

**FILED**

APR 24, 2017

Court of Appeals  
Division III  
State of Washington

**No. 34713-3-III**

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

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**STATE OF WASHINGTON,**

**Respondent,**

**v.**

**GIL VELAZQUEZ, JR.,**

**Appellant.**

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**BRIEF OF RESPONDENT**

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**GARTH DANO  
PROSECUTING ATTORNEY**

**Kevin J. McCrae – WSBA #43087  
Deputy Prosecuting Attorney  
Attorneys for Respondent**

**PO BOX 37  
EPHRATA WA 98823  
(509)754-2011**

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## **I. ASSIGNMENTS OF ERROR**

1. Three of the conditions of community custody are unlawful.

## **II. ISSUES RELATED TO ASSIGNMENT OF ERROR**

1. Is the condition related to pornography vague or unrelated to the crime?

2. Is the condition prohibiting frequenting places where children congregate vague?

3. Is the condition prohibiting use of the internet unrelated to the crime?

## **III. STATEMENT OF FACTS**

The Appellant's statement of facts is sufficient for this appeal.

## **IV. ARGUMENT**

### **A. Prohibition on pornographic material.**

The State agrees, based on the cases cited by the appellant, that this condition should be struck.

### **B. Do not frequent places where children congregate.**

This condition, as listed in appendix F of the judgment and sentence, reads: Do not frequent places where children congregate, including but not limited to parks, playgrounds or schools. This is compliant with the court's ruling in *State v. Irwin*, 191 Wn. App. 644, 364

P.3d 830 (2015). In *Irwin* the condition was “Do not frequent areas where minor children are known to congregate, as defined by the supervising CCO.” *Id.* at 652. The court held that conditions requiring further definition from the community corrections officer were unconstitutional. The court also said “Without some clarifying language or an illustrative list of prohibited locations (as suggested by trial counsel), the condition does not give ordinary people sufficient notice to understand what conduct is proscribed.” *Id.* at 655. The condition in this case corrects the flaws noted in *Irwin*.

“That a law requires subjective evaluation to determine whether the enactment has been violated does not mean the law is unconstitutional.” *State v. Zigan*, 166 Wn. App. 597, 270 P.3d 625 (2012). As the trial court noted in *Irwin* “If we tried to micromanage that language, we’d have a document a hundred pages long” *Irwin*, 191 Wn. App. at 649. Simply because the court does not specify the address of every place Mr. Velazquez is not permitted to go does not make the condition unconstitutional.

Mr. Velazquez’s examples show how he has to deliberately misinterpret the language in order to make his point. He cites Mt. Rainer National Park as an example that makes it unclear. But a clear reading of the condition indicates the first clause, places where children congregate,

modifies the examples, such as parks. It is not unclear that a park where children are not typically expected to congregate, such as the back country of Mt. Rainer National Park, would not be off limits. The same would apply to the University of Washington.

In this case Mr. Velazquez molested a 13 year old girl who was a stranger to him in Wal-Mart. He has a prior conviction for a rape of a child 3<sup>rd</sup> where he met the victim at church. CP 58. The State has a clear and strong interest in keeping Mr. Velazquez away from children. The constitution does not require such specificity that there is no place for reasonable assessment. The condition in this case meets the requirements of *Irwin* and is not unconstitutionally vague.

**C. No internet/email/social media access.**

While this condition is probably a good idea, as Mr. Velazquez's current crime relates to his past crime, and his past crime utilized social media, the statute does require a direct relationship between the crime and the condition. RCW 9.94A.030(10). Thus the court should remand to strike this condition.

**V. CONCLUSION**

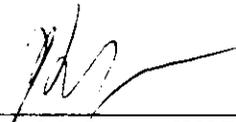
Two of the conditions complained about should be stricken. The condition on going to places where children congregate complies with

applicable case law, is reasonable related to Mr. Velazquez's behavior,  
and should remain.

Dated this 21<sup>st</sup> day of April, 2017.

Respectfully submitted,

GARTH DANO  
Prosecuting Attorney

By:   
\_\_\_\_\_  
Kevin J. McCrae – WSBA 43087  
Deputy Prosecuting Attorney

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

STATE OF WASHINGTON,            )  
  )  
                                  Respondent,    ) No. 32974-7-III  
  )  
                                  vs.                )  
  )  
GIL VELAZQUEZ, JR.,            ) DECLARATION OF SERVICE  
  )  
                                  Appellant.     )  
\_\_\_\_\_ )

Under penalty of perjury of the laws of the State of Washington,  
the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this  
matter by e-mail on the following party, receipt confirmed, pursuant to the  
parties' agreement:

David B. Koch  
Nielsen, Broman & Koch, PLLC  
[sloanej@nwattorney.net](mailto:sloanej@nwattorney.net)

Dated: April 24<sup>th</sup>, 2017.

  
Kaye Burns

**GRANT COUNTY PROSECUTOR**  
**April 24, 2017 - 11:18 AM**  
**Transmittal Letter**

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