

SANTA CRUZ

# Killer's freedom denied

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**A judge finds probable cause** to keep Donald J. Schmidt, who drowned a 3-year-old, in the juvenile system. The case will go before a jury.

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By David L. Beck  
*Mercury News*

A juvenile court judge in Santa Cruz ruled Monday that there is probable cause to keep Donald J. Schmidt — the oldest person in the state's juvenile system — locked up for another two years.

Schmidt, who will turn 30 in March, admitted to drowning 3-year-old Marihia Silvola while he sodomized her on Dec. 30, 1988, at a party in the Santa Cruz Mountains. He was tried as a juvenile and has been a ward of the California Youth

Authority since his conviction.

"Mostly, everyone leaves us, by law, at age 25," said Youth Authority spokeswoman Sarah Ludeman.

But Schmidt has twice been re-committed — at age 25 and 27 — at the request of the Youth Authority under the public-danger clause of the Welfare and Institutions Code, Section 1800.

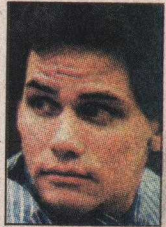
Monday's ruling means Schmidt's case will go before a jury later this year. If the jury finds him "physically dangerous to the public," Schmidt probably would re-

turn to the Heman G. Stark Correctional Facility, a juvenile center in Chino, where he has spent the last dozen years and where only older juvenile offenders are kept.

The Youth Authority could formally ask a court to move him into the adult California Department of Corrections, but it has not done so — probably because the handful of attempts to do so with other offenders have failed.

Juvenile justice codes require treatment, not just incarceration. That has been the stumbling block.

"There has to be a place for this person



**Schmidt**  
29-year-old is still a ward of the Youth Authority for 1988 crime.

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that gives the required treatment, which is sex offender treatment," said Ludeman, "and CDC doesn't do that."

## Tried as a juvenile

Schmidt's odd status as the senior ward of the juvenile system arises from the fact that in 1989, Santa Cruz Superior Court Judge Thomas Black decided, over the objections of then-District Attorney Art Danner, that Schmidt should be tried as a juvenile.

"As horrible as the crime is," Black said then, "that is not the sole test."

He was convicted in a bench trial by Judge William Kelsay and committed to the Youth Authority until the age of 25 — the maximum age the system is designed for. Leslie Silvola, the mother of the murdered toddler who hosted the party, testified against him after cutting a deal with the district attorney's office to reduce her own drug and child-endangerment charges to a misdemeanor.

In 1997, when he was due to be released, the Youth Offender Parole Board invoked Section 1800, a judge found probable cause to keep him in the system, and Schmidt acquiesced. In 1999, he went before a jury and lost on the single statutory question, "Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality?"

## Treatment, counseling

The Chino facility houses wards — they're not called inmates — ages 18 to 25. Like his fellow wards, Schmidt lives in a single-bunk room. He spends his days in the specialized counseling unit for sex offenders and violent offenders. He is classified as both, according to a psychologist who testified at Monday's hearing.

He attends group and individual sessions with psychologists and counselors. He earned his high school diploma in 1998 and has earned certificates in several trade-related courses.

Psychologist Inga M. Talbert was the only witness Monday, having been chosen to conduct Schmidt's "1800 evaluation" because she is not a member of his counseling team. An "objective opinion" is standard procedure in these cases, she said.

Under questioning by prosecutor Ariadne Symons and defense attorney William Weigel, she described her interview with Schmidt and the psychological tests she employed, which included one called the Multiphasic Sex Inventory, specially designed for sex offenders.

It consists of 300 true/false questions. If an offender has been treated and has taken the treatment to heart — internalized it — "we'll get a certain profile," she said.

How did Schmidt do?

"He came out looking like a non-treated child molester," she replied. The test showed him to be dishonest about his interest "in any sexual deviance" and in denial about being sexually attracted to children and fantasizing about them.

"What struck me the most," she said of her interview with Schmidt, "was what he told me about the times he was going to kill someone and his friends held him back."

Her diagnosis: sexual sadism, the potential for sexually abusing children and anti-social personality disorder.

"In my opinion," she said, "he is a psychopath."

## Good behavior

Weigel pointed out that Schmidt had been receiving special privileges for more than a year thanks to his "Phase 3" status, which he had earned by doing well in his programs. He is a role model for other wards, Weigel said. He has plans for his parole, a regular visitor who lends support, and a group home to go to in Riverside County's Moreno Valley. Weigel said that many of Schmidt's test answers could be interpreted as referring to the past.

With both Symons and Weigel referring to Talbert's report, the issue was whether Schmidt had indeed changed or merely become adept at the system. Talbert, in a rare moment of levity, invoked what she said is informally known among clinical psychologists as "the snot test."

It's not enough for Schmidt to have cried while talking about his offense, she said. If he were sincere, his nose would have been running. And it wasn't.

Weigel said after the hearing that Schmidt at his 1999 trial "showed a great improvement over the years. ... Now, two years down the road, it appears the improvement has been exponential."

He noted Schmidt's non-violent record (since 1996) in a potentially violent setting. "I really think we are looking at basically an extremely different person from the person who was sent to the Youth Authority 13 years ago," said the attorney. "I'm very optimistic."

A trial date will be set on Sept. 17. The trial will take place no earlier than November and possibly as late as January.

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