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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45747
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2017-14874
)	
PHILLIP LEE COOLEY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Cooley failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with two years fixed, upon his guilty plea to felony injury to a child?

Cooley Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Cooley pled guilty to felony injury to a child, and the district court imposed a unified sentence of 10 years, with two years fixed. (R., pp.114-16.) Cooley filed a notice of appeal timely from judgment of conviction. (R., pp.122-24.)

Cooley asserts his sentence is excessive in light of his status as a first-time felon, low risk to reoffend, his love for his children, and his mental health and substance abuse issues. (Appellant's brief, pp.2-4.) The record supports the sentence imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for felony injury to a child is 10 years. I.C. § 18-1501(1). The district court imposed a unified sentence of 10 years, with two years fixed, which falls within the statutory guidelines. (R., pp.114-16.) Furthermore, Cooley's sentence is appropriate in light of the nature of the offense, his failure to accept responsibility, and his lack of remorse.

Cooley struck his 13-year-old daughter, L.C., with a belt approximately 12 times, causing "severe bruising" to his L.C.'s "right upper buttock/hip/let, and wrapp[ing] around her stomach." (PSI, p.63.) "The next day, [L.C.] complained of pain at school" and ultimately reported the abuse. (PSI, p.63.) When interviewed by police, Cooley "admitted he lost control while disciplining [L.C.]" and that he "struck [L.C.] with the belt too hard and too much." (PSI, p.63.) A CARES physician subsequently "reported that [L.C.'s] injuries could have caused life-threatening blood loss under the skin and the potential for irreversible muscle and kidney damage." (PSI, p.50.) Cooley's 10-year-old daughter, R.C., reported that Cooley also struck her with a belt multiple times and that she had previously "witnessed multiple incidents" in which Cooley and his wife "hit [L.C.] with the belt and pulled her hair." (PSI, p.63.) She had also previously seen Cooley's wife "strike [L.C.] with a wooden spoon on the back of the head, so hard that she caused [L.C.] to bleed." (PSI, p.63.)

Cooley's assertion that he loves his children falls flat when considering that the abuse and neglect of the victim went on for years, and was not limited to the single incident in which Cooley claimed "he lost control while disciplining." (PSI, pp.2, 45-53.) Not only did Cooley inflict abuse and neglect on his oldest daughter, his youngest daughter witnessed this abuse and neglect, and was abused as well. (PSI, pp.49, 63.) As reported by the psychological evaluator:

During initial interviews, [R.C.] told authorities that she also got spanked with a belt that evening and while they [sic] were no visible marks, she put toilet paper inside her underwear to keep her bottom from hurting. When asked, Mr. Cooley said he was not aware of this but said his spanking of her was not any

different than typical and said he used a belt with her about half the time. [R.C.] also reported that she could hear [L.C.] screaming out in pain while she was being beaten and when asked, Mr. Cooley said he couldn't remember how loud this was and said it is "troubling" to him to know that [R.C.] heard this. [R.C.] reported to authorities that the only thing in [L.C.'s] bedroom was a sleeping bag and when asked, Mr. Cooley said this is accurate and said it was because "she would use anything else to sop up her pee." He said she would urinate on the floor and then "sopped it up, even with her mattress," so they removed everything else from the room. [R.C.] reported that if [L.C.] did not urinate in her room, she still had to stand in front of the furnace door. When asked to explain this, Mr. Cooley said if [L.C.] did not urinate the night before, she still had to stand for a day and if she did not urinate for a second night, she still had to be there but she was allowed to read instead of just stand. He said she had to stand at the furnace room door for five days in order for the consequence to be over, even if she did not urinate in her room. He said while standing in time out, [L.C.] could not fidget, look around, or talk. When asked whether [L.C.] was ever able to stand all day without fidgeting, looking around, and talking, he said "she would occasionally get through it" and he reiterated that she had to do this for five days in a row before she could be "released" from time out. When asked, Mr. Cooley estimated that in the previous year [L.C.] had urinated in her room 95% of nights. When asked if she was ever able to get out of timeout, stay out of timeout, and follow all the rules, he said in a typical year she might be out of time out for "a week or two, sometimes a month."

(PSI, p.48.)

Regarding the abuse he inflicted in this case, Cooley told authorities that "he did not hit [L.C.] hard at first, but gradually hit her harder because it was "'not working,'" because she was not going to the bathroom. (PSI, p.50.) When Cooley was asked if he was aware that the CARES physician opined that L.C.'s injuries were life threatening, Cooley "said he was, but added 'I think it's an outright lie' and 'that's what they're paid to do.'" (PSI, p.50.) Mr. Cooley's response to this information and his utter lack of remorse demonstrate his failure take responsibility for and appreciate the egregiousness of his actions.

Cooley also claims that he has "serious depression and substance abuse issues," and is in need of treatment. (Appellant's brief, pp.3-4.) The state acknowledges the psychological evaluator's notes that Cooley presented with major depressive disorder, adjustment disorder with anxiety, characteristics of paranoid personality disorder and schizotypal personality disorder.

(PSI, p.7.) However, the psychological evaluator also noted that, due to Cooley’s “high level of suspiciousness and mistrust,” counseling would be “enormously challenging” for both the counselor and for Cooley. (PSI, p.56.) Additionally, while Cooley stated that he feels he needs alcohol treatment, he also indicated that he does not know if he wants to stop drinking. (PSI, p.7.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Cooley’s sentence. (11/21/16 Tr., p.38, L.20 – p.52, L.11.) The district court concluded:

... I think, frankly, with a lack of remorse shown by either parent, the lack of any meaningful level, desire to change, being expressed, I think it’s fair for the penalty to be the same, and, frankly, with this poor picture of rehabilitation, I think that the penalty as deterrent, penalty just plain for doing what the law forbids, is a more appropriate focus because I think that it’s essential for the system of justice to save children. People are not free to do any cruel or callus thing to a child because it’s their child.

(Tr., p.51, L.18 – p.52, L.3.) The state submits that Cooley has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal.

Conclusion

The state respectfully requests this Court to affirm Cooley’s conviction and sentence.

DATED this 27th day of September, 2018.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of September, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 counseling and the other things that are going on.
 2 The no contact order, just putting a blanket no
 3 contact order in place, the problem that I see with
 4 that, and I agree with co-counsel, is just a blanket no
 5 contact order, it makes it impossible for them to really
 6 work through the Health and Welfare system. If Health
 7 and Welfare and the court downstairs decides that
 8 their -- it would be appropriate for some communication
 9 between the parents and the child, some kind of
 10 supervised visitation, if there's a no contact order in
 11 place up here, it makes it nearly impossible for them to
 12 work through any kind of plan with Health and Welfare,
 13 and it's an almost guarantee that there's a -- that it
 14 ends up being termination, where they can't work through
 15 any of the plan that they may want to do down there, so
 16 I think the court should put it in place that, perhaps,
 17 you should have oversight, have the no contact order in
 18 place, but if it comes the time with Health and Welfare
 19 that they want to progress the CFS case to some kind of
 20 visitation, that they're able to do that with this
 21 court's approval without going through too much effort
 22 to get approval up here, but that they be allowed to
 23 progress with that case.
 24 Your Honor, I think probation would be
 25 appropriate. She has no criminal record in the past. I

1 don't know how the court would feel about a withheld
 2 judgment in this case, and it has caused her to lose her
 3 job at this point. It would certainly give her
 4 incentive to follow through with what the court orders
 5 and follow through with the plan, so, with that, Your
 6 Honor, we'd ask that you place her on probation,
 7 consider a withheld judgment and, perhaps, tweak the no
 8 contact order so that the court downstairs can figure
 9 out the rest of their case. Thank you.
 10 THE COURT: Mr. Cooley, do you have any comments
 11 you'd like to make to the court?
 12 DEFENDANT MR. COOLEY: No; I don't, Your Honor.
 13 THE COURT: Mrs. Cooley, do you have any
 14 comments you'd like to make to the court?
 15 DEFENDANT MRS. COOLEY: I don't.
 16 THE COURT: Is there a legal cause why judgment
 17 and sentence should not be pronounced?
 18 MS. BUSLITZ: Not from defense, Your Honor.
 19 MR. MARTENS: No, Your Honor.
 20 THE COURT: Well, obviously, having
 21 three-and-a-half decades of experience as a judge
 22 handling felony criminal cases, I have seen a wide range
 23 of cases involving abuse and neglect of children that
 24 has been so profound that it reaches the felony level,
 25 and I find this case to be particularly troubling.

1 This case arises when, finally, the injuries
 2 suffered by the older child were so significantly
 3 damaging and terrible, that this state finally takes
 4 action. However, it is clear that the incident that
 5 leads to final and finally more effective, is the stay
 6 in action, it was not an isolated incident. Very, very
 7 sadly, it was not the first time that suspected abuse
 8 was brought to the state's attention. Leann, the older
 9 child, was found wandering the streets at 3:20 o'clock
 10 a.m. in the morning in 2014.
 11 Although, Mrs. Cooley took -- did attend
 12 counseling for the girls and was told over and over
 13 again that depriving a child of food, making a child
 14 with ADHD stand from sunrise to sunset facing a wall and
 15 that throwing things -- well, I don't think they
 16 revealed that part -- making a child stand for hours and
 17 hours upon end, day in and day out, staring at a wall,
 18 was not appropriate technique to improve the life of a
 19 child who has some developmental delays that ought to be
 20 addressed.
 21 [REDACTED] went into the home at 5, having been the
 22 victim of abuse, having been born to parents that were
 23 addicted. Then being placed in a foster care home where
 24 she suffered abuse, and so a child who needed more love,
 25 more attention, more wisdom, more kindness, more wise

1 guidance, was placed with people who subjected her to
 2 physical abuse and to more horrendous emotional abuse.
 3 I'd say the level of emotional abuse in this case is
 4 among the highest I've seen.
 5 And it is very troubling when counselors talk
 6 over the years, at least that Ms. Cooley did go to
 7 counseling, though, it appears that very little of the
 8 actual level of abuse that the older child was suffering
 9 was revealed to counselors because I find it difficult
 10 to believe that if counselors had known the magnitude of
 11 the years of abuse being suffered by the older child,
 12 that they would have been content with just reminders of
 13 better ways of handling situations.
 14 What the final incident revealed is years and
 15 years of abuse in which both children suffer terrible
 16 emotional consequences because of the years and years of
 17 abuse. The pictures of the house show that [REDACTED]
 18 basically lived in a cell. She had nothing in the room
 19 at all except a sleeping bag and a vinyl pad. There
 20 were no toys. There were no pictures. There was
 21 nothing in the room but a sleeping bag. She basically
 22 lived in a cell for years.
 23 She was then made to stand day in and day out,
 24 from morning till night, facing a wall with objects
 25 being thrown at her if she moved, beatings if she moved,

1 and the level of cruelty, just emotional callousness and
 2 cruelty, is fairly astounding. The older child was
 3 given Christmas gifts and toys, and those were taken
 4 from her and given to the younger child. If the two
 5 children were taken camping, the older child was made to
 6 stand, facing a tree all day long, while the younger
 7 child got to play. So the younger child, although, it
 8 appears to me subjected to some level of physical abuse,
 9 really, suffered a level of emotional cruelty that kind
 10 of takes your breath away because what she was trained
 11 year in and year out, was it is all right to treat
 12 another human being in a way that no decent person
 13 treats an animal. Year in and year out, the older child
 14 was deprived and beaten and abused and degraded, and the
 15 younger child was trained to think that this was somehow
 16 an okay way to treat another human being, and that is a
 17 terrible amount of emotional abuse. To expose a
 18 child -- both children -- to such callus cruelty really
 19 is an astounding thing to do, and it's not seeking help
 20 when you're told that there's better ways to do things
 21 and you reject it all and continue to do cruel and
 22 callus things.

23 Both children have been seriously damaged by an
 24 environment that fostered extraordinarily serious
 25 emotional abuse, punctuated by physical abuse, a

1 violence that causes the deepest wounds is the violence
 2 that comes from those that we should have been able to
 3 trust. It doesn't come from the guy who gets mad in a
 4 bar fight and pops off and hits somebody. People are
 5 upset about that. They're surprised because some
 6 violence surprises people, but, really, they tend to be
 7 relatively in tact because they didn't experience the
 8 erosion of years of being treated as less than human, so
 9 I seriously question the wisdom and justice of always
 10 minimizing familial abuse.

11 On the other hand, it has also been my
 12 experience that in some families where there's been
 13 significant physical abuse, there's sometimes an
 14 emotional attachment, and there's poor skills and poor
 15 expectations about child development, so there are a lot
 16 of things in some families that deal with things with
 17 physical abuse. There's -- something's going on that
 18 with new skills and training and better techniques
 19 learned, that sometimes those families can become
 20 significantly healthier and stronger, and then there is
 21 an extra benefit because then the wounds can be
 22 addressed in a family situation where everybody can be
 23 brought together, where wrongs can be acknowledged,
 24 where new paths can be started, and so it can be a real
 25 healing process going on.

1 teaching of how compassion, of no decency, of violence,
 2 abuse and emotional cruelty and coldness. I, of course,
 3 as a judge who handles felonies and has handled a great
 4 number of felony cases, see a lot of instances in which
 5 people are subjected to violence by various people, but
 6 I think cruelty by other people, and oddly enough -- oh,
 7 I don't think it's so oddly once you think about -- and
 8 as a rule, our justice system is harshest on people who
 9 commit violent abuse of some type against a stranger,
 10 and that's because we generally think that's a more
 11 serious offense, but I really question that assumption
 12 because I think years and years and years in a home
 13 where you're treated as less than a human being, years
 14 and years in a home where it's okay for you to be
 15 tormented and starved. Because I also read the parts
 16 where the food was taken from the older daughter and
 17 just thrown out for no reason at all, according to the
 18 younger daughter, where she was often deprived of food.
 19 I don't think it's particularly remarkable that she
 20 would steal food at school considering how she was being
 21 treated.

22 I think it's an assumption that deserves some
 23 challenge in our justice system because, actually, the
 24 violence that seems to me, having seen many people over
 25 the years, having read many studies about it, the

1 In some homes where people have learned real
 2 poor and rather destructive ways of handling stressful
 3 situations with children, I have certainly seen that
 4 happen. I've seen people who were abusive learn better
 5 ways to deal with their kids and then be surprised at
 6 how much better things work, so I don't say that
 7 uniformly one can make any particular conclusion about
 8 everybody, but I think the critical task for a judge in
 9 this situation is to look at the individual situation of
 10 each case, and what this case has beyond just the
 11 physical abuse that leads to the major charge in this
 12 case, is you see years of neglect and emotional abuse,
 13 and so the picture in this case is significantly darker
 14 because in the families that I've seen where people have
 15 started to do a better job once they find better ways to
 16 deal with things, and learn how to deal with anger and
 17 frustration in more constructive ways, there was a
 18 positive, emotional connection, albeit, kind of a stupid
 19 one between parent and child, and so once the parents
 20 learn better ways to handle things and once they started
 21 getting better results, things moved in a generally
 22 better way, but in this situation, what you see is a
 23 level of callus cruelty and indifference to the
 24 suffering of the older child and the constant exposure
 25 of the younger child to all the unacceptable treatment

1 of the older child, and so I think you have a different
 2 level going on here, and I think you have what you see
 3 adopted into a lawyer's analysis, is that you see
 4 minimal empathy, cruel treatment over years, no clue
 5 about callousness or the effect, not a strong connection
 6 between parent and child in this case. The physical
 7 abuse in this case has to be viewed in the connection of
 8 extraordinary emotional abuse that's been going on, and
 9 that leads to an analysis of, what is the reasonable
 10 step to take next?
 11 I'm going to ask the bailiff to pass to each
 12 defendant the no contact order that the court has
 13 prepared, and the no contact order at this time is a no
 14 contact order with all minors because I don't -- I think
 15 that this is a situation where the level of lack of
 16 empathy and callousness means that this court should be
 17 on the supervisory rule, making sure that real progress
 18 occurs over the years.
 19 And, frankly, the way in which the younger child
 20 was exposed to all the mistreatment of the older child,
 21 makes me think that a no contact order with all minors
 22 is the wisest step 1. Now, this is, in my view, an
 23 extreme level of soul-destroying violence in this family
 24 situation that has been minimized by both defendants.
 25 Now, I'm going to turn to each defendant because I have

1 ultimately productive for society, if rehabilitation is
 2 possible, to box it out since that protects others after
 3 any period of incarceration is over, so there are a
 4 variety of factors that the court considers. The
 5 Toohill factors, which I've outlined, are a good summary
 6 of the statutory factors which the court should
 7 consider.
 8 Turning to Mr. Cooley, he would not talk about
 9 the injury to child charge that he pled guilty to. He
 10 told the PSI writer to read the reports. He showed no
 11 remorse, no insight. He would not talk about his
 12 family. He did get some positive letters from some
 13 people. He said his plans were to move out of Idaho.
 14 He primarily sees this case and his guilty plea as
 15 unjustifiable meddling by the State of Idaho. It
 16 appears that he does suffer from some mental-health
 17 conditions that would benefit from some treatment. He
 18 did report that both he and his wife were drinking very
 19 heavily. He wasn't sure, though, if he would stop
 20 drinking. He wouldn't provide any financial information
 21 because, according to him, the State of Idaho had taken
 22 enough from him. There's no indication of a permanent
 23 record.
 24 According to "Dr. Delawyer, who provides the
 25 greatest level of information on the defendant, Mr.

1 outlined what I think is a case of serious abuse and
 2 serious mistreatment in the injury to child case. It's
 3 abundantly clear, it meets the felony level of injury to
 4 child. And placed in its context of abuse and emotional
 5 abuse, that gives an acceptable way to assess the level
 6 of seriousness of the offense.
 7 So I'd say that, in terms of Mr. Cooley, the
 8 offense is serious. The beating that the child received
 9 was such that as the doctors note, it could have caused
 10 kidney damage. It was significant and substantial. The
 11 considerations in any sentencing are, of course, No. 1,
 12 first and foremost, always protection of the public, and
 13 protection of the public requires the court to consider
 14 things, like, a penalty for something wrong,
 15 deliberately done, consequences for actions are
 16 important in the deterrence "fathers and the deterrence
 17 of the people particularly involved because deterrence
 18 is a fundamental reason for the existence of a judicial
 19 system. And a penalty considered as a deterrent to a
 20 person who has not stopped their actions on their own,
 21 so external consequences can be a way of underlining the
 22 importance of controlling yourself and not acting on
 23 illegal impulses.
 24 Rehabilitation is also an important
 25 consideration in the system of justice because it is not

1 Cooley, he describes no abuse by his parents. Although,
 2 he does seem to indicate that, perhaps, his father
 3 abused some drugs. He doesn't appear to have had a
 4 longstanding alcohol problem. He blames the older child
 5 for this case. It's all her fault that this case is in
 6 the court system. He doesn't trust people.
 7 As I said, everything's the older child's fault
 8 because she's conniving, she's deceiving, she can't be
 9 distrusted. He didn't go to meetings about her, he
 10 wasn't connected to her, he didn't go to counseling
 11 sessions regarding her, didn't go to PTA meetings.
 12 Basically, he appears to be substantially disconnected
 13 from the older child, substantially with the younger
 14 child, somewhat less so, and his primary involvement
 15 appears to have been to enforce with whatever method he
 16 thought he wanted to do, the abusive structure that was
 17 present in the family home.
 18 According to Dr. Delawyer, he showed to him as
 19 well, mental empathy. No clue about his callousness, no
 20 understanding of the effect of his severity on the older
 21 child, and what I thought was particularly interesting
 22 for Dr. Delawyer to point out is, that the way the whole
 23 structure was set up, there was no way for the older
 24 child to ever escape any mistreatment. She was in a
 25 situation where there's no way a kid with ADHD could

1 stand for hours on end without moving, and, then, if she
 2 moved, she received more harsh treatment.
 3 So he was -- he did a thorough analysis of the
 4 situation with both parents, but I don't see any
 5 remorse. I don't see any of the things that we need to
 6 work on for rehabilitation to be a very significant
 7 factor. I do think deterrence is a major factor with
 8 respect to Mr. Cooley. I do think that a penalty is
 9 appropriate for engaging in this conduct, not just one
 10 time, but as part of multiyear pattern of abuse.
 11 Turning to Mrs. Cooley, she would go to the
 12 counselors, and they would tell her that withholding
 13 food from a child was not a good way to discipline a
 14 child, making a child stand hours on end, day in and day
 15 out, facing the wall, not a good method, but none of
 16 that ever made any difference. None of the behavior
 17 stopped, and I don't believe that some of the other
 18 behavior was fully revealed. I think that primarily she
 19 was protecting the silence in which this mistreatment
 20 was flourishing.
 21 It appears that Mrs. Cooley has a more
 22 significant problem with alcohol use. While both of
 23 the, Mr. and Mrs. Cooley, appear to have been drinking
 24 heavily, for sure in the last six months, but it appears
 25 that it's been a problem, at least according to the

1 presentence materials, for Mrs. Cooley, for a longer
 2 period of time. Since at least, in the report, it's
 3 says that it has been going on for the last four years.
 4 She also did not show remorse. She was not honest about
 5 the extent of the abuse. She minimized the amount of
 6 abuse and neglect towards both daughters. She
 7 demonstrated neither compassion or empathy for the
 8 physical or mental injuries that they had suffered. She
 9 again blames the older child for all the problems and
 10 does not accept any responsibility for her role in
 11 causing them.
 12 While, for sure, the victim has mental-health
 13 issues, it's been certainly added to in the last number
 14 of years, and I note that both Mr. and Mrs. Cooley
 15 constantly attack the older child and blame everything
 16 on her and talk about all the terrible problems, and I
 17 did think it was notable, as Dr. Delawyer did, that all
 18 of these problems stopped when she went to a decent
 19 place where she had food to eat and kind people to take
 20 care of her, and so I think that's pretty revealing of
 21 how helpful it might have been in a much earlier stage
 22 for her to be with kind and caring people who are
 23 willing to take her to counselors and then actually
 24 listen to what the counselors actually say and do
 25 something about it.

1 So I've looked at this. The state's
 2 recommendation is different for each parent, and I don't
 3 think that I agree with that analysis. I think the
 4 state certainly it is fair to say that in the injury to
 5 child case that Mr. Cooley pled guilty to, that's his
 6 responsibility. That was his crime. But in terms of
 7 the family dynamic, in this case, both parents had been
 8 conspiring to create this environment of ugly abuse.
 9 And the law actually often recognizes that two
 10 people having a bad idea, two or more people having a
 11 bad idea, can also be a great deal more socially
 12 destructive than one person having a bad idea. That's
 13 why the law has special categories for conspiracy and
 14 other crimes where people combine together because two
 15 people having a bad idea reinforces the bad idea and
 16 sets up a troubling dynamic. So I've given considerable
 17 thought to this case, and I think it's more reasonable
 18 that the penalties parallel, and, I think, frankly, with
 19 a lack of remorse shown by either parent, the lack of
 20 any meaningful level, desire to change, being expressed,
 21 I think it's fair for the penalty to be the same, and,
 22 frankly, with this poor picture of rehabilitation, I
 23 think that the penalty as deterrent, penalty just plain
 24 for doing what the law forbids, is a more appropriate
 25 focus because I think that it's essential for the system

1 of justice to save children. People are not free to do
 2 any cruel or callous thing to a child because it's their
 3 child.
 4 And so it's the judgment of the court that each
 5 defendant should be subjected to the same penalty, but
 6 I've looked at each case separately. I've considered
 7 each case separately. The similarities are substantial,
 8 and the shared plan, in essence, is apparent, so I'm
 9 going to impose a sentence of 2 years fixed, followed by
 10 8 years indeterminate, for a 10-year sentence. You have
 11 42 days in which to appeal. The court will recess.
 12 (Proceedings concluded.)
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