

Colorado court of appeals says internet prohibition is constitutional

written by Larry Neely | July 16, 2021



By Larry . . . It is constitutional to prohibit internet access according to the Colorado Court of Appeals. Christopher Landis appealed his probationary sentence for attempted sexual assault on a child. He argued that the conditions of his probation restricting his use of the internet and social media violate (1) the governing Colorado statutory scheme and (2) his rights to free speech under the United States and Colorado Constitutions. His suit argued that the United States Supreme Court's decision in *Packingham vs. North Carolina* would make such a probationary condition unconstitutional.

The appeals court stated, "While we fully acknowledge that, to date, the internet has become one of the most important places, if not the most important place, for people to exchange views and ideas, under the circumstances here, we disagree with both of Landis's contentions." The court briefly recited the facts underlying Landis' conviction. "According to

the affidavit of probable cause for arrest, Landis sexually assaulted his stepdaughter when she was ten years old. The evidence included his admission to police that he touched the victim's vagina and breasts. In a negotiated plea, Landis pleaded guilty to one count of attempted sexual assault on a child. The parties stipulated to a sentence to probation.

At the sentencing hearing, the prosecutor agreed with the recommendation in the presentence investigation report, that the court sentence Landis to sex offender intensive supervision probation (SOISP) and require him to comply with (1) the standard "Additional Conditions of Probation for Adult Sex Offenders" (the standard conditions) and (2) the recommendations in the sex offense specific evaluation (SOSE). The court sentenced Landis to seven years of SOISP. As for the two standard conditions restricting use of the internet and social media, the court required Landis to comply with those conditions but modified them to allow for such use required by his employment at the electronics installation company.

Landis argued that he should not be required to comply with the two standard conditions prohibiting use of the internet and social media without prior approval from his probation officer. He emphasized that he is required to use the internet in his ongoing employment at an electronics installation company. He also argued that the conditions violate his constitutional rights based on *Packingham v. North Carolina* (2017) which invalidated a statute creating a new felony offense for violation of post-custodial restrictions on sex offender access to social media.

The court emphasized that probation is an alternative to prison and is intended to be rehabilitative [Opinion at 4](#). Colorado Revised Statutes, Section 18-1.3-204(2) lists the various conditions of probation that a district court may impose, which includes a catchall for "any other conditions reasonably related to the defendant's rehabilitation and the purposes of probation." The court relied on *People v.*

Brockelman, 933 P.2d 1315, 1319 (Colo. 1997). The court stated, "We conclude from our evaluation of the five Brockelman factors that the probation conditions at issue restricting Landis's use of the internet and social media are reasonably related to his rehabilitation and the purposes of probation. First, the conditions are reasonably related to Landis's underlying offense. To be sure, Landis did not use the internet in attempting to sexually assault his stepdaughter. However, he engaged in sexual conduct with a child, and it was reasonable to place restrictions on Landis's use of a medium that easily can be used to facilitate contact with children." According to the SOSE, objective testing indicated that Landis's highest sexual interest is toward juvenile females. It also concluded that he was in high denial regarding his offense. The SOSE recommended that he be "monitored carefully while in the community" and "not have contact with [the victim] or with anyone younger than 18."

The Supreme Court specifically pointed out in *Packingham* that "of importance" to the Court was ". . . the troubling fact that the [North Carolina] law imposes severe restrictions on persons who already have served their sentence and are no longer subject to the supervision of the criminal justice system." The Supreme Court repeated the same point soon after, concluding that "It is unsettling to suggest that only a limited set of websites can be used even by persons who have completed their sentences."

The Colorado Court of Appeals concluded that *Packingham* is distinguishable on that basis. Unlike the defendant in *Packingham*, Landis is quite obviously still serving his probationary sentence for a sex-related offense. They went on to say, "As the United States Supreme Court held in ***United States v. Knights***, "Inherent in the very nature of probation is that probationers 'do not enjoy "the absolute liberty to which every citizen is entitled" ' " [Opinion at 13](#). Finally, the Court said that there are ample alternatives. "The

probation conditions at issue still leave ample channels of communication for Landis to engage in everyday life. For example, Landis may still communicate in person, communicate over the telephone, receive news from television and newspapers, and write to his government representatives” *Opinion* at 18.