

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANKLIN PILLIER,

Petitioner

VS.

COMMONWEALTH OF MASSACHUSETTS,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MASSACHUSETTS APPEALS COURT

PETITION FOR WRIT OF CERTIORA

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QUESTIONS PRESENTED

- I. WHETHER, WHEN THE COURT ASKS A DEFENDANT IF HE IS GUILTY THIRTY-FIVE TIMES BEFORE INFORMING HIM OF THE RIGHTS HE IS FORFITTING AND THE CONSEQUENCES OF HIS PLEA, THE COURT VIOLATES THE DEFENDANT'S CONSTITUTIONAL RIGHTS AND HIS SUBSEQUENT MOTION TO WITHDRAW HIS PLEA MUST BE ALLOWED.

- II. WHETHER A CONDITION OF PROBATION, WHICH COMMENCES WHILE A DEFENDANT IS INCARCERATED AND CONTINUES ONCE HE IS RELEASED FOR THE DURATION OF THE PROBATION, IS AN IMPERMISSABLE GOVERNMENT INTRUSION ON A DEFENDANT'S FUNDAMENTAL CONSTITUTIONAL RIGHTS WHEN STRICT SCRUTINY IS NOT SATISFIED.

LIST OF ALL PRIOR PROCEEDINGS

Commonwealth v. Franklin Pillier, docket 1377CR659; Essex Superior Court, MA.

Commonwealth v. Franklin Pillier, docket 1377CR667; Essex Superior Court, MA.

Commonwealth v. Franklin Pillier, docket 1477CR1180; Essex Superior Court, MA.

Commonwealth v. Franklin Pillier, 95 Mass. App. Ct. 1112 (2019).
Docket 18-P-137 in the Appeals Court of Massachusetts.

Commonwealth v. Franklin Pillier, 482 Mass. 1105 (2019).
Docket FAR -26852 in the Massachusetts Supreme Judicial Court.

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BASIS OF JURISDICTION

On May 9, 2019 the Appeals Court of the Commonwealth of Massachusetts entered an order denying the defendant/appellant/petitioner's request to reverse the opinion of the lower court. The petitioner they filed a timely petition of further appellate review with the Massachusetts Supreme Judicial Court, and it was denied on June 27, 2019. The petitioner now seeks review of the judgement of the decision in this matter, and invokes this Court's jurisdiction under 28 U.S.C. 1257a and the Rules of the United States Supreme Judicial Court.

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitutional Provisions:

First Amendment to the United States Constituion:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Ninth Amendment to the United States Constitution

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fourteenth Amendment to the United States Constitution:

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws.

Statutes:

28 U.S.C. 1257a:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Rules:

United States Supreme Court Rule 13 (1):

Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the

United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

Massachusetts Rules of Court:

Mass. R. Crim. P. 12 (In Relevant Parts):

. . . (a) (3) Acceptance of Plea of Guilty, a Plea of Nolo Contendere, or an Admission to Sufficient Facts. A judge may accept a plea of guilty or a plea of nolo contendere or an admission to sufficient facts only after first determining that it is made voluntarily with an understanding of the nature of the charge and the consequences of the plea or admission. A judge may refuse to accept a plea of guilty or a plea of nolo contendere or an admission to sufficient facts. . . .

. . . (b) (3) Inquiry as to the Existence of a Plea Agreement. After being informed that a defendant intends to plead guilty or to admit to sufficient facts, the judge shall inquire as to the existence of a plea agreement.

(4) Pleas Without an Agreement. If the defendant intends to plead guilty or nolo contendere or to admit to sufficient facts and there is no agreement under Rule 12(b)(5), the judge shall follow the procedures set forth in Rule 12(c). . . .

. . . (c) Procedure If No Plea Agreement or If Plea Agreement Does Not Include Both a Specific Sentence and a Charge Concession.

(1) Disclosure of the Terms of Any Plea Agreement. If the parties have entered into a plea described in Rule 12(b)(5)(B), the parties shall disclose the terms of that agreement on the record in open court unless the judge for good cause allows the parties to disclose the terms of the plea agreement in camera on the record.

(2) Tender of Plea. The defendant's plea or admission shall be tendered to the judge.

(3) Colloquy. The judge shall:

(A) Provide notice to the defendant of the consequences of a plea.

The judge shall inform the defendant:

(i) that by a plea of guilty or nolo contendere, or an admission to sufficient facts, the defendant waives the right to trial with or without a jury, the right to confrontation of witnesses, the right to be presumed innocent until proved guilty beyond a reasonable doubt, and the privilege against self-incrimination;

- (ii) of the maximum possible sentence on the charge, and, if applicable,
 - (a) any different or additional punishment based upon subsequent offense provisions of the General Laws;
 - (b) that the defendant may be subject to adjudication as a sexually dangerous person and required to register as a sex offender;
 - (c) the mandatory minimum sentence on the charge; and
 - (d) that a conviction or plea of guilty for an offense listed in G.L. c. 279, § 25(b) implicates the habitual offender statute, and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct;
- (iii) of the following potential immigration consequences of the plea:
 - (a) that, if the defendant is not a citizen of the United States, the guilty plea, plea of nolo contendere, or admission may have the consequence of deportation, exclusion of admission, or denial of naturalization; and
 - (b) that, if the offense to which the defendant is pleading guilty, nolo contendere, or admitting to sufficient facts is under federal law

one that presumptively mandates removal from the United States and federal officials decide to seek removal, it is practically inevitable that this conviction would result in deportation, exclusion from admission, or denial of naturalization under the laws of the United States.

(B) Factual basis for the charge. The prosecutor shall present the factual basis of the charge.

(C) Rights of Victims and Witnesses of Crimes. If applicable, the judge shall inquire of the prosecutor as to compliance with the requirements of G.L. c. 258B, Rights of Victims and Witnesses of Crimes. At any time prior to imposing sentence, the judge shall give any person entitled under G.L. c. 258B to make an oral and/or written victim impact statement the opportunity to do so.

(4) Disposition Requests.

(A) When there is no agreed-upon recommendation as to sentence. The judge shall give both parties the opportunity to recommend a sentence to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first

giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(B) Where there is an agreed-upon recommendation as to disposition. The judge shall inform the defendant that the sentence imposed will not exceed the terms of the agreement without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(5) Findings of Judge; Acceptance of Plea. The judge shall inquire whether the defendant still wishes to plead guilty or nolo contendere or admit to sufficient facts. If so, the judge will then make findings as to whether the plea or admission is knowing and voluntary, and whether there is an adequate factual basis for the charge. The defendant's failure to acknowledge all aspects of the factual basis shall not preclude a judge from accepting a guilty plea

or admission. At the conclusion of the hearing, the judge shall accept or reject the tendered plea or admission.

(6) Sentencing. After acceptance of a plea of guilty or nolo contendere or an admission, the judge shall sentence the defendant.

(A) Conditions of Probation. If the judge's disposition includes a term of probation, the judge, with the assistance of probation where appropriate and after considering the recommendations of the parties, shall impose appropriate conditions of probation.

(B) Intent to Impose Sentence Exceeding Requested Disposition. In District Court, if the judge decides to impose a sentence that will exceed the defendant's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In Superior Court, if the judge decides to impose a sentence that will exceed the prosecutor's request for disposition under Rule 12(c)(4)(A) or the parties' request for disposition under Rule 12(c)(4)(B), the judge shall, on the record, advise the defendant of that intent and shall afford the defendant the opportunity to withdraw the plea or admission. In both District and Superior Court, the judge may indicate to the parties what sentence the judge would impose. . . .

STATEMENT OF THE CASE

A. Procedural History:

Indictments were returned in Essex Superior Court in the matters of: 1377CR659 on May 16, 2013; 1377CR667 on May 22, 2013; and 1477CR1180 on September 17, 2013. Mr. Pillier was then arraigned on these matters on September 24, 2013. (RA 3, 10, 16, 20-89). The indictments were as follows:

Indictments ESCR2013-667-1; ESCR2013-667-2; ESCR2013-667-3; ESCR2013-667-4 for aggravated rape of a child, G.L.c. 265, sec. 23A.

Indictments ESCR2013-667-5 rape; ESCR2013-667-6; ESCR2013-667-7; and ESCR2013-667-8 for rape, G.L.c. 265, sec. 22(b).

Indictments ESCR2013-667-9; ESCR2013-667-10; ESCR2013-667-11 indecent assault and battery on a child Under the age of 14, G.L.c. 265, sec. 13B.

Indictments ESCR2013-667-12; ESCR2013-667-13; ESCR2013-667-14; ESCR2013-659-3; ESCR2013-659-4; ESCR2013-659-5; ESCR2013-659-6; ESCR2013-659-7; ESCR2013-659-8 for indecent assault and battery on a child over 14 years of age, G.L.c. 265, 13H.

Indictment ESCR2013-667-15 for assault and battery,
G.L.c. 265, sec. 13A.

Indictment ESCR2013-659-1 for rape, G.L.c. 265, sec.
22(b).

Indictment ESCR2013-659-2 for assault with intent to
commit rape, G.L.c. 265, sec. 24.

Indictments ESCR2014-1180-1; ESCR2014-1180-2;
ESCR2014-1180-3; ESCR2014-1180-4; ESCR2014-1180-5;
ESCR2014-1180-6; ESCR2014-1180-7; ESCR2014-1180-8;
ESCR2014-1180-9; ESCR2014-1180-10; ESCR2014-1180-11;
ESCR2014-1180-12 for posing/exhibiting a child in a sexual act
G.L. c. 272, sec. 29A. .

Mr. Pillier entered a plea of guilty on December 4, 2014, to all
except 2013-667-25 for which a nolle pros was issued (T 1-63;), and was
sentenced by the Honorable Judge David A. Lowy as follows:

2013-667-01 not less than 15 years and not more than 23
confinement. 2013-667-02, 2013-667-3, 2013-667-04, 2013-667-
05 concurrent with 2013-667-01.

Indictments 2013-667-06, 2013-667-07, 2013-667-08, and
2013-667-09, 2013-667-10, 2013-667-11, 2013-667-12, 2013-667-

13, 2013-667-14, 2013-659-2, 2013-659-03, 2013-659-04, 2013-657-05, 2013-659-06, 2013-659-07, 2013-659-08, 2014-1180-2, 2014-1180-3, 2014-1180-4, 2014-1180-5, 2014-1180-6, 2014-1180-07, 2014-1180-8, 2014-1180-9, 2014-1180-10, 2014-1180-11, and 2014-1180-12 five years probation concurrent to each other but consecutive to 2013-667-01.

Indictment 2013-659-01 15 to 20 years confinement concurrent to 2013-667-01.

Indictment 2014-1180-1 10 years and 1 day to 20 years confinement concurrent to 2013-667-01.

A nolle prosequi was issued in 2013-667-15. (T 1-63).

The defense filed a motion to withdraw the plea on September 18, 2017. The Commonwealth filed an objection on November 22, 2017. The court issued a partial order denying the motion on September 25, 2017, but deemed that it was not ripe for an appeal until the final order denying the motion which was issued on December 12, 2017. The defense filed a timely notice of appeal.

On May 9, 2019 the Appeals Court issued a summary denial pursuant to Rule 1:28. The appellant (petitioner) filed a timely Petition for Further Appellate Review with the Massachusetts Supreme Judicial Court, and this petition was denied on June 27, 2019.

Federal Issues Raised: The federal issues to be reviewed were initially raised in a motion to withdraw the plea in Essex Superior Court, and subsequently appealed.

B. Facts Presented:

Before receiving any of his constitutionally required warnings, Mr. Pillier was asked thirty-five times “What say you sir, in this indictment; guilty or not guilty?”. Each of the thirty-five times, Mr. Pillier answered “guilty, your honor.” (T, 4-18). After admitting that he was guilty thirty-five times, the Court informed him of the constitutional protections he waived by entering a plea, and he was informed of the facts. (T. 4-39).

After Mr. Pillier answered “guilty” thirty-five times, the Judge said, “So when you plead guilty, sir, you gave up very important rights.” (T. 24). The judge then informed Mr. Pillier of the rights he had forfeited. (T. 24-39). Further, after Mr. Pillier said “guilty” thirty-five times, the Commonwealth proffered the facts they would have presented at a trial (T. 38-44), and he was informed of the minimum and maximum sentence to which he could be sentenced at this hearing or upon a violation of probation. (T. 3-24). There was no inquiry into whether or not Mr. Pillier had been informed about the elements the Commonwealth would have to prove at trial, until after he had entered

his plea, and even at that point there was no meaningful exchange to determine whether Mr. Pillier actually grasped the elements and had the capability to apply them to the facts. (T 38).

At the conclusion of the plea and sentencing hearing, while there were no allegations of inappropriate interactions with his own three children at any time, the judge imposed a condition of probation prohibiting Mr. Pillier from having any interaction with his children, who were then seven, eight and nine years old. This special condition was to commence immediately while Mr. Pillier was incarcerated. During the fifteen to twenty-three years that Mr. Pillier would be incarcerated, and thereafter, he was not permitted to have any contact with his own children. (T 21, 61-62). The trial judge did not conduct any analysis, or specify a factual basis, to indicate how this infringement on a fundamental right satisfied strict scrutiny, or even the lower standard of being tailored to, or rationally related to, the facts of the case, or the goals of probation.

REASONS TO GRANT THE PETITION FOR WRIT OF CERTIORARI

I. THE COURT VIOLATED THE DEFENDANT'S CONSTITUTIONAL RIGHTS, AND THE DEFENDANT IS ENTITLED TO WITHDRAW HS PLEA, WHEN THE COURT ASKED HIM IN THE COLLOQUY IF HE WAS GUILTY THIRTY-FIVE TIMES BEFORE INFORMING HIM OF THE RIGHTS HE WAS FORFITING AND CONSEQUENCES OF A PLEA.

The Fifth, Sixth and Fourteenth Amendment rights to due process and to be informed of the “nature and cause” of the accusations against him requires constitutional safeguards in the plea colloquy prior to a defendant changing his plea to guilty.

The Appeals Court decision Commonwealth v. Franklin Pillier, 59 Mass. App. Ct. 1112 (2019) violated Mr. Pillier’s constitutional rights, when it determined that it was acceptable for the Court to ask a defendant to enter his plea of guilty thirty-five times before he received such constitutional protections such as: 1) hearing the rights he was waiving, 2) hearing the facts the Commonwealth would have to prove beyond a reasonable doubt at trial; 2) being informed of the maximum and minimum penalties he faced presently and if he violated probation.

The Appeals Court was also incorrect when they found that this procedure was permissible due to it being a common practice in the Commonwealth. The Appeals Court was incorrect on this for two

reasons. First, there was no evidence whether this was a common practice in the trial courts of the Commonwealth, and even if it was commonplace, it still would have been impermissible as a violation of fundamental constitutional rights.

A plea must be intelligent and voluntary. Brady v. United States, 397 U.S. 742, 728 (1970)). In order to be intelligent and voluntary, a defendant must first be informed of the rights he is waiving (right to a jury trial, unanimous verdict; proof of each element beyond a reasonable doubt, privilege against self-incrimination) (Boykins v. Alabama, 395 U.S. 238, 242-243 (1960)); the elements of the offenses to which he is entering his plea; (Marinez v Massachusetts, 530 U.S. 1281 (2000)); the facts that the Commonwealth would use to prove each element beyond a reasonable doubt; (Sullivan v. Louisiana, 508 U.S. 275, 278 (1993)); and the minimum and maximum sentence he may receive at the plea hearing and if he ever violates his probation (Brady v. United States, 397 U.S. 742, 748 (1970)).

A colloquy, and proffer must satisfy the constitutional protections, in order for it to be made intelligently and voluntarily. This is essential to satisfy due process under the Fifth and Fourteenth Amendments to the United States Constitution; and the Sixth

Amendment, which specifically guarantees that a defendant is to be “informed of the nature and causes of the accusations.”

The Court in Pillier also misinterpreted Mass. R. Crim. P. 12 (c), as allowing the Court to require a defendant to enter a guilty plea before he is provided with the requisite constitutional safeguards. Mr. Pillier would argue that this is incorrect for at least two reasons. First, Mr. Pillier interprets the statute to mean that the court would merely as an administrative process determine whether there was to be a change of plea—and not to require him to actually plea before being informed of his rights and other constitutional safeguards. Secondly, if the Appeals Court’s is correctly interpreting the rule, then the rule violates Mr. Pillier’s Constitutional rights. A statute that is unconstitutional is to be void. Montgomery v. Louisiana, 136 S.Ct. 718, 730-731 (2016).(illegal and void; cannot be cause of imprisonment).

Without the proper constitutional safeguards to ensure the defendant has received a plea colloquy with the required constitutional safe-guards, the defendant must be allowed to withdraw his plea. Mack v. United States, 635 F.2d 20 24-26 (1st Cir. 1980). Reversal of the trial court is required, and Mr. Pillier must be allowed to withdraw his plea.

While the Appeals Court referred to a requirement of “knowing and voluntary”, instead of “intelligent and voluntary”, the plea was neither without the required constitutional safeguards.

For the reasons herein, Mr. Pillier was denied his constitutional rights to due process, to not be convicted without proof of each element beyond a reasonable doubt, to hear the and effective assistance of counsel, to not be convicted without hearing the nature and causes of the charges against him, or until they are fully explained to him, as required under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

A determination whether constitutional protections are required in a plea colloquy prior to the defendant being required to assert his guilt, is a substantial constitutional issue affecting the public interest and the interests of justice. Wherefore, the defendant/petitioner’s petition for writ of certiorari should be granted.

II: A CONDITION OF PROBATION, PROHIBITING A PARENT FROM HAVING CONTACT WITH HIS OWN CHILDREN, IS AN IMPERMISSABLE GOVERNMENTAL INTRUSION ON THE DEFENDANT’S FUNDAMENTAL CONSTITUTIONAL RIGHTS, WHEN STRICT SCRUTINY IS NOT SATISFIED.

Without any findings of fact the Superior Court judge announced at the end of sentencing that as a term of probation that

was to follow Mr. Pillier's incarceration (of not less than fifteen but not more than twenty-three years), Mr. Pillier was not to have any contact with his own children. Further, this condition of probation prohibiting contact with his children was to start immediately while he was incarcerated. There was no evidence to suggest that Mr. Pillier had any inappropriate behaviors with his own children, and further, his own children would be adults in their late twenties and thirties by the time he would be released from incarceration and begin to serve his probation. Mr. Pillier would be incarcerated during all of his offsprings' childhoods. There was no factual basis presented as to how any compelling state interest would be served by prohibiting Mr. Pillier from sending cards or making phone calls to his children, or seeing them in the prison visitation room under the watchful eye of the guards and whatever family member had brought the children for a visit.

The right to parent and to raise one's own children is a fundamental constitutional right. Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942); Stanley v. Illinois, 405 U.S. 645, (1972); Hodgson v. Minnesota, 497 U.S. 417, 447-448 (1990). The integrity of the family is protected under; 1) the Due Process clause of the Fourteenth Amendment (Meyers v. Nebraska; Hodgson); the Equal Protection Clause of the Fourteenth Amendment

(Skinner v. Oklahoma; Hodgson); 3) and fundamental non-specific rights under the Ninth Amendment (Griswald v. Connecticut, 381 U.S. 479, 496 (1965); Stanley; Hodgeson). Substantive due process protects individuals from unreasonable interference in their lives. United States v. Salerno, 481 U.S. 739, 746 (1987).

The right to parent is a long-standing fundamental constitutional right. Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Government can only interfere with a fundamental right if it first satisfies a strict scrutiny review, which requires the governmental interference to be narrowly tailored to a compelling state interest. United States v. Salerno, 481 U.S. 739, 746 (1987); Clark v Jeter, 486 U.S. 456, 461 (1988). The failure of the Massachusetts Courts to apply the strict scrutiny standard of requiring this governmental interference to be narrowly tailored to a compelling state interest violates Mr. Pillier's constitutional rights.

While the government might have an interest in protecting children, since Mr. Pillier's children will be in their 20s and 30s by the time he is released, they will not be children by then and there would be no compelling government interest to protect.

The Massachusetts Appeals Court also misapplies the case of Commonwealth v. Lapointe, 435 Mass 458. 459-461 (2001). Contrary to the decision of the Appeals Court, Lapointe is not relevant to Mr.

Pillier's situation. In Lapointe, the defendant wanted to live with his children. Since Mr. Pillier will be incarcerated during the entire childhoods of his children, he will never be in a position to live with them as children. Unlike Lapointe, in order for Mr. Pillier to see his children, an adult would have to bring the children to the prison, and Mr. Pillier would never be able to be alone with his children, since all prison visits are heavily supervised. Further the restriction on Mr. Pillier having any interaction with his children also prevents him from sending them cards or talking to them on the phone. Mr. Pillier will not even be released from prison and put on probation until his children are in their 20s and 30s. This condition of probation is not only depriving Mr. Pillier of his fundamental constitutional right to be a parent, but also infringes on the First Amendment fundamental constitutional right of adults to associate with whomever they choose, as well as due process under the Fourteenth Amendment. Roberts v. United States Jaycees, 468 U.S. 609, 618 (1984); Attorney Gen. v. Bailey, 386 Mass. 367, 379-384 (1982). It is important to point out that none of Mr. Pillier's own children were ever touched inappropriately by him. Therefore, as applied to the facts of Mr. Pillier's case, the condition preventing Mr. Pillier from having contact with his own children is not narrowly tailored to satisfy a compelling state interest.

This matter concerns Mr. Pillier's constitutional rights, since the family unit is protected under the due process clause of the Fourteenth Amendment (Skinner v. Oklahoma), the equal protection clause of the Fourteenth Amendment, freedom of association under the First Amendment, and the fundamental non-specific rights under the Ninth Amendment. (Griswald v. Connecticut, 381 U.S. 479, 496 (1965)). Further, Mr. Pillier is being deprived of his due process rights under Article 12 of the Massachusetts Declaration of Rights. The prohibition against Mr. Pillier having contact must be reversed.

For the reasons herein, the condition prohibiting Mr. Pillier from having contact with his offspring is an impermissible intrusion on his fundamental constitutional rights, and is a substantial constitutional issue affecting the public interest and the interests of justice. Wherefore, the defendant/petitioner's petition for writ of certiorari should be granted.

CONCLUSION:

The petition for writ of certiorari should be granted, since for the reasons herein, substantial constitutional issues affecting fundamental constitutional rights are at issue. It would therefore be a matter of great public interest and in the interest of justice to grant the petition.

Respectfully submitted through Counsel:

/s/ Dale Marie Merrill

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APPENDIX

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COMMONWEALTH OF MASSACHUSETTS
 ESSEX, S.S. SUPERIOR COURT DEPARTMENT
 OF THE TRIAL COURT

* * * * *

COMMONWEALTH OF MASSACHUSETTS * Docket No. 1377CR00659

v. *

FRANKLIN Y. PILLIER *

* * * * *

CHANGE OF PLEA HEARING
 BEFORE THE HONORABLE DAVID A. LOWY

APPEARANCES:

For the Plaintiff, Commonwealth of Massachusetts:
 Essex District Attorney
 Ten Federal Street
 Salem, Massachusetts 01970
 By: Jean Marie Curran, Esq.

For the Defendant, Franklin Y. Pillier:
 Law Office of Michael Phelan
 616 Washington Street
 Lynn, Massachusetts 01901
 By: Michael Phelan, Esq.

Salem, Massachusetts
 December 4, 2014

Proceedings recorded by Court Personnel.
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I N D E X

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1 (Court called to order.)
2 (Defendant Present.)
3 (2:36 p.m.)

4 THE CLERK: Your Honor, calling the case of Commonwealth of
5 Massachusetts v. Franklin Pillier, AKA Luis Andino, docket
6 number is 2013-659, 2013-667, and 2014-1180. Would counsel
7 identify themselves for the record, please?

8 MS. CURRAN: Good afternoon, your Honor, Jean Curran for
9 the Commonwealth.

10 MR. PHELAN: Good --

11 THE COURT: Ms. Curran, good afternoon.

12 MR. PHELAN: Good afternoon, Michael Phelan for Franklin
13 Pillier. Mr. Pillier is seated here beside me.

14 THE COURT: Mr. Phelan, Mr. Pillier, good afternoon.

15 THE DEFENDANT: Good afternoon.

16 THE COURT: Jim, did I do a lobby form on this?

17 All right, this is on for a potential change of plea?

18 MR. PHELAN: It is, your Honor. We're going to go forward
19 with that plea today.

20 THE COURT: All right, thank you.

21 MR. PHELAN: I do have three (indiscernible - speaking away
22 from microphone at 2:37:25).

23 THE COURT: Thank you. Okay, is there going to be an
24 allocation, Ms. Curran?

25 MS. CURRAN: I don't believe so. We -- there was an
allocation on the last date and unless something changes at the

1 last minute, I don't expect any more to be said other than what
2 I will say.

3 THE COURT: Okay. All right, thank you.

4 THE COURT OFFICER: (Indiscernible - speaking away from
5 microphone at 2:38:08).

6 THE CLERK: Mr. Pillier, you just want to stand up?

7 THE DEFENDANT: Sorry.

8 MR. PHELAN: That's okay.

9 THE CLERK: Franklin Pillier, on indictment of 2013-659-
10 001, charging on the 9th day of April, 2013, in Andover, did
11 have unnatural sexual intercourse with L.R., and did -- did
12 compel said L.R. to submit by force and against her will or by
13 threat of bodily injury, to wit, Defendant's mouth and tongue in
14 victim's vaginal opening.

15 What say you, sir, in this indictment; guilty or not
16 guilty?

17 THE DEFENDANT: Guilty, your Honor.

18 THE CLERK: Indictment number 002, charging on the 8th day
19 of April, 2013, in Andover, did assault L.R. with the intent to
20 commit rape.

21 What say you, sir, in this indictment; guilty or not
22 guilty?

23 THE DEFENDANT: Guilty, your Honor.

24 THE CLERK: Indictment number 003, charging on the 9th day
25 of April, 2013, in Andover, did threaten indecent assault and

1 battery on L.R., to wit, did place her hand on his penis.

2 What say you, sir, to this indictment; guilty or not
3 guilty?

4 THE DEFENDANT: Guilty, your Honor.

5 THE CLERK: To indictment 004, charging on the 9th day of
6 April, 2013, in Andover, did commit an indecent assault and
7 battery on L.R., to wit, did place her (sic) hand on her breast.

8 What say you, sir, to this indictment; guilty or not
9 guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE CLERK: To indictment number 005, charging on the 9th
12 day of April, 2013, in Andover, did commit an indecent assault
13 and battery on L.R., to wit, did place her hand -- his hand on
14 her genital area.

15 What say you, sir, to this indictment; guilty or not
16 guilty?

17 THE DEFENDANT: Guilty, your Honor.

18 THE CLERK: To indictment number 006, charging on the 8th
19 day of April, 2013, in Andover, did commit an indecent assault
20 and battery on L.R., to wit, did place her hand on his penis.

21 What say you, sir, to this indictment; guilty or not
22 guilty?

23 THE DEFENDANT: Guilty, your Honor.

24 THE CLERK: To indictment number 007, charging the 8th day
25 of April, 2013, in Andover, did commit indecent assault and

1 battery on L.R., to wit, did place his hand on her breasts.

2 What say you, sir, to this indictment; guilty or not
3 guilty?

4 THE DEFENDANT: Guilty, your Honor.

5 THE CLERK: The number 8 -- 008, charging on the 8th day of
6 April, 2013, in Andover, did commit an indecent assault and
7 battery on L.R., to wit, did place his hand on her genital area.

8 What say you, sir, to this indictment; guilty or not
9 guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE CLERK: On indictment number 2013-667-001, charging
12 indictment dates between April 30th, 2009, and April 29th, 2012,
13 in Lawrence, did assault L.R., a child under 16 years of age
14 with the intent to unlawfully have unnatural sexual intercourse
15 with and abuse said L.R., and did unlawfully have unnatural
16 sexual intercourse with and abuse said L.R., there existing more
17 than 10 years of age difference between Franklin Pillier and
18 L.R. while L.R. was between the ages of 12 and 16.

19 What say you, sir, to this indictment; guilty or not
20 guilty?

21 THE DEFENDANT: Guilty, your Honor.

22 THE CLERK: To indictment number 002, charging indictment
23 dates between April 30th, 2009, and April 29th, 2012, in
24 Lawrence, did assault L.R., a child under 16 years of age with
25 the intent to unlawfully have unnatural sexual intercourse with

1 and abuse said L.R., and did unlawfully have unnatural sexual
2 intercourse with and abuse said L.R., there existing more than
3 10 years of age difference between Franklin Pillier and L.R.
4 while L.R. was between the ages of 12 and 16.

5 What say you, sir, to this indictment; guilty or not
6 guilty?

7 THE DEFENDANT: Guilty -- guilty, your Honor.

8 THE CLERK: To indictment number 003, charging indictment
9 dates between April 30th, 2009, and April 29th, 2012, in
10 Lawrence, did assault L.R., a child under 16 years of age with
11 the intent to unlawfully have unnatural sexual intercourse with
12 and abuse said L.R., and did unlawfully have unnatural sexual
13 intercourse with and abuse said L.R., there existing more than
14 10 years of age difference between Franklin Pillier and L.R.
15 while L.R. was between the ages of 12 and 16.

16 What say you, sir, to this indictment; guilty or not
17 guilty?

18 THE DEFENDANT: Guilty, your Honor.

19 THE CLERK: To indictment number 004, charging indictment
20 dates between April 30th, 2009, and April 29th, 2012, did
21 assault L.R., a child under 16 years of age with the intent to
22 unlawfully have sexual intercourse with and abuse said L.R., and
23 did unlawfully have sexual intercourse with and abuse said L.R.,
24 there existing more than 10 years of age difference between
25 Franklin Pillier and L.R. while L.R. was between the ages of 12

1 and 16.

2 What say you, sir, to this indictment; guilty or not
3 guilty?

4 THE DEFENDANT: Guilty, your Honor.

5 THE CLERK: To indictment number 005, charging indictment
6 dates between April 30th, 2009, and April 7th, 2013, did have
7 sexual intercourse with L.R., and did compel said L.R. to submit
8 by force and against her will by threat of bodily injury.

9 What say you, sir, to this indictment; guilty or not
10 guilty?

11 THE DEFENDANT: Guilty, your Honor.

12 THE CLERK: To indictment number 006, charging indictment
13 dates between April 30th, 2009, and April 7th, 2013, did have
14 unnatural sexual intercourse with L.R., and did compel said L.R.
15 to submit by force and against her will or by threat of bodily
16 injury.

17 What say you, sir, to this indictment; guilty or not
18 guilty?

19 THE DEFENDANT: Guilty, your Honor.

20 THE CLERK: To indictment number 007, charging indictment
21 dates between April 30th, 2009, and April 7th, 2013, did have
22 unnatural sexual intercourse with L.R., and did compel said L.R.
23 to submit by force and against her will or by threat of bodily
24 injury.

25 What say you, sir, to this indictment; guilty or not

1 guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE CLERK: To indictment number 008, charging indictment
4 dates between April 30th, 2009, and April 7th, 2013, did have
5 unnatural sexual intercourse with L.R., and did compel said L.R.
6 to submit by force and against her will or by threat of bodily
7 injury.

8 What say you, sir, to this indictment; guilty or not
9 guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE CLERK: To indictment number 009, charging indictment
12 dates between April 30th, 2008, and April 29th -- April 29th,
13 2010, in Lawrence, did commit an indecent assault and battery on
14 L.R., a child under 14 years of age, to wit, did place his hands
15 on her genital area.

16 What say you, sir, to this indictment; guilty or not
17 guilty?

18 THE DEFENDANT: Guilty, your Honor.

19 THE CLERK: To indictment number 010, charging indictment
20 dates between April 30th, 2008, and April 29th, 2010, in
21 Lawrence, did commit an indecent assault and battery on L.R., a
22 child under 14 years of age, to wit, did place his hands on her
23 breasts.

24 What say you, sir, to this indictment; guilty or not
25 guilty?

1 THE DEFENDANT: Guilty, your Honor.

2 THE CLERK: To indictment number 011, charging indictment
3 dates between April 30th, 2008, and April 29th, 2010, in
4 Lawrence, did commit an indecent assault and battery on L.R., a
5 child under 14 years of age, to wit, did place her hands on his
6 penis.

7 What say you, sir, to this indictment; guilty or not
8 guilty?

9 THE DEFENDANT: Guilty, your Honor.

10 THE CLERK: To indictment number 012, charging indictment
11 dates between April 30th, 2010, and April 20th, 2013, in
12 Lawrence, did commit an indecent assault and battery on L.R., a
13 child over 14 years of age, to wit, did place his hands on her
14 genital area.

15 What say you, sir, to this indictment; guilty or not
16 guilty?

17 THE DEFENDANT: Guilty, your Honor.

18 THE CLERK: To indictment number 013, charging indictment
19 dates between April 30th, 2010, and April 7th, 2013, did commit
20 an indecent assault and battery on L.R., a child over 14 years
21 of age, to wit, did place his hands on her breasts.

22 What say you, sir, to this indictment; guilty or not
23 guilty?

24 THE DEFENDANT: Guilty, your Honor.

25 THE CLERK: To indictment number 014, charging indictment

1 dates between April 30th, 2010, and April 7th, 2013, did commit
2 an indecent assault and battery on L.R., a child over 14 years
3 of age, to wit, did place her hands on his penis.

4 What say you, sir, to this indictment; guilty or not
5 guilty?

6 THE DEFENDANT: Guilty, your Honor.

7 THE CLERK: To indictment number 015, charging on April
8 9th, 2013, in Andover, did assault and beat L.R.

9 What say you, sir, to this indictment; guilty or not
10 guilty?

11 THE DEFENDANT: Guilty, your Honor. I hit her. Guilty,
12 your Honor.

13 THE CLERK: On indictment number 2014-1180-001, charging of
14 the 24th day of April, 2011, in the County of Essex, with
15 knowledge that L.R., date of birth 4/30/1996, was under 18 years
16 of age, or while in possession of such facts, that he should
17 have reason to know that said person was a child under 18 years
18 of age, and with lascivious intent, did hire, coerce, solicit,
19 entice, employ, procure, use, cause, encourage, or knowingly
20 permit said child to engage or to participate in any acts that
21 depicts, describes, or represents sexual conduct for the purpose
22 of representation or reproduction in any visual material or to
23 engage in any live performance involving sexual conduct.

24 What say you, sir, to this indictment; guilty or not
25 guilty?

1 THE DEFENDANT: Guilty, your Honor.

2 THE CLERK: To indictment number 002, charging the 30th day
3 of November, 2011, in the County of Essex, with knowledge that
4 L.R., date of birth, 4/30/1996, was under 18 years of age, or
5 while in possession of such facts, that he should have reason to
6 know that said person was a child under 18 years of age, and
7 with lascivious intent, did hire, coerce, solicit, or entice,
8 employ, procure, use, cause, encourage, or knowingly permit said
9 child to engage or to participate in any act that depicts,
10 describes, or represents sexual conduct for the purpose of
11 representation or reproduction in any visual material or to
12 engage in any live performance involving sexual conduct.

13 What say you, sir, to this indictment; guilty or not
14 guilty?

15 THE DEFENDANT: Guilty, your Honor.

16 THE CLERK: For indictment number 003, charging the 1st day
17 of December, 2011, in the County of Essex, with knowledge that
18 L.R., date of birth, 4/30/1996, was under 18 years of age, or
19 while in possession of such facts, that he should have reason to
20 know that said person was a child under 18 years of age, and
21 with lascivious intent, did hire, coerce, solicit, or entice,
22 employ, procure, use, cause, encourage, or knowingly permit said
23 child to engage or to participate in any acts that depicts,
24 describes, or represents sexual conduct for the purpose of
25 representation or reproduction in any visual material or to

1 engage in any live performance involving sexual conduct.

2 What say you, sir, to this indictment; guilty or not
3 guilty?

4 THE DEFENDANT: Guilty, your Honor.

5 THE CLERK: Indictment number 004, charging the 4th day of
6 December, 2011, in the County of Essex, with knowledge that
7 L.R., date of birth, 4/30/1996, was under 18 years of age, or
8 while in possession of such facts, that he should have reason to
9 know that said person was a child under 18 years of age, and
10 with lascivious intent, did hire, coerce, solicit, or entice,
11 employ, procure, use, cause, encourage, or knowingly permit said
12 child to engage or to participate in any act that depicts,
13 describes, or represents sexual conduct for the purpose of
14 representation or reproduction in any visual material or to
15 engage in any live performance involving sexual conduct.

16 What say you, sir, to this indictment; guilty or not
17 guilty?

18 THE DEFENDANT: Guilty, your Honor.

19 THE CLERK: To indictment number 005, charging the 17th day
20 of December, 2011, in the County of Essex, with knowledge that
21 L.R., was under 18 years of age, or while in possession of such
22 facts, that he should have reason to know that said person was
23 under 18 years of age, and with lascivious intent, did hire,
24 coerce, solicit, or entice, employ, procure, use, cause,
25 encourage, or knowingly permit said child to engage or to

1 participate in any act that depicts, describes, or represents
2 sexual conduct for the purpose of representation or reproduction
3 in any visual material or to engage in any live performance
4 involving sexual conduct.

5 What say you, sir, to this indictment; guilty or not
6 guilty?

7 THE DEFENDANT: Guilty, your Honor.

8 THE CLERK: On indictment number 006, charging on the 28th
9 day of January, 2012, in the County of Essex, with knowledge
10 that L.R., date of birth, 4/30/1996, was under 18 years of age,
11 or while in possession of such fact, that he should have reason
12 to know that said person was a child under 18 years of age, and
13 with lascivious intent, did hire, coerce, solicit, or entice,
14 employ, procure, use, cause, encourage, or knowingly permit said
15 child to engage or to participate in any act that depicts,
16 describes, or represents sexual conduct for the purpose of
17 representation or reproduction in any visual material or to
18 engage in any live performance involving sexual conduct.

19 What say you, sir, to this indictment; guilty or not
20 guilty?

21 THE DEFENDANT: Guilty, your Honor.

22 THE CLERK: To indictment number 007, charging on the 9th
23 day of April, 2012, in the County of Essex, with knowledge that
24 L.R., date of birth, 4/30/1996, was under 18 years of age, or
25 while in possession of such facts, that he should have reason to

1 know that said person was a child under 18 years of age, and
2 with lascivious intent, did hire, coerce, solicit, or entice,
3 employ, procure, use, cause, encourage, or knowingly permit said
4 child to engage or to participate in any act that depicts,
5 describes, or represents sexual -- sexual conduct for the
6 purpose of representation or reproduction in any visual material
7 or to engage in any live performance involving sexual conduct.

8 What say you, sir, to this indictment; guilty or not
9 guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE CLERK: To indictment number 008, charging on the 22nd
12 day of April, 2012, in the County of Essex, with knowledge that
13 L.R., date of birth, 4/30/1996, was under 18 years of age, or
14 while in possession of such facts, that he should have reason to
15 know that said person was a child under 18 years of age, and
16 with lascivious intent, did hire, coerce, solicit, or entice,
17 employ, procure, use, cause, encourage, or knowingly permit said
18 child to engage or to participate in any act that depicts,
19 describes, or represents sexual conduct for the purpose of
20 representation or reproduction in any visual material or to
21 engage in any live performance involving sexual conduct.

22 What say you, sir, to this indictment; guilty or not
23 guilty?

24 THE DEFENDANT: Guilty, your Honor.

25 THE CLERK: To indictment number 009, charging on the 10th

1 day of January, 2013, in the County of Essex, with knowledge
2 that L.R., date of birth, 4/30/1996, was under 18 years of age,
3 or while in possession of such facts, that he should have reason
4 to know that said person was a child under 18 years of age, and
5 with lascivious intent, did hire, coerce, solicit, or entice,
6 employ, procure, use, cause, encourage, or knowingly permit said
7 child to engage or to participate in any acts that depicts,
8 describes, or represents sexual conduct for the purpose of
9 representation or reproduction in any visual material or to
10 engage in any live performance involving sexual conduct.

11 What say you, sir, to this indictment; guilty or not
12 guilty?

13 THE DEFENDANT: Guilty, your Honor.

14 THE CLERK: To indictment number 010, charging on the 21st
15 day of January, 2013, in the County of Essex, with knowledge
16 that L.R., date of birth, 4/30/1996, was under 18 years of age,
17 or while in possession of such facts, that he should have reason
18 to know that said person was a child under 18 years of age, and
19 with lascivious intent, did hire, coerce, solicit, or entice,
20 employ, procure, use, cause, encourage, or knowingly permit said
21 child to engage or to participate in any act that depicts,
22 describes, or represents sexual conduct for the purpose of
23 representation or reproduction in any visual material or to
24 engage in any live performance involving sexual conduct.

25 What say you, sir, to this indictment; guilty or not

1 guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE CLERK: To indictment number 011, charging on the 26th
4 day of March, 2013, in the County of Essex, with knowledge that
5 L.R., date of birth, 4/30/1996, was under 18 years of age, or
6 while in possession of such facts, that he should have reason to
7 know that said person was a child under 18 years of age, and
8 with lascivious intent, did hire, coerce, solicit, or entice,
9 employ, procure, use, cause, encourage, or knowingly permit said
10 child to engage or to participate in any act that depicts,
11 describes, or represents sexual conduct for the purpose of
12 representation or reproduction in any visual material or to
13 engage in any live performance involving sexual conduct.

14 What say you, sir, to this indictment; guilty or not
15 guilty?

16 THE DEFENDANT: Guilty, your Honor.

17 THE CLERK: To indictment number 012, charging on the 9th
18 day of April, 2013, in the County of Essex, with knowledge that
19 L.R., date of birth, 4/30/1996, was under 18 years of age, and
20 while in possession of such facts, that he should have reason to
21 know that said person was a child under 18 years of age, and
22 with lascivious intent, did hire, coerce, solicit, or entice,
23 employ, procure, use, cause, encourage, or knowingly permit said
24 child to engage or to participate in any act that depicts,
25 describes, or represents sexual conduct for the purpose of

1 representation or reproduction in any visual material or to
2 engage in any live performance involving sexual conduct.

3 What say you, sir, to this indictment; guilty or not
4 guilty?

5 THE DEFENDANT: Guilty, your Honor.

6 THE CLERK: Please raise your right hand, sir.

7 FRANKLIN Y. PILLIER, Sworn

8 THE WITNESS: I affirm.

9 THE CLERK: Please stand, please, sir, and (indiscernible -
10 unclear speech at 2:54:23).

11 MR. PHELAN: Judge, it's my understanding that -- my notes
12 say that Mr. Pillier if the Court were to exceed a 15 to 23 year
13 sentence.

14 THE COURT: That's what I wrote down. Thank you.

15 THE COURT OFFICER: Here we go, right now, and -- and face
16 the bar.

17 There you go, sir. Just turn and face.

18 THE COURT: Hello, my name is David Lowy, the judge here in
19 the Superior Court. I'm going to ask you some questions so I
20 can make sure your decision to plead guilty today is being made
21 knowingly of your own free will and voluntarily. If I ask you
22 anything you don't understand, please let me know. And even if
23 you understand my questions, if you'd like any time to speak to
24 Mr. Phelan before you answer my questions, let me know that so I
25 can give you time to talk to him.

1 What's your full name and how old are you, sir?

2 THE DEFENDANT: My full name is Franklin
3 Pillier -- Franklin Yovani (phonetic) Pillier, and I'm 42 years
4 old.

5 THE COURT: Mr. Pillier, how far did you go in school, sir?

6 THE DEFENDANT: College one -- one year.

7 THE COURT: Have you ever been treated for a mental
8 condition, sir, or are you aware of any mental illness you now
9 have?

10 THE DEFENDANT: No, sir.

11 THE COURT: Sir, have you taken any prescription
12 medication, narcotics, or alcohol today?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Okay, now, did you hear the indictments that
15 were just read by the clerk magistrate?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did you understand those indictments, sir?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And sir, you've had enough time to talk to Mr.
20 Phelan about the indictments, sir?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And are you now offering to plead guilty to
23 those indictments?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Ms. Curran, could you please state the maximum

1 penalty, and the mandatory minimum applicable, and your
2 recommendation on the case?

3 MS. CURRAN: Your Honor, on the aggravated rape of a child,
4 which is a ten year -- more than a ten year age difference, the
5 maximum penalty is life, the minimum is ten years in the State's
6 prison.

7 On the rape of the -- rape, it is a life sentence, no
8 minimum mandatory. On the indecent assault and battery on a
9 child under 14, it's a maximum penalty of ten years in the
10 State's prison, and on the indecent assault and battery of a
11 child over 14, it's a five-year state prison sentence, and on
12 assault and battery, the maximum penalty is two-and-a-half years
13 in the House of Corrections.

14 On the posing or exhibiting a child in a state of sexual
15 conduct, the -- I think it's -- I know it's a minimum 10-year
16 sentence if one is given, to a maximum of -- I think it's a
17 maximum of 20 years.

18 MR. PHELAN: It's my understanding on that, Judge, that it
19 can be probated.

20 UNIDENTIFIED SPEAKER: Right.

21 MS. CURRAN: It can be probated, but I -- I was forgetting
22 what the maximum penalty was.

23 THE COURT: All right.

24 MS. CURRAN: I will look, as the Court is inquiring of the
25 Defendant.

1 THE COURT: Okay, thank you.

2 Before you do that, Ms. Curran --

3 MS. CURRAN: Oh, the Court wanted me to --

4 THE COURT: -- on your --

5 MS. CURRAN: -- give my recommendations.

6 THE COURT: Yeah.

7 MS. CURRAN: My recommendation is a sentence of not less
8 than 18, no more than 25 years in the State's prison, with 10-
9 years' probation on and after the Defendant's release; that
10 there be no contact between the Defendant and any of the
11 children, his children included --

12 THE COURT: Children what age?

13 MS. CURRAN: I know that they're -- they're --

14 THE COURT: Yeah, but --

15 MS. CURRAN: -- very young right now.

16 THE COURT: -- it was -- but you said no contact with any
17 children?

18 MS. CURRAN: Well, I meant no children under 16, except for
19 his children, no contact.

20 THE COURT: Okay.

21 MS. CURRAN: And their ages are --

22 MR. PHELAN: They're seven, eight, and nine, Judge.

23 THE COURT: Okay.

24 MS. CURRAN: Seven, eight, and nine presently.

25 THE COURT: Okay. Which, of course, that would -- that

1 would be stated specifically if the plea goes through, but it's
2 also within the no contact with any child under 16, obviously.

3 MS. CURRAN: It is, but once they become 16 --

4 THE COURT: Yeah, I understand.

5 MS. CURRAN: -- we'd be asking that he still not have any
6 contact.

7 THE COURT: Okay. And tell me how you're requesting the
8 sentences be imposed as far as the committed sentence and
9 probationary sentences.

10 MS. CURRAN: I would ask that --

11 THE COURT: Hold on, I don't want all the probationary
12 sentences to have mandatory minimums, obviously.

13 MS. CURRAN: Correct. So that I was going to ask for the
14 sentences on the charges that do have the mandatory minimums.
15 And then the remaining charges would all be probation,
16 I -- because the indecent assault and batteries, none of them
17 carry over 10 years, and my recommendation is the 18 to 25, so
18 I'd be asking for the commitments on the aggravated rape, and
19 then on the -- as well as several of the posing or exhibiting a
20 child in the state of nudity.

21 THE COURT: Okay.

22 MS. CURRAN: And then on several of the other offenses of
23 posing or exhibiting, he'd be on probation.

24 THE COURT: Okay. And -- okay, at the lobby conference, I
25 thought your recommendation was 20 to 25? Your recommendation

1 is 18 to 25; is that right?

2 MS. CURRAN: My recommendation is what I made back on that
3 last date, and so if I misspoke and said 18, I had that in my
4 head, and my recommendation is 20 to 25.

5 THE COURT: Okay. All right, and you're recommending a
6 ten-year minimum and up to what, ten years to --

7 MR. PHELAN: We -- I've spoken with Mr. Pillier, and we
8 have a recommendation for the Court, we're going to be seeking a
9 10 to 15-year period of incarceration of the aggravated rape,
10 and probation on the other matters. We do have an argument and
11 reasons why we're asking for that sentence.

12 THE COURT: Okay, so I may impose any sentence provided by
13 law up to the maximum penalty. I may not impose a sentence less
14 than the mandatory minimum. However, if I impose a sentence of
15 anything less than 15 to -- anything more than 15 to 23 years in
16 State prison with probation from and after, you may withdraw
17 your plea and still have a trial. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Sir, for the sentences that you're on probation
20 for, if you violate your probation, your probation could be
21 revoked. If it is revoked, you'd be sentenced for up to the
22 maximum penalty and no less than any mandatory minimum if you
23 are sentenced on a charge that carries a mandatory minimum, but
24 it doesn't have to be imposed, specifically, posing or
25 exhibiting a child in a state of sexual conduct; do you

1 understand that, sir?

2 THE DEFENDANT: Yes -- yes, your Honor.

3 MS. CURRAN: And I would indicate to the Court that on that
4 charge of posing or exhibiting, it's a minimum of 10, maximum of
5 20, and it can be probated.

6 THE COURT: So when you plead guilty, sir, you give up very
7 important constitutional rights. You have a right to a fair and
8 impartial trial on these indictments before a judge or a jury.
9 At your trial, sir, you'd have a right to face your accusers.
10 Mr. Phelan in your presence, could confront and cross-examine
11 the Commonwealth's witnesses. You have a right at your trial to
12 present your own evidence, call your own witnesses, and if you
13 want to take the witness stand and tell the jury your view of
14 what happened, you have a constitutional right to do that, as
15 well.

16 Now, while you have a right to present your own evidence,
17 and call your own witnesses, you also have a constitutional
18 right not to. What I mean by that is, you have a right against
19 self-incrimination. You're not required to present any evidence
20 on your own behalf, the Government, they couldn't comment on it
21 if you chose not to. And the Government, the Commonwealth,
22 bears the burden of proving each of these indictments. And the
23 standard of proof that they face is proof beyond a reasonable
24 doubt.

25 If you want a jury trial, sir, this is how it will

1 be -- it'll work. Citizens will be called in randomly from the
2 community for jury duty. You and Mr. Phelan would be involved
3 in the selection of 12 jurors to sit on your case. The verdicts
4 of the jury would have to be unanimous; all 12 sitting jurors
5 would have to agree as to each indictment whether you are guilty
6 or not guilty.

7 Now, you could also request to have a trial in front of a
8 judge instead of a jury; we refer to that as a bench trial. In
9 a bench trial, the judge still retains the responsibility, just
10 like here, sir, you would have at a jury trial: the
11 (indiscernible - unclear at 3:03:24) of law or issues of
12 evidence. And if the Government met the burden of proof
13 applicable in all criminal trials of proof beyond a reasonable
14 doubt, the judge would sentence.

15 The difference is this: at a bench trial in front of a
16 judge, it's the judge as opposed to 12 jurors who decides the
17 facts and decides whether or not the charge or charges have been
18 proven beyond a reasonable doubt. Sir, do you understand all
19 those constitutional and statutory rights?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: and do you wish to give them up, sir, by
22 pleading guilty today?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: The waiver forms that you signed, sir, did you
25 understand the rights explained in these forms?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you have the benefit of Ms. Curran's advice
3 before you signed the forms, sir?

4 MS. CURRAN: Mr. Phelan's.

5 THE COURT: Ms. -- Mr. Phelan's advice before you signed
6 the forms?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you wish to give up the rights explained
9 in these forms by pleading guilty today, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: All right, sir, what I'd ask you to do is
12 please listen carefully to the Prosecutor. She's going to
13 provide a summary of what she believes the Commonwealth's
14 evidence would be. I need to make sure you understanding and
15 accept the evidence. If you don't, you'll have a chance to let
16 me know about it, and there's a factual basis for your plea.

17 Ms. Curran, please.

18 MS. CURRAN: Your Honor, on April 9th of 2013, officers of
19 the Andover Police Department were sent to investigate
20 allegations of a sexual assault. Ms. L.R. had -- had stayed
21 home from school that particular morning. There was a call
22 placed to her home, and she was supposed to be at school,
23 however, it's my understanding it, and I'll be saying it further
24 within the police report, that the Defendant had called her
25 in -- out that particular day. According to the school, they

1 believe that Mr. Pillier was at work and they contacted him to
2 say L.R. needs to come to school, she can't be out of school,
3 she has an event that she wants to be in and she's not going to
4 be allowed to attend that event if she doesn't go to school.

5 Mr. Pillier suggested that he was at work, but that he
6 would go and get her, and ultimately, Mr. Pillier brought her to
7 school on that day. When she arrived at school, it was in and
8 around that time that she disclosed that on that particular
9 morning that she was awoken to find the Defendant touching her.
10 What -- now, L.R., her date of birth is April 30th of 1996, and
11 so on this date, April 9th, she was 16, almost 17 years of age.
12 She -- she arrived at school about 11:15.

13 She had indicated on that morning she had woke up early,
14 however, she was a little tired and she went back to bed. She
15 described to the police how that she is a light sleeper. She
16 usually uses her cell phone to wake her up, and however, she
17 thinks her alarm was shut off. She awoke to being touched by an
18 individual. She described to the officers that she was being
19 touched all over. She described that the individual's hands
20 were on her breasts, as well as her genital area, that the
21 individual put his fingers inside of her vagina. That also, he
22 put his mouth and tongue in and around her vagina, and that she
23 described that happening on the 9th.

24 She did say that she then woke up and looked and saw that
25 it was Franklin Pillier. And she went on later in time to

1 describe how this was not the first time that this had happened.
2 She would always be sleeping, and the Defendant would come into
3 her room or she would be brought to her mother's room, and I'll
4 describe that momentarily.

5 On this particular occasion, she looked up, saw that it was
6 him, she was telling him to stop, and at one point she described
7 having been hit by him harder than she had ever been hit and
8 that in a sense was what caused her to finally tell what had
9 happened. She talked about how she had felt that for -- this
10 had been going on from around the time towards the end of her
11 12th year to her 13th year was when these things started, and it
12 was continuing on through her 16th birthday into her 17th
13 birthday. And she had never told anyone, and how that was
14 difficult for her, but finally on this occasion she had changed
15 schools; she had originally been in the Lawrence school system,
16 had moved to the Andover school system. And because she was a
17 new student in the school system, there was a little bit more
18 focus on trying to integrate her with -- into the schools, and
19 she felt comfortable talking and telling what had been going on
20 on that April 9th, partly because of the positive nature of the
21 school system, but also because she had been hit on this
22 occasion and was very concerned.

23 She indicated that the day before -- excuse me -- she had
24 indicated that she had lived in the Andover town for four
25 months, and before that had lived in Lawrence. She described

1 that on the day before she had been laying on the couch, she was
2 on the first level apartment, and she felt touching and
3 movement, and then when she opened her eyes she saw that she was
4 in her mother's bed, which is in a room that's adjacent to the
5 living room where she originally had fallen asleep on the couch.
6 Again, she saw that Franklin Pillier was with her. He touched
7 her breasts and vaginal area, her genital area with his hands,
8 he put his fingers inside of her vagina, he got on top of her,
9 was trying to penetrate her, and told -- she did say that she
10 was trying to stop him from that happening, she was trying to
11 move around and maybe kind of roll over.

12 She originally had been sleeping and then pretended to be
13 asleep, however, he would turn her back over, hold down her
14 legs, keep her legs open and her arms down, and was trying to
15 have intercourse with her. And he also, told her to loosen up.
16 He put his hands on her, meaning he had put his -- her hand on
17 his penis and had her move her hand up and down on his penis,
18 and she had done that.

19 She was asked whether there were other times, and that's
20 when she had indicated that in and around the time when she was
21 13 years of age, this had been going on at a number of different
22 addresses that they lived in and around the Lawrence area. The
23 Defendant's date of birth was May 28th of 1972, and at that time
24 he was 41 years of age. When asked how it was she ended up in
25 the bedroom, she just believes that she was brought to the

1 bedroom and placed on the bed, and that as I said, it was a
2 first-floor room.

3 Those indictments, or some of those indictments relate to
4 the events, and the -- the events on the 9th of April. And so
5 there was one indictment for the Defendant placing his mouth and
6 tongue in the victim's vaginal opening, that on the 9th. On the
7 8th, the Defendant had tried to force himself -- his penis into
8 her vagina; that was the assault with intent to commit rape.
9 And the -- there was an indecent assault and battery where he
10 placed her hand on his penis, and also he placed his hands on
11 her breasts on the 9th when he had come into her room. Also on
12 the 9th, he did put his hand on her genital area, as well as
13 putting his -- her hand on his penis that, also on the 8th. And
14 again on the 8th, there was another indecent assault and battery
15 when he touched her breasts, and on the 8th, placing his hands
16 on her genital area. And those were the facts that I had
17 related to those event.

18 There was a subsequent jury present -- grand jury
19 presentation, and that was just a week or so later where there
20 was information provided to the grand jury where some of it was
21 when in the first grand jury presentation there had been
22 incidents where there were -- where she had described having
23 been sexually assaulted in the years from the time she was in
24 and around 13 up until she was 16 years of age. Those would be
25 the aggravated rapes. The grand jurors were told that there

1 were three counts of unnatural, which was one of the unnaturals
2 was when the Defendant put his fingers in her vagina; one count
3 was oral sex performed by L.R. on the Defendant, and one was
4 from the Defendant performing oral sex on L.R. And then those
5 were the unnaturals. And there was one count of natural sexual
6 intercourse. The grand jurors, and the testimony would come
7 during the trial that L.R. would indicate that many times during
8 the time over the ages, these were the kinds of sexual conduct
9 that the Defendant engaged in.

10 In a moment I'll be reading some indictments that relate to
11 posing or exhibiting a child in a state of nudity or in a state
12 of sexual conduct. Those were based on videos that were
13 obtained from the Blackberry that L.R. had identified to the
14 police as a Blackberry the Defendant kept in his possession that
15 he didn't use as a phone; he used it as a form of picture
16 taking. When the police ultimately recovered that Blackberry
17 phone it was sent for an analysis, and it took a substantial
18 amount of time, but on that there were a number of occasions,
19 both before L.R. turned 16 and after L.R. turned 16 where there
20 was sexual conduct that was captured on the video. And in a
21 moment I will describe that.

22 On the indictments for which the Defendant is pleading
23 guilty on 677, there were the aggravated rape charges, and then
24 there were four counts of rape as L.R. had turned 16 years of
25 age, and those were without her consent. Those were also

1 identified to the grand jurors.

2 And if I could just have one moment.

3 And on those rapes where she was over 16 years of age,
4 there was one natural sexual intercourse and three unnatural
5 sexual intercourse. Again, those similar conducts, and I will
6 be further describing those in a moment based on the videos.

7 There was also the grand jury indictments in 2014, 1180,
8 based on those videos that I had described to the Court. And in
9 it, those videos showed the Defendant -- a resume of the
10 Defendant's was on the Blackberry. There was also pictures of
11 the Defendant, clothed and unclothed, on the -- on the -- the
12 phone, and so that was what the Commonwealth would allege was
13 the Defendant's phone, that he was the one that was videoing and
14 photographing.

15 There were a significant number of photographs of L.R., or
16 what the Commonwealth believes to be L.R., in various stages of
17 dress where she would be in some bed with different coverings.
18 The Defendant would take photographs of her in different pairs
19 of underwear. And then there were, as I said, those videos.
20 And the videos depicted a number of dates: they were on
21 November 24th of 2011; November 30th, 2011; December 1st, 2011;
22 December 4th, 2011; December 17th, 2011; January 28th, 2012;
23 April 9th, 2012; April 22nd, 2012; January 10th, 2013; January
24 21st, 2013; March 26th, 2013; and finally on the day that L.R.
25 had disclosed to the school, April 9th of 2013.

1 Those videos depicted much of the following. When L.R. was
2 under 16 years of age, there were a number of videos of the
3 Defendant's tongue in and around the vagina of L.R. There was
4 videos of the victim's mouth on the Defendant's penis; there was
5 video of the Defendant's tongue, again, in the victim's vagina;
6 the Defendant's fingers in the rectal opening of L.R.; the
7 Defendant's tongue, again, in her vagina. There was a foreign
8 object, a dildo, that had been placed into her vagina. All of
9 these occurring in and around 2011 and 2012, and all of those
10 occurring before L.R. turned 16 years of age.

11 Once she had turned 16 years of age and while she was
12 living in Andover, there -- of the videos that were presented to
13 the grand jury, there were two unnatural sexual intercourse,
14 which was the Defendant's tongue in the victim's vagina, there
15 was the Defendant's finger in the victim's vagina, another where
16 the Defendant's tongue was in the victim's vagina; there were
17 two where the Defendant's penis was in the victim's vagina, and
18 another with the Defendant's penis in the vagina. And those
19 were all delineated by date and type of event.

20 L.R. had described those events occurring in the grand jury
21 of May 22nd; this was through a police officer, as well as her
22 testimony on May 16th of 2013. And she described how on many
23 occasions that these things were happening, he was touching her
24 breasts, he would touch her vaginal area, and she had not ever
25 told anyone that any of this was going on, but as I had

1 indicated, she described that when she was punched that
2 particular day on April 9th, that's what ultimately caused her
3 disclose the abuse that had been ongoing from towards the end of
4 her 12th year to when she was 13, through 16 and into her almost
5 17th birthday.

6 THE COURT: All right, thank you, Ms. Curran.

7 Mr. Pillier, what the Commonwealth just said happened, is
8 that what happened, sir?

9 THE DEFENDANT: Yes, except for the fact that the punching,
10 I don't -- I didn't want to punch her.

11 THE COURT: All right, well, what do you want to do
12 about -- do you want to -- what's your position, Ms. Curran, on
13 the -- on the plea?

14 MS. CURRAN: If the plea will go through, I will
15 administratively deal with it.

16 THE COURT: And do -- do you admit everything else Ms.
17 Curran said is true?

18 THE DEFENDANT: Yes, your Honor. Yes, your Honor.

19 THE COURT: Are you pleading guilty today willingly of your
20 own free will and voluntarily, sir?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Has anyone forced you to plead guilty or
23 threatened you to get you to plead guilty, sir?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Have you had enough time to speak to Mr. Phelan

1 about this case, your rights, possible defenses, and the
2 consequences of your plea, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You understand when you plead guilty, sir, a
5 jury won't hear about any potential defenses?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Any motion to suppress, Mr. Phelan, in the
8 case?

9 MR. PHELAN: There was not, Judge.

10 THE COURT: When you plead guilty any motions to suppress
11 that might have been heard won't be heard by a judge in the
12 Superior Court, there will be no review of suppression issues by
13 a higher court. Do you understand that, sir?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you believe Mr. Phelan is doing his best for
16 you and representing you fairly, sir?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And have I confused you about any of my
19 questions, sir?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Sir, as I understand it, you're pleading guilty
22 to each of these indictments, other than the straight assault
23 and battery indictment, because you are guilty and for no other
24 reason; is that correct, sir?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Sir, if you're not a citizen of the United
2 States, you're hereby informed that a conviction of these
3 charges (indiscernible - unclear speech at 3:21:08) the result
4 of deportation will exclude you to the admission into the United
5 States or deny you of your naturalization under the laws of the
6 United States. If you are a citizen, nothing happening today
7 will affect your citizenship.

8 By pleading guilty to these indictments, you'll be required
9 to provide a sample of your blood, hair, and/or saliva to the
10 State Police Crime Lab. You will pay for the cost of that
11 sample, unless you are indigent, that sample will become part of
12 the State DNA database. Failure to provide such a sample will
13 constitute a violation of probation.

14 By pleading guilty to these indictments charging you with
15 sexual offenses, you will be required to register as a sex
16 offender with the Sex Offender Registry Board. To provide any
17 information relative to change of address, intended change of
18 address, to the Board. You will be required to submit
19 documentary evidence relative to your obligation to register as
20 a sex offender, your risk of reoffending, and your degree of
21 dangerousness that you pose to the public. Failure to register
22 would constitute a violation of law, subjecting you to criminal
23 penalties and constitute a violation of probation.

24 By pleading guilty to these indictments involving the
25 aggravated rape and the indecent assault and battery under 14,

1 and indecent assault and battery over 14, by pleading guilty you
2 may be subject to a separate civil proceeding pursued to our
3 authorizing a civil commitment of you as a sexually dangerous
4 person. Either the District Attorney's office or the Attorney
5 General's office may petition the court for a probable cause
6 hearing to determine whether you should be committed to the
7 Massachusetts Treatment Center for the purpose of an examination
8 and diagnosis, and they may thereafter petition the court to
9 determine whether you are in fact, are a sexually dangerous
10 person.

11 And if a judge or a jury so determines that you are a
12 sexually dangerous person, you may be committed to the treatment
13 center for a period of a day to life unless and until you are
14 discharged as no longer being sexually dangerous.

15 Do you understand all of these collateral consequences of
16 your plea, sir?

17 THE DEFENDANT: Yes.

18 MR. PHELAN: I did go over the sexual (indiscernible -
19 unclear speech at 3:23:31) person statute with Mr. Pillier --

20 THE COURT: All right.

21 MR. PHELAN: -- before this.

22 THE COURT: Thank you. Mr. Pillier, this -- these
23 aggravated rape and rape -- aggravated rape charges and rape
24 charges constitute predicate offenses under the habitual
25 offender statute. If you are convicted a third time of a

1 predicate offense under the habitual offender statute, and the
2 previous two offenses have had a penalty of more than three
3 years in state prison, you would be required to receive the
4 maximum term for any subsequent offense, and the sentence
5 couldn't be reduced. You'd be ineligible for probation, parole,
6 work release, furlough, or receive any deduction in the sentence
7 from earned good time. Do you understand that collateral
8 consequence of your plea, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Sir, could I ask you to please step down with
11 Mr. Phelan?

12 All right, Ms. Curran, is there a -- let me ask Mr. Phelan
13 a couple of questions first, and then I'll ask you about any
14 further allocation.

15 Mr. Phelan, did you have a chance to review and discuss the
16 elements of the indictments with your client?

17 MR. PHELAN: I did.

18 THE COURT: And do you believe his plea is being made
19 knowingly of his own free will and voluntarily?

20 MR. PHELAN: I do.

21 THE COURT: I find the plea is being made knowingly,
22 willingly, and voluntarily. The Defendant understands the
23 nature of the charges and the consequences of the plea, and the
24 plea is hereby accepted.

25 THE CLERK: Does the Commonwealth move for sentencing?

1 MS. CURRAN: Your Honor, the Commonwealth moves for
2 sentencing.

3 THE COURT: Any further requests of the victim and/or her
4 family to allocate?

5 MS. CURRAN: No, your Honor.

6 THE COURT: All right, I'll hear you on disposition.

7 MS. CURRAN: Your Honor, as I indicated on the date that we
8 did our lobby, this was a case that Mr. Phelan and I had talked
9 about possibly resolving. And when I went to the victim, she
10 indicated that she wanted the Defendant to get the maximum
11 possible sentence. And many times when we try to resolve cases
12 early, it's to not have to put the victim through the -- the
13 difficulties of having to testify and the -- the difficulties of
14 a trial.

15 However, L.R. for -- I think she's now 19 years old, is
16 very, very mature for her age. She wants to go off to college,
17 she's about to start pretty soon in January, and she was
18 concerned that the Defendant's behavior would not be punished
19 for what it was. I had seen the videos and L.R. had asked the
20 Court, and I know that I had brought the videos to the
21 courthouse so that the Court could see the videos. And
22 not -- we don't always have videos and we all hear these
23 allegations many times, but it's not until you see it happening,
24 how in a sense, difficult it is to look at.

25 It's difficult for us to hear these allegations, but it's

1 difficult when a defendant, as this Defendant did, took a
2 Blackberry and -- and held that Blackberry in a way that only
3 showed, most times, the genital areas of this young woman. And
4 it showed him putting his fingers in her vagina, putting his
5 penis in her vagina, putting his -- his fingers in her rectum,
6 putting a -- a foreign object in her vagina, him performing oral
7 sex on her, and her performing oral sex on him. And those
8 images are the images that L.R. lives with on a daily basis.

9 And those are the images that the Defendant put on his
10 Blackberry so that he could memorialize them for himself. It
11 was a Blackberry that he carried with him, it was a Blackberry
12 that the police officers did find, and it took, as I said, a
13 significant amount of time for the police to send them off
14 because the resources are such that it takes a long time. But
15 once these videos were recovered, as well as all of the
16 photographs, because as one scrolled through the disk, and this
17 is the disk that the Court had the opportunity to see was part
18 of the forensic report. And so what it did was it captured the
19 images of L.R. in her underwear, L.R. in bed, L.R. with her
20 breasts exposed.

21 Now, the indictments only go towards -- for the posing or
22 exhibiting the videos themselves, but as one looks through the
23 disk, it's very, very sexualized, what the Defendant is doing.
24 And how he's focusing only on the genitals of this young woman
25 in various locations because one can see the bedding changes and

1 the items that surround her and the clothing that she's wearing
2 all changes.

3 But the overriding thing that I think that your -- that
4 anyone who's seen the videos are left with, and what L.R. wanted
5 the Court to see. I think it's embarrassing for a young person
6 to say, please, I want you to look at these videos of what this
7 man who was my stepfather did to me. But for her it was so that
8 the Court understood the magnitude of what it was that she
9 experienced, and the magnitude of what she needs to sort of in a
10 sense, put away now that this case hopefully will resolve itself
11 so that she can go on and make of her life what she chooses to
12 make of her life, and not to dwell on what someone else did to
13 her when she was 13, 14, 15, 16, and 17 years of age.

14 But as I said, what I felt was important for the Court to
15 see was how the pictures were posed so that one saw that he only
16 focused on her genital areas. And that every once in a while,
17 maybe two or three videos, the Court could see her face, but
18 generally it appeared, and what L.R. had described to the police
19 is, she would wake up to this happening to her. This wasn't as
20 if when she was underage, she wasn't of age to consent, but when
21 she became 16, these things were happening to her when she would
22 wake up. And sometimes she would fight him off in the sense of
23 pushing him away, and other times she would just stay with her
24 eyes closed because to acknowledge what was going on was
25 difficult for her.

1 And so difficult that she couldn't tell her mother, and it
2 created a schism between the two of them for some period of
3 time. And so it's for those reasons because L.R. wanted the
4 case to go to trial, for the Defendant to get the full impact of
5 a sentence. And I know the Court said, well, maybe, you know,
6 the Defendant may not be guilty if the sentence is the sentence
7 that the Commonwealth asks for, the 20 to 25 years. L.R. is
8 ready to get on that stand --

9 THE COURT: Well, let me just sort of be direct about it
10 then. It's an executive branch prerogative, I guess, and -- and
11 you know, it -- it's not that one can't, unfortunately,
12 visualize the evil without seeing the videos, but the -- the
13 nature of the videos are, as you suggest, but give more detailed
14 view than -- than testimony really ever could from the most
15 articulate victim in the -- in the world. But you know, there's
16 20 to 25 years as a recommendation is -- is way below the value
17 of the case. I mean, 20 to 25 years is not what a crime like
18 this is -- is worth. I mean, a life sentence and a life
19 sentence from and after isn't.

20 But my question for you is, I mean, it's really an
21 executive branch prerogative, but if I impose a 15 to 23-year
22 sentence, in the -- if he's not paroled he's 65. If there's
23 ever a case where the Commonwealth is going to move for a civil
24 commitment as a sexually dangerous person, it's this case. It's
25 not an executive branch prerogative, the Commonwealth has

1 to -- I mean, it's an executive branch prerogative; the
2 Commonwealth, you know, understands that -- that any sentence,
3 whatever it is, is not going to be commensurate with the horror
4 of the crime. And the question is, what -- what is gained by
5 that additional amount of time considering the posture this case
6 is in, and -- and the Defendant's age, considering, you know,
7 what's involved. Indicated that she wants to put it behind her;
8 I don't -- I don't blame her, of course she does.

9 So you know, I guess I'm saying sometimes you've got to be
10 careful what you ask for.

11 MS. CURRAN: Well, I understand. I -- I make the point
12 just so that the Court understands, there are many times when
13 the Commonwealth will give a lesser recommendation because it
14 avoids for all, having to take the witness stand. The Defendant
15 has every right to plead guilty, and I know that the Defendant
16 wanted to do a lobby conference. So the Commonwealth had to
17 come to a recommendation that looked at the feelings of the
18 victim, as well as what the Commonwealth's job is because I'm
19 not the -- the victim's attorney; I'm the Commonwealth's
20 attorney.

21 And one of the requirements is that the Commonwealth
22 present the Court with a recommendation that's based on the
23 crime and what it is we all try to strive for when we look at a
24 particular fact -- set of facts and circumstances.

25 THE COURT: Well, I guess that's my -- that's my point. I

1 understand you're taking into an acceptance of responsibility,
2 which obviously has a value of a victim of this type of horrible
3 crime. But that when you say that, you know -- I mean, you
4 know, what -- what strength and bravery to -- to be willing to
5 take the witness stand, but considering that -- that -- the
6 recommendation, there must be some factoring in of that it
7 resolves short a trial.

8 MS. CURRAN: I think that's why the Commonwealth's
9 recommendation is as it is, and not as the Court said it's worth
10 so much more if one were to see the videos at a trial and to
11 hear her.

12 THE COURT: All right, do you want to add anything else?

13 MS. CURRAN: I don't.

14 THE COURT: Mr. Phelan.

15 MR. PHELAN: Judge, I know that I've given you some of the
16 background of Mr. Pillier, and I'll probably go back to this
17 at -- at the end. But I first met Mr. Pillier in the Lawrence
18 District Court in -- in the lockup, and we had a brief
19 conversation about what he's being charged with and the
20 seriousness of the offense. And I can tell you on that day, he
21 told me that he was guilty of the offenses, and that he wanted
22 to resolve the matter knowing that he was wrong. And that's
23 something that's almost unheard of with someone with these types
24 of charges.

25 There are many times that these cases come before the Court

1 where evidence can be overwhelming and it can be the so-called
2 slam dunk of the Commonwealth. However, the case still goes to
3 trial because someone cannot step to the plate and come forward
4 to the Court and say that they are, in fact, guilty of these
5 offenses.

6 THE COURT: Now, that's a -- that's a very fair point, Mr.
7 Phelan. That -- that's a fair point.

8 MR. PHELAN: And so you may ask why are we at this posture
9 now on the case, why is it a lengthy period of time from when he
10 was first charged in the Lawrence District Court? It is that
11 once he got arraigned in the Superior Court, myself
12 communicating with Ms. Curran indicated that there potentially
13 could be more indictments coming down. So we waited for those
14 indictments to come down for the sole purpose of when they did
15 come down that we could tender a plea of all indictments before
16 the Court at one time.

17 So when we come before the Court, we should be looked at as
18 if we're coming forward on an early disposition session because
19 he is, in fact, coming here at the earliest possible time when
20 all these cases have been brought to light before the Court.

21 Briefly, Mr. Pillier is 42 years of age. He was born in
22 New York, he attended East Manhattan High School and he had a
23 year of community college. He took a business administration.
24 Since on, went and got -- got a license in real estate and life
25 insurance so that he could sell that. He did have some problems

1 down in New York 22 years ago, and then he moved up to Lawrence,
2 and started a family again.

3 He does have children, seven, eight, and nine years of age,
4 and he has the stepchild, L.R., and for which he's before the
5 Court on. He understands it has taken a family -- the family
6 toll. But he did also, on his own, write a letter -- or a -- a
7 letter of apology, and he had asked that I read this to the
8 Court.

9 THE COURT: Ms. Curran, do you want -- does -- does the
10 victim want it or not, if it's an apology? Why don't you -- why
11 don't you check if --

12 MR. PHELAN: The reason why Mr. Pillier asked me to read
13 it, Judge, is he doesn't feel that -- he would like to -- he
14 doesn't feel that he's allowed to stand up and -- and face L.R.
15 today.

16 THE COURT: Yeah. No, I mean, he can say anything he wants
17 to -- to the Court, but if -- let me see what the --

18 MS. CURRAN: She would prefer not.

19 THE COURT: Okay, why don't I read it then, please?

20 And if there's a -- a request that it not be shown to her,
21 Ms. Curran, obviously, that will be honored, as well.

22 (Pause.)

23 MR. PHELAN: Can I continue, Judge?

24 THE COURT: Sure, please.

25 MR. PHELAN: Judge, I know you just read the letter that

1 Mr. Pillier prepared for the Court. The -- the edits in ink
2 were by me. The one thing about that letter that should jump
3 out at you is that many times people come before the Court and
4 it's a story of woe me, give me a lighter sentence. In fact,
5 the letter was not written like that, but it was heartfelt
6 apology to L.R. It was a -- more or less showing the Court that
7 he has done wrong, showing the Court that he has basically
8 ruined his family from not just L.R., but his other children
9 with not having any contact with them, and a -- at one point, a
10 good relationship with his wife.

11 Mr. Pillier, since he's been in custody, has come to me and
12 he knows that he is going to be incarcerated; he knows he's
13 going to be incarcerated for at least a ten-year period of time.
14 He has come to me and he has on own, has explored which prisons
15 have sexual offender treatment available to him so that he can,
16 when he's in there, put his time to some use trying to put
17 whatever problem he has behind him.

18 The sentence we ask for is -- is whenever someone gets a
19 sentence, especially in a charge of this nature, many times they
20 focus on that bottom number. And that bottom number, whatever
21 that is, is not a number that's given away easily. Anyone
22 that's a sex offender and goes to state prison with
23 that -- those -- a range of numbers, quite often does the top
24 number. It's extremely difficult to make parole. In order to
25 make parole, Mr. Pillier would have to be a model prisoner. And

1 a model prisoner on top of not getting into trouble while he's
2 in state prison, must include participation in some sort of sex
3 offender treatment program while he's incarcerated, and of
4 course, it would help him when he gets to, at any point during
5 his sentence, whether he's going to be a candidate for the
6 Commonwealth to file a sexually dangerous person petition.

7 Mr. Pillier wants to make it so that when he does
8 eventually, hopefully, some day make it out into the community
9 that he's not going to be one that would be reoffending again.
10 He knows, also, that upon his release that he's going to be on
11 probation for a lengthy period of time, perhaps another decade.
12 That conditions of that probation of -- on top of no contact
13 with many people of many ages, is that he's going to have to
14 register, and he's likely going to be a level 3 sex offender and
15 so everyone is going to know where he lives and what he does.

16 We're asking for the 10 to 15-year sentence, Judge. And
17 ten years would be the absolute minimum that he would get out,
18 if things went well. Any bump in the road whatsoever, or if
19 someone on the parole board just decides that he's not a
20 candidate at ten years to get out, he's going to do that
21 additional five years.

22 Furthermore, we -- we are asking that the -- the posing a
23 child in the state of nudity, I believe it's the -- the other
24 statute, that that be given probation. And the reason being is
25 twofold: number one, if Mr. Pillier were to violate his

1 probation for any reason whatsoever, that would instantly give
2 him another decade back in prison; secondly, had that matter
3 been indicted in the beginning with this one, it would've run
4 concurrent, quite frankly, with any sentence that -- that
5 would've been given by the Court. And by us waiting for the
6 Commonwealth for their indictments to come forward, it's
7 actually given him an additional time for a period of
8 incarceration.

9 And finally, I'd just like to say that Mr. Pillier has
10 stepped to the plate early. He's truly apologized. He knows
11 that he has done wrong; he knows that he's going to do a lengthy
12 period of time; he would like to make it out someday. And he
13 knows that he's ruined his family, and he knows that all that
14 happened because of him and for no other reason. So we ask that
15 you accept our sentence.

16 THE COURT: All right, thank you, Mr. Phelan.

17 Even when there's, you know, overwhelming evidence, as
18 there obviously was in this case, acceptance of responsibility
19 is important, and hopefully helpful to L.R. and the case, maybe
20 helpful in having this not define her whole life and understand
21 that everything that happened, zero percent of it was her fault
22 or anybody else's fault. The only fault was with the Defendant.

23 There's no sentence that's enough time for what happened.
24 Certainly, 15 to 23 years in state prison is a long time; it's
25 not long enough, but it's a long time. And based on the entire

1 sequence of events, that's the sentence that I would impose on
2 indictments 001 through 004 of 667. On 005, 6, 7, 8, 9, and 10,
3 11, 12, 13, and 14 -- excuse me -- on 001 through 005 would be
4 15 to 23 years in state prison. There's 15 to 23 on 1 -- 001
5 through 004, 15 to 20 on 005. The reason for that is so that
6 the prison sentences are not just on the aggravated rape; that's
7 the reason for that. 006 through 0014 (sic), would be five
8 years' probation from and after. I'll go over the conditions
9 shortly.

10 On 2013-659, 001, that would be 15 to 20 years in state
11 prison. And 002 through 008, would be five years' probation
12 from and after.

13 On the posing or exhibiting a child in a state of sexual
14 conduct, I believe that the seriousness of those offenses
15 require at least one of them be a prison sentence. So 001 would
16 be 10 to 11 years in state prison, and 002 through 00 -- through
17 012, would be five years' probation from and after.

18 MR. PHELAN: Judge, wouldn't sentence 001 in effect, be
19 exceeding the 15 to 23?

20 THE COURT: No, I -- I hope I said 15 to 20 --

21 MR. PHELAN: I'm sorry.

22 THE COURT: -- on the rapes, on the straight rape, 15 to 23
23 on the aggravated rape.

24 MR. PHELAN: Right, but by sentencing him to ten years,
25 since we waited so long for the Commonwealth to bring this

1 indictment forward, isn't that going to give him, in fact, a
2 bigger bottom number?

3 THE COURT: No.

4 MR. PHELAN: I -- I might be confusing myself.

5 THE COURT: You know, he's going to get credit, right?

6 THE CLERK: No, it won't.

7 THE COURT: What?

8 THE CLERK: It's a concurrent.

9 THE COURT: It's concurrent.

10 THE CLERK: (Indiscernible - speaking away from microphone
11 at 3:50:52).

12 THE COURT: It's a concurrent sentence.

13 THE CLERK: Yeah.

14 THE COURT: Well, think about it for a moment while I'm
15 talking -- going over the probation -- probation issues, all
16 right. The --

17 MR. PHELAN: I think it will make a difference; I don't
18 think it will make much of a difference. And it's not
19 guaranteed to make a difference, potentially, it could make a
20 difference.

21 THE COURT: Okay, I'll talk to you about it in a minute.
22 Let me go over the probation conditions.

23 The probation conditions are to stay away and no contact
24 from victim in this case, from his -- the three children, and
25 it's important to understand that that stay away-no contact is

1 in effect immediately with the victim and the three children.
2 That means that a violation of probation relative to that would
3 subject him to a violation of probation. So that -- those
4 conditions are in effect right away.

5 No contact with children under 16, no contact with -- is
6 there a request for any, no contact with immediate family
7 members, too?

8 MS. CURRAN: Yes, of the mother.

9 THE COURT: All right, and her name for the record?

10 MS. CURRAN: I'll give the last name, (indiscernible -
11 speaking away from microphone at 3:52:37) Mendez (phonetic).

12 THE COURT: With Ms. Mendez (phonetic). GPS, sex offender
13 counseling and treatment, requisite victim-witness fee.

14 All right, so Mr. Phelan, if the plea had taken place while
15 not waiting for the indictments, then the -- then the bottom
16 number would have already started moving.

17 MR. PHELAN: Right.

18 THE COURT: And it hasn't started moving because you were
19 waiting for the indictments. And even though the bottom number
20 is less than the bottom number on the aggravated rapes, at least
21 theoretically because you were waiting, the bottom number on a
22 concurrent 15 to 20 ends up, because of waiting for the other
23 indictments, to be more than 20. That's your position, correct?

24 MR. PHELAN: Well, not -- not -- almost, sorry. 15 to 23,
25 potentially, he could earn statutory good time (indiscernible -

1 unclear speech at 3:53:42) to be able to work --

2 THE COURT: Okay.

3 MR. PHELAN: -- earn up to ten days a month.

4 THE COURT: Yeah, earn good time.

5 MR. PHELAN: Earn good time. So in theory, he could get
6 ten years, he could be paroled at ten years; I think it's highly
7 unlikely. So to give him a ten-year sentence from today, his
8 parole eligibility, since that would be a minimum mandatory,
9 would exceed and actually push that forward. So that's why we'd
10 be asking for probation.

11 THE COURT: Well, do you want -- do you want a moment to
12 talk to Mr. Phelan, Ms. Curran?

13 The bottom line is that the earned good time that collapses
14 off of the 23 couldn't collapse at a pace faster than the 20.
15 But how long has it been since -- that you were waiting, and
16 then I'll just make the high number that number. But the 23
17 earned good time off the back -- because it comes off the
18 back --

19 MR. PHELAN: Well, that's -- I've had a lot of conversation
20 with Mr. Pillier about this -- that gets very confusing. I -- I
21 tell him that it -- it changes, there's no guarantee you're
22 going to get into programs, no guarantee you're going to get
23 even the -- the earned good time. And I don't know whether it
24 comes off the top of the lower number, it can make a difference.

25 THE COURT: Well, I think it comes off the back.

1 Since -- since -- I mean, you can look into it, but based on
2 truth and sentencing in 1994 --

3 MR. PHELAN: I --

4 THE COURT: -- I'm pretty sure that earned good time comes
5 off the back end.

6 MR. PHELAN: Yeah, and it seems like earned good time went
7 away for a while and then it came back.

8 THE COURT: Well, statutory good time is -- got eliminated.
9 I mean, I'm not giving your -- your -- and I'm -- I'm not
10 saying -- and I'm not -- not giving anybody any advice, but my
11 understanding is the earned good time comes off the back.
12 But --

13 MR. PHELAN: I --

14 THE COURT: -- but it is what it is.

15 MR. PHELAN: -- I would ask that the case be -- that he be
16 sentenced nunc pro tunc, the date of the arrest.

17 THE COURT: Yeah, I'm not going to do that. But how long
18 was -- was the time period of waiting for the -- to me, this is
19 entirely academic because the -- the minimum is 15, and -- and
20 the -- the earned good time, if there is any earned, is going to
21 come off both, if it's earned, so it can't --

22 MR. PHELAN: (Indiscernible - simultaneously speaking at
23 3:56:24) but --

24 THE COURT: -- I can't make a difference, but
25 nonetheless --

1 MR. PHELAN: Some -- all these -- you say that until it
2 comes back.

3 THE COURT: But nonetheless, I will eliminate --

4 MR. PHELAN: And I'm --

5 THE COURT: -- I'll eliminate the issue. Nonetheless, I'll
6 eliminate the issue. What was the period of time that you were
7 waiting --

8 MS. CURRAN: Well, I think Mr. Phelan would say from the
9 date that he was arrested was when they had the phone. It took,
10 let's say, close to -- close to a year, let's say, to get the
11 phone, and then it was a number of months before it was
12 indicted. So it's at -- Mr. Phelan would like it to go back to
13 the date the Defendant's arrested, and I would just say that he
14 legitimately was waiting at least from the time I got the
15 information about the pictures, was probably, I would say six
16 months, being generous.

17 MR. PHELAN: Seems all right.

18 THE COURT: All right.

19 MS. CURRAN: And --

20 THE COURT: So --

21 MS. CURRAN: And I would just say to the Court, if the
22 Court were to give the Defendant all probationary sentences,
23 the -- much of what I described to the Court related to the
24 sexual acts that have been indicted, some of which were the
25 aggravated rape indictments for which the Defendant is getting

1 the minimum mandatory of 10, even though he's getting a sentence
2 of 15 to 23.

3 THE COURT: Um-hum.

4 MS. CURRAN: So if the Court wanted to fashion its sentence
5 in any other way.

6 THE COURT: Well, the only thing that -- that matters,
7 unless you're going to tell me otherwise, based on the time
8 waiting is the top number on the -- on the straight rape, isn't
9 it?

10 MR. PHELAN: I'm not sure.

11 THE COURT: Yeah, all right. All right, well, it
12 seem -- to me, I mean, quite frankly, I understand and
13 I'll -- and I'll impose a 15 to 18-year sentence on the -- on
14 the straight -- state -- straight rapes, but the -- you know,
15 the mitigation of the issue and the nunc pro tunc issue is not
16 one theoretically, that I really see. Quite frankly, to address
17 a pink elephant in the room, if it weren't for that Blackberry,
18 there's probably be a jury in this case. And -- and
19 therefore --

20 MR. PHELAN: I would say maybe, Judge, but he was -- he was
21 stepping to the plate before we even knew the Blackberry
22 evidence was coming down so --

23 THE COURT: Well, that's an interesting point, but how do
24 you say the -- the rape charge --

25 MR. PHELAN: It's --

1 THE COURT: -- impacts the parole --

2 MR. PHELAN: It's the posing the child in a state of nudity
3 one.

4 THE COURT: Oh, the 10 to 11 one?

5 MR. PHELAN: Yes.

6 THE COURT: Oh, okay. All right, so -- so I -- it's my
7 view that it should be a sentence on one of those.

8 MR. PHELAN: Right, just that one.

9 THE COURT: Right. And that I imposed a 10 to 11.

10 MR. PHELAN: Right, and all the others got probation.

11 THE COURT: The rape by -- one of the rapes on each
12 indictment I was going to impose a sentence on that, and I'm
13 not -- I'm not sure how it impacts the parole eligibility. But
14 tell me how you think it could.

15 MR. PHELAN: I'm getting a little bit confused now.

16 THE COURT: Well, let me just say, aggravated rape 15 to
17 23, the rapes 15 to 20, one of the child posing or exhibiting a
18 child in a state of sexual conduct 10 to 11.

19 MR. PHELAN: Right, because that was indicted on September
20 17th of 2014.

21 (Counsel confer.)

22 MS. CURRAN: I apologize to the Court for Mr. Phelan and I
23 discussing.

24 MR. PHELAN: I think it makes very little difference, if
25 any, but --

1 THE COURT: All right, I'm -- I'm having a hard time seeing
2 how it does. Ms. Curran, what about you?

3 MS. CURRAN: I don't see any difference, that's why I was
4 explaining to Mr. Phelan that on the aggravated rape, as well as
5 an adult rape, we'll call it, on May -- excuse me, let me back
6 up.

7 On May 16th, the Defendant was indicted for rape because
8 the victim was over 16 years of age, as well as assault with
9 intent to rape, and a number of indecents over 14. Then on the
10 22nd of May, which was just merely a week later, there were
11 indictments for the aggravated rape of a child, another rape,
12 indecent assault and batteries under. And then it wasn't until
13 September of this year that the Defendant was indicted for the
14 posing or exhibiting.

15 THE COURT: But there's no way, Mr. Phelan, in my -- unless
16 I'm misunderstanding something, that anything could ever happen
17 in less than 11 years, as you've -- the way earned good time
18 collapses.

19 MR. PHELAN: It would be under the -- or it would be
20 looking at it under the presumption that if he got 15-year
21 sentence and was paroled -- well, 10 if he was able to earn that
22 off from the bottom number. And I don't know if that's correct,
23 but I try to error on the side of caution.

24 THE COURT: Yeah, okay. All right, I will impose the
25 sentences that I just indicated with the caveat that to make the

1 point of the horror of the indictments in 1180, that 1180-001
2 will be ten to ten-and-a-day, everything else will be as I said.

3 All right, the sentence may be imposed. It just seems to
4 me for the purposes of how serious a crime that is that one of
5 them should have a committed sentence.

6 THE COURT: And do you want me to go over it again, or you
7 got it?

8 THE CLERK: No, your Honor.

9 Franklin Pillier, for indictment number 2013-667-001,
10 charged in the aggravated rape of a child, the Court having
11 accepted your plea of guilty, the Court finds you guilty, and
12 are to be punished by confinement for a term of not less than 15
13 years and not more than 23 years. And this sentence shall be
14 executed upon you in or within the precincts of the
15 Massachusetts Correctional Institution at Cedar Junction, and
16 you stand committed in execution of this sentence.

17 On indictment number 002, 003, and 004, each charging
18 aggravated rape of a child, the Court having accepted your plea
19 of guilty, the Court finds you guilty. And orders you will be
20 punished by confinement for a term of not less than 15 years and
21 not more than 23 years. And these sentences shall be executed
22 upon you in or within the precincts of the Massachusetts
23 Correctional Institution at Cedar Junction, and you stand
24 committed in execution of these sentences. These sentences
25 shall run concurrent with the sentence being served on

1 indictment number 001.

2 On indictment number 005, charge of rape, the Court having
3 accepted your plea of guilty, the Court finds you guilty. And
4 orders you be punished by confinement for a term not less than
5 15 years and not more than 20 years. And this sentence shall be
6 executed upon you in or within the precincts of the
7 Massachusetts Correctional Institution at Cedar Junction, and
8 you stand committed in execution of this sentence. This
9 sentence shall run concurrent with the sentence being served on
10 indictment number 001.

11 On indictment number 006, charging rape; 007, 008, each
12 charging rape; indictments number 009 and 010, each charging
13 assault and battery of a child under 14 years of age; number 011
14 and 012 -- I'm sorry -- 011 charging indecent assault and
15 battery of a child under 14; number 012 charging indecent
16 assault and battery of a child over 14 years of age; 013
17 charging indecent assault and battery of a child over 14 years
18 of age; and 013 charging indecent assault and battery of a child
19 14 years of age. The Court having accepted your plea of guilty,
20 the Court orders you placed on probation for a period of five
21 years. This period of probation shall run from and after the
22 sentence being served on indictment number 001. These periods
23 of probation shall run concurrent with each other.

24 On --

25 THE COURT: You're getting one --

1 THE CLERK: -- indictment number 2013-659-001 --

2 THE COURT: Here, Jim.

3 THE CLERK: -- charging rape, the Court having accepted
4 your plea of guilty, the Court finds you guilty, and orders you
5 be punished by confinement for a period of not less than 15
6 years and not more than 20 years. And this sentence shall be
7 executed upon you in or within the precinct of the Massachusetts
8 Correctional Institution at Cedar Junction. This sentence shall
9 run concurrent with the sentence being served on indictment
10 number 2013-667-001.

11 To indictment number 2013-659-002, charging assault with
12 intent to commit rape; number 003 charging indecent assault and
13 battery of a person 14 years of age or older; number 004
14 charging indecent assault and battery of a person 14 years of
15 age or older; number 005 charging indecent assault and battery
16 of a person 14 years of age or older; number 006 charging
17 indecent assault and battery of a person 14 years of age or
18 older; number 007 charging indecent assault and battery of a
19 person 14 years of age or older; and number 008 charging
20 indecent assault and battery of a person 14 years of age or
21 older, the Court having accepted your plea of guilty, the Court
22 finds you guilty, and orders you placed on probation for a
23 period of five years. This period shall -- probation shall run
24 from and after the sentence being served on indictment number
25 2012-667-001. These periods of probation shall also run

1 concurrent with each other.

2 On indictment number 2014-1180-001, charging posing or
3 exhibiting a child in a state of sexual conduct, the Court
4 having accepted your plea of guilty, the Court finds you guilty,
5 and orders you be punished by confinement for a term of not less
6 than ten years and not more than ten years and one day. And
7 this sentence shall be executed upon you in or within the
8 precinct of the Massachusetts Correctional Institution at Cedar
9 Junction. This sentence shall run concurrent with the sentence
10 being served on indictment number 2013-667-001.

11 And on indictments numbers 002 through 012, each charging
12 posing or exhibiting a child in a state of sexual conduct, the
13 Court having accepted your plea of guilty, the Court finds you
14 guilty, and orders you to be placed on probation for a period of
15 five years. This period of probation shall run from and after
16 the sentence being served on indictment number 2012-667-001 and
17 shall be concurrent with each other.

18 The rest of the conditions of your probation, sir, is:
19 one, you are to have no contact at all with your three children
20 in this case or Ms. Mendez (phonetic), the -- the mother of the
21 children. This special condition of probation shall commence
22 forthwith. And you are to have no contact with any children
23 under the -- under the age of 16, you're to register as a sex
24 offender, and you are to comply with any sex offender counseling
25 or treatment requested by probation, and you are subject to the

1 GPS monitoring and the monthly fee.

2 The Court further orders that you pay ninety dollars as a
3 victim witness fee, and the Court grants you 604 days' credit,
4 sir, for time served.

5 MS. CURRAN: And I'm not certain if I heard Mr. Clancy say
6 no contact with L.R.

7 THE COURT: No, I think -- but -- no, but -- no contact
8 with L.R. starts immediately, as well.

9 All right, thank you. Court will be in recess.

10 THE COURT OFFICER: All rise. Court will be in recess.

11 (Hearing concluded at 4:08 p.m.)

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C E R T I F I C A T I O N

I, DEE VENTUCCI, COURT-APPROVED TRANSCRIBER, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
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COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT
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I, DEE VENTUCCI, FURTHER CERTIFY THAT I NEITHER AM COUNSEL
FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE
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COMMONWEALTH OF MASSACHUSETTS**ESSEX, ss.****SUPERIOR COURT
CRIMINAL****NO. 2013-00659****2013-00667****~~2014-01180~~****COMMONWEALTH****vs.****FRANKLIN PILLIER**

ORDERS ON POST-CONVICTION MOTION

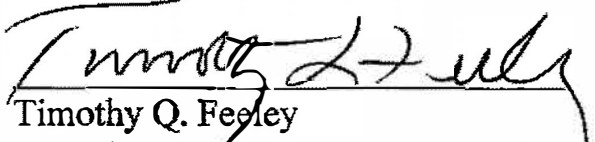
Now before the court is defendant Franklin Pillier's ("Pellier") motion to withdraw guilty plea and for new trial. [D. 18]. Pillier raises two issues. He challenges the order of his guilty plea colloquy conducted by the court (Lowy, J.). At the colloquy, the clerk obtained Pillier's pleas of guilty, swore the defendant, and the colloquy then followed, all in accordance with the long-standing practice of the court. In fact, the pleas were not accepted by the court until after a full and complete colloquy that was in compliance with constitutional requirements and Mass. R. Crim. P. 12. At the conclusion of the colloquy, the court stated: "I find the plea is being made knowingly, willingly, and voluntarily. The defendant understands the nature of the charges and the consequences of the plea, and the plea is hereby accepted."

[Tr. p. 38].

Pillier does not argue to the contrary. He simply asserts that the defendant's plea of guilty cannot precede the colloquy. Pillier is simply wrong and provides no authority as to why the long-standing practice of the superior court is unconstitutional. In fact, the plea did not precede the colloquy because Pillier's plea was merely an offer to plea until it was accepted by the court. The controlling aspect of a plea colloquy under Rule 12 is the acceptance of the plea by the court. "The judge shall not accept such a plea or admission without first determining that it is made voluntarily with an understanding of the nature of the charge and the consequences of the plea or admission." Mass. R. Crim. P. 12(a)(3). Law cited by Pellier is taken out of context and does not call into question the constitutionality of the court's standard change-of-plea practice. So much of Pellier's motion that challenges his plea colloquy is summarily denied, without opposition briefing or hearing. Mass. R. Crim. P. 30(c)(3).

With respect to Pellier's claim that the portion of his sentence that imposed a probationary condition barring his contact with his adult children is unlawful raises an issue worthy of consideration. The court would benefit from adversarial briefing.

The Commonwealth shall file a responsive memorandum within ninety days of this order.


Timothy Q. Feeley
Associate Justice of the Superior Court

September 25, 2017

COMMONWEALTH OF MASSACHUSETTS**ESSEX, ss.****SUPERIOR COURT
CRIMINAL****NO. 2013-00659****2013-00667****~~2013-01180~~**

17 J23

COMMONWEALTH**vs.****FRANKLIN PILLIER**

SECOND ORDER ON POST-CONVICTION MOTION

Defendant Franklin Pillier's ("Pillier") filed a motion to withdraw guilty plea and for new trial. [D. 18 in 13-0659]. Pillier raised two issues. He challenged the order of his guilty plea colloquy conducted by the court (Lowy, J.). At the colloquy, the clerk obtained Pillier's pleas of guilty, swore the defendant, and the colloquy then followed, all in accordance with the long-standing practice of the court. In fact, the pleas were not accepted by the court until after a full and complete colloquy that was in compliance with constitutional requirements and Mass. R. Crim. P. 12. At the conclusion of the colloquy, the court stated: "I find the plea is being made knowingly, willingly, and voluntarily. The defendant understands the nature of the charges and the consequences of the plea, and the plea is hereby accepted." [Tr. p. 38].

Pillier did not dispute the findings of the court that his plea was voluntary. He simply asserted that the defendant's plea of guilty cannot precede the colloquy. Pillier is simply wrong and provides no authority as to why the long-standing practice of the superior court is unconstitutional. In fact, the plea did not precede the colloquy because Pillier's plea was merely an offer to plea until it was accepted by the court. The controlling aspect of a plea colloquy under Rule 12 is the acceptance of the plea by the court. "The judge shall not accept such a plea or admission without first determining that it is made voluntarily with an understanding of the nature of the charge and the consequences of the plea or admission." Mass. R. Crim. P. 12(a)(3). Law cited by Pellier was taken out of context and did not call into question the constitutionality of the court's standard change-of-plea practice. The court ruled in a short memorandum decision that so much of Pellier's motion that challenged his plea colloquy was summarily denied, without opposition briefing or hearing. Mass. R. Crim. P. 30(c)(3).

Pillier made a second claim in his motion to vacate his plea and for a new trial, which will now be addressed by the court, without the need for a hearing. More specifically, Pillier moved to vacate a portion of his sentence as illegal. He argues that the portion of his sentence that imposed a probationary condition barring his contact with his biological children is illegal. The court requested and received a

responsive opposition from the Commonwealth. After review of the papers, the remaining portion of Pillier's motion is **DENIED**, without prejudice to renewal upon his biological children reaching adulthood.

Pillier was charged in three separate indictments. The victim of all the charged crimes was Pillier's teenage step-daughter.¹ The charges included rape, aggravated rape with force, assault with intent to rape, indecent assault and battery on a child and on a person over the age of fourteen, and posing a child in a sexual act. Pillier pled guilty to all indictments (Lowy, J.). His longest prison sentence was set at fifteen to twenty-three years. He received various concurrent sentences of imprisonment, as well as five years of probation to run on and after the expiration of his prison sentences. Among special terms and conditions of probation, the court ordered that Pillier "forthwith" have no contact with the victim or his three biological children. None of the convictions involved conduct against his biological children, who were seven, eight, and nine years old when Pillier was sentenced. They lived in the family home during the period of the offense conduct on which Pillier stands convicted. The biological children will be adults when Pillier is released from prison and starts serving his term of probation. The special condition of probation was accepted by

¹Pillier and the victim's mother also have three biological children who also lived in the family home at the time of the offense conduct.

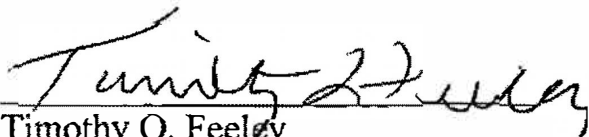
Pillier without objection. Pillier now argues that the special condition of probation prohibiting his contact with his non-victim biological children violates various constitutional protections. He also argues that the special condition is not sufficiently related to the offense conduct, rehabilitation, and public safety.

After reviewing and considering the law submitted by both Pillier and the Commonwealth, the court rejects Pillier's constitutional challenge to the special condition during the period of time that his biological children are minors. See *Commonwealth v. Lapointe*, 435 Mass. 455, 460-461 (2001). The court will deny this portion of Pillier's motion to vacate and for a new trial, more properly entitled a motion to correct illegal sentence, without prejudice to being renewed when his biological children are adults. Any such renewed motion should include the desires of the adult biological children for any contact with their father during the pendency of his special condition. This court has not considered or reached any conclusion as to how it would act upon any such renewed motion.

ORDER

So much of Pillier's motion to vacate guilty plea and for a new trial [D. 18 in 13-0659; D. 23 in 13-0667; and D. 16 in 14-1180] that challenges the special

condition of probation restricting his contact with his biological children is **DENIED**,
without prejudice to renewal upon his children reaching adulthood.


Timothy Q. Feely
Associate Justice of the Superior Court

December 19, 2017



Neutral

As of: September 20, 2019 8:19 PM Z

Commonwealth v. Pillier

Appeals Court of Massachusetts

May 9, 2019, Entered

18-P-137

Reporter

2019 Mass. App. Unpub. LEXIS 358 *; 95 Mass. App. Ct. 1112; 125 N.E.3d 799; 2019 WL 2057831

COMMONWEALTH vs. FRANKLIN PILLIER.¹

Notice: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS [RULE 1:28](#), AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO [RULE 1:28](#) ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE [CHACE V. CURRAN, 71 MASS. APP. CT. 258, 260 N.4, 881 N.E.2d 792 \(2008\)](#).

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NORTH EASTERN REPORTER.

Subsequent History: Appeal denied by *Commonwealth v. Pillier*, 482 Mass. 1105, 2019 Mass. LEXIS 409 (Mass., June 27, 2019)

Disposition: Orders dated September 25, 2017, and December 19, 2017, denying motion to withdraw plea affirmed.

Core Terms

guilty plea, conditions of probation, colloquy, probation, constitutional right, biological child, minor child, conditions, assaulted, infringe, rights

Judges: Hanlon, Kinder & Englander, JJ. [*1]

OpinionMEMORANDUM AND ORDER PURSUANT TO [RULE 1:28](#)

The defendant appeals from the denial of his motion pursuant to [Mass. R. Crim. P. 30 \(b\)](#), as appearing in 435 Mass. 1501 (2001), which sought to withdraw his guilty plea or, alternatively, to vacate a condition of his probation. The defendant argues (1) that his guilty plea was invalid because the plea was taken before the judge engaged in the required colloquy to determine whether the plea was knowing and voluntary, and (2) that a probation condition prohibiting the defendant from contact with his own biological children is unconstitutional and thus an illegal sentence. We affirm.

Background. On April 9, 2013, the defendant's sixteen year old stepdaughter informed officials at her high school that the defendant had sexually

¹ Also known as Louis Andino.

abused and assaulted her that morning. The victim later went on to recount additional, extensive sexual abuse at the hands of the defendant, spanning nearly five years. She explained that the defendant had assaulted her while she was sleeping or otherwise vulnerable, including multiple instances of rape and attempted rape, and that the defendant took videos and photographs of the assaults.

The defendant was indicted on thirty-five counts related [*2] to the abuse, and on December 4, 2014, he pleaded guilty to each count. The defendant was sentenced to fifteen to twenty-three years in prison followed by five years of probation. One probation condition, which commenced immediately, prohibited the defendant from having any contact with his three biological children.

In September of 2017 the defendant moved pursuant to [rule 30 \(b\)](#) to withdraw his guilty plea, and to vacate the above noted probation condition as an illegal sentence. The defendant argued that his guilty plea was invalid because it was entered prior to the colloquy with the judge, and prior to any explanation of the consequences of pleading guilty. The defendant also argued that the probation condition prohibiting contact with his biological children infringed on his constitutional right against government interference with the family unit, and with his right to raise his own children. The motion judge ruled that the plea was valid and that the probation condition was permissible, although the judge specifically noted that the defendant could revisit the probation condition after his children "reach[ed] adulthood." The defendant appeals.

Discussion. The defendant first contends that [*3] his guilty plea was entered *prior* to the required colloquy with the judge, and thus that his plea could not satisfy the constitutional requirement that it be knowing and voluntary. This argument is without merit. The plea judge followed a common procedure, one that is consistent with [Mass. R. Crim. P. 12 \(c\)](#), as appearing in 470 Mass. 1501 (2015), and the constitutional requirements. Under that procedure the defendant first "tendered" his

guilty plea by responding to questions from the court clerk. [Mass. R. Crim. P. 12 \(c\) \(2\)](#). After the tender, the judge conducted the required colloquy in order to advise the defendant of the rights he would be foregoing, and to determine whether it was appropriate to accept the plea. See [Mass. R. Crim. P. 12 \(c\) \(3\) \(A\)](#) ("The judge shall. . . [p]rovide notice to the defendant of the consequences of the plea"). The judge began the colloquy: "I'm going to ask you some questions so I can make sure your decision to plead guilty today is being made knowingly of your own free will and voluntarily." At the close of the colloquy the judge found that the plea was "made knowingly, willingly, and voluntarily," and accordingly "accepted" the plea. See [Mass. R. Crim. P. 12 \(c\) \(5\)](#) (acceptance of plea).

This process was in accordance with [rule 12](#), and the constitutional requirement that a guilty plea [*4] must be knowing and voluntary. See [Boykin v. Alabama, 395 U.S. 238, 242-243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 \(1969\)](#). The defendant does not object to the substance of the colloquy or the advising of his rights. Rather, the defendant's only objection is that, according to the defendant, he actually "entered his plea" of guilty before the colloquy commenced. We do not find this to be a fair characterization of what transpired. As [rule 12](#) contemplates, the plea hearing was initiated by a "tender" — by the defendant indicating, to the court, his intention to plead guilty. Then, shortly after the defendant answered the clerk's questions, the judge began by describing the defendant's answers as an offer to plead guilty: "And are you now offering to plead guilty to these indictments?" After the defendant answered affirmatively, the judge went on to conduct the colloquy and to make the findings required by [rule 12](#). In its totality, the process provided the defendant all the information required, and ensured a knowing and voluntary plea. The defendant has not identified a single case suggesting that the process employed here was constitutionally infirm. There was no error.

The defendant next argues that the condition of

probation prohibiting all contact by the defendant with his biological [*5] children is illegal and in violation of his fundamental rights. We disagree, because the condition is valid under the circumstances here.

Probation is a creature of statute. [*General Laws c. 276, § 87*](#), authorizes a judge to place a defendant in the care of a probation officer "for such time and upon such conditions as [the judge] deems proper." See [*Commonwealth v. Lapointe*, 435 Mass. 455, 459, 759 N.E.2d 294 \(2001\)](#) ("Judges are permitted 'great latitude' in imposing conditions of probation" [citation omitted]). Conditions of probation will sometimes go beyond restraints on liberty and infringe upon other constitutional rights — such as rights of association or, as in this case, parenting. Such conditions are nevertheless enforceable where they are reasonably related to the goals of sentencing and probation — such as rehabilitation, public protection, and deterrence. *Id.* See [*Commonwealth v. Gomes*, 73 Mass. App. Ct. 857, 858-859, 903 N.E.2d 234 \(2009\)](#). Conditions that infringe upon constitutional rights are "not without limits," however, and "merit 'special scrutiny'" (citation omitted). [*Commonwealth v. Obi*, 475 Mass. 541, 547, 58 N.E.3d 1014 \(2016\)](#). Generally, where the condition advances a probationary goal and the right at issue is not unnecessarily burdened in light of the facts of the crime, the condition will be upheld. See [*Commonwealth v. Pike*, 428 Mass. 393, 403, 701 N.E.2d 951 \(1998\)](#) ("[Probationary] goals are best served if the conditions . . . are tailored to address [*6] the particular characteristics of the defendant and the crime").

Indeed, the Supreme Judicial Court has several times upheld probation conditions that infringe on fundamental constitutional rights, including the right to parent. See, e.g., [*Commonwealth v. Eldred*, 480 Mass. 90, 97, 101 N.E.3d 911 \(2018\)](#) (affirming condition of remaining drug free with random testing); [*Lapointe*, 435 Mass. at 460-461](#) (affirming condition prohibiting defendant from residing with his children); [*Commonwealth v. Power*, 420 Mass. 410, 415, 650 N.E.2d 87 \(1995\)](#)

(affirming condition affecting [*First Amendment*](#) rights); [*Commonwealth v. Veronneau*, 90 Mass. App. Ct. 477, 481-482, 60 N.E.3d 1175 \(2016\)](#) (affirming condition prohibiting firearm possession).

Here, the probation condition that the defendant not have contact with his minor children substantially advanced the goals of protection of the public, deterrence, and punishment, and was appropriately tailored to the defendant's crime. The defendant repeatedly assaulted a minor stepchild that lived with the defendant in the defendant's own home. The defendant's actions were an extreme breach of trust, and in so acting the defendant took advantage of his parental role and of his access to the minor child, which access arose from his status as a parent.

The decision in *Lapointe* is instructive. In *Lapointe*, the court upheld a condition prohibiting the defendant — convicted of indecent assault and battery against his [*7] minor daughter — from residing with any minor children, including his biological children, and "any future children he might have." [*Lapointe*, 435 Mass. at 458](#). The court held that such residency prohibitions were appropriate because they were designed to "remove the defendant from situations in which he presents a danger," to deter his conduct, and to assist his rehabilitation. *Id.* at 460. See [*Commonwealth v. Goodwin*, 414 Mass. 88, 93-94, 605 N.E.2d 827 \(1993\)](#) (recognizing particularly high recidivism rates among child molesters).

It is true that the condition at issue goes beyond the condition in *Lapointe*, by prohibiting all contact with the defendant's minor children.² The condition nevertheless is within the judge's "great latitude," in light of the circumstances of the defendant's crime. [*Lapointe*, 435 Mass. at 459](#). While the defendant

² The conditions in *Lapointe* prohibited the defendant from residing with the defendant's minor children, as well as any future children, but allowed some contact with all of his children and grandchildren apart from the victim and her family.

does have a constitutional right to raise, and thus to have contact with, his own children, see [*Blixt v. Blixt*, 437 Mass. 649, 652, 774 N.E.2d 1052 \(2002\)](#), such a right is of course not absolute; it was reasonable for the judge to infringe on that right where the defendant had previously used his position as parent to exploit a vulnerable child in his care.³ The motion judge appropriately noted that the defendant may revisit the condition by motion after the defendant's children have reached adulthood.

*Orders dated September [*8] 25, 2017, and December 19, 2017, denying motion to withdraw plea affirmed.*

By the Court (Hanlon, Kinder & Englander, JJ.⁴),

Entered: May 9, 2019.

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³ We note that the defendant was advised that this condition would be imposed during the plea hearing, and he did not object at that time.

⁴ The panelists are listed in order of seniority.



Neutral

As of: September 20, 2019 8:21 PM Z

Commonwealth v. Pillier

Supreme Judicial Court of Massachusetts

June 27, 2019, Decided

No Number in Original

Reporter

2019 Mass. LEXIS 409 *; 482 Mass. 1105; 127 N.E.3d 273; 2019 WL 2913317

COMMONWEALTH vs. FRANKLIN Y. PILLIER.

Notice: DECISION WITHOUT PUBLISHED
OPINION

Prior History: Reported below: 95 Mass. App. Ct. 1112, 125 N.E.3d 799 (2019) [*1] .

Commonwealth v. Pillier, 95 Mass. App. Ct. 1112,
2019 Mass. App. Unpub. LEXIS 358, 125 N.E.3d
799 (May 9, 2019)

Judges: Mr. Justice Lowy did not participate.

Opinion

Further appellate review denied.

Mr. Justice Lowy did not participate.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANKLIN PILLIER,

Petitioner

VS.

COMMONWEALTH OF MASSACHUSETTS,

Respondent

PROOF OF SERVICE

I, Dale Marie Merrill, do swear or declare that, as required by Supreme Court Rule 29, I have served the enclosed Petition for Writ of Certiorari and Motion to Proceed in Forma Pauperis on each party to the above proceeding or that party's counsel, and on every other person required to be served, by mailing the above documents by first class U.S. mail or better and properly addressed to each of them, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. Ten copies have been filed with the Clerk of Court, for the U.S. Supreme Court. Said documents are further electronically being filled and served through the Court's electronic filing service on this 21st day of September 2019.

The parties who have been served are: Maura Healey, Attorney General, Massachusetts Office of the Attorney General, One Ashburton Place, Boston, MA 02108, marua.healey@state.ma.us; Marina Moriarty, ADA, Office of the District Attorney, 10 Federal St., Salem, MA 01970, marina.moriarty@state.ma.us; and on the Clerk of Court, U.S. Supreme Court, 1st Street NE, Washington, DC 20543.

/s/ Dale Marie Merrill

Dale Marie Merrill, Esq., BBO#641896

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