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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29783-7-III

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

JASMINE NICOLE SINGH,
Defendant/Appellant.

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT
Honorable Salvatore F. Cozza, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The there was insufficient evidence to sustain the conviction of First Degree Perjury.

2. The trial court erred in entering a portion of Finding of Fact/Conclusion of Law 2 (CP 44):

The defendant, on or about November 23, 2009, did make a materially false statement, to-wit: by replying “no” to ever talking to the defendant, Anthony Singh, about witnesses in the case and facts of the case, and testimony of witnesses, knowing such statement was false, under an oath required or authorized by law, in an official proceeding, to-wit 404B Evidence Hearing. The court finds that ... [t]he State produced recordings and transcripts proving that this testimony was false. ...

3. The trial court erred in entering Finding of Fact/Conclusion of Law 4 (CP 44):

The court finds beyond a reasonable doubt that on or about November 23, 2009, the defendant made demonstrably false statements.

4. The trial court erred in entering Finding of Fact/Conclusion of Law 5 (CP 44):

The court finds beyond a reasonable doubt that the knowledge of the defendant can be inferred from the facts and circumstances of the case. It’s clear by listening to the recordings that the defendant knew her testimony was false.

5. The trial court erred in entering a portion of Finding of Fact/Conclusion of Law 6 (CP 44–45):

The court finds beyond a reasonable doubt that the Defendant's statements were material. ... The court finds that the defendant's false statements could have affected the course or outcome of the proceeding and the judge could have been misled as to the discussions of the defendant with her brother and efforts to tailor testimony stemming from those conversations.

6. The trial court erred in entering Finding of Fact/Conclusion of Law 11 (CP 45).

The Court finds beyond a reasonable doubt that the defendant is guilty of the crime of first degree perjury.

7. The sentencing court erred in imposing invalid conditions of community custody.

Issues Pertaining to Assignments of Error

1. Is the perjury conviction unsupported by substantial evidence in violation of Ms. Singh's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment?

2. Does a sentencing court lack statutory authority to impose certain conditions of community custody that are not crime-related?

B. STATEMENT OF THE CASE

On or around November 19, 2009, Officer Roberge and Detective Barrington of the Spokane City Police Department, received disks containing recorded telephone conversations originating from the Spokane

County Jail. RP 36, 60–61, 82–83, 91–92. The three calls were made on November 16, 17 and 20, 2009. RP 41, 52, 54, 92. Anthony Singh made the calls to his sister, Jasmine Singh, who is the defendant in this case. RP18, 26–27, 32–35, 38, 41–43, 51, 53–54.

An ER 404(b) evidentiary hearing took place on November 23, 2009 in the case of State v. Anthony Singh. The hearing was held in Spokane County Superior court before the Honorable Kathleen O'Connor. Also present were Deputy Prosecuting Attorney, Lawrence Haskell and Defense Attorney, Thomas Cooney. RP 38–39, 45–46, 55, 83–84; Exhibit 7, p. 1.

The purpose of the hearing was to determine admissibility of gang-related information. RP 39, 57, 84. During the hearing, Ms. Singh was called to testify. She testified she did not know about any alleged gang activity by her brother Anthony. Exhibit 7, p. 4–5.

Ms. Singh was asked a series of questions on cross-examination by Mr. Haskell:

Q: Have you ever talked to [your brother] about this case?

A: Not really. Just kinda what's going on.

Q: You ever talk to him about any of the witnesses involved in the case?

A: No.

Q: You ever talk to him about the facts of the case?

A: No.

Q: You ever talk to him about anything that anybody else has testified about this case?

A: No.

Exhibit 7, pp. 8–9.

Some gang-related evidence was allowed into evidence and Anthony Singh was ultimately convicted by the State. RP 83; CP 31.

By Information filed May 3, 2010, Ms. Singh was charged with Perjury in the First Degree, alleging that she made a materially false statement “by replying “no” to ever talking to the defendant, Anthony Singh, about witnesses in the case and facts of the case and testimony of witnesses.” The charges were based on the three recorded calls made from the jail (Exhibits 4, 5 and 6) and Mr. Haskell’s cross-examination of Ms. Singh during the ER 404(b) hearing. CP 1.

A bench trial took place on February 8, 2011. Officer Roberge said that Ms. Singh sat in the courtroom through several pre-trial hearings in her brother Anthony’s case. RP 56. He was present during her cross-examination by Mr. Haskell, and had no knowledge whether she had been provided with a witness list of who would be testifying. RP 62–63. The officer said Mr. Haskell was well aware that he and Detective Barrington

were monitoring Anthony's phone calls from the jail and that they suspected Ms. Singh was the person being called. RP 62. Detective Barrington testified he had discussed the contents of the three recorded calls with Mr. Haskell prior to his cross-examination of Ms. Singh at the ER 404(b) hearing. RP 92-94.

Detective Harrington had personal knowledge of specific facts and witness names and names of witnesses who had previously testified in Anthony Singh's case, due to his involvement as the lead detective. He testified that some of those facts and witness names were discussed in the recorded jail calls. RP 83, 87-88. The detective said Ms. Singh was present at many of the hearings in Anthony's case. RP 84.

Detective Barrington believed whether Ms. Singh had in fact spoken to her brother about the witnesses in his case would be material to Judge O'Connor's ruling whether or not to admit gang-related information because any discussion of facts could sway or be an attempt to sway potential witnesses' testimony. RP 86-87.

The court found Ms. Singh guilty of First Degree Perjury and, as a first time offender, ordered confinement of 90 days with work release as an option. RP 118; CP 48. The court imposed terms of community custody, including the following conditions:

- 2. That the defendant [is] not allowed to have any association or contact with known felons or gang members or their associates.

...

- 6. That the defendant shall not wear clothing, insignia, medallions, etc., which are indicative of gang lifestyle. Furthermore, that the defendant shall not obtain any new or additional tattoos indicative of gang lifestyle.

...

- 9. That the defendant not possess weapons.

CP 50. This appeal followed. CP 57–58.

C. ARGUMENT

1. The perjury conviction is unsupported by substantial evidence and violates Ms. Singh’s right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment.¹

a. Due process requires proof of all elements of perjury beyond a reasonable doubt. As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment the state must prove every element of a crime charged beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); In re Winship, 397 U.S. 358, 364, 90 S.Ct.

¹ Assignment of Error 1, 2, 3, 4, 5 and 6.

1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in Winship: “[T]he use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” Winship, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. State v. Moore, 7 Wn. App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. Id. “Substantial evidence” in the context of a criminal case, means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” State v. Taplin, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting State v. Collins, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)). The remedy for a conviction based on insufficient evidence is reversal and dismissal with prejudice. Smalis v. Pennsylvania, 476 U.S. 140, 144, 106 S. Ct. 1745, 90 L. Ed. 2d 116 (1986).

In determining the sufficiency of the evidence, the test is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201, 829 P.2d 1068 (citing State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d at 201, 829 P.2d 1068 (citing State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

While circumstantial evidence is no less reliable than direct evidence, State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. Baeza, 100 Wn.2d at 491, 670 P.2d 646. Specific criminal intent may be inferred from circumstances as a matter of logical probability." State v. Zamora, 63 Wn. App. 220, 223, 817 P.2d 880 (1991).

b. Elements of the crime of perjury and heightened requirements of proof. To be convicted of First Degree Perjury, the State must prove

beyond a reasonable doubt: 1) the statement was made in an official proceeding, under oath; 2) the statement is false; 3) the defendant knew the statement to be false, and 4) the statement was material to the outcome of the case. RCW 9A.72.020(1).

Because perjury has a peculiar impact on the administration of our system of justice, the law has raised proof of this offense to a position unique in the rules of criminal evidence. Nessman v. Sumpter 27 Wn. App. 18, 22, 615 P.2d 522 (1980). “Perjury requires a higher measure of proof than any other crime known to the law, treason² alone excepted.” State v. Wallis, 50 Wn.2d 350, 311 P.2d 659 (1957).

Thus, the testimony of one witness or circumstantial evidence alone is not sufficient when the charge is perjury. To sustain a conviction for perjury, “there must be either positive testimony of at least two credible witnesses that directly contradicts the defendant’s statement made under oath or there must be one such direct witness along with independent direct or circumstantial evidence of supporting circumstances that clearly overcomes the oath of the defendant and the legal presumption

² “So firm was the rule with respect to treason that it was written into our constitution no person could be convicted of treason except upon the testimony of two witnesses to the same overt act or confession in open court.” State v. Wallis, 50 Wn.2d 350, 353, 311 P.2d 659 (1957), citing Washington State Constitution, Art. I, § 27.

of defendant's innocence."³ 11A WAPRAC WPIC 118.12; *see State v. Olson*, 92 Wn.2d 134, 594 P.2d 1337 (1979); *see also Nessman v. Sumpter* 27 Wn. App. at 23. The necessary contradicting testimony must come from a witness with personal knowledge of the facts. *Id.* at 24.

In this case, the statements made by Ms. Singh occurred under oath during an official proceeding: an ER 404(b) hearing held on November 23, 2009, before the Honorable Kathleen O'Connor. However, the State has failed to prove beyond a reasonable doubt and under the heightened requirements of proof that the answers Ms. Singh provided during the State's cross-examination were false, that she knew the answers were false, and that the answers were material to the outcome of the case. RCW 9A.72.020(1).

c. Ms. Singh answered Mr. Haskell's questions truthfully.

Under the pressures and tensions of interrogation, it is not uncommon for the most earnest witnesses to give answers that are not entirely responsive. Sometimes the witness does not understand the question, or may in an excess of caution or apprehension read too much or too little into it.

Bronston v. U.S. 409 U.S. 352, 358, 93 S.Ct. 595(1973).

³ Assignment of Error 4. Contrary to the court's finding/conclusion, knowledge of falsity must be proved by direct and/or direct and independent corroborating evidence.

To sustain a perjury conviction, questions and answers that support the allegation must demonstrate both that the defendant was fully aware of the actual meaning behind the examiner's questions and that the defendant knew the answers were not truthful. State v. Stump, 73 Wn. App. 625, 628, 870 P.2d 333 (1994), quoting United State v. Eddy, 737 F.2d 564, 567 (6th Cir. 1984). The questions and defendant's answers must be interpreted in the context of what immediately preceded and succeeded them. Stump, 73 Wn. App. at 628.

A statement that is literally, technically, or legally true, even if deliberately misleading, cannot form the basis of a perjury charge. State v. White, 31 Wn. App. 655, 660–61, 644 P.2d 693 (1982). The literal truth defense was adopted by the Washington Supreme Court in State v. Olson, *supra*. In Olson, a grand jury witness swore that he had never delivered county-owned timber to “the Spane Mill.” In fact, the witness had delivered timber to a construction company, Spane Building. The company's headquarter was equipped as a sawmill and was often called “the Spane Mill.” Nevertheless, since that was not the company's name, either legally or de facto, the response was literally true and the witness could not be convicted of perjury. Olson, 92 Wn.2d at 140.

Here, Ms. Singh was asked a series of questions on cross-examination by Mr. Haskell:

Q: Have you ever talked to [your brother] about this case?

A: Not really. Just kinda what's going on.

Q: You ever talk to him about any of the witnesses involved in the case?

A: No.

Q: You ever talk to him about the facts of the case?

A: No.

Q: You ever talk to him about anything that anybody else has testified about this case?

A: No.

Ms. Singh truthfully testified that she had talked to her brother a little bit about "what's going on" in his case. Mr. Haskell's subsequent questions were not preceded or succeeded by any context, and simply assumed Ms. Singh had affirmative and specific knowledge of her brother's case. Mr. Haskell did not specify "the case" he was asking questions about. He did not specify the names of the witnesses or inquire whether Ms. Singh knew the names of the witnesses in Mr. Singh's case. He not define any "fact" that Ms. Singh should have known or inquire whether Ms. Singh knew any "facts" of the case and, if so, what facts did she know. The last inquiry, "[Did] [y]ou ever talk to him about anything that anybody else has testified about this case", appears to refer to prior

testimony by some unknown witness(es) and again, Mr. Haskell did not name the witness(es) or inquire whether Ms. Singh knew the name(s) of any witness who may have previously testified in her brother's case.

Mr. Haskell's questions were ambiguous and vague. It was not Ms. Singh's duty to ask Mr. Haskell to clarify his questions.⁴ In State v. Stump, this Court "reject[ed] the argument that, when a witness is confronted with ambiguous questions, it is for the jury to decide whether the witness has committed perjury. Bronston discredited this type of jury conjecture which is now contended should be permissible. A contrary rule would allow a jury to infer from a witness' unresponsive answer to a vague question that the witness knew his testimony to be false." Stump, 73 Wn. App. at 629 (citation omitted). The Court continued, quoting from Bronston, 409 U.S. at 358, 93 S.Ct. at 600:

... It is the responsibility of the lawyer to probe, testimonial interrogation, and cross-examination in particular, is a probing prying, pressing form of inquiry. If a witness evades, it is the lawyer's responsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination.

⁴ "Here, when the grand jury interrogator asked the [witness] whether he had delivered timbers to the Spane Mill, [the interrogator] did not identify the place which he had in mind with that precision which is required of such an interrogator, if a perjury charge is to be based upon the response to the question. [The interrogator] may or may not have had reference to Spane Building, for all the question indicated on its face. It was not the [witness'] duty to ask him to clarify that question. Not having delivered timbers to a place having that name, [the witness] could literally and truthfully answer in the negative." Olson, 92 Wn.2d at 140.

Stump, 73 Wn. App. at 629.

Here, Mr. Haskell was fully aware of the content of the recorded jail conversations. Yet he established no foundation to determine that Ms. Singh knew or should have known any of the witnesses, facts or testimony associated with Anthony Singh's trial. And Mr. Haskell asked no follow-up questions to flush out Ms. Singh's answers.

Defendants may not be "assumed into the penitentiary", especially in perjury cases. Stump, 73 Wn. App. at 629, quoting United States v. Brumley, 560 F.2d 1268, 1277 (5th Cir. 1977). "The burden is on the questioner to pin the witness down to the specific object of his inquiry. Precise questioning ... is imperative as a predicate for perjury." Olson, 92 Wn.2d at 129. Similar to the defendant in the Olson case, Ms. Singh answered the exact questions she was asked. Those answers were "literally true"⁵ and they do not rise to the level of perjury.

d. The State failed to meet the heightened requirements of proof.

To sustain this conviction, Ms. Singh's allegedly perjured statements must be directly contradicted by the testimony of at least one witness. In

⁵ Assignment of Error 5. A "materially false statement" is "any false statement oral or written, regardless of its admissibility under the rules of the evidence, which could have affected the course or outcome of the proceeding." RCW 9A.72.010(1); State v. Dial, 44 Wn. App. 11, 14, 720 P.2d 461 (1986). Ms. Singh made no false statement. As such, her truthful responses could not have affected the outcome of the ER 404(b) and her statement was not materially false.

addition, there must be either (1) a second contradicting witness, or (2) corroborating circumstances established by independent evidence of such a character as clearly to turn the scale and overcome the oath of the defendant and the presumption of innocence. Sumpter 27 Wn. App. at 23.

The necessary contradicting testimony must come from a witness with personal knowledge of the facts. Id. at 24. The contradiction is sufficiently “direct” if it establishes that are necessarily inconsistent with the defendant’s sworn statement. For example, if the defendant swore that a person was in a specified place at a particular time, that testimony can be contradicted by a witness who saw the person elsewhere at that time. State v. Hanson, 14 Wn. App. 625, 628–29, 544 P.3d 119 (1975). Business records directly contradictory of the defendant’s statements are also sufficient. State v. Dodd, 193 Wash. 26, 36–37, 74 P.2d 497 (1937).

Here, Detective Barrington had no personal knowledge of the recorded jail calls—he was not present when Ms. Singh spoke to her brother. Thus Detective Barrington cannot directly contradict Ms. Singh’s statements at the ER 404(b) hearing

Nor did the detective have any personal knowledge that Ms. Singh was aware of any specific facts involved in her brother’s case or knew the names of specific witnesses or the names of specific witnesses who had

testified prior to the ER 404(b) hearing. The detective did say that Ms. Singh was present at several of Anthony's motion hearings and that he was "assuming that she would know that they were discussing [Anthony's] gang status in [the] [ER]404(b) hearing" and that he "would say ... that [Ms. Singh] knew some of the witnesses in that case, yes." RP 97-98. However, the State presented no evidence as to which specific hearings Ms. Singh attended and no evidence that specific witnesses from those hearings were discussed in the jail phone calls. The detective's testimony is simply innuendo and does not link Ms. Singh to knowledge of a particular fact. Detective Barrington cannot directly contradict Ms. Singh's statements at the ER 404(b) hearing. There is no direct testimony of at least one witness that her statement was false, and the conviction for Perjury cannot be sustained.

Furthermore, there is no independent corroborative evidence. The information contained in the jail call transcripts is what it is.⁶ There is no evidence that at the time the jail calls were made, Ms. Singh knew specific facts and witness names and names of witnesses who had previously

⁶ Assignment of Error 2. The recordings/transcripts are but a small part of the State's evidence, which evidence is insufficient to establish the falsity contemplated by the perjury statute.

testified in her brother's case. Thus, there was no evidence that could possibly be corroborated through the jail call transcripts.

The State used Detective Barrington in an attempt to "manufacture" such evidence. The detective had personal knowledge of specific facts and witness names and names of witnesses who had previously testified in Anthony Singh's case, due to his involvement as the lead detective. He testified that some of those facts and witness names were discussed in the recorded jail calls. But the issue in a perjury prosecution is not the detective's knowledge. There is no evidence that Ms. Singh knew specific facts and witness names and names of witnesses who had previously testified in her brother's case.

Since there is no direct testimony of at least one witness and no corroborating independent evidence "of such a character as clearly to turn the scale and overcome the oath of the defendant and the presumption of innocence,"⁷ the State failed to prove that Ms. Singh lied about a material matter and the conviction for Perjury cannot be sustained.

e. The State failed to meet the stringent burden of proving perjury and the conviction must be reversed. Stringent proof requirements are imposed in perjury prosecutions. At best, the State produced only

circumstantial evidence in this case. Circumstantial evidence, no matter how strong, is insufficient. Sumpter 27 Wn. App. at 23.

In State v. Buchanan, 79 Wn.2d 740, 745, 489 P.2d 744 (1971), the court upheld a perjury conviction where the State had met the stringent burden by providing direct contradictory testimony and independent corroborating evidence. At a preliminary hearing defendant testified his name was Benton and that he was 17. He later told a probation officer his true name and adult age. At his perjury trial, the state presented testimony by defendant's mother which positively and directly contradicted defendant's oath. The admissions to the probation officer provided the necessary corroboration. Buchanan, 79 Wn.2d at 741–42, 744–45.

In this case, however, there is no counterpart to Mrs. Buchanan. No one testified of his or her own direct knowledge that Ms. Singh had talked to Anthony by telephone about specific facts, witnesses or testimony involved in his case. Without direct testimony that positively contradicts Ms. Singh's statement, the State has not met the special requirements for proving perjury. The remedy is reversal of the conviction of perjury. Sumpter 27 Wn. App. at 25.

⁷ Sumpter 27 Wn. App. at 23.

2. The trial court exceeded its authority when it imposed non-crime related prohibitions on Ms. Singh.⁸

Ms. Singh challenges the following three conditions imposed by the court:

That [she is] not allowed to have any association or contact with known felons or gang members or their associates.

That [she] shall not wear clothing, insignia, medallions, etc., which are indicative of gang lifestyle. Furthermore, that the defendant shall not obtain any new or additional tattoos indicative of gang lifestyle.

That [she] not possess weapons.

CP 50.

Sentencing conditions are reviewed for abuse of discretion. State v. Crockett, 118 Wn. App. 853, 856, 78 P.3d 658 (2003); *see* State v. Riley, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993). A crime-related prohibition will be reversed if it is manifestly unreasonable. Riley, 121 Wn.2d at 37 (quoting State v. Blight, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977)).

The Legislature has authorized the imposition of prohibitions and affirmative conduct upon a defendant, provided they are related to the circumstances of the crime. Crockett, 118 Wn. App. at 857; State v.

⁸ Assignment of Error 7.

Jones, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003). RCW 9.94A.505, the general sentencing statute of the Sentencing Reform Act, provides that “[A]s a part of any sentence, the Court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. RCW 9.94A.505(8). RCW 9.94A.703(3)(c) and (e) authorize a court to order participation in crime-related treatment or counseling services and compliance with any crime-related prohibition. A “crime-related prohibition” is 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) (emphasis added). A “circumstance” is defined as “[a]n accompanying or accessory fact.” State v. Williams, 157 Wn. App. 689, 692, 239 P.3d 600 (2010).

a. Indicative of gang lifestyle. Here, there is nothing in the record to indicate there was anything gang-related about the circumstances of the crime of perjury. Although no causal link needs to be established between the condition imposed and the crime committed, the condition must relate to the circumstances of the crime. State v. Llamas-Villa, 67 Wn. App. 448, 456, 836 P.2d 239 (1992). The type of clothing, insignias, jewelry or tattoos Ms. Singh wears was and is not related to the underlying

conviction. This condition is not reasonably related to the circumstances of the perjury, and the provision should be stricken.

b. Contact with gang members or their associates. Similarly, the prohibition against associating with gang members or their associates is not reasonably related to the circumstances of Ms. Singh's crime of perjury. The condition must relate to the circumstances of the crime. *See State v. Parramore*, 53 Wn. App. 527, 768 P.2d 530 (1989) (community supervision condition requiring defendant convicted of selling marijuana to submit to urinalysis was directly related to his drug conviction despite absence of evidence on whether defendant smoked marijuana); *Llamas-Villa*, 67 Wn. App. at 456 (condition prohibiting association with individuals who use, possess, or deal with controlled substances was conduct intrinsic to the crime for which Llamas was convicted and therefore was directly related to the circumstances of the crime of possession of cocaine with intent to deliver); *State v. Hearn*, 131 Wn. App. 601, 128 P.3d 139 (2006) (condition that Ms. Hearn refrain from associating with known offenders was directly related to circumstances of the crime of drug possession).

Herein, perjury is not a gang-related crime. There was no evidence that the perjury occurred because of gang involvement by Ms. Singh.

Since the challenged prohibition does not relate to the circumstances of the crime, the restriction here is manifestly unreasonable.

Furthermore, limitations upon fundamental rights must be imposed sensitively, in order to be permissible. United States v. Consuelo-Gonzalez, 521 F.2d 259, 265 (9th Cir.1975). A defendant's freedom of association may be restricted only if reasonably necessary to accomplish the essential needs of the state and public order. Malone v. United States, 502 F.2d 554, 556 (9th Cir.1974), *cert. denied*, 419 U.S. 1124, 95 S.Ct. 809, 42 L.Ed.2d 824 (1975). This constraint is an unconstitutional restriction of Ms. Singh's freedom of association.

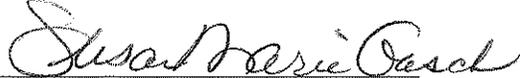
c. Weapons. The legislature has determined that a convicted felon may not own or possess a firearm. RCW 9.41.040. Here, the condition prohibits possession of "weapons". This broad category may reasonably encompass firearms, but also includes deadly weapons and undefined weapons of any sort. Since the legislature has specified only a prohibition against firearms, the imposition of a broader restriction is authorized only if it is crime related. Weapons and/or possession of weapons had nothing to do with the underlying conviction. This condition is not reasonably related to the circumstances of the perjury, and the provision should be stricken.

d. The offending conditions must be vacated. The trial court's imposition of the three restrictions was exercised on untenable grounds. The offending conditions of community custody are not directly related to the circumstances of the crime and are not authorized by statute. The court lacked authority to impose such conditions. See State v. Bird, 95 Wn.2d 83, 85, 622 P.2d 1262 (1980) (court may only suspend sentence if authorized by Legislature); In re Carle, 93 Wn.2d 31, 33, 604 P.2d (1980). The offending conditions must be stricken.

D. CONCLUSION

For the reasons stated, this Court should reverse the conviction for perjury.

Respectfully submitted August 25, 2011.


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