

FILED
Court of Appeals
Division II
State of Washington
11/14/2017 8:19 AM

NO. 50263-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

KRIS KEITH BENNETT,

Appellant.

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

The Honorable Mary Sue Wilson

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The condition of community custody prohibiting Mr. Bennett from frequenting places where children congregate is not statutorily authorized because it is not “crime-related.”

2. The condition prohibiting Mr. Bennett from frequenting places where children congregate is unconstitutionally vague.

B. ISSUES RELATED TO THE ASSIGNMENTS OF ERROR

A trial court is statutorily authorized to impose “crime-related prohibitions” only if they are directly related to the circumstances of the crime. A condition barring frequenting places where children congregate is crime-related only if frequenting places where children congregate caused the defendant to facilitate commission of the crime. Did the trial court err in imposing this condition where frequenting places where children congregate was not related to the facilitation or commission of the crime?

C. STATEMENT OF THE CASE

On February 27, 2017, Kris Bennett pleaded guilty to Count I of attempted rape of a child in the second degree and Count II of possession of depictions of minor engaged in sexually explicit conduct in the first degree. CP 22-34. On April 24, 2017, Mr. Bennett was sentenced. CP 87-100. At sentencing, the court imposed a minimum term of 76.5 months. CP 91. As part of the sentence, the court imposed 36 months of community custody, with the conditions listed in

Appendix F. CP 92-93 (4.6 Community Custody.); CP 98-99
(Appendix F). Among these conditions were the following:

6. Do not frequent places where children congregate.

CP 98.

Mr. Bennett appeals. CP 101-15.

D. ARGUMENT

CONDITION 6 IS NOT CRIME-RELATED AND MUST BE STRICKEN.

a. Community custody conditions must be crime-related.

A court may impose only the sentence authorized by statute. *State v. Barnett*, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). Imposing crime-related prohibitions as part of a sentence is generally within the discretion of the sentencing court and will be reversed when they are manifestly unreasonable.” *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). “[A]n unconstitutional condition will always be ‘manifestly unreasonable.’” *State v. Irwin*, 191 Wn.App. 644, 652, 364 P.3d 830 (2015).

The Sentencing Reform Act (SRA) allows a court to impose crime-related prohibitions that are independent of community custody conditions. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). A “[c]rime-related prohibition’... directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10); *State v. Land*, 172 Wn.App. 593, 605, 295 P.3d 782 (2013). “Although the conduct prohibited during community custody

must be directly related to the crime, it need not be causally related to the crime.” *State v. Letourneau*, 100 Wn.App. 424, 432, 997 P.2d 436 (2000).

Under RCW 9.94A.507(1)(a)(i)(iii), (5), a person convicted of attempted second degree rape of a child shall be sentenced to community custody under the supervision of the Department of Corrections (DOC) for any time he is released from total confinement before expiration of the maximum sentence. The sentencing court is required to impose certain conditions and has discretion to impose others, such as crime-related prohibitions, affirmative conditions, and statutorily authorized infringements of certain constitutional rights. RCW 9.94A.703(3)(f); *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *State v. Riles*, 135 Wn.2d 326, 346-47, 957 P.2d 655 (1998).

b. *Condition 6 is not crime-related and must be stricken.*

Mr. Bennett submits that community custody condition 6, prohibiting him from frequenting places where children congregate, is not crime related and must be stricken. Condition 6 is not “crime-related” because Mr. Bennett’s crimes did not involve him frequenting places where children congregate.

Further, the prohibition against frequenting areas where minor children congregate is unconstitutionally vague and because it is not crime related, it must be stricken. See *Riles*, 135 Wn.2d at 350

(condition that limits or prohibits contact with minors must relate to the underlying crime), *abrogated on other grounds by State v. Sanchez Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010); *Irwin*, 191 Wn.App. at 655 (term of condition of custody restricting access where children are known to congregate is unconstitutionally vague as it does not give sufficient notice of what conduct is proscribed).

Here, a review of the Affidavit of Probable Cause, the Pre-sentencing Investigation Report, the Statement of Defendant on Plea of Guilty, and the Statement of Prosecuting Attorney shows that frequenting places where children congregate was not a factor in the crimes to which Mr. Bennett pleaded guilty. CP 8-9, 22-51. In addition, as reflected in the Judgment and Sentence, and after a defense objection as to condition 6 being overly burdensome and unconstitutionally vague, and ensuing discussion of the issue, the court struck certain language in Condition 6 (specifying fast food outlets, libraries, theaters, shopping malls, parks, etc.), which was language originally found in the pre-sentence investigation. CP 98; RP (Sentencing) 16-17, 25-26, 38-39. However, the court striking the parenthetical did not make the prohibition less vague or less broad as the court intended, striking the language provided no further clarification on the areas Mr. Bennett was to avoid. Condition 6 remained overly broad, vague and not crime-related. Because

condition 6 is not crime-related and is unconstitutionally vague it must be stricken.

E. CONCLUSION

The condition of community custody barring Mr. Bennett from frequenting places where children congregate was not statutorily authorized and was unconstitutionally vague.

Therefore, the condition must be stricken.

DATED this 14th day of November, 2017.

Respectfully submitted,



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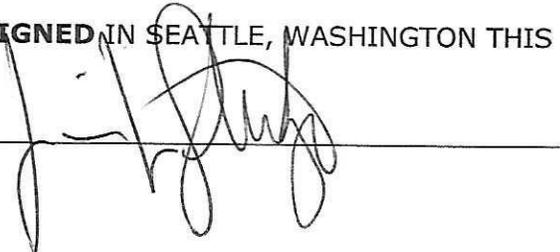
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STUTZER LAW PLLC

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