

# Child-killer, oldest CYA ward, appeals incarceration, again

Crime + Criminals - Jaso

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At age 34, Donald Schmidt is the oldest ward ever in the California Youth Authority. On Tuesday, Schmidt was in a Santa Cruz courtroom to appeal to get out, again.

In 1988, Schmidt, then a 16-year-old Fremont boy on methamphetamines, sodomized a 3-year-old girl and drowned her in a bathtub at a Lompico house where he was a guest. The next year, he was convicted as a juvenile and entered CYA, where juveniles are typically not incarcerated beyond age 25.

But the situation has been different for Schmidt, who was diagnosed with sexual sadism, pedophilia, deviant sexual behavior and an antisocial disorder. The state can keep him imprisoned if CYA deems him a danger. Every two years since he turned 25, Schmidt has had the right to petition for his freedom. In that time, he has abandoned two bids and lost two others.

On Tuesday, Santa Cruz County Superior Court Judge William Kelsay decided a jury will get to make the call if Schmidt remains a danger to society or should be released.

"I feel very bad. I'm not sure if the system's meeting his need," said Kelsay, also the judge who convicted Schmidt in juve-



Dan Coyro/Sentinel

Donald Schmidt appears in court Tuesday in Santa Cruz.

nile court 17 years ago, before addressing Schmidt directly. "I never expected today I would still see you in custody."

Schmidt, dressed in orange County

Jail scrubs with his receding dark hair pulled into a tight ponytail, sat between his attorneys at the defense table and stroked his goatee while two psychologists testified about his progress.

"He's a danger to others," said Dr. Elaine Mura, a California Department of Corrections and Rehabilitation psychologist who reviewed Schmidt's case prior to Tuesday's hearing and appeared as a witness for the prosecution.

However, Schmidt's treatment team at Herman G. Stark Youth Correctional Facility in Chino told Mura that he had made considerable progress toward his treatment goals, she said.

Reports of bad behavior while at Stark were few — Schmidt punched a wall after a difficult telephone call two years ago — and at times during the hearing Schmidt was described as a "model ward," said Dr. Inga Talbert, a CYA psychologist familiar with Schmidt's case for the last six years who testified for the defense.

"To my knowledge, he's done everything we've asked him to do," Talbert said. "His behavior's been very appropriate."

But prosecutor Ariadne Symons brought up specific incidents of bad behavior, including separate sexual relations Schmidt admitted to having with a woman and a male transvestite inmate while in the Santa Cruz County Jail awaiting a 2004 court appearance. Symons also said — and psychologists confirmed

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— Schmidt had repeatedly pursued relationships with women who had young children during his incarceration.

"Even though they said there's progress, most of the reports said he remained a danger," Mura said.

Talbert told the court Schmidt had been through numerous treatment programs and completed his treatment plan.

"We have nothing left for him in sex offender treatment," Talbert said. "He's done it all."

Questions whether Schmidt was internalizing the treatment, just going through the motions or something in between arose during the hearing.

"All I'm hearing today from both witnesses is he's a high risk for re-offending," Kelsay said.

Public Defender William Weigel, who has been involved with Schmidt's appeals since 2000, said he was optimistic after Tuesday's proceedings. A jury trial date will be set Dec. 19.

If released, Schmidt would not be transitioned back into the community through a parole program because he has already served his sentence, Symons said. He also would not have to register as a sex offender because the sodomy conviction was expunged on appeal.

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