SUPREME COURT NO. 97591-4
COA NO. 78447-1-I
(cons. w/ 78506-1-I)

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRENT REAMER,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Bruce I. Weiss, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER

Brent Reamer asks the Supreme Court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Reamer requests review of the decision in State v. Brent Charles Reamer, Court of Appeals No. 78447-1-I (consolidated with No. 78506-1-I) (slip op. filed July 29, 2019), attached as appendix A.

C. ISSUE PRESENTED FOR REVIEW

Whether the community custody condition requiring petitioner to not associate with known drug users or sellers of illegal drugs is vague in violation of due process because it does not provide fair warning of proscribed conduct and exposes him to arbitrary enforcement?

D. STATEMENT OF THE CASE

Brent Reamer pleaded guilty to five counts of second degree burglary. CP[1] 81-102. Under a separate cause number, Reamer pleaded guilty to an additional five counts of second degree burglary. 2CP[2] 73-94. In both cases, the court imposed a prison-based Drug Offender Sentence Alternative consisting of 29.75 months in prison and 29.75 months on

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[1] "CP" refers to the clerk's papers designated in Court of Appeals No. 78447-1-I, Snohomish County Superior Court Cause No. 16-1-02471-31.
[2] "2CP" refers to the clerk's papers designated in Court of Appeals No. 78506-1-I, Snohomish County Superior Court Cause No. 17-1-01933-31.

community custody. CP 40; 2CP 43. As a condition of community custody, the court ordered "Do not associate with known drug users or sellers of illegal drugs." CP 49; 2CP 52.

Reamer raised various arguments on appeal, including a challenge to the "known drug users" condition as vague in violation of due process. The Court of Appeals affirmed this condition. Slip op. at 6-8.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. REVIEW IS WARRANTED TO DETERMINE WHETHER THE COMMUNITY CUSTODY CONDITION IS VAGUE, IN VIOLATION OF DUE PROCESS.

Due process demands that sentencing conditions not be so vague that those subject to them must guess at what they can or cannot do. Conditions also cannot be written in a manner that renders those subject to them vulnerable to arbitrary enforcement. The community custody condition prohibiting Reamer from associating "with known drug users or sellers of illegal drugs" fails both requirements. CP 49; 2CP 52.

Reamer seeks review of this issue under RAP 14.4(b)(3) as a significant question of constitutional law. Review is also appropriate under RAP 13.4(b)(4) because the same condition crops up in other drug-related cases and carries potential damaging effects on obtaining legitimate drug treatment. Under the text of the condition, a person on

community custody who wished to attend a Narcotics Anonymous meeting could be barred from doing so. Without narrowing the scope of the associations the condition prohibits, the condition could similarly prohibit association with those in group treatment for current and ongoing drug use. The vague condition's potential chilling effects on obtaining drug treatment present an important public issue that should be decided by the Washington Supreme Court under RAP 13.4(b)(4).

a. Community custody conditions are subject to vagueness challenge.

The due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of the Washington Constitution requires the State to provide citizens with fair warning of proscribed conduct. State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008). A community custody condition does not survive if it fails to define the forbidden conduct "'with sufficient definiteness that ordinary people can understand what conduct is proscribed'" or "'does not provide ascertainable standards of guilt to protect against arbitrary enforcement.'" Bahl, 164 Wn.2d at 752–53 (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)). Failure to satisfy either prong renders a condition unconstitutionally vague. State v. Irwin, 191 Wn. App. 644, 653, 364 P.3d 830 (2015).

b. The condition is unconstitutionally vague because it does not provide adequate notice of prohibited conduct and permits arbitrary enforcement.

In assessing the vagueness challenge to the "do not associate" condition, its constitutional dimension must be kept in mind. The First Amendment right to freedom of association protects a person's right to enter into and maintain human relationships. State v. Moultrie, 143 Wn. App. 387, 399 n. 21, 177 P.3d 776, review denied, 164 Wn.2d 1035, 197 P.3d 1185 (2008). When a community custody condition implicates First Amendment protections, "a vague standard can cause a chilling effect on the exercise of sensitive First Amendment freedoms." Bahl, 164 Wn.2d at 753. For this reason, a heightened level of clarity is demanded. Id.

Under the first vagueness prong, the condition requiring Reamer to not associate with "known drug users or sellers of illegal drugs" fails to provide sufficient notice as to what associations are disallowed. CP 49; 2CP 52.

First, the word "known" in the condition is vague because it does not specify *who* must know that a person is a user or seller of illegal substances. Must a person be known to Reamer as a drug user or seller of illegal drugs? Known to the CCO personally? Known to law enforcement generally? All possibilities could qualify as "known" users or sellers

under the language of the condition. Because it does not specify the identity of who must know a person is a user or seller of illegal drugs, the condition fails to provide sufficient notice of what is proscribed.

Second, the condition prohibiting association with "known" users or sellers does not contain any temporal limitation. As written, the condition does not limit the prohibition to current users or sellers. The language of the condition is broad enough to encompass association with those who previously abused or sold drugs but no longer do. It could constitute a violation to associate with any person who has ever used or sold an illegal drug, even only once, decades ago. Because this condition contains no temporal limitation, ordinary persons would not be able to distinguish with the requisite definiteness with whom they are permitted to associate. The temporal problems links to the identity problem described above. How is a person to know if someone is a past drug user or seller, especially if that activity occurred years in the past?

Third, the prohibition on associating with "drug users" is constitutionally infirm because this language is not limited to *users* of *illegal* drugs. Suppose a friend has a legal prescription for a drug from a doctor to treat depression. Suppose an acquaintance uses an over-the counter drug to help sleep at night. Are these people "drug users" and is Reamer prohibited from associating with them? How is a person of

ordinary intelligence to know when the language of the condition, as written, does not give the answer?

Fourth, the condition is intolerably vague because it prohibits association with sellers of "illegal drugs." In the age of recreational marijuana, it does not provide fair notice to write conditions in terms of "illegal drugs." In Washington, those over the age of 21 may legally possess up an ounce of useable marijuana, 16 ounces of marijuana infused products (72 ounces of marijuana-infused product in liquid form), or up to seven grams of marijuana concentrates. RCW 69.50.360(3); RCW 69.50.4013(3); RCW 69.50.4014. In Washington, marijuana possession within these limits does not qualify as an "illegal drug." Under federal law, however, marijuana remains an "illegal drug." 21 U.S.C. § 812 (listing "marihuana" as a Schedule I drug); 21 U.S.C. § 844(a) (making unlawful for any person to knowingly or intentionally possess a schedule I drug). The challenged condition, employing the term "illegal drugs," does not fairly notify Reamer whether he is permitted to associate with those who use or sell marijuana.

The contrast in federal and state law highlights the dilemma: how is a person of ordinary intelligence to know whether a person selling marijuana in the state of Washington is using or selling an "illegal" drug? The Washington Attorney General's Office has taken the position that

federal law does not preempt state law when it comes to legalizing marijuana.[3] The U.S. Attorney General does not it see it that way.[4] If legal professionals cannot agree, a person of ordinary intelligence cannot be expected to know who is right and, by extension, with whom he or she is prohibited from associating.

The condition also fails the second prong of the vagueness test because it gives rise to arbitrary enforcement. Drafting off the immediately preceding argument, who gets to decide whether marijuana is an illegal drug? The CCO is the person tasked with enforcing this condition. The CCO gets to decide. But given the conflict between state and federal law, the choice is arbitrary. More broadly, a creative CCO could interpret the condition in such a way that maximizes it effect, making Reamer's contact with any person who is known by someone to ever have used any drug or sold any "illegal" drug a violation even where the person is not currently using or selling.

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[3] See Brief of Attorney General As Intervenor at 38-45 filed in Downtown Cannabis Co. v. City of Fife, No. 90780-3 (arguing federal law does not preempt I-502, which decriminalized the possession of limited amounts of marijuana by persons 21 years or older), available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/90780-3%20Brief%20of%20 Attorney %20General%20as%20Intervenor.pdf (last visited Aug. 27, 2019).

[4] See Memorandum For All United States Attorneys, Jan. 4, 2018, available at https://www.justice.gov/opa/press-release/file/1022196/ download (last visited Jan. August 27, 2019).

The condition prohibiting association with known drug users or sellers of illegal drugs gives Reamer's CCO almost unfettered discretion to define known drug users and to define "illegal drugs" to include marijuana. A condition that leaves so much to the imagination is unconstitutionally vague because it gives too much discretion to the CCO to determine when a violation has occurred. See State v. Valencia, 169 Wn.2d 782, 794-95, 239 P.3d 1059 (2010) (striking down "paraphernalia" prohibition because it gave too much leeway to inventive probation officers). This condition "does not provide ascertainable standards for enforcement." Bahl, 164 Wn.2d at 758.

The Court of Appeals in In re Pers. Restraint of Brettell, 6 Wn. App. 2d 161, 169-72, 430 P.3d 677 (2018) held this condition was not vague. A motion for discretionary review on the issue is currently pending in the Supreme Court. The Court of Appeals in Reamer's case relied on Brettell in rejecting Reamer's challenge. Slip op. at 6-8.

Brettell is wrongly decided. The Brettell court thought it obvious that the offender is the one who must know that a person is a user or seller of illegal drugs. Brettell, 6 Wn. App. 2d. at 169-70. It failed to consider City of Spokane v. Neff, 152 Wn.2d 85, 89-91, 93 P.3d 158 (2004), which struck down as vague an anti-prostitution ordinance because it did not define the term "known prostitute."

The Neff court explained that a definition for "known prostitute" was essential to save the term from vagueness: "Undefined, the term allows an arresting officer to identify a 'known prostitute' as someone with prior convictions, prior arrests, or merely prior acts of loitering in an area where prostitution occurs." Id. at 89. Other anti-prostitution ordinances that did define "known prostitute" survived challenges. For instance, in City of Seattle v. Jones, 79 Wn.2d 626, 488 P.2d 750 (1971), and City of Seattle v. Slack, 113 Wn.2d 850, 784 P.2d 494 (1989), the ordinance at issue defined "known prostitute" as someone who had been arrested or convicted of violating any prostitution-related ordinance within the past year. Neff, 152 Wn.2d at 89. The Neff court explained:

> First, the Seattle ordinance requires an arresting officer's knowledge of a prior conviction, which protects against the possibility that an officer would improperly make a legal determination that a person is a prostitute based merely on past police contacts or charges against the individual that were dismissed due to lack of evidence, lack of probable cause, mistaken identity, not guilty findings, etc. Second, the Seattle ordinance requires the suspect to have been convicted of prostitution-related activity within the prior 12 months. The 12 month limit allows for the possibility of reform and provides a clear time frame in which past conduct may be used to indicate a present intent. Altogether, the limitations of the Seattle ordinance establish standards that permit police to enforce the law in a nonarbitrary, nondiscriminatory manner. In contrast, the Spokane ordinance simply does not limit police discretion in any way when it comes to determination of who is a "known prostitute." Id. at 90.

For similar reasons, the prohibition on associating with "known users or sellers of illegal drugs" is not sufficiently definite and leads to arbitrary enforcement. Although the Brettell court presumed it is the person on community custody who must know who qualifies as a user or seller, the condition does not say so. It is just as possible that a person known to a community corrections officer, to law enforcement more generally, or even a person who happens to be in an area of high drug use would qualify as a "known user or seller of illegal drugs." Because the condition does not specify who or what must know a person is a user of illegal drugs, the condition fails to provide sufficient notice and is susceptible to being employed in a completely arbitrary manner, just like "known prostitute" could have in Neff.

The Court of Appeals in Reamer's case, in dispensing with Neff, commented "the difference between an ordinance of general applicability and a community custody condition of specific applicability is not to be overlooked." Slip op. at 8. The Supreme Court, however, has taken the vagueness standard applicable to ordinances and applied that same standard to community custody conditions. Bahl, 164 Wn.2d at 752-53 (citing City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)). The Court of Appeals' asserted distinction fails.

Further, statutes are presumed constitutional while community custody conditions are not. Valencia, 169 Wn.2d 782, 792-93. Yet Neff struck down the ordinance as unconstitutionally vague despite the presumption. Applying the reasoning of Neff to the community custody condition here yields the same result because community custody conditions enjoy no such presumption. It is easier to strike down community custody conditions on vagueness grounds than it is to strike down statutes on vagueness grounds.

Brettell relied on United States v. Vega, 545 F.3d 743 (9th Cir. 2008), and United States v. Soltero, 510 F.3d 858 (9th Cir. 2007), to show that "known" is not a vague term. Brettell, 6 Wn. App. 2d. at 170. The conditions at issue in those cases prohibited association with a "criminal street gang," and did not even employ the term "known." Vega, 545 F.3d at 749; Soltero, 510 F.3d at 866. While the Vega court indicated that including the term "known" would have made the condition clearer, 545 F.3d at 749-50, it does not do so with respect to the community custody condition here for several reasons.

"Criminal street gang" was a defined term under federal statutes and referred to an identifiable group of individuals. Soltero, 510 F.3d at 866 & n.8. Thus, the "court [wa]s entitled to presume that Soltero—who has admitted to being a member of [the Dehli gang]—is familiar with the

Delhi gang's members, its places of gathering, and its paraphernalia." Id. at 866; see also Vega, 545 U.S. at 749-50 ("entitled to presume Vega was familiar with the Harpys street gang: there was ample undisputed evidence in the record that Vega had been a Harpys member since at least 1995").

Unlike members of "criminal street gangs" or "known members" of such gangs, "known users and sellers of illegal drugs" are not all part of some identifiable organization. Unlike Soltero and Vega, there is no way that the person on supervision or anyone else would be able to accurately identify drug users and sellers, rendering the Brettell court's reliance on Soltero and Vega inapt. And, as explained in Neff, a definition of the group in question matters; in both Soltero and Vega a federal statute provided the necessary definition. With respect to Reamer's community custody condition, no definition is provided. The absence of the considerations that were present in Vega and Soltero underscores the vagueness of the prohibition on associating with known users or sellers of illegal drugs in Reamer's case. There is simply nothing to indicate who must know a person qualifies as a "known" drug user or seller or how Reamer would know. The condition is indefinite and arbitrary.

The Brettell court also rejected the claim that "known user or seller" was vague in part because it contains no temporal limitation by relying on selected dictionary definitions of the terms "user" and "seller,"

concluding they "refer [only] to ongoing current activity." Brettell, 6 Wn. App. 2d. at 170. Neff runs contrary to this conclusion.

In Neff, the anti-prostitution ordinance provided "no standards for locating the line between who is a 'known prostitute' and who is not," given that the term "may include anyone from a person with a recent conviction for prostitution to a person who is simply loitering on a street where prostitution occurs. The ordinance invites an inordinate amount of police discretion due to the lack of guidelines." Id. at 91.

The same is true of the condition at issue here. It could qualify as a violation to associate with a person who is known to have been a user or seller of illegal drugs but who has not used or sold drugs since. It could also be a violation to associate with any person who has ever used an illegal drug, even only once. Because the condition contains no temporal limitation, ordinary person would not be able to distinguish with whom they are permitted to associate, and the condition could be enforced in an arbitrary manner due to this lack of guidance. Moreover, restrictions implicating First Amendment rights "must be clear and must be reasonably necessary to accomplish essential state needs and public order." Bahl, 164 Wn.2d at 753. The prohibition on free association with anyone known to have ever used or sold illegal drugs is not narrowly tailored under this standard.

Regarding the term "illegal drugs," the Brettell court stated, "The complication of different state and federal drug enforcement policies does not excuse a person from knowing that for marijuana, it is still 'illegal.' The mere fact that only the federal government prohibits recreational marijuana use and possession does not make the term 'illegal drugs' vague as applied to marijuana." Brettell, 6 Wn. App. 2d. at 171. Brettell also relied on widespread media coverage that indicates marijuana remains illegal under federal law. Id. at n.29. But the fact that a drug may be illegal under one set of laws and legal under another only makes the term "illegal drugs" vague in and of itself. Brettell does not explain how a prohibition on associating with any user of an illegal drug would provide definite notice that marijuana users were off limits where the prohibition is imposed by a state court in a state where marijuana is legal.

F. CONCLUSION

For the reasons stated, Reamer requests that this Court grant review.

DATED this 26th day of August 2019.

Respectfully submitted,

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APPENDIX A

FILED
7/29/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. BRENT CHARLES REAMER, Appellant.	DIVISION ONE No. 78447-1-I (consol. with No. 78506-1-I) UNPUBLISHED OPINION FILED: July 29, 2019

DWYER, J. — Following his conviction for burglary in the second degree, Brent Reamer appeals, raising constitutional challenges to two community custody conditions and additional challenges to certain legal financial obligations imposed by the sentencing court. We affirm one of the challenged community custody conditions, but remand to the trial court to strike or clarify the other, as well as to strike the challenged legal financial obligations.

I

In late 2016, Brent Reamer committed a series of burglaries at an array of businesses in Lynnwood and Mill Creek. In two separate criminal actions, he was charged with, and pled guilty to, a total of 10 counts of burglary in the second degree. Reamer admitted at his sentencing hearing that his criminal behavior coincided with the use of heroin and requested that a Drug Offender

Sentencing Alternative (DOSA) be imposed. The trial court imposed a prison-based DOSA pursuant to which Reamer would spend a total of 29.75 months in prison, followed by 29.75 months of community custody.

In addition to standard conditions, the court imposed the following additional conditions as part of Reamer's community custody:

1. Obey all municipal, county, state, tribal and federal laws.
2. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
3. Do not possess or consume controlled substances.
4. Do not associate with known users or sellers of illegal drugs.
5. Do not possess drug paraphernalia.
6. Stay out of drug areas, as defined in writing by the supervising Community Corrections Officer.
7. Participate in offense related counseling programs, to include substance abuse/chemical dependency treatment and Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
8. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.
9. Participate in all urinalysis, breath tests, and compliance polygraph examinations as directed by the supervising Community Corrections Officer.
10. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
11. You must consent to DOC [Department of Corrections] home visits to monitor your compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of the residence in which you live or have exclusive/joint control/access.
12. 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.

At the sentencing hearing, neither the State nor Reamer objected to any of these conditions. The court's sentencing orders under both causes also imposed upon Reamer a $200 criminal filing fee, a $100 DNA collection fee, and costs related to future community custody supervision to be determined by the Department of Corrections, as well as interest on these obligations.

Reamer now appeals. He contends that two of the additional conditions applicable to the community custody portion of his sentence are unconstitutionally vague and that the aforementioned legal financial obligations (LFOs) should be stricken. Because the State concedes that one of the additional community custody conditions is unconstitutionally vague, and because changes in the law mandate the striking of certain of the LFOs, we reverse portions of the sentence.

II

Reamer first challenges the fourth additional community custody condition listed above—that he "not associate with known users or sellers of illegal drugs." The condition is unconstitutionally vague, he asserts, both because it impedes on his First Amendment right to freedom of association and because it does not sufficiently define the class of people that he must avoid, rendering it vague in violation of his right of due process. We disagree with both contentions.

A defendant may assert a constitutional challenge to a community custody condition for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744-45, 193 P.3d 678 (2008). Community custody conditions are reviewed under an abuse of

discretion standard and may be reversed only if they are manifestly unreasonable. State v. Hai Minh Nguyen, 191 Wn.2d 671, 678, 425 P.3d 847 (2018). However, the imposition of an unconstitutional condition is always manifestly unreasonable. State v. Sanchez Valencia, 169 Wn.2d 782, 791-92, 239 P.3d 1059 (2010). The requirement that Reamer not associate with known users or sellers of drugs is both constitutional and eminently reasonable.

A

We begin by addressing Reamer's First Amendment challenge, noting that limitations on fundamental rights are permissible provided that they are imposed sensitively. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). An offender's freedom of association may be restricted if reasonably necessary to accomplish the essential needs of the state and public order. Riley, 121 Wn.2d at 37-38. In State v. Hearn, 131 Wn. App. 601, 128 P.3d 139 (2006), a defendant argued that a community custody condition demanding that she refrain from associating with known drug offenders violated her freedom of association. Division Three affirmed the imposition of the challenged community custody condition, noting that "[r]ecurring illegal drug use is a problem that logically can be discouraged by limiting contact with other known drug offenders." Hearn, 131 Wn. App. at 609.

Similarly, the sentencing court in this case found, based upon Brent Reamer's own admissions, that Reamer suffered from a chemical dependency condition that contributed to his criminal behavior:

> THE COURT: . . . I mean, when you're using, you're out stealing, and that's very clear; right?

MR. REAMER: Yes.

THE COURT: . . . And I'd say that despite your record and your number of convictions I'm pretty confident what I have is somebody who is a drug addict who commits crimes when they're on drugs, based on your two spurts of time and based on what you steal and how you steal it. So I'm pretty confident that if we can keep you clean and sober that you will not commit crimes.

MR. REAMER: Definitely.

Further, Reamer admitted that this dependency was furthered through his association with other users, and that he viewed disassociation from these users as a critical step toward recovery:

THE COURT: Okay. So do you hang out with people who use?

MR. REAMER: No, not anymore.

THE COURT: When did you stop doing that? Your attorney doesn't know. You know.

MR. REAMER: It had to have been about a year ago.

THE COURT: Why did you do that?

MR. REAMER: I went on Suboxin to get off heroin. And, then, after that, I deleted my Facebook and all that stuff to make sure that people couldn't contact me and I couldn't contact them.

THE COURT: Why did you decide to do that?

MR. REAMER: To protect myself so I don't get back on heroin.

The essential needs of the state and public order include the prevention of burglaries. Reamer's own statements make clear that his commission of burglaries stemmed from his drug abuse, and that such abuse came about, at

least in part, as a result of his association with others who used drugs. Thus, the court acted within its discretion in limiting Reamer's freedom of association.

B

The guaranty of due process, contained in the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, precludes vague laws. State v. Irwin, 191 Wn. App. 644, 652, 364 P.3d 830 (2015). Due process requires that citizens have fair warning of conduct that is proscribed. City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). A statute is unconstitutionally vague if (1) it does not define the criminal offense with sufficient definiteness that an ordinary person can understand what conduct is proscribed, or (2) does not provide ascertainable standards of guilt to protect against arbitrary enforcement. Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983); Bahl, 164 Wn.2d at 752-53.

If persons of ordinary intelligence are able to understand what the law proscribes, notwithstanding some possible areas of disagreement, the law is sufficiently definite. Bahl, 164 Wn.2d at 754. A community custody condition is not unconstitutionally vague simply because a person cannot predict with complete certainty the exact point at which his or her actions would be classified as prohibited conduct. Sanchez Valencia, 169 Wn.2d at 793.

Very recently, we considered and rejected the argument that Reamer makes regarding the alleged vagueness of the same community custody

condition. In re Pers. Restraint of Brettell, 6 Wn. App. 2d 161, 430 P.3d 677 (2018). In that decision, we stated:

> Brettell claims that the word "known" makes the condition vague because it does not state who must "know" that a particular person used or sold illegal drugs before he must avoid that person. Brettell does not cite any cases where "known," when used *in a community custody condition*, refers to the knowledge of anyone other than the offender.
>
> In United States v. Vega, [545 F.3d 743, 746 (9th Cir. 2008),] the Ninth Circuit rejected a vagueness challenge to a condition for supervised release that stated "'defendant shall not associate with any member of any criminal street gang.'" Consistent with what the court described as "well-established jurisprudence," it presumed that the condition prohibited the defendant's knowing misconduct. The Vega court noted that while constitutional, the condition would be clearer if it included the term "known." This would have limited the condition's reach to people known by the defendant to be gang members. [545 F.3d at 749-50.] Brettell does not present legal authority contrary to Vega or otherwise show how the term "known" itself makes the condition vague.
>
> Brettell also asserts that the condition is unclear because the term "users and sellers" might refer to people's actions in the distant past and/or those they are no longer engaged in. A court interprets an undefined term in a community custody condition based on its plain meaning, which includes the dictionary definition." The definition of "user" is "one that uses; specif[ically] : a person who uses alcoholic beverages or narcotics." The definition of "use" is "the act or practice of using something." The definition of "seller" is "one that offers for sale." Thus, the terms "users or sellers" refer to ongoing current activity. Like the terms "using, possessing, or dealing" found constitutional in State v. Llamas-Villa, [67 Wn. App. 448, 456, 836 P.2d 239 (1992),] they effectively notify a person of ordinary intelligence what behavior is prohibited.
>
> Brettell also contends that the term "illegal drugs" reinforces the vagueness of "known." With some states' decriminalization of "recreational marijuana, it does not provide fair notice to write conditions in terms of 'illegal drugs.'" Washington no longer criminalizes the use and possession of limited quantities of marijuana. But this conduct remains a federal offense, governed by the Controlled Substances Act (CSA). The CSA preempts state

> law, even for marijuana wholly grown and distributed intrastate. The complication of different state and federal drug enforcement policies does not excuse a person from knowing that for marijuana, it is still "illegal." The mere fact that only the federal government prohibits recreational marijuana use and possession does not make the term "illegal drugs" vague as applied to marijuana.

Brettell, 6 Wn. App. 2d at 169-171 (emphasis added) (footnotes omitted).

Perhaps understandably, given that our reasoning in Brettell eviscerates the viability of Reamer's vagueness challenge, Reamer contends that Brettell was wrongly decided. In support of this, he states that the Brettell court did not consider the precedent of City of Spokane v. Neff, 152 Wn.2d 85, 93 P.3d 158 (2004). In that case, our Supreme Court held that a municipal anti-prostitution ordinance was unconstitutionally vague owing to its omission of a definition for the term "known prostitute." Neff, 152 Wn.2d at 91.

However, the difference between an ordinance of general applicability and a community custody condition of specific applicability is not to be overlooked. Making the exact same challenge to the same community condition as that imposed in Brettell, Reamer, like Brettell, fails to "cite to any cases where 'known,' when used in a community custody condition, refers to the knowledge of anyone other than the offender." Brettell, 6 Wn. App. 2d at 169. We consider Brettell well-decided and dispositive on this issue.

III

Reamer also challenges as unconstitutionally vague the community custody condition requiring that he "stay out of drug areas, as defined in writing by the supervising Community Corrections Officer." The State concedes that this condition is unconstitutional in light of Irwin, 191 Wn. App. at 655, in which we

held that a community custody condition mandating the defendant absent himself from areas where minor "'children are known to congregate'" was unconstitutionally vague. We accept the State's concession. On remand, the condition should be either clarified or stricken from the sentencing order.

IV

Finally, Reamer contests the imposition of several LFOs. These obligations include both $200 criminal filing fees, a $100 DNA collection fee, future expenses related to his community supervision, and interest on the nonrestitution portion of his LFOs. Recent changes in the law have relieved the burden of such LFOs from indigent defendants, see, e.g., RCW 10.01.160(3); RCW 36.18.020(2)(h); or in the case of DNA collection, eliminated them where they are superfluous, RCW 43.43.7541. Reamer is an indigent defendant.

The statute in effect at the time of Reamer's sentencing, former RCW 36.18.020(2)(h), provided for the mandatory assessment of a $200 filing fee upon a criminal's conviction or plea of guilty. This was amended effective June 7, 2018, to exclude indigent defendants from its scope. The amendment applies prospectively to defendants with appeals pending at the time of the statute's enactment. State v. Ramirez, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). Reamer asks that we remand to the trial court for it to strike each of the filing fee cost assessments. The State concedes that this is necessary.

Reamer next challenges the trial court's decision to impose a $100 DNA collection fee under *both* of his cause numbers. The fee should be stricken, Reamer avers, because only one such fee can be imposed. A legislative

amendment to RCW 43.43.7541, effective June 7, 2018, requires imposition of the fee "unless the state has previously collected the offender's DNA as a result of a prior conviction." LAWS OF 2018, ch. 269, § 18. Citing to Ramirez, Reamer further notes that the amendment applies to defendants with appeals pending at the time of enactment. 191 Wn.2d at 747. The State acknowledges the error in light of the legislative purpose of avoiding redundant DNA collection fees. It concedes that the second fee payment requirement should be eliminated on remand.

Reamer next contends that the requirement that he pay the costs of community custody supervision be stricken. The State opposes this request.

The trial court imposed, as a condition of community custody, the requirement that Reamer "pay supervision fees as determined by DOC." RCW 9.94A.703(2) authorizes the court to waive these fees, indicating that they, too, are a discretionary legal financial obligation of the type that may no longer be imposed on indigent defendants pursuant to the most recent iteration of RCW 10.01.160(3). Division Two endorsed this view in State v. Lundstrom, 6 Wn. App. 2d 388, 396 n. 3, 429 P.3d 1116 (2018), review denied, 193 Wn.2d 1007 (2019). We find that court's analysis persuasive. Accordingly, we direct that the trial court strike this payment obligation on remand.

Finally, Reamer contends that the statement in the judgment and sentence imposing interest on his nonrestitution LFOs is not authorized by statute. This is correct in light of amendments to RCW 10.82.090(1), which now states that "[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal

financial obligations." Reamer asks that, on remand, the judgment and sentence be modified to reflect that no interest shall accrue on such obligations after June 7, 2018.

The State counters that, because the statute specifically provides that interest will not accrue after that date, the relief Reamer requests is "built into the statute," and that to direct the trial court to amend the judgment and sentence is superfluous. However, the Supreme Court adopted a different view in State v. Catling, 193 Wn.2d 252, 438 P.3d 1174 (2019). Therein, the Supreme Court noted that the new version of the statute "also eliminated interest accrual on all LFOs except restitution" and directed the trial court to revise the judgment and sentence at issue to "eliminate such interest on any qualifying remaining LFOs." Catling, 193 Wn.2d at 259 n.5. Thus, on remand, we direct that Reamer's sentencing court do the same.

Affirmed in part and reversed in part.

WE CONCUR:

NIELSEN, BROMAN & KOCH P.L.L.C.

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