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Court of Appeals
Division II
State of Washington
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NO. 52179-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

JERRY STOCK, II,

Appellant.

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

The Honorable Kevin D. Hull, Judge

MOTION TO WITHDRAW AND BRIEF REFERRING TO MATTERS
IN THE RECORD WHICH MIGHT ARGUABLY SUPPORT REVIEW

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I. IDENTITY OF MOVING PARTY

CATHERINE E. GLINSKI, appointed counsel for appellant, JERRY STOCK, II, requests the relief designated in part II of this motion.

II. STATEMENT OF RELIEF REQUESTED

Appointed counsel requests permission to withdraw pursuant to RAP 15.2(i).

III. FACTS RELEVANT TO MOTION

By order dated August 6, 2018 and pursuant to an order of indigency entered in superior court, this Court appointed Catherine E. Glinski to represent appellant in his appeal from Kitsap County Superior Court's imposition of a Judgment and Sentence on June 18, 2018.

In reviewing this case for issues to raise on appeal, counsel did the following:

- (a) read and reviewed the verbatim report of proceedings from the plea and sentencing hearings;
- (b) read and reviewed all of the clerk's papers;
- (c) researched all pertinent legal issues and conferred with other attorneys concerning potential legal and factual bases for appellate review.

IV. GROUNDS FOR RELIEF

RAP 15.2(i) allows an attorney to withdraw on appeal where counsel can find no basis for a good faith argument on review. In accordance with the due process requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967); *State v. Theobald*, 78 Wn.2d 184, 185, 470 P.2d 188 (1970); and *State v. Pollard*, 66 Wn. App. 779, 825 P.2d 336, 834 P.2d 51, *rev. denied*, 120 Wn.2d 1015 (1992), counsel seeks to withdraw as appellate counsel and allow Stock to proceed *pro se*. Counsel submits the following brief to satisfy her obligations under *Anders*, *Theobald*, *Pollard*, RAP 15.2(i), and RAP 18.3(a)(2).

V. BRIEF REFERRING TO MATTERS IN THE RECORD THAT MIGHT ARGUABLY SUPPORT REVIEW

A. Potential Issues on Appeal

1. Are the conditions of community custody unconstitutionally vague?
2. Did the sentencing court err in imposing community custody conditions that are not sufficiently related to the circumstances of appellant's offenses?

B. Statement of the Case

On October 13, 2017, the Kitsap County Prosecuting Attorney charged appellant Jerry Stock, II, with rape of a child in the second degree

by criminal attempt, and felony communication with a minor for immoral purposes. CP 10-13. The probable cause statement indicated that the charges arose out of Stock's responses to an ad on Craigslist placed by an undercover law enforcement officer. CP 5-9.

Pursuant to a plea agreement, the State filed an amended information charging two counts of child molestation in the second degree, felony communication with a minor for immoral purposes, and distribution of a controlled substances to a person under 18 with sexual motivation, and Stock pled guilty to those offenses. CP 14-18, 19-26, 27-37. Stock acknowledged at the change of plea hearing that he had discussed the plea agreement and recommendation with his attorney, he signed it freely and voluntarily, he was not forced or threatened, he understood the rights he was waiving, and he understood the consequences of conviction. 1RP¹ 10-13.

The court reviewed the probable cause statement and found there was a factual basis for the greater offense and that Stock was pleading guilty to lesser offenses of child molestation and distribution of controlled substances to a minor to avoid greater punishment². 1RP 14. Stock

¹ The Verbatim Report of Proceedings is contained in two volumes, designated as follows: 1RP—5/18/18 and 2RP—6/18/18.

² Pursuant to *In re Barr*, 102 Wn.2d 265, 684 P.2d 712 (1984).

entered an *Alford*³ plea as to the communication charge. 1RP 14. The court found the pleas were knowingly, voluntarily, and intelligently made with understanding of the consequences, and it accepted the pleas. 1RP 14.

At sentencing, the prosecution and defense made the agreed recommendation of a low-end standard range sentence of 124 months, and the court followed the recommendation. 2RP 2-3, 10. Defense counsel asked the court to waive all non-mandatory legal financial obligations, and the court imposed only the \$500 victim penalty assessment. 2RP 9; CP 46.

The defense also objected to several conditions of community custody. First, Condition 6 provides, “Do not possess or access any sexually explicit material or frequent adult bookstores, arcades or places where sexual entertainment is offered.” CP 52. Counsel argued that this condition is vague and not crime related. 2RP 5-6. Counsel objected that Condition 15, which prohibits the use of public social websites, should be stricken because such websites can be used for legitimate purposes. 2RP 7; CP 53. Counsel also objected to Condition 16, which prohibits contacting 900 numbers that offer sexually explicit materials, again

³ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

arguing it is vague and not crime related. 2RP 8; CP 53. The court imposed these challenged conditions. 2RP 6-8; CP 51-53.

C. Potential Argument on Appeal

1. Are the conditions of community custody unconstitutionally vague?

An appellate court reviews community custody conditions for an abuse of discretion and will reverse them if manifestly unreasonable. *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). Imposition of an unconstitutional condition is manifestly unreasonable. *Id.*

The Fourteenth Amendment to the United States Constitution as well as article I, section 3 of the Washington State Constitution require that citizens be afforded fair warning of proscribed conduct. *State v. Nguyen*, 191 Wn.2d 671, 678, 425 P.3d 847 (2018). A community custody condition is unconstitutionally vague if it does not describe the prohibited conduct with sufficient definiteness that an ordinary person can understand what is proscribed, or does not provide ascertainable standards to protect against arbitrary enforcement. *Id.* “[A] stricter standard of definiteness applies where the community custody condition prohibits material protected by the First Amendment.” *Id.* at 679 (citing *Bahl*, 164 Wn.2d at 753).

In *Bahl*, the Supreme Court held that the term “pornographic materials” was unconstitutionally vague. *Bahl*, 164 Wn.2d at 756. Stock may wish to argue that the community custody conditions prohibiting his access to “sexually explicit materials” are unconstitutionally vague and must be vacated.

2. Are the community custody conditions imposed by the sentencing court sufficiently crime-related?

As a condition of community custody, a sentencing court may order an offender to comply with “crime related prohibitions.” RCW 9.94A.703(3)(f). A “[c]rime-related prohibition” means 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). Thus, there must be a reasonable relationship between the crime of conviction and the community custody condition. *State v. Irwin*, 191 Wn. App. 644, 658-59, 364 P.3d 830 (2015).

Stock was charged with attempted rape of a child and communication with a minor for immoral purposes. CP 10-13. He entered guilty pleas to charges of child molestation, communication with a minor, and distribution of controlled substances to a minor. CP 40. His offenses all involved inappropriate contact with underage victims. There were no allegations of sexual offenses against adults. CP 5-9. Stock may

wish to argue that conditions prohibiting him from frequenting adult bookstores or places where sexual entertainment is offered or from accessing 900 numbers offering sexually explicit materials do not directly relate to the circumstances of his offenses and should therefore be vacated.

VI. CONCLUSION

For the reasons stated above, counsel for appellant asks that the motion to withdraw as appointed counsel be granted, and that appellant be allowed to proceed *pro se* should he choose to do so.

DATED this 11th day of January 2019.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



CATHERINE E. GLINSKI
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Attorney for Appellant

Certification of Service

Today I caused to be mailed a copy of the Motion to Withdraw and Brief in *State*

v. Jerry Stock, II, Cause No. 52179-2-II as follows:

Jerry Stock, II/DOC#348835
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
January 11, 2019

GLINSKI LAW FIRM PLLC

January 11, 2019 - 10:17 AM

Transmittal Information

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