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OCT 18 2013

King County Prosecutor
Appellate Unit

NO. 70146-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

ANDRE WATTS,

Appellant.

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

The Honorable Lori K. Smith, Judge

BRIEF OF APPELLANT

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10/18/13 10:22

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A. ASSIGNMENT OF ERROR

The trial court erred in entering an order and community custody condition limiting the appellant's contact with minors, including his own children. CP 50, 56.

Issues Pertaining to Assignment of Error

1. Where the crime of conviction involved an adult, did the trial court lack authority to enter a no-contact order limiting the appellant's contact with minors, including his biological children, as well as an identical community custody condition?

2. Do the order and condition violate the appellant's fundamental right to parent?

B. STATEMENT OF THE CASE

The State charged appellant Andre Watts with two counts of first degree incest, alleging he had a sexual relationship with his daughter, T.D., whom he met when she was 17 years old. CP 1-8. Watts pled guilty to a single count occurring during a four-year date range beginning on the date T.D. turned 18. CP 9-36, 46.

Watts filed a pre-sentence report outlining his plan to reside with his fiancée – who was pregnant with his child at the time of sentencing – and the fiancée's two other children upon release. CP 37-45. Watts also has four other children and two grandchildren under 18 he wished to have

contact with. CP 39. Watts argued there was no nexus between the crime of conviction, committed against an adult woman, and a provision limiting contact with all minors. CP 21, 39, 46; see also RP 8-9 (arguing lack of legal nexus to impose an order prohibiting or limiting contact with minors).

The court sentenced Watts to a standard-range term of incarceration and 36 months of community custody. CP 47, 49. The court entered a no-contact order with T.D., which Watts has not challenged. CP 50.

The court also entered an additional no-contact order as follows:

4.6 **NO CONTACT:** For the maximum term of 10 years, defendant shall have no contact with: . . .

[x] Any minors without supervision of a responsible adult who has knowledge of this conviction.

CP 50. Below this preprinted language, the following provision is handwritten:

Defendant may have supervised contact with his biological children unless sex offender treatment provider concludes such contact is not in the best interest of defendant's treatment. Defendant may reside in a residence where minors live if an adult who had knowledge of this conviction resides there also but the defendant may not be alone with minors in that residence at any time.

CP 50. The court also entered a community custody condition referencing the no-contact provision in the main body of the judgment and sentence.

CP 56. The court explained it was entering the no-contact provisions “as the State proposes.” RP 12.

Watts timely appeals. CP 59-60.

C. ARGUMENT

THE COURT LACKED AUTHORITY TO IMPOSE AN ORDER AND CONDITION THAT ARE NOT DIRECTLY RELATED TO THE CRIME AND VIOLATE THE APPELLANT’S FUNDAMENTAL RIGHT TO PARENT.

A trial court may only impose a statutorily authorized sentence. State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). RCW 9.94A.505(8) allows a sentencing court to “impose and enforce crime-related prohibitions and affirmative conditions” as provided in the Sentencing Reform Act. Under RCW 9.94A.030(10), a “[c]rime-related prohibition” means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted”

A no-contact order as to a “class” of individuals must be “directly related” to the crime of conviction. State v. Warren, 165 Wn.2d 17, 32-33, 195 P.3d 940 (2008); see also State v. Riles, 135 Wn.2d 326, 349, 957 P.2d 655 (1998) (provision ordering no-contact with minors stricken because it was not related to rape of a 19-year-old woman), abrogated on other grounds, State v. Sanchez Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010).

RCW 9.94A.703(3)(f) authorizes a sentencing court to impose a community custody condition ordering compliance “with any crime-related prohibitions.” A “crime-related” community custody prohibition must be supported by evidence showing the factual relationship between such prohibition and the crime being punished. State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989).

This Court reviews sentencing conditions for abuse of discretion. State v. Bahl, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). A court abuses its discretion in imposing a crime-related prohibition if it applies an incorrect legal standard. State v. Lord, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007)). A sentencing court also abuses its discretion when it violates a defendant’s constitutional right. Sanchez Valencia, 169 Wn.2d at 791; State v. Iniguez, 167 Wn.2d 273, 280, 217 P.3d 768 (2009). There is no presumption favoring the constitutionality of sentencing conditions. Sanchez Valencia, 169 Wn.2d at 792.

As in Riles, the offense that Watts admitted to did not involve a minor child. CP 21, 39, 46. That complainant, T.D., is the subject of a valid and appropriate no-contact order. CP 50. But the provision prohibiting contact with all minors, including Watts’s own children, was not directly related to the circumstances of this crime. Accordingly, the no-contact order and identical community custody condition should be

removed from the judgment and sentence. Riles, 135 Wn.2d at 349 (ordering provision to be stricken).

The challenged order and condition also violate Watts's constitutional rights. A parent has a fundamental right to raise his children without state interference. U.S. Const. amend 14; In re Custody of Smith, 137 Wn.2d 1, 13, 15, 969 P.2d 21 (1998), aff'd sub nom. Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). State interference with a fundamental right is subject to strict scrutiny. In re Parentage of C.A.M.A., 154 Wn.2d 52, 60-61, 109 P.3d 405 (2005). In other words, any infringement must be narrowly tailored to serve a compelling interest. Id. at 61. As a result, a sentencing condition that interferes with a fundamental right must be "sensitively imposed," with "no reasonable alternative way to achieve the State's interest." Warren, 165 Wn.2d at 32; accord, In re Rainey, 168 Wn.2d 367, 377, 229 P.3d 686 (2010).

Assuming the condition were somehow permitted under the SRA, the court did not find, and there is no indication in the record, that the order and condition were narrowly tailored to interfere minimally with Watts's right to parent his children. Warren, 165 Wn.2d at 32. As discussed above, however, Watts maintains the order and condition should be removed altogether, as the court lacked statutory authority to impose them.

D. CONCLUSION

Because the trial court acted without statutory authority, this Court should remand for removal of no-contact order and community custody condition limiting contact with minors including Watts's minor children.

DATED this 18TH day of October, 2013.

Respectfully submitted,

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v.)	COA NO. 70146-1-I
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ANDRE WATTS,)	
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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 18TH DAY OF OCTOBER 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ANDRE WATTS
DOC NO. 971004
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
LITTLE ROCK, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 18TH DAY OF OCTOBER 2013.

x *Patrick Mayovsky*

2013 OCT 19 11:14:22