No. 90812-5
COA No. 70002-2-I

SUPREME COURT
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

FREDERICK E. HARDTKE, Petitioner

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# PETITION FOR REVIEW

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## PETITION

### A. IDENTITY OF PETITIONER

Frederick Hardtke, Petitioner, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

### B. COURT OF APPEALS DECISION

Mr. Hardtke asks this court to review the Court of Appeals' decision entered July 21, 2014, affirming Mr. Hardkte's sentence, in particular affirming "restitution" to San Juan County in the amount of $3,972 for the costs of electronic monitoring. A copy of this decision is in Appendix A at pages 1 through 9. A copy of the Court of Appeals' summary denial of Mr. Hardtke's Motion for Reconsideration, entered August 13, 2014, is in Appendix A at page 10.

### C. ISSUES PRESENTED FOR REVIEW

1. Under RCW 10.01.160, can a criminal defendant, presumed innocent, be made to pay to the police the costs of the electronic monitoring of his pretrial release conditions, particularly when he is given the Hobson's choice of agreeing to pay for this monitoring or post a performance bond?



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## D. STATEMENT OF THE CASE

On June 26 and 27, 2012, Petitioner Frederick Hardtke assaulted his girlfriend while blacked out from alcohol abuse. CP 87. Mr. Hardtke appeared in San Juan County Superior Court on June 28, 2012, where Judge Donald Eaton ordered him released if he could post a $15,000 performance bond. Agreed Report of Proceedings 3 [hereinafter "AR"]. However, the court invited Mr. Hardtke to move for a modification of his conditions of release if he could show that no bonding company would write a performance bond. *Id.*

Appearing on July 11, 2012, on his motion to modify his release conditions, Mr. Hardtke argued that a release condition requiring him to wear an ankle bracelet that would measure his blood-alcohol level (called a Transdermal Alcohol Detection (TAD) bracelet) would be a less-restrictive condition that would protect the public. AR 4. Therefore, if a TAD condition could be imposed, the court would have to eliminate or at least reduce the performance bond requirement. *Id.* (citing CrR 3.2(d)(6)). The court agreed, required Mr. Hardtke to wear the TAD, and lowered the performance bond to $3000. *Id.*

However, after the State argued that Mr. Hardtke should pay the costs of the TAD monitoring, the court ordered Mr. Hardtke either to post



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the original $15,000 performance bond or to pay the costs of the TAD monitoring and post a $3000 performance bond. AR 4– 5; CP 8–10.[1]

On February 15, 2013, Judge Eaton sentenced Mr. Hardtke. AR 7. Mr. Hardtke repeated his objection to the imposition of the cost of the pretrial monitoring on Mr. Hardtke. *Id.* Yet the Court imposed $3,972 as "restitution" to San Juan County for this cost. *Id.*; CP 33.

On appeal, Mr. Hardtke argued to the Court of Appeals that RCW 10.01.160 governs the imposition of costs in criminal matters and that this statute does not authorize the imposition of the costs of pretrial electronic monitoring. Brief of Appellant, *State v. Hardtke*, No. 70002-2-I (Ct. App. Div. I August 2, 2013) [hereinafter Br. of App]. The Court of Appeals did not address RCW 10.01.160. *State v. Hardtke*, No. 70002-2-I slip op. (Ct. App. Div. I July 21, 2014) [hereinafter COA Opinion]. Instead, the court relied entirely on CrR 3.2, pointing out that nothing in the rule prohibited the imposition of the costs of pretrial release conditions. *Id.* Mr. Hardtke's motion for reconsideration, again pointing out that RCW 10.01.160 controls, was summarily denied. *Motion for*

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[1] On August 9, 2012, following Mr. Hardtke's violation of the release condition that he not consume alcohol, the trial court forfeited the $3000 cash that Mr. Hardkte had posted and imposed an additional $10,000 performance bond. AR 6; CP 22–24. The new order maintained all other conditions including that Mr. Hardtke wear the TAD bracelet and that he pay the costs of that bracelet. AR 6; CP 24–25. The Agreed Report of Proceedings reports that this hearing occurred on August 8, 2012. This appears to be an error in the report.



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*Reconsideration*, *State v. Hardtke*, No. 70002-2-I (Ct. App. Div. I July 25, 2014); Order Denying Motion for Reconsideration, *State v. Hardtke*, No. 70002-2-I (Ct. App. Div. I August 13, 2014).

## E. ARGUMENT

### 1. The Supreme Court should address the allocation of the costs of pretrial electronic monitoring.

This case presents a question of substantial public interest: Can courts, concerned with improving the monitoring of pretrial release conditions, require defendants to pay for advanced technology that is available to meet this concern? In practice, can courts condition the elimination or lowering of a performance bond requirement on the defendant's willingness to pay for this advanced technology? *See* RAP 13.4(b)(4).

The public has become increasingly concerned in recent years about the release of dangerous criminal defendants pending trial, as evidenced by the aftermath of the Maurice Clemmons shooting of four police officers in 2009. The public's concern has recently been reflected in legislative action. *See, e.g.,* Const. amend. 104 (amending Article I, Section 20 authorizing denial of bail); Laws of 2010, ch. 254 (enacting Chapter 10.21 RCW regarding bail determinations).

Many of the crimes committed in Washington are related to alcohol abuse. Courts, concerned with releasing defendants in such cases,



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routinely condition release on abstention from alcohol. However, this condition is difficult to monitor. Defendants frequently violate this condition with impunity, raising public safety concerns.

To motivate defendants to comply with alcohol-related restrictions, prosecutors and courts often resort to performance bonds. Unlike surety bonds, which only guarantee a defendant's appearance, performance bonds guarantee compliance with all conditions of release. *Compare* CrR 3.2(b)(5) (surety bonds) *with* CrR 3.2(d)(6) (performance bonds). With the increasing general concern about defendants on pretrial release, the use of performance bonds is increasing.

Performance bonds are a flawed tool. At least in San Juan County, no bonding company will write a bond guaranteeing all release conditions, requiring defendants to post cash to be released. *See* CP 3. Courts are required to take into consideration a defendant's financial circumstances when ordering performance bonds. CrR 3.2(d)(6). However, courts are often uncomfortable with the meager protection of the few hundred dollars cash many defendants can afford to post, and order higher performance bonds that only serve to jail defendants until trial.

In alcohol-motivated cases, advancing technology has presented courts with a solution: an ankle bracelet that monitors the blood-alcohol level of the defendant and reports electronically to law enforcement (the



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Transdermal Alcohol Detection (TAD) bracelet). This bracelet provides courts with an alternative to performance bonds by holding defendants accountable for compliance with conditions of release prohibiting the consumption of alcohol. In fact, when a TAD bracelet is available, a court is required to order its use if doing so will address the concerns that would otherwise require the imposition of a performance bond. CrR 3.2(d)(6).[2]

Unfortunately, TAD bracelets are expensive. The per-day cost of these bracelets is more than many defendants can afford.[3] Courts are reluctant to impose this new cost on the city or county. They instead give defendants the "option" to pay for the ankle bracelet to reduce the performance bond requirement. Payment must be to the local police authority that provides and monitors the device. Even those defendants who have the means to post the required performance bond may need to pay the monitoring costs to avoid tying up cash needed for their defense.

San Juan Superior Court gave Mr. Hardtke exactly this option. The court's orders imposing conditions of release required Mr. Hardtke to pay the cost of the TAD bracelet or else post more cash to guarantee his

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[2] Performance bonds "may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community." CrR 3.2(d)(6).

[3] Mr. Hardtke has been ordered to pay approximately $18 per day. CP 9, 33.



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performance of the other release conditions. CP 9–10. When Mr. Hardtke decided to wear the bracelet rather than post the higher performance bond, the trial court imposed the cost of the TAD bracelet in Mr. Hardtke's sentence. CP 33.

RCW 10.01.160 governs the costs that a court may impose in a criminal case. As explained *infra*, this statute does not authorize the cost of the TAD bracelet to be imposed either as a condition of pretrial release or in a sentence. In its opinion, the Court of Appeals did not address at all whether RCW 10.01.160 governs or authorizes these costs.

Mr. Hardtke's case is not unusual. Many if not most crimes involve alcohol. Of those alcohol-related cases in which a court has concerns for public safety, a release condition based on the TAD bracelet is often a court's best option to mitigate those concerns. The use of the TAD bracelet is common and increasing. The pressure to avoid the increasing costs that result from use of this tool is also increasing. Prosecutors are now commonly seeking to burden defendants with these costs.

This issue extends beyond electronic monitoring of alcohol levels. Bracelets can now be used to monitor geographic restrictions with instant warning to the police of violations. Advancing technology will no doubt provide courts with more precise and reliable pretrial monitoring of



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defendants in the near future. For example, electronic monitoring for drug use may someday be available. Someone must pay the costs of this monitoring.

The Supreme Court should decide whether defendants can be required to pay for these costs. In particular, the Supreme Court should decide whether the legislature has prohibited the imposition of this cost in RCW 10.01.160. This issue is one of substantial public interest as the use of electronic monitoring increases and the costs have to be allocated. *See* RAP 13.4(b)(4).

### 2. RCW 10.01.160 prohibits the imposition of the costs of pretrial electronic monitoring.

A court may require a defendant to pay costs. RCW 10.01.160(1). However, with three exceptions not applicable here, "costs may be imposed only upon a convicted defendant." *Id.* Further, this statute is a statute of limitation, limiting costs to those enumerated in the statute. *See* RCW 10.01.160(2) ("Costs shall be limited to . . . ."). The cost of pretrial electronic monitoring is not a cost allowed by the legislature.[4]

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[4] Mr. Hardtke's judgment and sentence recovers the cost of his electronic monitoring as "restitution." Mr. Hardtke argued before the Court of Appeals that the statutes governing restitution do not include reimbursement for his electronic monitoring. *See* Br. of App. at 10–13. The State did not argue that restitution was appropriate. *See* Br. of Resp. And, the Court of Appeals did not address this issue at all. *See* COA Opinion.



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The statute splits costs into pretrial costs and those imposed on a convicted defendant. *See* RCW 10.01.160(1). Mr. Hardtke was ordered to pay the costs of his electronic monitoring in the pretrial orders conditionally releasing him.

Pretrial costs are limited to costs associated with a deferred prosecution program, costs relating to the preparing and serving of a warrant for failure to appear, and "costs imposed upon a defendant for pretrial supervision." RCW 10.01.160(1). Mr. Hardtke did not enter a deferred prosecution program and was never ordered to pay the costs of a warrant. Also, as explained to the Court of Appeals, Mr. Hardtke's electronic monitoring is not "pretrial supervision" as that term is used in the statute. *See* Br. of App. at 8. However, even if it were, "pretrial supervision" costs are limited to $150. RCW 10.01.160(2). Consequently, the trial court erred when it imposed on Mr. Hardtke nearly $4000 in pretrial electronic monitoring costs.

The Court of Appeals sidestepped the legislature's limitations on pretrial costs by noting in a footnote that, in Mr. Hardtke's case, the cost of electronic monitoring was imposed upon conviction. *See* COA Opinion at 7 n.2. Although Mr. Hardtke was ordered to reimburse the county for the costs of pretrial electronic monitoring in his judgment and sentence,



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the nature of this expense remains pretrial. Thus, the limitations on pretrial expenses set forth in RCW 10.01.160(1) apply.

Even if the trial court could modify the character of the electronic monitoring expenses by putting them in the judgment and sentence, the legislature has not authorized these expenses upon conviction. *See* RCW 10.01.160. The costs that may be imposed upon conviction are limited to "expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision." RCW 10.01.160(2). Again, with no deferred prosecution in Mr. Hardtke's case, and with pretrial supervision limited to $150 if applicable at all, electronic monitoring costs are allowed only if they are "expenses specially incurred by the state in prosecuting the defendant." *See id.*

The term "prosecuting" in RCW 10.01.160(2) "refers to the portion of a criminal action that leads to a determination of guilt or innocence." *Utter v. State, DSHS*, 140 Wn. App. 293, 305, 165 P.3d 399 (2007). Pretrial release conditions are not directly related to the determination of guilt or innocence.

In addition, any logic that would include the costs of pretrial electronic monitoring as a prosecution cost would also include "pretrial supervision" as such a cost. Pretrial supervision is a condition imposed to



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protect the community. *See* CrR 3.2(d)(4). So is electronic monitoring. *See* CrR 3.2(d)(9). Pretrial supervision could not be considered a prosecution cost because this interpretation would render the term "pretrial supervision" in the RCW 10.01.160 superfluous. *See State v. Pannell*, 173 Wn.2d 222, 230, 267 P.3d 349 (2011) ("[A] statute . . . should, if possible, be so construed that no clause, sentence or word shall be superfluous, void, or insignificant.") (quotation marks omitted). Therefore, pretrial electronic monitoring is also not a prosecution cost.[5]

In summary RCW 10.01.160 does not authorize courts to impose pretrial electronic monitoring costs on defendants. Indeed, RCW 10.01.160 prohibits courts from doing so.

### 3. The legitimate costs associated with pretrial conditions cited by the Court of Appeals and the State do not fall under RCW 10.01.160.

Persons defending criminal charges can incur legitimate expense complying with pretrial release conditions. However, unlike pretrial monitoring costs incurred by the government, RCW 10.01.160 does not address these expenses.

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[5] The legislative history of RCW 10.01.160 provides additional support for the proposition that the legislature did not intend pretrial electronic monitoring to be a prosecution cost. *See* Br. of App. at 17–18.



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The Court of Appeals mentioned two expenses that a defendant may incur: the cost of obtaining a surety bond guaranteeing the defendant's appearance and the cost of vacating a residence as the result of a pretrial no-contact order. *See* COA Opinion at 7. The State also mentioned the cost of a pretrial ignition interlock device and the cost of a pretrial 24/7 sobriety monitoring program. *See* Br. of Resp. at 7 (referencing RCW 10.21.055(1)). Both argued that, since the pretrial release conditions giving rise to these costs are allowed, a court can impose monitoring expenses on a defendant.

However, with the exception of the 24/7 sobriety, a court does not order payment of expenses associated with these release conditions. In fact, the court is not involved with these costs at all since any costs are collateral consequences of the conditions. It may be possible to obtain a bond, or obtain an ignition interlock device, or move from a residence, free of charge. Any charge is between the provider of the service (e.g. the bondsman or the moving company) and the defendant and may involve a variety of factors (e.g. the availability collateral for a bond or friends to help move or a favor owed). Because a court does not impose these costs, RCW 10.01.160 does not address them.

The 24/7 sobriety program referenced by the State is run by the government. RCW 36.28A.300. The legislature has specifically



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authorized courts to condition release on participation in a 24/7 sobriety program, and to charge defendants with the associated expenses. RCW 36.28A.350. This authorization overrides the limitations set forth in RCW 10.01.160. *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 210–11, 118 P.3d 311 (2005) (giving preference to more specific and more recently enacted statute).

Further, the fact that a defendant may legitimately incur expense complying with pretrial release conditions does not void the legislative intent behind RCW 10.01.160. The legislature would not have expressly authorized "pretrial supervision" as an expense for which a defendant may be charged if it intended to allow courts to charge defendants directly for any monitoring expense. While the Court of Appeals' comparison of costs incurred as a result of pretrial release conditions is attractive, it cannot eviscerate the limitations imposed by the legislature.

**4. Mr. Hardtke's plea deal is irrelevant.**

In his plea deal, Mr. Hardtke agreed to "reimburse San Juan County for cost of transdermal monitoring." CP 48. However, Mr. Hardtke cannot agree to an illegal sentence. *Restraint of Goodwin*, 146 Wn.2d 861, 873–74, 50 P.3d 618 (2002); *Personal Restraint of Moore*, 116 Wn.2d 30, 38–39, 803 P.2d 300 (1991).



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Admittedly the plea deal makes this case unattractive. Why should Mr. Hardtke receive an appellate court's consideration when he is asking it to change the deal he had made?

Prosecutors at times insist on agreement to illegal sentences in good faith based on a misunderstanding of the law. Defendants, unable to have a trial court decide the issue without losing the benefit of the deal, must then decide whether or not to stand on principle to their peril. The law protects such defendants by not giving effect to the deal they must make.

## F. CONCLUSION

One can only imagine the tools that advancing technology will give courts in the future to assure the safety of the public. As little as ten years ago, few would have predicted that technology would give courts a bracelet that could detect alcohol in a person's body through non-invasive techniques. The use of the alcohol-detecting bracelet is increasing, and new technologies will come along.

The legislature, not the courts, should decide who should pay for the use of this new technology. With some exceptions such as the $150 pretrial supervision fee and the 24/7 sobriety program, the legislature currently does not allow courts to impose those pretrial expenses on the defendant. It is for the legislature to change this policy. Currently, under



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RCW 10.01.160, Mr. Hardtke and the many defendants like him (many of whom do not incur enough expense to justify an appeal) should not be ordered to pay for pretrial alcohol monitoring.

The Supreme Court should review the Court of Appeals decision in this case.

Respectfully submitted,

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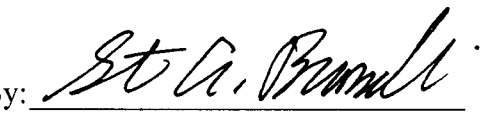
Dated: August 11, 2014

By: 

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

| | | |
|---|---|---|
| STATE OF WASHINGTON, Respondent, v. FREDERICK E. HARDTKE, Appellant. | ) | No. 70002-2-I<br>DIVISION ONE<br>UNPUBLISHED OPINION<br>FILED: July 21, 2014 |

SPEARMAN, C.J. — Frederick Hardtke challenges a condition of pretrial release and condition of sentence requiring him to reimburse San Juan County (County) for the cost of pretrial monitoring via a Transdermal Alcohol Detection (TAD) ankle bracelet. Because defendants are solely responsible for bearing the cost of conditions of pretrial release, and Hardtke expressly agreed to reimburse the County for the costs of TAD monitoring in his valid plea agreement, we affirm.

FACTS

On June 28, 2012, Frederick Hardtke was arraigned and pled not guilty to two counts of second degree rape, one count of second degree assault, four counts of fourth degree assault, and malicious mischief, all involving domestic violence. The trial court found that a substantial danger existed that Hardtke would commit a violent crime if released and, pursuant to CrR 3.2(d), the court imposed conditions of release. The court required Hardtke not to possess or

consume alcohol, to have no contact with the alleged victim, and to abide by the terms of a domestic violence no contact order. The court also ordered Hardtke to post a $15,000 bond or cash to guarantee those conditions. However, the trial court agreed to reconsider the bond condition if it could be shown that no bonding company would write a bond for the required amount.

On July 11, 2012, the trial court heard Hardtke's motion to modify his conditions of release. Hardtke had been unable to secure a $15,000 bond from any agency and remained in custody. Noting that the court's main concern was his behavior when intoxicated, Hardtke suggested that, in lieu of the $15,000 bond, the court should require him to submit to monitoring via a TAD ankle bracelet, which could measure his blood-alcohol level at all times. In response, the State submitted that, if TAD monitoring were ordered, Hardtke should bear the costs.

The trial court reduced the bond to $3,000 but maintained all other conditions. The court also ordered Hardtke to appear in court on July 20, 2012, at which time he was to have posted a performance bond in the amount of $15,000, or, in the alternative, post a $3,000 bond and submit to TAD monitoring at his own expense. The court agreed to revisit the issue of requiring Hardtke to pay the cost of TAD monitoring at the July 20 hearing.

At the July 20, 2012 hearing, Hardtke advised the court that arrangements had been made for TAD monitoring to begin at 1:00 p.m., but contended that he should not be required to pay the cost of the monitoring. He argued:

> [T]hat the Court had decided that the $3000 performance bond, the TAD device, and the other release conditions, as a set, addressed adequately the concern that Defendant will commit a violent crime. Therefore, under CrR 3.2, the Court could not impose a higher performance bond. This is true whether or not Defendant payed (sic) the cost of the TAD device. Therefore, the Court could not impose the cost of the TAD device on Defendant under the threat of imposing a higher performance bond.

Agreed Report of Proceedings (ARP) at 5.

The trial court apparently adhered to its earlier decision, requiring as conditions of release that Hardtke either post a $15,000 performance bond and abide by certain conditions or, in the alternative, post a $3,000 bond, abide by certain conditions, and submit to TAD monitoring at his own expense. Notably, although the agreed record of proceedings reports the trial court's ruling on this issue, the rationale for the court's conclusion, if given at the hearing, is absent. It appears that Hardtke chose the latter option and was released from custody.

On August 9, 2012, the State moved to revoke release and forfeit Hardtke's $3,000 bond. The TAD device had shown that Hardtke had consumed alcohol on at least three occasions between August 4 and August 8, 2012. When Hardtke was subsequently taken into custody, breath testing showed blood alcohol concentration of over 0.05. Hardtke admitted the violations. The court revoked release and forfeited the $3,000 bond. It also entered a new order of

release, which maintained the conditions set forth in the July 20, 2012 order, but with the bond amount increased to $10,000. It appears that Hardtke posted the increased amount and remained free on bond.

Prior to trial, Hardtke reached a plea agreement with the State, under which the State reduced the charges against Hardtke to one count of rape in the third degree and one count of assault in the second degree. The parties also agreed upon a sentencing recommendation which included, among other things, an exceptional sentence of 24 months incarceration on each count and that Hardtke would "[r]eimburse San Juan County for the cost of transdermal monitoring." Clerk Papers (CP) at 73.

Hardtke was sentenced on February 15, 2013. Despite his agreement to reimburse the County for the cost of TAD monitoring, Hardtke repeated his argument from July 20 that he could not be legally required to pay it. The court imposed the agreed upon sentence and conditions. Hardtke appeals only the trial court's assessment of $3,972 in costs associated with TAD monitoring.

## DISCUSSION

There is a strong public interest in enforcing terms of plea agreements that are voluntarily and intelligently made. In re Personal Restraint Petition of Breedlove, 138 Wn. 2d 298, 309, 979 P.2d 417 (1999). Both parties are bound by the terms of a valid plea agreement and, between the parties, they are regarded and interpreted as contracts. Id. Entering a valid plea agreement

waives a defendant's right to challenge the sentence he requested pursuant to the agreement. Id. But, a defendant cannot agree to a sentence in excess of that authorized by statute and, thus, cannot waive a challenge to such a sentence. In re Personal Restraint Petition of Goodwin, 146 Wn.2d 861, 873, 50 P.3d 618 (2002).

Hardtke argues that because, in his view, the trial court lacked authority to order him to pay the cost of TAD monitoring, it also could not impose as a condition of his sentence that he reimburse the County for that cost. The argument is without merit. Hardtke fails to identify any provision in CrR 3.2 that prohibits a court from requiring a defendant on pretrial release to assume the costs associated with conditions of release, and his argument that we should interpret the rule to find such a prohibition is unpersuasive.

Resolution of this case requires interpretation of a court rule, which is subject to de novo review. State v. McEnroe, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). We interpret court rules using the rules of statutory construction. Id. The terms used in court rules should be given their plain and common meaning. State v. Johnson, 21 Wn. App. 919, 921, 587 P.2d 189 (1978); see also State v. Ollivier, 178 Wn.2d 813, 852, 312 P.3d 1 (2013). Rules are construed so as to effectuate the drafters' intent, avoiding readings that result in absurd or strained consequences. McEnroe, 174 Wn.2d at 795.

CrR 3.2(d) sets forth several conditions of pretrial release that a trial court may impose if it finds a substantial danger that the defendant will commit a violent crime, intimidate witnesses, or otherwise unlawfully interfere with the administration of justice while awaiting trial. Subsection (d)(9) and (d)(10) permit the court to "[r]equire the accused to return to custody during specified hours or to be placed on electronic monitoring, if available," and to "[i]mpose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others in the community," respectively. Hardtke does not dispute the trial court's finding that he presented such a danger and, since he proposed TAD monitoring as a condition of release, he concedes it was an appropriate condition to mitigate the danger. He contends, however, that the court rules do not provide authority for the trial court's order that he bear the cost of this condition.

Hardtke first argues, without citation to authority, that because CrR 3.2(d) does not expressly provide that trial courts may require defendants to bear the cost of TAD monitoring, they lack authority to do so.[1] The argument is without merit. A number of the conditions of release authorized by CrR 3.2(d) have costs associated with them, but under Hardtke's line of reasoning, a defendant cannot be required to bear the cost of utilizing them. This is an absurd result. For

[1] Hardtke notes that with one exception, no statute or court rule gives courts blanket authority to impose the cost of pretrial release conditions on a defendant. RCW 10.01.160(2) provides that costs for administering a pretrial supervision program may not exceed one hundred fifty dollars.

example, under CrR 3.2(d)(6), a trial court may require as a condition of release, as it did in this case, that the defendant post a secured bond. The bonding company will typically require a fee of ten to twenty percent of the amount of the bond. Under Hardtke's interpretation of the rule, courts must either require the bonding company to provide this service to the defendant at no cost, or they are limited to imposing an unsecured bond requirement or requiring cash in lieu thereof. Neither result is a sensible interpretation of the rule. Similarly, pursuant to CrR 3.2(d)(1) and (2), a trial court could require, as it did in this case, that the defendant have no contact with the victim. Here, compliance with the court's no contact condition required Hardtke to vacate the residence he shared with the victim and their child. No doubt costs were associated with abiding by this condition of release. Under Hardtke's interpretation of the rule, instead of requiring the defendant to bear these costs, the anomalous result would be to impose them on some other individual or entity.

As with other conditions of pretrial release, if a defendant chooses to avail himself of TAD monitoring in order to be released from confinement, the cost of doing so is fairly his to bear. The court rules, reasonably read, do not prohibit this result.[2]

[2] Hardtke observes that under RCW 10.010.160(1) costs may not be imposed on a defendant except upon conviction, but there was no violation of this statute. Although Hardtke spent nearly seven months on TAD monitoring, it does not appear that he was required to pay for the service until after he was sentenced.

In this case, it was within the trial court's authority to order TAD monitoring as a condition of release and to require Hardtke to pay to the cost thereof. Accordingly, his agreement to reimburse the County for this expense as a condition of his sentence was lawful and properly imposed by the court. In re Breedlove, 138 Wn.2d at 312.

Affirm.

WE CONCUR:

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

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>FREDERICK E. HARDTKE,<br><br>Appellant. | No. 70002-2-I<br><br>DIVISION ONE<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

The appellant having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 13th day of August, 2014.

FOR THE COURT:

Spearman, C.J.