No. 97224-9

COA #50522-3-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KYLE T.W. BELL,

Petitioner/Appellant.

ON REVIEW FROM
THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION TWO, AND THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
MASON COUNTY,
the Honorable Judges Toni A. Sheldon and Amber Finley

PETITION FOR REVIEW

KATHRYN RUSSELL SELK
WSBA No. 23879

Counsel for Petitioner

RUSSELL SELK LAW OFFICE
1037 N.E. 65th Street. # 176
Seattle, Washington 98115
(206) 782-3353

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT

WASHINGTON COURT OF APPEALS

RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

A. IDENTITY OF PETITIONER

Petitioner Kyle Bell, the appellant below, asks the Court to review a portion of the decision referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of a portion of the majority decision of the court of appeals, Division Two, in State v. Bell, __ Wn. App. 3d ___ (2019 WL 1399882), issued March 27, 2019. The opinion is attached hereto as Appendix A. The state's motion to reconsider was denied by a majority with one dissenting judge on April 18, 2019, A copy of the Order is attached as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Is an indigent appellant entitled to relief from legal financial obligations under this Court's decision in State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018), where his case was pending on direct appeal from the revocation of a suspended sentence at the time Ramirez was decided regardless whether he appealed the legal financial conditions imposed in the original judgment and sentence years before Ramirez was decided?

2. Did the court of appeals improperly stretch the holding of in Personal Restraint of Wolf, 196 Wn. App. 496, 384 P.3d 591 (2016), to this direct appeal where Wolf was grounded in the legal effect of this Court's decision in State v. Blazina, 182 Wn.2d 827, 344 p.3d 680 (2015) and whether that case was a "significant change in the law" which applied retroactively on collateral review but this is a direct appeal involving the legal effect of 2018 legislative changes which this Court recently held in Ramirez applied to all cases pending on direct review not yet final under RAP 12.7?

3. Where the state seeks to revoke a suspended sentence imposed as part of a Special Sex Offender Sentencing Alternative, does the minimal due process guaranteed under State v. Dahl, 139 Wn.2d 678, 990 P.2d 396 (1999), require written notice of that intent or is oral notification sufficient even when the written pleadings explicitly

sought only sanctions for the alleged violations? Did Division Two misinterpret Dahl in holding that Dahl required only written notice of the claimed violations but did not require written notice of the remedy the state sought?

D. OTHER ISSUES SUPPORTING REVIEW

4. Should review be granted on all of the issues raised by the Petitioner in his Statement of Additional Grounds for Review?

E. STATEMENT OF THE CASE

Petitioner Kyle T.W. Bell was was charged with and pled guilty in Mason County superior court with one count of second-degree rape of a child. CP 27-38, 35-46; RP 67-68.[1] On March 3, 2014, he was ordered to serve a Special Sex Offender Alternative sentence which involved a 90-month minimum term of custody suspended on condition that Bell serve a term of eight months in confinement followed by three years of community custody with conditions. CP 49.[2]

Despite Bell's indigence, included on the judgment and sentence were legal financial obligations of a $200 for the criminal filing fee, "service fees" of $609 for the Sheriff, $600 for the court-appointed attorney, $1,550.00 for the "appointed defense expert and other defense

[1]The transcript is contained in two volumes, which are chronologically paginated and will be referred to herein as "RP." The first volume contains the proceedings of June 28, July 8, August 4, 12, 13, and 26, September 3 and 9, October 7 and 28, November 4 and December 2, 2013, January 6, 21, 22, 24, 27, and 28, March 3, September 29, October 13, and December 2, 2014, March 27, July 14, November 24, and December 8, 2015, March 15, June 22 and 28, July 12 and 26, August 30, September 13 and October 4, 2016, February 6, March 13, 27 and 30, April 4, 25 and 26, June 5 and 13, 2017. CHK when divided.

[2]The later decision by the court of appeals included a majority and a dissent on the issue of whether one of the conditions of community custody was proper. See App. A; App. B. That issue is not presented in this Petition.

costs," and a $100 DNA collection fee. CP 50. The judgment and sentence also imposed interest. CP 50. A preprinted section of the document provided as follows:

> **2.5 Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:
>
> [X] The defendant has the ability or likely future ability to pay the legal financial obligations impoed herein. RCW 9.94A.753.

CP 50-51.

Over the next few years, there were several review hearings and proceedings regarding Mr. Bell's serving the SSOSA including "violation" proceedings where he was ordered to serve a sanction of time in custody for violations. See RP 67-70, 190-91, 304; see App. A at 1. Relevant to these proceedings, on March 31, 2017, the prosecution filed a "PETITION FOR ORDER MODIFYING SENTENCE/REVOKING SENTENCE /CONFINING DEFENDANT." CP 130 (emphasis in original).

The state's Petition alleged that Bell had committed two violations of his terms of community custody: 1) contact with minors "on several occasions" on or after 3/15/17, and 2) failing to complete SSOSA treatment on or after 3/29/17. CP 132. The community corrections officer (CCO) reported telling the treatment provider that Bell was in a relationship with someone without preapproval and that meant that he was going to be terminated from treatment as a result. CP 133. Bell had been previously found to be involved with a woman who had kids and

had served eight months for the violation, after which he was ordered to, *inter alia*, "[a]bstain from all relationships not sanctioned by the provider, group[,] and DOC." CP 91.

The CCO's report, attached to the state's pleading, indicated his recommendation to revoke the SSOSA. CP 134. The Petition did not ask for revocation of the SSOSA, however. CP 130. The document, a copy of which is attached as Appendix C, provides in relevant part:

> 4. The undersigned petitions the court for an order:
>
> [ ] Modifying sentence.
>
> [ ] Revoking the sexual offender alternative suspended sentence and ordering execution of sentence.
>
> [ ] Confining the defendant pursuant to RCW 9.94A.200(2)(b).
>
> [X] Requiring the defendant to show cause why he should not be punished for noncompliance with sentence.

CP 130. After Bell was taken into custody based on this document, the court appointed new counsel. RP 190-93. On April 4, 2017, during discussions about bail pending the hearing, the prosecutor declared Bell was a "liar," then said he was going to "bring the CCO down, have him testify, and then we're going to be seeking to revoke his SSOSA[.]" RP 200. After an evidentiary hearing, the lower court found the state had not proven its claim that Mr. Bell had contact with minors as alleged. RP 304. Mr. Bell was found to have committed the second alleged violation, however, based on the CCO's testimony that Bell had been removed from SSOSA treatment for having a relationship which was not approved

in advance by the treatment provider. RP 304. The judge then revoked the SSOSA. RP 305-308.

On review, Bell argued in Division Two, *inter alia*, that the minimal due process rights an offender enjoys in a SSOSA proceeding are violated when the state gives written notice of an intent to simply "punish[] for non-compliance" of the terms of a suspended sentence but then proceeds to orally seek the remedy of revoking the suspended sentence (see App. A at 1-2).

After this Court issued its decision in Ramirez, Bell filed supplemental briefing arguing that he was entitled to relief from the LFOs under the 2018 amendments to the LFO statutes and this Court's holding in Ramirez that the 2018 amendments apply to all cases pending on direct review regardless when sentencing occurred. See App. A at 10-11. The court of appeals disagreed with Bell's arguments about the due process right to notice and the legal financial obligations. See App. A. It issued a divided opinion, reversing in part and affirming in part, with one judge dissenting on the issue of one of the conditions of community custody and later dissenting from the denial of the state's motion for reconsideration on that issue. See App. A; App. B.

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THIS COURT SHOULD GRANT REVIEW TO ADDRESS THE QUESTIONS RAISED ABOUT THE SCOPE OF THIS COURT'S HOLDING IN RAMIREZ AND ENSURE THAT THOSE ENTITLED TO RELIEF UNDER THE 2018 AMENDMENTS TO THE LEGAL FINANCIAL OBLIGATIONS STATUTES RECEIVE IT

At the time Mr. Bell received the SSOSA sentence, the lower

court imposed then-mandatory legal financial obligations, as well as several which were a matter of discretion. More specifically, the trial court ordered Bell to pay $200 for the criminal filing fee, "service fees" of $609 for the Sheriff, $600 for the court-appointed attorney, $1,550.00 for the "appointed defense expert and other defense costs," and a $100 DNA collection fee. CP 50. This Court should grant review, because Division Two erred in denying Petitioner relief from those legal financial obligations.

In Ramirez, this Court addressed 2018 changes to the LFO statutes, enacted as Laws of 2018, ch. 369 (Engrossed Second Substitute House Bill 1783). Ramirez, 191 Wn.2d at 735-36. Before 2018, the relevant statutes allowed and sometimes even required imposition of multiple LFOs on those convicted of a crime. See Blazina, 182 Wn.2d at 830. At the time of the sentencing here,"legal financial obligations" were defined in former RCW 9.94A.030(30)(2012),as "a sum of money that is ordered by a superior court" including

> restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction[.]

Former RCW 10.01.160(1)(2013) provided that costs "shall be limited to expenses specially incurred by the state in prosecuting the defendant[.]" Former RCW 10.01.160(3)(2013) further required that a sentencing court "shall not order a defendant to pay costs unless the defendant is or will be able to pay them." In Blazina, this Court noted the requirement of

former RCW 10.01.160(3)(2013), that a sentencing court "shall not order a defendant to pay costs unless the defendant is or will be able to pay them." 182 Wn.2d at 829-30. The Blazina Court also noted that most sentencing courts in our state were not conducting any analysis of a defendant's actual "ability to pay." Id. The Court condemned that use of "boilerplate" or pre-printed "findings" of a defendant's "ability to pay" if the record showed that the court had not conducted a careful, individualized examination of a defendant's actual financial situation. Id.

Further, the Court recognized serious systemic problems with the LFO scheme, which had led to significant inequities and issues for defendants who were indigent when sentenced. Blazina, 182 Wn.2d at 829-30. After Blazina, courts struggled to determine both what constitutes an adequate inquiry and for which costs, exactly, a Blazina analysis must occur. See e.g., State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016); State v. Stoddard, 192 Wn. App. 222, 686 P.3d 474 (2016); State v. Clark, 191 Wn. App. 369, 362 P.3d 309 (2015). After review was granted in Ramirez, however, the 2018 Legislature significantly amended our LFO system. See Ramirez, 191 Wn.2d at 735. More specifically, Engrossed Second Substitute House Bill ("Bill") 1783 (2018) was passed. See Laws of 2018, ch. 269 (ESSHB 1783).

In Ramirez, this Court declared that, with the amendments, the Legislature chose to "prohibit[] the imposition of certain LFOs on indigent defendants[.]" Ramirez, 191 Wn.2d at 737. Whereas before, under Blazina, former RCW 10.01.160(3)(2013) allowed imposition of "discretionary" LFOs with a proper finding of "ability to pay," the

amendments to RCW 10.01.160(3) now "categorically prohibit" imposition of *any* discretionary LFOs on a defendant who was indigent at the time of sentencing. See Laws of 2018, ch. 269, § (6)(3); Ramirez, 191 Wn.2d at 736-37. The bill further prohibits imposition of specific LFOs, such as the $200 court filing fee, if the defendant is indigent, and makes the $100 DNA testing fee discretionary if the defendant has previously given the state DNA. See Ramirez, 191 Wn.2d at 735-37; Laws of 2018, ch. 269, § 18.

In Ramirez, after first deciding some issues regarding the Blazina analysis, the Court then did not apply Blazina, instead finding that the 2018 Bill had changed the law. Ramirez, 191 Wn.2d at 725. The Court then held that the bill was "concerning attorney fees and costs," and that the "precipitating event" for such a statute is the end of any direct appeal. Id., citing, State v. Blank, 131 Wn.2d 230, 249, 930 P.2d 1210 (1997). Because the Bill's provisions "concern the courts' ability to impose costs on a criminal defendant following conviction," the Ramirez Court held, the amendments wrought by the Bill applied to defendants like Ramirez whose cases are "on appeal as a matter of right." Ramirez, 191 Wn.2d at 736-37. Put another way, cases still pending on direct review at the time of the statutory changes "not final under RAP 12.7." Id.

In holding that Ramirez did not apply and Mr. Bell was not entitled to relief in this case, Division Two relied on its own decision in Personal Restraint of Wolf, 196 Wn. App. at 496. App. A at 10. According to the court of appeals, Wolf controls and holds that Bell is not

enftitled to relief even given the holding of Ramirez because the appeal Bell filed was from his SSOSA revocation, not the imposition of the SSOSA in the first place. App. A at 10. Thus, it held that, despite Ramirez, the 2018 legislative changes which this Court has held apply to all cases pending on direct review does not *really* apply to all cases pending on direct review but only those cases not involving a SSOSA appeal.

But Wolf does not control. At the outset, unlike here, Wolf did not involve the 2018 amendments to the LFO statutory scheme. 196 Wn. App. at 510. Nor did Wolf involve the scope of this Court's decision in Ramirez, obviously, given that Wolf predated Ramirez by years. See Ramirez, 191 Wn.2d at 733; Wolf, 196 Wn. App. at 510.

Indeed, Wolf was decided in a different procedural posture altogether - a request for collateral relief. In Wolf, the defendant received a SSOSA sentence in 2008 for juvenile crimes but later had that suspended sentence reversed. 196 Wn. App. at 499. He appealed but did not succeed. 196 Wn. App. at 499. Later, he filed a personal restraint petition (PRP) presenting multiple arguments including for the first time a claim for relief from the legal financial obligations which had been imposed. 196 Wn. App. at 500. Mr. Wolf argued that this Court's then-new decision in State v. Blazina amounted to a "significant change in the law" exempted from the time limits for the PRP he had filed under RCW Title 10.73 and its rules on PRP filings. Wolf, 196 Wn. App. at 500.

The Wolf decision was thus grounded in the rule that "[a] PRP is not a substitute for a direct appeal and the availability of collateral relief

is limited." 196 Wn. App. at 502. The court then relied on RCW 10.73.090(1), which contains a one-year time "bar" for filing a PRP. Wolf, 196 Wn. App. at 502-503. The statute prohibits a defendant from filing a PRP more than one year after the judgment and sentence becomes "final." Id. Because the defendant had not appealed from the judgment and sentence and because the SSOSA revocation hearing and direct appeal did not involve those LFOs, the Wolf court found his PRP on this issue was not timely under the statutory "time bar" of one year for PRPs. 196 Wn. App. at 510-11.

The Wolf Court was also swayed by its own decision that this Court's decision in Blazina, supra, did not constitute a "significant change in the law" which applied to requests for collateral review on "retroactive application of the changed law." Wolf, 196 Wn. App. at 510. And this Court has agreed that Blazina is not such a change. In re the Personal Restraint of Flippo, 187 Wn.2d 106, 108-109, 385 P.3d 128 (2016).

But that is not the issue here. This case does not involve a request for retroactive application of Blazina. It involves application of the 2018 legislative changes to our legal financial which this Court held in Ramirez applies to all cases still pending on direct appeal, i.e., not yet "final" under RAP 12.7.

This Court should grant review. The 2018 changes to the LFO system were made to correct the injustices Blazina first noted. Under Ramirez, those changes should apply to Mr. Bell. The court of appeals erred in relying on Wolf, a PRP case, to hold that Bell could not raise the

issues in his direct appeal.

2. MINIMAL DUE PROCESS RIGHTS SHOULD INCLUDE PROPER WRITTEN NOTICE OF INTENT TO REVOKE A SUSPENDED SENTENCE

The Court should also grant review under RAP 13.4(b)(3), to address the question of what minimal due process rights are required when the state seeks to revoke a suspended sentence. This Court reviews revocation of a suspended sentence for abuse of discretion but alleged violations of due process rights de novo. See State v. McCormick, 166 Wn.2d 689, 705, 213 P.3d 32 (2009); State v. Simpson, 136 Wn. App. 812, 816, 150 P.3d 1167 (2007).

In holding there was no due process violation here, the court of appeals declared that Dahl, supra, holds that there is no right to sufficient written notice of the intent to revoke a suspended sentence, only to written notice of the "claimed violations." App. A at 5. The Court stated that proper notice was required to allow the defendant to marshal the facts in his defense but only as to the alleged violations. App. A at 5.

Here, the state did not just fail to notify the accused in writing that the state was going to seek to have the suspended sentence revoked; the Petition affirmatively said the state was only seeking a "show cause" for sanctions for the violation. CP 130. Indeed, it specifically did *not* indicate that revocation would be sought. CP 130.

The court of appeals should not be the final arbiter of what this Court held in Dahl. Further, minimal due process should require that the state provide proper written notice when it intends to revoke a suspended sentence. This Court should grant review.

G. OTHER ISSUES PRESENTED FOR REVIEW

3. REVIEW SHOULD ALSO BE GRANTED ON ALL THE ISSUES PETITIONER RAISED PRO SE

Petitioner filed a pro se RAP 10.10 Statement of Additional Grounds for Review ("SAG") in the Court of Appeals. See App. A at 12-13. This Court has not yet resolved the issue of how a Petitioner who has filed a SAG should seek review of that SAG in such circumstances.

In State v. Brett, 126 Wn.2d 136, 206, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121 (1996), this Court held that it would not address arguments parties tried to incorporate by reference from other cases. However, this Court has not disapproved of incorporation by reference of arguments raised pro se when counsel has not been appointed on those issues pursuant to RAP 10.10. Thus, to comply with RAP 13.7(b) and raise all issues in this Petition without making any representations about their relative merit as required by the WSBA Rules of Professional conduct, incorporated herein by reference are the arguments Mr. Bell raised in his RAP 10.10 SAG. This Court should grant review on those issues as well.

H. CONCLUSION

For the reasons stated herein, this Court should grant review.

DATED this 20th day of May, 2019.

Respectfully submitted,

KATHRYN RUSSELL SELK, No. 23879
Counsel for Petitioner
RUSSELL SELK LAW OFFICE
1037 N.E. 65th Street, #176
Seattle, Washington 98115
(206) 782-3353

CERTIFICATE OF SERVICE BY MAIL/EFILING

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel at Mason County Prosecutor's Office via email at the address registered with the appellate courts for this purpose via the court's filing/service system and caused a true and correct copy of the same to be sent to appellant by deposit in U.S. mail, with first-class postage prepaid at the following address: Kyle TW Bell, DOC 372002, Airway Heights CC, P.O. Box 2049, Airway Heights, WA. 99001-2409.

DATED this 20th day of May, 2019.

KATHRYN RUSSELL SELK, No. 23879
Appointed counsel for Petitioner
RUSSELL SELK LAW OFFICE
1037 N.E. 65th Street, #176
Seattle, Washington 98115
(206) 782-3353

APPENDIX A

2019 WL 1399882
Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 2.

STATE of Washington, Respondent,
v.
Kyle T.W. BELL, Appellant.

No. 50522-3-II
|
March 27, 2019

Appeal from Mason County Superior Court, 13-1-00292-2, Toni A. Sheldon, J.

Attorneys and Law Firms

Timothy W. Whitehead, Mason County Prosecutors Office, Timothy J. Higgs, Mason County Prosecutors Aty. Office, PO Box 639, Shelton, WA, 98584-0639, for Respondent.

Kathryn A. Russell, Selk Russell Selk Law Office, 1037 Ne 65th St., Seattle, WA, 98115-6655, for Appellant.

UNPUBLISHED OPINION

Maxa, C.J.

***1** Kyle Bell appeals the trial court's revocation of his Special Sex Offender Sentencing Alternative (SSOSA), which was imposed after his conviction of second degree child rape.

Bell's community custody conditions included having no contact with minor children and remaining in SSOSA treatment. The State alleged that Bell violated these conditions by having contact with children, and the allegation caused Bell's treatment provider to discharge him from treatment. The trial court concluded that the State had failed to prove that Bell had contact with children, but revoked Bell's SSOSA because he no longer was in treatment.

We hold that (1) the State did not violate Bell's right to due process by failing to inform him in the written notice of the alleged violations that it was seeking to revoke his SSOSA;

(2) the trial court did not abuse its discretion by revoking Bell's SSOSA; (3) the community custody condition prohibiting Bell from frequenting places where children congregate (condition 8) is improper, but the condition allowing his treatment provider and community corrections officer (CCO) to order plethysmograph testing (condition 11) is proper with modifications; (4) Bell cannot challenge his legal financial obligations (LFOs) based on the 2018 amendments to the LFO statutes because his judgment and sentence was not on direct appeal when those amendments took effect; and (5) Bell's claims in his statement of additional grounds (SAG) have no merit.

Accordingly, we affirm the trial court's order revoking Bell's SSOSA, but we remand for the trial court to strike community custody condition 8 and to modify community custody condition 11.

FACTS

In 2014, Bell pleaded guilty to second degree child rape. The trial court imposed a SSOSA. The judgment and sentence ordered confinement for a minimum term of 90 months and a maximum term of life, but only actual confinement of eight months with the remainder suspended for the duration of the SSOSA program.

The court also sentenced Bell to lifetime community custody and imposed community custody conditions. The community custody conditions included:

> 1. The defendant shall reside at a location and under living arrangements that have been approved in advance by the CCO, and shall not change such arrangements/location without prior approval;
>
> ...
>
> 6. The defendant shall not have contact with minor children under the age of 18 years unless in the presence of a responsible adult who is capable of protecting the child and is aware of the conviction, and contact has been approved in advance by the [CCO] and the sexual offender's treatment therapist;
>
> ...
>
> 8. The defendant shall not loiter in nor frequent places where children congregate such as parks, video arcades, and day care facilities or other such places as may be designated by the CCO and/or the state certified sexual deviancy treatment provider;

9. The defendant shall immediately upon release enter into and successfully participate in and complete a program offering sexual deviancy treatment through a state certified therapist;

***2** ...

11. The defendant shall undergo periodic polygraph and/or plethysmograph testing to measure treatment progress and compliance at a frequency determined by his/her treatment provider and/or his/her [CCO].

Clerk's Papers (CP) at 60-61. The trial court also ordered Bell to pay certain LFOs.

Bell served the confinement portion of his SSOSA and was released on community custody in July 2014. In September, Bell was found to have violated a community custody condition prohibiting possession of ammunition and served a sanction of 15 days on a work crew.

In June 2016, the State filed a petition for an order revoking Bell's suspended sentence based on a report of violations written by CCO Aaron Anderson. The report stated that Bell admitted that for the previous nine months he had stayed at the residence of Lindsey Frazer at least three nights per week and had extensive contact with Frazer's three minor children.

In an order dated October 4, 2016, the trial court found that Bell had violated the terms of his community custody by failing to reside in a Department of Corrections (DOC) approved residence, failing to comply with treatment conditions, and having contact with minor children. The court ordered Bell to serve eight months of confinement. The court also modified Bell's sentence to require, among other things, that Bell remain in SSOSA treatment, continue in group sessions, and "[a]bstain from all relationships not sanctioned by the [treatment] provider, group and DOC." CP at 118. Bell served a portion of the ordered time in confinement and was released on community custody on November 28, 2016.

In March 2017, Anderson submitted a violation report alleging that Bell had been in contact with Frazer and her children. Anderson stated that he received a call about Bell being back at Frazer's residence with her children present. Anderson investigated and found Bell in Frazer's neighborhood. Anderson frisked Bell, found his cell phone, and checked the text messages. Anderson stated that based on Bell's text messages it was clear that he was back in a relationship with Frazer, that he had been to her residence, and that he was having contact with her children.

Anderson's report further stated that he had called Bell's treatment provider, Jeff Crinean, and told Crinean what he had learned. Crinean subsequently informed Anderson that Bell

had been discharged from treatment because he had violated his SSOSA treatment contract. Anderson's report recommended that the court revoke Bell's suspended sentence.

The State filed a petition for an order modifying Bell's sentence. Under the type of order requested, the petition had a checked box next to "Requiring the defendant to show cause why he or she should not be punished for noncompliance with sentence." CP at 130. The box was not checked next to "Revoking the sexual offender alternative suspended sentence and ordering execution of sentence." CP at 130. However, at a preliminary hearing the State stated that it was seeking to revoke the SSOSA.

***3** The trial court held an evidentiary hearing. The State alleged two violations: having contact with minors and failing to complete SSOSA treatment as ordered by the court. Anderson testified about locating Bell in Frazer's neighborhood and searching Bell's cell phone for evidence that Bell was in contact with Frazer. The court admitted the text messages and photographs Anderson found on Bell's cell phone as an exhibit.

Anderson also testified that Crinean told him that Bell's SSOSA treatment contract required that his relationships be approved through treatment and that Crinean had discharged Bell from treatment because of the violation of that provision. Bell acknowledged that the treatment contract with Crinean stated that he must abstain from all relationships not sanctioned by Crinean and the treatment group.

Bell denied having any contact with Frazer's children since being released from jail in November 2016. He also presented a number of witnesses who testified that Frazer's children were never present when Bell was at Frazer's residence. In addition, Bell testified that he was not in a relationship, and specifically was not in a sexual relationship, with Frazer. However, he admitted that he and Frazer were in love with each other and that they did talk regularly and did see each other on occasion.

The trial court found that the State had not proven by a preponderance of the evidence that Bell had contact with minor children. However, the court found that Bell had failed to complete his SSOSA treatment as directed by the court and that the violation was willful. The court stated that Bell had been discharged from treatment because he was in a relationship without advance approval by his treatment provider. The court found that there was a relationship between Bell and Frazer and that Bell knew that the relationship was prohibited.

The trial court revoked Bell's SSOSA and ordered that he serve the original sentence of 90 months to life in confinement with credit for time already served. Bell appeals the trial court's order revoking the SSOSA.

ANALYSIS

A. DUE PROCESS – WRITTEN NOTICE

Bell argues that the State violated his right to due process by failing to give him written notice that it intended to seek revocation of his SSOSA. We disagree.

The revocation of a SSOSA does not require the same level of due process as a criminal proceeding because an offender facing a revocation already has been found guilty beyond a reasonable doubt. *State v. McCormick*, 166 Wn.2d 689, 700, 213 P.3d 32 (2009). Offenders who allegedly violate a SSOSA condition are entitled to the same minimal due process rights as those afforded during the revocation of probation or parole. *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

Minimal due process for revocation of a SSOSA requires (1) written notice of the claimed violations, (2) disclosure of the evidence against the offender, (3) an opportunity to be heard, (4) the right to confront and cross-examine witnesses, (5) a neutral and detached hearing body, and (6) a statement by the court of the evidence relied on and the reasons for the revocation. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972)); *see also In re Pers. Restraint of Blackburn*, 168 Wn.2d 881, 884-87, 232 P.3d 1091 (2010) (discussing required notice, *Dahl*, and *Morrissey* in the context of violation of a community custody provision punishable by confinement). "[P]roper notice must set forth all alleged ... violations so that a defendant has the opportunity to marshal the facts in his defense." *Dahl*, 139 Wn.2d at 684.

***4** Here, the State filed a petition for an order requiring Bell to show cause why he should not be punished for noncompliance with his sentence. The petition attached a detailed narrative report of violations, which alleged that Bell had violated his community custody conditions by having contact with minor children and failing to complete SSOSA treatment. As a result, there is no question that Bell received written notice of the claimed *violations* and disclosure of the facts supporting the allegations.

Bell argues that the State also was required to provide written notice that it was seeking to revoke his SSOSA. However, *Dahl* expressly states that the State must provide "written notice of the *claimed violations*." *Dahl*, 139 Wn.2d at 683 (emphasis added). "Due process requires that the State inform the offender of the *specific violations alleged* and the facts that the State will rely on to prove those violations." *Id.* at 685 (emphasis added). *Dahl* does not hold that minimal due process requires the State to give written notice of the type of punishment it will seek for a SSOSA violation. And Bell provides no other authority for his argument.

We hold that the State's failure to give Bell written notice that it intended to seek revocation of his SSOSA did not violate Bell's minimal due process rights.

B. RCW 9.94A.670 – REVOCATION OF SSOSA

Bell argues that the trial court erred by revoking his SSOSA based on his willful failure to complete treatment. He claims that he was discharged from treatment based on his CCO's allegations regarding his relationship with Frazer and contact with her children, most of which the trial court found were not proved by a preponderance of the evidence. We disagree.

RCW 9.94A.670 authorizes a sentencing court to impose a SSOSA if the offender is eligible under RCW 9.94A.670(2) and based on considerations identified in RCW 9.94A.670(4). Once the sentencing court determines that a SSOSA is appropriate, the court imposes a sentence and then may suspend execution of the sentence subject to certain mandatory and discretionary conditions. RCW 9.94A.670(4)-(6). Mandatory conditions include a term of community custody and treatment for up to five years. RCW 9.94A.670(5)(b), (c).

The trial court also has the authority under RCW 9.94A.670(11) to revoke the suspended sentence:

> The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment.

We review a trial court's decision to revoke a SSOSA for an abuse of discretion. *State v. Miller*, 180 Wn. App. 413, 416-17, 325 P.3d 230 (2014). A court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or reasons. *Id.* at 417.

Here, the trial court found that Bell had failed to complete his SSOSA treatment. This finding was based on undisputed evidence from the CCO that Bell's treatment provider had discharged him from treatment for being in a relationship that the provider had not approved. And the trial court's October 2016 order expressly required Bell to remain in SSOSA treatment and to abstain from all relationships not sanctioned by the treatment provider.

Bell argues that the trial court found that the State had not proved most of the CCO's allegations. However, the court found that the State had failed to prove only the allegation that Bell had contact with Frazer's children. The court expressly found that Bell was in a

relationship with Frazer and that he knew that such a relationship was prohibited, and that relationship caused the violation – not remaining in treatment – that resulted in revocation of the SSOSA.

***5** We hold that the trial court did not abuse its discretion in revoking Bell's SSOSA.

C. COMMUNITY CUSTODY CONDITIONS

Bell argues that the community custody conditions prohibiting him from frequenting places where children congregate (condition 8) and allowing his CCO to order plethysmograph testing (condition 11) were improper. We hold that condition 8 is improper, but hold that condition 11 is proper once modified to strike certain provisions.

1. SSOSA Community Custody Conditions

Under RCW 9.94A.670(5)(b), a sentencing court ordering a SSOSA must make any suspended sentence subject to the imposition of a term of community custody. However, a sentencing court may only impose community custody conditions the legislature has authorized. *State v. Warnock,* 174 Wn. App. 608, 611, 299 P.3d 1173 (2013). We review de novo whether the sentencing court acted with statutory authority. *State v. Johnson,* 180 Wn. App. 318, 325, 327 P.3d 704 (2014).

2. Frequenting Places Where Children Congregate

Condition 8 states,

> The defendant shall not loiter in nor frequent places where children congregate such as parks, video arcades, and day care facilities or other such places as may be designated by the CCO and/or the state certified sexual deviancy treatment provider.

CP at 61. Bell challenges this community custody condition as unconstitutionally vague.

Under the Fourteenth Amendment to the Unites States Constitution and article I, section 3 of the Washington Constitution, community custody conditions that are unconstitutionally vague violate due process. *State v. Wallmuller*, 4 Wn. App. 2d 698, 701, 423 P.3d 282 (2018), *rev. granted*, 192 Wn.2d 1009 (2019). A community custody condition is vague if either "(1) it does not sufficiently define the proscribed conduct so an ordinary person can understand the

prohibition or (2) it does not provide sufficiently ascertainable standards to protect against arbitrary enforcement." *State v. Padilla*, 190 Wn.2d 672, 677, 416 P.3d 712 (2018).

We review a community custody condition for an abuse of discretion. *Wallmuller* 4 Wn. App. 2d at 701. However, a trial court abuses its discretion if it imposes an unconstitutional custody condition. *Id.* Unlike statutes, we do not presume that community custody conditions are valid. *Id.*

In *Wallmuller*, this court held in a 2-1 decision that a community custody condition prohibiting a defendant from frequenting "places where children congregate such as parks, video arcades, campgrounds, and shopping malls" was unconstitutionally vague. *Id.* at 700, 702-04. The court stated that the phrase "where children congregate" was vague because it did not give ordinary people sufficient notice to understand what places the defendant could not go. *Id.* at 703-04. The court stated that even though the condition provided a short list of examples of places the defendant could not go, the condition was still vague because the phrase "such as" indicated other unidentified places could also violate the condition. *Id.* at 703. [1]

1 Division Three of this court has held that a community custody condition containing the phrase "where children congregate" was not unconstitutionally vague. *State v. Johnson*, 4 Wn. App. 2d 352, 360-61, 421 P.3d 969, *rev. denied*, 192 Wn.2d 1003 (2018).

***6** Here, condition 8 includes the phrase "places where children congregate." CP at 61. We follow *Wallmuller* and hold that this phrase is too vague to give ordinary people sufficient notice of what locations would violate the condition.

In addition, condition 8 also prohibited Bell from frequenting "other such places as may be designated by the CCO and/or the state certified sexual deviancy treatment provider." CP at 61. In *State v. Irwin*, the court addressed a community custody condition that prohibited a defendant from "frequent[ing] areas where minor children are known to congregate, as defined by the supervising CCO." 191 Wn. App. 644, 652, 364 P.3d 830 (2015). The court held that this condition was unconstitutionally vague because it left the condition vulnerable to arbitrary enforcement. *Id.* at 654-55. Although condition 8 has somewhat different language, as in *Irwin* this condition allows for arbitrary enforcement and therefore is vague.

We hold that condition 8 is unconstitutionally vague and remand for the trial court to strike this condition.

3. Plethysmograph Testing

Condition 11 states,

> The defendant shall undergo periodic polygraph and/or plethysmograph testing to measure treatment progress *and compliance* at a frequency determined by his/her treatment provider *and/or his/her [CCO].*

CP at 61 (emphasis added). Bell argues that community custody condition 11 violates his due process right to be free from bodily intrusion. The State concedes that allowing the CCO to order plethysmograph testing *for monitoring purposes* is improper.

A trial court has authority to order a defendant to submit to plethysmograph testing in conjunction with sexual deviancy treatment. *State v. Johnson*, 184 Wn. App. 777, 780, 340 P.3d 230 (2014). However, using plethysmograph testing as a monitoring tool is improper. *See id.* at 780-81. Therefore, a community custody condition can allow plethysmograph testing only for treatment purposes and not for monitoring. *Id.* at 781.

Here, the trial court ordered Bell to undergo sexual deviancy treatment. The court's modified sentence also required Bell to remain in SSOSA treatment. Therefore, condition 11 was proper to the extent that it allowed plethysmograph testing for treatment purposes. But that condition was improper to the extent it allowed the CCO to order plethysmograph testing for purposes of monitoring compliance with other community custody conditions. Therefore, condition 11 can be upheld if the words "and compliance" and "and/or his/her Community Corrections Officer" are stricken.

We remand for the trial court to strike to words "and compliance" and "and/or his/her Community Corrections Officer" from community custody condition 11.

D. CHALLENGE TO LFOS

Bell argues that certain discretionary and mandatory LFOs must be stricken under the 2018 amendments to the LFO statutes. We disagree.

In 2018, the legislature amended various LFO statutes. The Supreme Court in *State v. Ramirez* held that these amendments apply prospectively to cases pending on direct appeal. 191 Wn.2d 732, 749-50, 426 P.3d 714 (2018). The court stated that the amendments applied to cases pending on direct appeal because the imposition of LFOs is governed by the statutes in effect at the termination of the case, and those cases were not final at the time the statute was enacted. *Id.* at 749.

***7** This court in *In re Personal Restraint of Wolf* considered whether LFOs imposed as part of a SSOSA in 2008 were appealable as part of a SSOSA revocation appeal in 2015. 196 Wn. App. 496, 509-10, 384 P.3d 591 (2016). The court stated that because the SSOSA revocation did not involve the LFOs from the original sentence and the defendant did not appeal the original sentence, the LFOs were final on the date the original sentence was entered in 2008. *Id.* Therefore, the court held that the defendant's LFO claim was time-barred. *Id.* at 510-11.

Here, the trial court imposed LFOs as part of Bell's original sentence in 2014. Bell did not appeal his original sentence. The revocation of Bell's SSOSA did not involve the LFOs imposed in 2014 and did not impose any additional financial obligations on Bell. Therefore, although Bell's appeal of his *SSOSA revocation* was pending on direct appeal when the LFO statutes were amended, no direct appeal of Bell's *judgment and sentence* was pending. Accordingly, *Ramirez* is inapplicable to Bell's LFOs.

We hold that the trial court's imposition of LFOs was final at the termination of Bell's case in 2014 and therefore that the 2018 amendments to the LFO statutes do not apply.

E. SAG CLAIMS

1. Search of Cell Phone

Bell asserts that the trial court's revocation of his SSOSA must be reversed because the court's ruling was based on evidence obtained through an illegal search of his cell phone. We disagree.

Article I, section 7 of the Washington Constitution states that "[n]o person shall be disturbed in his private affairs ... without authority of law." The term "authority of law" refers to a valid warrant, subject to limited exceptions. *State v. Cornwell*, 190 Wn.2d 296, 301, 412 P.3d 1265 (2018). Cell phones and the data they contain are "private affairs" under article I, section 7. *State v. Samalia*, 186 Wn.2d 262, 272, 375 P.3d 1082 (2016). Therefore, law enforcement generally cannot search a person's cell phone without a warrant unless an exception to the warrant requirement applies. *Id.*

However, "individuals on probation are not entitled to the full protection of article I, section 7" because they have a reduced expectations of privacy. *Cornwell*, 190 Wn.2d at 301. Probationers have diminished privacy rights because, while they continue to serve their sentence in the community, they remain in the custody of the law even though they have been released from confinement. *State v. Reichert*, 158 Wn. App. 374, 386, 242 P.3d 44 (2010). The same principles apply to offenders released from confinement who are subject to community custody conditions. *State v. Rooney*, 190 Wn. App. 653, 659, 360 P.3d 913 (2015).

A CCO may search an individual without a warrant if the CCO has a " 'well-founded or reasonable suspicion of a probation violation.' " *Cornwell*, 190 Wn.2d at 302 (quoting *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009)); *see also* RCW 9.94A.631(1) (allowing a CCO to conduct a warrantless search if he or she has "reasonable cause to believe that an offender has violated a condition or requirement of the sentence"). A reasonable suspicion exists if specific and articulable facts suggest that there is a substantial possibility a violation occurred. *See State v. Jardinez*, 184 Wn. App. 518, 524, 338 P.3d 292 (2014). In addition, probationers retain some expectation of privacy, and the State's authority to search probationers without a warrant is limited to property that bears a nexus to the suspected probation violation. *Cornwell*, 190 Wn.2d at 306.

***8** Here, Bell previously had violated his community custody conditions by having contact with Frazer's minor children. Anderson received a call about Bell being back at Frazer's residence with her children present. Anderson then encountered Bell in Frazer's neighborhood. Anderson stated that he believed Bell was back in a relationship with Frazer and could have been in contact with her minor children. Therefore, Anderson's search was based on specific and articulable facts which suggested that there was a substantial possibility Bell had contacted Frazer's minor children.

Anderson asked to search Bell's cell phone because he believed Bell had been exchanging text messages with Frazer and that the text messages would prove that Bell had violated his community custody conditions. Therefore, there was a nexus between Bell's cell phone and the suspected violation because the cell phone could indicate whether Bell had been communicating with Frazer in a manner consistent with a romantic relationship or about her children.

Accordingly, we hold that Anderson's warrantless search of Bell's cell phone was not unlawful.

2. Ineffective Assistance of Counsel

Bell asserts that defense counsel was ineffective for failing to file a motion to suppress the text messages. But as discussed above, we hold that the search of Bell's cell phone was not unlawful. Therefore, a trial court likely would not have granted a motion to suppress evidence from the search of Bell's cell phone. Accordingly, we hold that Bell's claim of ineffective assistance of counsel fails.

3. Infringement of Free Speech

Bell asserts that the trial court infringed on his right of free speech by using his text message conversations with Frazer as evidence that he violated his community custody conditions. We disagree.

Bell seems to claim that the trial court criminalized his communications with Frazer. But the trial court revoked Bell's SSOSA because of his conduct – having a relationship without authorization and failing to complete treatment – not his speech. And Bell cites no authority for the proposition that using speech as evidence violates the First Amendment. Accordingly, we hold that Bell's claim that the trial court violated his free speech rights fails.

CONCLUSION

We affirm the trial court's order revoking Bell's SSOSA sentence, but we remand for the trial court to strike community custody condition 8 and the words "and compliance" and "and/or his/her Community Corrections Officer" from community custody condition 11.

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.

I concur:

JOHANSON, J.P.T.

Lee, J. (concurring in part, dissenting in part)

I concur with the majority's opinion in all respects, except with regard to Bell's challenge to community custody condition 8; specifically, the clause in community custody condition 8 prohibiting Bell from frequenting places where children congregate. Bell argues that the community custody condition 8 is unconstitutionally vague.

I agree with the majority on all other challenged clauses in community custody condition 8; however, I depart from the majority with regard to the specific clause prohibiting Bell from frequenting places where children congregate. For the same reasons articulated in my dissent in *State v. Wallmuller*, 4 Wn. App. 2d 698, 704-14, 423 P.3d 282 (2018), I respectfully disagree with the majority that this particular clause in community custody condition 8 is unconstitutionally vague. I would hold that the clause prohibiting Bell from frequenting places where children congregate is not unconstitutionally vague.

All Citations

Not Reported in Pac. Rptr., 2019 WL 1399882

End of Document

APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

April 18, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KYLE T.W. BELL, Appellant.	No. 50522-3-II ORDER DENYING MOTION FOR RECONSIDERATION

Respondent State of Washington has moved for reconsideration of the court's March 27, 2019 unpublished opinion in the above entitled matter. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Johanson, Lee

FOR THE COURT:

Maxa, C.J.

MAXA, C.J.

I dissent:

J.

LEE, J.

APPENDIX C

REC'D & FILED
MASON CO. WA.
2017 MAR 31 A 10:39
SHARON K. FOGO CO. CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON, Plaintiff, vs. KYLE T.W. BELL, Defendant.	NO. 13-1-00292-2 PETITION FOR ORDER MODIFYING SENTENCE/ REVOKING SENTENCE/ CONFINING DEFENDANT

1. The undersign states that the defendant, Kyle T.W. Bell, was found guilty of the crime of:

   COUNT I: RAPE OF A CHILD IN THE SECOND DEGREE

2. The defendant was sentenced on MARCH 3, 2014 to various requirements or conditions under:
   - [ ] An order of confinement over one year.
   - [ ] An order of confinement for one year or less.
   - [ ] The first-time offender waiver.
   - [X] The SSOSA offender sentencing alternative suspended sentence.
   - [ ] The sexual offender option allowing confinement to be served in a treatment program at a state hospital.

3. The defendant has violated or failed to comply with the requirements or conditions of sentence as set forth in:
   - [ ] The attached affidavit(s).
   - [X] The attached Report of Violation dated: 03/30/2017

4. The undersigned petitions the court for an order:
   - [ ] Modifying sentence.
   - [ ] Revoking the sexual offender alternative suspended sentence and ordering execution of sentence.
   - [ ] Confining the defendant pursuant to RCW 9.94A.200(2)(b).
   - [X] Requiring the defendant to show cause why he or she should not be punished for noncompliance with sentence.

134

Date: 3/31/17

MICHAEL K. DORCY
Prosecuting Attorney

By: _____
MICHAEL K. DORCY
Prosecuting Attorney

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

COURT - NOTICE OF VIOLATION

REPORT TO:	THE HONORABLE Amber Finlay Mason COUNTY SUPERIOR COURT	**DATE:**	3/30/2017
OFFENDER NAME:	BELL, Kyle T.	**DOC NUMBER:**	372002
		DOB:	12/20/1985
CRIME:	Rape of a Child 2	**COUNTY CAUSE #:**	Mason 13-1-00292-2(AA)
SENTENCE:	Sex Offender Community Custody	**DATE OF SENTENCE:**	3/3/2014
LAST KNOWN ADDRESS	923 133RD St. NW Gig Harbor, WA 98322	**TERMINATION DATE:**	TBD
MAILING ADDRESS:	923 133RD St. NW Gig Harbor, WA 98322	**STATUS:** **CLASSIFICATION:**	In Custody HNV

PREVIOUS ACTION:

TOLLING - SRA & PAROLE

Tolling Type	Start Date	End Date	Days
Confinement	3/3/2014	6/29/2014	118

SUPERVISION VIOLATION PROCESSES

Level of Response : Full Hearing
Response Date : 10/13/2014
Violation Date : 9/5/2014
Violation(s) : Possession of Ammunition or Explosives

Level of Response : Full Hearing
Response Date : 10/10/2016
Violation Date : 6/22/2016
Violation(s) : Non Particip. Trt/Counseling
Other
Contact with Prohibited Class/Minors

VIOLATION(S) SPECIFIED:

Violation 1: Having contact with minors on several occasions, on or after 03/15/17.

Violation 2: Failing to complete SSOSA treatment as directed by the Court, on or after 03/29/17.

SUPPORTING EVIDENCE:

On 01/28/14, Kyle Bell was sentenced to a SSOSA sentence with life time Community Custody in Mason County Superior Court on cause #13-1-00292-2 for Rape of a Child in the Second Degree. Mr. Bell was instructed to abide by the following conditions: reside at a location under the living arrangements that been approved in advance by the CCO, and shall not change such arrangements/location without prior approval; not to possess or consume any mind or mood altering substance (alcohol or marijuana) unless lawfully prescribed; not to have contact with minors unless approved by CCO and treatment provider; and to complete SSOSA treatment as directed by the Court.

On 03/26/14, Mr. Bell signed his DOC Conditions, Instructions, and Requirements form. At this time, Mr. Bell was also instructed to abide by the above mentioned conditions set forth by the Court.

Violations 1, and 2 Combined for Clarity and Brevity:

On 03/21/17, my office received a call about Mr. Bell being back at Lindsey Frazier's residence with her children present. The caller said that Mr. Bell's truck was in the driveway as of 03/20/17. I was unable to respond to this on the day of the call due to being in training.

On 03/23/17, I was working late and decided to follow up on this day about Mr. Bell. I went to drive by Lindsey Fraizer's residence to see if Mr. Bell was there. Mr. Bell was not at her residence but had his truck parked outside a neighbor's residence. I stopped and contacted Mr. Bell. I asked him why he was over in this area. Mr. Bell claimed he was just helping the neighbor work on his plumbing. I asked to see Mr. Bell's cell phone as I wanted to check it for violations of his supervision. Mr. Bell claimed it wasn't on him and he didn't know where it was. Mr. Bell then immediately asked to go to the bathroom. I told him no and that I needed to check his phone because I believed he is back staying at Lindsey Fraizer's residence. I did a pat search of Mr. Bell's person and found his phone on him. I checked Mr. Bell's text messages and found several from Lindsey. Based on these text messages which only went back to 03/15/17 (the last time I saw Mr. Bell in the office) it was clear Mr. Bell was back in a relationship with Lindsey, has been at the residence, and was having contact with her children again. Mr. Bell claimed this wasn't true but he really wants to be their father and wants to be around them.

After staffing the case with my supervisor, Mr. Bell was not arrested at this time. Mr. Bell was directed not to have any contact with Lindsey and to report for a specific issue polygraph on 03/29/17 about having contact with Lindsey's children. After contacting Mr. Bell, I called Jeff Crinean (Mr. Bell's SSOSA provider) and informed him of what was going on with Mr. Bell. Jeff Crinean informed me he would have to review his contract with Mr. Bell but he believed this relationship with Lindsey Frazier would put Mr. Bell in violation of his treatment conditions as all of his romantic relationships must be preapproved. Jeff Crinean said he would get back to me once he reviewed everything.

On 03/29/17, I received a call from Jeff Crinean who informed me that Mr. Bell was found in violation of his SSOSA treatment contract and that Mr. Bell was discharged from treatment.

Later on 03/29/17, Mr. Bell reported as directed and submitted to a specific issue polygraph about with Pat Seaberg. Mr. Bell was found to be deceptive on having contact with Lindsey Fraizer's minor children. I spoke with Mr. Bell after his polygraph and he had no answers for his failed polygraph.

I staffed Mr. Bell's case with my supervisor (Matt Geobel) and the arrest of Mr. Bell was approved. Mr. Bell was transported to Mason County Jail without incident.

Mr. Bell discharge paperwork from treatment along with polygraph result and picture messages of the text messages between him and Lindsey Fraizer will be submitted to the Court at a later time as I am still waiting to get the paperwork from his provider and from the polygrapher.

ADJUSTMENT:

Mr. Bell started DOC supervision of his SSOSA sentence on 07/02/14. Less than two months after he was released from Mason County jail, Mr. Bell was in violation. Mr. Bell was found to be in possession of ammunition and was sanctioned to 15 days work crew. After this incident, Mr. Bell appeared to be on the right track. This was not the case after all.

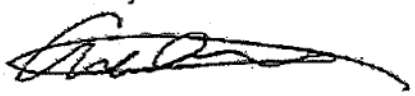
Eventually, it was found out that Mr. Bell had been in a romantic relationship with Lindsey Fraizer and had been living at her residence with her minor children for about a year. Mr. Bell was caught and arrested for these violations. The Court gave Mr. Bell a second chance by not revoking his sentence and allowing him to do his SSOSA treatment with another provider. Mr. Bell was released from custody on 11/28/16. Less than 5 months after his release, Mr. Bell gets caught again violating his sentencing as he has been at Lindsey's residence with the children present and not following his treatment contract, thus resulting in him being discharged from treatment. Mr. Bell continues to make very poor choices. Mr. Bell plays the victim and takes zero responsibility for his actions. Mr. Bell isn't suitable for the SOSSA program as part of this program is taking responsibility for your actions and learning from them; which he has failed to do.

RECOMMENDATION:

I recommend that Mr. Bell SSOSA sentence be revoked and that he be sent to prison to serve out the suspended sentence part of his SSOSA sentence.

I certify or declare under penalty of perjury of the laws of the state of Washington that the following statements are true and correct to the best of my knowledge and belief based on the information available to me as of the date this report is submitted.

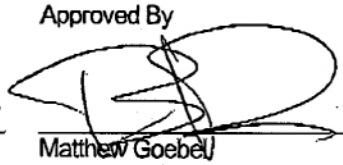
Submitted By:



03/30/17

Aaron Anderson DATE
COMMUNITY CORRECTIONS OFFICER
Lakewood Office
10918 Bridgeport Way Sw,Ms:Wt-07
Lakewood WA 98499
Telephone (253) 853-3647

Approved By



for 3/30/17

Matthew Goebel DATE
Community Corrections Supervisor

AJA / AJA / 3/30/2017

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: **ORIGINAL** - Court **COPY** - Prosecuting Attorney, Defense Attorney, File

APPENDIX D

Jail 48 Doc 59 MJ

RECEIVED & FILED
MAR - 3 2014
GINGER BROOKS, Clerk of the Superior Court of Mason Co. Wash.

16

Superior Court of Washington
County of Mason

State of Washington, Plaintiff, vs. KYLE T. W. BELL, Defendant. DOB: 122085 PCN: 941120296 SID:	No. 13-1-00292-2 14-9-190-7 **Felony Judgment and Sentence (FJS)** **[ ] Prison [ ] Sex Offense / Kidnapping of Minor** **[ ] RCW 9.94A.507 Confinement** **[ ] Special Sexual Offender Sentencing Alternative** **DV Clerk's Action Required, 2.1, 3.2, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7**

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the ~~(deputy)~~ prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
[X] guilty plea (date) January 28, 2014 :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	FA	06/07/14

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)
(If the crime is a drug offense, include the type of drug in the second column.)

[X] The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507**.

The jury returned a special verdict or the court made a special finding with regard to the following:
[ ] The offense was predatory as to Count _____. RCW 9.94A.836.
[ ] The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
[ ] The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
[ ] The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
[ ] Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
[ ] **Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

Crime	Cause Number	Court (county & state)	DV* Yes

*DV: Domestic Violence was pled and proved.
[ ] Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes

*DV: Domestic Violence was pled and proved.

[ ] Additional criminal history is attached in Appendix 2.2.

[ ] The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

[ ] The prior convictions listed as numbers(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

[ ] The prior convictions listed as numbers(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	0	XI	78 – 102 MONTHS	N/A	78 – 102 MONTHS	LIFE $50,000

* (V) VUCSA in a protected zone, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are [ ] attached [ ] as follows: _____.

2.4 [ ] Sex Offender Sentencing Alternative. The defendant is a sex offender who is eligible for the sex offender sentencing alternative and the court determines that the sentencing alternative is appropriate. RCW 9.94A.670.

The Prosecuting Attorney [ ] did [ ] did not recommend a sex offender sentencing alternative.

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

[X]The defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

_____.

[ ] The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

3.1 The defendant is ***guilty*** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The court ***dismisses*** Counts _____ in the charging document.

IV. Sentence and Order (SOSA)

It is ordered:

4.1 Confinement. RCW 9.94A.670. The court sentences the defendant to a term of confinement as follows:

(a) ***Confinement.*** A term of confinement in the custody of the county jail or Department of Corrections (DOC):

_____months on Count _____

(b) RCW 9.94A.507: The court sentences the defendant to the following term of confinement in the custody of the DOC:

Count	I	minimum term:	90 months	maximum term:	LIFE (Statutory Maximum)
~~Count~~	_____	~~minimum term:~~	_____	~~maximum term:~~	~~(Statutory Maximum)~~

(c) ***Suspension of Sentence.*** The court imposes Eight (8) months (up to 12 months of actual confinement or the maximum term of the standard range, whichever is less) and suspends the remainder for the duration of the special sex offender sentencing alternative program.

(d) ***Community Custody.*** The court places the defendant on community custody under the charge of DOC for the length of the suspended sentence, the length of the maximum term sentenced under RCW 9.94A.507, or three years, whichever is greater. The defendant shall comply with the community custody conditions in paragraph 4.2.

(e) ***Credit for Time Served:*** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(f) ***Review Hearing.*** The defendant's first annual progress review hearing is scheduled for 09-29-14 @ 9:00am (date). RCW 9.94A.670(7)(b).

(g) ***Termination Hearing.*** A treatment termination hearing is scheduled for to be scheduled at a later date (date) (three months prior to anticipated date for completion of treatment). RCW 9.94A.670(6).

(h) ***Revocation of Suspended Sentence.*** At any time during the period of community custody, if the defendant violates the conditions of the suspended sentence or the court finds that the defendant is failing to make satisfactory progress in treatment, the court may revoke the suspended sentence and order execution of the sentence, with credit for any confinement served during the period of community custody, RCW 9.94A.670.

4.2 Community Custody Conditions. The defendant shall comply with all rules, regulations and requirements of DOC and shall perform affirmative acts as required by DOC to confirm compliance with the orders of the court. The defendant shall abide by any additional conditions of community custody imposed by DOC under RCW 9.94A.704 and .706. While under supervision, the defendant shall not own, use, or possess firearms or ammunition. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence. The court orders that during the period of supervision the defendant shall:

(1) report as directed to a community corrections officer,
(2) pay all legal financial obligations,
(3) perform any court ordered community restitution (service) work,

(4) submit to electronic monitoring if imposed by DOC,
(5) undergo and successfully complete an [ ] outpatient [ ] inpatient sex offender treatment program with _____ for a period of _____. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change; and
(6) be subject to the following terms and conditions or other conditions that may be imposed by the court or DOC during community custody:

[ ] Serve _____ days/months of total confinement. Work Crew and Electronic Home Detention are not authorized. RCW 9.94A.725, .734.
[ ] Obtain and maintain employment: _____.
[ ] Perform _____ hours of community restitution (service) as approved by defendant's community corrections officer to be completed:
  [ ] as follows:_____.
  [ ] on a schedule established by the defendant's community corrections officer. RCW 9.94A.
[ ] Work release is authorized, if eligible and approved. RCW 9.94A.731.
[ ] Shall not reside within any community protection zone (inside 880 feet of the facilities and grounds of a public or private school). RCW 9.94A.030.
[X] Other conditions:

SEE CONDITIONS OF COMMUNITY PLACEMENT / CUSTODY – APPENDIX H _____
FILED HEREWITH AND INCORPORATED HEREIN BY THIS REFERENCE_____
_____.

Court-Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

The conditions of community custody shall begin immediately unless otherwise set forth here: _____
_____.

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE			
PCV	$ 500.00	Victim assessment	RCW 7.68.035
CRC	$ 809.00	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee $ 200.00 FRC	
		Witness costs $ _____ WFR	
		Sheriff service fees $ 609.00 SFR/SFS/SFW/WRF	
		Jury demand fee $ _____ JFR	
		Extradition costs $ _____ EXT	
		Other $ _____	
PUB	$ 600.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	$ 1,550.00	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	$ _____	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD NTF/SAD/SDI	$ _____	Drug enforcement fund of _____	RCW 9.94A.760
CLF	$ _____	Crime lab fee [ ] suspended due to indigency	RCW 43.43.690
	$ 100.00	DNA collection fee	RCW 43.43.7541
FPV	$ _____	Specialized forest products	RCW 76.48.140
	$ _____	Other fines or costs for: _____	
	$ Reserved	Restitution to: K.A.W.	
RTN/RJN	$ _____	Restitution to: _____	
	$ _____	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
	$ 3,559.00 Total		RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[ ] is scheduled for _____ (Date).

[ ] The defendant waives any right to be present at any restitution hearing (sign initials): _____.

[ ] ***Restitution*** Schedule attached.

[ ] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant	***Cause Number***	(Victim's name)	(Amount-$)
RJN			

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $25.00 per month commencing 60 days following release from total confinement RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

[ ] The court orders the defendant to pay costs of incarceration at the rate of $_____ per day (actual costs not to exceed $100 per day). (*JLR*) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

[ ] Electronic Monitoring Reimbursement. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

[ ] ***HIV Testing.*** The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

[X] The defendant shall not have contact with K.A.W. (DOB: 10-5-99) _____ (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party ~~until~~ for Life (which does not exceed the maximum statutory sentence).

[X] The defendant is excluded or prohibited from coming within 500 feet (distance) of: [X] K.A.W. (DOB: 10-5-99) (name of protected person(s))'s [X] home/ residence [X] work place [X] school [ ] (other location(s)) _____, or [ ] other location _____, ~~until~~ for Life (which does not exceed the maximum statutory sentence).

[X] A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 Other: _____.

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____.

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5 Firearms.

You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court of Washington State where you live, and by a federal court if required. **You must immediately surrender any concealed pistol license.** (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 [X] Sex and Kidnapping Offender Registration. RCW 9A.44.128, 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

If you are not a resident of Washington, but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who Are New Residents or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

i) before arriving at a school or institution of higher education to attend classes;

ii) before starting work at an institution of higher education; or

iii) after any termination of enrollment or employment at a school or institution of higher education.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 Other:_____.

Done in Open Court and in the presence of the defendant this date: 3/3/14.

Judge/Print Name:

Mason County Prosecuting Attorney
WSBA No. 31968
Print Name: Michael K. Dorcy

Attorney for Defendant
WSBA No. 15687
Print Name: Jeanette W. Booth

Defendant AMBER L. FINLAY
Print Name:

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: ⊗ Amber L. Finlay

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at (city) _____, (state) _____, on (date) _____.

_____ _____

Interpreter Print Name

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____.

Clerk of the Court of said county and state, by: _____, Deputy Clerk

VI. Identification of the Defendant

SID No. ____________________ (If no SID complete a separate Applicant card (form FD-258) for State Patrol)

Date of Birth 12-20-85

FBI No. ____________________

Local ID No. ____________________

PCN No. 941120296

Other DOC # 372002

Alias name, DOB: ____________________

Race:

[ ] Asian/Pacific Islander [ ] Black/African-American [X] Caucasian

[ ] Native American [ ] Other: ____________________

Ethnicity:

[ ] Hispanic

[X] Non-Hispanic

Sex:

[X] Male

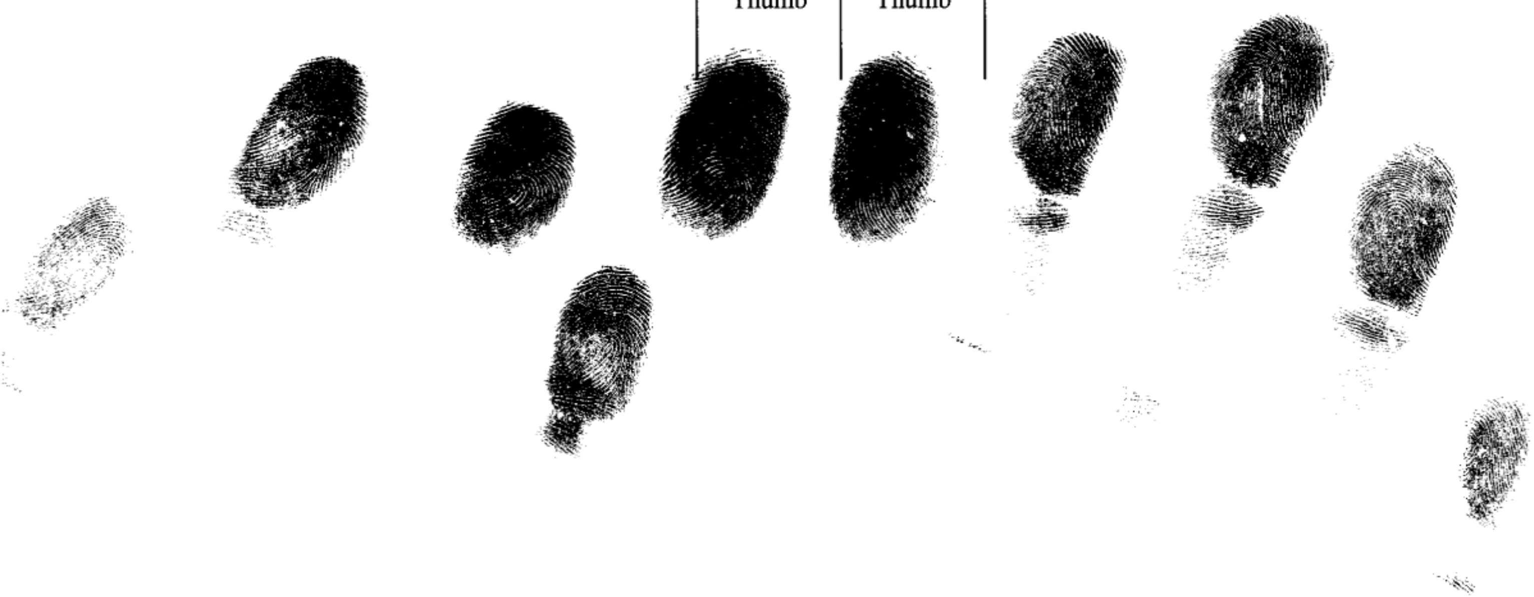
[ ] Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, [signature] Dated: 3-3-14

The defendant's signature: [signature]

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON]] Plaintiff] v.] **BELL, KYLE T. W.** Defendant]] DOC No. **372002**]	**Cause No.: 13-1-00292-2** **JUDGMENT AND SENTENCE (FELONY)** **APPENDIX H** **COMMUNITY PLACEMENT / CUSTODY**

The court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below.

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.507 committed on or after September 1, 2001 to include up to life community custody; for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.728 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.602 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

13-1-00292-2
ORAU 155
Order Authorizing
1713608

REC'D & FILED
MASON CO. WA.
2017 AUG 18 P 2:36
SHARON K. FOGO CO. CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY

State of Washington,

Plaintiff,

v.

Bell, Kyle T.W.,

Defendant.

No. 13-1-00292-2

ORDER AMENDING THE JUDGMENT AND SENTENCE CORRECTING A SCRIVENER'S ERROR

ORDER

THIS matter having come before the above entitled court and the undersigned Judge it is hereby Ordered, Adjudged and Decreed the judgment and sentence in the above referenced cause is AMENDED to change the date of the crime to June 7, 2013.

DATED this _____ day of August 2017.

Presented by:

Ronald E. Sergi WSBA# 19670
Deputy Public Defender

Approved as to form:

Michael K. Dorcy WSBA# 23644
Deputy Prosecuting Attorney

Amber Finlay
Superior Court Judge

155

Ronald E. Sergi
Deputy Public Defender
411 North Fifth Street
Shelton, Washington 98584
(360) 427-9670 x 774
(360 427-7757 fax

RUSSELL SELK LAW OFFICE

May 20, 2019 - 4:46 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	50522-3
Appellate Court Case Title:	State of Washington, Respondent v Kyle Thomas Whitney Bell, Appellant
Superior Court Case Number:	13-1-00292-2

The following documents have been uploaded:

- 505223_Petition_for_Review_20190520164434D2959484_4925.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Bellapt4r.pdf

A copy of the uploaded files will be sent to:

- timh@co.mason.wa.us
- timw@co.mason.wa.us

Comments:

Sender Name: Kathryn Selk - Email: KARSdroit@gmail.com
Address:
1037 NE 65TH ST
SEATTLE, WA, 98115-6655
Phone: 206-782-3353

Note: The Filing Id is 20190520164434D2959484