). (R., p.155.)

ISSUE

Did the district court abuse its discretion when it entered the no contact order prohibiting Mr. Ayala from all contact with his parents for the next 20 years?

ARGUMENT

The District Court Abused Its Discretion When It Entered The No Contact Order Prohibiting Mr. Ayala From All Contact With His Parents For The Next 20 Years

A. Introduction

The district court entered a no contact order prohibiting Mr. Ayala from having any type of contact with his mother and father, without exception, despite Mr. Ayala's request to allow him to contact with his parents, and notwithstanding the district court's finding that the parents are not victims. The district court abused its discretion because its decision is inconsistent with *State v. Thompson*, 173 Idaho 170, 540 P.3d 341(2023), and *State v. Lodge*, 166 Idaho 537, 461 P.3d 819 (2020), and because it did not reach its decision by an exercise of reason. Mr. Ayala's parents are not victims or potential victims of Mr. Ayala's offenses, nor did they ever request the protection of a no contact order. Notwithstanding the prosecutor's bald assertions and speculation, there is no evidence in the record to support a conclusion that prohibiting Mr. Ayala from all communication with parents for the next 20 years is needed for the protection of the victims.

Due to the district court's discretionary error, Mr. Ayala respectfully requests this Court vacate the district court's no contact order in part to allow him to have contact with his parents.

B. Standard Of Review

The district court's decision whether to issue or modify a no contact order pursuant to Idaho Code § 18-920 is one of discretion. *See* Idaho Code § 18-920(1); *Thompson*, 173 Idaho 170, __, 540 P.3d 341, 344 (2023) (citing *State v. Lodge*, 166 Idaho 537, 539, 461 P.3d 819, 821

(2020)). When the district court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine,

whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Thompson, 173 Idaho at ___, 540 P.3d at 539.

C. The District Court Abused Its Discretion When It Entered The No Contact Order Prohibiting Mr. Ayala From Having Any Contact With His Parents

At sentencing, Mr. Ayala did not object to the entry of a no contact order naming Q.A. and Y.A. as protected persons, but he asked that the order not include his parents. He contends the district court's decision to include his parents in the order as "protected persons" represents an abuse of discretion in at least two ways. First, the district court did not apply the correct legal standards because Mr. Ayala's mother and father are not victims or potential victims of the offense. Second, the district court did not exercise reason because, notwithstanding the prosecutor's bald assertions, there is no evidence that allowing communication between Mr. Ayala and his parents was needed to protect the victims.

1. The District Court's Decision Is Inconsistent With The Legal Standards Set Forth In *Thompson And Lodge*

Idaho Code section 18-920(1) provides that "[w]hen a person is charged with or convicted" of certain enumerated offenses, "an order forbidding contact with another person may be issued." The Idaho Supreme Court has interpreted that statute to mean that "no contact orders must be made to protect the current or future victims of these types of crimes," and are "properly entered and

amended when there is substantial and competent evidence in the underlying record related to the offense that the order is being entered to protect current and future victims.” *Thompson*, 173 Idaho at 173, 540 P.3d at 344 (citing *Lodge*, 166 Idaho at 540, 461 P.3d at 822)).

In the present case, the district court agreed that Mr. Ayala’s parents were not victims but decided to prohibit contact because “they are the parents of the victim.” (Tr., p.23, L.24 – p.24, L.4.) However, the fact they are the parents of the victims does not provide an appropriate legal justification to name them as protected persons in the no contact order.

To begin, there is nothing that suggests Mr. Ayala’s parents ever asked for the protection of a no contact order. (*See generally* Conf.Exs., pp.1-22.) Moreover, although the parents of a minor victim can be appointed as representatives to exercise the rights of the minor victim, *see e.g.*, I.C. § 19-5306(3) (Idaho’s victim’s rights statute), the parents’ representative status does not make them a “victim,” *see* I.C. § 19-5306(5)(a) (defining “victim”). Thus, the fact that Mr. Ayala’s parents are also parents of the victim does not make the parents “victims or future victims” of Mr. Ayala’s offense. Accordingly, the parents are not protected persons within the scope of the no contact order statute, I.C. § 18-920(1). *See Thompson*, 173 Idaho at 173, 540 P.3d at 344; *Lodge*, 166 Idaho at 540, 461 P.3d at 822.

Moreover, while the Idaho Supreme Court has held that “no contact orders must be made to protect the current or future victims,” it does not appear the Court has addressed the circumstances, if any, in which the district court may issue a no contact order forbidding contact with persons who are *not* victims or future victims. However, the Court’s recent decisions in *Thompson* and *Lodge* provide instruction.

In *Thompson*, the defendant appealed the district court's decision to modify a no contact order that prohibited him from contacting his minor son, R.T., for a period of more than eight years. 540 P.3d at 344. There, the defendant was convicted of domestic violence in the presence of a child, resulting from an altercation with his live-in girlfriend while her three children, including R.T., were in the home. 540 P.3d at 343. The district court originally entered a no contact order prohibiting the defendant from contacting his girlfriend and the three children, but it subsequently removed R.T. as a protected person to allow the defendant to have unsupervised visits with him. *Id.* Later, however, the girlfriend filed a motion seeking to prohibit any further contact with R.T., alleging that the defendant "continues to harass and threaten me." *Id.* Following a hearing, the district court decided to amend the no contact order to prohibit all contact with R.T., with the order set to expire in eight years. 540 P.3d at 344.

The Idaho Supreme Court reversed. *Id.* The Court did so after examining its previous decision in *Lodge*, wherein it upheld a no contact order prohibiting a defendant from having contact with the victims and "all minor children under the age of 18," which included his children. *Thompson*, 175 Idaho at __, 540 P.3d at 345 (citing *Lodge*, 166 Idaho at 539, 461 P.3d at 821). The *Thompson* Court pointed out that in *Lodge*, it "was able to cite specific evidence that Lodge would be a threat to his children," whereas in *Thompson*, the State "presented no evidence that Thompson's continued contact with R.T. negatively impacted R.T. in any way." *Id.* The *Thompson* Court acknowledged the girlfriend's desire "to be free from all contact with the defendant," and that facilitating the defendant's contact with R.T. "might create a hardship for her." *Id.* However, the Court held that those reasons "standing alone, did not support the district

court's decision to cut off *all* contact between Thompson and his son, especially for such a lengthy period.” *Id.* (emphasis the Court's). Reversing the district court, the *Thompson* Court explained,

The district court may *only* grant such a motion *if it determines on the record, and based on substantial and competent evidence, that R.T. is a current or future victim of domestic violence*. Because that did not occur in this case, we cannot affirm the no contact order to the extent it precludes Thompson from any contact whatsoever with his son. Accordingly, we hold that the district court did not reach its decision by the exercise of reason. Therefore, the district court abused its discretion in amending the no contact order in the way that it did.

540 P.3d at 346 (cleaned up) (emphasis added).

Mr. Ayala submits that, as in *Thompson*, the district court made no finding that Mr. Ayala's parents are “current or future” victims of his offense. On the contrary, the district court specifically found that Mr. Ayala's parents are “not victims.” (Tr., p.23, L.24 – p.24, L.4.) Additionally, and as in *Thompson* but in contrast with *Lodge*, the record in Mr. Ayala's case contains no specific evidence that could support the conclusion that Mr. Ayala poses a threat to his parents. *Thompson*, 540 P.3d at 345 (citing *Lodge*, 166 Idaho at 540, 461 P.3d at 822). Consequently, to the extent that the district court decided to enter a no contact order prohibiting Mr. Ayala from any contact whatsoever with his parents, who are not victims or future victims, the district court failed to act in accordance with *Thompson* and *Lodge*, and as such, reached its decision through the failure to exercise reason. *Thompson*, 540 P.3d at 346.

2. Permitting Mr. Ayala To Communicate With His Parents Does Not Pose A Threat The Victims Or Future Victims

Finally, even assuming, arguendo, that the holdings of *Thompson* and *Lodge* leave room for the issuance of no contact orders that prohibit contact with persons who are neither victims nor future victims, Mr. Ayala submits that such order must likewise be based upon a finding, supported by substantial and competent evidence in the record, that allowing the defendant to contact such persons poses a threat to a victim or potential victim. *See Thompson*, 540 P.3d at 346. The district court made no such findings in Mr. Ayala's case. (*See generally* Tr.)

Moreover, and notwithstanding the prosecutor's unsupported assertions and speculation about the parents, (*see e.g.*, Tr., p.22, Ls.1-18 (wherein the prosecutor claims that the parents blame the younger victim for what has happened and that "there's a case under review for charges against the parents"), and Tr., p.60, L.17 – p.61, L.14 (wherein the prosecutor claims the younger victim "will be in a terrible situation" if the defendant is allowed contact with his parents, and that "there's already information that the parents aren't supportive of her,")), there is no substantial and competent evidence in the record to support a finding that extinguishing communication between Mr. Mr. Ayala and his parents is needed to protect the victim. In contrast to the facts in *Lodge*, the evaluation and reports in Mr. Ayala's underlying record contain no findings or recommendations that would support a conclusion that permitting Mr. Ayala to communicate with his parents poses a threat to the victim. Certainly, prohibiting Mr. Ayala from contacting his parents "in any manner" until the year 2043 (*see* Conf.Exs., p.199), is not justified for the

protection of the current or future victims, and as such represents an abuse of the district court's discretion.

CONCLUSION

Mr. Ayala respectfully requests that the Court vacate the no contact order entered in this case on July 14, 2023, and remand this case to the district court for entry of a no contact order that permits Mr. Ayala to have contact with his parents.

DATED July 5, 2024.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 5, 2024, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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EVAN A. SMITH
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KAC/eas