

FILED  
Court of Appeals  
Division II  
State of Washington  
9/9/2019 3:35 PM

No. 52256-0-II

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

---

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY WILLIAM HOCH,

Appellant.

---

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

---

APPELLANT'S REPLY TO RESPONDENT'S AMENDED BRIEF

---

Sara S. Taboada  
Attorney for Appellant

Washington Appellate Project  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT IN REPLY ..... 1

    1. Because the condition Mr. Hoch is challenging is invalid on its face,  
    the court appropriately reached the merits of Mr. Hoch’s CrR 7.8 motion. 1

    2. As fully detailed in Mr. Hoch’s opening brief, the court failed to  
    correctly employ the applicable legal standard when it neglected to modify  
    the condition banning Mr. Hoch from having all contact with his son..... 4

B. CONCLUSION ..... 5

TABLE OF AUTHORITIES

**Washington Cases**

*In re the Pers. Restraint Petition of Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002)..... 2

*State v. Harkness*, 145 Wn. App. 678, 186 P.3d 1182 (2008) ..... 3

*State v. Zavala-Reynoso*, 127 Wn. App. 119, 110 P.3d 827 (2005) ..... 3

*Wandell v. State*, 175 Wn. App. 447, 311 P.3d 28 (2013)..... 2

**Statutes**

RCW 10.73.090 ..... 1, 3

RCW 10.73.090(1)..... 1, 3

**Constitutional Provisions**

U.S. CONST. amend. XIV..... 2

**Court Rules**

CrR 7.8..... 1, 2, 3

CrR 7.8(b)(5)..... 1

## A. ARGUMENT IN REPLY

### **1. Because the condition Mr. Hoch is challenging is invalid on its face, the court appropriately reached the merits of Mr. Hoch's CrR 7.8 motion.**

After first conceding that the court erred when it failed to engage in the required inquiry to determine the lawfulness of the condition of community custody that prohibits Mr. Hoch from having any contact with his child, the State now argues the court was barred from reaching the merits of Mr. Hoch's argument. *Compare* Resp. Br. at 1 *with* Resp. Supp. Br. at 2-5. To support this new position, the State claims (1) the court had no jurisdiction to assess the merits of Mr. Hoch's CrR 7.8 motion; and (2) the motion was time-barred. Resp. Supp. Br. at 2-5. For the reasons stated below, the State's arguments are unavailing, and this Court should reject them.

Mr. Hoch properly brought forth a CrR 7.8 motion to the trial court because the portion of the judgment and sentence he was challenging was invalid on its face. CrR 7.8(b)(5) allows defendants to seek relief from a judgment or order for "any...reason justifying relief from the operation of the judgment," and such judgments are subject to the conditions set forth in RCW 10.73.090. RCW 10.73.090(1) provides that a one-year time bar exists for CrR 7.8 motions, but this time-bar *only* applies if the judgment was "valid on its face" at the time it was entered. A condition of

community custody is invalid on its face if, without further elaboration, the condition evidences infirmities of a constitutional magnitude. *See In re the Pers. Restraint Petition of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002).

The condition of community custody Mr. Hoch challenged via his CrR 7.8 motion was invalid on its face because it (1) prohibits him from having any contact with any minors; but (2) fails to carve out an exception that allows Mr. Hoch to exercise his fundamental liberty interest in the care and companionship of his children. *See* CP 13; U.S. CONST. amend. XIV; *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980); *In re the Pers. Restraint Petition of Rainey*, 168 Wn.2d 367, 377, 229 P.3d 686 (2010).

The State's reliance on *Wandell* is misplaced because in *Wandell*, the condition at issue did not categorically bar the defendant from having any contact with his minor children (it merely prevented him from staying overnight in a residence with minor children); accordingly, it was neither invalid on its face nor did this condition otherwise meet the Sentencing Reform Act's (SRA) carefully drawn criteria allowing for post-sentence relief. 175 Wn. App. 447, 449-452, 311 P.3d 28 (2013); Resp. Supp. Br. at 3-4.

Similarly, the State’s claim that the court lacked jurisdiction to reach the merits of Mr. Hoch’s CrR 7.8 motion is unpersuasive. Relying on *Harkness*, the State appears to claim that courts can never reach the merits of CrR 7.8 motions and instead only the Department of Corrections can because *Harkness* stated, “after final judgment and sentencing, the courts loses jurisdiction to the [Department of Corrections].” 145 Wn. App. 678, 685, 186 P.3d 1182 (2008); Resp. Br. at 3. While this is generally true, the State reads *Harkness* far too broadly. *Harkness* held that courts lacked jurisdiction to modify the *length of a sentence* via the imposition of a Drug Offender Sentencing Alternative (DOSA) after a conviction because no statutory authority exists for courts to do so. *Id.* at 685-86. Here, in contrast, the legislature has granted courts the express authority to modify a sentence (including a condition of community custody) that is invalid on its face. RCW 10.73.090(1); CrR 7.8.

The court properly determined it could reach the merits of Mr. Hoch’s CrR 7.8 motion because the condition at issue was invalid on its face. *State v. Zavala-Reynoso*, 127 Wn. App. 119, 124, 110 P.3d 827 (2005).

**2. As fully detailed in Mr. Hoch’s opening brief, the court failed to correctly employ the applicable legal standard when it neglected to modify the condition banning Mr. Hoch from having all contact with his son.**

As fully explained in Mr. Hoch’s opening brief, the court failed to employ the correct legal standard when it assessed whether the condition the prohibits Mr. Hoch from having any contact with his minor son was “reasonably necessary” to protect his son. AOB at 2-9. While the State originally agreed, it now argues that the court actually employed the correct legal standard. *Compare* Resp. Br. at 1 *with* Resp. Supp. Br. at 5-6. The State is wrong. In sum, because the court (1) failed to assess whether any reasonable, less-restrictive alternatives existed; and (2) failed to explain how the duration of this outright ban on Mr. Hoch’s ability to contact his son was appropriate, the State’s argument is unavailing. *Rainey*, 168 Wn.2d at 382.

**B. CONCLUSION**

For the reasons expressed in this brief and in his opening brief, Mr. Hoch respectfully requests that this Court remand with instruction for the sentencing court to employ the legal test detailed in *Rainey*.

DATED this 9th day of September, 2019.

Respectfully submitted,

/s Sara S. Taboada  
Sara S. Taboada – WSBA #51225  
Washington Appellate Project  
Attorney for Appellant

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

---

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 52256-0-II
	)	
JEFFREY HOCH,	)	
	)	
APPELLANT.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 9<sup>TH</sup> DAY OF SEPTEMBER, 2019, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS - DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DAVID PHELAN	( )	U.S. MAIL
[pheland@co.cowlitz.wa.us]	( )	HAND DELIVERY
[appeals@co.cowlitz.wa.us]	(X)	E-SERVICE VIA
COWLITZ COUNTY PROSECUTING ATTORNEY		PORTAL
312 SW 1 <sup>ST</sup> AVE		
KELSO, WA 98626-1739		
[X] JEFFREY HOCH	(X)	U.S. MAIL
7901 49 <sup>TH</sup> AVE S	( )	HAND DELIVERY
SEATTLE, WA 98118	( )	_____

SIGNED IN SEATTLE, WASHINGTON THIS 9<sup>TH</sup> DAY OF SEPTEMBER, 2019.



X \_\_\_\_\_

**Washington Appellate Project**  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

# WASHINGTON APPELLATE PROJECT

September 09, 2019 - 3:35 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52256-0  
**Appellate Court Case Title:** State of Washington, Respondent v. Jeffrey W. Hoch, Appellant  
**Superior Court Case Number:** 05-1-00510-3

### The following documents have been uploaded:

- 522560\_Briefs\_20190909153427D2511003\_9420.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was washapp.090919-05.pdf*

### A copy of the uploaded files will be sent to:

- appeals@co.cowlitz.wa.us
- greg@washapp.org
- pheland@co.cowlitz.wa.us

### Comments:

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Sara Sofia Taboada - Email: sara@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 610  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20190909153427D2511003**