

Child-killer won't be freed

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LOOPHOLE FOUND TO KEEP WARD IN CUSTODY RATHER THAN S.J. HOTEL

By David L. Beck
Mercury News

False alarm. Donald Schmidt is not being paroled after all.

The 33-year-old "ward" of the California Youth Authority, convicted in 1989 of sodomizing and killing a 3-year-old girl, was to have been paroled to a San Jose

hotel under an order issued this week by the Youth Authority Board.

On Friday, following howls from officials in San Jose and Santa Cruz, the board reversed itself.

"The Youth Authority board does not have jurisdiction over

Mr. Schmidt," said Julio Calderon, an information officer for the CYA. "The chairman will issue a memo rescinding the parole."

Board Executive Officer John Monday did not take calls Friday. But he said through spokeswoman Nancy Lungren that he had not been pleased at the plan to release Schmidt, a high-profile inmate whose release has been blocked ever since he

turned 25, the normal CYA maximum age. Monday did not have a vote in the parole decision.

"The bells and whistles went off," said Lungren. "He said, 'What do you mean, they're going to parole him?'"

On Thursday, Monday halted Schmidt's release pending a check of the parole board's procedures. He was expected to an-

See **LOOPHOLE**, Page 4A



Schmidt
Killed 3-year-old girl in Santa Cruz County.

LOOPHOLE | Killer stays in custody

Continued from Page 3A

nounce a rehearing date Friday.

But according to Calderon, an attorney reviewing the little-used law under which Schmidt is being held found a loophole. "It jumped out at him," Calderon said. "Wait a minute: By whose authority" is Schmidt being paroled?

The attorney insisted that Schmidt can only be released by the court that signed the order holding him — and then only at the request of the district attorney or Schmidt's attorney.

Does the Santa Cruz County District Attorney's Office plan to make such a request?

"No, we absolutely do not," said Ariadne Symons, who has fought for years to keep Schmidt behind bars. "We're very pleased. It's exactly the right thing in terms of this defendant."

The decision by Monday's office means Schmidt will serve the remaining 16 months of his current commitment, probably at the Herman G. Stark Youth Correctional Facility in Chino, where he has been held for many years.

Then he will be released — unless the Santa Cruz district attorney again asks a judge to rule that Schmidt is a danger to the community and not in control of his behavior. If the judge agrees, Schmidt can take it to a jury, something he has done three times before and lost.

Schmidt has been in custody since the Dec. 30, 1988, attack on Marihia Lea Silvola, who died two days later. His molestation conviction was later thrown out on a technicality, so he will not have to register as a sex offender.

The parole board was acting at the recommendation of prison psychologists and counselors who testified that Schmidt was finally making real progress in his treatment program.

"I think he has a better chance now than he ever did," said Inga M. Talbert, a clinical psychologist at Stark who has done pre-release evaluations of Schmidt four times but never before recommended

at Stark who has done pre-release evaluations of Schmidt four times but never before recommended his release.

The idea was to release him "on a leash," as Calderon put it.

He's gone as far as he can with his treatment on the inside, Talbert said. "The guy's always going to be dangerous," she said. "Now he needs to adjust to a community *while* he's still doing the sex offender treatment on parole, the last three stages of it."

Instead, he will stay at Stark until November 2006, when his current two-year hold expires. Then he will go through the judge-and-jury process all over again, because Santa Cruz County prosecutors insist he should never get out.

They also think the law needs to be changed. "There's no legal basis to transfer" Schmidt to the adult prison system, said Symons, who made "bunches and bunches and bunches of calls" trying to find one. "But maybe we should make one."

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SCHMIDT CASE TIMELINE

Dec. 30, 1988: Marihia Lea Silvola, 3, is found unconscious in a bathtub in her mother's Lompico house. She dies two days later. Donald Schmidt, 16, of Fremont, is arrested and charged with molesting and murdering her.

April 1989: Santa Cruz County Superior Court Judge Tom Black rules Schmidt can not be tried as an adult.

August 1989: Schmidt is found guilty of sodomizing and murdering Marihia. He is sentenced to the California Youth Authority until he turns 25. The sexual charge is later expunged.

February 1997: Prosecutors ask that Schmidt, now 25, be confined for two more years because he is a danger to the public. Schmidt demands a jury trial but then agrees to serve the time.

April 1999: A judge rules that Schmidt must be confined for two more years.

August 2001: Schmidt makes another bid for freedom and is turned down. He again requests a jury trial.

August 2002: Schmidt agrees to two more years in CYA.

November 2004: Schmidt withdraws another request for release.

Thursday: State Youth Authority Board says Schmidt will be paroled, then delays a final decision.

Friday: Board says Schmidt will continue to be confined until November 2006.

Source: Mercury News archives