

IN THE IOWA DISTRICT COURT FOR LEE SOUTH – KEOKUK COUNTY

STATE OF IOWA, Plaintiff, vs. BENJAMIN G. TRANE, Defendant.	CRIMINAL NO. FECR009152 DEFENDANT’S SENTENCING BRIEF
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COMES NOW, the Defendant, Benjamin G. Trane, by and through his undersigned counsel, and respectfully submits this Brief in Support of Sentencing Request:

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I. COURSE OF PROCEEDINGS

On September 18, 2017, Benjamin Trane was charged by Trial Information with three counts: 1) Sexual Abuse in the Third Degree, in violation of Iowa Code Sections 709.1 and 709.4(1)(a), a Class C Felony; 2) Sexual Exploitation by a Counselor, in violation of Iowa Code Sections 709.15(1), 709.15(2)(a)(1), and 709.15(4)(a), a Class D Felony; and 3) Child Endangerment – No Injury, in violation of Iowa Code Sections 726.6(1)(a) and 726.6(7), an Aggravated Misdemeanor. Trane entered a plea of not guilty to these charges.

Trial on these three charges began on December 12, 2017. On December 21, 2017, the jury returned its verdict, finding Benjamin guilty of the following: 1) Assault with Intent to Commit Sexual Abuse – No Injury, an Aggravated Misdemeanor; 2) Sexual Exploitation by a Counselor, a Class D Felony; and 3) Child Endangerment – No Injury, an Aggravated Misdemeanor.

II. SENTENCING DISCRETION AND FACTORS

Trial courts are granted wide discretion in their sentencing decisions. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995). In exercising its discretion, “the district court is to weigh all pertinent matters in determining a proper sentence including the nature of the offense, the attending circumstances, the defendant’s age, character, and propensities or chances for reform.” *Id.* (quoting *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994)). The punishment imposed must fit the specific person and circumstances under consideration, with each decision made on an individual basis, and no single factor, including the nature of the offense, being solely determinative. *State v. Hildebrand*, 280 N.W.2d 393, 397 (Iowa 1979).

Iowa Code Section 901.5 establishes the process followed in sentencing:

After receiving and examining ***all pertinent information***, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, ***will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.***

Iowa Code §901.5. The most significant criteria the court must consider are the maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant. *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983). In addition, there are several other factors, including the nature of the offense and the personal characteristics of the individual, which the Court must consider when sentencing the defendant. *Id.* The Iowa Supreme Court has noted that:

Generally, courts may consider a variety of factors to justify the imposition of a sentence, including rehabilitation of the defendant, protection of the community from further offenses by the defendant and others...the defendant's age and criminal history, the defendant's employment and family circumstances, the nature of the offense, and "such other factors as are appropriate."

State v. Bentley, 757 N.W.2d 257, 266 (Iowa 2008) (*citing* Iowa Code §901.5; Iowa Code §907.5). See *also* Iowa Code § 901.3 (setting forth factors to be set forth in Presentence Investigation Report).

III. ARGUMENTS

A. Discussion of Sentencing Factors

1. Age of the Defendant

Benjamin was born on June 27, 1978, to Calvin and Jane Trane in American Fork, Utah. At the time of his sentencing, Benjamin will be thirty-nine years old.

2. Family Circumstances

Benjamin was raised in a two-parent household by his parents in Idaho Falls, alongside his four siblings. Benjamin is the middle child of the five. He has been married to his wife, Layani, for fifteen years. They have five minor children, ranging in age from twelve to five. His entire family resides in Idaho. His parents and all his siblings continue to reside in Idaho Falls, while his wife and kids live in Ammon, Idaho. No member of his family has any criminal history, nor any history of substance abuse. Jane was herself an educator for twenty-five years, as a high school teacher in Idaho. He has a strong, positive relationship with his entire family, which continues to support him.

Layani and Benjamin met while both were attending Southern Utah University, where Layani earned a degree in Communications, with an Interpersonal Communication emphasis, and in Public Relations. They got married around the same time as Midwest Academy opened, with Layani traveling with her husband from Idaho to Iowa. Layani has also earned her master's in Psychology, earning this degree in 2014.

Layani is currently the sole provider for their five children. Since the allegations against her husband rendered it nearly impossible for him to find work, she has had to provide economically for the family. To this end, she works as a director of training and education for Qualified Intellectual Disability Professionals, working both with individuals having intellectual disabilities, and training staff workers on working with maladaptive behavior. She also began her business, Polaris Education Systems, LLC, in May 2017. This business is still working towards becoming consistently profitable. Prior to his arrest, Benjamin was working alongside his wife to operate this business and get it off the ground.

After Midwest Academy was shut down, Benjamin and his family returned to Idaho. Prior to turning himself in, Benjamin was living his family in Ammon, Idaho. Upon learning about warrants having been issued for his arrest, Benjamin immediately acted to turn himself in. In doing so, he left his family while on vacation in Utah, traveling to Lee County where he was arrested. He took no time to retrieve any personal or work items prior to leaving his family to turn himself in. He has been living in an apartment in Keokuk, at the grace of personal friends, and is prohibited from leaving the State. As such, Benjamin has had little in-person contact with his wife, children, parents, or siblings since his arrest.

3. Education and Employment Circumstances

Benjamin attended Hurricane High School in Hurricane, Utah, graduating in 1996. Though having dyslexia, Benjamin does not believe this interfered with his education. Following graduation, he attended Utah Valley State College, in Orem, Utah for a year, studying computer science and business. He also worked for Cross Creek Residential Treatment in La Verkin, Utah.

In 1999, Benjamin began at Southern Utah University in Cedar City, Utah. He studied Computer Information Technology for three years, until he left to open Midwest Academy in Keokuk in 2002. He ultimately earned his degree in Computer Information Systems from Brigham Young University, which he attended from 2016 to 2017.

While at Southern Utah University, he also worked at 2 Help Teens, an online marketing and educational company for struggling teens. Benjamin was the company's first employee. With Benjamin's assistance, the business grew rapidly, doing over 450k in revenue in the first eighteen months. He went from working as a salesman to becoming

a web designer, then online marketing manager, and then managed the six other employees resigning. It has since closed its operation.

In addition to operating Midwest Academy, Benjamin and his wife pursued other business interests. From 2005 to 2016, Benjamin and Layani owned and managed the River Bend Apartment complex in Montrose, Iowa. Benjamin also owned and operated B&B Express, LLC, a gas station and truck stop in Montrose, Iowa. The business opened in 2006, with Benjamin working as the manager for the first two years before hiring managers to handle the day-to-day operation. At its peak, Benjamin employed over twenty people at the gas station, reaching just over a million dollars in sales in the first two years. Benjamin sold the businesses in 2016.

4. Prior Record

Benjamin has no prior criminal convictions, nor has he ever been granted a deferred judgment.

5. Nature of Offense

Benjamin was convicted of three criminal offenses. The first offense, Assault with Intent to Commit Sexual Abuse – No Injury, in violation of Iowa Code §709.11(3) an Aggravated Misdemeanor, was a lesser included offense of the crime with which he was charged. By rendering a guilty verdict on a lesser-included offense, Benjamin was impliedly acquitted by the jury of the offense of Sexual Abuse in the Third Degree. See *Price v. Georgia*, 398 U.S. 323, 329 (1970) (acquittal occurs when jury has full opportunity to return verdict on greater charge but only convicts on a lesser included offense). Benjamin continues to assert his innocence as to the offenses for which he was convicted.

6. Other Factors

Benjamin is practicing member of the Church of Latter Day Saints, having done his mission work in Ohio. He has lived most of his life in Idaho, though he lived in Utah while attending college, and in Iowa while operating Midwest Academy.

As part of the PSI preparation, Benjamin underwent psychological assessments to assess his chance of reoffending. On the risk factors measured by the STATIC-99-R assessment, he scored a zero, placing him in the Low range for reoffending. The Iowa Sex Offender Risk Assessment scored him at a moderate risk. These results combined place Benjamin at a Low-Moderate range in predicting reoffending. The accuracy of these scores are supported by the Sexual Adjustment Inventory self-assessment Benjamin completed. This assessment shows Benjamin to have an adequate to average Sexual Adjustment, and low risk in terms of violence, alcohol, and drugs. Overall, these results show that he does not present any indicators of risk to commit sexual assault in the future.

B. Request for Probation and Deferred Judgment

Defendant is legally eligible for a deferred judgment on Count III - Child Endangerment – No Injury, in violation of Iowa Code Sections 726.6(1)(a) and 726.6(7), an Aggravated Misdemeanor:

[T]he trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony or to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

Iowa Code §907.3. Child Endangerment – No Injury is neither a forcible felony, see Iowa Code §702.11, nor a violation of Iowa Code Chapter 709. While he may not be eligible

for this sentencing option on Counts I and II, the factors discussed above still support granting probation and a deferred judgment as to Count III.

Probation is defined as:

the procedure under which a defendant, against whom a judgment of conviction of a public offense has been or may be entered, is released by the court subject to supervision by a resident of this state or by the judicial district department of correctional services.

Iowa Code §907.1(5). It is to be served in lieu of, not in addition to, incarceration on an individual conviction. *State v. Stephenson*, 608 N.W.2d 778, 784 (Iowa 2000). *Cf. State v. Dailey*, 774 N.W.2d 316, 321 (Iowa Ct. App. 2009) (defendant cannot be sentenced to serve both incarceration and probation simultaneously).

The formal definition of “deferred judgment” is “a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court and whereby the court assesses a civil penalty[.]” Iowa Code §907.1(1). Its effect is to allow:

a defendant to avoid a criminal conviction “by satisfactorily meeting terms of probation voluntarily undertaken before his guilt had been adjudicated,” and once the defendant is discharged from probation, “no conviction occurs in the strict legal sense because no adjudication of guilt is made.”

Youker v. State, No. 10–0869, 2011 WL 662744 (Iowa Ct. App. February 23, 2011) (*quoting State v. Farmer*, 234 N.W.2d 89, 92 (Iowa 1975)). The purpose of this sentencing option is to “permit a defendant to avoid otherwise inevitable conviction and a judicial record of the criminal charge.” *Farmer*, 234 N.W.2d at 92. This gives the offender a new chance “and an opportunity to escape the permanent effect of an isolated incident of bad judgment.” *State v. Mensah*, 424 N.W.2d 453, 455 (Iowa 1988). *See also State v. Frazer*, 402 N.W.2d 446, 448 (Iowa 1987) (*quoting* J. Yeager and R. Carlson, Iowa Practice—Criminal Law and Procedure §1724 (1979 ed.)) (theory of deferred judgment is the

offender will successfully complete probation and be discharged without entry of judgment, thereby avoiding “the stigma which would otherwise result from his conviction.”).

The factors to be considered in determining whether to grant a probation and a deferred judgment mirror those factors in determining what constitutes an appropriate sentence. *Compare* Iowa Code §907.5(1) (setting out factors used to determine “which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community”) *with* Iowa Code §901.5 (court to select the appropriate sentence from those authorized by determining which will provide maximum opportunity for rehabilitation and protection of community.)

Benjamin is a family man who has not seen his family since the day of his arrest. His career is gone and the ability to provide for his family along with it. He is facing incarceration, followed by a special sentence, resulting in further separation from his loved ones. As shown by his work experience, Benjamin has been a force for good in the lives of hundreds of youths. This good cannot be overlooked in assessing the sentence to be imposed. Not can the fact he is a low risk to reoffend be ignored. The benefit of a deferred judgment as to Count III would provide him with some ability to move forward at the conclusion of his sentence. While he would still be stuck with the stigma of Counts I and II, a deferred judgment as to the Child Endangerment conviction would provide ensure sufficient protection for the community and rehabilitation for himself without an unnecessary and unbeneficial “piling on” as he attempts to rebuild his life.

IV. CONCLUSION

Benjamin Trane is a man who has tried to do good in the lives of teenagers heading down a bad and dangerous path. Despite the good he has done, the stigma of these convictions will remain with him. While he has the support of the family which he is currently unable to provide for, this is support provided at a distance, and is effectuated only by the occasional visit, with phone calls and letters being the predominant form of contact. Benjamin is not a future risk to any individual nor society as a whole. He asks this court to impose a deferred judgment as to Count III, to give him some chance to rebuild his life at the end of his sentence.

set out in Iowa Code 903B.1.

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was **electronically filed** on EDMS on May 9, 2018. Subject to the exceptions cited therein, Iowa Court Rule 16.315 provides that this electronic filing, once electronically posted to the registered case party's EDMS account, constitutes service for purposes of the Iowa Court Rules.

Copies have been provided to all registered parties because once the document is posted, those parties are able to view and download the presented or filed document.

The undersigned certifies that the foregoing instrument was served by other means as follows:

<input type="checkbox"/> personal service	<input type="checkbox"/> first class mail	<input type="checkbox"/> certified mail, return receipt requested
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