NO. 91304-8

THE SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JESSE LEE CASTILLO

RESPONSE TO PETITION FOR DISCRETIONARY REVIEW BY YAKIMA COUNTY

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A. INTRODUCTION

Petitioner/Appellant Castillo was charged with and convicted of felony violations of a no contact order – domestic violence. Castillo timely filed an appeal, the State filed a Motion on the Merits in response. That motion was granted by the Court of Appeals Division III. There was a subsequent request by Petitioner that the court review that order, this request was denied by a panel of the court on January 16, 2015. This motion followed.

B. ISSUE PRESENTED BY PETITION

What is the correct interpretation of the statutory language contained in LAWS OF 2010, ch. 274, Sec. 101?

ANSWER TO ISSUES PRESENTED BY PETITION

1. The trial court and all three divisions of the Court of Appeals have correctly analyzed this question, review by this court is not needed.

C. STATEMENT OF THE CASE

The State shall only briefly set forth a separate facts section. They have been set forth in the petitioner's opening brief and motion for review, they are sufficient to allow review. Appellant was charge with one count of Felon Violation of a Protection Order. The Information reads as follows:

Count 1 -FELONY VIOLATION OF A PROTECTION ORDER- DOMESTIC VIOLENCE

RCW 26.50.11 0(5) and 10.99.020
CLASS C FELONY- The maximum penalty is 5 years imprisonment and/or a $10,000.00 fine.
On or about August 15, 2013, in the State of Washington, with knowledge that the Yakima County District Court had previously issued a protection order, restraining order, or no contact order pursuant to Chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW in State of Washington vs. Jesse Lee Castillo, Cause No. 39393, which protects Helen Marie Miller, you violated the order while the order was in effect by knowingly violating the restraint provisions therein, and/or by knowingly violating a provision excluding you from a residence, a workplace, a school or a daycare, and/or by knowingly coming within, or knowingly remaining within, a specified distance of a location, and you have at least two previous convictions, Yakima County District Court Cause Number 39393 and Sunnyside Municipal Court Cause Number 62033, for violating a provision of a court order issued under Chapter 7.90, 10.99, 26.09, 26.10, 26:26, 26.50, or 74.34 RCW, or any valid foreign protection order as defined in RCW 26.52.020.
Furthermore, you committed this crime against a family or household member. (RCW 10.99.020.)

Appellant plead guilty to this count reserving the right to appeal the domestic violation designation in the original count. The record for in trial court is scarce the following is the basis argued to the trial court:

> The destic -- domestic violence enhancement doesn't belong in this case. The definition of 26.50.010 having to do with any risk of harm just simply isn't present. This case should never be considered as a double point counter in a future hearing, nor should any -- any of the other -- any other aspect of domestic violence be involved.
>
> This is a strictly a violation of a no-contact order case. The enhancement does not apply. It shouldn't be there.

> I'm going to ask the Court to strike the pled and proven language. The State has not alleged that there was domestic violence involved. We're also going to ask the Court to strike the domestic violence enhancement. That doesn't mean that the sentencing ranges are different; this is a domest -- this is a no-contact order violation and it is to be punished. The twenty-four months is the appropriate punishment because those other risks were not present.
>
> So we're going to ask the Court to make those two modifications. We believe that the rest of the settlement is appropriate. Jesse understands that until he gets the prior orders released he is to have no contact with her. He's going to be in custody the next sixteen months.

This is the totality of the State's analysis regarding this issue:

> Judge I would urge the Court to follow the recommendation. You are privy to some of the -- the arguments between defense and the State regarding what's considered domestic violence, under what circumstances or whatnot. I'd -- given that you've seen some of the briefing and made rulings on it I would urge the Court to remain in the finding that this is domestic violence pled and proven, given that it is a violation of a domestic violence no-contact order.

What Appellant asked of the court of appeals was that the court find that in order for a conviction to be possible the facts must meet the definitions of domestic violence in both RCW 10.99.020 and RCW 26.50.010

D. ARGUMENT

1. Standards of Review.

> RAP 13.4(b) Considerations Governing Acceptance of Review.;

> A petition for review will be accepted by the Supreme Court only: (**1**) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (**2**) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (**3**) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (**4**) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Castillo's only basis for review is under the auspices of (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. While obviously the issue of domestic violence and societies need to address that violence is a topic of "substantial public interest" it is just as obvious that the lower courts have answered this question in unison, those decisions should stand. Just as this court refused to consider a motion for review in State v. Kozey, infra, so too should this court deny review herein.

Before oral argument in this case both State v. McDonald, 183 Wn. App. 272, 333P.3d 451 (Division I, 2014) and State v. Kozey, 183 Wn. App. 692; 334 P.3d 1170; 2014 Wash. App. LEXIS 2278, review denied, 182 Wn.2d 1007 (Division II, 2015) were decided by Divisions I and II. Division III adopted the reasoning of those two sister courts when review of the Commissioner's decision was denied a three judge panel and the order denying modification was signed by Chief Judge Siddoway.

The three division have all now ruled; State v. McDonald, 183 Wn. App. 272, 278-9, 333P.3d 451 (Division I, 2014);

> It is unreasonable to apply the definition found in chapter 26.50 RCW to chapter 10.99 RCW. Nothing in either statute indicates that the legislature intended such a result. To the contrary, RCW 26.50.010 makes clear that its definition of domestic violence applies specifically to that chapter. A common sense reading of RCW 9.94A.030's plain meaning indicates that the legislature's use of the word "and" means that in order to qualify for enhanced sentencing, the crime must meet either the definition of domestic violence in RCW 10.99.020 or the definition in RCW 26.50.010. Both definitions are independently sufficient.

State v. Kozey, 183 Wn. App. 692; 334 P.3d 1170; 2014 Wash. App. LEXIS 2278, review denied, 182 Wn.2d 1007 (Division II, 2015);

> Turning now to RCW 10.99.020 and RCW 26.50.010 themselves, their presence virtually compels adoption of the disjunctive reading of RCW 9.94A.030(20), since the conjunctive reading would effectively rob one of them of any effect. As discussed above, RCW 10.99.020 defines "domestic violence" through a nonexclusive list of crimes; RCW 26.50.010 defines "domestic violence" through a list of qualifying behaviors. If the conjunctive reading of RCW 9.94A.030(20) were correct, then the list of crimes found in RCW 10.99.020 would have meaning only where the offender commits an act encompassed by RCW 26.50.010. The reference to RCW 10.99.020 would be superfluous.
>
> In contrast, as noted above, a disjunctive reading gives meaning to both of the cross-references in RCW 9.94A.030(20):RCW 10.99.020 defines the nonexclusive list of per se crimes of domestic violence and RCW 26.50.010 tells the court how to determine if a crime not on the list constitutes domestic violence. The examination of related statutes therefore requires a disjunctive reading of RCW 9.94A.030(20).

Further, these same considerations show that reading RCW 9.94A.030(20) conjunctively quickly descends into self-contradiction. The conjunctive interpretation of "and" in RCW 9.94A.030(20) would mean that the requirements of both referenced statutes must be met before a crime can be deemed domestic violence. As just shown, requiring both statutes to be met reduces the definition of domestic violence to that of RCW 26.50.010 only. Thus, the conjunctive interpretation defeats itself by making RCW 10.99.020 superfluous. When our court interprets a statute, we attempt to avoid interpretations that render statutory language "meaningless or superfluous." Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 809, 16 P.3d 583 (2001). A disjunctive reading, therefore, is the only way to give meaning to all the language in RCW 9.94A.030(20).

(Kozey at 699-701(Footnotes omitted.)

...

The sentencing amendments the legislature enacted in 2010 tracked the amendments proposed by the attorney general in function, but the amendments used "and" in the place of "or" when adding what became RCW 9.94A.030(20). Compare Laws of 2010, §§ 401, 403, with AG Proposal at 1 (proposing amendments to RCW 9.94A.030(20) and RCW 9.94A.525). The intended effect of this change, if any, is plain from the surrounding circumstances. The legislation implements both the attorney general's proposal and the vigorous statement of intent in Laws of 2010, ch. 274, § 101, cited above. A conjunctive reading of RCW 9.94A.030(20) narrows the scope of its protections and starkly contradicts the statement of legislative intent to "prevent domestic violence" and to "[i]ncrease the safety afforded to individuals who seek protection." Laws of 2010, ch. 274, § 101. The disjunctive reading of RCW 9.94A.030(20) is necessary to preserve that intent.

(Id at 704-5, Footnotes omitted.)

State v. Castillo, 32086-3-III (2014), Commissioner's ruling, slip at page 3;

> This issue was raised in two very recent published decisions, *State v. Kozey,* _ Wn. App. _, _Po 3d _, WL 4627668 (Sept. 16, 2014) and *State v. McDonald,* _Wn. App., _ P.3d _, WL 4345448 (July 28, 2014). Both of those cases discuss statutory construction and legislative intent and then hold that a common sense reading of RCW 9.94A.030 indicates that the legislature's use of the word "and" means that in order for enhanced sentencing to be imposed, the crime must meet either the definition of domestic violence in RCW 10.99.020 or that in RCW 26.50.010. "Both definitions are independently sufficient." *Id.*
>
> In light of the above, the State's motion on the merits is granted and the decision of the trial court is affirmed.

These courts have clearly reviewed the history of these statutes and found that the legislature did not intend the strained interpretation proffered by Castillo.

E. CONCLUSION

Petitioner has failed to set forth a valid basis for this matter to be reviewed by this court. Castillo's claim does not meet the requirements of any section of RAP 13.4. The actions of the trial court and the Court of Appeals Division III, both the Commissioner's ruling and the determination by the panel to decline review, were correct. There is no basis for this Motion for Discretionary Review to be granted, the actions of the Court of Appeals should not be disturbed.

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Respectfully submitted this 17th day of March 2015.

s/ David B. Trefry
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Certificate of Service

I, David B. Trefry, hereby certify that on this date I sent a copy of this Response to Mr. Dennis Morgan, by email, by agreement of the parties at nodblespk@rcabletv.com

Dated at Spokane, WA this 17th day or March, 2015.

s/ David B. Trefry

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Please find attached the State's response to the Petition for Review filed in this case.

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