

Convicted sex offender sentenced to more than 26 years in prison

SENTENCED, from Page 1

he was involved in one prior incident, in 1998, which involved pointing a handgun at an individual in Colorado. He said he negotiated a plea bargain and was fined \$100 and given unsupervised probation.

Although it was not explained at hearing, this testimony was apparently given to establish a court record on which to argue about the constitutionality of a life sentence with mandatory minimum of 25 years for a first offense.

Following Moyer's testimony, Mason and Ladner debated the effect of two factors, Jessica's Law and the Freeman test, on this case. In *The State of Kansas v. Oehlert*, the defendant received a shorter sentence than mandated by Jessica's Law because, among many other things, he was approximately six years older than his underage victim.

Some cases seeking to avoid the consequences of Jessica's Law have had as a factor the establishment of the age of the defendant. In this case, Judge Showalter ruled Moyer was "Old enough to know better."

Following arguments for mitigation of sentence, victim impact statements were heard.

Written statements from the victim and her sisters and mother were read by Ladner. Reading from the statement of Jessica Moyer, mother of the victim, Ladner said, "So many times she's thought about what she could have done to prevent all this from happening. All she asked him

to do was to be a better father, act like he cared about the kids, spend time with their kids and try to get to know them. She didn't know how he could go from one extreme to the other. She sometimes wonders if he didn't have the whole thing planned from the day they began their relationship... Things could have been so different for this family, but he made his own choices. He did not hurt just one person, he hurt a whole family."

From the victim, Ladner read, "She's very angry. What was going on in his head? She wants to know.... She knows what is wrong from right, and he obviously didn't care, or something was really wrong in his head. Did he ever even know or understand what a true father was, or how a true father is supposed to treat his children? ... She will never know what it would be like to have a real father. She feels he had the opportunity to be a real father with a real family, and he took that and threw it away." Ladner concluded, "She hopes he is happy with all of his new friends."

Following the victim impact statements, Ladner ran through a list of what the State was asking as penalties for the crimes charged. She asked for life plus 122 months for the five offenses.

Mason, speaking on behalf of his client, while "preserving all objections and so forth", asked for the mandatory sentence on the first charge, with all other charges to run concurrently. This would be the 25 years-to-life mandated by Jessica's

Law, with no years added by the other charges.

The Judge asked if the defendant wished to tell the court of any mitigating circumstances which could reduce his sentence. Judge Showalter cautioned Moyer that at this time it was not appropriate to discuss where Moyer felt his trial may have gone wrong, but "We're here to discuss why a lesser sentence may be appropriate." Because the victim statements had run for 18 minutes, Judge Showalter gave the defendant an equal amount of time.

"I've been trying to prove my innocence," Moyer said. "I don't know what I can do in a Sherman County Court to prove my innocence against these allegations. ... I ask the court how can I prove my innocence? I have medical reports; I have doctors' reports saying it never happened." He said the reports of the Kansas Bureau of Investigation officers, the Sherman County investigator and other trial reports had "changes."

"What I'm saying is, you can give me life in prison, you can give me the death penalty, but you're not going to change my mind that the crime never happened. My problem is to prove my innocence, that I never attacked my daughter," he said. "If I had a bunch of money in the bank, I wouldn't be here." He referred to a case he had heard of on MSNBC News of a woman accused of 22 counts of child abuse

who was apparently wealthy, was a teacher and had the support of her community, and the charges were dropped. He said he had "been constantly on my lawyer's back" to have further examinations made of his daughter to see if she was lying. He said he wasn't smart, like the prosecuting attorney, "All I can do is focus on what I can do to prove my innocence. If I have to go to prison because of allegations, then I have to go to prison. If I have to sit there the rest of my life, then I'm going to sit there the rest of my life." He referred to himself as "railroaded" and the victim of a "witch hunt."

When he started questioning whether his daughter was traumatized, the Judge reminded him, "Mr. Moyer, you need to be dealing with why I should be lenient. Attacking the victim is not a successful way of achieving that."

Moyer responded, "Okay, I guess my conclusion is this: I didn't do the crime. You guys have been convinced since April 6, 2009 at 10:15 when they arrested me and charges were brought against me from April 6 to now I've been under the gun, I've been on the hot seat... There's nothing I can do to change your mind... I know you've already made up your mind." He said he had turned down a plea offer because, "for me to sit there and deal for less of a sentence, that's saying I'm guilty for something I didn't do, so you're going to give me whatever

you feel appropriate and I can take it to the next level and I can appeal the case, and that's what I'm going to do. That's it"

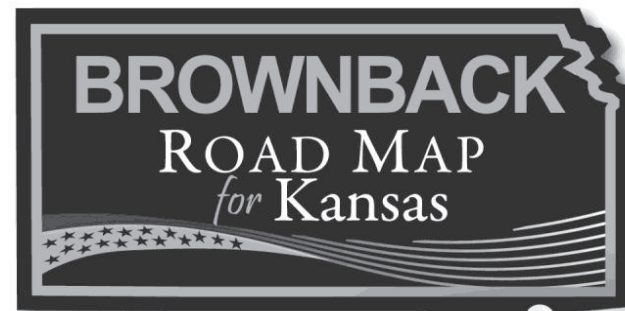
Following Moyer's statement, Judge Showalter proceeded to the sentencing part of the hearing.

He found that, although the defendant had no evidence of prior criminal activity, no other mitigating circumstances apply. Further, the crime is one of extreme sexual violence, and that, additionally because of the relationship of the victim to the defendant and the extent and nature of the crime between the scoring mechanism and the long-term victimization by the defendant, there is no substantial or compelling reason why the penalties set for in Jessica's Law should not be applied.

In addition to the mandatory life sentence with no chance of parole for 25 years, Jessica's Law required that, on release from prison, offenders be placed on lifetime parole. The judge went through each of the five counts, assigning the additional months and noting whether they were to be served concurrently or consecutively.

Judge Showalter advised the defendant he had 10 days in which to file an appeal.

He concluded, "Mr. Moyer, the evidence presented by the State was substantial to the point of being nearly overwhelming. I would hope at some point in your life you would recognize the harm you have caused and continue to cause, and make amends for your actions."



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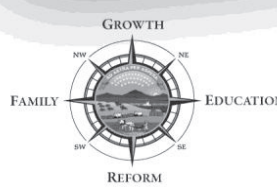
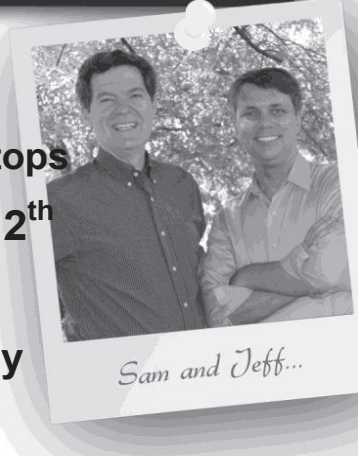
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