

FILED
Court of Appeals
Division II
State of Washington
1/3/2018 2:16 PM

NO. 50653-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

QUINN ROBINETT,
Appellant.

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

Kitsap County Cause No. 16-1-01175-4

The Honorable Melissa A. Hemstreet, Judge

BRIEF OF APPELLANT

Skylar T. Brett
Attorney for Appellant

LAW OFFICES OF LISE ELLNER
SKYLAR T. BRETT
P.O. Box 2711
Vashon, WA 98070
(206) 494-0098
skylarbrettlawoffice@gmail.com

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ISSUES AND ASSIGNMENTS OF ERROR..... 1

STATEMENT OF FACTS AND PRIOR PROCEEDINGS..... 3

ARGUMENT..... 4

I. The order prohibiting Mr. Robinett from forming “relationships” with anyone who has care or custody of a minor child without prior authorization is unconstitutionally vague..... 4

II. The sentencing court exceeded its authority by ordering conditions of Mr. Robinett’s community custody that are neither crime-related nor otherwise authorized by statute. 9

A. The community custody condition prohibiting Mr. Robinett from forming relationships with anyone with the care or custody of a minor child is not crime-related. 10

B. The community custody condition requiring Mr. Robinett to get prior approval before any overnight guests could stay in his home and before he could stay outside of his home overnight is not crime-related..... 12

CONCLUSION 13

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008)..... 5, 7, 8, 9

State v. Cordero, 170 Wn. App. 351, 284 P.3d 773 (2012).... 10, 11, 12, 13

State v. Irwin, 191 Wn. App. 644, 364 P.3d 830 (2015)..... 7

State v. Jorgenson, 179 Wn.2d 145, 312 P.3d 960 (2013) 5

State v. Kinzle, 181 Wn. App. 774, 326 P.3d 870 (2014)..... 11

State v. Norris, No. 75258-8-I, -- Wn. App. ---, 404 P.3d 83 (October 30, 2017) 6, 7, 8

State v. O’Cain, 144 Wn. App. 772, 184 P.3d 1262 (2008) 9, 10, 11, 12, 13

State v. Riley, 121 Wn.2d 22, 846 P.2d 1365 (1993)..... 10

State v. Sanchez Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010) 5, 6, 8, 9

State v. Warnock, 174 Wn. App. 608, 299 P.3d 1173 (2013)..... 9

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. I..... 8

U.S. Const. Amend. XIV 1, 5

Wash. Const. art. I, § 3..... 1, 5

WASHINGTON STATUTES

RCW 9.94A.030..... 9

RCW 9.94A.703..... 9

ISSUES AND ASSIGNMENTS OF ERROR

1. The sentencing court imposed community custody condition (b)(20) in violation of Mr. Robinett's Fourteenth Amendment right to due process.
2. The sentencing court imposed community custody condition (b)(20) in violation of Mr. Robinett's Wash. Const. art. I, § 3 right to due process.
3. Community custody condition (b)(20) is unconstitutionally vague.
4. Community custody condition (b)(20) must be stricken from Mr. Robinett's Judgment and Sentence.

ISSUE 1: A sentencing condition is unconstitutionally vague if it either (1) fails to define the proscribed conduct with "sufficient definiteness" that an ordinary person can understand what is prohibited or (2) fails to provide "ascertainable standards" to protect against arbitrary enforcement. Is the condition prohibiting Mr. Robinett from forming "relationships" with any adults with the care or custody of minor children unconstitutionally vague when the term "relationship" is not defined in any way and could be read to include, for example, business relationships or doctor-patient relationships?

5. The court exceeded its statutory authority by imposing community custody condition (b)(20).
6. Community custody condition (b)(20) is not crime-related in Mr. Robinett's case.
7. Community custody condition (b)(20) is not authorized by statute.

ISSUE 2: Unless otherwise authorized by statute, a sentencing court exceeds its authority by imposing a sentencing condition that is not crime-related. Did the court exceed its authority by prohibiting Mr. Robinett from forming any relationships with any adult with minor children when there was no evidence that he had ever offended against any child whom he met through a relationship with his/her parents?

8. The court exceeded its statutory authority by imposing community custody condition (b)(17).
9. Community custody condition (b)(17) is not crime-related in Mr. Robinett's case.
10. Community custody condition (b)(17) is not authorized by statute.
11. Community custody condition (b)(17) must be stricken from Mr. Robinett's Judgment and Sentence.

ISSUE 3: Unless otherwise authorized by statute, a sentencing court exceeds its authority by imposing a sentencing condition that is not crime-related. Did the court exceed its authority by prohibiting Mr. Robinett from having overnight guests in his home or from sleeping outside of his approved residence when there was no evidence that his offenses involved any overnight guests or overnight stays away from home?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Quinn Robinett entered an Alford plea to one count of attempted second-degree child molestation and one count of third-degree child molestation. CP 49-63.

The factual basis for the plea was provided by the probable cause statement, which describes allegations by Mr. Robinett's adopted daughters, which appear to have occurred in the family home. CP 7-10.

As conditions of community custody, the sentencing court prohibited Mr. Robinett (without objection) from having any contact with minor children and from forming romantic relationships with anyone with minor children. CP 94.

The sentencing court also ordered over defense objection that Mr. Robinett:

Shall not form relationships with individuals who have care or custody of minor children without authorization from the CCO and/or therapist.
CP 94; RP (7/7/17) 24-25.

Mr. Robinett's attorney pointed out that the term "relationships" was extremely broad and vague. RP (7/7/17) 24. He noted that it could be construed to include, among other things, any business relationships that Mr. Robinett may form. RP (7/7/17) 24. Defense counsel also pointed out that there were no allegations that Mr. Robinett had ever harmed any

children whom he had met through relationships with their parents. RP (7/7/17) 25.

The court also ordered (over objection) that Mr. Robinett:

Shall have prior approval for all residential and employment situations, including overnight guests at his approved residence and overnight stays at places other than his approved residence. CP 94; RP (7/7/17) 21.

Defense counsel pointed out that the condition would require prior approval before an adult out-of-town guest could stay at Mr. Robinett's home. RP (7/7/17) 21. Mr. Robinett also noted that there were no allegations that Mr. Robinett had ever offended against anyone who was a guest in his home or whom he was visiting during an overnight stay. RP (7/7/17) 21.

This timely appeal follows. CP 96-111.

ARGUMENT

I. THE ORDER PROHIBITING MR. ROBINETT FROM FORMING “RELATIONSHIPS” WITH ANYONE WHO HAS CARE OR CUSTODY OF A MINOR CHILD WITHOUT PRIOR AUTHORIZATION IS UNCONSTITUTIONALLY VAGUE.

Over Mr. Robinett's objection, the sentencing court prohibited him from “form[ing] relationships with individuals who have care or custody of minor children without authorization from the CCO and/or therapist.” CP 94; RP (7/7/17) 24-25.

As Mr. Robinett pointed out, however, that language is unclear and could be read, for example, to prohibit the forming of business relationships without prior approval. RP (7/7/17) 24. The condition is unconstitutionally vague.

Due process requires that the state provide citizens with fair warning of proscribed conduct. *State v. Sanchez Valencia*, 169 Wn.2d 782, 791, 239 P.3d 1059 (2010); U.S. Const. Amend. XIV; art. I, § 3.

A community custody condition is unconstitutionally vague if it (1) fails to define the proscribed conduct with “sufficient definiteness” that an ordinary person can understand what is prohibited or (2) fails to provide “ascertainable standards” to protect against arbitrary enforcement. *State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008). Failure to satisfy either requirement renders the condition void for vagueness. *Id.*

Unlike a statute or ordinance, the court does not begin with the presumption that a sentencing condition is constitutional. *Sanchez Valencia*, 169 Wn.2d at 793.¹

A sentencing condition that affects a constitutional right must be “sensitively imposed” and must be “reasonably necessary to accomplish

¹ Constitutional issues are reviewed de novo. *State v. Jorgenson*, 179 Wn.2d 145, 150, 312 P.3d 960 (2013). Generally, conditions of community custody are reviewed for abuse of discretion. *Sanchez Valencia*, 169 Wn.2d 78 at 791-92. A court abuses its discretion by imposing an unconstitutional sentencing condition. *Id.*

the essential needs of the State and public order.” *State v. Norris*, No. 75258-8-I, -- Wn. App. ---, 404 P.3d 83, 86 (October 30, 2017)

In *Sanchez Valencia*, for example, the court found that a sentencing condition prohibiting possession of “paraphernalia that can be used for ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances” was unconstitutionally vague. *Id.* The court declined to read the word “paraphernalia” to mean only “drug paraphernalia,” because the sentencing condition did not include such limiting language. *Id.*

The court also found that the *Sanchez Valencia* condition violated the second alternative of the vagueness test:

...an inventive probation officer could envision any common place item as possible for use as drug paraphernalia, such as sandwich bags or paper. Another probation officer might not arrest for the same “violation,” i.e. possession of a sandwich bag. A condition that leaves so much to the discretion of individual community corrections officers is unconstitutionally vague.

Sanchez Valencia, 169 Wn.2d at 794-95.

Similarly, the *Irwin* court found that an order prohibiting an offender from going to any place where “children are known to congregate,” absent some illustrative list of prohibited locations, was unconstitutionally vague because it did not give sufficient notice for an ordinary person to “understand what conduct is proscribed.” *State v.*

Irwin, 191 Wn. App. 644, 654–55, 364 P.3d 830 (2015); *See also Norris*, 404 P.3d 83 (finding a similar condition to be unconstitutionally vague).

The condition prohibiting Mr. Robinett from forming “relationships” with anyone with minor children fails both prongs of the vagueness test. *Bahl*, 164 Wn.2d at 752-53.

First, the language fails to define the proscribed conduct with “sufficient definiteness” that an ordinary person can understand what is prohibited. *Id.* The term “relationship” could be interpreted to include, *inter alia*, any business associate or co-worker, someone who serves him regularly at a local café, attorney-client relationships, doctor-patient relationships, or simply being friendly with the mailman. Under one plausible construction, Mr. Robinett would be required to ask every person he encounters if s/he has minor children and then get prior approval from his Community Corrections Officer (CCO) “and/or therapist” before continuing the conversation if the answer is affirmative. The language of the condition fails the first prong of the vagueness test. *Id.*

The condition regarding “relationships” also fails to provide “ascertainable standards” to protect against arbitrary enforcement. *Id.* An “inventive probation officer” could find Mr. Robinett in violation of his sentence the moment he strikes up a conversation with a stranger without first asking whether that person has children and calling his CCO for

approval while another officer may not consider that action a violation. *Sanchez Valencia*, 169 Wn.2d at 794-95. The condition is unconstitutionally vague because it leaves too much to “the discretion of individual community corrections officers.” *Id.*; *Bahl*, 164 Wn.2d at 752-53.

Finally, the condition affects Mr. Robinett’s constitutional right to the freedom of association, but is neither “sensitively imposed” nor “reasonably necessary to accomplish the essential needs of the State and public order.” *Norris*, 404 P.3d at 86; U.S. Const. Amend. I. Compliance with the condition would make it all but impossible for Mr. Robinett to get involved with a club or political organization without first assessing whether any of the other members have children and obtaining prior permission from a CCO or therapist.

Indeed, Mr. Robinett is already separately prohibited from any contact with minors and from forming *romantic* relationships with people who have minor children. CP 94. The additional condition barring any other “relationships” is not necessary to protect children.

The remedy for an unconstitutionally vague sentencing condition is to strike it from the judgment and sentence. *Sanchez Valencia*, 169 Wn.2d at 795.

The condition of Mr. Robinett’s community custody prohibiting “relationships” with anyone with the care or custody of a minor child is unconstitutionally vague. *Bahl*, 164 Wn.2d at 752-53; *Sanchez Valencia*, 169 Wn.2d at 794-95. That condition must be stricken from the Judgment and Sentence. *Id.*

II. THE SENTENCING COURT EXCEEDED ITS AUTHORITY BY ORDERING CONDITIONS OF MR. ROBINETT’S COMMUNITY CUSTODY THAT ARE NEITHER CRIME-RELATED NOR OTHERWISE AUTHORIZED BY STATUTE.

The trial court does not have power to impose community custody conditions unless they are authorized by statute. *State v. Warnock*, 174 Wn. App. 608, 611, 299 P.3d 1173 (2013). A court may order a person on supervision to “comply with any crime-related prohibitions.” RCW 9.94A.703(3)(f).²

“Crime-related prohibition” is defined as “an order of a court prohibiting conduct that directly relates to the circumstances for which the offender has been convicted...” RCW 9.94A.030(10). A condition is not crime-related if there is no evidence linking the prohibited conduct to the offense. *State v. O’Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

² Whether a court has imposed a community custody condition beyond the bounds of its authority is reviewed de novo. *Warnock*, 174 Wn. App. at 611.

The philosophy behind the provision for crime-related sentencing conditions is that “persons may be punished for their crimes and they may be prohibited from doing things which are directly related to their crimes, but they may not be coerced into doing things which are believed to rehabilitate them.” *State v. Cordero*, 170 Wn. App. 351, 373–74, 284 P.3d 773 (2012) (quoting *State v. Riley*, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993)).

In Mr. Robinett’s case, the conditions prohibiting him from forming relationships with anyone with the care of custody of a minor child and requiring prior approval before any adult overnight guests could stay in his home or he could stay outside of his home overnight are not crime-related. There was no indication that his offenses involved any children he met through social relationships with their parents, any connection to an overnight guest, or occurred while he was staying outside of his home overnight. *See CP generally*. Those conditions must be stricken from Mr. Robinett’s Judgment and Sentence. *Cordero*, 170 Wn. App. 351; *O’Cain*, 144 Wn. App. at 775.

- A. The community custody condition prohibiting Mr. Robinett from forming relationships with anyone with the care or custody of a minor child is not crime-related.

There was no indication in Mr. Robinett’s case that his offenses involved any children he had encountered by forming relationships with

their parents. Rather, both of his offenses of conviction were based on allegations by his own children, occurring in his own home. CP 7-10.

Even so, the sentencing court prohibited him – over defense objection – from forming relationships with people with the care or custody of minor children without prior authorization. CP 94; RP (7/7/17) 24-25. That condition must be stricken from Mr. Robinett’s Judgment and Sentence because it is not crime-related or authorized by any other statute. *Cordero*, 170 Wn. App. 351; *O’Cain*, 144 Wn. App. at 775.

Notably, a separate condition of Mr. Robinett’s sentence already prohibited him from having any contact with minor children. CP 94. So the condition prohibiting relationships with any adults who had care of children was not necessary to prevent interaction with the children, themselves.

Mr. Robinett’s Judgment and Sentence also separately prohibited him from forming a romantic relationship with anyone with minor children. CP 94.

Kinzle, in which Division I found that an identical condition to be crime-related, is instructive for the contrast it provides with Mr. Robinett’s case. *State v. Kinzle*, 181 Wn. App. 774, 785, 326 P.3d 870 (2014).

In *Kinzle*, the defendant’s convictions involved children whom he accessed by forming a social relationship with their parents. *Id.* The

actual offenses took place when Kinzle spent the night at the home of a friend and molested that friend's children. *Id.* at 777-78.

But there was no evidence along those lines in Mr. Robinett's case. CP 7-10. The condition prohibiting Mr. Robinett from forming relationships with people with the care or custody of minor children is not related to his crime in any way and must be stricken from his Judgment and Sentence. *Cordero*, 170 Wn. App. 351; *O'Cain*, 144 Wn. App. at 775.

B. The community custody condition requiring Mr. Robinett to get prior approval before any overnight guests could stay in his home and before he could stay outside of his home overnight is not crime-related.

There was no evidence that Mr. Robinett's offenses involved any adult overnight guests to his home or occurred when he spent the night away from his home. CP 7-10.

Still, the sentencing court required Mr. Robinett to get prior approval before any adult could stay at his home and before he could spend a night away from his approved residence. CP 94.

Again, Mr. Robinett was already prohibited from any contact with minor children and from forming romantic relationships with anyone with minor children. CP 94. He was also subject to any geographic restrictions his CCO chose to put in place. CP 94. Accordingly, the condition related

to overnight guests was not otherwise necessary to limit Mr. Robinett's access to children.

The community custody condition prohibiting Mr. Robinett from having overnight guests and from sleeping outside of his home was not crime-related or otherwise authorized by statute. That condition must be stricken from Mr. Robinett's Judgment and Sentence. *Cordero*, 170 Wn. App. 351; *O'Cain*, 144 Wn. App. at 775.

CONCLUSION

The order prohibiting Mr. Robinett from forming "relationships" with anyone with care or custody of a minor child is unconstitutionally vague. That order, as well as the order requiring him to get prior approval for any overnight guests at his home or overnight stays outside of his home, also exceeded the sentencing court's authority because they are neither authorized by statute nor crime-related. Those conditions must be stricken from Mr. Robinett's Judgment and Sentence.

Respectfully submitted on January 3, 2018,



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Quinn Robinett/DOC#399716
Airway Heights Corrections Center
PO Box 2049
Airway Heights, WA 99001

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Kitsap County Prosecuting Attorney
kcpa@co.kitsap.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on January 3, 2018.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

LAW OFFICE OF SKYLAR BRETT

January 03, 2018 - 2:16 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50653-0
Appellate Court Case Title: State of Washington, Respondent v. Quinn Robinett, Appellant
Superior Court Case Number: 16-1-01175-4

The following documents have been uploaded:

- 506530_Briefs_20180103141546D2744998_2646.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Robinett Opening Brief.pdf

A copy of the uploaded files will be sent to:

- Liseellnerlaw@comcast.net
- trrobins@co.kitsap.wa.us
- valerie.liseellner@gmail.com

Comments:

Sender Name: Valerie Greenup - Email: valerie.skylarbrett@gmail.com

Filing on Behalf of: Skylar Texas Brett - Email: skylarbrettlawoffice@gmail.com (Alternate Email: valerie.skylarbrett@gmail.com)

Address:
PO Box 18084
Seattle, WA, 98118
Phone: (206) 494-0098

Note: The Filing Id is 20180103141546D2744998