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COA NO. 69402-2-I

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

REC'D
JUL 22 2013
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

ROBERT RACHELS,

Appellant.

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

The Honorable Palmer Robinson, Judge

REPLY BRIEF OF APPELLANT

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STATE OF WASHINGTON
COURT OF APPEALS DIVISION ONE

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
THE DEPARTMENT OF CORRECTIONS LACKED AUTHORITY TO UNILATERALLY IMPOSE A PROBATIONARY CONDITION AND THE COURT UNLAWFULLY DELEGATED ITS AUTHORITY IN ALLOWING THE DEPARTMENT TO DO SO.	1
B. <u>CONCLUSION</u>	2

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. Playter</u> , 12 Wn. App. 388, 531 P.2d 831 (1974).....	2
<u>State v. Wilkerson</u> , 107 Wn. App. 748, 31 P.3d 1194 (2001).....	2
<u>State v. Williams</u> , 97 Wn. App. 257, 983 P.2d 687 (1999), <u>review denied</u> , 140 Wn.2d 1006, 999 P.2d 1261 (2000)	2

A. ARGUMENT IN REPLY

THE DEPARTMENT OF CORRECTIONS LACKED AUTHORITY TO UNILATERALLY IMPOSE A PROBATIONARY CONDITION AND THE COURT UNLAWFULLY DELEGATED ITS AUTHORITY IN ALLOWING THE DEPARTMENT TO DO SO.

In the opening brief, Rachels argued the court unlawfully delegated its sentencing authority to the Department of Corrections (DOC). Brief of Appellant (BOA) at 1, 5-10. The State claims the DOC community corrections officer (CCO) properly imposed a restriction on where Rachels could live because the court, as part of the judgment and sentence, prohibited Rachels from having contact or being in close proximity to where minors congregate. Brief of Respondent (BOR) at 1, 9. According to the State, the DOC was merely enforcing the probation conditions imposed by the court. BOR at 6.

The problem with the State's argument is that the CCO did not deny approval of Rachels's residence on the basis that it was near a middle or high school that minor children attended, but rather because it was a block away from a Seattle University female dormitory, where adult women lived. RP 32. Rachels's motion was directed at the CCO's decision to not approve his residence on the basis that it was close to the Seattle University dormitory. CP 25-41. The CCO did not deny approval of the residence on the basis that it was located in proximity to a middle or

high school where minors went. RP 32; CP 26-27. The CCO did not rely on the court's restriction on contact with minors to deny approval of Rachels's residence. Furthermore, neither the judgment and sentence nor the "standard conditions" of supervision referenced in the judgment and sentence contain a pre-approved residence requirement. CP 18, 20, 38. The CCO therefore did not enforce a probation condition imposed by the court.

The State contends, in the alternative, that the court ratified the CCO's residence restriction, thereby making it lawful. BOR at 10-12. Rachels stands by his argument presented in the opening brief that the court did not ratify the CCO's restriction. BOA at 8-10 (citing State v. Playter, 12 Wn. App. 388, 390-91, 531 P.2d 831 (1974); State v. Wilkerson, 107 Wn. App. 748, 755-56, 31 P.3d 1194 (2001); State v. Williams, 97 Wn. App. 257, 260-61, 983 P.2d 687 (1999), review denied, 140 Wn.2d 1006, 999 P.2d 1261 (2000)).

B. CONCLUSION

For the reasons set forth above and in the opening brief, Rachels requests reversal of the order denying his motion to clarify and remand for proceedings consistent with this Court's opinion.

DATED this 21st day of July 2013

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 69402-2-1
)	
ROBERT RACHELS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 22ND DAY OF JULY, 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ROBERT RACHELS
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SIGNED IN SEATTLE WASHINGTON, THIS 22ND DAY OF JULY, 2013.

X *Patrick Mayovsky*