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Court of Appeals
Division II
State of Washington
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NO. 54654-0-II

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

STATE OF WASHINGTON, Respondent

v.

GEOFF SETH RYAN SAGUN, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-00315-5

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The trial court properly denied Sagun’s CrR 7.8 motion to strike or amend his sentencing condition prohibiting contact with minors as the condition was properly imposed and did not unduly infringe upon Sagun’s fundamental right to parent his children.**

STATEMENT OF THE CASE

The State accepts the appellant’s statement of the case.

ARGUMENT

Sagun argues that the trial court improperly imposed a sentencing condition prohibiting contact with all minors because he claims it violates his fundamental right to parent. The condition was properly imposed by the trial court as it was reasonably necessary to accomplish the essential needs of the State – to protect children. The trial court did not abuse its discretion in denying Sagun’s CrR 7.8 motion as the trial court properly imposed the no contact with minors sentencing condition. The trial court should be affirmed.

This Court reviews a Superior Court’s decision on a CrR 7.8 motion for an abuse of discretion. *State v. Forest*, 125 Wn.App. 702, 706, 105 P.3d 1045 (2005); *State v. Larranaga*, 126 Wn.App. 505, 509, 108 P.3d 833 (2005) (citing *State v. Robinson*, 104 Wn.App. 657, 662, 17 P.3d 653, *review denied*, 145 Wn.2d 1002 (2001)). An abuse of discretion

occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Ancira*, 107 Wn.App. 650, 653, 27 P.3d 1246 (2001). Therefore, this Court's review of the Superior court's decision in this case is limited to whether the Superior Court's decision on Sagun's CrR 7.8 motion was manifestly unreasonable, exercised on untenable grounds, or exercised on untenable reasons.

The Superior Court considered Sagun's CrR 7.8 motion and his argument that the no contact with minors provision was a scrivener's error. CP 87-88. The Superior Court affirmed that it was not a scrivener's error, that the condition of sentence was intentionally imposed and denied Sagun's CrR 7.8 motion. *Id.* Now, Sagun attempts to appeal the CrR 7.8 motion on wholly different grounds than what he raised at the trial court level in his CrR 7.8 motion. Sagun now argues the imposition of the no contact with minors prohibition was not crime-related and violates his fundamental right to parent his biological child. This is not the grounds that he raised at the trial court level. This is not a permissible use of the direct appeal vehicle for the denial of Sagun's CrR 7.8 motion. In considering a direct appeal from the denial of a CrR 7.8 motion, an appellate court's review is limited to whether the trial court abused its discretion in denying the motion. *Larranaga*, 126 Wn.App. at 509 (citing *Robinson*, 104 Wn.App. at 662). The appellate court cannot consider

additional, new claims for the first time on appeal. The Superior Court below considered Sagun's actual argument in his CrR 7.8 motion – that the entry of the no contact prohibition was a scrivener's error. The Superior Court judge who imposed the sentence confirmed it was not a scrivener's error and therefore denied the motion. This is not an abuse of discretion. This Court should limit its review simply to whether the trial court's decision that the no contact prohibition was not a scrivener's error was an abuse of discretion. In applying that standard, it is clear the trial court acted appropriately and properly and correctly denied Sagun's CrR 7.8 motion. This Court should deny his appeal as the Superior Court did not abuse its discretion.

However, even if this Court reaches Sagun's new argument, that the no contact with minors prohibition violates his fundamental right to parent, this Court should affirm the trial court's denial of the CrR 7.8 motion as the no contact with minors prohibition was properly imposed at Sagun's original sentencing. A trial court is authorized to impose "crime-related prohibitions" as part of any sentence. RCW 9.94A.505(9). "Crime-related prohibition" means a prohibition that directly relates to the circumstances of the crime of conviction. RCW 9.94A.030(10). This Court reviews the imposition of crime-related prohibitions for an abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). An

abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Ancira*, 107 Wn.App. 650, 653, 27 P.3d 1246 (2001). However, when a fundamental constitutional right is involved, this Court engages in a more careful review of the sentencing condition. *State v. Warren* 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

A trial court is limited in imposing sentencing conditions by a defendant's fundamental rights. *In re Personal Restraint of Rainey*, 168 Wn.2d 367, 377, 229 P.3d 686 (2010) (citing *Warren*, 165 Wn.2d at 32). "Conditions that interfere with fundamental rights' must be 'sensitively imposed' so that they are 'reasonably necessary to accomplish the essential needs of the State and public order.'" *Id.* (citing *Warren*, 165 Wn.2d at 32). "Parents have a fundamental right to raise their children without State interference." *State v. Corbett*, 158 Wn.App. 576, 598, 242 P.3d 52 (2010) (citing *In re Custody of Smith*, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)). However, that fundamental right may be subject to reasonable limitations if the limitations are "reasonably necessary to accomplish the essential needs of the state and the public order." *State v. Riles*, 135 Wn.2d 326, 349-50, 957 P.2d 655 (1998); *Prince v.*

Massachusetts, 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944).

“Sentencing courts can restrict fundamental parenting rights by conditioning a criminal sentence if the condition is reasonably necessary to further the State’s compelling interest in preventing harm and protecting children.” *Corbett*, 158 Wn.App. at 598 (citing *State v. Berg*, 147 Wn.App. 923, 942, 198 P.3d 529 (2008); *Ancira*, 107 Wn.App. at 654; *State v. Letourneau*, 100 Wn.App. 424, 438, 997 P.2d 436 (2000); *In re Dependency of C.B.*, 79 Wn.App. 686, 690, 904 P.2d 1171 (1995), *review denied*, 128 Wn.2d 1023, 913 P.2d 816 (1996)).

In *Corbett*, this Court addressed the same issue Sagun raises: whether the trial court properly imposed a no contact prohibition with his own biological children when they were not victims of the crime of conviction. In *Corbett*, the defendant was convicted of sexual abuse against his stepdaughter. *Corbett*, 158 Wn.App. at 599. The victim had lived with the defendant for about seven months. *Id.* This Court found that the defendant “abused his parenting role by sexually abusing a minor in his care.” *Id.* Therefore, this Court found that the trial court’s no contact with minors provision was reasonably necessary to protect the defendant’s children because of his history of “using the trust established in a parental role to satisfy his own prurient desire to sexually abuse minor children.” *Id.* This Court found the defendant’s class of victims to be “minors he

parented.” *Id.* at 601. Thus, the defendant’s biological child fell into that class and was someone whom the State had an interest in protecting.

The *Corbett* Court relied heavily on *Berg, supra* in coming to its conclusion. In *Berg, supra*, the defendant was convicted of rape of a child in the third degree and child molestation in the third degree after he sexually abused a 14-year-old child who lived with him. *Berg*, 147 Wn.App. at 927-30. The defendant in *Berg* had a parenting role type relationship with the victim, even though the victim was not the defendant’s biological child. In upholding the trial court’s no contact with minors prohibition, the Court of Appeals found that the trial court’s order restricting contact was reasonably necessary to protect the defendant’s biological child as he had abused a child in his care previously; putting his biological child in the same position as the victim would put the child in the same situation – where the defendant had a parenting role relationship with the child. *Berg*, 147 Wn.App. at 942-43.

Sagun relies on *State v. Letourneau*, 100 Wn.App. 424, 997 P.2d 436 (2000) to support his claim that the trial court erred in denying his CrR 7.8 motion to strike the sentencing condition that prohibits contact with his own biological minor child. However, Sagun’s reliance on *Letourneau* is misplaced. The facts involved in *Letourneau* differ greatly from the facts at hand. In *Letourneau*, the victim was not a child the

defendant parented and there was nothing to suggest the defendant's own biological children were at risk of harm from her. *Id.* at 441-42. Therefore, the Court found the trial court's sentencing condition was not reasonably necessary to protect her biological children from the risk of harm of molestation by their mother. *Id.* Sagun's victim did involve a child he had a parenting relationship with and therefore the case differs significantly from *Letourneau*.

As in *Corbett* and *Berg*, Sagun's case involved a victim whom he parented, his stepdaughter. Sagun demonstrated a disregard for appropriate behavior with those entrusted to his care. Sagun's minor child is in the same class of persons as the victim of his convictions. Based on the nature of Sagun's crimes and the similar positions of the victim and his own minor biological child, the trial court did not abuse its discretion by prohibiting contact with his minor child. This Court should affirm the trial court's denial of Sagun's CrR 7.8 motion to amend his sentencing condition regarding contact with minors.

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CONCLUSION

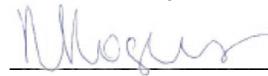
Sagun should not be allowed to raise new issues for the first time on appeal in his appeal from the trial court's denial of his CrR 7.8 motion as this Court is limited to determining whether the trial court abused its discretion in denying the CrR 7.8 motion. It is clear the trial court did not abuse its discretion in considering the issue actually raised by Sagun in his CrR 7.8 motion. But even if this Court reaches the merits of Sagun's appeal, this Court should affirm the trial court's denial of the CrR 7.8 motion and, in effect, affirm Sagun's judgment and sentence which imposed a condition that Sagun have no contact with minors because this condition was properly imposed and does not unduly infringe on Sagun's fundamental right to parent.

DATED this 17th day of September, 2020.

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