

FILED
Court of Appeals
Division II
State of Washington
8/20/2019 3:41 PM

NO. 52848-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

JOHN FLYNN,

Appellant.

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

The Honorable Frank E. Cuthbertson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in imposing conditions of community placement that were not authorized by the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, at the time of John Frederick Flynn III's October 1993 offenses and in imposing sanctions for violation of these unauthorized conditions of community placement.

2. Flynn's counsel was ineffective for failing to investigate what the SRA authorized in terms of community placement conditions and for stipulating rather than objecting to Flynn's violations of community placement conditions that were not authorized.

Issues Pertaining to Assignments of Error

1a. Must the conditions of community placement imposed against Flynn conform to the law in effect at the time of the offenses—in Flynn's case, to former RCW 9.94A.120(8)(b) and (c) (1993), amended by LAWS OF 2001, ch. 10, § 6 (codified as amended at RCW 9.94A.505)?

1b. Did the trial court err in imposing the various community placement conditions that are challenged in this brief given that the SRA provisions in effect at the time of the offenses did not authorize the conditions and did not permit the trial court to delegate authority to impose the conditions to the Department of Corrections?

1c. Did the trial court err in sanctioning Flynn for violating illegal community placement conditions?

1d. Is this court capable of providing Flynn effective relief in the form of striking the unlawful community placement conditions such that this appeal is not moot?

2. Did defense counsel render constitutionally ineffective assistance of counsel for stipulating to Flynn's violations of community placement conditions rather than researching the conditions and objecting to those conditions that were not legally authorized by the SRA at the time of Flynn's offenses?

B. STATEMENT OF THE CASE

Flynn was convicted of first degree rape and first degree burglary in May 1994; the crimes were alleged to have been committed in October 1993. CP 8. Flynn was sentenced to 280 months of incarceration. CP 13.

More than 20 years later, Flynn successfully petitioned the Washington Supreme Court for resentencing. Supp. CP ____ (Aug. 1, 2016 Certificate of Finality attaching Washington Supreme Court order remanding for resentencing). Flynn's original sentence had been erroneously calculated because it included criminal history never proven by the prosecution.

Resentencing occurred in 2016. The resentencing court determined that Flynn had erroneously served nearly three years of confinement,

sentencing Flynn to 240 months. The court also imposed several conditions of community placement. CP 36, 43. Pertinent here, the court imposed the following community placement conditions: “(8) perform affirmative acts as required by DOC^[1] to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706[;] (10) for sex offenses, submit to electronic monitoring if imposed by DOC,” and “[checked box] comply with the following crime-related prohibitions: per CCO.” CP 36.

When Flynn was released from DOC incarceration, he was transferred to the Special Commitment Center for evaluation for involuntary civil commitment under chapter 71.09 RCW. CP 111-48 (chapter 71.09 evaluation). Flynn was determined not to meet chapter 71.09 RCW commitment criteria, and thereafter began serving the community placement term imposed in conjunction with his 2016 judgment and sentence. CP 147.

DOC began alleging the violations pertinent here in October 2018. According to the amended petition filed by the prosecutor, Flynn was alleged to violate the various community placement conditions in the following ways:

1. Consuming alcohol on or about 10/15/18;
2. Consuming alcohol on or about 10/22/18;
3. Failure to abide by curfew on 11/17/18;

¹ Department of Corrections.

4. Failure to report as directed to CCO^[2] on 11/19/18;
5. Failure to be available for urinalysis on 11/19/18;
6. Failing to report as directed since on or about 11/26/18 and 11/27/18;
7. Failing to comply with curfew on or about 11/26/18;
8. Failure to be available for urinalysis testing since on or about 11/26/18;
9. Failing to attend sex offender/sexual deviancy treatment for the last several weeks.

CP 209.

A hearing on the violations occurred on December 7, 2018. Flynn's attorney stipulated to the violations. RP (12/07/18) 2. Thus, defense counsel presented argument solely with respect to the appropriate sanction, requesting that the court impose only credit for time served. RP (12/07/18) 9. The trial court imposed 120 days of incarceration for the nine violations. RP (12/07/18) 14; CP 210-11.

Flynn appeals. CP 256-57.

² Community Corrections Officer.

C. ARGUMENT

1. THE SENTENCING COURT ERRED IN RESENTENCING FLYNN WITH CONDITIONS THAT WERE NOT AUTHORIZED BY THE SENTENCING REFORM ACT IN EFFECT ON THE DATE OF FLYNN'S OFFENSES

The offenses for which Flynn was convicted in 1993 must be sentenced under the law then in effect. State v. Schmidt, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001); RCW 9.94A.345. When the trial court resentenced Flynn in 2016, it imposed conditions of community placement that were not authorized in 1993. Some of these invalid conditions formed the basis for finding Flynn violated conditions of community placement and ordering that Flynn serve 120 days in jail in December 2018. Even though Flynn has already served these 120 days, this court may still provide him relief by striking the conditions that are not authorized by law from his judgment and sentence. Flynn requests this relief.

- a. The trial court's authority to impose community placement conditions was provided by former RCW 9.94A.120(8)(b) and (c) (1993),³ the provisions in effect on the date the offenses were committed

The commission of the sex offenses in this case occurred on October 28, 1993. On that date, former RCW 9.94A.120(8)(b) was in effect and established the trial court's authority to impose community placement and

³ Amended by LAWS OF 2001, ch. 10, § 6 (codified as amended at RCW 9.94A.505).

conditions thereof. Former RCW 9.94A.120(8)(b) required the following community placement conditions to be imposed unless they were waived by the trial court:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements shall be subject to the prior approval of the department of corrections during the period of community placement[.]

Former RCW 9.94A.120(8)(b)(i)–(vi). The statute also gave the trial court authority to impose the following “special conditions”:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment of counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

Former RCW 9.94A.120(8)(c)(i)–(v). Former RCW 9.94A.120(8)(d) provided that prior or during community placement, “any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.”

The trial court’s authority to impose community placement conditions under former RCW 9.94A.120 has been repeatedly considered and given a narrow application by the Court of Appeals. In In re Personal Restraint of Capello, 106 Wn. App. 576, 579, 24 P.3d 1074 (2001), the trial court declined to impose a discretionary community placement condition that subjected Capello’s living arrangements and employment to prior approval and verification by the community corrections officer.⁴ However, DOC informed “Capello that it will require him to obtain a preapproved residence location and living arrangement” Id. Division One granted Capello relief from DOC’s requirement, noting, “There is nothing in the SRA specifically

⁴ Unlike the version of former RCW 9.94A.120(8) at issue in this case, under the version of the statute in effect when Capello committed his crime, prior approval of living arrangements and employment was not a presumptively mandatory provision but an entirely discretionary one. See Capello, 106 Wn. App. at 581-82 (discussion of former RCW 9.94.120(8) in effect in 1991).

authorizing DOC to independently impose any of the statutorily listed special conditions of community placement.” Id. at 583. “The statutory framework of RCW 9.94A.120 evinces a legislative intent that the trial court, not DOC, has exclusive discretion to decide whether or not to waive the standard conditions enumerated in RCW 9.94A.120(8)(b), and whether or not to impose the special conditions enumerated in RCW 9.94A.120(8)(c).” Id. at 583-84. Capello makes clear that the trial court bore the sole responsibility for imposing community placement conditions under former RCW 9.94A.120(8)(b) and that it was limited in its authority to impose only those community placement conditions listed in this statute.

Division One revisited and reaffirmed Capello in In re Personal Restraint of Stewart, 115 Wn. App. 319, 75 P.3d 521 (2003). The legislature, in response to Capello, had amended the pertinent statute to require prior approval of living arrangements and employment. Stewart, 115 Wn. App. at 329-30. In addition, legislative amendments also authorized DOC to impose conditions “independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement.” Id. at 330 (quoting LAWS OF 2002, ch. 50, § 2).

The Court of Appeals held that the amendments “cannot have retroactive application because the amendatory act contravenes this court’s judicial construction of the statutory scheme in effect . . . and retroactive

application of the amendments violates the separation of powers doctrine.” Id. at 331. The court reaffirmed that under former RCW 9.94A.120, “the trial court had the exclusive authority to determine whether to impose” pre-approved residence location and living arrangement requirements. Id. at 335. To give amendments retroactive effect, “would violate the constitutional separation of powers doctrine because the legislative branch of government cannot retroactively overrule a judicial decision which authoritatively construes statutory language.” Id. Nor were the amendments merely curative, given that they substantively changed sentencing authority rather than just clarifying it. Id. at 339-40. The court emphasized that “[p]rior to the 2002 amendments, there was nothing to indicate DOC had any such independent authority” to impose conditions of community placement. Id. at 341. As in Capello, under Stewart, the trial court bore the sole responsibility for imposing community placement conditions and had authority to impose such conditions only as provided by the statute in effect at the time the crime was committed.

In re Personal Restraint of Davis, 67 Wn. App. 1, 834 P.2d 92 (1992), is also instructive on this point. There, the Court of Appeals held unequivocally that the trial court, not DOC, has the sole authority to impose community placement terms and conditions. Id. at 9. Although the Davis court was construing RCW 9.94A.120 (8)(a) rather than (8)(b), its focus was on language in the statute that provided that “the *court* shall in addition to the

other terms of the sentence, sentence the offender to a one-year term of community placement” Davis, 67 Wn. App. at 9 (alterations in original) (quoting former RCW 9.94A.120 (8)(a)). Therefore, the court concluded that the requirement for community placement was not self-executing but must be imposed by the trial court itself. Id.

The community placement conditions authorized in former RCW 9.94A.120 (8)(b) are worded slightly differently than the provision at issue in Davis. Former RCW 9.94A.120 (8)(b) provided, “Unless a condition is waived by the court, the terms of any community placement for offenders sentenced pursuant to this section shall include the following conditions” Unlike the provision in Davis, it appears that the legislature intended these community custody conditions to be imposed; the only exception is waiver of the condition by the trial court. Nonetheless, it was the sentencing court’s sole responsibility to impose the conditions. Former RCW 9.94A.120(8)(b) begins by stating, “When the court sentences a person . . . for an offense categorized as a sex offense . . . committed on or after July 1, 1990, the court shall in addition to the other terms of sentence, sentence the offender to community placement” Then the statute provides that certain conditions should be imposed “[u]nless a condition is waived by the court.” Former RCW 9.94A.120(8)(b). Former RCW 9.94A.120(8)(c) similarly places authority in

the hands of the sentencing court, stating, “The court may also order one or more of the following special conditions” (Emphasis added.)

The teaching of these cases is clear: community placement conditions may be imposed solely per the strictures of former RCW 9.94A.120 (8)(b) and (8)(c), and the trial court holds the sole authority to impose conditions of community placement under former RCW 9.94A.120 (8)(b) and (8)(c).

b. The 2016 resentencing court exceeded its authority in imposing several conditions of community placement

When Flynn was resentenced in 2016, the trial court improperly imposed conditions of community placement that were not authorized by former RCW 9.94A.120 (8)(b) or (c). As a result, these conditions must be stricken from Flynn’s judgment and sentence.

A court may impose only a sentence that is authorized by statute. State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). “If the trial court exceeds its sentencing authority, its actions are void.” Id. Furthermore, because an unauthorized sentence condition is void, the trial court has no authority to impose punishment or sanction based on violating the void condition. State v. Raines, 83 Wn. App. 312, 316, 922 P.2d 100 (1996). “When a sentence has been imposed for which there is no authority in law, the trial court has the power and the duty to correct the erroneous sentence, when the error is discovered.” In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604

P.2d 1293 (1980) (citation omitted). Statutory authority under the Sentencing Reform Act is an issue of law reviewed de novo. State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003).

The trial court imposed the following conditions of community placement: “(8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court,” “(9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706,” “(10) for sex offenses, submit to electronic monitoring if imposed by DOC,” and “comply with the following crime-related prohibitions: per CCO.” CP 36; see also CP 42 (Appendix F to the judgment and sentence requiring that “The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC” and “Other: per CCO”). None of these conditions is authorized by former RCW 9.94A.120 (8)(b) or (c). Therefore, the resentencing court had no authority to impose them. Each must be stricken from the judgment and sentence.

Former RCW 9.94A.120(8)(b) requires an offender to report and be available for contact with the assigned CCO, but nowhere in former RCW 9.94A.120 (8)(b) or (c) does the statute require the offender to submit to other “affirmative acts” that DOC deems necessary to monitor compliance with court orders. The condition requiring Flynn to submit to affirmative acts for monitoring purposes is void. It must be stricken.

Similarly, the community placement condition authorizing additional conditions imposed by DOC under RCW 9.94A.704 and .706⁵ is void. RCW 9.94A.704 did not exist at the time of Flynn’s 1993 crimes. It therefore cannot apply. As a related matter, the 2016 judgment and sentence requires Flynn to submit to electronic monitoring if imposed by DOC. CP 36. However, the authority for DOC to impose electronic monitoring derives from RCW 9.94A.704(5)(b), which, again did not exist and was not in effect when the 1993 crimes occurred. More fundamentally, as noted above, DOC has no authority to independently impose any condition of community placement as the law stood in October 1993. See Capello, 106 Wn. App. at 583-84. There was no authority to authorize electronic home monitoring under former RCW 9.94A.120 (8)(b) or (c). These conditions must be stricken.

The trial court also imposed a condition that Flynn comply with the “following crime-related prohibitions: per CCO.” CP 36. Certainly, the trial court had legal authority to impose crime-related conditions. Former RCW 9.94A.120 (8)(c)(v). But it had no authority to broadly delegate its authority to Flynn’s CCO. “The statutory framework of RCW 9.94A.120 evinces a

⁵ RCW 9.94A.706 prohibits an offender sentenced to community custody from owning, using, or possessing firearms, ammunition, or explosives. Although the trial court was not authorized to delegate to DOC authority to impose conditions under RCW 9.94A.706, Flynn acknowledges that he was not permitted to possess firearms under the law as it existed in October 1993. Former RCW 9.94A.120(13). Furthermore, it does not appear that DOC has imposed any RCW 9.94A.706 condition and therefore Flynn does not discuss RCW 9.94A.706 further.

legislative intent that the trial court, not DOC, has exclusive discretion to decide . . . whether or not to impose the special conditions enumerated in [former] RCW 9.94A.120(8)(c).” Capello, 106 Wn. App. at 584 (emphasis added). The trial court cannot authorize the DOC to impose crime-related prohibitions; rather, if the trial court wished to impose a crime-related prohibition, it must do so itself under former RCW 9.94A.120 (8). Here, it did not do so. The condition delegating discretion to Flynn’s CCO to impose crime-related prohibitions exceeds authority, is therefore void, and accordingly must be stricken from Flynn’s judgment and sentence.

Because the community placement conditions discussed in this subsection of argument were imposed without statutory authority, the conditions are void and must be stricken from the judgment and sentence.

- c. Flynn’s curfew “violations” derived from void community placement conditions and are therefore not violations

Flynn was sanctioned for violating nine community placement conditions. CP 208-11. Two of the violations were for “[f]ailure to abide by curfew” on November 17 and 26, 2018. CP 189, 198, 209.

The trial court imposed no curfew on Flynn.⁶ Therefore, the curfew Flynn was alleged to have violated must have been imposed by DOC. As

⁶ Arguably, a curfew might qualify as a crime-related prohibition under RCW 9.94A.120 (8)(c)(v). However, despite this authority, the sentencing court did not exercise it, as no curfew was imposed.

discussed above, DOC has no authority to impose community placement conditions independently from the trial court. Capello, 106 Wn. App. at 583-84. It is true that the trial court authorized crime-related conditions to be imposed “per CCO.” CP 36. However, as also discussed above, the trial court may not delegate its sentencing authority to the DOC; the trial court bears the sole responsibility to establish conditions of community placement. The trial court did not impose a curfew and could not authorize DOC to do so. As such, the curfew condition is void. Because the curfew condition is void, Flynn may not be punished for violating it. Raines, 83 Wn. App. at 316.

It is unclear what sanction the trial court would have imposed had it not relied on void curfew conditions. Where the record does not clearly show what the trial court’s sentence would be given a particular error, remand is the typical remedy. State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575 (1997). However, as discussed below, Flynn already served the 120-day sanction imposed by the trial court. In this appeal, he seeks relief in the form of striking unauthorized community placement conditions from his judgment and sentence.

- d. Although Flynn has already served the jail term for violating the void conditions, he is still entitled to relief in the form of striking the void conditions from his judgment and sentence

In response, the State might argue that Flynn's appeal is moot because he already served the entire 120-day sanction imposed by the trial court. "A case is moot if a court can no longer provide effective relief." In re Det. of Cross, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983).

This case is not moot even though Flynn already served his jail time. This court may still provide Flynn effective relief by ordering that the community placement conditions imposed without legal authority be stricken from Flynn's judgment and sentence. From these unauthorized conditions, DOC has apparently required Flynn to abide by a curfew. In addition, DOC apparently frequently uses electronic monitoring as a basis for Flynn's violations. See, e.g., CP 212-52 (GPS points provided by Flynn's electronic monitoring). Neither curfews nor electronic monitoring were authorized by the trial court under former RCW 9.94A.120 (8). Because the Court of Appeals can still provide Flynn relief from these unauthorized community placement conditions, this appeal is not moot. This court should grant Flynn relief, strike the challenged community placement conditions from Flynn's judgment and sentence, and further order that Flynn need not comply with additional unauthorized conditions imposed by DOC.

2. FLYNN'S COUNSEL WAS INEFFECTIVE FOR STIPULATING TO VIOLATIONS OF COMMUNITY PLACEMENT CONDITIONS IMPOSED WITHOUT AUTHORITY

Every criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution and under article I, section 22 of the Washington Constitution. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Estes, 188 Wn.2d 450, 457, 395 P.3d 1045 (2017). To show ineffective assistance, the defendant “must show both (1) deficient performance and (2) resulting prejudice.” Estes, 188 Wn.2d at 457-58. “Performance is deficient if it falls ‘below an objective standard of reasonableness based on consideration of all the circumstances.’” Id. at 458 (quoting State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995)). “Prejudice exists if there is a reasonable probability that ‘but for counsel’s deficient performance, the outcome of the proceedings would have been different.’” Id. (quoting State v. Kylo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)).

“The duty to provide effective assistance includes the duty to research relevant statutes.” Id. at 460 (citing In re Pers. Restraint of Yung-Cheng Tsai, 183 Wn.2d 91, 102, 351 P.3d 188 (2015)). “Failing to conduct research falls

below an objective standard of reasonableness where the matter is at the heart of the case.” Id. (citing Kyloo, 166 Wn.2d at 868).

In Estes, “defense counsel’s failure to investigate the impact of deadly weapon enhancements under the [Persistent Offender Accountability Act (POAA), RCW 9.94A.570] was objectively unreasonable.” Id. Counsel repeatedly acquiesced to the knives at issue as “deadly weapons”—thereby acquiescing to his client’s third strike offense—and “argued against the enhancements posttrial only after he became aware of his mistake.” Id. Because he was unaware of an essential point of law, his performance was objectively unreasonable and Strickland’s first prong was satisfied. Id. at 460-63.

Counsel was deficient for failing to investigate her client’s Kentucky conviction before recommending a trial “even though the information given to her by the State indicated that the Kentucky conviction qualified as an ‘adult felony’ conviction.” State v. Crawford, 159 Wn.2d 86, 99, 147 P.3d 1288 (2006). Crawford was facing lifetime incarceration under the POAA, yet counsel merely assumed the Kentucky conviction was a misdemeanor, non-strike offense. Id. at 92-93. The court concluded, “A reasonable attorney who knew of her client’s extensive criminal record and out-of-state conviction would have investigated prior to recommending trial as the best option.” Id. at 99. Counsel’s performance was objectively unreasonable. Id.

In State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999), counsel proposed and failed to object to instructions that permitted Aho to be convicted “of a crime under a statute which did not apply to acts committed prior to July 1988.” “[T]here [wa]s no conceivable legitimate tactic where the only possible effect of deficient performance was to allow the possibility of a conviction of a crime under a statute which did not exist,” and the court therefore reversed. Id. at 745-46.

This case is little different than Estes, Crawford, and Aho. In each of those cases, counsel failed to research the applicable law and facts that would assist their clients. The same happened here. Counsel was aware of Flynn’s 1993 conviction and presumably aware that sentencing authority varies by the provisions in effect at the time the crimes were committed. Yet counsel made no effort to research the community placement conditions that were authorized in 1993 under former RCW 9.94A.120 **Error! Reference source not found.**(8). Had she done so, she would quickly have realized that the trial court’s authority to impose community placement conditions derives solely from the provisions of RCW 9.94A.120 (8)(b) and (c), and that the conditions Flynn identifies here fall outside that authority. Counsel would also have readily learned that DOC has no authority to impose conditions that the trial court has not. Thus, competent counsel would have challenged curfews, electronic monitoring, and the improper delegation of community placement

conditions to DOC. Counsel did none of these things but the opposite: counsel affirmatively stipulated to Flynn's violation of conditions that were imposed without legal authority. RP (12/07/18) 2. Counsel's failure to research the applicable statutes and case law or attempt to apply them to her client's circumstances constituted objectively deficient performance. Estes, 188 Wn.2d at 460.

The deficient performance has prejudiced Flynn. "Prejudice exists if there is a reasonable probability that 'but for counsel's deficient performance, the outcome of the proceedings would have been different.'" Id. at 458 (quoting Kyllo, 166 Wn.2d at 862). A "'reasonable probability' is lower than a preponderance standard" and constitutes "a probability sufficient to undermine confidence in the outcome." Id. (quoting Strickland, 466 U.S. at 694).

Had counsel objected to the curfew, two out of the nine conditions Flynn was alleged to have violated would not have resulted in violation. This could have changed the 120-day jail term imposed by the trial court within a reasonable probability.

In addition, electronic monitoring is not something that former RCW 9.94A.120 (8) authorized as a condition of community placement, as noted above. Had defense counsel challenged the State's requirement and reliance of electronic monitoring, several of the other conditions Flynn was found to

have violated could have resulted in no violation, within a reasonable probability. See, e.g., CP 169-78 (including GPS tracking reports based on electronic monitoring as part of violation report); CP 199 (refuting Flynn's explained failure to report by reviewing his activities "through the electronic monitoring program"); CP 212-52 (CCO filing extensive GPS tracking reports available based on electronic monitoring). As such, there is a reasonable probability that failing to challenge and actually stipulating to unauthorized community placement conditions has resulted in Flynn's unlawful incarceration. In addition, Flynn must continue to comply with conditions that are not authorized, which itself causes additional prejudice.

In sum, Flynn should obtain relief from his counsel's ineffectiveness in the form of striking the unlawful conditions of community placement and requiring Flynn to comply with only those conditions authorized by law.

D. CONCLUSION

For the reasons stated, community placement conditions not authorized by the SRA must be stricken from Flynn's judgment and sentence. Going forward, Flynn may be required to comply with only those community placement decisions authorized by law.

DATED this 20th day of August, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "K March", written over a horizontal line.

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August 20, 2019 - 3:41 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52848-7
Appellate Court Case Title: State of Washington, Respondent v. John Flynn, Appellant
Superior Court Case Number: 93-1-04150-2

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