

# Man, 30, in custody as youth, drops his bid for freedom

*Murder*  
**Donald Schmidt,**

who killed a child 14 years ago, halted his jury trial and will remain in custody for at least two more years.

**By David L. Beck**  
*Mercury News*

Donald Schmidt's latest bid for freedom ended abruptly Thursday morning when the oldest ward of the California Youth Authority waived his jury trial and agreed to stay in custody for another two years. Just where he will be held, however, may not be decided immediately.

The trial was in its second week. Schmidt, 30, who in 1988 sodomized and

murdered a child, spent all of Wednesday on the stand telling his story under the sympathetic questioning of his own attorney and defending it under cross-examination.

He was to resume testifying Thursday. His refusal to go on with the trial took defense attorney William Weigel by surprise. "I came in ready for court," Weigel said.

Prosecutor Ariadne Symons said it

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was the sight of letters and photos taken overnight from the jail cell of a transsexual Schmidt was wooing — but denied under oath that he even knew — that pushed him over the line.

"Weigel went over and showed it to him, and he just said he'd had enough," she said.

The trial was being held because the

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California Youth Authority, which normally releases wards by the age of 25, wanted him held for another two years — his third two-year extension — under a law designed to protect the public. The sole issue in the trial was whether Schmidt was dangerous because of a mental disorder.

Assigned since 1999 to Herman G. Stark Youth Facility in Chino, which houses older offenders, he has been in Santa Cruz County Jail since July 2000 while awaiting a judicial hearing, which took place last December, and then the trial he requested.

Schmidt, who grew up in Fremont, asked to stay in county jail for another week in order to give his family more time to visit him. Then he will probably be returned to Stark.

But Symons said she is asking the Youthful Offender Parole Board to request that Schmidt be transferred to the adult correctional system. She hoped the extra week would give the board time to act.

She is banking on a law that allows the parole board to ask the court to resentence him to the California Department of Corrections "for a period equal to the maximum term prescribed by law for the offense of which he or she was convicted," less time served in the Youth Authority.

Had Schmidt been tried as an adult, his probable sentence would have been 25 years to life, Symons has said.

The purpose of returning Schmidt to the CYA is for further treatment, which "can't hurt him," Weigel said. "It's been a pretty consistent pro-

gression. Every two-year period over the last six years, he's done better. I expect he'll pick up where he left off" and in another two years be "more ready for release."

Symons disagrees. "It's real clear he's not amenable to treatment," she said.

Judge John Salazar accepted Schmidt's decision to waive the rest of the trial, said he agreed with Schmidt's decision, speculated that it was motivated by an effort to prevent further humiliation, and entered a finding that Schmidt is indeed a danger. He said the evidence for that finding was overwhelming.

It was Salazar who found probable cause to retain Schmidt in the California Youth Authority at a hearing in December, triggering the option of a jury trial. Five years ago, Schmidt asked for a trial and then ended it during jury selection. Three years ago, he went through with the trial and lost.

Humiliation may have been the key to his capitulation. Wednesday, under questioning by Symons, he said, "I don't have that sex drive for other people of my gender, ma'am,"

although he paused and made a terrible face before saying "my gender."

A transvestite who goes by the name Michelle Banks testified earlier about a love relationship with Schmidt, but Schmidt called it a lie and said he did not even know another transsexual named David Perez, who prefers to be called Vanessa.

It was Vanessa's cell at county jail that Symons ordered searched overnight, and it was her letters from Schmidt and photos of him that he was shown before court Thursday.

"It's terribly difficult for him to hear ... all of the evidence about homosexual activity," Weigel said. "Out here in Santa Cruz, that's nothing to be ashamed of, nothing to be afraid of. ... Nor would anybody interpret it as evidence of dangerousness."

"But where he's coming from," that is, a prison culture in which "homosexual conduct is accepted but homosexual orientation is not," the rules are different.

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