

ISANTI COUNTY ATTORNEY'S OFFICE

555 Eighteenth Avenue Southwest
Cambridge, Minnesota 55008
Tele: 763.689.2253
Fax: 763.689.8334

JEFFREY R. EDBLAD

County Attorney

SHILA A. WALEK

Chief Deputy County Attorney

ASSISTANT COUNTY ATTORNEYS

David M. Kraemer

Timothy C. Nelson

Robert C. Bieniek

Deanna N. Natoli

Holly Mikeworth Collins

VICTIM SERVICES

Brenda Skogman

August 8, 2016

Nate Reitz
Executive Director
Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

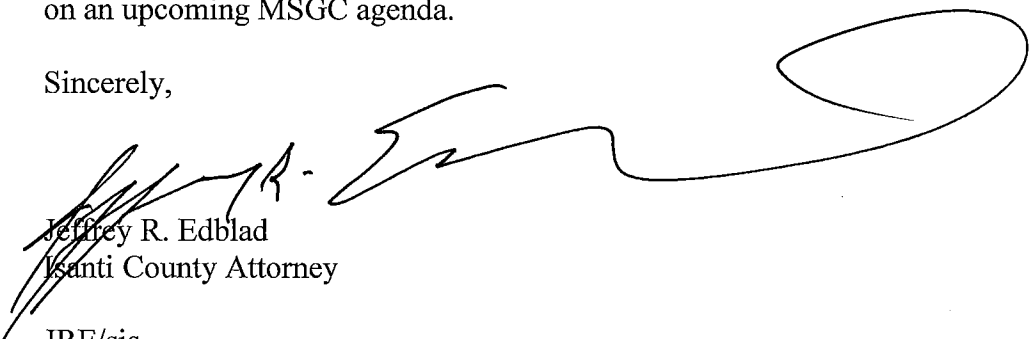
Re: Request for review of sentencing guidelines for child neglect pursuant to request of Sherburne County Attorney.

Dear Mr. Reitz,

Enclosed please find the August 2, 2016 request of Sherburne County Attorney Kathleen Heaney, for the Minnesota Sentencing Guidelines Commission to review the sentencing guidelines as to the offense of child neglect.

While I am no longer a member of the Minnesota Sentencing Guidelines Commission, I am respectfully requesting as president elect of the Minnesota County Attorneys Association that this offense be included on an upcoming MSGC agenda.

Sincerely,



Jeffrey R. Edblad
Isanti County Attorney

JRE/sjs

cc: Honorable Christopher Dietzen, MSGC Chair w/enclosure
Robert Small, Minnesota County Attorneys Association w/enclosure
Kathleen Heaney, Sherburne County Attorney
Sam Wertheimer, Chief Deputy Sherborne County Attorney
Peter Orput, Washington County Attorney w/enclosure

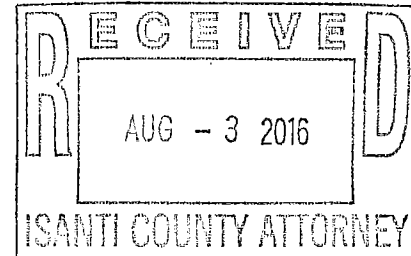


Sherburne County Attorney's Office
and
Victim Witness Services

Kathleen A. Heaney, Sherburne County Attorney

August 2, 2016

Jeffrey Edblad
Isanti County Attorney
Isanti County Attorney's Office
555 18th Avenue SW
Cambridge, MN 55008



RE: Request for Review of Sentencing Guidelines for Child Neglect
County Attorney File Number 190575

Dear Mr. Edblad:

I am writing to you at the request of Sherburne County Attorney Kathleen Heaney on a matter in which we hope you can assist as a member of the Minnesota Sentencing Guidelines Commission.

In March of 2015, our office charged Michael Scott Gunderson with two felony counts of Child Neglect in Sherburne County Court File 71-CR-15-334. Mr. Gunderson's starvation, isolation, and emotional disregard of his two small boys are outlined in great detail in the attached court documents.

As you know, pursuant to Minnesota Statutes Section 609.378, the offense of Child Neglect is a gross misdemeanor unless the State can additionally prove the neglect resulted in "substantial harm to the child's physical, mental, or emotional health." Felony Child Neglect is ranked a Severity Level 1 offense under the Minnesota Sentencing Guidelines. A stayed one year, one day sentence is presumed for this offense regardless of whether the offender has a criminal history score of 0, 1, or 2.

When determining how to reach an appropriate resolution in the Gunderson case, the current sentencing structure significantly limited the State's ability to speak to the nature and severity of Mr. Gunderson's neglect. For example, the low severity level of this offense within a wide range of offender criminal history meant that Mr. Gunderson's possession of approximately one pound of marijuana (Count 1 of the Complaint) carried a higher penalty than both offenses concerning the neglect of his children. Moreover, hernandizing the Child Neglect counts to recognize each child victim also resulted in no greater impact under the guidelines. Permissive consecutive sentencing did not appear

13880 Business Center Drive, Elk River, MN 55330-1692
(763) 765-4725 • Fax (763) 765-4747 • 1-800-433-5244
attorney@co.sherburne.mn.us
www.co.sherburne.mn.us

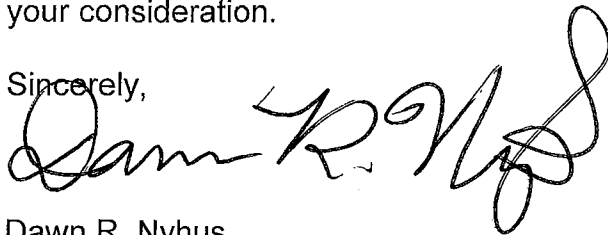
to be an option because the presumptive sentence was not a commitment to the Commissioner of Corrections. In sum, the presumed guideline sentence of one year, one day was simply not commensurate with Mr. Gunderson's extremely egregious conduct toward his children. The current sentencing structure likewise fails to recognize the severity of this offense overall.

I am providing you the court records in this case with the accompanying request that the Minnesota Sentencing Guidelines Commission strongly consider a review of the ranking and presumptive sentence for the offense of felony Child Neglect. Ultimately, we were able to reach an agreement in the Gunderson case whereby he consented to a double upward durational departure based on factors pursuant to Blakely. Even so, the State took great effort to identify the factual grounds demonstrating substantial bodily harm for the enhanced felonies independent from the bases used to support departure factors. We cannot expect such agreed upon dispositions in every case, and the limited sentencing alternatives suggest there is a need for review.

I am also enclosing some additional information we received from the Minnesota Sentencing Guidelines Commission concerning the number of felony Child Neglect cases sentences between 2010-2014 and the number and circumstances of departures. A few aspects are notable: 1.) all 40 cases sentenced were presumptively stayed sentences, despite the fact that the criminal histories of the offenders varied between 0 and at least 5; and 2.) the very few upward departures/prison sentences imposed appear to have occurred in circumstances where other higher ranked felony charges with presumed prison sentences (e.g. Second Degree Controlled Substance Sale, Second Degree Manslaughter) were dismissed. I include this information for whatever additional insight it may provide.

I would be happy to make myself available for any questions you may have or to discuss this very important matter with the Commission at a future date. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Dawn R. Nyhus". The signature is fluid and cursive, with the first name "Dawn" being the most prominent.

Dawn R. Nyhus
Assistant County Attorney

CC: Kathleen Heaney, Sherburne County Attorney
Sam Wertheimer, Chief Deputy County Attorney

Enclosures:

Court Records for 71-CR-15-334

- Criminal Complaint
- Stipulated Facts in Support of Aggravated Factors (with redactions)
- Guilty Plea transcript (with redactions)
- Sentencing transcript (with redactions)

Information Response from Minnesota Sentencing Guidelines Commission

STATE OF MINNESOTA
COUNTY OF SHERBURNE

DISTRICT COURT
TENTH JUDICIAL DISTRICT
COURT FILE NO.: CB-15-334
PROSECUTOR FILE NO.: 185668

State of Minnesota,

Plaintiff,

v.

Complaint- Order for Detention

Michael Scott Gunderson, DOB 11/24/1982
31603 123rd Street
Princeton, MN 55371

Defendant.

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s):

Count: 1 Drugs - 5th Degree - Possess Schedule 1,2,3,4 - Not Small Amount Marijuana
In Violation of: 152.025 subd. 2(a)(1)
Penalty Statute: 152.025 subd. 2(a) - Drugs - 5th Degree - Possession - Penalty
MOC: DH548
ICR: 15005427
Penalty: 5 Years Imprisonment and/or \$10,000 Fine

That on or about 3/13/2015, in Sherburne County, Minnesota, the defendant, Michael Scott Gunderson, DOB: 11/24/1982 (32), unlawfully possessed one or more mixtures containing a controlled substance classified in schedule I, II, III, or IV, except a small amount of marijuana, to-wit: 447 grams of marijuana.

Count: 2 Neglect of a Child-Results Subst. Harm Physical/Emot Health-F
In Violation of: 609.378 subd. 1(a)(1)
Penalty Statute: 609.378 subd. 1(a)(1) - Neglect of a Child-Results Subst. Harm Physical/Emot Health-F
MOC: I1062
ICR: 15005427
Penalty: 5 years in prison, a \$10,000 fine, or both

On or about 3/13/2015, within the County of Sherburne, defendant unlawfully and wrongfully, as a parent, legal guardian, or caretaker, willfully deprived a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health, to wit: two-year-old child.

Count: 3 Neglect of a Child-Results Subst. Harm Physical/Emot Health-F

In Violation of: 609.378 subd. 1(a)(1)
Penalty Statute: 609.378 subd. 1(a)(1) - Neglect of a Child-Results Subst. Harm Physical/Emot Health-F
MOC: I1062
ICR: 15005427
Penalty: 5 years in prison, a \$10,000 fine, or both

On or about 3/13/2015, within the County of Sherburne, defendant unlawfully and wrongfully, as a parent, legal guardian, or caretaker, willfully deprived a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health, to wit: three-year-old child.

STATEMENT OF PROBABLE CAUSE

Your Complainant is an officer with the Sherburne County Sheriff's Office. In this capacity your Complainant believes the following to be true and correct.

On or about March 13, 2015 at approximately 12:21 PM, the Sherburne County Sheriff's Office was dispatched on a child maltreatment report to the Fairview Hospital located in the city of Princeton. Staff at the hospital stated that two children with the approximate ages of two and three years old had been brought to the hospital in a severely malnourished state. The children's mother was identified as R.M.G., DOB: 07/29/1981. The children's father was identified as Michael Scott Gunderson, DOB: 11/24/1982, the defendant herein. The children were determined to have been living with their father at 31603 123rd Street NW at a location in Sherburne County, Minnesota.

Sherburne County Investigator Kris Haley and Sherburne County Health and Human Services (HHS) then interviewed R.M.G. She stated that she is married to the defendant. They have two children together. She lost her job in November of 2014. She moved to Salt Lake City on approximately January 1, 2015, and has been living there ever since. The defendant was supposed to be taking care of their two children. She returned home on approximately March 13th, and immediately smelled feces and urine in their home. She observed that their two children were alone in the house in a crib. They both appeared very thin and dehydrated. The younger child was too weak to walk. One child appeared to be trying to eat feces. She immediately brought their children to the hospital for medical treatment. The children were immediately given fluids by IV upon their arrival at the hospital.

On March 13, 2015, law enforcement interviewed the defendant. He stated his wife moved to Salt Lake City in January of 2015. He stated his home had limited electricity and he did not have garbage service. He stated that he worked 12 hour rotating shifts, and that when he was at work he left the two- and three-year old children at home alone. He stated that he had no one else to care for them. He acknowledged that the children lost weight when their mother was away from home. He noticed they had not been eating much lately.

On March 13, 2015, law enforcement executed a search warrant at the defendant's home at 31603 123rd Street NW. Sherburne County Sergeant Luke McLean noted there appeared to be numerous items from a marijuana grow in the residence. Law enforcement located a total of approximately 447 grams of a green leafy matter scattered throughout the home. Much of the green leafy vegetable matter was in bags. It NIK tested positive for marijuana.

Law enforcement also located a safe in the northeast upstairs bedroom. Inside the safe was a clear plastic bag containing a brown stemmed plant material. The substance appeared to be dried mushrooms. The mushrooms have been mailed to a lab for analysis.

The two- and three-year old children have been treated at the Fairview Northland Regional Hospital. Medical records from the hospital show both children had sores on their bodies. Their rib cages are showing. They were diagnosed as being severely malnourished and subject to starvation due to food deprivation. They remain hospitalized as of the filing of this criminal complaint.

PLEASE TAKE NOTICE: Pursuant to Minn. Stat. 609.49., intentional failure to appear for duly scheduled court appearances may result in additional criminal charges, and in addition to any arrest warrant that may otherwise be issued by the Court.

Complainant requests that Defendant, subject to bail or conditions of release, be:

- (1) Arrested or other lawful steps be taken to obtain Defendant's appearance in court; or
- (2) Detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:

COMPLAINANT'S SIGNATURE:

[Handwritten Signature]

[Handwritten Signature] #3522

Subscribed and sworn to before the undersigned this 16th day of March, 2015.

NAME/TITLE:

SIGNATURE:



[Handwritten Signature]

Being authorized to prosecute the offenses charged, I approve this complaint.

PROSECUTING ATTORNEY'S SIGNATURE:

Date:

3/16/2015

[Handwritten Signature]
 Samuel Wertheimer II 0190640
 Chief Deputy County Attorney
 Sherburne County Government Center
 13880 Business Center Drive
 Elk River, MN 55330
 (763) 765-4725

Court File Number: _____

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

SUMMONS

THEREFORE, YOU THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the _____ day of _____, 20__ at _____ before the above-named court at Sherburne County Government Center 13880 Business Center Drive Elk River, MN 55330 to answer this complaint.

WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I hereby order, in the name of the State of Minnesota, that the above-named Defendant be apprehended and arrested without delay and brought promptly before the above-named court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

____ Execute in MN Only ____ Execute Nationwide ____ Execute in Border States

X ORDER OF DETENTION

Since the above-named Defendant is already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant continue to be detained pending further proceedings.

Bail:

Conditions of Release:

This complaint, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this 16th day of March, 2015.

JUDICIAL OFFICER:

SIGNATURE:

NAME: _____

TITLE: _____

Mary [Signature]
STATE OF MINNESOTA }
COUNTY OF SHERBURNE } SS
FILED

Sworn testimony has been given before the Judicial Officer by the following witnesses:

<p>COUNTY OF SHERBURNE STATE OF MINNESOTA</p> <p>State of Minnesota Plaintiff,</p> <p>vs.</p> <p>Michael Scott Gunderson Defendant.</p>	<p>Clerk's Signature or File Stamp: <u>16</u> 2015</p> <p>PATRICIA A. KUKA COURT ADMINISTRATOR</p> <p>By <i>[Signature]</i> Deputy</p> <p>RETURN OF SERVICE</p> <p>I hereby Certify and Return that I have served a copy of this Summons upon the Defendant(s) herein-named. Signature of Authorized Service Agent:</p> <p><i>[Signature]</i></p>
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DEFENDANT FACT SHEET

Other DOBs:

Race/Ethnicity:

CID:

Alias Information:

Fingerprinted:

Handgun Permit:

Location of Violation:

Driver's License #:

Accident Type:

License Plate #:

BAC Status:

BAC Level:

Statute and Offense Grid

Count: 3

Ct	Statute Type	Offense Date	Statute #/Descr and Sup	Level	MOC	GOC	Rpt Ctrl Agency	Rpt Ctrl #
1	State Statute	3/13/2015	152.025 subd. 2(a)(1) - Drugs - 5th Degree - Possess Schedule 1,2,3,4 - Not Small Amount Marijuana 152.025 subd. 2(a) - Drugs - 5th Degree - Possession - Penalty	F	DH548	NA	MN0710000	15005427
2	State Statute	3/13/2015	609.378 subd. 1(a)(1) - Neglect of a Child-Results Subst. Harm Physical/Emot Health-F 609.378 subd. 1(a)(1) - Neglect of a Child-Results Subst. Harm Physical/Emot Health-F	F	I1062	NA	MN0710000	15005427
3	State Statute	3/13/2015	609.378 subd. 1(a)(1) - Neglect of a Child-Results Subst. Harm Physical/Emot Health-F 609.378 subd. 1(a)(1) - Neglect of a Child-Results Subst. Harm Physical/Emot Health-F	F	I1062	NA	MN0710000	15005427

STATE OF MINNESOTA }
STATE OF MINNESOTA } SS.
COUNTY OF SHERBURNE }
COUNTY OF SHERBURNE } **FILED**

DISTRICT COURT

TENTH JUDICIAL DISTRICT

NOV 10 2015

State of Minnesota,

PATRICIA A. KLUKA
COURT ADMINISTRATOR

Patricia A. Kluka
Deputy

-vs-

**STIPULATED FACTS
IN SUPPORT OF AGGRAVATED FACTORS**

Michael Scott Gunderson,

Defendant.

Court File No. 71-CR-15-334
County Attorney File No. 185668

The defendant has decided to waive his right to a jury trial in this matter and enter of plea of guilty to Counts 2 and 3, and has further agreed that the following aggravating factors exist: (1.) each victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, and the defendant knew or should have known of this vulnerability; (2.) each victim was treated with particular cruelty for which the individual defendant should be held responsible, and; (3.) the offenses committed were more serious than the typical felony Child Neglect offenses. See Minn. Sent. Guidelines 2.D.3.b.(1) and (2).

In support of his admission as to the above aggravating factors, the defendant stipulates the following facts are true and correct and will be admitted to the Court in support of the agreed upward durational departure. The defendant also agrees that the record will be supplemented with the police reports, medical reports, and photographs included in Exhibit 1 and referenced herein and agrees the contents of that exhibit are also true and correct.

STIPULATED FACTS

On March 13, 2015, [redacted] was 37 months old. His brother, [redacted] was 23 months old. Both boys were hospitalized at the University of Minnesota Medical Center on March 13, 2015 based on their presenting medical conditions. Dr. Nancy Harper evaluated each child that day and determined both suffered from severe malnutrition (Exhibit 1, Tabs 1,2, 5 & 6). Due to their low phosphorous levels, both were also at high risk for re-feeding syndrome, a life-threatening metabolic process that occurs when a child with malnutrition has surges of insulin as the body is re-introduced to carbohydrates. (Id., Tab 7). On March 15, 2015, Dr. Frederick Ott diagnosed [redacted] with moderate cerebral brain atrophy and [redacted] with mild cerebral atrophy. (Id., Tabs 5 & 6). In an interview with Investigator Haley on March 18, 2015, Dr. Harper observed that while immediate improvements were being made in the boys' metabolism, they had regressed in their development, in part due to the

muscle atrophy and the cerebral atrophy they experienced; she described cerebral atrophy as a loss of brain volume. (Id., Tab 7). and were hospitalized until March 27, 2015. Since their discharge, they have been under the continuing care of medical providers, occupational and physical therapists, and their foster care family to address their needs arising out of the long-term effects of their starvation, lack of care, and isolation from others.

On July 1, 2015, Investigator Haley spoke with Dr. Diana Kutts, a pediatrician at the Hennepin County Medical Center Growth and Nutrition Clinic who had been treating and . She advised that while the boys have recovered nutritionally, both have very significant developmental delays and a dysregulation of emotional behavior and evidence of attachment disorder. (Id., Tab 8). She stated the damage to both boys is not just developmental but behavioral and emotional. She believes it is unlikely that either boy will make a full recovery and will continue to have very significant long term care needs. She had no hesitation in saying the profound starvation the boys experienced was a very strong contributor to their current developmental and emotional status, even if some issues were pre-existing (Id.). With in particular, she noted that any pre-existing delays he had made him even more vulnerable to the nutritional and emotional deprivations he recently experienced. Dr. Kutts stated starvation of the brain resulted in a change to the boy's brain architecture that is hard to remedy.

On August 6, 2015, and were examined by a multi-disciplinary team at St. David's Center for Child and Family Development. Both boys were assessed in the areas of speech language, occupational therapy, social-emotional and relational functioning. Mr. Joe Egli, MA, Ph.D., made the following diagnostic impression of : Global Developmental Delay; Disinhibited Social Engagement Disorder; and Child Neglect Confirmed. (Id., Tab 10). Mr. Egli determined 's emotional and social functioning was significantly delayed, and he was nearly indiscriminate in his relational preferences. He determined 's history of neglect and deprivation made him at risk for attachment disorder and he will continue to need ongoing therapy. Mr. Egli made the following diagnostic impression of : Global Developmental Delay; Reactive Attachment Disorder; and Child Neglect Confirmed. (Id., Tab 9). Mr. Egli made similar findings concerning , but noted behavioral issues concerned a lack of interaction with his caregivers. He will require ongoing therapy with his caretakers to develop an appropriate relationship. In a phone interview, Mr. Egli likened the boy's future cognitive development as that of a 10-year old child at the time they reach high-school age. (Id., Tab 11).

and receive occupational therapy services through Capernaum Pediatric Therapy. Reports issued from September of 2015 show and continue to struggle with basic needs and emotional and behavioral issues. (Id., Tabs 12 & 13). continues to stuff food into his mouth and works on fine motor skills, self-care and self-feeding, as well as learning appropriate self-calming techniques. is non-verbal and will eat to the point of vomiting. He walks in a high guard position as a child does who is just learning to walk. 's continuing care plan includes goals in improving fine motor skills and learning to assist with undressing. and will

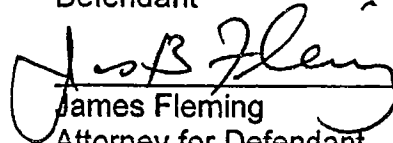
continue to receive these services on a weekly basis for at least the next several months.

Dated: 11-10-15



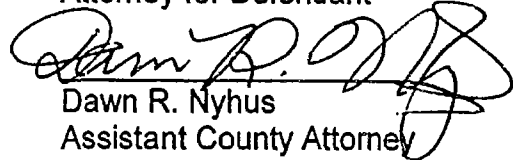
Michael Scott Gunderson
Defendant

Dated: 11-10-15



James Fleming
Attorney for Defendant

Dated: 11/10/15



Dawn R. Nyhus
Assistant County Attorney