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IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

ATALANI TILI,

Petitioner.

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PETITION FOR REVIEW

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Court of Appeals No. 52133-4-II  
Appeal from the Superior Court of Pierce County  
Superior Court Cause Number 17-1-00748-1  
The Honorable Kitty-Ann van Doorninck, Judge

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## TABLE OF CONTENTS

<b>I.</b>	<b>IDENTITY OF PETITIONER .....</b>	<b>1</b>
<b>II.</b>	<b>COURT OF APPEALS DECISION .....</b>	<b>1</b>
<b>III.</b>	<b>ISSUES PRESENTED FOR REVIEW.....</b>	<b>1</b>
<b>IV.</b>	<b>STATEMENT OF THE CASE .....</b>	<b>1</b>
<b>V.</b>	<b>ARGUMENT &amp; AUTHORITIES .....</b>	<b>3</b>
<b>VI.</b>	<b>CONCLUSION .....</b>	<b>9</b>

## TABLE OF AUTHORITIES

### CASES

<i>State v. Ancira</i> , 107 Wn. App. 650, 27 P.3d 1246 (2001) .....	6
<i>State v. Bahl</i> , 164 Wn.2d 739, 193 P.3d 678 (2008).....	5
<i>State v. Hearn</i> , 131 Wn. App. 601, 128 P.3d 139 (2006).....	5-6
<i>State v. Johnson</i> , 180 Wn. App. 318, 327 P.3d 704 (2014) .....	4
<i>State v. Julian</i> , 102 Wn. App. 296, 9 P.3d 851 (2000) .....	4
<i>State v. Letourneau</i> , 100 Wn. App. 424, 997 P.2d 436 (2000) .....	5
<i>State v. Llamas-Villa</i> , 67 Wn. App. 448, 836 P.2d 239 (1992) .....	4
<i>State v. Riles</i> , 135 Wn.2d 326, 957 P.2d 655 (1998).....	5-6
<i>State v. Riley</i> , 121 Wn.2d 22, 846 P.2d 1365 (1993).....	5
<i>State v. Scott</i> , 110 Wn. 2d 682, 757 P.2d 492 (1988).....	4

### OTHER AUTHORITIES

RAP 13.4 .....	3
RCW 9.94A.505.....	4
RCW 9.94A.703.....	5
U.S. Const. amd I .....	5
Wash. Const., art. 1, § 4 .....	5
Wash. Const., art. 1, § 5 .....	5

**I. IDENTITY OF PETITIONER**

The Petitioner is ATALANI TILI, Defendant and Appellant in the case below.

**II. COURT OF APPEALS DECISION**

Petitioner seeks review of the unpublished opinion of the Court of Appeals, Division 2, case number 52133-4-II, which was filed on May 12, 2020. (Attached in Appendix) The Court of Appeals affirmed the conviction and sentence entered against Petitioner in the Pierce County Superior Court.

**III. ISSUES PRESENTED FOR REVIEW**

1. Are the conditions that Petitioner have no contact at all with any unrelated child under the age of 13 and no contact with any child under the age of five unconstitutionally overbroad and a violation of Appellant's first amendment right to free association and assembly?

**IV. STATEMENT OF THE CASE**

The State charged Atalani Tili with one count of murder in the first degree and one count of assault of a child in the first degree. (CP 6-7) The State alleged that the crimes were aggravated because Tili used her position of trust to facilitate the crimes and because the victim was particularly vulnerable. (CP 6-7)

According to the declaration of probable cause, Tili was

caring for two-year old K.P., the child of a family friend, when he bit her hand and would not let go. (CP 8-9) Tili threw K.P. against a dresser and he hit his head on an exposed hinge. (CP 8-9) K.P. had trouble standing after the incident and was not acting normally that evening, but Tili put him to bed without seeking medical attention. (CP 8-9) When Tili tried to dress K.P. the next morning, he collapsed. Tili contacted K.P.'s mother and called 911. (CP 8-9) K.P. had suffered a head injury, a stroke, and severe swelling in the brain, and passed away 10 days later. (CP 8-9)

Tili agreed to plead guilty to an amended information charging one count of manslaughter in the first degree. (CP 36, 37-38) Tili acknowledged the above facts, and also stated the following in her written plea statement:

In reacting as I did in pushing K.P. as I did in response to him biting me, I knew of and disregarded a substantial risk that his death might occur. My disregard of this risk was a gross deviation from conduct that a reasonable person would exercise in the same situation.

(CP 47) At the plea hearing, the trial court engaged in the standard colloquy, and found that the plea was knowingly, voluntarily and intelligently made. (04/17/18 RP 5-9)

The trial court adopted the agreed recommendation for a

102-month standard range sentence and 36 months of community custody. (CP 42, 58, 59; 04/17/18 RP 14, 16-17)

Tili has minor children under the age of 13, and gave birth to a child while her case was still pending. (06/26/17 RP 22; CP 100) She asked that she be allowed to have supervised contact with her children during her incarceration, and supervised contact with her children and child relatives (nieces and nephews) after her release. (04/17/18 RP 15) But the trial court ordered that she have “no contact with any child under 5 after release from custody whether related or unrelated.” (CP 57, 59, 64; 14/17/18 RP 17) The trial court also ordered that she have “no contact [with] unrelated minors under age 13.” (CP 57, 59, 64)

Tili timely appealed. (CP 74) The Court of Appeals affirmed Tili’s conviction and sentence.

#### **V. ARGUMENT & AUTHORITIES**

The issue raised by Tili’s petition should be addressed by this Court because the Court of Appeals’ decision conflicts with settled case law of the Court of Appeals, this Court and of the United State’s Supreme Court. RAP 13.4(b)(1) and (2).

The conditions prohibiting contact with any unrelated minor under the age of 13 and prohibiting contact with any minor under

the age of five, whether related or unrelated, exceed the trial court's sentencing authority and are unconstitutional under the First Amendment. The trial court's order is so broad as to bear no reasonable relation to the goal of promoting safety and public order. The conditions must be stricken.

The trial court's authority to impose sentence in a criminal proceeding is strictly limited to that authorized by the legislature in the sentencing statutes. *State v. Johnson*, 180 Wn. App. 318, 325, 327 P.3d 704 (2014). Erroneous or illegal sentences, including unauthorized community custody conditions, may be challenged for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744-45, 193 P.3d 678 (2008).<sup>1</sup>

RCW 9.94A.505(9) provides that, "As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter." And, as a condition of community custody, the trial court may order an offender to "[r]efrain from direct or indirect contact with the victim of

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<sup>1</sup> See also *State v. Julian*, 102 Wn. App. 296, 304, 9 P.3d 851 (2000) (holding that the right to challenge the conditions of community placement is not waived by the failure to object below). Issues of constitutional magnitude may also be raised for the first time on appeal. *State v. Llamas-Villa*, 67 Wn. App. 448, 454-55, 836 P.2d 239 (1992) (citing RAP 2.5(a); *State v. Scott*, 110 Wn. 2d 682, 757 P.2d 492 (1988)).

the crime or a specified class of individuals.” RCW 9.94A.703(3)(b).

Conditions that interfere with fundamental rights must be sensitively imposed and narrowly drawn. *Bahl*, 164 Wn.2d at 757; *State v. Riley*, 121 Wn.2d 22, 29, 37, 846 P.2d 1365 (1993). A reviewing court looks to whether the order prohibits “a real and substantial amount of protected conduct, in contrast to its legitimate sweep.” *State v. Riles*, 135 Wn.2d 326, 346-47, 957 P.2d 655 (1998). Discouraging further criminal conduct is a goal of community placement. *Riley*, 121 Wn.2d at 38; *State v. Letourneau*, 100 Wn. App. 424, 438, 997 P.2d 436 (2000).

Under both the First Amendment to the United States Constitution and Wash. Const., art. 1, § 4 and art. 1, § 5, Tili has the right to freely associate and assemble with others. Her freedom of association may be restricted only to the extent it is reasonably necessary to accomplish the essential needs of the state and public order. *Riles*, 135 Wn.2d at 347 (quoting *Riley*, 121 Wn.2d at 37-385).

For example, in *State v. Hearn*, Division 3 rejected a constitutional challenge to a condition that an offender convicted of methamphetamine possession refrain from associating with known



drug offenders. 131 Wn. App. 601, 128 P.3d 139 (2006). The court noted that “discouraging further criminal conduct is a goal of community placement, “and concluded that “[r]ecurring illegal drug use is a problem that logically can be discouraged by limiting contact with other known drug offenders.” 131 Wn. App. at 608-09.

Conversely, in *State v. Ancira*, the defendant was convicted of violating a no-contact order requiring him to stay away from his wife, and the trial court imposed a condition prohibiting the defendant from contacting his wife and his children. 107 Wn. App. 650, 652, 27 P.3d 1246 (2001). Division 1 reversed, finding that the condition “was not reasonably necessary to protect the children against the harm of witnessing domestic violence between their parents” and therefore infringed on Ancira’s constitutional right to parent. 107 Wn. App. at 653-57.

And in *Riles*, co-petitioner Gholston was convicted of raping a 19-year old woman. 135 Wn.2d at 349. The sentencing court included a condition prohibiting Gholston from having contact with “any minor-age children.” 135 Wn.2d at 349. Because there was no showing that children were at risk and thus required special protection from Gholston, this Court found that particular restraint upon Gholston’s freedom of association “bears no reasonable

relationship to the essential needs of the state and public order” and “the provision [was] not justified.” 135 Wn.2d at 350.

Here, the sentencing conditions infringe upon Tili’s fundamental right to free association and assembly. It prohibits all contact, of any type whatsoever, with any unrelated children under 13, and any children under the age of five at all times, regardless of whether the children are supervised by other adults or whether Tili is in a public or private environment. Because the condition prohibits Tili from interacting in any way with a large segment of the population, it reaches a substantial amount of constitutionally protected conduct. Yet there is no basis in the record to conclude that this condition is necessary to rehabilitate Tili or to protect the public safety.

The victim in this case was a two-year old child who was placed in Tili’s exclusive care. Tili did not engage in predatory behavior involving K.P. or children at large in the community. There is no history of abusive or violent behavior towards other children. The broad prohibition on any contact with unrelated children under 13 and with any child under five is overbroad and unnecessary to protect the public from any risk Tili might pose.

The prohibition on all contact is so broad it essentially

prohibits Tili from going anywhere or doing anything with her own children or extended family. Children are omnipresent in our society, and a person always runs the risk of encountering children. This especially true when one is a parent of minor children—Tili cannot attend events that her children may take part in, such as school music performances or after-school sports competitions, because other unrelated minors will be there. Tili cannot attend holiday events with her extended family because her minor nieces and nephews will be there. Tili cannot attend church, go to a mall, or even ride a bus without running the risk of contact with an unrelated minor.

The Court of Appeals inexplicably found that “these conditions are not overbroad but are a reasonable restriction sensitively imposed on Tili[.]” (Opinion at 4) But it is evident in this case that the prohibitions could be more narrowly drawn. Tili could be prohibited from contact with children in the absence of other adults. This more narrowly drawn prohibition would not sweep quite so broadly as to seriously impinge on Tili’s fundamental rights.

There is no evidence in the record that Tili presents any danger whatsoever to children not in her exclusive care. Prohibiting any contact with unrelated minors under the age of 13

and with related or unrelated minors under the age of five, even when supervised or in the presence of other adults, is not reasonably necessary. The conditions improperly infringe on Tili's right to freedom of association and freedom of assembly. These conditions are arbitrary and unreasonable, and the conditions should be stricken.

**VI. CONCLUSION**

This Court should accept review, and order that the community placement conditions discussed in this petition be stricken.

DATED: May 18, 2020



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STEPHANIE C. CUNNINGHAM, WSB #26436  
Attorney for Petitioner Atalani Tili

**CERTIFICATE OF MAILING**

I certify that on 05/18/2020, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Atalani Tili, DOC# 407287, WCCW, 9601 Bujacich Road NW, Gig Harbor, WA 98332-8300.



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STEPHANIE C. CUNNINGHAM, WSBA #26436

## APPENDIX

Court of Appeals Opinion in *State v. Atalani Tili*, No. 52133-4-II

May 12, 2020

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent.

vs.

ATALANI TILI,

Appellant.

No. 52133-4-II

UNPUBLISHED OPINION

MAXA, P.J. – Atalani Tili appeals two community custody conditions imposed following her conviction of first degree manslaughter: that she have no contact with any unrelated child under the age of 13 and no contact with any child under the age of 5. She argues that these conditions violate her federal and state constitutional rights to free association and assembly. We hold that the conditions are reasonable restrictions on Tili’s liberty. Accordingly, we affirm the imposition of the challenged community custody conditions.

**FACTS**

In February 2017, Tili had been caring for a family friend’s two-year-old son when the child bit her hand and would not let go. Tili jerked her hand back and in doing so pushed the child backwards and the child fell, hitting his head on an exposed hinge on a dresser. Tili knew the child was not acting normally that night but thought that he would get better after sleeping. The following morning, the child collapsed when Tili was trying to dress him. The child died 10

days later in the hospital having suffered a head injury, a stroke, severe swelling in the brain, and enduring two surgeries.

Tili pleaded guilty to first degree manslaughter. The trial court sentenced her to 102 months of incarceration and 36 months of community custody, and imposed community custody conditions. The two community custody conditions relevant here provide: (1) “No contact with unrelated minors under age 13”; and (2) “No contact with any child under 5 after release from custody, whether related or unrelated. May have contact with her children while she is incarcerated.” Clerk’s Papers at 57. Tili appeals the trial court’s imposition of these two community custody conditions.

## ANALYSIS

### A. LEGAL PRINCIPLES

We review the imposition of crime-related prohibitions for an abuse of discretion. *State v. Wallmuller*, 194 Wn.2d 234, 238, 449 P.3d 619 (2019). We will reverse only if the decision is manifestly unreasonable or based on untenable grounds. *State v. Sanchez Valencia*, 169 Wn.2d 782, 791-92, 239 P.3d 1059 (2010). However, imposing an unconstitutional condition is always an abuse of discretion. *Id.* at 792.

As part of a term of community custody, a sentencing court has authority to order offenders to “[r]efrain from direct or indirect contact with the victim of the crime or a specified class of individuals,” RCW 9.94A.703(3)(b)<sup>1</sup>, and to “[c]omply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). Tili does not appear to question the trial court’s statutory authority to impose the challenged conditions.

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<sup>1</sup> RCW 9.94A.703 was amended in 2018. Because those amendments do not affect our analysis, we cite to the current version of the statute.

The First Amendment to the United States Constitution and article I, sections 4 and 5 of the Washington Constitution give people the right to freely associate and assemble with others. Statutorily authorized sentencing conditions may restrict these rights “to the extent it is reasonably necessary to accomplish the essential needs of the state and the public order.” *State v. Riles*, 135 Wn.2d 326, 350, 957 P.2d 655 (1998). But “conditions that interfere with fundamental rights must be sensitively imposed.” *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

B. ANALYSIS

Tili argues that the challenged community custody conditions violate her rights to free association and assembly. She claims that the conditions prohibit her from interacting with a large segment of the population and thereby infringe on a substantial amount of constitutionally protected conduct. Tili points out that the conditions prevent her from attending events in which her own children participate, attending gatherings with her extended family, going to church or to the mall, or even riding a bus. She suggests that the conditions could be narrowed to prohibiting contact with children when no adults are present.

The question here is whether the conditions are reasonably necessary to accomplish the State’s essential needs. *Riles*, 135 Wn.2d at 350. Tili’s reckless conduct of striking the two-year-old child she was caring for and then not seeking medical care caused the child’s death. Therefore, there is no question that she poses a risk to children. The conditions the trial court crafted recognized that the State has a compelling interest in protecting children from harm. *State v. Ancira*, 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001); *see also State v. Corbett*, 158 Wn. App. 576, 597-601, 242 P.3d 52 (2010) (restricting contact with all children was a reasonable restriction where defendant was convicted of raping his young stepdaughter).



Because Tili's recklessness ended the life of a toddler, we conclude that these conditions are not overbroad but are a reasonable restriction sensitively imposed on Tili to protect children from harm. *Riles*, 135 Wn.2d 347.

In addition, the trial court imposed 36 months of community supervision. These conditions at issue are in effect only during this period, not for the rest of Tili's life.

We hold that the trial court did not abuse its discretion in imposing the challenged community custody conditions.

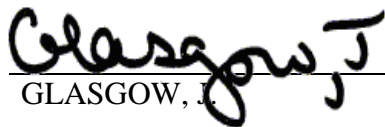
CONCLUSION

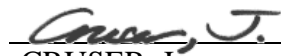
We affirm the two community custody conditions imposed restricting Tili's contact with children.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
MAXA, P.J.

We concur:

  
\_\_\_\_\_  
GLASGOW, J.

  
\_\_\_\_\_  
CRUSER, J.

**May 18, 2020 - 12:23 PM**

**Transmittal Information**

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