

TINA RAE DOUGLAS  
Official Court Reporter  
PO Box 230  
Rapid City, SD 57709  
(605)394-2571

September 10, 2004

TO:



RE: State vs. Arleen Anderson (CRI 03-1747  
Sentencing Hearing, 03-08-04

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1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 2 ) SS.  
 3 COUNTY OF PENNINGTON ) SEVENTH JUDICIAL DISTRICT

4 \*\*\*\*\*

5 THE STATE OF SOUTH DAKOTA )

6 Plaintiff, )

7 V. )

8 ARLEEN ANDERSON )

9 Defendant. )

COPY

SENTENCING HEARING

CRI 03-1747

10 \*\*\*\*\*

11 PROCEEDINGS: The above-entitled matter commenced on  
 12 the 8th day of March, 2004, at the  
 13 Pennington County Courthouse  
 14 Rapid City, South Dakota

15 BEFORE: The Honorable John J. Delaney

16 \*\*\*\*\*

17 APPEARANCES: MR. KENNETH VARNS  
 18 Deputy State's Attorney  
 19 Pennington County  
 20 Representing the State

21 MR. DENNIS GROFF  
 22 Attorney at Law  
 23 Representing the Defendant  
 24  
 25



\* \* P R O C E E D I N G S \* \*

**THE COURT:** This is the time and place for the sentencing in the matter of State of South Dakota versus Arleen Anderson, court file 03-1747.

The defendant is present in person with counsel, Mr. Groff.

Mr. Varns is here on behalf of the state.

Mr. Groff, have you had an opportunity to review the presentence report?

**MR. GROFF:** Yes.

**THE COURT:** And has your client?

**MR. GROFF:** Yes, she has.

**THE COURT:** Do you have any additions or corrections to it?

**MR. GROFF:** It's accurate.

**THE COURT:** Mr. Varns, do you have any additions or corrections?

**MR. VARNs:** No, Your Honor.

**THE COURT:** State have anything to say?

**MR. VARNs:** Yes, Your Honor.

I know the Court has received the letter from Victims' Assistance which includes and incorporates a letter from Carol Husby indicating what the impact of this crime has had on Special Olympics including causing an -- some disability in raising funds, and the time and effort



1 that was put into investigating this case to determine the  
2 loss that was incurred due to Ms. Anderson's actions and I  
3 can assure the Court that that time was substantial.

4 The police report that was generated, including  
5 the paperwork that was involved in the bank transactions,  
6 was literally two thick binder books of documents, so  
7 considerable time was spent in investigating this case.

8 But probably more important than that is the  
9 damage it did to the reputation of Special Olympics.

10 On the other hand, Arleen Anderson has admitted  
11 what she did pretty much from the get go in this  
12 investigation. She has taken steps to pay restitution and  
13 she was willing to do that as soon as the prosecution -- or  
14 actually even before the prosecution was commenced.

15 In weighing both sides of the equation, Your  
16 Honor, the state is recommending a probationary sentence  
17 for Arleen Anderson. I do recommend some county jail just  
18 due to the nature of the crime -- the nature of the  
19 theft -- but I would leave that in the Court's sound  
20 discretion. And I would recommend a probationary term of  
21 approximately three years. That's really all the  
22 recommendations that I have, Your Honor.

23 **THE COURT:** Mr. Groff?

24 **MR. GROFF:** You know, I guess a thousand times  
25 it's been said in this courtroom that we come in and we



1 represent someone with no history. Well, that's fine. I  
2 want to be able to say that. But that's not where I am  
3 going in terms of my comments, Judge. From what I know  
4 because I worked with her for many months, Ms. Anderson  
5 came from California with her daughter after a divorce.  
6 She's not like a gambler, not like a druggie, not like an  
7 alcoholic, but in her own way she got in over her head.

8 And I want to pause for one fact for you here,  
9 Judge. We talked right away about her finances because  
10 immediately I challenged her about this contract. And I  
11 said, how is it that you can think that you can somehow act  
12 like someone that is going to put together a fund raiser  
13 and also be the executive director and not tell anybody  
14 about it and not be wrong. We talked about that many  
15 times.

16 But more importantly, we talked about the idea  
17 that frankly it's one thing to be a volunteer; it's another  
18 thing to be a volunteer that is in over her head.

19 What's going to happen with that house that's  
20 referred to, that was on a contract for deed. Her payments  
21 on that house were, I believe, between 2 and \$3,000 for her  
22 and her daughter. And despite her goals and hopes that  
23 somehow she would be able to put together a business with  
24 fund raising, and all of the benefits that go to charities,  
25 but likewise benefits to her she wasn't producing money and



1 she put herself in a position where she was over her head  
2 and she reached into the pockets of the people who trusted  
3 her, she reached into that account through that bogus  
4 contract and secured \$7,500.

5 Now, I appreciate the comments Mr. Varns has made.  
6 We are, Judge -- so you know, we are, I guess, about \$29  
7 short. We had it all paid when we brought the check at the  
8 time of the plea. But I have a check in the amount of \$29.  
9 I hope that's the difference we still owe on the  
10 restitution, and of course, I have a check for the Court  
11 costs here.

12 But the bottom line is, Judge, I got a woman, I  
13 believe -- she's in the position she's in, but to some  
14 extent, I just can't believe that she would think this is  
15 something that she would have ever gotten away with.

16 She is fearful. I think you are probably aware of  
17 this. She is fearful of your sentence. She is fearful of  
18 the effect it will have on her daughter. She's fearful of  
19 going to jail.

20 We have provided for you, and I hope you have,  
21 Judge, the information -- I am acquainted with the group  
22 known as Sun Chasers (SIC), and I change my comments here a  
23 little bit. For whatever she has done, she was, I think,  
24 well liked in the volunteer community. I think she was  
25 effective in that capacity. The Court may not be aware of



1 it, but when they were looking for some of the money in  
2 checks, and actually when I got involved in the case, some  
3 of that was down in the basement I believe in shoe boxes or  
4 whatever it might be so I pause for one condition that I  
5 think you really need to impose here. I think she could  
6 continue to be a volunteer, Judge, both during her  
7 probation and after, but I encourage you not to permit her  
8 to be in any fiduciary capacity with any charitable  
9 organization to any extent during the period of time you  
10 would put her on probation if you determine you will do so.  
11 I think she will be a model probationer. I don't think  
12 she'll get in trouble again.

13 I think the state is correct when they talk about  
14 the harm it does to a charitable community. To find out  
15 that an executive director of a charity has done this -- no  
16 one wants to give money to a charity -- I pause for a  
17 second. A lot of people just don't want to give money to a  
18 charity because there are those who think the charity will  
19 not be sending their funds for the necessary use of the  
20 charitable organization and so they don't want to give at  
21 all.

22 One thing I do want to say because we are short,  
23 what's happened is over and over we have been in front of  
24 you many, many times. Maybe today will be the exception.  
25 She was always worried whether or not this would hit the



1 paper and for some good fortune or luck it didn't. And I  
2 assume what happened is -- I assume what happened is that  
3 probably through the circles of the charitable  
4 organizations the word got out anyway that the executive  
5 director was gone and there had been some taking of money.  
6 So I understand how they got hurt as that word spread on  
7 the street. We have been fortunate at least in terms of  
8 the media the fact about the executive director being  
9 charged and convicted and of course being sentenced.

10 Let me summarize. I ask that you give her  
11 probation. I ask that you give her a suspended imposition  
12 of sentence. I do believe she's very low risk for any type  
13 of violation here. I ask that you place that condition on  
14 her that she cannot be in a fiduciary role. I ask, Judge,  
15 that you would consider the fact that she has paid the  
16 entirety of the restitution.

17 Now, when you get to good will of an organization,  
18 maybe there is no way you can ever repay that, but she's  
19 paid at least what she can in money.

20 The Sun Chasers group is a group I am acquainted  
21 with that deal with handicapped children and deal with  
22 basically confidence, mobility, balance, and just sort of  
23 self worth in dealing with children. And they do it  
24 through riding horses and it's a volunteer group which she  
25 wants to work with and they want her to work with them. No



1 matter what she's done, she's a good volunteer. She will  
2 do -- she will do well with that organization and I ask  
3 that you consider giving her community service.

4 I will tell you what's really on the line here and  
5 I want to speak, specifically, you are going to decide  
6 today whether you are going to put this woman in jail for a  
7 period of time. She doesn't want that to happen. I am  
8 asking you to consider not doing it. I am asking you to  
9 consider an extensive period of community service which she  
10 will do well at and which will serve the community as an  
11 alternative.

12 If you decide to put her in jail for any period of  
13 time, there are a couple things I want you to know. First  
14 of all, if it's any significant period, she would ask that  
15 you consider it be after high school has been completed for  
16 this year so that her daughter could go back and live with  
17 her father during the summer during whatever period of time  
18 you gave her. What she could do is serve that sentence  
19 effective June 1 or something like that. If you give her  
20 jail, Judge, she's asking for work release.

21 There is nothing that's going to happen today  
22 that's going to atone for what she did. There is nothing  
23 she could say to you today that's going to make you feel  
24 like she could erase what's happened here. I don't think  
25 she will be in another courtroom in a criminal setting and



1 I don't think she is going to be taking, no matter her  
2 financial circumstances, the money of anyone else including  
3 a charitable organization.

4 And that's all I have.

5 **THE COURT:** Thank you.

6 Ms. Anderson, what do you have to say?

7 **DEFENDANT ANDERSON:** There is no excuse for what I  
8 did. And there is no way I can truly make up for it  
9 because the damages goes far beyond the restitution.

10 However, I can begin to make up for some of it by  
11 the grace of the folks over at Sun Catchers who do want me  
12 to work with them and help them and I also do not wish to  
13 work in any fiduciary manner whatsoever there. And I  
14 promise not to do that. And there are some other  
15 organizations, likewise, that I had contact with through  
16 Special Olympics who have also stated that they would like  
17 my involvement.

18 And while I know this doesn't begin to make up for  
19 what I did in retrospect, I -- it's -- there is nothing I  
20 can do to fix that at this point. What I can do is put in  
21 as much time as possible to help these other groups that  
22 support the groups like Special Olympics. Sun Catchers  
23 supports the equestrian program we built so I can at least  
24 begin to make up for it there.

25 And that's all I know how to do to even begin to



1 make up for what I did. And I do look forward to the  
2 opportunity at some point to do that as soon as possible.  
3 They want me to work with them starting this week.

4 My daughter has also expressed an interest to get  
5 back involved in community service with me, which I think  
6 would be great for her.

7 And I just pray the Court will allow me to serve  
8 the community in that fashion and to maintain my status  
9 with my daughter in raising her because it is a good  
10 environment for her here with a lot of support, not just  
11 from myself, but her activities.

12 And I know I can't make up to Special Olympics  
13 what I did, but I can do my best by doing the best that I  
14 can in supporting these other opportunities through Sun  
15 Catchers and other groups like them.

16 **THE COURT:** Any reason I should not impose  
17 sentence at this time?

18 **MR. GROFF:** No, Judge. There is no reason why you  
19 shouldn't impose sentence at this time.

20 **THE COURT:** You entered a plea of guilty to this  
21 charge on January 27, of this year, do you recall that?

22 **DEFENDANT ANDERSON:** Yes, I do, Your Honor.

23 **THE COURT:** Is that still your plea today?

24 **THE DEFENDANT:** Yes, it is, Your Honor.

25 **THE COURT:** The previous lady that was in here was



1 to some extent in on a similar offense. She served no jail  
2 time and she considered it a joke, or at least didn't take  
3 it seriously. I don't think she does now, but she did.

4 And I say that just by way of warning because the  
5 fact that a sentence is not anywhere near as harsh as it  
6 could be does not mean that I am not serious about it.

7 I have read with detail several times the  
8 presentence report and I to this day am not sure what went  
9 sideways, but it did. So the sentence is this. It is five  
10 years in the South Dakota Penitentiary suspended for a  
11 period of five years.

12 The conditions of the suspension are as follows.  
13 You will pay over the course of the next two years  
14 additional restitution determined by me representing the  
15 costs of the investigation to the charity. If there is a  
16 disagreement you will have the opportunity for a hearing on  
17 that. I don't perceive this is the opportunity for a  
18 victim to make hay, but on the other hand they not only had  
19 a temporary loss, but a distraction from their duties and  
20 services to trace this down.

21 You will do over the course of those five years  
22 1,000 hours of community service work. That comes to about  
23 20 days a year.

24 You will obviously obey all laws.

25 I don't know whether drugs or alcohol are a



1 problem and asking people doesn't help me answer that  
2 question unless you are talking to juveniles. They are  
3 astoundingly frank. Adults are not. But simply because I  
4 don't want to put you in jail -- and I know of nothing that  
5 reduces IQ and common sense as fast as either alcohol or  
6 drugs and leads to very stupid decisions.

7           You will not drink nor will you use drugs except  
8 those prescribed by a physician during the course of  
9 probation.

10           You will submit to periodic tests of breath or  
11 bodily fluids to that end. You will maintain contact as  
12 directed by your Court Services Officer. And you will  
13 follow all recommendations as given by that Court Services  
14 Officer.

15           I frankly see at this stage more harm done by  
16 putting you in jail than good accomplished. There is not  
17 the big public uproar or the big public announcement. I  
18 think the impact on your daughter would likely be severe,  
19 particularly following a divorce and I wish to avoid that.

20           But as you noticed from the last hearing, if you  
21 do not follow these conditions and instructions with good  
22 intent, there will be a piper to pay. Okay.

23           Do you have any question about that?

24           **MR. GROFF:** Judge, I have one question.

25           **THE COURT:** Yes, sir.



1           **MR. GROFF:** You may have anticipated my question.  
2 You, of course, will retain jurisdiction for a period of  
3 one year from that date over this sentence and she will in  
4 my opinion serve this sentence well. I will keep my file  
5 open. I know you have not granted, today, a suspended  
6 imposition of sentence. Likely, we will still attempt to  
7 approach you with that. If that's a futile measure I don't  
8 know.

9           **THE COURT:** And following good performance for a  
10 year, no violations, I would be inclined to grant a  
11 suspended imposition of sentence. You must timely make the  
12 motion.

13           **MR. GROFF:** I will.

14           She's asked the question, which you may or may not  
15 have heard before. That is, may I have a glass of wine at  
16 home for dinner.

17           **THE COURT:** No.

18           **MR. GROFF:** I think we understand the answer.  
19 Thank you.

20           **THE COURT:** It's real simple if I keep it none.  
21 It gets complicated if I say one. Then we start arguing  
22 about size of the glass. We aren't going there, so, no.  
23 The answer is none.

24           Now you are -- if you should be incarcerated in  
25 the penitentiary, your parole eligibility is 25 percent of



1 any sentence which you should receive. That is, if you for  
2 some heinous mistake on your part should ultimately be  
3 sentenced to the penitentiary for five years, your parole  
4 eligibility would be one and a quarter years, 25 percent of  
5 the total sentence, less credit for time served.

6 You have a right to appeal this sentence within 30  
7 days of when it is signed and filed.

8 Questions?

9 **MR. GROFF:** No, Your Honor. I have no questions.

10 **THE COURT:** Mr. Varns, you will need to get, as  
11 the Victim's Assistance Office noted, an additional figure  
12 for me for that sum. Please share it with Mr. Groff. If  
13 there is an objection to it, let me know, and we'll have a  
14 hearing.

15 **MR. VARNs:** I will, Your Honor.

16 **THE COURT:** Thank you.

17 (End of proceedings.)  
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19  
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22  
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1 STATE OF SOUTH DAKOTA )  
2 COUNTY OF PENNINGTON ) SS. CERTIFICATE

3

4 I, Tina Rae Douglas, Official Court Reporter,  
5 hereby certify that the foregoing pages, 1-14, inclusive,  
6 are a true and correct transcript of my stenotype notes.

7

8 Dated at Rapid City, South Dakota, this 10th day  
9 of September, 2004.

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Tina Rae Douglas  
Official Court Reporter  
My Commission expires: 09-25-06

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