



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

CENTRAL COURTHOUSE  
220 WEST BROADWAY  
SAN DIEGO, CA 92101

**F I L E D**

Clerk of the Superior Court

MAR 09 2010

By: \_\_\_\_\_  
K. SELVERSTON DEPUTY

**Criminal Supervising**

Date: 3/9/2010

Hon. David J. Daniels, Judge  
Central D-11

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SCD 151675 People v. John Gardner

On 3/8/10, the court ordered that the redacted probation report made available for inspection and copying during the pendency of CD 225886 and in accord with Penal Code section 1203.05.

That order was stayed pending an application for review. In open court, DPD Mel Epley and DPD Michael Popkins appeared for the Defendant and advised the court that review would not be sought. Accordingly, the stay is lifted forthwith and the probation report, as redacted by the court, is ordered available for inspection and copying.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

SAN DIEGO COUNTY PROBATION DEPARTMENT  
ADULT SERVICES  
PROBATION OFFICER'S REPORT

FILED  
STEPHEN THUNBERG  
Clerk of the Superior Court  
JUL 11 2000  
By: J. MORSE, Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA

v.

RN: GARDNER, JOHN  
CN: GARDNER, JOHN ALBERT  
AKA:

COURT NO. SCD 151675	DEPT. & JUDGE SDSC 31 P. DEDDEH
DA FILE NO. AAE 32001	ATTORNEY W. HALSEY: RETAINED
HEARING DATE/TIME 7-17-2000 @ 1:30 PM	PROB CASE NO. A 818746
PROBATION OFFICER D. POWELL:mjn	PO TEL. NO. (619) 515-8243
TEL. NO. [REDACTED]	BIRTHPLACE/CITIZENSHIP CULVER CITY, CALIFORNIA

ADDRESS  
[REDACTED]  
RANCHO BERNARDO, CALIFORNIA 92127

BIRTH DATE 4-9-1979	AGE 21	RACE CAUCASIAN	SEX MALE	HT 6-2	WT 210	EYES BROWN	HAIR BROWN
DRIVER'S LIC. NO. [REDACTED]	INS. NO.	OTHER ID DATA					
DATE OFFENSE COMMITTED 3-16-2000	DATE CONVICTED 5-31-2000	HOW GUILTY PLEA	CUSTODY STATUS BAIL BOND				
INVESTIGATING AGENCY SAN DIEGO POLICE DEPARTMENT	DATE COMPLAINT FILED 3-20-2000	SDSO SYSTEM NO. 00076 214515					
CII NO. 12050913	FBI NO. 439772HB8	ARREST REPORT NO. 00016877	SDSO BOOKING NO. 00118401A				

CONVICTED OF:

- \* Count One: 288(a) PC, Lewd/Lascivious Acts with Child Under 14 Years, as a lesser included offense of 288(b)(1) PC, Forcible Lewd Act Upon Child;
- \* Count Two: 288(a) PC, Lewd/Lascivious Acts with Child Under 14 Years, as a lesser included offense of 288(b)(1) PC, Forcible Lewd Act Upon Child;
- \* Count Four: 236/237(a) PC, False Imprisonment by Violence, Menace, Fraud, Deceit.

PRE-PLEA AGREEMENT:

"Dismiss balance of information; no deals regarding sentencing"

RECOMMENDATION: CONTINUANCE

RELATED COURT DATA:

The defendant entered a plea of guilty with Harvey and Arbuckle Waivers. In accordance with the pre-plea agreement, the following were dismissed:

- \* Count Three: 288(b)(1) PC, Forcible Lewd Act Upon Child;
- \* Count Five: 647.6(a) PC, Child Molesting.

THE OFFENSE:

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SOURCES OF INFORMATION for this Section

DISTRICT ATTORNEY'S FILE;  
POLICE REPORT.

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On 3-16-2000, San Diego Police Department officers responded to a call regarding the molestation and beating of a 13-year-old girl by a 20-year-old male. Responding officers spoke with the victim, [REDACTED], who complained of head, neck, and abdominal pain. She said she was dizzy and had just vomited. Paramedics were called to assess her.

The victim told officers that she had "ditched" school that day because some girls had wanted to beat her up. She said that she had known the defendant for over a year and had a friendly relationship with him. She said that during their struggle, she may have scratched the defendant's hands or arms. Between 7:45 and 8:00 o'clock that morning, she had been waiting for a school bus. Just before the bus arrived, she saw the defendant who was standing by his car in a nearby parking lot. She had been to a local Taco Bell and nearby waterfall several times in the past with the defendant in a group of friends. She had been inside of his house twice. On this morning, she had walked over with her friend Erin C. to say hello. The defendant offered them a ride to school and they accepted. It was then that the victim saw two girls with whom she was having difficulties and announced that she was not going to school. Erin said that she was going and got out of the car. The defendant told the victim that she could come over to his house and watch movies if she wanted.

On March 17, after the victim's release from the hospital, she additionally told officers that after leaving school on the day of the Instant Offense, she went to the defendant's house and they selected a video of "Patch Adams" to watch. The defendant wanted to give the victim a massage but she said that she didn't need one. The defendant insisted and picked the victim up off of her chair and placed her on the floor and began to massage her. She kept telling the defendant she didn't really want to do that but he continued. The defendant then picked her up off the floor and put her on the couch and she continued to say that she did not want to do this.

The defendant lay atop the victim and began rubbing against her. She could feel that he had an erection. He kissed her on the mouth, neck, and breasts. He pulled up her shirt and sucked on her nipples. He pulled her pants down to the mid-thigh area and kept trying to get them off. He again picked her up and carried her upstairs to his bedroom, placed her on his bed, and again lay on top of her. The victim said that she did not want to stay there and they both went back downstairs.

Once downstairs, the defendant began taking off the victim's pants and she told him to stop; that she wanted to go back to school. The defendant asked her if he had scared her and she said that he had and that she really did not want to do this. The defendant said that he could not take it any longer and then threw the victim onto the couch. He got on top of her and began "humping" her again. The victim was telling the defendant to stop, to leave her alone. She grabbed his shoulders and tried to pull him off but was unable to do so. The victim's pants were undone. The defendant stuck a finger under her panties and touched her "private area in the front."

The defendant then covered the victim's mouth. She could not breathe and said she thought she would die. The defendant began hitting her lots of times, all over her head. He hit her real hard in the face. She kept asking him to please stop. She said that she would do anything if he would just stop, but he just kept going. She couldn't remember how many times he struck her. She thought that his penis might have been out at one point.

When she was able to get up, her pants were unzipped but said "nothing happened" indicating that they had not had sexual intercourse. She said everything was a blur. The defendant hugged her when it was over and said that he was sorry; that he didn't know what he had been thinking. The victim had only one shoe but was able to get out of the house. She ran to a nearby house with an open garage and told the people inside what had happened. They called the police. The victim said that she could not believe what had happened because she had trusted the defendant so much. She remembered that she had left a shoe, her wallet, backpack, and books in the defendant's house.

The officer who subsequently arrested the defendant a short time later at a nearby gas station first observed the defendant as he sprayed his hands from a can of "Odor Eaters" and then rubbed them together as if to wash them. Upon arrest, the defendant spontaneously stated, "What's wrong? The car isn't stolen. I was just on my way to Mira Mesa to see my girlfriend. Oh yeah, just so you know, I have a butterfly knife in the center console of my car."

The victim suffered a cut to the right side of her bottom lip, contusions under her left eye, and bruising around her left eyelid. There were numerous bruises on the left side of her head and a bruise behind her left ear. The inner portion of her left thumb and palm area was red and bruised. There was a red mark behind the right side of her neck.

After admonishment, the defendant denied that the victim had been at his house. When asked if a 13-year-old girl had been at his house earlier, the defendant said that he had given ~~her~~ a ride to school. He said that she is a neighbor who lives nearby. He did not know her last name. When asked

if he had struck anyone that day, the defendant denied having done so saying that he does not hit girls. The defendant said, "Everyone knows that she is like my little sister. Her mother and father are weird."

The defendant denied that he used any drugs or alcohol.

The defendant physically described the victim and again denied that they had any kind of intimate relationship saying that she was like his sister. He said that he had kissed her in the past but only as a friend. He denied having ever had sex with her. He denied that any of her clothing would be found in his house. When asked where he had seen the victim that day, the defendant said that he had picked her friend and her up in front of the Westwood Club and dropped them off in front of an apartment complex next to a Circle K store. He said that he had been with the victim about an hour and a half. When it was noted that the distance in question was only about five blocks, officers asked the defendant what he and the victim had done all that time. The defendant then said that the school had been about ten or 15 minutes away so that he had only been with her about 15 minutes.

VICTIMS:

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RESTITUTION: Unknown.

VICTIM NOTIFIED OF P&S HEARING: Yes. INTENDS TO APPEAR:  
Yes (victim's father).

SOURCES OF INFORMATION for this Section

VICTIM'S FATHER, [REDACTED]

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In a telephone conversation with the Probation Officer on 7-5-2000, Mr. [REDACTED] said essentially the following:

He feels very badly about what happened to his daughter. It is something that neither he nor his family can forget. His family had to move from the house in which they were living. In fact, the victim was taken by her mother to San Francisco for a while. Being at home has been like being in a jail. The victim has lost all of her ability to trust people. This is why her mother finally took her to San Francisco. His daughter also had to change schools. This case has hurt the family financially. He had to break his lease when he moved. His daughter is very disturbed by what happened to her. If she can't trust her friends, and she did believe the defendant was a friend, who can she trust? He believes his daughter needs counseling. She is okay physically but mentally, she is not so good. Also, she periodically complains of lingering pain in one eye where she was struck by the defendant.

The defendant should be in jail so that all of his friends around him can see that one cannot get away with doing such things. The defendant should receive the maximum punishment.

Mr. [REDACTED] plans to appear in Court today and will want to address the Court.

DEFENDANT'S STATEMENT:

SOURCES OF INFORMATION for this Section

INTERVIEW WITH DEFENDANT, HALL OF JUSTICE, 7-5-2000.

In the interview with the Probation Officer, the defendant said essentially the following:

The defendant knows "the girl" (the victim) and her two witnesses. She used to live next-door. He always talked to her like she was a little sister. He also liked her dad. They were from some other country. He knows that the mother has slapped the girl before.

On the day of the Instant Offense, he gave a friend, Ryan W., a ride to school. He dropped him off and on the way home, saw the victim, waved, stopped and asked her how she was doing.

The victim had come over to his house once before while the defendant's girlfriend was there. She made it seem very important that she speak with him and even came up to his bedroom and knocked on the door. The defendant had tried to let her know that he was visiting with his girlfriend and was not available at the moment but she was insistent. Ultimately, he acquiesced and walked downstairs with her to see what she wanted. As it turned out, she said that she just wanted to see how he was doing. He surmised at that time that perhaps she had a crush on him. He had never noticed anything like that before. He had been in her company previously at a recreation center located in their neighborhood where they had played miniature golf in the company of other friends. Actually, he thought that the victim had a crush on his friend, Ryan.

Anyway, on the day of the Instant Offense, he offered the victim a ride to school. Once they got there, the victim said that she saw some girls who she thought were going to beat her up. She seemed really scared. The defendant said, "Okay, what do you want to do?" The victim said that she was not going to school and just wanted to be taken home. At that point, her friend, E [REDACTED], got out. He drove her back to her apartment complex which is midway between where he lived and where he was ultimately arrested at a gas station. There was about a half block between each place. He dropped the victim off and then drove home. He was off that day and was just relaxing. He put in a video and was preparing to do a load of laundry. Then, he left the house and was going to look for friends with whom to hang out. He drove around for a while. Then, he decided to go to Escondido to see if another friend was home. He stopped at a gas station and a motorcycle officer stopped in front of his car. He asked the officer what was wrong and said that the car he was driving was his and that it was paid for. He thought maybe the officer thought it was stolen because it

looked new. Instead, she asked his name and when he told her, she handcuffed him. He asked what this was all about and she said, "Don't worry about it." The defendant waited in the car for about two hours. A detective wanted him to sign a consent to search his house. He said that he would only consent to such a search if his mother or he were present. The defendant refused to sign the consent otherwise and said that he waited another half hour in the back of the car. Finally, his rights were read to him and he asked what was going on. At first, the detective said only that the victim "got a little beat up." He then answered a series of questions about what he had been doing that day:

The defendant says, unequivocally, that the victim's mother beat her. Several witnesses in the neighborhood have heard loud yelling coming from the victim's house. He has seen the victim's mother slap her. The defendant and his sister and a friend of his mother's all heard screaming come from the house before. On at least one occasion, there was very loud hysterical screaming, "Leave me alone!" and "Get away from me!" The victim's mother is vicious and he has even seen her get in Mr. [REDACTED] face. He thinks maybe they are married but also thinks that she has had a boyfriend over before. Anyway, Mr. [REDACTED] is very meek and retiring.

The defendant is absolutely innocent. He took a plea because three attorneys said that he was going to get reamed if he went to trial.

The defendant is willing to comply with any conditions of probation. He said, "I'm willing to do anything." He just wants to get this case ended so he can start his life again.

CRIMINAL HISTORY:

SOURCES OF INFORMATION for this Section

CII AND FBI;  
LOCAL RECORDS.

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<u>Date</u>	<u>Agency</u>	<u>Charge</u>	<u>Disposition</u>
3-16-2000	SDPD	1) 288(a) PC 2) 288(a) PC 4) 236/237(a)PC	SCD 151675: <u>INSTANT OFFENSE.</u>

PERSONAL DATA:

The following information was offered by the defendant. Unless noted otherwise, it has not been verified.

Significant Family Information and Living Arrangements:

The defendant was born and lived in Culver City, California until about age two at which time he moved to Palmdale where he lived until about age six. The defendant's parents divorced when he was about five years old. He does not know why, just that they were not getting along. At age six, he moved back to the Los Angeles area where he lived until age seven at which time he moved to Redlands and then to Running Springs in the San Bernardino Mountains. He lived there until he was 18 years old. His mother then moved to San Diego. The defendant returned to the Los Angeles area for about six months and lived with a cousin. However, he, too, moved to San Diego in 1998 and has lived here with his mother ever since.

The defendant's mother married his step-father when he was about nine years old. This man was "an awesome dad." His natural father was a good father but did not handle young children well. He lived with his father for about a year after his parents' divorce but he began having problems in school and ultimately returned to his mother.

When asked how he was treated as a child, he said that he was moved around a lot and also suffered from ADHD (Attention Deficit Hyperactivity Disorder). Consequently, he took, at various times, Ritalin, Sylert, Zoloft, Paxil, Tegretol, Mellaril, Imipramine, and Wellbutrin. He said also that his father spanked him with a belt and felt that he went over the line to abusiveness. The defendant said that this was the normal punishment for misbehaving and repeated that his father just did not do well with young children.

The defendant has four half-sisters, all of whom are adults. One lives in Alabama, another in Santa Monica, another in Redondo Beach, and a fourth in Long Beach. The defendant is very close with the two half-sisters from his mother's side of the family. He sees the other two mainly at Christmas and other family holidays.

The defendant's mother and stepfather divorced in 1998. The defendant's relationship with his mother is somewhat strained at times because they share a small apartment and get on each other's nerves. The defendant said it would be better if they each had their own places. The defendant maintains an occasional relationship with his step-father.

The defendant's uncle, step-father, and natural father are all alcoholics.

Family Criminal History:

The defendant thinks that maybe an uncle has a criminal history.

Education:

The defendant graduated from Rim of the World High School in the San Bernardino mountains in 1997. The defendant reports a 3.2 GPA.

Military History and Status:

N/A.

Employment History:

The defendant first worked at the age of 15 or 16 with his step-father in construction on an on-and-off basis. Afterward, he worked as a lifeguard at Agua Fria for one season at Twin Peaks, a San Bernardino Mountain resort. Thereafter, he worked at Santa's Village in the San Bernardino Mountains as a ride operator for about four months until the amusement park went out of business and closed down.

Thereafter, the defendant worked at an In-and-Out Burger in Los Angeles for from three to six months.

After moving to San Diego in 1998, the defendant worked at a Big Five Sporting Goods store for about a year and a half. This was the defendant's most recent job. He took a leave because of the Instant Offense. He believes that he may not be allowed to return to that job because of the fact that the store sells firearms and he now has this case on his record. He worked there on a full-time basis at \$9.60 an hour.

Financial Information:

The defendant supported himself on his job at the Big Five Sporting Goods store. He characterized his current financial condition as "terrible." He said that he can't work at his job because of gun laws vis-a-vis this case. However, if he really needs help, his grandparents have a sign shop in which he can work on a temporary basis.

Marital Status:

Engaged.

Number of Dependents & Ages/Relationship to Defendant:

None.

Psychological/Medical Problems:

Psychological:

The defendant suffers from ADHD (Attention Deficit Hyperactivity Disorder). However, he stopped taking medications for this condition as a teenager.

Medical:

The defendant is in good health and good physical shape.

Substance Abuse and Treatment History:

The defendant is an occasional drinker. He has a drink once or twice a month at most.

The defendant has tried marijuana in the past but did not like it. He said that he threw up and had stomach problems for a week. He has never tried any other drugs.

The defendant denies that he has ever needed, sought, or received treatment for any kind of alcohol or substance abuse problem.

Gang Affiliation:

Denies.

Plans:

The defendant was going to be a math teacher but can't do that now. He also considered going into the military or a police department. He can't do those things either now. So, he will go back to school. He is looking at obtaining some sort of technical degree such as a contractor so that he can get back on his feet and begin making money right away.

SENTENCING DATA:

Possible Circumstances in Mitigation:

Rule 423(b)(1): The defendant has no apparent record of criminal conduct.

Possible Circumstances in Aggravation:

Rule 421(a)(1): The crime involved great violence inflicted upon the victim and disclosed a high degree of cruelty, viciousness, and callousness.

Rule 408(a): The defendant benefitted from the dismissal of additional counts which could have added substantially to his potential prison term.

Prison Term Analysis:

The sentencing options available to the Court in this case for Counts One and Two are:

- \* Lower Term - Three Years;
- \* Middle Term - Six Years;
- \* Upper Term - Eight Years.

The options for Count 4 are 16 months, 2, or 3 years. Therefore, the Probation Officer selects Count One as the principal term. The weight of the possible circumstances in aggravation with particular regard to the violent beating inflicted upon the victim is heavy. However, the defendant's lack of a significant criminal history is a substantial mitigant. Therefore, the presumptive middle term will be recommended.

Pursuant to Rule 425(a)(1) and Rule 425(a)(3), the Probation Officer will recommend that punishment for Count Two run concurrently with that for Count One in that the crimes and their objectives were not predominantly independent of each other and because the crimes were essentially committed at the same time and place.

The Probation Officer will recommend that punishment for Count Four be stayed pursuant to 654 PC in that the false imprisonment of the victim was part and parcel of the Lewd/Lascivious and later violent acts to which she was subjected by the defendant.

Therefore, the total suggested prison term will be six years.

Suggested Prison Term:

<u>Crime</u>	<u>Suggested Base Term</u>	<u>Recommended Term</u>	<u>Recommended Stay</u>
Count One, 288(a) PC	Middle - Six Years	Six Years	0
Count Two, 288(a) PC	Middle - Six Years (Concurrent)	0	0
Count Four, 236/237(a) PC	Middle - Two Years	0	Stayed per 654 PC
Total Recommended Term:		Six Years	

EVALUATION:

Probation Eligibility:

The Probation Officer will argue that pursuant to 1203(e)(3) PC, the defendant is presumptively ineligible for probation by virtue of his willful infliction of great bodily injury upon the victim except in the unusual case where the interests of justice would best be served by a grant of probation. Further, the Probation Officer argues great bodily injury in this case pursuant to the definition found under 12022.7(e) PC which states that "great bodily injury means a significant or substantial physical injury." The defendant punched the victim in the face several times after she continually refused to have sex with him. As reported by her father, the victim was emotionally traumatized after suffering the physical punishment inflicted by the defendant to the point where she now feels unable to trust anyone and to the point where her parents found it necessary to remove her with her mother to the San Francisco area. Additionally, seven months after the event, the victim still experiences pain in the area of one eye where she was struck by the defendant.

The Probation Officer has reviewed the provisions of Rule 413 and will argue the unusual case pursuant to Rule 413(c)(2)(iii) in that the defendant is relatively youthful and has no apparent record of prior criminal offenses. In any event, the Probation Officer is aware that under Rule 408(a); the Court may cite any factor under Rule 414 in order to grant the unusual case.

Circumstances Supporting a Grant of Probation:

- Rule 414(b)(1): The defendant has no apparent record of prior criminal conduct.
- Rule 414(b)(3): The defendant expressed a willingness to comply with the conditions of probation.
- Rule 414(b)(4): The defendant appears to have the ability to comply with reasonable conditions of probation as indicated by his age, education, health, mental faculties, overall lack of reported alcohol or other substance abuse, family background and ties to the community, and employment history.
- Rule 414(b)(6): The defendant's felony convictions in this case will likely have an adverse collateral consequence upon his life which might be somewhat ameliorated by a grant of probation.

Circumstances Supporting a Denial of Probation:

- Rule 414(a)(1): The nature of this case when compared to other instances of Lewd/Lascivious Acts Upon a Child Under 14 Years of Age is more serious in that it involved the infliction of significant bodily injury upon the victim by the

GARDNER, John  
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defendant.

Rule 414(a)(4): The defendant inflicted physical and emotional injury upon the victim.

Rule 414(b)(7): The defendant made no mention whatsoever of feelings of contrition or remorse. In fact, in the face of the evidence in this case, the defendant absolutely denies any culpability whatsoever and instead, insisted that the victim's mother inflicted the injuries upon the victim.

#### Discussion:

Appearing before the Court for sentencing is 21-year-old John Albert Gardner who pleaded guilty to two counts of Lewd/Lascivious Acts with a Child Under 14 Years of Age as lesser included offenses of Forcible Lewd Act Upon a Child and one count of False Imprisonment. An additional count of Forcible Lewd Act Upon a Child and one count of Child Molesting were dismissed with Harvey and Arbuckle Waivers.

In this case, the defendant gave the victim a ride to his house from her school after she told him that she did not want to attend that day because she feared that two girls in the vicinity would beat her up. Once at the house, the two watched videos and the defendant began making sexual advances toward the victim. The defendant's acts included getting on top of the victim and moving as if simulating sexual intercourse, touching her vaginal area with his hand, and putting his mouth on her breasts. The victim refused to comply with the defendant's advances and at one point, he began punching her repeatedly in the face and head area. The victim ran from the house leaving one shoe and a backpack behind and ran into the garage of a neighbor. The neighbor called police and the defendant was ultimately arrested a short time later at a nearby gas station.

The Probation Officer has arranged for the psychological evaluation of the defendant mandated by 288.1 PC and will need to benefit from that evaluation before a recommendation can be offered for the consideration of the Court. Therefore, at this juncture, the Probation Officer will be recommending that this matter be continued for at least three weeks so that the evaluation of the defendant can be conducted and a supplemental report prepared. Additionally, the Probation Officer will recommend that the defendant be ordered to appear for the psychological evaluation which has been scheduled for 7-20-2000 at eight o'clock a.m. in this Courthouse.

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7-17-2000

CUSTODY DATA:

<u>Date Confined</u>	<u>Date Released</u>	<u>Place</u>	<u>Custody Days</u>
3-16-2000	3-21-2000	County Jail	6
		4019 PC Credits	<u>2</u>
		Total Credits	8

RECOMMENDATION:

That this matter be continued for at least three weeks so that a psychological evaluation of the defendant can be conducted and a supplemental report prepared; further, that the defendant report to the psychological evaluation scheduled for him on 7-20-2000 on the first floor of this Courthouse at eight o'clock a.m.

Respectfully submitted,

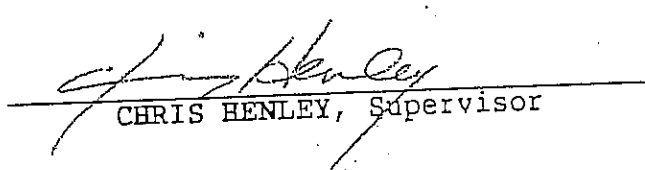
ALAN M. CROGAN  
Chief Probation Officer

By:



DENNIS POWELL  
Senior Probation Officer

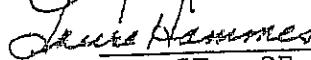
Approved



CHRIS HENLEY, Supervisor

I have read and considered the foregoing report.

8/23/00



JUDGE OF THE SUPERIOR COURT

DP:mjn (TL: 7-7-2000)  
(T/L) PROB. 2185

AUG 09 2000

By: X. LUGO, Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA

v.

RN: GARDNER, JOHN  
CN: GARDNER, JOHN ALBERT  
AKA:

COURT NO. SCD 151675	DEPT & JUDGE SDSC 31 P. DEDDEH
DA FILE NO. AAE 32001	ATTORNEY W. HALSEY: RETAINED
HEARING DATE/TIME 8-24-2000 @ 1:30 PM	PROB. CASE NO. A 818746
PROBATION OFFICER D. POWELL:mjn	PO TEL. NO. (619) 515-8243

REASON FOR HEARING:

At the Probation Hearing and Sentencing on 7-17-2000, this matter was continued until today to allow for a psychological evaluation of the defendant and the preparation of this Supplemental Report.

The Probation Officer is in receipt of the psychological evaluation of the defendant and will offer a recommendation for the consideration of the Court.

COLLATERAL INFORMATION:

SOURCES OF INFORMATION for this Section

PSYCHOLOGICAL EVALUATION OF THE DEFENDANT, PERFORMED BY  
DR. MATTHEW F. CARROLL, M.D., 7-20-2000;  
TELEPHONE CONVERSATION WITH DR. CARROLL THEREAFTER.

The psychological evaluation of the defendant performed by Dr. Carroll on 7-20-2000 stated essentially the following:

Dr. Carroll noted the defendant's claim that he suffers from Attention Deficit Hyperactivity Disorder (ADHD) but noted also that the defendant has not been on any medication since age 16, graduated from high school with a 3.2 GPA, and has been able to hold a full-time job without medications. Therefore, Dr. Carroll concluded that the defendant does not suffer from any clinically significant symptoms of ADHD.

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Dr. Carroll also considered a diagnosis of pedophilia and found that the defendant has not been interested in pre-pubescent children even though he has demonstrated interest in children of approximately 13 years of age. The defendant completely denied any attraction to young females although Dr. Carroll noted that based upon the evidence in the Probation Officer's original report in this case and the District Attorney's file, it appears that the defendant is attracted to girls significantly younger than he.

Dr. Carroll found that the defendant manifests significant predatory traits to underage females. He was found to have clearly taken advantage of them sexually.

The defendant denied any thoughts of harming himself. However, Dr. Carroll noted that the defendant significantly beat the 13-year-old victim when she did not engage in sexual activity with him. Based upon this, Dr. Carroll concluded that the defendant would be a continued danger to underage girls in the community.

Dr. Carroll found that the defendant did not warrant a clinical diagnosis.

With regard to treatment, Dr. Carroll noted the defendant's complete denial of any culpability in this case including having ever sexually touched any underage females. Therefore, Dr. Carroll found it unlikely that the defendant would be amenable to treatment. Dr. Carroll wrote that there is no known treatment for an individual who sexually assaults girls and does not admit to it in any way. Dr. Carroll states in part:

"The fact that the defendant takes no responsibility whatsoever for his actions makes him an extremely poor candidate for any sexual offender treatment. There are sex offender treatment programs available in the community, however, the success rate for these tends to be low. The most successful patients in these cases are individuals who fully admit the gravity and extent of their actions. In this case, the defendant makes no such admissions. In my opinion, the defendant would not benefit from sexual offender treatment."

With regard to a sentencing recommendation, Dr. Carroll recommended the maximum sentence allowed by law.

The Probation Officer failed to note the date of the telephone conversation with Dr. Carroll. However, it was within a day or two of the psychological evaluation of the defendant. In the telephone conversation with the Probation Officer, Dr. Carroll, who initiated the call, stated essentially the following:

"The defendant does not suffer from a psychotic disorder. He is simply a bad guy who is inordinately interested in young girls. However, his predilection toward younger girls is a problem. He manifests significant predatory traits and is a danger to the community. The defendant is a poor candidate for probation; he takes no responsibility whatsoever for what he has done."

Dr. Carroll recommends that the defendant be sentenced under the highest sentencing guidelines available. Dr. Carroll surmises that the defendant pleaded guilty in order to take advantage of the plea agreement.

The defendant reported having been on as many as 18 different medications in the past because of his claimed attention deficit hyperactivity disorder. If this were true, then the person would be severely mentally ill (which the defendant is not) or, there is a serious behavior problem. Dr. Carroll feels that since the defendant has not taken any medications since age 16, graduated with a good grade point average from high school, and has done well in life without medications, there is no behavioral problem. Therefore, Dr. Carroll's conclusion is that the defendant "is just a bad, bad kid."

Dr. Carroll noted that the defendant tested with a 113 IQ which is relatively high for someone of the defendant's age.

Dr. Carroll is concerned about the defendant's prior arrest for Trespassing at a high school. He would like to know why the defendant would be hanging around a high school. He finds this behavior disturbing. Dr. Carroll was also disturbed by a statement made by the defendant with regard to his alleged fiancée. Apparently, she had become pregnant at some point in the recent past and the defendant told Dr. Carroll that she had gone ahead and gotten an abortion because she was afraid she could not raise a child by herself. This statement seems very odd to Dr. Carroll. He finds pervasive oddness in this case.

The best treatment for the defendant would be a commitment to State Prison. From what the defendant did, and Dr. Carroll looked at the photographs, this is a very serious case.

#### EVALUATION:

##### Discussion:

Appearing before the Court for sentencing is 21-year-old John Albert Gardner who pleaded guilty to two counts of Lewd/Lascivious Acts with a Child Under 14 Years of Age as lesser included offenses of Forcible Lewd Act Upon a Child and one count of False Imprisonment. An additional count of Forcible Lewd Act Upon a Child and one count of Child Molesting were dismissed with Harvey and Arbuckle Waivers.

In this case, the defendant gave the victim a ride to his house from her school after she told him that she did not want to attend that day because she feared that two girls in the vicinity would beat her up. Once at the house of the defendant, the two watched videos and the defendant began making sexual advances toward the victim. The defendant's acts included getting on top of the victim and moving as if simulating sexual intercourse, touching her vaginal area with his hand, and putting his mouth on her breasts. The victim refused to comply with the defendant's repeated advances and at one point, he began punching her repeatedly in the face and head area. The victim ran from the house leaving one shoe and a backpack behind and ran into the garage of a neighbor. The neighbor called police

and the defendant was ultimately arrested a short time later at a nearby gas station.

For his part, the defendant completely denies any culpability whatsoever. His statement to the Probation Officer is that the defendant's mother must have beaten her. The defendant went to great lengths to paint a picture of a family dominated by the victim's mother and stated unequivocally that the mother must be the guilty party. The defendant, according to his statement, is absolutely innocent. He took a plea because three attorneys said that he was going to "get reamed" if he went to trial.

The psychological evaluation performed by Dr. Carroll indicates that while the defendant does not warrant a clinical diagnosis, he does have an inordinate attraction to girls younger than he. The defendant also manifests marked predatory traits and is not seen as a suitable candidate for sex offender treatment insofar as he refuses to accept any responsibility for what he has done. Dr. Carroll recommended that the defendant be sentenced to State Prison for the highest term possible.

The Probation Officer also finds that the defendant is not a suitable candidate for probation. There does not appear to be any rhyme or reason for what the defendant did in this case. Unfortunately, the answers can only come from the defendant and it does not appear likely that he will be offering an explanation for why he committed this crime any time soon. In point of fact, the defendant's assertion that the victim's mother committed this crime is nothing short of audacious. Beyond that, the degree to which the defendant violated the trust of the young, unsophisticated victim makes this crime reprehensible. She is a former neighbor of the defendant; they have "hung out" together with a mutual group of friends and she should have had no reason to fear him. The fact that he would try to force himself upon her sexually is indefensible but then to beat her as he did out of frustration or predation represents a qualitative leap to extremely serious criminal behavior. It is very fortunate that the victim was not severely injured. Even so, one can only imagine the terror she must have felt. Finally, the defendant's cool denial of culpability is cause for the gravest concern.

The defendant does not appear to be amenable to treatment and is an unsuitable candidate for probation given the seriousness of this crime which has quite probably marred the victim for life. Even though he might be able to overcome his presumptive ineligibility on the basis of his youth and lack of a significant prior record, the Probation Officer will be recommending the following term in State Prison for the consideration of the Court.

RECOMMENDATION:

That probation be denied and the defendant be committed to the Department of Corrections for the term of six years with credit for time served of 6 actual days and 2 days 4019 PC credits, a total of 8 days credit; that restitution be paid to the victim in an amount to be determined/modified by further Court Order if the victim reports a loss; that any restitution order be enforceable as a civil judgment under 1202.4(i) PC; further, that the defendant pay restitution per 1202.4(f) PC to the Victims of Crime

Program if a claim made by the defendant is paid; that the defendant pay a restitution fine pursuant to 1202.4(b) PC in the amount of \$1,800, to be paid forthwith or as provided in 2085.5 PC; further, that the defendant pay an additional restitution fine pursuant to 1202.45 PC in the amount of \$1,800, with fine to be suspended and remain so unless defendant's parole is revoked.

Term Recommendation Breakdown by Count is as Follows:

<u>Crime</u>	<u>Suggested Base Term</u>	<u>Recommended Term</u>	<u>Recommended Stay</u>
Count One, 288(a) PC	Middle - 6 Years	6 Years	0
Count Two, 288(a) PC	Middle - 6 Years (Concurrent)	0	0
Count Four, 236/237(a) PC	Middle - 2 Years	0	Per 654 PC

Total Recommended Term: 6 Years

Respectfully submitted,

MALAN M. CROGAN  
CHIEF PROBATION OFFICER

By: *Dennis Powell*  
DENNIS POWELL  
Senior Probation Officer

Approved

*Chris Henley*  
CHRIS HENLEY, SUPERVISOR

I have read and considered the foregoing report.

*Leuca Harmonas 8/23/00*  
JUDGE OF THE SUPERIOR COURT

*Peter C. Deddeh*