

RECEIVED COPY
OCT 03 2013
OCT 08 2013
Judge Silver
CLERK'S DISTRICT COURT
DISTRICT OF ARIZONA
BY P DEPUTY

OCT 3, 2013

Case CV-13-01962-Plx-Ros

I Melvin Thomas Respectfully submit A copy of The letter being Requested by The Court And The source of The Letter.

Ms. Kirschbaum was The source of The letter. I had given Ms. Kirschbaum my word NOT TO SHARE ANY PRIVATE CONVERSATION with others, unless given permission. Ms. Kirschbaum has since given me permission to disclose The letter she and I discussed regarding why she and others felt former board members had NOT been Re-Appointed.


Let me be clear That Ms. Kirschbaum only implied IT WAS due to The ATTACHED LETTER regarding INMATE F/1, batte, that the former members had NOT been Re-Appointed.

Ms. Kirschbaum LATER ASKED IF I WANTED TO See The letter she implied THAT might had IMPACTED The decision NOT TO Re-Appoint former board members. I declined her offer to read A copy of SAID letter.

Apparently, I mis-interpreted her comments that the letter we were discussing was not something from the Governor's office, or to any one of the Board members.

Upon receipt of the letter from Ms. Kirschbaum I learned the letter was the Board's recommendation to the Governor's office, regarding inmate Flibotte.

Sincerely,


Melvin Thomas

P.S. I believe this letter was already part of the proceeding.



29 of hundreds

Error

Ellen Kirschbaum - Oct 2
to melthomas1950

Mel ..I just read the letter I sent you and it is truly a draft. The recommendation was typed wrong here..we recommended a total of 5 years for all 9 counts and the tenth count to remains as life probation. My final is probably in the work computer or I can get you a final copy.

We are headed to Florence this morning. Have a wonderful day.

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February 2, 2012

The Honorable Jan Brewer

Governor of the State of Arizona

1700 West Washington, 9th Floor

Phoenix, Arizona 85007

Re: Robert T. Flibotte ADC# 2657156

Commutation of Sentence Application – A.R.S. 13-603(L)--Issued by The Honorable Peter Cahill-Gila County Superior Court

Gila County Cause # CR-2009-0552 & CR 2010-0630

Dear Governor Brewer:

The Arizona Board of Executive Clemency met on January 26, 2012 to consider Mr. Robert T. Flibotte's application for Commutation of Sentence. On July 28, 2011 a jury unanimously found Mr. Flibotte guilty on 10 counts of Sexual Exploitation of a Minor. Nine of the ten counts were Dangerous Crimes Against Children and on each of these counts a ten-year prison term was ordered. By law, each sentence must be served consecutively. Therefore, Mr. Flibotte must serve 90 years. On the remaining count, life time probation with sex offender terms was ordered.

All five members of the Board believe the 90 year prison term is excessive based on mitigating factors and the likelihood that Mr. Flibotte will not commit a future offense. The Board voted unanimously to recommend to you that Mr. Flibotte's sentence be commuted from the ten years consecutive on each of the nine counts to five years on each count to be served concurrently. Mr. Flibotte would serve 5 years in prison. On the remaining count, life time probation with sex offender registration will remain as previously mandated by the court.

Statement of the Offense

On October 5, 2009, the Payson Police Department received notification from a local computer business that a computer, in their possession and under repair, had numerous images of young girls between the ages of eight and twelve involved in various sex acts or exploitive exhibition of their genitals. The computer had been taken from the home of Mr. Robert Flibotte after the repair technician determined that the virus present in the machine would require further repair at the business' location.

The Payson Police Department viewed the images and then issued a search warrant for Mr. Flibotte's residence. At Mr. Flibotte's home, a thumb drive with multiple images of young girls engaged in exploitive exhibition or other sexual conduct were found. Also located during the search was paperwork on how to unlock encrypted files and "How to Hide Porn on Your Computer." Later, a search warrant at his place of business was issued and at that location, his computer and a number of other thumb drives were seized and sent for further analysis. Subsequently, it was found that Mr. Flibotte possessed over 26,000 images as well as a significant number of videos (500) exploiting young girls and boys. The defendant was arrested and initially charged on 15 counts. He was tried for only ten counts.

Mr. Flibotte did not testify at trial but maintained his innocence by stating he was only "surfing" for information relating to a Disney character. He claimed the pornographic images came forth and were automatically downloaded without his consent. At the time of his presentence report, the Probation Officer completing the report noted that Mr. Flibotte was still diminishing his responsibility as doing no wrong by stating he felt the intricacies of the computer and internet made him vulnerable and susceptible to malicious cyber attacks and viruses.

Discussion

Mr. Flibotte is a 74 year old, Air Force Reserve veteran and retired 33 year resident of the Payson Community. The Board has identified a number of mitigating factors to consider clemency for Mr. Flibotte. Until this incident, Mr. Flibotte's criminal history record was blemish free without so much as a traffic ticket. He had established himself as a business leader and active community volunteer. Along with his partner, he is founder of the Payson Coldwell Banker Realty and served as President of the Arizona Association of Realtors in 1995. He served 16 years on the Planning and Zoning Commission of which he served 5-6 years as Chairman, volunteered his time during the political campaigns in the Town of Payson and was a member of the Rotary Club.

At the time of sentencing, Judge Cahill stated, "I will find that the sentence is required to impose today is clearly excessive. If I were to think of the murderers I've sentence to mere decades, 22 years, and compare it to the sentence I've just imposed for 90 years, it's clearly excessive." Also stated at sentencing, "Where I think the sentence is clearly excessive is at least where I'm required to impose consecutive sentences, at least there." Based on this reasoning, Judge Cahill issued a 603(L) allowing Mr. Flibotte to seek a commutation of sentence from the Governor through the Board of Executive Clemency.

Nearly 100 letters asking for probation were presented to Judge Cahill prior to his sentencing. For the clemency hearing, a number of support letters were submitted and several community leaders including a former Mayor of Payson and friends spoke highly of Mr. Flibotte. They asked Board members to consider Mr. Flibotte's past community contributions as factors in determining the recommendation to Governor Brewer. Also present were a number of family members including Mr. Flibotte's wife of 47 years and his daughter, Amy Kissling. His eldest daughter, Renee Luskow could not be present due to her residency in Germany but she provided a letter of support. Mr. Flibotte's brother, Don, came from New Hampshire to speak on behalf of his brother. All delivered a compelling plea for clemency describing Mr. Flibotte as a devout, loving and committed husband and

father. Representative Cecil Ash spoke in regards to excessive sentencing and outlined his belief as to why Mr. Flibotte's case served as a strong example for consideration. Telephonically participating at the hearing was a Gila Deputy County Attorney who opposed any form of clemency. She believed the sentence was not excessive.

On May 19, 2011, a psychological and psychosexual evaluation was conducted by Dr. Richard Lanyon, Ph.D. on Mr. Flibotte to gain a comprehensive understanding of him, including childhood, adolescence and adulthood, any childhood dysfunctions, physical or sexual abuse, psychopathology, dysfunction related to injury or illness and any other factors that could be relevant to an understanding of Mr. Flibotte in regard to the allegations made against him. Also requested was an assessment of the degree of risk that Mr. Flibotte poses to the community, and the likelihood that he could be successfully rehabilitated. The completed report noted:

"Risk assessment based on the results of three research-based and empirically constructed instruments designed to identify men who will continue to commit sex offenses in the future uniformly indicate that Mr. Flibotte's likelihood of further activity is extremely low. Combining these empirical results with clinical opinion based on his overall characteristics. I believe that Mr. Flibotte is not typical of men who have extensively viewed child pornography; and now that his difficulties have come into the open, active counseling will provide a successful outcome. Given Mr. Flibotte's long-term monogamous relationship and the fact that he has reportedly never engaged in deviant sexual activity actual children, despite many opportunities to do so, I believe it is unnecessary for him to register as a sex offender.

The Board members also note Mr. Flibotte's questionable state of health. He has undergone several surgeries to include prostate cancer removal (2007), kidney stone removal (2006) and a heart stent placement (2005). Prior to his incarceration, he was under the care of several physicians to monitor his heart, thyroid, neuropathy, check his PSA levels, and conduct other medical tests along with taking his prescribed medications: L-Thyroxin, Lyrica, Allopurinol, Arthrotec and Aspirin.

At the hearing, Mr. Flibotte was questioned about his responsibility for his actions and he acknowledged his egregious behavior and horrors of child pornography. He understands that his obsession to viewing child pornography is not a harmless, victimless crime.

Recommendation

Arizona has some of the strictest child pornography laws in the U.S and for good reason which is to deter this hideous and deplorable crime. While Mr. Flibotte's convictions are serious, deplorable and certainly warrant criminal charges, there was no allegation or evidence in his past that Mr. Flibotte actually touched a child. His conviction stems from his downloading and purient viewing of the materials. Should his sentence be commuted as recommended, Mr. Flibotte will be nearly 80 years old upon release and subject to lifetime probation and sex offender registration.

Board members recognize the seriousness of Mr. Flibotte's offenses; however, we believe that the Board's recommended sentence is adequate to serve justice and protection for the community.

Respectfully yours,

Duane Belcher,

Chairperson

Ellen Kirschbaum

Board Member

Jack LaSota

Board Member

Marilyn Wilkens

Board Member

Ellen Stenson

Board Member



34 of hundreds

Clemency Letter

Ellen Kirschbaum - Oct 1 1 - Attachments
to melthomas1950

Mel. Wonderful to see you today. Next time..a happy lunch!

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