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### **Probation will be appealed Ex-officer's sex assault sentence draws fire Reactions to sentencing Probation, not jail time: the judge's reasoning**

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Michelle Wright noted the irony. Wright, a recovering crack addict, has been handcuffed and carted to jail every time she has been arrested for prostitution, a misdemeanor.

And she understands why.

Yet, as she sat outside a courtroom Tuesday, Wright, 37, couldn't comprehend why a judge declined to slap any handcuffs: or jail time: on a former **Omaha police** officer convicted of sexually assaulting a prostitute in his cruiser.

**Scott Antoniak**, 29, could have received up to 50 years in prison for the July 2005 attack in which he forced a prostitute to perform oral sex on him or be taken to jail. Douglas County District Judge Joseph Troia also could have given **Antoniak** time in the county jail as part of his probation sentence.

"I spent time in jail every time I was picked up," said Wright, who testified that **Antoniak** had groped her before assaulting the other prostitute. "And he sexually assaults someone and gets probation? I don't think it should even be an option."

The sentence had everyone from Wright to rape counselors to Douglas County Attorney Don Kleine questioning how **Antoniak** could get no jail time for first-degree sexual assault.

It also raises a bigger question: Is a straight probation sentence, devoid of any jail time, ever appropriate in cases of sexual assault involving forced penetration?

Kleine said it is not. And the veteran prosecutor said he will appeal **Antoniak's** sentence.

Kleine polled the prosecutors in his office Tuesday and couldn't come up with another example of a jail-free probation sentence for first-degree sexual assault. Kleine said the only probation terms he could find were for statutory rape, in which someone 19 or older has consensual sex with someone 15 or younger.

"With what he did to this woman, and how he did it by abusing his position of authority," Kleine said, "this to us is an excessively lenient sentence."

Defense attorneys cautioned against mandating a minimum sentence for sex offenders.

**Antoniak's** attorney, Mike Fabian, said it's impossible for legislators to rule out probation as an option or anticipate all the scenarios in which a defendant might be convicted of first-degree sexual assault.

Probation was perfectly appropriate in this case, Fabian said.

**Antoniak** had a spotless record before this incident and letters of support from 35 friends and family members, Fabian noted. Fabian pointed to testing in which a psychologist said **Antoniak** was a low risk to reoffend or be violent.

The judge noted that he had several requests, including from prosecutors, to incarcerate **Antoniak**.

"For about 2 1/2 hours, you abused your authority," Troia told **Antoniak**. "As a result of that, you lost your job. You shamed yourself. You embarrassed your family. And you disrespected your wife.

"In effect, you became a rogue cop."

Troia noted that "people believe the seriousness of your crime demands imprisonment." But as a judge, Troia said, he must weigh the seriousness of the crime against the defendant's likelihood of reoffending.

Troia said he evaluated the psychologist's reports and pondered the shame and stigma that will follow **Antoniak** with this felony conviction. **Antoniak** must register as a sex offender.

"I believe it won't happen again," Troia said.

Kleine said all defendants bring stigma to their names and shame to

their families when they commit crimes.

And most go to prison for first-degree sexual assault, he said.

Troia convicted **Antoniak** after a two-day trial in January.

The incident happened during a prostitution sting in July 2005 when **Antoniak** questioned the 37-year-old woman.

He gave her a choice as he drove her through a north **Omaha** neighborhood in his cruiser: Point out crack houses, perform oral sex on him or go to jail.

She refused to point out crack houses.

He then drove south as if he were taking her to jail. When they got as far as the Joslyn Art Museum, she relented and agreed to perform the sex act.

After she did, she spat his semen onto an identification card. The next day, **Omaha police** tested the semen: and it matched **Antoniak's** DNA. **Omaha police** fired him six weeks later.

**Antoniak** denied assaulting the victim or groping Wright.

Prosecutor John Alagaban said **Antoniak** needs to realize his actions were "wrong in every way."

"There were no winners in this," he said. "Yet the defendant made the choice. He was in control."

Troia ordered **Antoniak** to read the victim's statement of how the incident affected her. He then ordered **Antoniak** to write a letter of apology to the woman, to Wright and to **Omaha police**.

**Antoniak** had apologized to the judge, to his family and to the department for the "shame and embarrassment and pain I've caused everyone."

He didn't apologize to the assault victim.

Kleine questioned why **Antoniak's** lack of remorse wasn't a factor.

"It would be a factor (in his favor) if he said, 'I'm sorry for what I did to this woman,'" Kleine said. "Now the judge is telling him he has to say he's sorry, rather than anything coming from the defendant himself."

Mike Denney came to **Antoniak's** defense. The University of

Nebraska at **Omaha** wrestling coach attended the sentencing, then threw his arm around **Antoniak's** father as they left the courtroom, teary-eyed.

Denney said character was never a question with **Antoniak**, a two-time All-American wrestler.

"I've been coaching for 38 years," Denney said, "and have been around hundreds of people. All I can say is he's a great young man."

Several women's advocates questioned whether **Antoniak's** reputation: compared with the woman's: factored into the judge's decision.

Troia scolded **Antoniak**, saying "you've got to respect people even if their position is less desirable in society."

But victim advocates said putting him on probation speaks louder than any lecture.

Hope Peabody, clinical coordinator and rape counselor at the YWCA, called the sentence "offensive." She said probation reinforces victims' beliefs that their allegations won't be taken seriously and their offenders won't be treated harshly.

Kristen Houser, past president of the National Alliance to End Sexual Violence, said the sentence doesn't square with society's insistence that sex offenders be held accountable.

"I hope the judge didn't forget that this is a woman," Houser said. "She's not a prostitute. She's a woman with human rights. And she was preyed upon by someone who was supposed to protect those rights."

#### Reactions to sentencing

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Douglas County Attorney Don Kleine

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Probation, not jail time: the judge's reasoning

Convicted of first-degree sexual assault, **Scott Antoniak** was sentenced to five years' probation and 250 hours of community service and ordered to undergo counseling. Under state law, Judge Joseph Troia had the choice of

probation for the former **Omaha police** officer unless he found that any or all of several factors necessitated prison.

Here are the statutory factors favoring prison, followed by Troia's reasoning against it:

State law: The defendant has a substantial risk to reoffend.

Troia: The risk is minimal not only because **Antoniak** lost his badge but also because he has acknowledged the shame and stigma of his actions.

State law: The offender needs correctional treatment that can be provided only in prison.

Troia: Ordered outpatient counseling consistent with a psychologist's report, though he didn't specify the kind of treatment.

State law: A lesser sentence will depreciate the seriousness of the crime or promote disrespect for the law.

Troia: The crime will never be depreciated, especially because **Antoniak** has to look his wife "in the eye every day."

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