

INELIGIBLE VOLUNTEER RECORD SERVICE  
REGISTRATION SERVICE  
BOY SCOUTS OF AMERICA

DATE: 2/9/90

FULL NAME Darrald Timmie Ostocowich S.S. NO. \_\_\_\_\_  
(No initials if you can possibly get full name)

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE CA ZIP CODE \_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_ (This is important and should be exact)

APPROXIMATE AGE \_\_\_\_\_ (To be used ONLY when date of birth is not known)

RELIGION \_\_\_\_\_ NATIONALITY (Citizen of) \_\_\_\_\_

OCCUPATION \_\_\_\_\_

EDUCATION \_\_\_\_\_

WEIGHT \_\_\_\_\_ HEIGHT \_\_\_\_\_ RACE \_\_\_\_\_

COLOR OF HAIR \_\_\_\_\_ COLOR OF EYES \_\_\_\_\_

ANY DISTINGUISHING PHYSICAL CHARACTERISTICS \_\_\_\_\_

HOBBIES OR SPECIAL INTERESTS \_\_\_\_\_

MARRIED  SINGLE  NAME OF SPOUSE \_\_\_\_\_

CHILDREN \_\_\_\_\_

(Name, number, ages, if possible)

SCOUTING CONNECTIONS:

| <u>UNIT #</u> | <u>CITY</u> | <u>STATE</u> | <u>POSITION</u> | <u>DATE REGISTERED</u> | <u>DATE RESIGNED</u> |
|---------------|-------------|--------------|-----------------|------------------------|----------------------|
|               |             |              | ASM             |                        |                      |

Chartered Organization \_\_\_\_\_

SPECIAL RECOGNITION \_\_\_\_\_

| <u>INCIDENT:</u> | <u>TYPE</u> | <u>DATE OF INCIDENT</u> | <u>RESOLUTION</u> |
|------------------|-------------|-------------------------|-------------------|
|                  | <u>Type</u> |                         | <u>Resolution</u> |

- 1=Scout Related
- 2=~~Scout~~ scout related
- 3=homosexual (not specifically with youth)

- 1. Internal (only Scouts Know)
- 2. Criminal action
- 3. Court action
- 4. Probationary status
- 5. Reported to state agency

**NOTED**

MAR 05 1990

JOSEPH L. ANGLIM OFF list of attached documentation

- 1. Description of incident
- 2. Victim(s) statement
- 3. media reports
- 4. Legal proceedings
- 5. Offender's statement
- 6. Official notification of termination
- 7. Found guilty/innocent by court

He is a pedophile who admitted to molesting 9-11 yr old boys he met at Cub Scout meetings

Council \_\_\_\_\_ Signed \_\_\_\_\_ Registration/National  
SCOUT EXECUTIVE

3823--eko-9/22/89

March 7, 1990

Mr. Ed C. Jacobs  
Scout Executive  
Los Angeles Area Council, No. 33

PERSONAL AND CONFIDENTIAL

SUBJECT: GARRALD TIMMIE OSTOPOWICH

Dear Ed:

Thank you for the detailed information sent concerning the above Scouter. This case has been reviewed with our attorney and is now on our permanent Ineligible Volunteer File.

Sincerely,

Paul Ernst, Director  
Registration Service

ag

cc: Western Region

READY TO FILE  
MAR 07 1990  
ERIN O'RILEY

CONF018620



Los Angeles Area Council  
Boy Scouts of America

Los Angeles, California 90026

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Peter J. Pitchess '77  
John M. Russon '76  
E. L. Shannon, Jr. '74, '75  
Arthur D. MacDonald '72, '73  
John P. Pollock '71

January 19, 1990

Mr. Paul Ernst  
Director of Registration Service  
National Office  
Boy Scouts of America

Irving, Texas 75015-2079

Dear Paul,

I still am not able to find information on Darrald Jimmie Ostopowich. I have reviewed the name with several of the staff members and with the registrar and find that no one has knowledge of the name nor do we find his name on our computer or are we aware that he has ever been registered in any unit within this council.

With the unit number, I am sure we could be more helpful. Have you tried the other councils in the Los Angeles area?

Sincerely yours,

Richard B. Frans  
Vice President, Development

RBF/md

A gift to the  
Los Angeles Area Council Trust Fund  
supports Scouting beyond one's lifetime.



United Way

READY FOR FILE

JAN 10 1990

JULIE FIELDER

January 10, 1990

Mr. Richard B. Frans  
Vice President Development  
Los Angeles Area Council, No. 33

PERSONAL AND CONFIDENTIAL

SUBJECT: BARRALD TIMMIE OSTROWICH

Dear Dick:

Thank you for your letter of January 5, concerning the above named individual. Let me give you a little more information.

I have a copy of a criminal law procedure from the Superior Court of Los Angeles County related to the above named individual. This was Case No. 8042064. It, also, had several other numbers which had information which had previously taken place. In the information which I have a copy of, this appeared in the daily journal DAR10748. On February 7, 1989 the court appointed psychiatrist reported to the court that the defendant was a pedophile. The defendant had estimated that he had sex with 50 boys. Most of these were 9 to 11 year old boys who he met at Cub Scout meetings where he was involved.

All I need at the present time, is some additional information concerning this individual, so that we could identify him should he attempt registration after getting out of prison. That is the reason I am asking you for a record sheet at this time.

I do not know what to tell you except that he was involved with some youth through Scouting and I do not even know what council and, therefore, am asking for a record sheet to identify him. Perhaps, you could check some older registration records and determine if he was registered in the past in your council and, therefore, you could get some information on his size and other personal characteristics.

CONF018622

Thanks for your help. I am enclosing a record sheet for your use.

Sincerely,

Paul Ernst, Director  
Registration Service

jf

Enclosure

cc: Western Region  
Ed C. Jacobs, Scout Executive-No. 33



SCOUTING/USA

Cub Scout, Scout, and Explorer programs

Los Angeles Area Council  
Boy Scouts of America

Los Angeles, California 90026

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E. L. Shannon, Jr. '74, '75  
Arthur D. MacDonald '72, '73  
John P. Pollock '71

January 5, 1990

Mr. Paul Ernst  
Director of Registration Service  
National Council  
Boy Scouts of America

Irving, Texas 75015-2079

Dear Paul,

I find no information in our computers concerning  
Darrald Timmie Ostopowich as described in the  
attached letter. If you can give us additional  
information we will be glad to check it out.

Sincerely yours,

Richard B. Frans  
Vice President Development

RBF/md

cc: Edward C. Jacobs

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United Way

January 2, 1990

READY FOR FILE

DEC 29 1989

A. GRAVES

Mr. Ed C. Jacobs  
Scout Executive  
Los Angeles Area Council, No. 33

PERSONAL AND CONFIDENTIAL

SUBJECT: Darrauld Timmie Ostopowich

Dear Ed:

We recently received information concerning the above named individual. It indicated he was a pedophile, who admitted to molesting 9-11 year old boys he met at Cubscout meetings.

I am enclosing an Ineligible Volunteer Record Sheet which I would like to have completed, so we can identify this individual. Please complete this with as much information as you have available.

We would, also, like to have any other material which would help us in completing our file. We really would like to close this matter at this time.

Sincerely,

Paul Ernst, Director  
Registration Service

ag

Enclosure

cc: Western Region

CONF018625

READY FOR FILE

September 28, 1989

SEP 29 1989

JULIE EATON

Mr. Ed C. Jacobs  
Scout Executive  
Los Angeles Area Council, No. 33

PERSONAL AND CONFIDENTIAL

SUBJECT: DARRALD TIMMIE OSTOPOWICH

Dear Ed:

We recently received information that the above named individual had previously been registered as a Cub Scout leader. It was also indicated that a psychiatrist had reported that he was a pedophile, who had admitted molesting 9-11 year old boys.

I am enclosing an Ineligible Volunteer Record Sheet which I would like to have you complete so that we can identify Mr. Ostopowich, should he attempt registration in some other location. Please give us as much information as you have available, so we can identify him, should he move to another part of the country.

We would also like to have any other material you might have available, through newspaper clippings or court records that would help us in having a complete file.

Sincerely,

Paul Ernst, Director  
Registration Service

eko

cc: Western Region

CONF018626





BOY SCOUTS OF AMERICA

National Office

Irving, Texas 75015-2079

September 26, 1989

SUBJECT: CANDIDATE FOR INELIGIBLE VOLUNTEER FILE

From: Debra C. Duhs

To: Paul I. Ernst

The attached is a report on the criminal trial of Darrald Timmie Ostopowich. The court-appointed psychiatrist reported to the court that Ostopowich was a pedophile who admitted to molesting 9-11 year old boys he met at Cub Scout meetings. If Mr. Ostopowich is not already in the Ineligible Volunteer File, I recommend that his name be placed in the file as it was the psychiatrist's opinion in February 1989 that Ostopowich presented a substantial danger of doing bodily harm to others.

sd

*Added to CF file 9/29/89  
Show me reg on  
National computer.  
9/28/89*

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CONF018627

\* Retired Presiding Justice of the Court of appeal sitting under assignment by the Chairperson of the Judicial Council.

# CRIMINAL LAW AND PROCEDURE

## Sex Offender's Confinement Extended Despite Terms of Plea Agreement

Cite as 89 Daily Journal D.A.R. 10748

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

DARRALD TIMMIE OSTOPOWICH,

Real Party in Interest.

No. B042284

Super. Ct. No. M 255232, A 263973

California Court of Appeal

Second Appellate District

Division Two

Filed August 22, 1989

Original proceeding; petition for a writ of mandate. Petition granted, with directions.

Ira Reiner, District Attorney (Los Angeles), Maurice H. Enneim and Brent Riggs, Deputy District Attorneys, for petitioner.

No appearance for Respondent.

Wilbur F. Littlefield, Public Defender, and Lawrence M. Sarnoff, David Yamada, and John Hamilton Scott, Deputy Public Defenders, for Real Party in Interest.

By petition for writ of mandate, the People challenge an order dismissing their petition to extend the state hospital commitment of a defendant whose original eight-year commitment as a mentally disordered sex offender was about to expire.

By a complaint filed in municipal court on November 25, 1980, defendant was charged with six counts of sodomy, oral copulation, and child molestation, involving three victims. On January 12, 1981, defendant agreed to plead guilty to one count. It was further agreed that the People would move to dismiss the remaining five counts at the time of sentencing; that it was contemplated that defendant would be found to be a mentally disordered sex offender and committed as such for a period not to exceed eight years; and that if he were not so found, he would be permitted to withdraw his plea.

After psychiatric evaluation, the superior court on April 13, 1981, found defendant to be a mentally disordered sex offender, adjourned criminal proceedings, and committed him pursuant to Welfare and Institutions Code section 6300 to the Department of Mental Health, with a recommended placement at Patton State Hospital, for a period not to exceed eight years.

In the interim, on February 20, 1981, the court of appeal ruled, in *People v. Lomboy* (1981) 116 Cal.App.3d 67, that a defendant who pleaded not guilty by reason of insanity and was committed to the Department of Mental Health for a period

not to exceed six years could appeal the commitment and win the right to withdraw her plea because she was not told, at the time of the plea, of the statutory provision for successive two-year extensions of the commitment if she should not recover her sanity and were found to represent a substantial danger of physical harm to others.

Later in 1981 the Legislature repealed the Mentally Disordered Sex Offenders Act, declaring that "the commission of sex offenses is not in itself the product of mental diseases." (Stats. 1981, ch. 923, § 4.) The Act remained effective, however, with respect to persons committed as mentally disordered sex offenders before January 1, 1982. (Id., § 3.)

In August 1988 the acting medical director of Patton State Hospital reported to the office of the district attorney that defendant's term of commitment was scheduled to expire on April 11, 1989, but that he continued to suffer from a mental disease, defect, or disorder, as a result of which he was predisposed to the commission of sexual offenses to such a degree that he continued to present a substantial danger of bodily harm to others. Accordingly, on December 14, 1988, the district attorney filed a petition for a two-year extension of defendant's commitment to the Department of Mental Health, pursuant to former Welfare and Institutions Code section 6316.2.

On January 11, 1989, the superior court appointed the public defender to represent defendant, and appointed a psychiatrist and a psychologist to examine him.

On February 7, 1989, the court-appointed psychiatrist reported to the court that defendant was a pedophile; defendant had estimated that during the four years before his arrest in this case he had had sex with about fifty boys, generally nine- to eleven-year-olds whom he met at Cub Scout meetings where he was an assistant scoutmaster; that he continues to have sexually arousing fantasies involving young children; and that he is not ready for discharge because he represents a substantial danger of doing bodily harm to others.

The psychologist's report is not in the record.

On March 16, 1989, defendant filed a motion to dismiss the petition for extended commitment, on the basis of the rationale of *People v. Lomboy*, supra. The reporter's transcript of the 1981 plea showed that defendant was told, on the record, that "If [the court] finds that you are a mentally disordered sex offender, you will be sentenced up to eight years of detention. That means that you could be kept in a place of confinement for up to eight years. That confinement would normally be in hospitals or places of that nature but places where you will not be free to leave. That eight years can be extended — apart from the eight years, you can be released, you can be on parole or be released from hospitals under doctors' care. That time will not count against the eight years of detention. . . . That eight years can be extended for 12 or 14 years. Sometimes you would be out. Sometimes you might be in, depending on your condition and what the doctors want to do. . . . Your overall effect is that you can be confined for up to eight years of your plea of guilty."

Defendant also stated, by declaration and by testimony at a hearing on his motion, that he had not been informed of the possibility of an extension, and that he would not have pleaded guilty had he been so informed.

Defendant did not offer a declaration from the privately-retained attorney who had represented him at the time of his guilty plea.

On April 24, 1989, the trial court ruled that defendant was not adequately informed, when he entered his plea of guilty, of the possibility of an extension of his commitment, and on that basis granted his motion to dismiss the petition for extension. This petition followed.

The courts of appeal are in conflict over whether the rule of *People v. Lomboy*, supra, should be applied to guilty pleas entered before it was decided. (See *People v. Superior Court (Bannister)* (1988) 203 Cal.App.3d 1525 (rev. denied) (*Lomboy* not retroactive)); *People v. McIntyre* (1989) 209 Cal.App.3d

548, modified, 209 Cal.App.3d 900 (1989), *retracive* to Sept. 1, 1989, authorizing extension of commitment by reason of insanity.

The People's motion for extension of commitment was granted, and defendant's commitment was extended to April 11, 1991. Defendant's appeal of the extension was dismissed.

Only our Supreme Court can resolve the deadlock between the two courts of appeal and whether it is fair to draw a guilty plea in *Lomboy*, only the benefits of the plea. (1989) 210 Cal.App.3d 1000. The possibility of an extension of commitment would have been a factor with the fact that he procured for him to the state plea and defense.

In the present case, the People's motion for extension of commitment was granted, and defendant's appeal of the extension was dismissed. The state hospital's reason for insanity is a substantial danger of bodily harm to others and penal commitment to the state hospital. (a.)

The Mental Health Act. Upon conviction, or on the motion of the prosecutor, or on the motion of the defendant to institute a plea of guilty, a defendant who is a mentally disordered sex offender (a.) If, as heretofore, the defendant's consent to a plea of guilty is not a result of treatment (a.) The defendant committing his crime is not a jury member. (See former section 6316.2.)

Thus, commitment to the state hospital was a consequence of the defendant's commission of mental disease, defect, or disorder, and the commission of a crime dangerous to the public safety. Such a commitment could have been avoided if the defendant had not pleaded guilty or had not pleaded guilty to a crime for which the state hospital is required to receive him.

Accordingly, the motion to dismiss the petition for extended commitment was granted, and the possibility of an extension of commitment was not a factor in the defendant's plea of guilty.

All parties agree that this court should resolve the issue of the applicability of the rule of *People v. Lomboy* to guilty pleas entered before it was decided. The parties have presented the issues fully, and the court is in a position to resolve the issue. Let a per-

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LEGAL COMMUNICATION

346, modified, 209 Cal.App.3d 1098b (rev. denied) (Lomboy retroactive to September 13, 1979, the effective date of legislation authorizing extensions of commitments of persons found not guilty by reason of insanity).)

The People do not contend that the ambiguous references extension when defendant's plea was taken constituted compliance with Lomboy. Rather, they argue that Lomboy was incorrectly decided, and in any event should not be applied to invalidate pleas taken before it was decided.

Only our Supreme Court is invested with power to break the deadlock between Bannister and McIntyre. We ourselves have grievous doubts whether Lomboy was correctly decided, and whether it is properly extended to confer a right to withdraw a guilty plea upon a defendant who, unlike the defendant in Lomboy, only raises the issue years later after accepting the benefits of his plea. (See *People v. Superior Court (Wagner)* (1989) 210 Cal.App.3d 1146, 1150-1153.) We also are dubious of defendant's assertion that had he been informed of the possibility of an extension of his state hospital commitment, he would have pleaded not guilty; this hardly seems consistent with the fact that at the time of his plea, the main agreement he procured was the guarantee that if the court did not send him to the state hospital, then he could withdraw his guilty plea and defend himself in order to resist being sent to prison.

In the present case, however, even if both Lomboy and McIntyre are sound, Lomboy is distinguishable. Lomboy, Bannister, and McIntyre all involved defendants committed to the state hospital after they elected to plead not guilty by reason of insanity. Without entry of such a plea, the only possible outcomes facing such defendants are dismissal, acquittal, and penal commitment; the court is powerless to force a defendant to invoke the insanity defense. (See Pen. Code, § 1025, subd. (a).)

The Mentally Disordered Sex Offender procedure was different. Upon conviction of a sex offense, on motion of the prosecutor, or on the court's own motion, the court was authorized to institute a proceeding to determine whether the defendant is a mentally disordered sex offender. (Former § 6302, subd. (a).) If, as here, the defendant was charged with felony child molestation, the court was required to institute such a proceeding. (Id., subd. (c).) A hearing was held, and the defendant's consent was not required before the court could find him to be a mentally disordered sex offender who could benefit by treatment in a state hospital. (See former § 6316, subd. (a).) The defendant had only the right to challenge an order committing him as a mentally disordered sex offender by obtaining a jury's determination whether he was such an offender. (See former §§ 6318, 6321.)

Thus commitment as a mentally disordered sex offender was a consequence of the offense committed by the defendant and the trial court's finding that he was a person who by reason of mental defect, disease, or disorder, was predisposed to the commission of sexual offenses to such a degree that he was dangerous to the health and safety of others. (Former § 6300.) Such a commitment was not a consequence which a defendant could have avoided by a different plea. Here, defendant has not contended either that he did not commit the criminal acts alleged or that he was not properly found to be a mentally disordered sex offender.

Accordingly, the trial court erred in granting defendant's motion to dismiss the petition for extended commitment on the ground he was not informed, when he pleaded guilty in 1981, of the possibility of an extension of his commitment.

All parties were informed by order entered July 26, 1989, that this court was considering issuing a peremptory writ in the first instance. (Code Civ. Proc., § 1088; *Palma v. U.S. Industrial Fasteners, Inc.* (9134) 36 Cal.3d 171, 177-180.) Contrary to real party's assertion the record is not incomplete. The parties having been afforded an opportunity to brief the issues fully, issuance of an alternative writ would add nothing to the exposition of the issues.

Let a peremptory writ of mandate issue, directing respon-

dent to vacate its order of April 24, 1989, granting real party's motion to dismiss the petition for extended commitment, and enter a new different order denying real party's motion.

COMPTON, Acting P.J.

We concur:  
GATES, J.  
FUKUTO, J.

## ORDER

Cite as 89 Daily Journal D.A.R. 10749

VALA PICHON,  
Plaintiff-Appellant,  
v.

PACIFIC GAS AND ELECTRIC CO. et al.,  
Defendants-Respondents.

No A041909  
Super. Ct. No. 833603  
California Court of Appeal  
First Appellate District  
Division One  
Filed August 23, 1989

### THE COURT

It is ordered that the opinion filed herein on July 24, 1989, be modified in the following particulars:

On page 2, second paragraph, items (2) and (3) are replaced with the following:

(2) The exclusivity of workers' compensation does not preclude causes of action for economic or contract damages; however, the employer does have the right to set-off from any damages the amount of compensation paid. (3) A compromise and release executed in settlement of appellant's workers' compensation claim does not preclude appellant from suing for breach of contract, termination in violation of public policy, or breach of the covenant of good faith and fair dealing.

On page 14, footnote 8 is revised to read:

<sup>1/</sup> By voluntarily limiting his claims to economic damages, appellant waived any non-economic damages that might have been recoverable pursuant to his public policy cause of action. (See *Foley v. Interactive Data Corp.*, supra, 47 Cal.3d 554, 567 [court held that tort damages are available for termination in violation of public policy].) Our decision does not preclude appellant from attempting to prove his cause of action for termination in violation of public policy. If appellant should prevail on that theory, however, he may only recover damages for lost wages and loss of job benefits not attributable to any injury to his psyche.

In *Foley*, the court also held that tort damages are unavailable for a cause of action for breach of the implied covenant of good faith and fair dealing in an employment contract. (Id. at p. 632-639.) *Foley* has been held to be fully retroactive. (*Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973.) We leave it to the trial court to determine whether, in light of the unavailability of tort damages on the breach of the covenant cause of action, appellant has any other elements of damages that might be recoverable.

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