

Crime & Courts

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Internet seduction felony case dismissed

• Judge says law on sending material to minors violates Constitution; prosecutors will pursue charges against ex-teacher in state court

By Renita Sandosham
TIMES STAFF WRITER

MARTINEZ -- Saying that the state law that prosecutors relied upon was unconstitutional, a judge Monday dismissed a felony charge against a former Walnut Creek middle school teacher accused of trying to seduce a 14-year-old boy via the Internet.

Edwin Wheelock, 33, had been charged with one count of sending harmful matter over the Internet with the intention of seducing a minor. But Contra Costa Superior Court Judge John Minney said the statute violated the free speech and due process provisions of the First and 14th amendments of the U.S. Constitution.

Wheelock, who taught industrial technology at Foothill Middle School in Walnut Creek, wiped away tears as Minney made his ruling.

"It's certainly a relief," said his attorney David Larkin outside the courtroom. "He spent a substantial amount of time in custody. He's lost his job. He's gone through an awful lot."

Wheelock was arrested in April after a joint investigation by Walnut Creek and San Jose police, who were brought in because of their department's child exploitation unit.

The probe netted six other men, several of whom were accused of meeting with the boy and engaging in sex acts with him.

Wheelock, however, was never accused of having met with the teen-ager. The allegation was that he chatted online in an attempt to seduce the boy. He was caught, police say, after making suggestive comments and sending risque photos to a police officer posing as a minor.

Wheelock was ordered to stand trial in June after a preliminary hearing. But Larkin filed a motion to dismiss the felony charge on Nov. 10, arguing the statute upon which the charge was based violated the Constitution.

Larkin argued that a 1997 U.S. Supreme Court ruling struck down a federal law that banned indecent communications to children because of its chilling effect on free speech.

He also claimed that the "vague" California law violates the Commerce Clause of the U.S. Constitution by trying to regulate a medium that cannot be controlled by any state.

"The statute needs to be revised to correct those defects," Larkin said.

John Forsyth, a Walnut Creek attorney whose firm specializes in representing defendants in Internet sex cases, hailed Minney's ruling as a breakthrough.

"This is really good news," Forsyth said. "It's an intellectually courageous decision on the part of Judge Minney."

Forsyth, who represented one of the defendants arrested during the same investigation, said the finding will have a "persuasive" effect on other judges.

Contra Costa Deputy District Attorney Paul Sequeira said that, while not legally binding, Minney's ruling will dampen prosecutors' efforts to use the law in the future. He said his office intends to appeal through the state Attorney General's Office.

He and Forsyth are awaiting a ruling by the 4th District Court of Appeal, which has taken up the case of an Oceanside kindergarten teacher charged with attempted child molestation and distribution of child pornography over the Internet. Those charges were filed under the same statute as the charges filed against Wheelock.

A decision by the state Court of Appeal on the constitutionality of the law in that case would supersede Minney's ruling.

Wheelock still faces a misdemeanor charge of possessing lewd material. Minney on Monday lowered his bail from \$75,000 to \$25,000.