SUPREME COURT NO. _____
COURT OF APPEALS NO. 74677-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

WENDY GRANATH,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

The State of Washington, Petitioner here and Respondent below, respectfully requests that this Court review the decision designated in section B of this petition.

B. COURT OF APPEALS DECISION

The State of Washington requests review of the published decision of the Court of Appeals in State v. Granath, No. 74677-4-I (July 31, 2017), a copy of which is attached as Appendix A.

C. ISSUE PRESENTED FOR REVIEW

In enacting chapter 10.99 RCW, the legislature intended to provide victims of domestic violence with "the maximum protection from abuse which the law and those who enforce the law can provide." RCW 10.99.050 permits a court to issue a domestic violence no-contact order ("DVNCO"), the violation of which is a separate criminal offense, to protect a domestic violence victim after sentencing. Did the legislature intend to authorize misdemeanor DVNCOs that protect victims for the maximum term of the court's sentencing authority, or did they intend a lesser amount of protection that is dependent on the amount of punishment imposed on the defendant?

D. STATEMENT OF THE CASE

Wendy Granath was convicted in King County District Court of one count of cyberstalking and one count of violation of a court order. CP 35. The jury found both misdemeanors to be crimes of domestic violence. CP 35. The charges arose from a series of emails that Granath sent to her estranged husband, John Agaba. CP 25. On November 8, 2012, the district court imposed a sentence of 364 days in jail and a $5,000 fine, with 334 days and $4,900 of that suspended for a period of 24 months. CP 35-36. The court imposed a five-year no-contact order. CP 39.

In the judgment and sentence, the court ordered that Granath "not go on the property of and have no contact with John Agaba." CP 35. In a separate document, entitled "Post-Conviction Domestic Violence No-Contact Order" ("DVNCO"), the district court imposed additional restrictions on contact, including, among other things, a prohibition on keeping Agaba under surveillance, a prohibition on contacting him through third parties, and a requirement that Granath stay 500 feet away from Agaba's "residence, school, or workplace." CP 39. The order stated that the court was "issu[ing] this Domestic-Violence No-Contact Order under chapter 10.99 RCW," and that the order would expire "[f]ive

years from today," or November 8, 2017. CP 39-40. Granath signed the order. CP 40.

On October 9, 2014, the district court announced that Granath's case would "close" after she paid outstanding fines, which Granath did on December 8, 2014. CP 26. The court did not terminate the DVNCO issued under RCW 10.99.050.

Several weeks after Granath paid her fines, she moved to vacate the DVNCO on the grounds that the trial court no longer had probationary jurisdiction over her. CP 26-27. The State objected. CP 26. After a hearing, the trial court denied the motion, finding that it "had lawful authority to issue a separate order under [RCW] 10.99" and that therefore the DVNCO could "survive on its own." CP 22-23. Granath filed a RALJ appeal challenging that decision. The superior court affirmed the district court, finding that "in enacting RCW 10.99.050 and RCW 26.50.110, the Legislature intended to create a statutory scheme in which a domestic violence no-contact order can be independently enforced outside the jurisdiction of the court that initially issued the order, thereby providing victims of domestic violence with the maximum protection from abuse allowed by law." CP 46. The superior court found that such orders could be issued for the "maximum term of sentence

that the district court could impose or suspend," which in Granath's case was five years. CP 46.

Granath successfully sought discretionary review in the court of appeals, which reversed the superior court. State v. Granath, No. 74677-4-I, slip op. at 1-3 (Wash Ct. App. July 31, 2017). The court framed the question at issue as "whether the legislature intended to criminalize violation of a postconviction no-contact order entered as a condition of sentence if the violation is committed after that sentence has been served." Granath, slip op. at 4.

The court held that the DVNCO issued under RCW 10.99.050 could not survive beyond the period for which the sentence was partially suspended. Granath, slip op. at 13. It reasoned that only the district court could enforce a violation of the conditions of Granath's sentence, and that it had no enforcement tools other than revocation of the suspended sentence. Granath, slip op. at 4. The court asserted that Granath had "completed her sentence," and since "revocation of the sentence" was no longer a possibility, it concluded that the DVNCO could not remain in effect. The court stated: "Once Granath completed her sentence and her case was closed, the no-contact condition of sentence expired.

The separate no-contact order expired at the same time." Granath, slip op. at 14.

The Court of Appeals rejected the State's argument that this reasoning was inconsistent with State v. W.S., 176 Wn. App. 231, 309 P.3d 589 (2013), which held that a juvenile court's loss of jurisdiction when a juvenile offender turns 18 or 21 does not limit the juvenile court's ability to issue a no-contact order under RCW 10.99.050 that extends beyond that point. Granath, slip op. at 9-10.

E. REASONS REVIEW SHOULD BE ACCEPTED AND ARGUMENT

RAP 13.4(b) permits review by this Court where a decision by the Court of Appeals is in conflict with another decision of the Court of Appeals or involves an issue of substantial public interest that should be determined by the Supreme Court. These criteria are met here. The decision below conflicts with the court of appeals' decision in State v. W.S., and contravenes the legislature's explicit intent to provide victims of domestic violence with "the maximum protection from abuse allowed by law." It invalidates countless domestic violence no-contact orders upon which vulnerable victims currently rely and upon which plea agreements were predicated, throwing into upheaval an area of

criminal prosecution in which the legislature has declared the protection of victims to be of paramount importance.

1. THE DECISION BELOW DEPRIVES COUNTLESS VULNERABLE VICTIMS OF THE MAXIMUM PROTECTION THE LEGISLATURE INTENDED TO GRANT THEM.

When the legislature enacted chapter 10.99 RCW, it stated, "The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide." RCW 10.99.010. RCW 10.99.040 ensures that courts have the tools to protect domestic violence victims from the beginning of the criminal justice process, and RCW 10.99.050 ensures that courts have the tools to protect domestic violence victims after sentencing. As this Court has observed, this statutory scheme "gives a trial court the authority to enter a no-contact order at every possible juncture in the prosecution." State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002).

However, the Court of Appeals implicitly held below that because RCW 10.99.050(1) refers to a "condition of sentence," it contains no independent grant of authority to issue a domestic

violence no-contact order at sentencing, and thus the life of a DVNCO is limited to the term during which the sentence is suspended. Granath, slip op. at 11. This interpretation leads to absurd results that contravene the intent of the legislature.

In interpreting a statute, a court's fundamental objective is to ascertain and carry out the intent of the legislature. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Courts first examine the language of the statute to discern the plain meaning "from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010). "[A]n act must be construed as a whole, considering all provisions in relation to one another and harmonizing all rather than rendering any superfluous." Id. If possible, "no clause, sentence or word shall be superfluous, void, or insignificant." State v. Pannell, 173 Wn.2d 222, 230, 267 P.3d 349 (2011). Furthermore, "a statute should not be given an interpretation which would make it an absurdity when it is susceptible of a reasonable interpretation which would carry out the manifest intent of the legislature." Martin v. Dep't of Soc. Sec., 12 Wn.2d 329, 331, 121 P.2d 394 (1942). Courts "will avoid an absurd

result even if it must disregard unambiguous statutory language to do so." In Matter of Dependency of D.L.B., 186 Wn.2d 103, 119, 376 P.3d 1099 (2016).

RCW 10.99.050(1) states, "When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim." Read in isolation, this language may not appear to contain an independent grant of authority to sentencing courts to issue domestic violence no contact orders. However, other language in chapter 10.99 repeatedly indicates that RCW 10.99.050 grants authority to *issue* DVNCOs, not merely record them.

Other subsections of RCW 10.99.050 repeatedly refer to orders "issued under this section" or "issued pursuant to this section." RCW 10.99.050(2)(a) ("Willful violation of a court order issued under this section..."); 10.99.050(3) ("Whenever an order prohibiting contact is issued pursuant to this section..."); 10.99.050(4) ("If an order prohibiting contact issued pursuant to this section..."). Similarly, RCW 10.99.040 indicates that section .050 authorizes courts to issue DVNCOs by referring to orders "issued

under this chapter," as RCW 10.99.050 is the only other section in chapter 10.99 that authorizes DVNCOs. RCW 10.99.040(3), (7) (referring to orders "issued under this chapter"); compare RCW 10.99.040(4), (6) (referring to orders issued "under subsection[s]" of .040); see also State v. Anaya, 95 Wn. App. 751, 754, 976 P.2d 1251 (1999) (citing RCW 10.99.040 and .050 as the provisions in RCW 10.99 that authorize DVNCOs); Schultz, 146 Wn.2d at 550 (same). Consistent with this analysis, Washington courts have noted that RCW 10.99.050 "authorizes sentencing courts to impose specialized contact orders." State v. O.P., 103 Wn. App. 889, 892, 13 P.3d 1111 (2000).

RCW 10.99.050 independently authorizes trial courts to issue DVNCOs, and thus the question becomes how long the legislature intended such orders to remain in effect. Chapter 10.99 RCW does not address time limits on orders issued under RCW 10.99.050. But given the legislature's explicitly stated intent to provide domestic violence victims "the maximum protection" that the law can provide, the interpretation that best effectuates that intent is that courts may issue DVNCOs to protect victims for up to

the maximum term of the sentencing court's authority over the defendant.[1]

The legislature determined in 2010 that district and municipal courts should have "continuing jurisdiction" over domestic violence offenders and "authority to suspend the execution of all or any part of its sentence" for up to five years after sentencing, increasing that term from the two years previously allowed. LAWS OF 2010, ch. 274, § 405 (amending RCW 3.66.068) (emphasis added). Thus, a district court may issue a DVNCO under RCW 10.99.050 that expires up to five years after sentencing.

Under the interpretation adopted by the Court of Appeals, a district court may impose a five-year DVNCO only if the court explicitly suspends part of the defendant's sentence for five years and does not end the period of suspension early. It is not clear whether the Court of Appeals meant that suspension of part of the *term of confinement* was required, or simply suspension of any aspect of the sentence (e.g., fines or other conditions), but either

[1] The Court of Appeals was incorrect when it asserted that any ambiguity as to the duration of DVNCOs issued under RCW 10.99.050 would be resolved in Granath's favor under the rule of lenity. Granath, slip op. at 13. The rule of lenity applies only "when a penal statute is ambiguous *and* legislative intent is insufficient to clarify the ambiguity." In re Post Sentencing Review of Charles, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998) (emphasis in original).

way, the opinion below leads to consequences that are absurd and inconsistent with the legislature's intent, as discussed below.

The Court of Appeals did not address what the maximum expiration date for a DVNCO would be when no portion of the sentence is suspended. Unfortunately, the court's statement that the DVNCO expired "[o]nce Granath completed her sentence" could arguably be interpreted as holding that a court that imposes a short unsuspended term of confinement may only impose an equally short-lived DVNCO. Granath, slip op. at 14. Such a narrow interpretation of RCW 10.99.050 and a trial court's misdemeanor sentencing authority is unsupportable, as Granath implicitly recognized when she conceded at oral argument that a misdemeanor DVNCO can always be imposed for at least 364 days. Wash. Court of Appeals oral argument, State v. Granath, No. 74677-4-I (July 20, 2017), at 32:45-33:00, available at <https://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a01&docketDate=20170720>.[2]

[2] The recording of Granath's July 20th oral argument appears on the court's website in the same audio file as the oral argument in Mock v. Wash. Dep't. of Corrections, No. 76097-1-I (July 20, 2017).

If the opinion below is read to allow a five-year DVNCO only upon suspension of part of the term of confinement, a sentencing court is forced to choose between extending the maximum protection to the victim through a DVNCO and imposing the maximum term of confinement (364 days, with none suspended) on the defendant. The court could not impose a 364-day jail term and also issue a DVNCO that would protect the victim beyond the defendant's release. Yet cases where the defendant deserves the maximum term of confinement are logically those where the victim most needs, and the legislature intended to provide, the maximum term of protection. Reading RCW 10.99.050 as forcing sentencing courts to choose between maximal protection through a DVNCO and maximal punishment through incarceration, with no way to achieve both, is absurd in light of the legislature's intent to assure maximum protection to domestic violence victims and ensure that "the official response to cases of domestic violence . . . communicate[s] the attitude that violent behavior is not excused or tolerated." RCW 10.99.010.

On the other hand, if the opinion below is read to allow a five-year DVNCO upon suspension of *any* part of the sentence, then a court that wishes to impose a five-year DVNCO without

suspending any confinement for five years could achieve that result in every case simply by engaging in creative sentencing "gymnastics." For example, a court could impose whatever confinement, fines, and suspension thereof it would normally impose, and then add a no-contact condition of sentence (or a one cent fine) to be independently suspended for five years on the sole condition that the defendant have no contact with the victim. Given the purpose of RCW 10.99, it is absurd to believe that the legislature intended to elevate form over substance by allowing a five-year DVNCO be imposed in every case if and only if the court jumps through the correct superficial hoops in phrasing the sentence.

2. THE DECISION BELOW CONFLICTS WITH ANOTHER DECISION OF THE COURT OF APPEALS.

In State v. W.S., a juvenile respondent challenged a ten-year DVNCO that was issued by the juvenile court under RCW 10.99.050 when W.S. was 16. 176 Wn. App. 231, 232, 235 n.3, 309 P.3d 589 (2013). W.S. argued that the DVNCO "must expire" when he turned 18 or 21 years old because the juvenile court had no authority to enter an order that outlasted the court's jurisdiction

over him.[3] Id. at 232, 239. The Court of Appeals rejected this argument. Id. at 232.

The W.S. court began its analysis by observing the legislature's "unambiguous and express intent to protect victims of domestic violence." Id. at 240. The court went on to note that under RCW 26.50.110, which criminalizes the knowing violation of an order issued under RCW 10.99, other courts can enforce a DVNCO even after a juvenile offender turns 18. Id. at 241-42. The court concluded that the juvenile court's authority to impose a DVNCO under RCW 10.99.050 for the maximum term was "independent and unrelated to the court's statutory jurisdiction over the offender," and thus the 10-year DVNCO was proper. Id. at 243.

[3] Except for purposes of enforcing restitution or a penalty assessment, the juvenile court cannot maintain jurisdiction over a juvenile offender after age 21. RCW 13.40.300(3).

The reasoning and result in W.S. conflict with the Court of Appeals' reasoning and result in this case. Here, the Court of Appeals held that once revocation of the suspended sentence was no longer possible, the DVNCO could not remain in place. Granath, slip op. at 4, 14. The Granath court attempted to distinguish W.S. by asserting that W.S.'s holding turned on the fact that juvenile court is a division of superior court, allowing the superior court to enforce a no-contact order after the juvenile court's jurisdiction ends. Granath, slip op. at 9. However, the enforcement mechanism relied on in W.S. was criminal prosecution under RCW 26.50.110—a mechanism equally available in Granath's case—not any (non-existent) ability of the superior court to sanction a now-adult offender for violation of the juvenile court's disposition. Under W.S., the district court's inability to revoke Granath's two-year suspended sentence once the two years were up had no bearing on the court's "independent and unrelated" authority under RCW 10.99.050 to impose a DVNCO for the maximum term of the court's sentencing authority.

3. AN OPINION FROM THIS COURT IS NEEDED.

Consonant with RCW 10.99's increased emphasis on protecting victims in domestic violence cases, Washington's trial courts handle thousands of domestic violence prosecutions each year, and routinely impose DVNCOs under RCW 10.99.050 for the maximum period they believe to be allowed by law. Until the issuance of the decision below, that was widely understood to be the maximum term of authority the court could exercise over a defendant.[4] Thousands of plea agreements and misdemeanor sentences have been crafted on the belief that a DVNCO could remain in place up to that maximum term even after no portion of the defendant's sentence remained suspended. Those orders are now in place and thousands of victims depend on them. Because the Court of Appeals' decision in this case has profound consequences for victims in such cases, which were unforeseen and unintended by the legislature, the parties, and the sentencing courts, a prompt resolution of the issue by this Court is needed.

[4] The model DVNCO form on the Washington Courts website contains boilerplate language that the order is in effect for five years unless a shorter term is specified. See WPF NC 02.0100, available at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=86>.

F. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to grant review of the Court of Appeals decision in this case.

DATED this 23rd day of August, 2017.

Respectfully submitted,

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Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. WENDY GRANATH, Appellant.	)	No. 74677-4-I DIVISION ONE PUBLISHED OPINION FILED: July 31, 2017

BECKER, J. — At issue is a postconviction domestic violence no-contact order issued by a district court under RCW 10.99.050(1) to record a condition of the sentence. We hold the court erred by refusing to lift the order when the defendant fulfilled all the conditions of her sentence.

FACTS

Appellant Wendy Granath was charged with sending a series of harassing e-mails to her estranged husband. She was convicted in King County District Court on one count of cyberstalking and one count of violation of a no-contact order. Both offenses were designated as crimes of domestic violence.

On November 8, 2012, the court imposed a 24-month suspended sentence. The court ordered 24 months of supervised probation and imposed fines and fees totaling $1,808.

Under the heading of "Conditions" on the judgment and sentence form, the court checked the box marked "Do not go on the property of and have *no contact* with" the victim. The form informed Granath that the conditions of sentence would "remain in effect through the period of the deferred or suspended sentence until and unless changed by Court order" and that a violation could lead to revocation of the suspended sentence.[1]

Also on November 8, 2012, the court issued a no-contact order. The order form was captioned as a postconviction domestic violence no-contact order authorized by RCW 10.99.050. The order directed Granath not to threaten, stalk, harass, or contact her estranged husband or keep him under surveillance, and not to knowingly come within 500 feet of him, his residence, his school, or his

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[1] Attached to the judgment form was a list of 12 "Rights, Conditions and Warnings." Item 10, "Failure to Meet Conditions," contained the warning about revocation as a possible consequence of a violation:

> Failure to meet any of the conditions of the Judgment and Sentence, or any conditions numbered 1 through 9 above, to fail to appear as scheduled, or to fail to pay financial obligations, may result in the issuance of a bench warrant for your immediate arrest, or the revocation of your deferred or suspended sentence. It may also result in the imposition of warrant costs, the suspension of your driver's license and the referral of your fines, costs and assessments to a collection agency. If a deferred or suspended sentence is revoked because of failure to meet conditions, you are subject to the imposition of the maximum sentence and fine as permitted by law, or such portion thereof as the Court deems appropriate. These conditions remain in effect through the period of the deferred or suspended sentence until and unless changed by Court order.

workplace. The order warned, "Violation of this order is a criminal offense under chapter 26.50 RCW *and will subject a violator to arrest.*"

The order form includes a blank space for the expiration date:

> 4. This no-contact order expires on: _____. Five years from today if no date is entered.

In Granath's case, the district court did not enter a date in the blank, so by default, the order was set to expire on November 8, 2017.

The parties agree that the district court "closed the case" in December 2014 after Granath paid the fines. At this point, the no-contact condition of her sentence no longer remained in effect. Granath moved to have the no-contact order vacated on the ground that it expired when she completed her sentence. The district court denied the motion. The court characterized a no-contact order issued under RCW 10.99.050 as a "stand-alone" order and found that such an order can "survive on its own" for a full five years even if the underlying sentence is completed earlier.

Granath appealed to King County Superior Court. The superior court affirmed. This court granted Granath's motion for discretionary review.

The statute under consideration requires a court to "record" a written no-contact order "when a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim":

> (1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.
>
> (2)(a) Willful violation of a court order issued under this section is punishable under RCW 26.50.110.

> (b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.
>
> (3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.
>
> (4) If an order prohibiting contact issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

RCW 10.99.50.

Only the district court had authority to enforce a violation by Granath of the no-contact condition of her sentence. And the only available tool of enforcement was revocation of her suspended sentence. Now that Granath has completed her sentence, revocation of the sentence is no longer a possibility. But as long as the separate no-contact order remains in place, if Granath contacts the victim, she is subject to punishment for a new offense in any jurisdiction in the State. RCW 10.99.050(2), (3).

The question to be decided is whether the legislature intended to criminalize violation of a postconviction no-contact order entered as a condition of sentence if the violation is committed after that sentence has been served.

Because statutory interpretation is required, de novo is the appropriate standard of review. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). The goal of statutory interpretation is to discern and implement the legislature's intent. Armendariz, 160 Wn.2d at 110. Legislative intent is primarily determined from the statutory language. State v. Anaya, 95 Wn. App. 751, 756, 976 P.2d 1251 (1999).

Chapter 10.99 RCW authorizes trial courts to enter no-contact orders at various stages in a domestic violence prosecution: when a person charged or arrested is released "before arraignment or trial," RCW 10.99.040(2)(a); at arraignment, RCW 10.99.040(3); and, as here, at sentencing after conviction if the defendant's contact with the victim is to be restricted as a sentencing condition, RCW 10.99.050(1). State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002).

When first enacted, the statute that is now RCW 10.99.040 did not expressly state the maximum duration of an order entered at arraignment. Anaya, 95 Wn. App. at 754. The absence of an express time limit led to the issue we addressed in Anaya. In that case, a district court entered a no-contact order at arraignment prohibiting the defendant from having contact with his girlfriend for one year. Anaya, 95 Wn. App. at 753. Two months later, the State dismissed the underlying charges. Several months after that, when responding to a report of domestic violence between the defendant and his girlfriend, police arrested the defendant for violating the no-contact order, which appeared to be

still valid. Anaya, 95 Wn. App. at 753. The defendant was charged and convicted solely for the violation.

We framed the question to be decided as "whether the Legislature intended to criminalize violation of a no-contact order entered at arraignment for a domestic violence charge after that charge is later dismissed." Anaya, 95 Wn. App. at 755. We reversed the conviction, concluding that the order expired with the dismissal. While there was no express statutory time limit, a no-contact order entered at arraignment was classified by statute as a condition of pretrial release. This classification indicated legislative intent "to limit the term of no-contact orders issued at arraignment to the period between entry of the order and trial." Anaya, 95 Wn. App. at 756. "It follows that if a case is dismissed and there is no trial, there is no express legislative authority for the continued validity of the no-contact order." Anaya, 95 Wn. App. at 756. We held that the order "is dependent on the criminal charge since it is issued as a condition of the defendant's pretrial release for that charge." Anaya, 95 Wn. App. at 757. The legislature later ratified the holding of Anaya by amending the statute to provide that a no-contact order entered at arraignment "shall terminate if the defendant is acquitted or the charges are dismissed." LAWS OF 2000, ch. 119, § 18; RCW 10.99.040(3); Schultz, 146 Wn.2d at 544-45.

The issue in this case is similar to the issue in Anaya. The legislature has not stated a specific time limit of months or years for the validity of a postconviction no-contact order issued under the authority of RCW 10.99.050(1). We know that the legislature does not intend for such an order to remain in effect

indefinitely because the statute calls for an "expiration date specified on the order." RCW 10.99.050(3). Here, the district court did not enter a date on the order, so by default, the order specified an expiration date in November 2017, five years after sentencing.

Granath contends that under RCW 10.99.050(1), the no-contact order expires at the same time as the sentence containing the no-contact condition. In her case, that was in December 2014.

The State responds that the permissible duration of the no-contact order is not tied to the length of the sentence *actually* imposed; rather, it is equivalent to the period of time during which the court *could have* exercised sentencing authority over the defendant. Five years is the statutory maximum length of time a district court may suspend a sentence for a domestic violence offense. RCW 3.66.068(1)(a); see also former RCW 3.66.068 (2001) (in effect at the time of Granath's crimes). The State thus contends that a no-contact order issued by a district court under RCW 10.99.050 may remain in effect up to five years, the default period provided by the form order.

The State's idea that a no-contact order may remain in effect for a "statutory maximum" of some kind is not expressed in RCW 10.99.050; it is derived from Armendariz. In that case, though, the maximum duration of the no-contact order was derived from felony sentencing statutes, not from RCW 10.99.050. The court issued an order prohibiting the defendant from contacting the victim for 5 years, the statutory maximum term for his offense of third-degree

assault. Armendariz, 160 Wn.2d at 109. The no-contact order was imposed as a crime-related prohibition. Armendariz, 160 Wn.2d at 112, 120.

On appeal, the defendant wanted the effective term of the no-contact order to be limited to the 12-month term of community custody included in his sentence. Armendariz, 160 Wn.2d at 118. The court instead held that a no-contact order imposed as a crime-related prohibition could be effective up to the statutory maximum term of the offense. The court began its analysis with RCW 9.94A.505(5), which specifies that a sentence generally may not exceed the "statutory maximum" for the crime as provided in chapter 9A.20 RCW. Armendariz, 160 Wn.2d at 119. The court noted that the statute does not specifically mention crime-related prohibitions as being limited in duration to the statutory maximum for the crime. "However, given that no more specific guidance is provided, it is reasonable to subject these conditions to the same time limit as applies to all other aspects of a defendant's sentence." Armendariz, 160 Wn.2d at 119.

The court supported this conclusion by referring to an earlier version of the statute that authorized crime-related prohibitions. The earlier version "explicitly provided that no-contact orders like the one at issue in the present case could be made effective 'for a period not to exceed the maximum allowable sentence for the crime.'" Armendariz, 160 Wn.2d at 119, quoting former RCW 9.94A.120(20) (1999). The legislature made technical corrections in 2000 that eliminated the explicit reference to making a no-contact order effective for the maximum allowable sentence. But the legislature "expressly stated its intent not to effect

any substantive changes by its actions. RCW 9.94A.015." Armendariz, 160 Wn.2d at 119.

The State attempts to find in Armendariz a general principle that a no-contact order imposed in conjunction with a criminal sentence may remain in effect for the statutory maximum term of the court's sentencing authority for the crime committed. But the State's argument depends on phrases—"statutory maximum" and "maximum allowable sentence"—that do not appear in RCW 10.99.050. Because the court was not called upon to interpret RCW 10.99.050, Armendariz does not provide authority to insert into RCW 10.99.050(1) a time limit equivalent to the statutory maximum term of a court's sentencing authority.[2]

Nor is that result compelled by State v. W.S., 176 Wn. App. 231, 309 P.3d 589 (2013). In that case, the juvenile court issued a no-contact order under RCW 10.99.050 with a term of 10 years. The offender argued on appeal that given the juvenile court's limited statutory jurisdiction, the no-contact order could not extend beyond his 18th birthday or, at the latest, beyond his 21st birthday. W.S., 176 Wn. App. at 236, 239. We affirmed. We reasoned that the superior court may hear a motion to modify or enforce a no-contact order issued by a juvenile court after the offender turns 18 because a juvenile court is a division of superior court. W.S., 176 Wn. App. at 242.

We also stated that Armendariz supports the conclusion that the juvenile court had the authority to impose a no-contact order under RCW 10.99.050 "for

[2] Armendariz does of course control the maximum duration of no-contact orders issued as crime-related prohibitions. We do not question the reasoning of Armendariz.

the statutory maximum of the crime." W.S., 176 Wn. App. at 242. The State deduces from this statement that W.S. authoritatively interpreted RCW 10.99.050(1) as including the words "for the statutory maximum of the crime." In view of the argument and theory presented in W.S., the State's reasoning is incorrect.

"An appellate court opinion that does not discuss a legal theory does not control a future case in which counsel properly raises that legal theory." State v. Reinhart, 77 Wn. App. 454, 458-59, 891 P.2d 735, review denied, 127 Wn.2d 1014 (1995); John Doe G v. Dep't of Corr., 197 Wn. App. 609, 619, 391 P.3d 496, review granted in part, 188 Wn.2d 1008 (2017). Granath's legal theory is that the plain language of RCW 10.99.050(1) ties the permissible length of the no-contact order to the sentence actually imposed. That theory was not raised in W.S. The appellant's only theory was that an order issued by a juvenile court must expire when the juvenile court's limited statutory jurisdiction over the offender expires. We held that a juvenile court's authority to issue a no-contact order under RCW 10.99.050 is "independent and unrelated to the court's statutory jurisdiction over the offender." W.S., 176 Wn. App. at 243. This is because after a juvenile offender turns 18, the superior court has the authority to enforce the no-contact order. W.S., 176 Wn. App. at 243. The reference in W.S. to "the statutory maximum of the crime" comes from the court's discussion of Armendariz, not from analysis of RCW 10.99.050. Therefore, the reference in W.S. to "statutory maximum" does not control or inform our analysis of the legal theory raised by Granath.

To discern the legislature's intent, we must look to the plain language of RCW 10.99.050. Specifically, we must look at the command of the first subsection, which reads as follows: "When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim." RCW 10.99.050(1).

This subsection states three prerequisites for a postconviction no-contact order issued under RCW 10.99.050. The defendant must be found guilty of a crime, there must be a sentence, and a condition of the sentence must restrict the defendant's ability to have contact with the victim. When those prerequisites are met, the no-contact condition of sentence must be "recorded" in a separate order that is provided to the victim.

This subsection does not say that a no-contact order issued under RCW 10.99.050 may remain in effect for the maximum term of the court's sentencing authority. Nothing like the phrase "statutory maximum" is found in the operative language of RCW 10.99.050. The only no-contact order the statute authorizes is one that records a no-contact condition of the sentence. It follows that when the no-contact condition of sentence expires, there is no express legislative authority for the continued validity of the no-contact order. A no-contact order is "stand-alone" only in the sense that a violation can be enforced as a criminal offense in any jurisdiction in the state.

The State fails to come to grips with the plain language of RCW 10.99.050(1). Instead, the State makes a policy argument. The State

contends a five-year term is necessary to fulfill the legislatively expressed purpose of assuring the victim of domestic violence "the maximum protection from abuse which the law and those who enforce the law can provide." LAWS OF 1979, 1st Ex. Sess., ch. 105, § 1; RCW 10.99.010.

If the statute is construed as authorizing no-contact orders that assure maximum protection for victims, then there is no reason to stop at 5 years; a no-contact order of 50 years or longer would be permissible. As we said in Anaya, the "strongly stated policy" of protecting victims of domestic violence "does not justify our reading into this criminal statute provisions that are not there. Creating statutory law is a purely legislative function." Anaya, 95 Wn. App. at 760.

The State suggests that RCW 10.99.050 has a "durational ambiguity" because it does not state a specific time limit. A statute is ambiguous if, after an inquiry to determine its plain meaning, it remains susceptible to more than one reasonable meaning. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 12, 43 P.3d 4 (2002).

The State does not identify terms in RCW 10.99.050 that make it susceptible to more than one reasonable meaning. The absence of language stating a specific time limit such as five years does not necessarily create a durational ambiguity. In Anaya, this court construed the statute relating to no-contact orders issued or extended at arraignment. At the time, the statute did not expressly state how long such orders could remain in effect, yet this court did not find an ambiguity. In Armendariz, the statute in question did not expressly state the maximum duration of a no-contact order issued as a crime-related

prohibition, yet the court did not find an ambiguity. And even if RCW 10.99.050 were ambiguous as to duration, it would not provide a route to the State's desired result. Because the statute criminalizes contact with the victim and establishes criminal penalties, the rule of lenity would apply. State v. Weatherwax, 188 Wn.2d 139, 155-56, 392 P.3d 1054 (2017).

We conclude a no-contact order authorized by RCW 10.99.050(1) must reflect a no-contact condition of the sentence actually imposed. The no-contact order terminates when the no-contact condition of sentence terminates.

The State contends this construction of the statute is absurd. In interpreting statutes, we presume the legislature did not intend absurd results. Weatherwax, 188 Wn.2d at 148. An appellate court will avoid an absurd result even if it must disregard unambiguous statutory language to do so. But this canon of construction must be applied sparingly, consistent with separation of powers principles. It will be invoked to "prevent obviously inept wording from thwarting clear legislative intent," not when it merely appears that a different policy choice might have been preferable. In re Dependency of D.L.B., 186 Wn.2d 103, 119, 376 P.3d 1099 (2016).

The wording of RCW 10.99.050(1) is not obviously inept. It is not absurd to tie the length of a no-contact order to the sentence actually imposed. The district court stated in its oral ruling that in most cases, it is "a good practice" to have the term of a no-contact order match the term of the defendant's probation; the court simply did not believe it was a legal requirement. We leave to the

legislature to determine whether a different time limit is preferable.[3]

Granath was found guilty of a crime, she was sentenced, and a condition of the sentence restricted her contact with the victim. The district court was required by the statute to record the condition of the sentence as a no-contact order. Once Granath completed her sentence and her case was closed, the no-contact condition of sentence expired. The separate no-contact order expired at the same time.

The district court erred by denying Granath's motion to vacate the no-contact order.

Reversed.

Becker, J.

WE CONCUR:

Cox, J.

[3] The legislature has in recent years enacted statutes similar to RCW 10.99.050 that specify particular time limits for a no-contact order. For example, a final sexual assault protection order entered in conjunction with a criminal prosecution "shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole." RCW 7.90.150(6)(c); State v. Navarro, 188 Wn. App. 550, 555, 354 P.3d 22 (2015), review denied, 184 Wn.2d 1031 (2016). A final stalking no-contact order entered in conjunction with a criminal prosecution "shall remain in effect for a period of five years from the date of entry." RCW 7.92.160(6)(c).

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Today I directed electronic mail addressed to Christine Jackson, the attorney for the respondent, at Christine.Jackson@kingcounty.gov, containing a copy of the PETITION FOR REVIEW, in State v. Wendy Granath, Court of Appeals Cause No. 74677-4, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 23 day of August, 2017.

Name:
Done in Seattle, Washington

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