

No. 44770-3-II

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

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STATE OF WASHINGTON,

Respondent,

v.

KRIS A. SAEGER,

Appellant.

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

The Honorable Toni A. Sheldon

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The sentence condition which required Mr. Saeger to stay 500 feet away from the victims violated his constitutionally protected right to travel and to reside.

2. The condition of Mr. Saeger's sentence violated equal protection.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

The United States Constitution guarantees citizens the right to travel and reside in the place of their choice. Sentence conditions which infringe this right pass constitutional muster only where they are reasonably necessary to achieve a compelling state interest and where there is no reasonable alternative to achieve the State's interest. Here, the trial court imposed a condition of Mr. Saeger's sentence which barred him from coming within 500 feet of the victims, which effectively barred Mr. Saeger from living on his property. Where the court failed to articulate the compelling state interest which required the sentence condition, and failed to consider any reasonable alternatives, is this Court required to strike the sentence condition?

C. STATEMENT OF THE CASE

Kris Saeger was convicted of three counts of felony harassment for harassing his neighbors on the adjacent property. As a condition of his sentence, the trial court barred Mr. Saeger from coming within 500 feet of the victims until November 26, 2017.

On March 20, 2013, Mr. Saeger filed a motion to amend the condition of his sentence that he stay away from the victims from 500 feet to 100 feet, on the ground that this condition bars him from living on his land. CP 30-31. The court denied Mr. Saeger's motion:

The Court was aware of the approximate distance between Mr. Saeger's trailer on his mother's property and the living situation of the victims in this case. The Court was also aware that this was not the first instance of a conviction of Mr. Saeger for harassment of the same individual or individuals. So the Court sees nothing that has significantly changed and is not willing to modify the judgment and sentence.

As I look through the case, I do see the judgment and sentence being entered on November 26, 2012, does restrain Mr. Saeger from coming within 500 feet of – and there are named protected persons, their home, their workplace or their school until November 26, 2013. I would also note that this is the case in which there have been more than one instance again of harassment in general, and I'm not changing the distance.

RP 3.

D. ARGUMENT

THE SENTENCE CONDITION REQUIRING MR.  
SAEGER TO STAY 500 FEET AWAY FROM THE  
VICTIMS INFRINGED HIS CONSTITUTIONALLY  
PROTECTED RIGHT TO TRAVEL

The United States Constitution guarantees the right to travel to, and reside in, any part of the nation. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-02, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986) (plurality opinion); *Dunn v. Blumstein*, 405 U.S. 330, 338, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 629-31, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). Because of the fundamental importance of this right to choice of residence, any governmental classification that penalizes its exercise is presumed invalid under the Equal Protection Clause of the Fourteenth Amendment. Such a classification will be upheld only if the Government can show it is truly *necessary* to the promotion of a *compelling* governmental interest. *Soto-Lopez* 476 U.S. at 904; *Dunn* 405 U.S. at 339; *Shapiro* 394 U.S. at 634.

The Sentencing Reform Act of 1981, chapter 9.94A RCW, authorizes the trial court to impose “crime-related prohibitions” as a condition of a sentence. RCW 9.94A.505(8). A “crime-related prohibition” prohibits “conduct that directly relates to the

circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). This Court reviews the imposition of crime-related prohibitions as a condition of a sentence for an abuse of discretion. *In re Personal Restraint of Rainey*, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010). A court abuses its discretion if it applies the wrong legal standard. *Rainey*, 168 Wn.2d at 375.

A defendant’s fundamental rights limit the sentencing court’s ability to impose sentencing conditions: “[c]onditions that interfere with fundamental rights” must be “sensitively imposed” so that they are “reasonably necessary to accomplish the essential needs of the State and public order.” *Rainey*, 168 Wn.2d at 377. Where sentencing conditions interfere with a fundamental constitutional right it is subject to strict scrutiny. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008), *cert. denied*, 129 S.Ct. 2007 (2009). The condition is lawful only where there is no reasonable alternative way to achieve the State’s interest. *Warren*, 165 Wn.2d at 34-35.

For instance, courts have held that a no-contact order prohibiting a defendant from all contact with his children was “extreme and unreasonable given the fundamental rights involved,” where less stringent limitations on contact would have successfully realized the

State's interest in protecting the children. *State v. Ancira*, 107 Wn.App. 650, 655, 27 P.3d 1246 (2001). There, the trial court imposed the no-contact order, prohibiting the defendant from all contact with his wife and children, as a condition of his sentence for a felony violation of a domestic no-contact order. *Ancira*, 107 Wn.App. at 652-53. Although the appellate court recognized the State's interest in preventing the children from witnessing domestic violence, the court determined that the State had "failed to demonstrate that this severe condition was reasonably necessary" to prevent that harm. *Id.* at 654. Rather, indirect contact, such as mail, or supervised contact without the mother's presence, might have successfully satisfied the State's interest in protecting the children. *Id.* at 655.

In imposing the challenged sentencing condition here, the trial court set forth no explanation as to whether the sentence condition was reasonably necessary to realize a compelling state interest or that there was no reasonable alternative available. *Rainey*, 168 Wn.2d at 381-82. The court merely noted that Mr. Saeger had engaged in this conduct on a prior occasion, thus meriting the condition requiring Mr. Saeger to stay 500 feet away. The court failed to articulate why 500 feet was required as opposed to the 100-foot alternative offered by Mr. Saeger.

In light of the condition's infringement on Mr. Saeger's residency, the condition violates his constitutionally protected right to travel and reside. The condition should be stricken.

E. CONCLUSION

For the reasons stated, Mr. Saeger requests this Court strike the sentence condition requiring him to stay 500 feet away from the victims.

DATED this 29<sup>th</sup> day of July 2013.

Respectfully submitted,

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