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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

CHRISTOPHER KYLE SIKES,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 15-1-00571-7
The Honorable Kathryn Nelson, Judge

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in imposing several terms of community custody that are not authorized by statute or are unconstitutionally vague.
2. The trial court erred in revoking Appellant's Special Sex Offender Sentencing Alternative (SSOSA) suspended sentence and ordering him to serve the remainder of his sentence in confinement.
3. The community custody condition prohibiting Appellant from purchasing alcohol exceeds the trial court's statutory authority.
4. The community custody condition ordering Appellant to inform his community corrections officer of any "romantic relationships" is unconstitutionally vague.
5. The failure of the trial court to make oral or written findings as to the evidence relied on and reasons for revoking Appellant's SSOSA constitute a violation of Appellant's due process rights.
6. The community custody condition prohibiting Appellant from entering into "any location where alcohol is the primary product" exceeds the trial court's statutory authority.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the trial court err in revoking Appellant's Special Sex Offender Sentencing Alternative (SSOSA) suspended sentence and ordering him to serve the remainder of his sentence in confinement, where two of the alleged violations were based on conditions that were imposed by the trial court without statutory authority? (Assignment of Error 1 & 2)
2. Did the trial court act without statutory authority in prohibiting Appellant from purchasing alcohol, and in revoking his SSOSA partly based on a violation of this condition, where the SSOSA statute provides a court with authority to impose alcohol-related conditions only if the prohibited alcohol-related behavior was "crime-related" or a known "precursor" behavior that led to criminal activity? (Assignments of Error 1, 2 & 3)
3. Did the trial court act without statutory authority in requiring Appellant to inform his community corrections officer of any "romantic relationships," and in revoking Appellant's SSOSA partly based on a violation of this condition, when this sentencing condition is unconstitutionally vague?

(Assignments of Error 1, 2 & 4)

4. Did the failure of the trial court to make oral or written findings as to the evidence relied on and reasons for revoking Appellant's SSOSA constitute a violation of Appellant's due process rights, where the oral ruling and written order are contradictory and where neither explain in any detail the facts and reasons the court used in deciding to revoke Appellant's SSOSA? (Assignment of Error 5)
5. Should the conditions prohibiting Appellant from purchasing alcohol or from entering into "any location where alcohol is the primary product" be stricken from Appellant's judgment and sentence because they are neither crime-related nor known "precursor" activities or behaviors that led to criminal activity? (Assignments of Error 1, 3 & 6)
6. Should the condition requiring Appellant to inform his CCO of any "romantic relationships" be stricken from Appellant's judgment and sentence because it is unconstitutionally vague? (Assignment of Error 1 & 4)

III. STATEMENT OF THE CASE

On September 25, 2015, Christopher Kyle Sikes pleaded guilty to one count of rape of a child in the first degree of A.S., and

one count of rape of a child in the first degree of J.S. (CP 8-9, 11-22; 09/25/15 RP 3, 9)¹ According to the probable cause declaration, Sikes began having sexual contact with A.S. and J.S., his adopted sisters, when they were five and six years old. (CP 6) Sikes also acknowledged that he had intercourse with A.S. and J.S. over several years. (CP 6, 19)

The trial court sentenced Sikes to a standard range sentence of 131.9 months and a lifetime term of community custody. (CP 89, 93, 95; 2RP 37) The trial court suspended all but 12 months of Sikes' sentence under the Special Sex Offender Sentencing Alternative (SSOSA). (CP 93; 1RP 19-20; 2RP 37) Conditions of Sikes' SSOSA included (1) 12 months confinement; (2) reasonable progress in and successful completion of sex offender treatment; (3) compliance with treatment conditions; and (4) compliance with community custody conditions. (1RP 19-20; 2RP 37; CP 93-96, 104-06)

After serving his 12-month jail term, Sikes began treatment with Daniel DeWaelsche on October 10, 2016. (CP 131; 3RP 51) Sikes was found to be in compliance with the terms of his SSOSA

¹ The transcripts labeled volumes 1 through 5 will be referred to by their volume number (#RP). The remaining transcripts will be referred to by the date of the proceeding.

at review hearings conducted on December 16, 2016 and June 2, 2017. (CP 126-27, 146) However, DeWaelsche was concerned about Sykes' progress when he learned that Sykes had developed a relationship with a woman that DeWaelsche thought was unhealthy and risky. (3RP 57, 61-62, 68)

DeWaelsche contacted Sikes' community corrections officer (CCO), Gail DeLaney, and expressed his concerns about Sikes' relationship with the woman. (3RP 109) DeLaney met with Sikes and asked him about the woman, "Chev." (3RP 109, 116) Sikes told DeLaney that he had been giving Chev money for alcohol and gambling, and giving her rides because she did not have a car. (3RP 110-11, 117) He also acknowledged that he had taken Chev to a casino and bought her drinks. (3RP 132) But Sikes told DeLaney that their relationship was not physical or romantic. (3RP 111)

Sikes eventually disclosed that he had offered to pay Chev money so that he could touch her breasts. (3RP 57, 58-59, 63, 67, 68, 70) He also disclosed that Chev had a two-year-old daughter living with her, that he had multiple contacts with the child in his car and in Chev's home, and that he had driven Chev and the child to Wild Waves waterpark. (3RP 113, 114-15, 116, 123, 152-55, 173)

The defendant submitted to a polygraph on September 18, 2017, during which he again admitted to these activities. (3RP 156; Exh. P3; CP 158-64)

DeLaney filed a Notice of Violation on September 28, 2017. (CP 152-57) DeLaney asserted that Sikes had violated the terms of his SSOSA by (1) having contact with a minor; (2) frequenting areas where minors congregate; (3) failing to remain within the geographic boundary of Pierce County; (4) not informing his CCO of any romantic relationships in order to verify that there are no victim age children involved; and (5) purchasing alcohol. (CP 152-53) Based on this Notice, on October 4, 2017 the State filed a petition to revoke Sikes' suspended SSOSA sentence. (CP 150-51, 165-71) The State asserted that revocation should be ordered based on the violations claimed by DeLaney, and because Sikes had failed to make satisfactory progress in treatment. (CP 150-51)

Sikes was terminated from treatment on October 25, 2017. (3RP 59, 64; Exh. P1) DeWaelsche said he would be unwilling to allow Sikes back into the treatment program because Sikes' dishonesty was a violation of the terms of treatment, and because Sikes had engaged in behavior that DeWaelsche believed put Sikes at risk to reoffend and to victimize another child. (3RP 59,

61-62, 66, 67, 70) Both DeWaelsche and DeLaney believed that Sikes would not progress in treatment if he remained in the community. (3RP 70, 126)

Dr. Paula van Pul is a sex offender treatment provider. (4RP 197) She evaluated Sikes and found him to be forthcoming and open about his offenses and recent behavior. (4RP 209, 212-13) Van Pul determined that Sikes exhibited cognitive issues consistent with a developmental disability. (4RP 212, 218-19) She believed Sikes would benefit from a unique special needs group treatment option that her program offered. (4RP 217-18) However, there were several alleged violations and behaviors that Sikes had apparently not disclosed to van Pul during their evaluation session. (4RP 234-36)

Following a hearing held on November 29, 2017 and April 12, 2018, the trial court revoked Sikes' SSOSA and ordered him to serve the remainder of his 131.9-month sentence in confinement, with credit for time served. (5RP 266-67; CP 231-32) Sikes timely appealed. (CP 259)

IV. ARGUMENT & AUTHORITIES

A. SEVERAL COMMUNITY CUSTODY CONDITIONS IMPOSED AS PART OF SIKES'S SSOSA WERE INVALID AND VIOLATION OF THOSE CONDITIONS SHOULD NOT HAVE BEEN THE BASIS FOR REVOKING SIKES' SSOSA.

1. *The trial court did not have statutory authority to impose a restriction on the purchase of alcohol as a condition of Sikes' SSOSA—or to revoke the SSOSA based on a violation of that conditions—because the condition was not crime-related or known precursors to Sikes' offense cycle.*

The trial court imposed a condition prohibiting Sikes from purchasing alcohol. (CP 105) The State argued that Sikes' violated this condition when he purchased alcohol for Chev. (CP 151, 154; 4RP 246) The trial court erred in imposing this community custody condition and in revoking his suspended sentence based in part on its violation, because this restriction is not authorized by statute.

A sentencing court's authority is derived wholly from statute. In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980); State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008). This Court reviews *de novo* whether the trial court had statutory authority to impose a challenged sentencing condition. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). An offender may challenge an erroneous sentencing condition for the

first time on appeal. Bahl, 164 Wn.2d at 744.

The Sentencing Reform Act (SRA) authorizes a trial court to impose a suspended sentence for certain first-time sex offenders who are amenable to treatment under the Special Sex Offender Sentencing Alternative (SSOSA), RCW 9.94A.670. The statute provides a court the option of imposing a SSOSA if the court determines that suspending the sentence and ordering treatment would be in the best interests of the offender and the community. State v. Jackson, 61 Wn. App. 86, 92-93, 809 P.2d 221 (1991); RCW 9.94A.670(4).

If the court determines an offender is eligible for a SSOSA, the court may order an examination to determine whether the offender is amenable to treatment. RCW 9.94A.670(3). The examiner's report must include "[r]ecommended crime-related prohibitions and affirmative conditions." RCW 9.94A.670(3)(b)(v). The examiner's recommended crime-related conditions "must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances." RCW 9.94A.670(3)(b)(v).

If the offender is amenable to treatment and the court decides to grant a SSOSA, the court imposes a term of confinement of up to twelve months, suspends the remainder of the sentence, and imposes a term of community custody “equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater.” RCW 9.94A.670(5)(a), (b). The court must also order the offender to participate in treatment in the community for any period of time up to five years in duration. RCW 9.94A.670(5)(c).

The statute provides the court authority to impose certain “conditions of the suspended sentence.” RCW 9.94A.670(5), (6). First, the court must impose “[s]pecific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified” by the examiner in the proposed treatment plan. RCW 9.94A.670(5)(d). The court also has discretion to impose other “[c]rime-related prohibitions.” RCW 9.94A.670(6)(a). Finally, during the term of community custody, the court must “require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.” RCW 9.94A.670(5)(b).

RCW 9.94A.703 is the general statute pertaining to community custody conditions in felony sentencing. Generally, that

statute does not provide authority to order an offender to refrain from engaging in otherwise lawful behavior during community custody unless the prohibition is “crime-related.” RCW 9.94A.703(3)(f) (“As part of any term of community custody, the court may order an offender to . . . [c]omply with any crime-related prohibitions.”); State v. Riles, 135 Wn.2d 326, 349-50, 957 P.2d 65 (1998), overruled in part on other grounds by State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010).

Two limited exceptions exist in regard to the use of intoxicating substances. First, the court may order the offender to “[r]efrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions.” RCW 9.94A.703(2)(c). Second, the court may order an offender to “[r]efrain from consuming alcohol” during community custody, even if alcohol did not contribute to the offense. RCW 9.94A.703(3)(e); State v. Jones, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003).

In this case, the trial court ordered that Sikes could not “**purchase**, possess, or consume alcohol.” (Other Condition No. 14, emphasis added; CP 105) But the examiner did not identify the purchase of alcohol as a precursor to Sikes’ criminal offense cycle. (CP 44) Neither is the purchase of alcohol “crime related.”

The SRA defines a “crime-related prohibition” as an “order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). The condition need not be causally related to the crime, but it must be directly related to the crime. State v. Zimmer, 146 Wn. App. 405, 413, 190 P.3d 121 (2008). Thus, crime-related conditions of community custody must be supported by evidence showing the factual relationship between the crime punished and the condition imposed. State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989). Substantial evidence must support a determination that a condition is crime-related. State v. Motter, 139 Wn. App. 797, 801, 162 P.3d 1190 (2007).²

Sikes pleaded guilty, so there was no trial. But the offenses are described in the certification for determination of probable cause and the psychosexual evaluation. There is no mention in either document of alcohol or controlled substances being present or consumed, or in any other way contributing to or playing a part in the commission of Sikes’ offenses. (CP 5-7, 35)

Because the purchase of alcohol is neither “crime-related”

² *Overruled on other grounds*, State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010).

nor a known “precursor” to criminal activity as identified by the examiner, the court did not have statutory authority to prohibit Sikes from engaging in this activity as a condition of the suspended sentence. And the court did not have authority to revoke Sikes’ sentence based on his violation of this condition.

2. *The trial court did not have statutory authority to require Sikes to report any “romantic relationships” as a condition of his SSOSA—or to revoke the SSOSA based on a violation of that condition—because the condition is unconstitutionally vague.*

The trial court imposed an additional condition requiring Sikes to inform his CCO of any “romantic relationships” (Other Condition 20). (CP 106) This condition is unconstitutionally vague because it fails to apprise Sikes of prohibited conduct and allows for arbitrary enforcement.

The due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of the Washington Constitution requires the State to provide citizens with fair warning of proscribed conduct. State v. Bahl, 164 Wn.2d at 752. The doctrine also protects from arbitrary, ad hoc or discriminatory enforcement. State v. Halstien, 122 Wn.2d 109, 116-17, 857 P.2d 270 (1993). A condition is unconstitutionally vague if it (1) does not define the criminal offense with sufficient definiteness that ordinary people can

understand what conduct is proscribed or (2) does not provide ascertainable standards of guilt to protect against arbitrary enforcement. Bahl, 164 Wn.2d at 752-53.

Condition 20 requires Sikes to inform his CCO of any “romantic relationships.” (CP 106) The condition does not provide Sikes with adequate notice of what he must do to avoid sanction and does not prevent arbitrary enforcement because it is not clear what constitutes a “romantic relationship.”

In United States v. Reeves, 591 F.3d 77 (2d Cir. 2010), the court held that a condition of supervision requiring the defendant to notify the probation department upon entry into a “significant romantic relationship” was vague in violation of due process. 591 F.3d at 79, 81. The court observed:

We easily conclude that people of common intelligence (or, for that matter, of high intelligence) would find it impossible to agree on the proper application of a release condition triggered by entry into a “significant romantic relationship.” What makes a relationship “romantic,” let alone “significant” in its romantic depth, can be the subject of endless debate that varies across generations, regions, and genders. For some, it would involve the exchange of gifts such as flowers or chocolates; for others, it would depend on acts of physical intimacy; and for still others, all of these elements could be present yet the relationship, without a promise of exclusivity, would not be “significant.” The history of romance is replete with precisely these blurred lines and misunderstandings.

591 F.3d at 81.³ The condition was too vague to be enforceable because it had “no objective baseline,” as “[n]o source provides anyone—courts, probation officers, prosecutors, law enforcement officers, or Reeves himself—with guidance as to what constitutes a ‘significant romantic relationship.’” 591 F.3d at 81.

Recently, in State v. Nguyen, the State Supreme Court found that the phrase “dating relationship” was not unconstitutionally vague. Slip Opinion No. 94883-6 (September 13, 2018) (consolidated with State v. Norris). However, the Court distinguished its holding from that in Reeves, noting that “[t]he terms ‘significant’ and ‘romantic’ are highly subjective qualifiers, while ‘dating’ is an objective standard that is easily understood by persons of ordinary intelligence.” Nguyen, Slip Op. No. 94883-6 at 10. The Court’s acknowledgment that the term “romantic” is highly subjective confirms that a community custody condition that requires an offender to disclose a “romantic relationship” is improperly vague.

Because of the various interpretations that can be and have

³ Citing Wolfgang Amadeus Mozart, *THE MARRIAGE OF FIGARO* (1786); Jane Austen, *MANSFIELD PARK* (Thomas Egerton, 1814); *WHEN HARRY MET SALLY* (Columbia Pictures 1989); *HE’S JUST NOT THAT INTO YOU* (Flower Films 2009).

been given to the term “romantic relationship,” a reasonable person would be left to guess at its meaning and to what behavior the condition applies. The condition does not provide a standard by which a reasonable person can understand what behavior establishes a “romantic relationship.”

The average citizen has no way of knowing what conduct is included in the statute because each person’s perception of what constitutes a “romantic relationship” will differ based on each person’s subjective understanding. But such “subjective terms allow a ‘standardless sweep’ that enables state officials to ‘pursue their personal predilections’ in enforcing the community custody conditions.” State v. Johnson, 180 Wn. App. 318, 327, 327 P.3d 704 (2014) (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 180 n.6, 795 P.2d 693 (1990) (quoting Kolender v. Lawson, 461 U.S. 352, 358, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983))) (internal quotation marks omitted). Sikes’ liberty should not hinge on the accuracy of his prediction of whether his CCO, a prosecutor, or a judge would conclude that a particular relationship was a “romantic relationship.” This condition is arbitrary and vague, and should not have been imposed or used to revoke Sikes’ SSOSA.

3. *Remand is required because the trial court may have relied at least in part on improper grounds to revoke the SSOSA and because its failure to enter written findings denied Sikes his minimal due process rights.*

“Loss of a SSOSA is a significant consequence to defendants.” State v. Sims, 171 Wn.2d 436, 443, 256 P.3d 285 (2011). A court abuses its discretion in revoking a SSOSA if the revocation is based upon an error of law. State v. Miller, 159 Wn. App. 911, 918, 247 P.3d 457 (2011).

The statute provides authority for a court to revoke a SSOSA under only two circumstances. The court may revoke a SSOSA and order execution of the sentence only if: (a) the offender violates a condition of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. RCW 9.94A.670(11); State v. McCormick, 166 Wn.2d 689, 698, 213 P.3d 32 (2009).

Furthermore, the United States Supreme Court has determined that, in the context of parole violations, due process requires several things, including a statement by the court as to the evidence relied upon and the reasons for the revocation. State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999) (citing Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)).

“These requirements exist to ensure that the finding of a violation of a term of a suspended sentence will be based upon verified facts.” Dahl, 139 Wn.2d at 683 (citing Morrissey, 408 U.S. at 484).

Written findings are preferable because they facilitate appellate review, allowing the appellate court to ascertain the presence or absence of substantial evidence in support of the decision to revoke. State v. Nelson, 103 Wn.2d 760, 767, 697 P.2d 579 (1985) (citing State v. Davenport, 33 Wn. App. 704, 657 P.2d 794 (1983)). However, the lack of specific written findings is not fatal if the trial court states on the record the evidence it relies upon and states its reasons for revocation. Nelson, 103 Wn.2d at 767 (citing State v. Murray, 28 Wn. App. 897, 627 P.2d 115 (1981)).

In this case, however, there is neither an oral ruling nor written findings detailing the evidence the trial court relied upon. At the hearing, the trial court only states that, because Sikes was not forthcoming with Dr. van Pul about his recent behavior, “the Court has found that Mr. Sikes, in violating his conditions, has shown that he is not currently amenable to treatment in the community and his SSOSA should be revoked in order to protect the community.” (5RP 267)

The court’s written order only states that the court has

“examined the files and records herein” and “heard testimony” and that it “appear[s] therefrom that the defendant has, by various acts and deeds, violated the terms and conditions of said sentence[.]” (CP 231) And “[t]he court finds[s] sufficient evidence as to be reasonably satisfied that the defendant has violated the conditions of his suspended SSOSA sentence[.]” (CP 232) The trial court’s oral ruling implies that the court is revoking the SSOSA based only on a finding that Sikes is not amenable to treatment. But the written order implies that the court is revoking the SSOSA based on a violation of the terms of community custody.

This lack of specificity is especially problematic here, because two of the supposed violations relate to conditions that are invalid. It is not clear from the record whether the trial court relied on proven facts establishing violations of the remaining valid conditions when it decided to revoke Sikes’ SSOSA, or whether the court relied only on its finding that Sikes is not amenable to treatment.

The trial court acknowledged that it “struggled a lot with this decision.” (5RP 266) Accordingly, Sikes’ case should be remanded so that the trial court can reconsider its decision to revoke the SSOSA in light of the invalidity of the two conditions

challenged above. See Dahl, 139 Wn.2d at 402 (remand was necessary where the SSOSA revocation was “based, at least in part,” on a legally erroneous finding); State v. Abd-Rahmaan, 154 Wn.2d 280, 290-91, 111 P.3d 1157 (2005) (a sentence modification is invalid and should be reversed to the extent the trial court relies on erroneous reasons). Alternatively, Sikes’ case should be remanded so that the trial court can enter accurate findings that set forth in writing the true facts and reasons for revocation.

B. ILLEGAL COMMUNITY CUSTODY CONDITIONS MUST BE STRICKEN FROM THE JUDGMENT AND SENTENCE.

Sikes’ original judgment and sentence includes illegal community custody conditions, which should be stricken. Illegal or erroneous sentences may be challenged for the first time on appeal. Bahl, 164 Wn.2d at 744. And the revocation of a suspended sentence is simply “an extension of the original criminal conviction.” McCormick, 166 Wn.2d at 699. Accordingly, if this court upholds the SSOSA revocation, it is still proper to challenge the illegal conditions now.

As argued in detail above, the trial court did not have statutory authority to impose a condition prohibiting the purchase of alcohol or a condition requiring Sikes to report any “romantic

relationships.” These conditions must be stricken from Appendix H of the judgment and sentence. (CP 104; 251-53)

The court also imposed a condition stating that Sikes may not “enter into any location where alcohol is the primary product, such as taverns, bars, and/or liquor stores.” (Other Condition No. 15; CP 105) Like the purchase of alcohol, the examiner did not identify proximity to alcohol or the frequenting of locations that primarily serve alcohol as precursors to Sikes’ criminal offense cycle. (CP 44) And this prohibition also is not “crime related.”

Appellate courts have struck community custody conditions under similar circumstances, when there is “no evidence” in the record that the circumstances of the crime related to the community custody condition. See Jones, 118 Wn. App. at 207-08 (reversing order to participate in alcohol counseling because “nothing in the evidence here shows that alcohol contributed to Jones’ offenses or that the trial court’s requirement of alcohol counseling was ‘crime-related’”); Zimmer, 146 Wn. App. at 413 (reversing condition that defendant not have a cell phone after finding “no evidence in the record” that defendant used cell phones to facilitate drug possession or distribution); State v. O’Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008) (striking condition that prohibited defendant’s

Internet use after finding “no evidence that [the defendant] accessed the Internet before the rape or that Internet use contributed in any way to the crime”); Johnson, 180 Wn. App. at 330-31 (striking Internet related community custody condition because “there [were] no findings suggesting any nexus between [the defendant's] offense and any computer use or Internet use”).

Furthermore, in most circumstances, children cannot even enter taverns, bars, liquor stores or casinos. See RCW 66.44.310; WAC 314-02-037. Thus, no connection exists between the child sex offenses that Sikes was convicted of and the act of entering into “taverns, bars, and/or liquor stores.” It makes no sense that Sikes is prohibited from going any place where children congregate (Other Condition 23), but is also prohibited from entering the one category of places that children *cannot* congregate. These conditions simply bear no relation to the circumstances of Sikes’ offenses.

Because the purchase of alcohol or the frequenting of locations serving or selling primarily alcohol was neither “crime-related” nor a known “precursor” to criminal activity, the court did not have statutory authority to prohibit Sikes from engaging in this behavior as a condition of community custody. These conditions

must also be stricken from Appendix H of the judgment and sentence. (CP 104; 251-53)

V. CONCLUSION

The court did not have statutory authority to prohibit Sikes from purchasing alcohol as a condition of his suspended sentence, or to impose the unconstitutionally vague condition requiring Sikes to inform his CCO of any “romantic relationship.” Therefore, the court acted without authority in revoking the suspended sentence, when the decision to do so was based in part on a violation of those conditions. Also, the trial court’s failure to make detailed findings regarding the facts and reasons for revocation violated Sikes’ due process rights. Thus, the order revoking the SSOSA must be vacated. Alternatively, the improper conditions included in Sikes’ judgment and sentence must be stricken.

DATED: September 17, 2018



STEPHANIE C. CUNNINGHAM

WSB #26436

Attorney for Christopher Kyle Sikes

CERTIFICATE OF MAILING

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