

S T A T E O F M I C H I G A N
I N T H E C I R C U I T C O U R T F O R T H E C O U N T Y O F K E N T

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

vs

STEPHEN DENNIS TURNER,

Defendant.

Case No. 93-63014-FC

Hon. Dennis C. Kolenda

SENTENCING MEMORANDUM

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INTRODUCTION

Pursuant to MCLA 771.4 and MCR 6.425(B), defense counsel and the defendant, Stephen Turner, have received a copy of the presentence investigation report in reference to the above-captioned cause. Defense counsel received the presentence report on January 13, 1994. Mr. Turner's sentencing has been scheduled for Wednesday, February 2, 1994. This Memorandum is in response to said report.

I. CHALLENGES AND OBJECTIONS

A. Sentencing Guidelines

1. Offense Variable 5

The probation officer assessed 15 points to OV 5. If the victim was moved to another place of greater danger or to a situation of greater danger or was held captive significantly beyond that which was necessary to commit the offense, 15 points

may be assessed to OV 5. However, if the victim was not carried away or held captive, the proper score is zero points.

Victim was not carried away

To understand that the defendant, Stephen Turner, did not carry the victim away, one need only look at the felony information and the charges contained and here in. The co-defendant, Daniel Turner, was charged with abducting the alleged victim; Stephen Turner was not. Furthermore, evidence presented at trial indicated that Stephen Turner did not participate, or assist his brother, in the abduction of Lakeysha Cage. Therefore, 15 points should not be assessed to OV 5 under the theory that Stephen Turner moved the victim to a place or situation of greater danger.

Victim not held captive

The second aspect of offense variable 5 initially presents a more difficult question. However, upon review of the relevant facts it is clear that zero points should be assessed to offense variable 5.

The testimony at trial clearly established that during many of Daniel Turner's criminal acts against Lakeysha Cage, defendant Stephen Turner was either absent from the room or apartment or completely non-participatory.

Apparently, the prosecutor's theory was that Stephen Turner aided and abetted his brother, Daniel Turner, in the commission of criminal sexual conduct in the first degree by helping him stage a photograph designed to prevent Lakeysha Cage from notifying authorities. Seemingly, this photograph was taken shortly before,

or immediately preceeding, Lakeysha's exit fromt he Turner's apartment. Therefore, this action was a continuation of the criminal sexual conduct in the first degree episode and was not beyond that which was necessary to commit the offense. Zero points, therefore, should be assessed to OV 5

2. Offense Variable 13

The probation officer has also assessed five points to Offense Variable 13 indicating that there was serious psychological injury to the victim or victim's family necessitating professional treatment. Although at a first glance, it would seem that scoring five points to OV 13 is appropriate, a closer look reveals that such scoring is inappropriate.

Records do exist showing that the alleged victim, Lakeysha Cage, and her parents, Cynthia and Larry Marble, initiated counseling in Muskegon County. However, an inspection of these records reveal that the majority of the appointments scheduled were canceled or the family simply failed to appear. Of the appointments listed on the counseling contact sheet, only one or tow involved Lakeysha. The focus of that session(s) appeared to be whether or not Lakeysha's parents were getting a divorce and the fact that she had observed Larry Marble hit her mother, Cynthia.

Therefore, it would seem that there was not serious psychological injury to the victim or her family necessitating professional treatment. If that were the case, there would have been greater follow through by the family. It appears that the contact with the counselor was nothing more than a minimum follow-

up as something recommended by officials needed for court purposes.

B. Irrelevant Information

In the second paragraph on page one of the presentence report, starting with line five through the conclusion of the second paragraph, irrelevant information is listed. Although the co-defendant's gender issues were relevant at trial, such was not the case with Stephen Turner. Therefore, any reference to gender issues in the presentence report is irrelevant and inappropriate. Therefore, it should be stricken from the report.

II. RESOLUTION OF CHALLENGES

Several objections and challenges have been made to the presentence report in this case. Such challenges must be resolved by this court. People v Bowens, 119 Mich App 470; 326 NW2d 406 (1982). If the court agrees with the above-mentioned objections, Turner's guidelines should be scored at a level A (zero points) - II (15 points), thereby changing his sentencing guideline range from 60 to 120 months to 24 to 96 months.

Furthermore, if the Court finds merit in the above-mentioned challenges or determines that it will not take the challenged information into consideration for the purpose of sentencing, pursuant to MCLA 771.14(5) and MCR 6.245(D)(3)(A) and (B), defense counsel requests that this Court order the probation officer to correct or delete the challenged information from the report. Finally, defense counsel asks the Court to order the probation officer to provide her with opportunity to review the corrected

report before it is sent to the department of corrections.

III. DEPARTURE FROM MINIMUM GUIDELINES/PROPORTIONALITY

The principal of proportionality requires sentences to be proportionate to the circumstances surrounding the offense and the offender. People v Milbourn, 435 Mich 630, 636; 461 NW2d 1 (1990). Even though sentencing within the guidelines is recommended rather than compulsory, a departure from the recommended range in the absence of factors not adequately reflected in the guidelines may indicate that the trial court has violated the principal of proportionality and thus abused its sentencing discretion. Id. at 660.

However, "the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range." Id. at 661. A sentence is proportionate to the seriousness of the matter when the sentencing judge "impose(s) a sentence that fits as precisely as possible that particular offender and the particular offense, taking into account all permissible factors." People v Rushlow, 437 Mich 149, 156; 468 NW2d 487 (1991). Once the decision is made to depart from the guidelines, the sentencing judge is merely required to articulate on the record its reasons for doing so. People v Potts, 436 Mich 295, 302; 461 NW2d 647 (1990).

In the instant case, there is no question that the charges for which the defendant has been convicted are serious. However, the court should remember that during two weeks of testimony presented

at trial, it became abundantly clear that the defendant, Stephen Turner's involvement, if any, was minimal at best. The defendant maintains his innocence. However, he stands before this court prepared to accept the jury's verdict.¹ And although the court may believe that the defendant's profession of innocence is nothing more than an exculpatory statement, the court should also remember that both the alleged victim's father and the detective in charge of this case, Detective Vasquez, indicated that they viewed Stephen Turner's crime as one of omission of failing to help the alleged victim.

Numerous mitigating circumstances exist which would authorize a downward departure from the guidelines. The defendant is 31 years old and has led a crime free life. This is verified by the presentence report. Mr. Turner is a high school graduate with an associates degree from Grace Bible College. Mr. Turner has also been working on a degree in computer applications at Grand Rapids Community College.

The defendant has been married to his wife, Alisha, since 1985. The defendant and Alisha have four small children ranging from age eight to six months. Throughout the course of this case, Alisha Turner has been incredibly supportive of her husband and attended several days of the trial. It is this writer's understanding and belief that upon release from incarceration that Turners will continue to live together as husband and wife.

¹ At the time of the preparation of this sentencing memorandum, the court had not yet heard nor ruled on defendant's Motion for New Trial.

Mr. Turner is a deeply religious man and has had to rely on his deep and abiding faith to carry him through this whole ordeal. Additionally, Mr. Turner has no history of alcohol or substance abuse.

Mr. Turner has an excellent work history. He has maintained employment at Cascade Engineering for the past eight years up until the time of his arrest. He was earning \$9.25 an hour.

Mr. Turner has many friends and family members who have been, and continue to be, supportive of him. His numerous positive qualities are evidenced by the attached letters.

The Court should also consider when determining to whether to depart from the minimum guidelines that the defendant has been convicted of a non probationary offense. The probation officer in this case has recommended that the defendant be sentenced at the low end of the guidelines. The probation officer indicated that she does not view the defendant as a particular danger to the community, but recommends sentencing at the low end of the guidelines because the defendant was convicted of a non probational offense.

Pursuant to People v Jeff Davis Jr., 196 Mich App 597; ___ NW2d ___ (1993). this is an appropriate factor for the court to take into consideration. In Davis, the sentencing court took into consideration the mandatory two year prison sentence the defendant would have to serve on his felony firearm conviction. The Davis court held that when a defendant has been convicted of both felony firearm and the underlying felony, it would defeat the principle of

proportionality to require the sentencing court to disregard the mandatory prison term for the felony firearm when fashioning an appropriate sentence for the underlying felony.

Although the offense for which Mr. Turner has been convicted does not mandate a mandatory prison term, it is a non-probationary offense. But for the conviction of criminal sexual conduct first degree, it would appear that Mr. Turner would be an appropriate candidate for a probationary sentence. Therefore, it would be proper for this court to take into consideration the fact that the offense for which Mr. Turner has been convicted is non probationable.

Finally, the court should take into consideration all of the testimony presented during the two weeks of trial. The defendant was absent or nonparticipatory during most, if not all, of the co-defendant, Daniel Turner's, criminal actions. This was established through the alleged victim, Lakeysha Cage. It would appear that the basis for the conviction of aiding and abetting criminal sexual conduct in the first degree was the staged photograph. Again, it is the position of the defense that there was no proof whatsoever to support the alleged victim's testimony in this regard.

As to the criminal sexual conduct in the second degree conviction, the court was present during Lakeysha Cage's testimony to hear her say that it was Daniel Turner, not Stephen Turner, who touched her on the breast. Therefore, it would appear that the defendant, Stephen Turner, was convicted on minuscule evidence at best. Given the questionable verdict and the defendant's professed

innocence, the court must take all of these facts into consideration when determining the appropriate sentence. And for all of the foregoing reasons, a departure from the minimum guidelines would be more than appropriate.

Dated: February 1, 1994

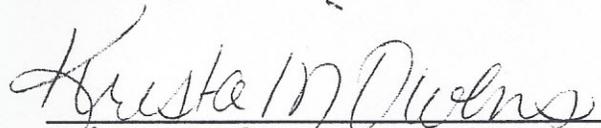
Respectfully Submitted,



Tonya L. Krause (P42056)
Attorney for Defendant
Stephen Dennis Turner

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Sentencing Memorandum was served upon Kevin Bramble by personally serving and/or mailing the same to the respective address of record with delivery fee prepaid thereon on February 1, 1994.



Krista M. Owens

To The 1-6-94

JAN 1 1994

Dennis Honorable

My Name C. Kolenda,
Amanda. I am
8 years old.

Steve is my dad.

My dad use to
play with me and
my sisters.
He use to take us
to fun places.
He was nice to us.
we love him.

I am sad about
My dad being in
hosp. I miss
HIM A Lot !!
I want

Him To Come Home.

Amanda
Mae
Turner

1-6-94

To The Honorable Dennis C. Kolenda,

I am Steve's wife of 8 years and have known him for about 10 years. We have 4 children.

Steve's character has always been one of patience, genuine concern for others, respects others - especially children. He would never think of being cruel to a child. He is a kind person. I trust him alone with our children.

I feel a light sentence is most deserving - one on the lowest end of the scale - (if not probation) because he has always worked at a job to support us and I've been able to stay at home to raise our children. He has been faithful to his last job for 8 yrs. Our children need a ~~father~~ Father in the home. Our youngest is a boy and really needs his father to help raise him. He has been my best friend since I first knew him and I also need his help at home as well as his companionship.

I believe that the jury was mistaken with their verdict. I believe that he is innocent. He is not the kind of person to violate ^{another} person's body. I believe that he was at the wrong place at the wrong time and got blamed for something he didn't do. He is a family man and belongs with us, his family.

Thank-you,
Alisha Turner

Pastor Jeffrey Shirley
109 3rd Street S.E.
Grand Rapids, Michigan

49548

To the Honorable Dennis C. Kolenda:

I am writing to you concerning Stephen Turner whom you will be sentencing on the 19th of this month. I have known Stephen since 1981 when we both attended Grace Bible College. As long as we have been friends he has been a very sensitive and caring person who has a deep affection for his friends and family. I have never seen him hurt anyone in any way. Therefore, it is hard for me to believe that he could be guilty of the crime of which he has been convicted.

Because of my belief in his innocence I would ask you that you prayerfully consider giving Stephen the most lenient sentence allowable under the law. This is not only for his sake, but also for his wife and four children who need the emotional and financial support of a husband and father.

I appreciate the time that you are taking to read this letter and I know that you will be fair in your sentencing. Please be assured that I will be in prayer for you that God will grant His wisdom to you on the 19th. May the Lord bless you.

Cordially:

Jeffrey Shirley

Jan 8, 1994

JAN 13 1994

Dear Honorable Dennis C Kolenda

I'm writing in regards to my brother, Stephen Turner.

I believe that justice will be better served by probation and possibly mandatory counselling for the cross-dressing.

I, myself am a survivor of child sexual abuse and understand the pain and confusion that is being felt by the victim, a part of me ~~is~~ wants to believe her. I believe that she has been abused, but have trouble believing Steve is involved. When I disclosed my abuse to Steve he was extremely supportive and began to look into his past looking for signs that he was also victimized. I don't know if he found any.

Steve is a kind, caring, sensitive, family man. He is too aware and empathic of the damage that abuse can create to do the things that he is charged with.

If Steve were sent to prison the State of Michigan would have to continue to help support his family. If he would be given probation, he would support his family as he had been doing prior to his arrest even though they were separated. ~~at~~

Sincerely
Joy M. Hayler

3922 Monte Carlo
Kentwood, MI 49512
December 28, 1993

To: The Honorable Dennis C. Kolenda
Re: Stephen Turner

JAN 03 1994

Alycia, Stephen's wife, called me to say that he had requested a "letter of character" from me.

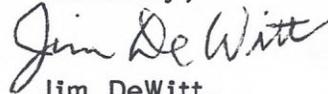
I am able to report the following because of our acquaintance, over a period of approximately four years, through my Writers Workshops where he had been an active participant. At these meetings, Stephen would invariably have new song lyrics or poems he'd composed to read and share with the rest of us present.

Thinking back about those sharing sessions (open to all), what strikes me is that he would always contribute some positive comments or helpful suggestions in response to the others' readings of their stories, poems, articles, etc. -- perhaps an astute observation, usually witty, and always upbeat and of good-natured content.

Stephen fit perfectly into the tone of our meetings: to be helpful and to encourage each other. We could count on him to be in the thick of the discussions. Yes all of us there, in fact, saw him as a "good guy"...a consistent, to-be-counted-on regular, an asset to our groups.

Then when he had to go on the afternoon shift at his place of work, we missed him. He was not able to get to any of our nighttime meetings after that, but did make a couple of the midday ones.

Sincerely,



Jim DeWitt,

Writers Workshops Founder/Director

To whom it may concern:

I am writing

in respect of giving the judge for Stephen
Tavern some well known names like

I am appalled at the charges against him
and can not believe they were found to
be true.

I am his aunt as I have known

him all his life. He is a well educated

man with great gifts merely that

charges of rape. He is kind, loving

generous and fair. He has always been

kind and has been a great pleasure to

have as a family member. He does not share

his children and wife. They will want

Christian names for all. He has generations

it was because of a misunderstanding in his

character life. But nothing could make

him do this thing. He has been changed

much. I feel this child should have

something to have been named after

Stephen and done these things.

I ask your mercy for Stephen

and give him the chance to let that reputation

live and family. With that anything can be
done and his position Stephen in Jackson Tenn.

His Loving Aunt
Jude W. W. W.

January 8, 1994

To: The Honorable Dennis C. Kolenda,

I am writing concerning the case of Stephen Dennis Turner. I have known Steve for over twelve years, having met him while attending Grace Bible College, and I feel that I know him very well. Based upon my friendship with Steve I find it difficult to believe that Steve is guilty of the crime he has been found guilty of.

I also know Alisha Turner and have kept in touch with her on a regular basis throughout this ordeal. Alisha, Amanda, Angela, Laura and Luke are very much in need of a husband and father who can provide them with a steady income. I feel it would be in their best interest for Steve to be given a light sentence or even probation until he has had a chance to appeal his conviction if that is possible.

Thank you for your consideration in this matter.

Roger Jameson

A handwritten signature in cursive script that reads "Roger Jameson". The signature is written in dark ink and is positioned below the typed name.

JAN 10 1988

The Honorable Dennis C. Kolenda,

I have known Stephen Turner for over 15 yrs. Since 8th grade in high school. He was the first person to befriend me after my family moved to Palmyra, WI. from Milw., WI.

At 14, Steve was just discovering his relationship with Christ; He has remained an active christian to this day.

Whereas I myself was rather a wild child in high school, Steve was always a stable influence. He maintained good grades and

was active in many extra-curriculars. The school newspaper for one.

As an adult, Steve has remained a steady individual. Besides working hard to support his wife & family, he finds time to endeavor at his writing & publishing career. He has always impressed me with how much effort he puts into his dreams without shirking any of his other responsibilities.

I lived with Steve & his family for two months, Dec. 91 - Jan. 92.

He and I were collaborating on a songwriting venture. During that time I was witness to his role as a loving father & husband.

Of recent there may have been some marital strife, but Steve and Alisha were both working very hard thru counseling to solve this. What young marriage hasn't undergone a certain amount of friction.

Both Steve & Alisha have maintained a steady correspondence with myself (via mail, phone, and the occasional visit.)

Even their eldest children,
Amanda (8yrs) & Angela (5yrs) send
me letters. So while I may be
removed from the situation by
a few hundred miles, I know
Stephen Turner well enough to
where I find it impossible,
very impossible to believe
that he could take any part
in the molestation of a child.

I know that you will be fair
and just, taking into account all
available evidence & data.

Thank You for your time,

Roger E Meyer Jr.
Roger E. Meyer Jr.