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DIVISION III

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STATE OF WASHINGTON NO. 40575-0-II

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

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STATE OF WASHINGTON,

Respondent,

v.

RODNEY ERDLE,

Appellant.

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

The Honorable John F. Nichols, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant was denied effective assistance of counsel because his counsel failed to request a jury instruction on a lesser included offense after introducing evidence appellant committed only the lesser offense

2. Appellant's sentencing condition that he not have contact with minors under the age of eighteen, as applied to appellant's two minor sons, unduly infringes on his fundamental parenting rights.

Issues Pertinent to Assignment of Error

1. Where appellant denied having sexual contact with the complaining witnesses but admitted touching them, and where evidence at trial demonstrated appellant was guilty of fourth degree assault, was his counsel ineffective for failing to propose a jury instruction on the lesser included offense of fourth degree assault?

2. Did the trial court's imposition of a sentencing condition prohibiting appellant from contact with minors under the age of eighteen violate his fundamental right to parent his children where there was no indication appellant posed a danger to his children and where the condition, as applied to his children, bore no reasonable relationship to the circumstances of his crime?

B. STATEMENT OF THE CASE

1. Procedural Facts

After a jury trial before the Honorable John F. Nichols in January 2010, appellant Rodney Lewis Erdle (Erdle) was found guilty of two counts of first degree child molestation for conduct involving A.G.M. and one count of second degree child molestation and two counts of third degree child molestation for conduct involving J.R.M. CP 84; RCW 9A.44.083; RCW 9A.44.086; RCW 9A.44.089. On March 5, 2010, the trial court sentenced Erdle to 173 months of incarceration. CP 84-88; RP 531.<sup>1</sup> As an additional condition of his sentence, the trial court ordered Erdle to not have contact with any minors under the age of eighteen. CP 101.

2. Substantive Facts

In October 2002, J.R.M. and A.G.M. moved in with their older half-sister, Sabrina Erdle (Sabrina), and her boyfriend, Erdle<sup>2</sup>, in the couple's Vancouver, Washington apartment; A.G.M. was 10 years old and J.R.M. was 12 years old. RP 206, 210.

While living at the apartment, Erdle would tickle Sabrina, J.R.M., and A.G.M. J.R.M. claimed Erdle would sometimes tickle her between

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<sup>1</sup> There are three consecutively paginated volumes of verbatim report of proceedings referenced collectively as "RP."

<sup>2</sup> The couple married in June 2005. RP 384.

her legs about an inch below her vaginal area and right under her breasts. RP 213-16. J.R.M. further claimed Erdle's tickling hurt her, at times leaving her legs "raw." RP 213. She stated Erdle sometimes sat on her stomach with his back facing her when he tickled her. RP 216. J.R.M. did not testify at trial as to any particular tickling incident, but instead claimed only that he would tickle her nearly every day. RP 216. J.R.M. also testified that these tickling incidents occurred in the presence of her sisters, Sabrina and A.G.M. RP 216-17.

At the end of October 2002, Erdle and Sabrina moved from their apartment into a house. RP 210, 218-19. J.R.M. and A.G.M. continued to live with Erdle and Sabrina in their new house for the next two years, along with Erdle and Sabrina's new baby. RP 219. J.R.M. claimed the tickling continued after they moved into the house. RP 220. Over defense counsel's objection, J.R.M. also testified that she would sometimes see Erdle looking through the crack of her bedroom door while she changed her clothes. RP 220-24.

A.G.M. also testified regarding Erdle's tickling. She claimed that on one occasion while living at the apartment, Erdle started tickling her in her bedroom. RP 317. She further claimed that on this occasion Erdle started to tickle her armpits under her shirt, and then grabbed her breasts. When asked whether she thought Erdle might have accidentally touched her

breasts, she responded, "I don't think so." RP 318-20. According to A.G.M., Sabrina was not in the apartment during this incident. RP 316. A.G.M. stated that she called out for J.R.M., and that when J.R.M. came to the room, Erdle put his hand on the door so she couldn't get in. RP 319. J.R.M. eventually got in the room and the tickling stopped. RP 320-21.

A.G.M. also testified about two incidents that occurred after moving into the house, when she was between the ages of 12 and 14. RP 322. She claimed that on one occasion Erdle sat on her, "acted like he was tickling [her]," pulled up her shirt and bra, and then kissed her on her chest between her breasts. RP 322-23. She said she couldn't remember how that incident ended, but thought that he stopped after he heard one of her sisters approaching. RP 323. A.G.M. also claimed that on a different occasion she was sitting in a corner of the upstairs hallway when Erdle started tickling her up her skirt and touched her vagina outside of her underwear. RP 325-26. A.G.M. said she told Sabrina in late 2004 or 2005 that Erdle had been touching her inappropriately, but that Sabrina did not believe her. RP 329.

J.R.M. and A.G.M moved back in with their father in 2004 or 2005, after Erdle and Sabrina moved from Vancouver to the Portland, Oregon area. RP 227-29. J.R.M. and A.G.M. continued to visit with Sabrina and Erdle in Oregon. RP 229, 347. Erdle and Sabrina moved to

Alaska when J.R.M. started the 8th grade; J.R.M. moved to Alaska with Sabrina and Erdle and lived with them for the next two years. RP 229-30.

Pretrial, defense counsel's motion to exclude reference to any incident that may have occurred while J.R.M. lived in Alaska was denied. RP 95-97. At trial, J.R.M. testified that one evening while living in Alaska, she was watching television in the living room with Erdle while Sabrina was at work and everyone else in the house was asleep. RP 231. She claimed Erdle had asked her to sit next to him on the couch but she had refused. RP 231-32. She further claimed Erdle had tugged her arm and had continued to ask her to sit next to him, and that he eventually kneeled in front of her, started touching her breasts, and removed her shirt and bra, and then led her to a bathroom where he continued to touch her breasts. RP 232-34. In January 2008, J.R.M. told a school counselor about Erdle's alleged inappropriate touching while she lived in Alaska, which the counselor then reported to law enforcement. RP 132-35.

On October 13, 2008, the State charged Erdle with one count of second degree child molestation and two counts of third degree child molestation for conduct with A.G.M. CP 1. The State alleged that Erdle committed third degree child molestation between December 1, 2003 and January 1, 2004. CP 1. On October 12, 2009, the State filed an amended information that extended the charging period forward for the third degree

child molestation by 11 months to November 30, 2004. CP 16. The State filed a second amended information on October 16, 2009, adding two counts of first degree child molestation for conduct involving J.R.M. CP 18. On the second day of trial, the State filed a third amended information, which extended the charging period back for the third degree child molestation counts by another 15 months, starting on September 1, 2002. CP 24.

Sabrina and Erdle testified in Erdle's defense. Sabrina agreed that Erdle would often tickle and wrestle with J.R.M. and A.G.M., but not that Erdle's conduct was inappropriate or that he made sexual contact with them. RP 395. Sabrina also confirmed that Erdle often tickled her, at times tickling her above her knee; however she did not consider Erdle's tickling to be sexual in nature. RP 398.

Erdle admitted tickling and wrestling with J.R.M. and A.G.M. a few times a week. RP 408-409. He denied, however, that he intentionally touched either J.R.M. or A.G.M. on the breasts, but admitted it was possible an unintentional touching may have occurred. RP 409, 416. Erdle also denied ever "spying on the girls while they were in their bedroom[,]” having any sexual contact with them, or ever making any sexually related remarks to them. RP 415, 417-18. He did not recall ever touching J.R.M. near her genital area, but that if he did it was

unintentional. RP 418. Erdle denied ever knowingly touching either J.R.M. or A.G.M. inappropriately and that he was “shocked and surprised” when he heard the allegations against him. RP 420-21.

Erdle’s defense counsel did not propose a to-convict jury instruction on the lesser included offense of fourth degree assault. The jury returned guilty verdicts on all five counts. CP 77-81.

C. ARGUMENTS

1. ERDLE WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE COUNSEL FAILED TO REQUEST AN INSTRUCTION FOR THE LESSER INCLUDED OFFENSE OF FOURTH DEGREE ASSAULT AFTER ELICITING EVIDENCE THAT ERDLE COMMITTED ONLY THAT OFFENSE.

Erdle's counsel was ineffective for failing to propose a lesser included offense instruction for fourth degree assault where it was supported in both law and fact, and where the defense theory of the case admitted that Erdle tickled J.R.M. and A.G.M. but denied that he made sexual contact with them or that the tickling was sexually motivated. Erdle was prejudiced by counsel’s error and therefore reversal is required.

a. Legal Standard

The Federal and State Constitutions guarantee all criminal defendants the right to the effective assistance of counsel. U.S. Const. amend. VI; Const. art. 1, § 22 (amend. 10); State v. Thomas, 109 Wn.2d

222, 229, 743 P.2d 816 (1987). To establish a claim of ineffective assistance of counsel, a defendant must show (1) that defense counsel's representation was deficient, and (2) that counsel's deficient representation prejudiced the defendant. In re Fleming, 142 Wn.2d 853, 865, 16 P.3d 610 (2001). Defendants are entitled to have juries instructed not only on the charged offense, but also on all lesser included offenses. RCW 10.61.006. A defendant is entitled to a lesser offense instruction if (1) each of the elements of the lesser offense is a necessary element of the charged offense and (2) the evidence supports an inference that the defendant committed only the lesser offense. State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). On review of the factual prong, a court examines the evidence in the light most favorable to the party seeking the instruction. See State v. Fernandez-Medina, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000).

b. Fourth Degree Assault is a lesser-included offense of first, second, and third degree child molestation

RCW 9A.36.041(1) defines fourth degree assault as an assault not amounting to assault in the first, second, or third degree, nor amounting to custodial assault. Fourth degree assault is a gross misdemeanor. RCW 9A.36.041(2). The term "assault" is not statutorily defined, but Washington courts recognize and apply three common law definitions of

assault: (1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm. State v. Stevens, 158 Wn.2d 304, 311, 143 P.3d 817 (2006). The offense of child molestation requires a showing of “sexual contact” between the defendant and a child, with the degree of the offense being based on the child's age.<sup>3</sup> RCW 9A.44.010(2) defines “sexual contact” as “any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.”

In Stevens, the Supreme Court held that second degree child molestation necessarily includes the elements of fourth degree assault. 158 Wn.2d at 311. Because the only difference between the degrees of child molestation is the ages of the parties involved, fourth degree assault is also necessarily a lesser included offense of first and third degree child molestation. Accordingly, the legal prong of the Workman is satisfied.

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<sup>3</sup> The child molestation statutes provide that for first degree child molestation the victim must be less than 12 years old and the defendant at least 36 months older, for second degree child molestation the victim must be at least 12 years old but less than 14 years old and the defendant at least 36 months older, and for third degree child molestation the victim must be at least 14 years old but less than 16 years old, and the defendant at least 48 months older. RCW 9A.44.083; RCW 9A.44.086; RCW 9A.44.089.

- c. The evidence supports a finding that Erdle committed only fourth degree assault.

At trial, Erdle admitted that he often tickled and wrestled with J.R.M. and A.G.M. and admitted that it was possible he may have unintentionally touched or come in close proximity to J.R.M.'s or A.G.M. private parts in the process. Erdle's admission to tickling and wrestling with J.R.M. and A.G.M. together with the girls' testimony that Erdle's tickling made them uncomfortable, including J.R.M.'s testimony that Erdle's tickling hurt her, at times leaving her legs "raw", supports and inference that Erdle committed only fourth degree assault and not child molestation.<sup>4</sup> Erdle has demonstrated the legal and factual prong of the Workman test. Accordingly, he was entitled to a to-convict jury instruction on fourth degree assault.

- d. Counsel was ineffective for failing to request a jury instruction on the lesser-included offense of fourth degree assault.

Erdle's counsel's failure to request a to-convict instruction for fourth degree assault constitutes deficient performance because there was evidence supporting an inference that Erdle assaulted J.R.M. and A.G.M., but did not have sexual contact with them. Additionally, given the stark

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<sup>4</sup> Because RCW 9A.44.010(2) defines "sexual contact" as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party," an unintentional touching of a person's intimate parts, which was not made for the purpose of satisfying either party's sexual desires, does not constitute child molestation.

difference in penalties between fourth degree assault, a gross misdemeanor, and the child molestation offenses for which Erdle was convicted, defense counsel's deficient performance prejudiced Erdle.

Moreover, counsel's failure to request a jury instruction on the lesser-included offense of fourth degree assault was not a legitimate trial strategy. A trial counsel's deliberate tactical decision may constitute ineffective assistance of counsel if it falls outside the wide range of professionally competent assistance. State v. Grier, 150 Wn. App. 619, 640, 208 P.3d 1221 (2009) (citing State v. Pittman, 134 Wn. App. 376, 390, 166 P.3d 720 (2006)), review granted, 167 Wn.2d 1017, 224 P.3d 773 (2010).

The facts here are similar to several Washington cases that have held appellant received ineffective assistance by defense counsel's failure to request a lesser-included offense instruction. See e.g., State v. Breitung, 155 Wn. App. 606, 230 P.3d 614 (2010) (defendant received ineffective assistance where defense counsel failed to request fourth degree assault instruction); In re Personal Restraint of Crace, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2010 WL 2935799 at \*12 (Slip Op. filed July 28, 2010) (petitioner received ineffective assistance where defense counsel failed to request a to-convict jury instruction on unlawful display of a weapon, which carried a sentence of less than one year as opposed to the life

sentence he received for his attempted second degree assault conviction); Grier, 150 Wn. App. at 642-44 (ineffective assistance for failing to request lesser included manslaughter to-convict instructions); State v. Smith, 154 Wn. App. 272, 278-79, 223 P.3d 1262 (2009) (ineffective assistance for failing to request lesser included second degree animal cruelty to-convict instruction); Pittman, 134 Wn. App. at 387-89 (ineffective assistance for failing to request lesser include first degree attempted criminal trespass to-convict instruction); State v. Ward, 125 Wn. App. 243, 250, 104 P.3d 670 (2004) (ineffective assistance for failing to request lesser included unlawful display of a weapon to-convict instruction).

In determining whether counsel's decision not to request a lesser included offense instruction was a legitimate trial strategy, this Court has looked to three themes: (1) The difference in maximum penalties between the greater and lesser offenses; (2) whether the defense's theory of the case is the same for both the greater and lesser offenses; and (3) the overall risk to the defendant, given the totality of the developments at trial. Grier, 150 Wn. App. at 640-41. All three themes show Erdle's counsel's all-or-nothing strategy was not a legitimate trial tactic and, thus, he was denied his right to effective assistance of counsel.

First, the difference in maximum penalties between his child molestation convictions and convictions for fourth degree assault is

substantial. As a gross misdemeanor, fourth degree assault carries a maximum jail term of one year. RCW 9A.36.041(2); RCW 9.92.020. In contrast, first degree child molestation is level X offense, second degree child molestation is a level VII offense, and third degree child molestation is a level V offense. RCW 9.94A.515. Accordingly, given Erdle's offender score of 12 (based on his concurrent child molestation offenses and RCW 9.94A.525(17)'s tripling provision), he faced a standard range sentence of 149 to 198 months of incarceration (approximately 12.5 to 16 years) on the first degree child molestation charges, 87 to 116 months of incarceration (approximately 7 to 9.5 years) on the second degree molestation charge, and 72 to 96 months of incarceration (6 to 8 years) on the third degree child molestation charges. RCW 9.94A.510. Thus, the risk of not allowing the jury to consider fourth degree assault as an alternative offense was much greater than the risk held unacceptable in Breitung, where the defendant faced a disparity in punishment of only 5 months. 155 Wn. App. at 615. Accordingly, the disparity in the punishment Erdle faced supports finding defense counsel rendered ineffective assistance by failing to present the jury with the option of convicting Erdle of the lesser included offense of fourth degree assault.

Second, Erdle's theory of the case would have been the same for both the greater and lesser offenses. Erdle admitted to tickling and

wrestling with J.R.M. and A.G.M., but denied that he made sexual contact with them. Because a defendant may commit fourth degree assault by putting another in apprehension of harm whether or not he intends to inflict or is incapable of inflicting that harm, Erdle's defense of his child molestation charges would not have been inconsistent with a fourth degree assault charge. RCW 9A.36.041(1).

Finally, given the developments at trial, defense counsel's failure to request a lesser included fourth degree assault instruction placed Erdle in great risk that the jury would convict him because it found his touching of J.R.M. and A.G.M. was inappropriate and unlawful, even if it did not find it was necessarily sexual in nature. Here, because the State did not present any physical evidence or witnesses corroborating J.R.M.'s or A.G.M.'s testimony, the jury's determination of guilt turned on the credibility of the complaining witnesses and the contrasting testimony of Sabrina and Erdle. By failing to request an instruction on fourth degree assault, Erdle's defense counsel placed Erdle at risk that the jury would find J.R.M. and A.G.M. credible in regard to their apprehension of Erdle touching them, thus finding him guilty of some offense, and resolving their doubts on the sexual nature of Erdle's touching in favor of guilt.

Under these circumstances, defense counsel's failure to propose a lesser included offense instruction for fourth degree assault constitutes

deficient performance that prejudiced Erdle and does not constitute a legitimate trial strategy. Therefore, this court should reverse his convictions.

2. THE TRIAL COURT'S SENTENCING CONDITION PROHIBITING ERDLE FROM HAVING CONTACT WITH MINORS UNDER THE AGE OF EIGHTEEN, AS APPLIED TO ERDLE'S TWO MINOR SONS, UNDULY BURDENS HIS FUNDAMENTAL RIGHT TO RAISE HIS CHILDREN.

A condition of Erdle's sentence prohibited him from "contact with minors under the age of eighteen." CP 99. On its face, this condition appears to prohibit any form of "contact" between Erdle and his minor sons.<sup>5</sup> Although the State's pre-sentence investigation report recommends a sentencing condition prohibiting contact with minors due to Erdle's denial of sexual victimization and risk to the community, it does not indicate any specific risk to his sons. CP 126-38.<sup>6</sup> Because the provision prohibiting contact with minors - including his two sons - is not reasonably related to the circumstances of Erdle's convictions, unnecessary to prevent his sons from harm, and unduly burdens his

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<sup>5</sup> As of February 1, 2010, Erdle's sons were 5 years old and 6 years old. CP 133; RP 374, 384.

<sup>6</sup> This citation is to the expected Clerk's Papers index numbers for the State Presentence Investigation Report, for which a supplement designation of clerk's papers was filed for on September 2, 2010.

fundamental right to parent his children, the trial court abused its discretion by excluding application of the condition as to Erdle's sons.

Appellate courts review a trial court's imposition of crime-related prohibitions for an abuse of discretion. State v. Ancira, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001). Generally, a reviewing court will only uphold such sentencing conditions if they are reasonably related to the circumstances of the crime for which the defendant was convicted. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008), cert. denied, \_\_\_ U.S. \_\_\_, 129 S. Ct. 2007, 173 L. Ed. 2d 1102 (2009). However, a “[m]ore careful review of sentencing conditions is required where those conditions interfere with a fundamental constitutional right.” Warren, 165 Wn.2d at 32.

Parents have a fundamental right to the care, custody, and control of their children without State interference. See In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998) (recognizing a parent's right to rear his or her children without State interference as a constitutionally-protected fundamental liberty interest) aff'd, Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); Ancira, 107 Wn. App. at 653; see also Meyer v. Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923). Although an individual's fundamental right to raise his child is not absolute and may be subject to reasonable government

regulations, any limitation on a fundamental right must be “reasonably necessary to accomplish the essential needs of the state and the public order.” State v. Riles, 135 Wn.2d 326, 349-50, 957 P.2d 655 (1998).

Sentencing courts can restrict an individual’s fundamental right to parent by conditioning a criminal sentence only when the condition imposed is reasonably necessary to further the State’s interest in preventing harm and protecting children. State v. Berg, 147 Wn. App. 923, 942, 198 P.3d 529 (2008); State v. Ancira, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001); see State v. Letourneau, 100 Wn. App. 424, 437-42, 997 P.2d 436 (2000); see also In re Dependency of C.B., 79 Wn. App. 686, 690, 904 P.2d 1171 (1995) (State has interest in preventing harm to children), review denied, 128 Wn.2d 1023, 913 P.2d 816 (1996). Here, the trial court erred by imposing a restriction on Erdle’s sentence prohibiting contact with minors under the age of eighteen because the restriction prevents contact between Erdle and his two minor sons without a showing such a restriction is necessary to protect them from harm.

In Letourneau, this Court held that a sentencing condition prohibiting Letourneau from unsupervised in-person contact with her children was not reasonably necessary to prevent her from sexually molesting her own children. 100 Wn. App. at 441. In reaching its decision, this Court reasoned that in order to uphold the sentencing

provision there must have been “some affirmative showing that the offender is a pedophile or that the offender otherwise poses the danger of sexual molestation of his or her own biological children.” Letourneau, 100 Wn. App. at 442. “The general observation that many offenders who molest children unrelated to them later molest their own biological children, without more, is an insufficient basis for State interference with fundamental parenting rights.” Letourneau, 100 Wn. App. at 442.

Here, there has been no affirmative showing that Erdle poses a danger to his two sons and therefore the sentencing provision prohibiting him from contact with them is not reasonably necessary to protect them and should be stricken as applied to them. Moreover, Erdle’s sons do not share similar characteristics as J.R.M. and A.G.M. because they are biologically related to him and are a different gender. See Letourneau, 100 Wn. App. at 441-42 (Trial courts and the Department of Corrections do not have authority to place restrictions on an offender’s contact with his biological children who are not of similar age or circumstances as a previous victim); See also, Riles, 135 Wn.2d at 649 (order prohibiting defendant convicted of raping 19-year-old woman from contact with minors bore no reasonable relationship to offense).

Erdle’s case is distinguishable from Berg, where this Court upheld a sentencing provision prohibiting contact with any female minor –

including his biological daughter - where the defendant was convicted of molesting the 14-year-old daughter of this girlfriend. 147 Wn.2d 923. First, the trial court in Berg specifically found the defendant was a danger to his biological daughter. 147 Wn. App. at 941-42. In contrast, neither the trial court nor the department of corrections in its pre-sentence report made a finding that Erdle posed a danger to his biological children.

Second, the trial court in Berg narrowly tailored the defendant's sentencing condition to apply only to unsupervised contact with any female minor, noting that the prosecutor expressed no concern with the defendant's contact with boys. 147 Wn. App. at 942. In contrast, the sentencing condition imposed here prohibits any form of contact with any minors under the age of eighteen, including Erdle's biological sons, despite the fact that there was no indication Erdle posed a danger to them specifically or to minor males generally. "[C]rime-related prohibitions affecting fundamental rights must be narrowly drawn." Warren, 165 Wn.2d at 34.

Because the condition prohibiting Erdle from contact with all minors, including his biological sons, is not reasonably related to the circumstances of his crime and unduly interferes with his fundamental right to raise his children, the trial court erred when it imposed the

sentencing condition. Accordingly, this court should vacate the sentencing condition as it applies to Erdle's sons.

D. CONCLUSION

Denial of his right to effective assistance of counsel requires reversal of Erdle's convictions. In the alternative, this Court should strike the sentence condition prohibiting Erdle from having contact with all minors, including his two sons.

Respectfully submitted this 7<sup>th</sup> day of September, 2010.

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 40575-0-II
	)	
RODNEY ERDLE,	)	
	)	
Appellant.	)	

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**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 7<sup>TH</sup> DAY OF SEPTEMBER 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

**SIGNED** IN SEATTLE WASHINGTON, THIS 7<sup>TH</sup> DAY OF SEPTEMBER 2010.

x *Patrick Mayovsky*