

No. 47061-6

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON,

Plaintiff/Appellee,

v.

NICHOLAS ALAN HARKEY,

Defendant/Appellant.

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OPENING BRIEF

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Stacy Kinzer  
705 Second Ave., Ste. 1300  
Seattle, WA 98104  
(206) 224-8777  
Attorney for Movant  
Nicholas Alan Harkey

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## **ASSIGNMENTS OF ERROR**

1. The Court erred by not ensuring that Mr. Harkey understood the sentencing consequences of his guilty plea; as a result his plea was not knowing or voluntary, and is a manifest injustice.

2. The broad sentencing condition that “defendant shall not have any contact with minors” interferes with Mr. Harkey’s fundamental constitutional right to parent his children.

## **ISSUES RELATING TO ASSIGNMENTS OF ERROR**

1.(a). The plea agreement documents stated that Mr. Harkey’s “standard range of actual confinement” was 86-114 months and the judge repeated the “standard range for actual confinement” at the plea hearing. Did this information adequately inform Mr. Harkey of the sentencing consequences of a “determinate plus” sentence – that the judge was required to sentence him to a mandatory maximum of life in prison, and he would only be released after serving the recommended minimum sentence if the ISRB deemed him “releaseable” following a review of his prison performance and a hearing?

(b). Mr. Harkey’s first plea hearing was interrupted because he had a panic attack, was not responding audibly to the judge, and the judge could not tell whether he wanted to plead guilty or understood the

sentencing consequences. When the hearing resumed the following week, the judge merely summarized the prior hearing, without any attempt to confirm that Mr. Harkey understood the sentencing consequences. Was this sufficient to ensure that Mr. Harkey's plea was intelligent, knowing, and voluntary?

2. Mr. Harkey's Judgment and Sentence contains the condition that "defendant shall not have any contact with minors," with no exceptions for his own children. Is this a violation of Mr. Harkey's fundamental right to parent?

## **STATEMENT OF THE CASE**

### **A. The Charges**

Nicholas Harkey was initially charged on March 15, 2004, with three counts of second-degree rape of a child. Information, CP:1. Mr. Harkey was facing a standard range of 159-211 months as charged, and would not have been eligible for a SSOSA sentence. The state offered a plea bargain in which, in exchange for Mr. Harkey's guilty plea to one count of second degree rape of a child, the state agreed drop the other two charges, making Mr. Harkey eligible for a SSOSA sentence under RCW 9.94A.670.

Mr. Harkey pled guilty to one count of second degree rape of a child as charged in the Amended Information filed June 14, 2004. CP:5. The Statement of Defendant on Plea of Guilty lists the elements as, “did have sexual intercourse with another less than 14 YOA and not married to.” CP:7. The defendant’s factual statement contained in paragraph 11 – “in his own words” – scrupulously tracks that elements language: “between Oct 23 and Nov 6, 2003 in Clark Co., Wash., I had intercourse with ARL a female who was 12 YOA at the time, I was greater than 36 mos older and to whom I was not married.” CP:13.

**B. The Plea Hearings**

An initial plea hearing was held on June 11, 2004. The transcript of that hearing begins with the parties expressing some question over whether Mr. Harkey is prepared to enter his plea. 6/11/04 TR:3. Mr. Harkey’s counsel, Mr. Barrar, tells the court that he is “just scared ... I think as we work through it, it’ll be fine.” *Id.*

The court first reviews the rights that Mr. Harkey is giving up by pleading guilty. 6/11/04 TR:4-5. The court then sets out the maximum sentence of life, and tells Mr. Harkey that “Based upon your criminal record, the standard range for actual confinement is between 86 to 114 months.” 6/11/04 TR:5. The court at first says that

community custody would run for up to 36 months but the state corrects him and says that because this case falls under §712,<sup>1</sup> the community custody range is life. *Id.* This appears to be new information to Mr. Harkey, as he asks for it to be repeated multiple times:

THE COURT: ... So you'd be on lifetime probation, do you understand those consequences?

MR. HARKEY: Can you say that to me –

MR. BARRAR: You'd have to register for life.

MR. HARKEY: I have to register for life?

THE COURT: Probation is for life.

MR. HARKEY: For the rest of my life?

MR. JACKSON: Yes.

THE COURT: That's right.

\* \* \*

THE COURT: That's the consequences you face at this time. Lifetime registration. Lifetime probation.

6/11/04 TR:5-6.

The court then discusses the state's recommendation: "They recommended a standard range, but it gives you the opportunity to

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<sup>1</sup> Former RCW 9.94A.712; 2008 c 231 § 56, effective August 1, 2009.

argue for a SSOSA. Do you understand the recommendation?” Mr. Harkey responds, “For SSOSA?” The court says “Uh huh” and Mr. Harkey makes no audible response. 6/11/04 TR:7. The court adds that it’s free to disregard anyone’s recommendation and when asked if he understands that, Mr. Harkey again makes no audible response. *Id.*

The court then explains the indeterminate sentencing scheme in the following manner: “Okay. Now, under this type of sentence, I would sentence you to life with a request for a minimum period of time to be served. It’s up to the review board, the sentencing board, in order to indicate what sentence you would actually receive, but they would take into consideration my recommendation with regard to the minimum amount.” 6/11/04 TR:8. The court did not inform Mr. Harkey that he could continue to be held beyond the minimum term. There was certainly no suggestion that the ISRB could go beyond the standard range sentence without finding exceptional circumstances.

The court then repeats that Mr. Harkey may or may not qualify for a SSOSA and if he got a SSOSA and failed to comply he would come back and be resentenced toward the maximum of the range. The court asks Mr. Harkey if he understands that; there is no audible response.

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recodified RCW 9.94A.712 to RCW 9.94A.507.

6/11/04 TR:8. The court then asks Mr. Harkey if knowing all this he still wishes to plead guilty. Mr. Harkey responds “Okay.” 6/11/04 TR:8-9. When the court prompts him that he must say whether he wishes to plead guilty Mr. Harkey does not respond. The hearing breaks down at this point, with the court stating: “Well, I’m seeing a great deal of reluctance on this, and I don’t know whether it’s because you’re uncertain about that, and uncertain about the consequences, but I – I’m reluctant to take a plea unless I have a firm acknowledgment that he’s going to wish to plead guilty at this time.” 6/11/04 TR:9. Mr. Barrar says he thinks Mr. Harkey understands but he’s had a very emotional response throughout the case. *Id.* Mr. Harkey then says he’s having an anxiety attack and they take a break. *Id.* The parties finally agree that they’ll check in again on Monday the 14th to see where this case will go.

The hearing on June 14th opened with defense counsel stating that Mr. Harkey was ready to proceed. 6/14/04 TR:1. The court then reviewed the colloquy that occurred at the prior hearing on June 11th:

THE COURT: Okay. We talked about the maximum term you face, which is life, with the maximum of life probation, standard range for actual confinement is between 86-114 months. Prosecution has made a recommendation. You’re familiar with that.

MR. HARKEY: (No audible response.)

THE COURT: We also talked about the lifetime requirement to register as a sex offender. Loss of the right to public assistance while in custody. The right to a SOSA evaluation. And the sentencing board would determine the actual length of sentence. Do you recall all those consequences?

6/14/04 TR:2. Mr. Harkey responded “Yes.” *Id.*

Mr. Harkey’s attorney then read the statement contained in paragraph 11 out loud; and Harkey confirmed that it was a true statement.

6/14/04 TR:3. The court accepted the plea, and a sentencing hearing was scheduled.

### **C. Sentencing**

At sentencing, the state explained that they originally believed Mr. Harkey’s criminal history score to be 1, but it actually appeared to be 3, so the standard sentencing range was 102 to 136 months. 10/18/04 TR:5. The court acknowledged that this case would have been perfect for a SSOSA in that there was only one victim, no violence involved, and no prior criminal conduct of this nature. 10/18/04 TR:23. But the court was concerned that Mr. Harkey wouldn’t comply with treatment, and also that he didn’t really believe that he did anything wrong. 10/18/04 TR:23-24. The court denied Mr. Harkey’s request for a SSOSA sentence, and imposed a standard range sentence of 110 months, which was “as close to the low end as I can get with good conscience.” 10/18/04 TR:28. The

court understood the range to be 102 to 136. 10/18/04 TR:29. “What I have to do is give the (inaudible) sentence, but this is a minimum that I can put down is 110. It’s up to the Board to make the final decision on that.” *Id.*

## ARGUMENT

### **I. MR. HARKEY WAS NOT ACCURATELY INFORMED OF THE SENTENCING CONSEQUENCES FOR THIS CRIME, THUS HIS PLEA WAS NOT KNOWING, VOLUNTARY, OR INTELLIGENT.**

A defendant’s guilty plea must be voluntary, knowing, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). And so a court must inform a defendant of all the direct consequences of the plea, including any term of community custody. *Isadore*, 151 Wn.2d at 298 (citing *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003)). A guilty plea is not valid when it is based on misinformation as to the sentencing consequences. *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001) (citing *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988)).

These constitutional requirements are implemented by court rule in Washington: “The court shall not accept a plea of guilty, without

first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” CrR 4.2(d). *See also State v. Barton*, 93 Wn.2d 301, 304, 609 P.3d 1353 (1980), citing *Wood v. Morris*, 87 Wn.2d 501, 554 P.2d 1032 (1976) (“The record of a plea hearing or clear and convincing evidence must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of the plea.”)

**A. The Record Shows that Mr. Harkey Was Not Accurately Informed of the Direct Sentencing Consequences of a Guilty Plea**

The record here shows that Mr. Harkey was never correctly informed about the sentencing consequences following a plea to a crime covered by RCW 9.94A.507 (Sentencing of Sex Offenders).

***1. The Court Advised Mr. Harkey that He Would Receive a Range of Actual Confinement of 86-114 Months***

The court repeatedly informed Mr. Harkey that his range for “actual confinement” for this crime was 86-114 months. The court did not inform Mr. Harkey that he could continue to be held beyond the minimum term, or that the Indeterminate Sentencing Review Board (ISRB) could hold him beyond the standard range sentence without

finding exceptional circumstances. In fact, by referring to the standard range as the term of “actual confinement,” the court implied that the ISRB could *not* keep him imprisoned beyond that range. 6/11/04 TR:5 and 6; 6/14/04 TR:2.

In contrast, the court made it very clear to Mr. Harkey that the sentencing consequences included lifetime registration and lifetime community custody. *See* 6/11/04 TR:5-6; 6/14/04 TR:2. It is obvious from Mr. Harkey’s reaction that even those consequences came as a shock to him – he asked for the information to be repeated several times, and the hearing degraded to the point where it could no longer continue – any responses Mr. Harkey may have made to the judge’s questions became inaudible, and he quickly had to stop because of a panic attack.

Given Mr. Harkey’s extreme reaction to learning about the lifetime community custody requirement, he clearly had no idea that he was actually entering a plea that would expose him to a potential lifetime in prison.

The court even admitted on the record that it did not know whether Mr. Harkey understood the sentencing consequences at the plea hearing on June 11th: “I don’t know whether it’s because you’re

uncertain about that, and uncertain about the consequences, but I – I’m reluctant to take a plea unless I have a firm acknowledgment.” 6/11/04 TR:9. The hearing was interrupted at that point because of Mr. Harkey’s panic attack. *Id.* When a new plea hearing was held three days later, the trial court did not confirm that Mr. Harkey understood the specific sentencing consequences. Instead, the court rattled off a list of topics covered at the prior, incomplete, hearing, and asked Mr. Harkey if he recalled them:

THE COURT: Okay. We talked about the maximum term you face, which is life, with maximum of life probation, standard range for actual confinement is between 86 to 114 months. Prosecution has made a recommendation. You’re familiar with that.

MR. HARKEY: (no audible response.)

COURT: We talked about also the lifetime requirement to register as a sex offender. Loss of the right to public assistance while in custody. The right to a SOSA evaluation. And the sentencing board would determine the actual length of the sentence. Do you recall all those consequences?

MR. HARKEY: Yes.

6/14/04 TR:2.

The court did not elaborate further on any of those sentencing consequences, despite the fact that Mr. Harkey had undergone an anxiety attack during the prior hearing so severe that he was unable to continue,

and despite the fact that the court itself stated that it could not tell whether Mr. Harkey understood the sentencing consequences at that prior hearing.

***2. The Plea Documents Also Advised Mr. Harkey that He Would Receive a Range of Actual Confinement of 86-114 Months***

The Statement of Defendant on Plea of Guilty does provide a boilerplate laundry list of possible sentencing consequences at Paragraphs 6.a. through 6.v. Paragraph 6.p. pertains to sex offenses. First, there is a provision for those committed prior to July 1, 2000; then for offenses committed between July 1, 2000 but before September 1, 2001; then for sex offenses committed on or after September 1, 2001. Subsection (i) discusses sentencing under RCW 9.94A.712. It says the offense has to be one of those listed below in subsections (aa) or (bb) and then talks about how the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and minimum term that could be within the standard range. It also explains how the minimum term can be increased by the Indeterminate Sentence Review Board. The chart listed under (aa) below does include rape of a child in the second degree committed when the defendant is at least under 18 years old.

There are no markings on the plea form to indicate which of all of these provisions might apply to Mr. Harkey.

Nothing in this document explains indeterminate sentencing to a defendant with a ninth-grade education. It does list a “maximum term” of life. But even before RCW 9.94A.712 crimes like this had a maximum term of life. That just meant that the defendant could theoretically receive a sentence as high as life if the judge gave an exceptional sentence, but the sentence imposed was nevertheless determinate.

Additionally, Mr. Harkey was informed at the plea hearing that he would receive lifetime community custody: “you’d be on lifetime probation.” 6/11/04 TR:5. That fact that he might never actually be on community custody – because he was receiving a maximum term of life in prison – was not explained.

Mr. Harkey was informed that he would have

The critical paragraph here is the one that contains the handwritten, individualized information for Mr. Harkey’s case – paragraph 6.a. And that paragraph states that the *Total Actual Confinement* is 86-114 months. CP:8.

**B. The Difference Between Determinate and Determinate-Plus Sentencing is Tremendous, but this Difference Was Not Explained to Mr. Harkey**

Mr. Harkey had one prior adult conviction, leading to a standard range determinate sentence. 10/18/04 TR:4-5. Yet sentencing for sex offenses under RCW 9.94A.507 (formerly 9.94A.712) is significantly more complicated than SRA determinate sentencing, and that difference is not obvious to defendants without careful explanation.

It is very important to understand the significance of the fact that any sentence for the second-degree rape of a child charged in this case would be indeterminate in nature. In 2001, the Washington State Legislature enacted a new sentencing scheme for certain sex offenses that significantly increased the consequences of certain convictions. Under RCW 9.94A.507(1)(a)(i), the trial court is now required to impose both a minimum term and a *maximum* term of whatever the maximum punishment is for that Class of offense – which is life imprisonment for second-degree rape of a child. The crime of second-degree rape of a child is one of the offenses that necessarily leads to what is commonly referred to as a “determinate plus” sentence. *See* RCW 9.94A.507(3)(b) (defendant convicted of second-degree rape of a

child must be sentenced to maximum term of life imprisonment, the statutory maximum for that crime).

Thus, in this case, conviction of a single count of second-degree rape of a child carries the very real possibility that the defendant will remain in prison for the remainder of his life. After the defendant serves his minimum term, the decision to release a defendant convicted of this offense is left to the ISRB. According to the ISRB Determinate Plus/CCB Statistical Report<sup>2</sup> dated June 30, 2011, the Board had conducted 1075 release hearings since the law was adopted in 2001, and only 40.6% of those hearings resulted in a finding that the offender was “releasable.” The remaining 59.4% of the hearings resulted in a finding that the offender was “not releasable.”

The court referred to the “statutory maximum” as life at Mr. Harkey’s plea hearing. But the court did not explain the difference between the statutory maximum in a determinate sentence case and the statutory maximum in a determinate-plus sentence case. In the former – as in Mr. Harkey’s prior adult VUCSA – the court cannot impose a sentence beyond the standard range without a finding of aggravating

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<sup>2</sup> Available online at <http://www.doc.wa.gov/isrb/docs/2011ccbstatistics.pdf>; last accessed 8/3/2015.

factors. But in determinate-plus cases, the court *must* impose the statutory maximum. In *State v. Clarke*, 156 Wn.2d 880, 134 P.3d 188 (2006), *cert. denied*, 552 U.S. 885 (2007), the Washington Supreme Court explained that the statutory maximum sentence under former RCW 9.94A.712 differs from other statutory maximum sentences because it is a sentence that *must* be imposed, not a sentence that might be imposed: “RCW 9.94A.712 establishes the sentencing regime for nonpersistent offenders convicted of specified sex crimes, including rape in the second degree. RCW 9.94A.712(3) directs the sentencing judge to impose both a maximum term and a minimum term. The maximum term ‘consist[s] of the statutory maximum sentence for the offense,’ which for the class a felony of rape in the second degree, is a term of life imprisonment. RCW 9.94A.712(3); RCW 9A.20.021. Therefore, the statutory maximum identified in RCW 9.94A.712(3) differs from other statutory maximums because it is mandatory, whereas most statutory maximums merely establish the outside limit of available sentences. *See* RCW 9A.20.021.” *Clarke*, 156 Wn.2d 880, 887-88. The court also sets a minimum term, but the label is a misnomer – it merely designates when the defendant is due for his first hearing before the ISRB. Ultimately, the ISRB determines the

minimum term of confinement; the ISRB can continue to increase his minimum sentence in 5-year increments; and the ISRB can hold defendants beyond the standard range sentence without any finding of exceptional or aggravated circumstances. RCW 9.95.420(3)(a); RCW 9.95.011(2)(a). None of this information, critical to a defendant's decision whether to enter a guilty plea, was presented to Mr. Harkey, either by his attorney or by the court.

**C. The Court's Failure to Ensure that Mr. Harkey Understood the Sentencing Consequences Rendered His Plea Involuntary and a Manifest Injustice**

A guilty plea may be considered involuntary when it is based on misinformation regarding a direct consequence of the plea, which includes the statutory maximum. *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006) (“a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea”); *State v. Weyrich*, 163 Wn.2d 554, 557, 182 P.3d 965 (2008) (“A defendant must be informed of the statutory maximum for a charged crime, as this is a direct consequence of his guilty plea.”).

*In re Pers. Restraint of Murillo*, 134 Wn.App. 521, 142 P.3d 615 (2006) is another case where a defendant was misinformed about the consequences of pleading to a “determinate plus” crime. Like Mr.

Harkey's plea form, Murillo's stated that his "Total Actual Confinement" was a range, in that case 51-68 months. 134 Wn.App. at 530. Mr. Murillo was not informed that a sentence within the range would only represent the minimum term, or that he would be subject to lifetime community custody. The court held that the duty under CrR 4.2(d) to determine that the defendant is entering a plea with a correct understanding of the consequences had not been met, and vacated his sentence. 134 Wn. App. at 531.

An involuntary plea constitutes a manifest injustice. *State v. Walsh*, 143 Wn.2d at 6. A petitioner may seek to withdraw a plea on direct appeal where the defendant has been misinformed of the maximum sentence. *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 594-595, 316 P.3d 1007 (2014) (citing *Mendoza*, 157 Wn.2d at 592; *Weyrich*, 163 Wn.2d at 556; *Walsh*, 143 Wn.2d at 10). It is irrelevant whether the misinformation actually affected the defendant's decision to plead guilty. *Weyrich*, 163 Wn.2d at 557 ("[t]he State's argument that the error did not actually affect Weyrich's decision to plead guilty requires the sort of subjective hindsight inquiry into Weyrich's decision of which *Mendoza* and *Isadore* disapprove.").

## II. THE SENTENCING CONDITION OF “YOU SHALL NOT HAVE ANY CONTACT WITH MINORS” IS AN UNCONSTITUTIONAL INTERFERENCE WITH MR. HARKEY’S FUNDAMENTAL RIGHT TO PARENT

Sentencing conditions are reviewed for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). “A court abuses its discretion if, when imposing a crime-related prohibition, it applies the wrong legal standard.” *State v. Howard*, 182 Wn. App. 91, 100, 328 P.3d 969 (2014) (quoting *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010)).

The Sentencing Reform Act of 1981 authorizes a trial court to impose crime-related prohibitions for a term of the maximum sentence to a crime, independent of any community custody conditions. RCW 9.94A.505(8); *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008), *cert. denied*, 556 U.S. 1192 (2009). “Crime-related prohibitions” are orders directly related to “the circumstances of the crime” and may include no-contact orders. RCW 9.94A.030(10); *State v. Armendariz*, 160 Wn.2d 106, 120, 156 P.3d 201 (2007). A causal link between the condition imposed and the crime committed is not necessary as long as the condition relates to the crime’s circumstances. *State v. Llamas-Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992).

Careful review is required when sentencing conditions interfere with a fundamental constitutional right. *Warren*, 165 Wn.2d at 32. Parents have a fundamental liberty interest in the care, custody, and companionship of their children. *Warren*, 165 Wn.2d at 34; *Howard*, 182 Wn. App. at 101. This fundamental right to parent can be restricted by a condition of a criminal sentence only if that condition is reasonably necessary to prevent harm to the children. *State v. Ancira*, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001). This “reasonable necessity” requirement involves an interplay of sentencing conditions and fundamental rights that is “delicate and fact-specific.” *Rainey*, 168 Wn.2d at 377; *see also Warren*, 165 Wn.2d at 32 (conditions that interfere with fundamental rights must be reasonably necessary to accomplish the essential needs of the State and public order, and they must be sensitively imposed). To survive scrutiny, both the scope and duration of a no-contact order affecting a defendant’s parental rights must be reasonably necessary. *Rainey*, 168 Wn.2d at 381. Further, “[t]he 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. There must be an 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 to justify such State intervention.” *State v. Letourneau*, 100 Wn. App. 424, 441-442 (Wash. Ct. App. 2000).

In *Letourneau*, the defendant was convicted of second-degree rape of a child. 100 Wn. App. 424, 427. The defendant was not related to the victim. *Id.*, at 428-29. As a condition of her sentence, Letourneau was prohibited from having unsupervised contact with her biological children until they reached the age of majority. *Id.*, at 437-38. The court held this condition was not reasonably necessary to accomplish the state’s compelling interest because there was no evidence that the defendant may molest her own children. *Id.*, at 441-42.

The condition in Mr. Harkey’s case is even more restrictive than the one rejected in *Letourneau*; it orders “You shall not have any contact with minors.” CP:53. There is no reference or exception to his own two children, now teenagers, even with supervision. . This condition has effectively barred *all* contact with his own children, even phone calls and letters. This condition is an unconstitutional

interference with a fundamental liberty interest, without any showing of necessity.

## V. CONCLUSION

Mr. Harkey was not informed of the correct sentencing consequences of his plea. His plea was not voluntary, knowing, or intelligent, and thus a manifest injustice. Mr. Harkey should be permitted to withdraw his plea.

Alternatively, this case should be remanded to the sentencing court to vacate the unconstitutional condition barring all contact with his children.

DATED this 3rd day of August, 2015.

Respectfully submitted,



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Stacy Kinzer WSBA #31268  
Attorney for Defendant/Movant  
Nicholas Alan Harkey

## CERTIFICATE OF SERVICE

Today I addressed electronic mail addressed to the attorney for the respondent, Anne Cruser, containing a copy of the OPENING BRIEF in *State v. Harkey*, No. 47061-6, in the Court of Appeals, Division II, for the State of Washington;

and mailed a copy via U.S. Mail, to:

Nicholas Alan Harkey #845524  
Stafford Creek Correctional Center  
191 Constantine Way  
Aberdeen, WA 98520

I certify under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 3rd day of August, 2015.



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Stacy Kinzer  
Done in Seattle, Washington

**STACY KINZER LAW OFFICE**

**August 03, 2015 - 3:27 PM**

**Transmittal Letter**

Document Uploaded: 2-470616-Appellant's Brief.pdf

Case Name: State v. Nicholas Harkey

Court of Appeals Case Number: 47061-6

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Stacy Kinzer - Email: [stacy@skinzerlaw.com](mailto:stacy@skinzerlaw.com)

A copy of this document has been emailed to the following addresses:

[anne.cruiser@clark.wa.gov](mailto:anne.cruiser@clark.wa.gov)

**PIERCE COUNTY SUPERIOR COURT**

**August 06, 2015 - 10:05 AM**

**Transmittal Letter  
Verbatim Report of Proceedings**

Case Name: In re: A.P., A.P. Jr., A.P., A.P, and A.P.

Court of Appeals Case Number: 47701-7

Is this a Personal Restraint Petition? Yes  No

**Copy of Verbatim Report of Proceedings**

Number of files being Uploaded: 1

Number of Volumes: 1

Hearing Date(s): 5/4/15

Sender Name: Dana S Eby - Email: [deby@co.pierce.wa.us](mailto:deby@co.pierce.wa.us)

A copy of the Verbatim Report of Proceedings file(s) have been emailed to the following addresses:

[ann@washapp.org](mailto:ann@washapp.org)

[laissp@atg.wa.gov](mailto:laissp@atg.wa.gov)