

Child killer still a ward of juvenile system at 30

Murder

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Donald Schmidt was 16 when he drowned a girl in 1988, long before Proposition 21, which allows minors to be tried as adults. His release has been denied once, in a trial two years ago. Another trial is set Aug. 12.

By David L. Beck
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When a boy kills, where should the man he becomes be held — and should he ever go free?

Those questions are central to the case of Donald Schmidt, a 30-year-old Fremont man who has spent the past 14 years in juvenile custody for drowning and sodomizing a 3-year-old Lompico girl when he was 16.

"Nowadays, this would be a no-brainer," says Barry Krisberg, head of the National Council on Crime and Delinquency. "A 16, 17-year-old who committed a heinous murder would have been tried as an adult and, having been convicted, probably go to the prison system."

But Schmidt killed 3-year-old Marihia Silvola in 1988, long before the passage of Proposition 21 made it easier for a teenager like Schmidt to be tried as an adult. A San-

ta Cruz judge ordered him tried as a juvenile and, convicted, he became a ward of the California Youth Authority.

He still is. He is technically assigned to the Heman G. Stark Youth Correctional Facility in Chino, where the wards are ages 18 to 25. But Schmidt currently is being held in Santa Cruz County Jail while he awaits yet another trial on the issue of whether it is safe to release him. That trial begins Aug. 12.

Krisberg calls Schmidt's "just a very odd case," and indeed it is. There has never been a ward of the juvenile system as old as



Schmidt
Murdered a 3-year-old Lompico girl when he was 16. He is now 30.

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Schmidt.

In the juvenile system, Schmidt could have expected his release at age 25, if not before. He is still being held because of Section 1800 of the Welfare and Institutions Code, which permits the Youth Authority, working through the county from which he was sentenced, to ask the juvenile court to hold him for another two years on the grounds that he "would be physically dangerous to the public."

And then another two years. And another.

"I mean, there's got to be limits to this 1800," said Krisberg. But in fact there are not. "The theoretical maximum period of detention is life as successive petitions may be filed at biennial intervals," ruled the California Supreme Court in 1971.

But in the same case, the court held that a ward is entitled to request a jury trial on the commitment issue.

Schmidt has done so three times. He aborted his first trial just as it began. His second,

at age 27, was lively: a defense psychologist was shown up as a fraud, condemned by the judge and fired by the Youth Authority, and on retrial Schmidt was ordered back to Stark.

In the latest trial, Assistant District Attorney Ariadne Symons will attempt to persuade a jury that, in the words of the code, he is "physically dangerous to the public because of his mental or physical deficiency, disorder or abnormality." Her list of potential witnesses includes an FBI profiler and a clinical psychologist from Stark.

Defense attorney William Weigel will argue that since 1994, when Schmidt began participating in treatment programs and "actually trying to get something out of the therapy," he has made enormous strides.

"We have a lot more insight into the commitment offense. We've got the natural aging process, which certainly makes everyone a little calmer," he said.

"Plus, they do have to prove that he's dangerous because

of a mental disorder." And that requires more than looking at what he did 14 years ago, he said.

Schmidt, who grew up in Fremont, drowned the 3-year-old while sodomizing her in the bathtub during a party.

Schmidt was charged with sodomy as well as murder, but an appellate court found that Judge Bill Kelsay erred in changing that charge to one of penetration with a foreign object, and threw out the sexual aspect of the conviction. As a result, Schmidt would not have to register as a sex offender should he be released.

At the Chino facility, Schmidt has been in a specialized counseling ward, but he is not isolated from the general population. "We use the 'sex offender cycle,' a paradigm for helping the ward to understand why they did what they did," said Talbert.

And does he?

No, said the psychologist. "The ward has to be open and honest about his behaviors for the treatment to take effect." Schmidt, she said, "has not been truthful."

She told Judge John Salazar at a hearing in December that tests show Schmidt to be a sexual sadist. She is expected to testify during the trial, which will be held in Superior Court, not at Juvenile Hall. Salazar will preside.

If Schmidt is remanded for two more years, the secondary issue — whether anyone his age belongs in a juvenile system — will come to the fore again.

"Technically, by law, we can send them to CDC," the California Department of Corrections, said Talbert. "But every time we try to do that with a ward, they tell us, 'Fine, we'll house the ward, but you provide the treatment.'"

The California Supreme Court has ruled that a commitment under Section 1800 requires treatment. "If he's sent to an adult prison," said Weigel, "there will be no treatment — no therapy — no psychologists working with him. He'll just be sitting there."

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