No. 102564-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARC RICHARD VANSLYKE,

Petitioner.

ANSWER TO PETITION FOR REVIEW

JASON J. CUMMINGS
Prosecuting Attorney

AMANDA F. CAMPBELL
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The facts are correctly set out in the Court of Appeals opinion.

In its opinion affirming the petitioner's convictions, the Court of Appeals held the plain language of RCW 10.99.050 unambiguously states that a no contact order issued as a condition of a felony sentence may not exceed the adult maximum sentence and, as Vanslyke's maximum sentence was five years, the no contact order for a term of five years did not exceed the statutory limit. Slip Op. at 3–4. The Court explained the legislature "knows how to provide defendants with credit for court-imposed restrictions, and it did not do so here." Id. at 4.

The Court of Appeals further held the no contact order was not a penalty and, therefore, due process did not

require that he receive credit for the time he was subject to the previous sentencing condition and no contact order for the same offense. Slip Op. at 5–8. The Court of Appeals held Vanslyke had not established the trial court acted with actual vindictiveness, as required. Id. at 9.

Finally, the Court of Appeals held Vanslyke had not proven an equal protection violation as he was treated the same as any other defendant who had not appealed. Id. at 11. The Court of Appeals concluded Vanslyke's trial counsel was not ineffective for failing to raise these issues. Id.

III. **ARGUMENT**

The petitioner argues this matter involves an issue of substantial public interest and a significant constitutional question. He also asks this Court to remand the matter to strike the Victim Penalty Assessment.

A. THE PETITIONER HAS FAILED TO DEMONSTRATE THIS MATTER INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

The Court of Appeals held the plain language of RCW 10.99.050 resolves the issue presented in the defendant's case. Slip Op. at 3. The defendant makes the same claim here as he did in the Court of Appeals, that interpreting the statute in this way—allowing the trial court to impose a five-year no contact order upon resentencing—leads to absurd consequences because a victim might be protected for more than the five-year statutory maximum.

The defendant, without citation to authority, treats two separate no contact orders as one order. He argues, for example, that he can only be subject to "it"—the no contact order—for five years total. Petition for Review at 10. However, the defendant was never subject to a no contact order that exceeded five years. He cites no authority that requires or even allows a court to combine

the terms of two separate orders in determining whether a no contact order exceeds the statutory maximum term. The two post-conviction no contact orders at issue here were signed at separate proceedings more than a year apart. Slip Op. at 2. The second order did not exceed the statutory limit. Id.

Further, as the Court of Appeals explained, "the legislature knows how to provide defendants with credit for court-imposed restrictions, and it did not do so here." Slip Op. at 4. The defendant argues the legislature could not have intended for no contact orders, when their terms were added together, to exceed the statutory maximum term. However, the legislature's choice to use different language than it used when providing defendants with credit for time served shows the legislature intended what occurred in this case. See Samish Indian Nation v. Dep't of Licensing, 14 Wn. App. 2d 437, 442, 471 P.3d 261 (2020) ("When the legislature uses different language in the same statute,

courts presume the legislature intended a different meaning.").

Thus, as a plain reading of the statute determines this issue clearly and the defendant does not cite any authority for a key premise of his argument, the defendant's claim does not raise an issue of substantial public interest.

B. THE PETITIONER HAS FAILED TO DEMONSTRATE THIS MATTER INVOLVES A SIGNIFICANT CONSTITUTIONAL QUESTION AS HE HAS NOT SUFFERED A DUE PROCESS VIOLATION.

The defendant argues he was penalized for exercising his right to appeal. Petition for Review at 14. He fails to address the Court of Appeals' analysis as to whether no contact orders are punitive.

The Court concluded no contact orders are not punitive, citing to In re Personal Restraint of Arseneau, 98 Wn. App. 368, 370-71, 989 P.2d 1197 (1999) and State v. Felix, 125 Wn. App. 575, 578-79, 105 P.3d 427 (2005). The defendant does not address either case or the reasoning

therein, instead citing U.S. v. Goodwin, 457 U.S. 368, 373, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982). The Court of Appeals explained, "Vanslyke's reliance on Goodwin is misplaced. The United States Supreme Court there addressed prosecutorial vindictiveness, not whether a court-imposed restriction short of confinement is a 'penalty.'" Slip Op. at 9. The Court concluded, "Properly construed, Goodwin supports our conclusion that not every governmental action 'detrimental to the defendant . . . after the exercise of a legal right' constitutes a penalty for due process purposes." Slip Op. at 10. The defendant does not address this distinction in his briefing, merely citing to Goodwin without explaining how the Court of Appeals erred in distinguishing that case from his. Petition for Review at 16.

No contact orders are not punitive for the reasons stated in the Court of Appeals opinion. Thus, there was not

a Due Process violation when the trial court imposed a five-year no contact order.

C. THE PETITIONER HAS FAILED TO DEMONSTRATE THIS MATTER INVOLVES A SIGNIFICANT CONSTITUTIONAL QUESTION AS HE HAS NOT SUFFERED AN EQUAL PROTECTION VIOLATION.

The defendant argues the no contact order violates his right to equal protection because he was treated differently than similarly situated defendants who did not appeal. Petition for Review at 17.

As the Court of Appeals explained, the defendant was treated the same as any other defendant who was sentenced following trial. The trial court imposed a no contact order that did not exceed the statutory maximum term. Again, the defendant cites no authority for his contention that the terms of two separate no contact orders should be added together for a legal determination as to whether their total length exceeds the statutory maximum term.

Therefore, there is no significant constitutional question at issue.

D. THE STATE AGREES THE COURT MAY REMAND THE MATTER TO THE TRIAL COURT TO STRIKE THE VICTIM PENALTY ASSESSMENT.

As the matter is on direct appeal, the State agrees it may be remanded to the trial court to strike the Victim Penalty Assessment, which was imposed prior to the legislative change, as the defendant notes in his petition.

IV. CONCLUSION

The Petition for Review should be denied.

This brief contains 1119 words (exclusive of appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and pictorial images).

Respectfully submitted on April 2, 2024.

JASON J. CUMMINGS
Snohomish County Prosecuting Attorney

By: _____
AMANDA F. CAMPBELL, WSBA #57216
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. MARC RICHARD VANSLYKE, Petitioner.	No. 102564-5 DECLARATION OF FILING AND E-SERVICE

DECLARATION OF DOCUMENT FILING AND SERVICE

I, DIANE K. KREMENICH, STATE THAT ON THE 2nd DAY OF APRIL, 2024, I CAUSED THE ORIGINAL: ANSWER TO PETITION FOR REVIEW TO BE FILED IN THE SUPREME COURT AND A TRUE COPY OF THE SAME TO BE SERVED IN THE FOLLOWING MANNER INDICATED BELOW:

[X] NIELSEN, KOCH & GRANNIS
Sloanej@nwattorney.net;
nielsene@nwattorney.net;
nelsond@nwattorney.net;

[X] E-SERVICE VIA PORTAL

SIGNED IN SNOHOMISH, WASHINGTON, THIS 2nd DAY OF APRIL, 2024.

DIANE K. KREMENICH
APPELLATE LEGAL ASSISTANT

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

April 02, 2024 - 11:40 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,564-5
Appellate Court Case Title:	State of Washington v. Marc Richard VanSlyke
Superior Court Case Number:	20-1-00524-4

The following documents have been uploaded:

- 1025645_Answer_Reply_20240402113934SC403822_8711.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was vanslyke answer to prv.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- nelsond@nwattorney.net
- nielsene@nwattorney.net

Comments:

Sender Name: Diane Kremenich - Email: diane.kremenich@co.snohomish.wa.us
Filing on Behalf of: Amanda Fern Campbell - Email: Amanda.campbell@co.snohomish.wa.us (Alternate Email: diane.kremenich@snoco.org)

Address:
3000 Rockefeller Avenue, M/S 504
Everett, WA, 98201
Phone: (425) 388-3333 EXT 3501

Note: The Filing Id is 20240402113934SC403822