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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

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STATE OF WASHINGTON,

Respondent,

v.

QUINN ROBINETT,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
KITSAP COUNTY, STATE OF WASHINGTON  
Superior Court No. 16-1-01175-4

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BRIEF OF RESPONDENT

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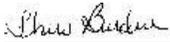
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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether two of the supervision conditions in the judgment and sentence are not statutorily authorized, crime related, or are constitutionally vague?

(a) Whether under the circumstances of this case a condition of supervision that provides that the offender “Shall not form relationships with individuals who have care or custody of minor children without authorization from the CCO and/or therapist” must be stricken?

(b) Whether under the circumstances of this case and condition of supervision that provides that the offender “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, subject to review after the completion of a psychosexual evaluation” must be stricken?

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

Quinn Robinett was charged by information filed in Kitsap County Superior Court with two counts of first degree child molestation, one charged as attempt, and one count of second degree rape of a child. CP 1-5. A domestic violence special allegation was charged on each count. Id.

Later, a first amended information charged second degree child molestation, attempt, domestic violence, regarding ARR, first degree child molestation, domestic violence, regarding RKR, third degree rape of a child, domestic violence, ongoing pattern of abuse, regarding MJR, first degree child molestation, domestic violence, ongoing pattern of abuse, regarding MJR, first degree rape of a child, domestic violence, ongoing pattern of abuse, regarding MJR, third degree rape of a child, domestic violence, ongoing pattern of abuse, regarding MJR. CP 22-29.

Pursuant to plea agreement, these many charges were reduced to one count of attempted second degree child molestation, domestic violence, regarding ARR, and one count third degree child molestation, domestic violence, regarding MJR in a second amended information. CP 38-41. The plea agreement said that in exchange for Robinette's plea the state would not file multiple counts of child molestation and child rape with aggravating circumstances of ongoing abuse. CP 44. The agreement recited the understanding of the parties that the state had sufficient evidence to prove first degree child molestation. CP 45.

Robinett pled guilty but admitted not facts. CP 58; RP, 6/6/17, 41. He agreed that the court could consider police reports and the statement of probable cause to establish a factual basis for the plea. Id. A presentence investigation was ordered and a presentence report filed. CP 60-67. That

report recommended conditions of supervision found in its appendix F. CP 67.

In fact, the recommended conditions were in appendix H, not F. CP 93. Robinett challenged some of the conditions. CP 71-76 (Defendant's sentencing memorandum). The trial court sustained some of Robinett's objections to the conditions. From the conditions of sentence section of the judgment and sentence the trial court struck conditions prohibiting possession of "sexually exploitive material" as defined by CCO or therapist and possession of or access to "sexually explicit materials, and/or information pertaining to minors via computer." CP 85.

The trial court expressly adopted the conditions recommended by presentence investigation. CP 85. But the trial court amended or struck several condition from appendix H. CP 93-95. The trial court struck section (b) other conditions number 12, prohibiting Robinett from frequenting places where minors congregate, number 14, prohibiting going to adult entertainment establishments, number 15, prohibiting the owning or viewing of sexually explicit materials (much like the condition stricken from the face of the judgment and sentence), and number 27, prohibiting the use of 900 numbers. CP 94-95.

The trial court amended condition 3, which prohibits consumption of controlled substances without a prescription, to apply to "illegal"

controlled substances only, amended condition 13, which prohibits possession of many sorts of weapons, to apply to firearms only, amended condition 16 maintaining geographical restrictions but striking a curfew condition, amended condition 17, which requires approval of “residential and employment situations,” to be reviewable after completion of a psychosexual evaluation, and amended condition 19, which generally prohibited intimate, romantic, or sexual relationships without CCO authorization, to prohibit such relationships with adults who have minor children only. CP 94-95.

Robinett received a standard range sentence. CP 82-83. The present appeal was timely filed. CP 96.

## **B. FACTS**

The statement of probable cause indicates that ARR was interviewed by authorities in May of 2016. CP 7. The child told a forensic child interviewer that Robinett had crawled into bed with her when she was nine years old and rubbed her body, stopping at putting his hand in her bra when she said no. Id. Another time, he lay behind her and she could feel his erect penis against her butt. CP 7-8.

On the same day, RKR was interviewed. CP 8. She said that when she was nine, Robinett got in bed with her, put his hand in her pants, and rubbed her private parts. CP 8. RKR said that when she was ten, Robinett

pushed his erect penis against her butt as well. CP 8.

On the same day, MJR disclosed that when she was 13, Robinett pulled down her pants and placed his penis partway into her vagina. CP 9. She said “owe” and he stopped but he continued to touch her with his hand. Id. MJR disclosed that since she was little Robinett had touched and placed his finger in her vagina. CP 10.

### III. ARGUMENT

#### A. **CONDITION (B)(20) IS NOT UNCONSTITUTIONALLY VAGUE AND IS CRIME RELATED AND CONDITION (B)(17) IS A REASONABLE APPLICATION OF THE STATUTORY AUTHORITY GRANTED TO THE DEPARTMENT OF CORRECTIONS AND THE TRIAL COURT.**

Robinett argues that condition of supervision (b)(20) is unconstitutionally vague. He focuses on a supposed ambiguity in the phrase “form relationships.” This claim is without merit because the condition is in fact abundantly clear.

Robinett may raise vagueness challenges to sentencing conditions for the first time on appeal as long as the issues are purely legal, do not require factual development, and the condition is final. *State v. Valencia*, 169 Wn.2d 782, 786, 239 P.3d 1059 (2010), citing *State v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008).

A trial court's imposition of community custody conditions is discretionary and will not be reversed unless manifestly unreasonable. *Valencia*, 169 Wn.2d at 791. Conditions of sentence are not presumed to be constitutional. *Id.* at 793. Imposing an unconstitutional condition is manifestly unreasonable. *Id.* at 792. But a trial court may always impose crime-related prohibitions. RCW 9.94A.505 (8). Such conditions "prohibit conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). The term "directly related" is broadly defined to include things that are "reasonably related" to the crime. *State v. Irwin*, 191 Wn.App. 644, 656, 364 P.3d 830 (2015).

The vagueness doctrine serves to give notice to a citizen of proscribed conduct and serves to protect against arbitrary enforcement. *Valencia*, 169 Wn.2d at 791. But the person upon whom the conditions are imposed need not be able to predict with absolute certainty what conduct is prohibited. *Id.* at 793. Impossible standards of specificity are not required. *See State v. Norris*, 1Wn. App.2d 87, 94, 404 P.3d 83 (2017). There must be "ascertainable standards of guilt to protect against arbitrary enforcement." *Valencia*, 169 Wn.2d at 794, *quoting Bahl*, 164 Wn.2d at 753.

At page 7 of his brief, Robinett argues that the term "relationship"

is too vague because it could be broadly interpreted to apply to a coworker, a barista, an attorney, a physician, or the mailman and thus fails to provide sufficient definiteness to advise Robinett of the behavior that is prohibited. Also, Robinett believes the word “relationship” would apply to any casual encounter. And that a clever CCO may violate him for having a casual encounter which makes the condition fail to be an ascertainable standard and will be subject to arbitrary enforcement.

First, the state believes that vagueness disappears by answering “yes.” That is, this prohibition should apply to all of the permutations of relationships that Robinett identifies and any others he can think of. If the barista, physician, mailman, and etcetera have minor children, Robinett should stay away unless upon disclosure his CCO or therapist allow it. If he does not know of the children, then a violation would be unlikely.

Second, the extension of the vagueness argument to casual encounters is simply not warranted. Consideration of the meaning of the term begins with the root “related,” which is defined as “connected by reason of an established or discoverable relation.” Merriam-Webster online dictionary <https://www.merriam-webster.com>. “Relationship” is “the state of being related.” Id. A casual encounter is simply not an “established and discoverable relation.” Unlikely that Robinett’s encounters with baristas or mail carriers are either established or

discoverable.

The plain English word that Robinett wants read into this condition is “acquaintance.” The word “acquaint” means “to cause to know personally.” Merriam-Webster online dictionary, <http://www.merriam-webster.com>. In turn, “acquaintance” means “the state of being acquainted.” Id. And, a second definition is more apt to the present situation: “a person whom one knows but who is not a particularly close friend.” Id. These are the individuals that Robinett stretches the language of the condition to cover. The distinction between “relationship” and “acquaintance” is clear. There is no reason to suppose that a CCO would not appreciate that distinction in enforcing this condition.

Finally, the condition is crime related. Robinett pled guilty to domestic violence special allegations. The record shows that the case involved inter-familial molestation. Keeping Robinett away from family-unit type relationships is “reasonably related” to his crimes of molesting children in such relationships. *State v. Irwin, supra*.

Next, Robinett claims that condition of supervision (b)(17) is not crime related. Much of that provision is validated by the mandatory conditions that DOC is statutorily required to impose. RCW 9.94A.704 requires the department to require the offender to “(b) Remain in prescribed geographical boundaries” and “(c) Notify the community

corrections officer of any changes to the offender's address or employment." Moreover, the trial court's authority in this wise includes ordering that the offender: "work at department-approved education, employment, or community restitution, or any combination thereof" and "obtain prior approval of the department for the offender's residence location and living arrangements." RCW 9.94A.703(2)(b) and (e).

These statutory provisions taken together supply the authority for condition of supervision (b)(17). The CCO may impose geographical limitations and nothing in the statutory language or the cases restricts this power from applying to where the offender intends to lay his head at night. The trial court's statutory power to require that the offender garner the approval of the department with regard to where he lives and more generally his "living arrangements" dovetails well with the CCO's authority for geographical limitations.

The department is allowed to consider his employment and living situations. Robinett is required to advise the CCO of where he lives and where he works. Condition of supervision (b)(17) simply expands on and gives content to the statutory grant of authority to the department and the trial court. This condition should not be stricken.

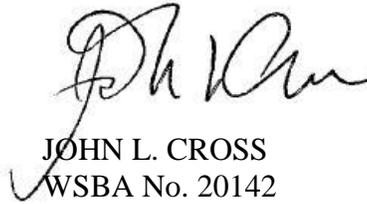
**IV. CONCLUSION**

For the foregoing reasons, Robinett's sentence should be affirmed.

DATED February 27, 2018.

Respectfully submitted,

TINA R. ROBINSON  
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A handwritten signature in black ink, appearing to read "John L. Cross". The signature is written in a cursive style with a large initial "J" and "C".

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