

**IN THE COURT OF APPEALS OF IOWA**

No. 0-275 / 09-0872  
Filed May 12, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ERWIN ARTURO CASTRO SR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

Erwin Castro appeals the sentence imposed upon his plea of guilty to the charge of sexual exploitation of a minor, claiming the condition of probation was an abuse of discretion. **SENTENCE VACATED IN PART AND CASE REMANDED FOR RESENTENCING.**

Susan R. Stockdale, Des Moines, for appellant.

Erwin Castro, Des Moines, pro se.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**DANILSON, J.**

On June 27, 2006, a preliminary complaint accused Erwin Castro of the crime of third-degree sexual abuse. On the same date, the district court found probable cause to believe Castro had committed the crime charged and entered a no contact order as a condition of any release. The order prohibited Castro from having unsupervised contact with children under the age of eighteen, and specifically prohibited contact with the alleged victim. The June 27 order provided in part, "ONLY A JUDGE CAN CANCEL THIS ORDER!"

On August 10, 2006, a trial information was filed charging Castro with third-degree sexual abuse, child endangerment, and incest occurring between March 1 and June 21, 2006. Castro failed to appear for the preliminary hearing, and an arrest warrant issued.

On May 13, 2009, Erwin Castro pleaded guilty to an amended charge of sexual exploitation of a minor in violation of Iowa Code section 728.12(3) (2005) related to conduct occurring in 2006. That same date, the district court entered a "probation sentencing order," in which the court dismissed the charges of third-degree sexual abuse, child endangerment, and incest; suspended a two-year term of imprisonment; and placed Castro on probation for a period of two years. As one of the conditions of probation, the court ordered: "The defendant shall have NO CONTACT with anyone under the age of 18 or any members of his immediate family residing in Des Moines, Iowa."

Castro appealed.

On January 28, 2010, the district court filed a "cancellation of no contact order." The protected persons are listed as "all persons under the age of 18" and

“all members of the Defendant’s family.” The order further states: “X This order is hereby canceled. (X) Upon the request of the Protected Party and no resistance by the State of Iowa.”

On appeal, Castro claims that to the extent the 2006 no contact order remains in effect, it is without legal basis, and that the no contact order imposed as a condition of probation is unreasonable and unconstitutionally overbroad. Castro has filed a “Notice of Potential Mootness of Appeal” in light of the January 28, 2010 cancellation.

In this case there exists only one “no contact order” as the other court-ordered obligation imposed upon Castro to not have any contact with anyone under the age of eighteen was a condition of probation. The “no contact order” terminated when judgment and sentence were imposed, as the only bail condition fixed by the sentencing order was the appeal bond in the sum of \$5000 cash. It appears that in an abundance of caution, a formal order terminating the “no contact order” was filed on January 28, 2010. This latter order states in part, “On the 28th day of January, 2010, this matter is before the court regarding the No Contact Order entered on 6/27/06.” Thus, any further review of the “no contact order” is moot.

In regard to the condition of prohibition, for the reasons expressed in *State v. Lathrop*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2010), we conclude the challenged probation condition is unreasonable, and the district court abused its discretion in imposing it. See also *State v. Hall*, 740 N.W.2d 200, 204–05 (Iowa Ct. App. 2007) (holding restriction on defendant’s communication with any child under eighteen years of age with no exception for incidental communication was

unreasonably restrictive). We vacate the no contact condition of the defendant's probation prohibiting contact with any person under the age of eighteen, and remand this case to the district court for "the opportunity to fashion a more realistic and precise condition on the defendant's probation that would ensure he does not have contact with minors in situations that would jeopardize the safety of the community and the defendant's rehabilitation." *Lathrop*, \_\_\_ N.W.2d at \_\_\_.

**SENTENCE VACATED IN PART AND CASE REMANDED FOR RESENTENCING.**