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JUN 24, 2015
Court of Appeals
Division III
State of Washington

NO. 32899-6-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

GREGORY E. DICKERSON,

Defendant/Appellant.

BRIEF OF APPELLANT

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CONSTITUTIONAL PROVISIONS

United States Constitution, First Amendment	1, 4, 6, 8
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ASSIGNMENT OF ERROR

1. The trial court improperly imposed the following condition of community custody: “That you do not enter a romantic relationship without the prior approval of the CCO and Therapist.” (CP 159)

ISSUE RELATING TO ASSIGNMENT OF ERROR

1. Does the condition of community custody relating to romantic relationships improperly impinge upon Gregory E. Dickerson’s right of association under the First Amendment to the United States Constitution?

STATEMENT OF CASE

Mr. Dickerson’s life dramatically changed when he was arrested for first degree rape on January 22, 2013. (CP 6)

Stacie Coe and Mr. Dickerson lived together for approximately four (4) years. They have two (2) children in common. She moved out in October 2012. (RP 377, ll. 16-18; RP 425, ll. 19-21)

Ms. Coe went to Mr. Dickerson’s home on January 22, 2013 to pick up her W-2 form. When she arrived she went inside. She and Mr.

Dickerson eventually ended up in one (1) of the daughter's bedrooms in the basement. Mr. Dickerson closed the door. Ms. Coe saw a knife on the desk. (RP 383, l. 19 to RP 385, l. 2; RP 531, ll. 5-12)

Mr. Dickerson directed Ms. Coe to remove her clothing. She eventually did so. He then asked her to masturbate. She did. He videotaped it. He began masturbating. As he was about to ejaculate he placed his penis in her vagina. (RP 31, ll. 14-22; RP 32, ll. 6-10; RP 388, ll. 16-19; RP 389, ll. 1-19; RP 391, ll. 6-16; RP 393, ll. 19-23; RP 530, l. 10 to RP 531, l. 1; RP 532, ll. 2-3; RP 603, l. 20 to RP 604, l. 1; RP 604, ll. 9 to RP 605, l. 2; RP 783, ll. 12-18; RP 784, ll. 16-25)

Ms. Coe asserted that she consented to the activity only because of the knife. She was afraid that Mr. Dickerson would kill her. The knife was originally on the desk in the bedroom. Prior to the sexual intercourse the knife was placed in the adjoining bathroom by Mr. Dickerson. (RP 33, ll. 10-18; RP 48, ll. 10-22; RP 385, ll. 9-10; ll. 16-19; RP 387, ll. 12-22; RP 388, ll. 1-11; RP 390, ll. 6-18; RP 782, ll. 8-12)

Ms. Coe's mother, Dana Rendell called 9-1-1 after she learned of the events. Deputy Walker responded to Mr. Dickerson's residence. Mr. Dickerson' was outside and approached the patrol car. He told the deputy that he thought Ms. Coe had called 9-1-1 and reported a rape. (RP 21, ll.

23-25; RP 22, ll. 17-23; RP 23, ll. 13-25; RP 24, ll. 16-23; RP 43, ll. 10-21; RP 491, ll. 4-5)

Mr. Dickerson was cooperative. He advised Deputy Walker that the knife was under the mattress in his bedroom. A t-shirt that was involved was in the laundry room. He allowed Deputy Walker to recover his cellphone. (RP 34, ll. 1-2; RP 37, ll. 24-25; RP 599, ll. 6-12; RP 611, ll. 4-14; RP 620, ll. 10-14)

The knife was twelve and three-quarter ($12 \frac{3}{4}$) inches long with a seven (7) inch blade. (RP 651, ll. 15-25)

An Information was filed on January 24, 2013 charging Mr. Dickerson with first degree rape. A deadly weapon enhancement was included as to the knife. (CP 6)

Multiple continuances occurred until trial commenced on May 6, 2014. (CP 7; CP 8; CP 9; CP 10; CP 11; CP 12; CP 13; CP 14; CP 15)

The jury determined that Mr. Dickerson was guilty of the offense. It answered the special verdict form "Yes." (CP 108; CP 109)

A PSI was completed. It contained numerous mandatory and recommended conditions of community custody. (CP 142; CP 159)

Judgment and Sentence was entered on October 23, 2014. It included a condition of community custody that Mr. Dickerson could not be

involved in any romantic relationship without the permission of his CCO or therapist. (CP 165)

Mr. Dickerson filed his Notice of Appeal on October 27, 2014. (CP 180)

SUMMARY OF ARGUMENT

The condition pertaining to romantic relationships should be removed from Mr. Dickerson's Judgment and Sentence.

ARGUMENT

Mr. Dickerson's right to association under the First Amendment to the United States Constitution is improperly impinged by condition 18 set forth in Schedule "H" of the Judgment and Sentence.

The Sentencing Reform Act of 1981, chapter 9.94A RCW, empowers trial courts to impose "crime-related prohibitions" during the course of community custody. ... "Crime-related prohibitions" are orders directly related to "the circumstances of the crime for which the offender has been convicted." ... Contrary to the State's position, a challenge that a community custody condition included in a defendant's sentence is illegal or erroneous may be challenged for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). We review a court's imposition of crime-related

prohibitions for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

State v. Cordero, 170 Wn. App. 351, 373, 284 P.3d 773 (2012).

Mr. Dickerson was convicted of first degree rape with a deadly weapon enhancement. He has no prior criminal history with the exception of a third degree theft.

Ms. Coe is his former significant other. They have two (2) children in common. There is no indication that Mr. Dickerson sexually abused Ms. Coe during their four (4) year relationship.

A law is unconstitutionally overbroad if it sweeps within its prohibitions conduct protected by the First Amendment. The First Amendment protects an individual's right to freedom of speech and association. ... [A] sentencing court may restrict an offender's freedom of association as a condition of sentencing "if reasonably necessary to accomplish the essential needs of the state and public order." **Our courts have also recognized that it would not be reasonable to order a sex offender to have no contact with a class of individuals who do not share a relationship to the offender's crime.**

State v. Moultrie, 143 Wn. App. 387, 398-99, 177 P.3d 776 (2008) (quoting *State v. Riley*, *supra*, 37-38 (quoting *Malone v. United States*, 502 F.2d

554, 556 (9th Cir. 1974), *cert. denied*, 419 U.S. 1124 (1975))). (Emphasis supplied.)

“No romantic relationship without permission” is not a reasonable condition of community custody. It prohibits Mr. Dickerson from his right to associate with whom he pleases under the First Amendment.

Future romantic partners have no relationship to Mr. Dickerson’s current offense. If there had been some type of history of sexual abuse of partners, then Mr. Dickerson would not have an argument. However, no such history exists.

Prohibiting Mr. Dickerson from becoming involved in a romantic relationship is not an essential need of the State. It does not impact public order.

The First Amendment prevents government from prohibiting protected speech or expressive conduct. ... Statutes which regulate behavior, as opposed to speech, will not be overturned unless the overbreadth is both real and substantial in relation to the conduct legitimately regulated by the statutes.

Our first task in overbreadth analysis is to determine whether a statute reaches constitutionally protected speech or expressive conduct. If the answer is yes, the next determination is to determine whether the statute prohibits a real and substantial amount of protected conduct in contrast to the statute’s legitimate sweep. ... We have previously stated that a “defendant’s constitution-

al rights during community placement are subject to the infringements authorized by the SRA.” A convicted defendant’s “freedom of association may be restricted if reasonably necessary to accomplish the essential needs of the state and public order.”

State v. Riles, 135 Wn.2d 326, 346-47, 957 P.2d 655 (1998) (quoting *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996) (quoting *In re Caudle*, 71 Wn. App. 679, 683, 864 P.2d 570 (1993) (*Sweeney, J., concurring*))).

Condition 18 of the terms of community custody prohibits a substantial amount of protected conduct. The imposition of that condition by the trial court constitutes an abuse of discretion. It is not a reasonable condition.

Placing the discretion to choose romantic partners in the hands of a CCO or therapist overreaches the trial court’s statutory authority. Under the circumstances of Mr. Dickerson’s case, no one should have the right to choose a romantic partner for him.

CONCLUSION

The trial court abused its discretion in imposing the condition of no romantic relationship without permission. The condition should be removed from Mr. Dickerson's Judgment and Sentence. It violates his First Amendment right to association.

DATED this 24th day of June, 2015.

Respectfully submitted,

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DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	SPOKANE COUNTY
Plaintiff,)	NO. 14 1 00579 5
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
GREGORY E. DICKERSON,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 24th day of June, 2015, I caused a true and correct copy of the *APPELLANT'S BRIEF* and to be served on:

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