ORIGNAL

95835-1

Washington Supreme Court

Motion for Discretionary Review

of

Court of Appeals of the State of Washington Division One

NO. 75762-8-I

State of Washington
Respondent

vs

Michael dèGalvez Williamson
Appellant (pro se)

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Introduction

on April 6, 2018, the Court of Appeals Div I denied petitioner (*hereafter*, referred to as me, myself, and/or I) pro se motion for Reconsideration filed timely in March 2018. The respondent did not file a response before the Court's opinion.

Assignment(s) Of Error

1. The Court of Appeal's Div One opinion filed Feb. 26, 2018, only, apprisingly, addressed the issue raised by my appellate Counsel, apprisedly, averting my contention, tenaciously, raised in my SAG that: The Sentencing Court failed to narrow it's (what I called) Banishment Order . . .
2. Div One's opinion upheld the Sentencing Court's decision premised on an unconstitutional overly-broad Protection of Society Concern, that even the trial Court, itself, did not support, when commenting

on the subject of Protection of Society.

3. Division I failed to consider it's own proffered resolve mentioned in State v McBride 74 Wash App a 467, applicable to the analogous issue at this instant.

Statement of the Case

The Court of Appeals Div I, affirmed the Sentencing of the King County Superior Court that imposed a NO Contact Order of the two victims and barred me from the Sound Transit Light rail, after a conviction of Indecent Exposure to the two victims on the Sound Transit Light rail, Subsequently, my appellate Counsel, Oliver Ross Davis of Washington Appellate Project argued, in my behalf, that the order constituted an unconstitutional restraint of my right to travel. I argued, howbeit, in my SAG and my Motion for Reconsideration (RAP 12.4 (b)), that the Order was analogous to a banishment order was constitutionally vague, overbroad, and should've been narrow-

ly tailored to protect the victims of the underlying offense. The Court of Appeals Div I concluded that the NO Contact Order was reasonable to Protect the Public and did not violate my right to travel.

Argument

In this case at bar, the Sentencing judge asked the following question, which the State circumvented:

> "Well that's the question is society going to be made safe - any safer by imposing these restrictions when he can find victims anywhere?" Aug 12, 2016 RP48

I submit that a "Protection of the Public" concern as concluded by Div I, here (albeit, the sentencing Court itself, did not enter such concerns into it's finding of facts and conclusions of law under CrR 6.1 (d)), is analogous to a future dangerous findings" and is not an appro -

priate aggravating factor to be upheld by our Washington Supreme Court. Please see:

State v Post 118 Wash 2d 596 (in relevant part)

"The SRA list a set of no exclusive aggravating ... factors to be considered when imposing an exceptional sentence. Protection of the Public is one of the purposes of the SRA. RCW 9.94A.010. It is not contained in the non exclusive list of aggravating and mitigating factors, and no decision of this Court has held it is an appropriate aggravating factor."

Without any personal disdain for the possible emotional damages to the victims of my offense (which up to date, I've finally, fortunately found the resolve for the OCD, behavior), I submit that the State and Div I erroneously equates the circumstances of the need for Protect of the public at large of people driving on public highways from one driving under the influence (as in State v. Scheffel 82 Wn 2d 872, 880, 514 P2d 1052 (1973)) - to being analogous

to their prognosticated concern to protect the Public at large from their surmised future exhibitionism by me on the Sound light rail transit. With no disrespect toward the State and/or Div I, I submit that their reasoning amounts to a mere hyperbole, that does not meet the "Strict Scrunity" prerequisite in reviewing a banishment Order as set forth in State v Alphonse 147 Wash. App. 891 @ 909-10. While victims of exhibitionism unquestionably should not be looked at as human bait considering that trial Court, in this instant, howbeit, made it clear that, " he can find victims anywhere" law enforcement ergo, would rather opt, I submit, to have such offenders present on Sound Transit light rail, ironically, where as this case illustrates, they are more likely to be apprehended and controlled because of the stronger Security measures and less chances of any presumed physical harm to victims,

-than to have such offenders present in the less apprehendable "anywhere" areas connoted by the sentencing Court. Here, the State's circumvented response to the Sentencing Court's question ("... is society going to be any safe -- safer by imposing these restrictions when he can find victims anywhere?") was a non sequitor, as he answered the court with a *question*: 'if the Court would just consider Where the offense(s) occurred(?)'. Thus, I submit that "where" the offense(s) occurred was the Off-limits behest of the State ordered by the Court, "Where it occurred." State v McBride 744 Wn.App. 460 at 465 states in relevant part that RCW 10.66 "only applies to known drug trackickers ... RCW 10.66 does not prohibit a substantial amount of constitutionally protected conduct ... the area from which a person may be banned by off-limits order is extremely limited."

I contend that the Sentencing Court, in my case, here, should have first, relied upon an expert Mental Health Evaluation to determine whether I posed a concern of Protection of Society under RCW 71.05.150 before Div I could rightly hold the Protection of Society affirmation. Please see the premises for my contention, here, at Volk v Demeerler 187 Wn 2d 241, 267, 386 P.3d 254.

Conclusion

While I continue to remain remoarseful for my misbehavior (of which, again, I strongly believe that I've brought it to a demise with Cognitive Behavior Therapy and Fluoxetine medication) - I, still, contend as I implored Div I to consider- that one of my DOC requirements was to maintain a job - which DOC got for me at Safeco Field and Century Link Stadiums and Sounds light rail transit was my only means of transportation

from there in the early mornings. As I tried to reason in my SAG and my motion for reconsideration, I implore this Court to review the Courts decision not to consider my docile suggestion that the sentencing Court should apply what the Court of Appeals suggested in State v McBride 74 Wash.App a 467 under RCW 10.66.050. RCW 10.66.050 states in relevant part:

> "The Court in it's discretion may allow a respondent, who is subject to any order under RCW 10.66.020 as a part of a civil or criminal proceeding to enter an off-limit area or areas for health or employment reasons, subject to conditions prescribed by the Court."

respectfully beseeched, and Submitted,

4/29/18 Michael Talivaldis Williamson

Copy sent to Respondent 4/29/18 MW

FILED
4/6/2018
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. MICHAEL DEGALVEZ WILLIAMSON, Appellant.	No. 75762-8-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Michael Williamson, has filed a motion for reconsideration of the opinion filed in the above matter on February 26, 2018. Respondent, State of Washington, has not filed a response to appellant's motion. The court has determined that appellant's motion should be denied. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

FOR THE COURT:

Becker, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. MICHAEL DEGALVEZ WILLIAMSON, Respondent.	No. 75762-8-I DIVISION ONE UNPUBLISHED OPINION FILED: February 26, 2018

BECKER, J. — Appellant Michael Williamson is challenging a no-contact order that bars him from the Sound Transit Link light rail. The no-contact order was imposed after Williamson was found guilty of two counts of indecent exposure, both of which occurred aboard the light rail. We conclude that the no-contact order was reasonable to protect the public and did not violate Williamson's constitutional right to travel.

Williamson was witnessed masturbating aboard the Sound Transit Link light rail on July 3, 2015, and again on December 3, 2015. Because of Williamson's criminal history, which includes six prior indecent exposure convictions and a conviction for second degree rape, law enforcement was able to identify Williamson.

The trial court sentenced Williamson to 12 months' confinement. The State proposed a no-contact order barring Williamson from public transportation

offered by Sound Transit. This order would have included Sound Transit buses and the Sounder train as well as the light rail. Williamson objected, noting that he did not have a car and the ban on using public transportation would leave him unable to attend religious services or his required mental health treatment. The trial court agreed that the no-contact order requested by the State was too broad. The State then proposed a no-contact order barring Williamson only from riding the light rail. The trial court entered the order.

A crime-related no-contact order is reviewed for abuse of discretion. State v. Corbett, 158 Wn. App. 576, 597, 242 P.3d 52 (2010). "Abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons." Corbett, 158 Wn. App. at 597.

Williamson argues that it would have been reasonable to prohibit him from contacting the individuals to whom he exposed himself, but the no-contact order as entered constitutes an unconstitutional restraint on his right to travel. This argument is not persuasive.

There is no constitutional right to a particular means of travel. State v. Scheffel, 82 Wn.2d 872, 880, 514 P.2d 1052 (1973), appeal dismissed, 416 U.S. 964 (1974). In Scheffel, the appellant challenged the revocation of his driver's license following his third conviction for driving under the influence. Scheffel, 82 Wn.2d at 874. The court upheld the prohibition on driving, stating "the right to travel is not being denied. The defendants are being prohibited from using a particular mode of travel in a particular way, due to their repeated offenses, in

order to protect the public at large which we find to be reasonable under the circumstances." Scheffel, 82 Wn.2d at 880-81.

Except for the prohibition on riding the light rail, Williamson is unrestricted in his travel. He remains free to utilize Sound Transit's bus and train lines as well as King County's own system of public transportation. The order, contrary to Williamson's assertion, is neither vague nor overbroad.

Williamson's victims were random, notable only for their presence on the light rail. There is no reason to believe that an order prohibiting contact with them would prevent future indecent acts by Williamson. Williamson exposed himself aboard the light rail twice in the span of six months. The trial court found the two instances sufficient to establish a pattern of behavior that justifies prohibiting Williamson from riding the light rail. We conclude the trial court did not abuse its discretion.

Affirmed.

Becker, J.

WE CONCUR:

Mann, J.

Cox, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	COA NO. 75762-8-I
	)	
MICHAEL WILLIAMSON,	)	
	)	
PETITIONER.	)	

DECLARATION OF SERVICE

I, MARIA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 4TH DAY OF MAY, 2018, I CAUSED A TRUE AND CORRECT COPY OF THE **APPELLANT'S PRO SE MOTION FOR DISCRETIONARY REVIEW** TO BE TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	STEPHANIE GUTHRIE, DPA [paoappellateunitmail@kingcounty.gov] [stephanie.guthrie@kingcounty.gov] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF MAY, 2018.

X_____

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WASHINGTON APPELLATE PROJECT

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