

NO. 34719-2-III

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

DENNIS GASTON,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KLICKITAT
COUNTY

HONORABLE JUDGE BRIAN P. ALTMAN

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

A. ISSUES PRESENTED.....2

B. STATEMENT OF THE CASE.....2

 1. PROCEDURAL FACTS.....2

 2. SUBSTANTIVE FACTS.....2

C. ARGUMENT.....2

 1. THE STATE CONCEDES THAT THE PROHIBITION AGAINST POSSESSING PORNOGRAPHY IS NOT CRIME RELATED AND THEREFORE NOT A LAWFUL CONDITION OF COMMUNITY CUSTODY.....2

 2. THE PROHIBITION AGAINST FREQUENTING “LOCATIONS WHERE CHILDREN ARE KNOWN TO CONGREGATE” IS NOT VAGUE WHEN IT IS ACCOMPANIED BY AN ILLUSTRATIVE LIST OF SUCH PLACES THAT INCLUDES PLAYGROUNDS, PARKS, OR SCHOOLS.....3

D. CONCLUSION.....4

TABLE OF AUTHORITIES

Table of Cases

<u>WASHINGTON CASES</u>	Page
<u>State v. Irwin,</u> 191 Wn. App. 644 (2015).....	10

Rules, Statutes, and Regulations

None.

A. ISSUES PRESENTED

1. Is Mr. Gaston's community custody condition prohibiting him from purchasing, possession, or review of pornography a lawful condition in this case?

2. Is Mr. Gaston's community custody condition prohibiting him from frequenting places where children congregate, including playgrounds, parks, and schools, unconstitutionally vague?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Omitted as the issues will either be conceded or do not rely on an understanding of the procedural history of this case.

2. SUBSTANTIVE FACTS

Omitted. The facts as summarized by the appellant are sufficient for review of the issues on appeal.

C. ARGUMENT

1. THE STATE CONCEDES THAT THE PROHIBITION AGAINST POSSESSING PORNOGRAPHY IS NOT CRIME RELATED AND THEREFORE NOT A LAWFUL CONDITION OF COMMUNITY CUSTODY.

Mr. Gaston argues that the prohibition against purchasing, possessing or viewing pornography is not crime related. The State concedes that there is no evidence in the record that connects Mr.

Gaston's molestation of the victim in this case to the use of pornography and that the prohibition ought to be stricken.

**2. THE PROHIBITION AGAINST FREQUENTING
“LOCATIONS WHERE CHILDREN ARE KNOWN TO
CONGREGATE” IS NOT VAGUE WHEN IT IS
ACCOMPANIED BY AN ILLUSTRATIVE LIST OF SUCH
PLACES THAT INCLUDES PLAYGROUNDS, PARKS, OR
SCHOOLS.**

Mr. Gaston argues that the prohibition requiring that he “not frequent playgrounds, parks, schools or any locations where children are known to congregate” is unconstitutionally vague. The state concedes that under the analysis in State v. Irwin, 191 Wn. App. 644 (2015), the phrase “Locations where children are known to congregate,” in isolation, is vague and would not give Mr. Gaston sufficient notice to know what conduct is proscribed. However, that phrase is modified and expanded by a list similar to what the court in State v. Irwin suggested would have been sufficiently clear to provide notice to Mr. Gaston. “Without some clarifying language or an **illustrative list of prohibited locations**...the condition does not give ordinary people sufficient notice to understand what conduct is proscribed.” Id., at 655 [emphasis added]. Here, there is an illustrative list, including playgrounds, parks, and schools, that

clarifies the kind and extent of congregation of children that is being proscribed.

Because the prohibition as a whole is not vague, it should be upheld. However, to the extent that the phrase "or any locations where children are known to congregate" in isolation may still be considered vague, in the alternative the prohibition should be remanded to the trial court for clarification on resentencing.

D. CONCLUSION

The State concedes that the prohibition against possessing pornography is not crime related and should be stricken. However, the prohibition against frequenting playgrounds, parks, and schools is not vague, and should either be upheld or returned to the trial court for clarification.

DATED this 28th day of April, 2017

RESPECTFULLY submitted,

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SKAMANIA COUNTY PROSECUTOR
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Comments:

No Comments were entered.

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