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Division II
State of Washington

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

STATE OF WASHINGTON,

Respondent,

v.

RANDALL GLEN BLACKMAN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No.

BRIEF OF RESPONDENT

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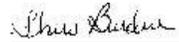
SERVICE	Eric J. Nielsen 1908 E Madison Street Seattle, Wa 98122-2842 Email: nielsene@nwattorney.net	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, <i>or, if an email address appears to the left, electronically.</i> I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED January 31, 2018, Port Orchard, WA  Original e-filed at the Court of Appeals; Copy to counsel listed at left. Office ID #91103 kcpa@co.kitsap.wa.us
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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the prohibitions on possessing sexually explicit materials, frequenting adult bookstores, etc., logging onto social websites, and hitchhiking and the curfew provisions should be stricken?
[Concession of Error]

2. Whether the trial court properly prohibited Blackman from frequenting alcohol-related establishments?

3. Whether the condition that Blackman undergo a substance abuse evaluation was proper?

4. Whether the trial court properly prohibited Blackman, a convicted child rapist, from frequenting places where children congregate?

II. STATEMENT OF THE CASE

Randall Glen Blackman pled guilty to the first-degree child molestation and first-degree rape of a child and was sentenced accordingly. CP 86. The victims were his stepsons. CP 6-7. Other facts and circumstances will be addressed in the argument portion of this brief.

III. ARGUMENT

A. THE CONDITIONS OF COMMUNITY CUSTODY RELATING TO PROHIBITIONS ON POSSESSING SEXUALLY EXPLICIT MATERIALS, FREQUENTING ADULT BOOKSTORES, ETC., LOGGING ONTO SOCIAL WEBSITES, AND HITCHHIKING AND THE CURFEW PROVISIONS SHOULD BE STRICKEN; THE REMAINING CONDITIONS TO WHICH BLACKMAN OBJECTS ARE PROPER.

Blackman argues that a variety of community custody conditions ordered by the trial court were improper. He is correct as to some of his claims and incorrect as to others.

Washington sentencing courts are required to impose certain community custody conditions in specified circumstances and may impose others. *See* RCW 9.94A.703; *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Imposing conditions of community custody is within the discretion of the sentencing court and will be reversed only if it is manifestly unreasonable. *Bahl*, 164 Wn.2d at 753.

RCW 9.94A.703(2) lists conditions that the court “shall order” unless specifically waived by the court. RCW 9.94A.703(2)(c) requires the court to order an offender to “[r]efrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions.”

RCW 9.94A.703(3) sets forth discretionary conditions that the

court may impose. The conditions that may be imposed include the requirement that the offender “[r]efrain from possessing or consuming alcohol.” RCW 9.94A.703(3)(e). The sentencing court is authorized to order an offender to refrain from consuming alcohol, regardless of whether alcohol contributed to the offense. *State v. Jones*, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003).

Finally, the court may require the offender to “comply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). The term “crime related prohibition” is defined in RCW 9.94A.030. No direct causal link need be established between crime related prohibitions and the crime committed; nevertheless, such conditions must relate to the circumstances of the crime. *State v. Llamas-Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992).

1. ***The prohibitions on possessing sexually explicit materials, frequenting adult bookstores, etc., logging onto social websites, and hitchhiking and the curfew provisions should be stricken (Blackman’s Claims 1.1 through 1.4).***

The State concedes that these condition must be stricken because no evidence suggested that these activities were related to or contributed to Blackman’s crimes. *State v. Norris*, 1 Wn. App. 2d 87, 404 P.3d 83, 89 (2017) (absent evidence showing a nexus with crime, conditions relating to frequenting sex-related businesses or possessing sexually explicit

materials were improper);¹ *State v. Johnson*, 180 Wn. App. 318, 330, 327 P.3d 704, 710 (2014) (condition prohibiting use of social networking websites was invalid unless such use contributed in some way to the offense); *State v. Fernandez*, ___ Wn. App. 2d ___, 2018 WL 446444, *7 (Jan. 17, 2018) (unpublished, *see* GR 14.1(a)) (curfew not crime-related where offense occurred in home); *State v. Perkins*, 178 Wn. App. 1024, 2013 WL 6795397, *6 (2013) (unpublished, *see* GR 14.1(a)) (prohibitions relating to hitchhiking or picking up hitchhikers must be crime-related).

2. *The trial court properly prohibited Blackman from frequenting alcohol-related establishments (Claim 1.5).*

As noted above, prohibitions on possession of alcohol and illegal drugs are authorized by statute regardless of whether they are crime related. *Jones*, 118 Wn. App. at 207-08.

Blackman is correct that the prohibition on frequenting places where alcohol is sold must be crime-related. *State v. Garcia*, 199 Wn. App. 1031 (2017) (unpublished, *see* GR 14.1(a)) (*citing Jones*, 118 Wn. App. at 206-07). Here, however, the trial court was justified in imposing this condition. Blackman himself asserted that the crime was alcohol-related:

Both victims reported that these incidents happened while

¹ In *Norris*, Division I of this Court declined to follow *State v. Magana*, 197 Wn. App. 189, 389 P.3d 654 (2016), in which Division III essentially held that these conditions were related to any sex crime. The State believes *Norris* is the correct interpretation.

Mr. Blackman was very drunk. There is evidence of alcohol abuse in Blackman's criminal history with a previous DUI on his misdemeanor record. Mr. Blackman also has been convicted of assaulting his ex-wife during this time too while under the influence of alcohol. Blackman reported to Dr. Reholz that he consumed a six-pack of beer daily. He reported being in rehab for alcohol. It was during one of these alcohol fueled incidents where the kids and their mother moved out and away from Blackman.

State's Supp. CP (Defense Sentencing Memorandum at 5). As such the trial court's prohibition was proper.

3. *The condition that Blackman undergo a substance abuse evaluation was proper (Claim 1.6).*

RCW 9.94A.703(3) permits courts to impose certain discretionary conditions as part of any term of community custody, including requiring the defendant to:

- (c) Participate in crime-related treatment or counseling services;
- (d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

However, such conditions must be related to the crime. *State v. Munoz-Rivera*, 190 Wn. App. 870, 893, 361 P.3d 182 (2015); *see also Jones*, 118 Wn. App. at 207-08.

As noted above, Blackman himself asserted that the crime was alcohol-related. Moreover, his own expert recommended this condition:

The following are recommended for Mr. Blackman:

- Chemical dependency evaluation: Mr. Blackman should demonstrate the ability to maintain sobriety; proof should be from a year of random urinalyses. The multisubstance screen should be sure to include assessment of alcohol and pain medications. His results should be submitted to his corrections officer. If his results are positive, he should undergo a chemical dependency evaluation and follow all recommendations deriving therefrom; quarterly status reports should be submitted by his treatment provider to his corrections officer.

State's Supp. CP (Defense Sentencing Memorandum, Attachment 1, at 21). Because the record showed that the crime was alcohol-related and because even Blackman's own expert recommended evaluation and treatment, this condition was properly imposed.

4. *The trial court properly prohibited Blackman, a convicted child rapist, from frequenting places where children congregate (Claim 1.7).*

RCW 9.94A.703(3)(b) provides that a trial a trial court may, as a condition of community custody, require an offender to “[r]efrain from direct or indirect contact with the victim of the crime or a specified class of individuals.” In light of this statute, the Washington Supreme Court has held that it is proper for a court to order a sex offender to “not frequent places where minors are known to congregate.” *State v. Riles*, 135 Wn.2d 326, 347-49, 957 P.2d 655 (1998). This prohibition is properly applied where the victim of a sexual assault was a child. *Id.* Here, Blackman sexual assaulted not one but two boys, one over an extended period of

time. This condition was proper and should be upheld.

B. THE STATE WILL NOT BE SEEKING APPELLATE COSTS.

Blackman next argues that appellate costs should not be awarded. Given the current state of the law, the State will not be seeking appellate costs.

IV. CONCLUSION

For the foregoing reasons, the cause should be remanded to strike the conditions identified in Blackman's Claims 1.1 through 1.4. but Blackman's conviction and sentence should otherwise be affirmed.

DATED January 31, 2018.

Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'RS' followed by a long horizontal line.

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