

No. 35381-8-III

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

STATE OF WASHINGTON,

Respondent,

v.

EDWARD LANE HART,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CHELAN COUNTY

The Honorable Judges T.W. Small and David Kurtz

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

Appellant Edward Lane Hart accepts this opportunity to reply to the State’s brief. Mr. Hart requests that the Court refer to his opening brief for issues not addressed in this reply.

B. ARGUMENT IN REPLY

1. The trial court erred in imposing a condition of community custody prohibiting Mr. Hart from residing in a “community protection zone.”

This argument pertains to Issue 3 raised in Mr. Hart’s opening brief. Mr. Hart argues the trial court erred in imposing a condition of community custody prohibiting Mr. Hart from “resid[ing] within 880 feet of the facilities and grounds of a public or private school (community protection zone)[,]” because the trial court lacked statutory authority to impose this condition, where the statute authorizing this community custody provision was not effective until after the date of Mr. Hart’s offenses. *See* Appellant’s Opening Brief pgs. 23-26.

In response, the State argues this community custody condition was authorized as a crime-related prohibition. *See* Respondent’s Brief pgs. 17-19. The State argues:

In this particular case, Mr. Hart was convicted of a sexual offense against a minor. It is well within the discretion of the court to impose a condition regulating where Mr. Hart is allowed to reside in order to protect the community and minors in designated community protection zone areas.

Respondent’s Brief pg. 19.

Mr. Hart acknowledges that a community custody condition prohibiting him from entering schools where minors congregate could arguably be viewed as a crime-related prohibition. *See, e.g., State v. Norris*, 1 Wn. App. 2d 87, 95, 404 P.3d 83 (2017), *review granted*, 190 Wn.2d 1002, 413 P.3d 12 (2018) (discussing a community custody

condition prohibiting a defendant convicted of child molestation from “enter[ing] any parks/playgrounds/schools where minors congregate” in the context of a vagueness challenge). However, the community custody condition here is not limited to minors. Instead, it prohibits Mr. Hart from residing within 880 feet of the facilities and ground of a public or private school, without specifying a limitation to where minors are present. The condition is not limited to minors, and therefore, there is not a basis for a connection to Mr. Hart’s offenses. *See State v. Irwin*, 191 Wn. App. 644, 657, 364 P.3d 830 (2015) (explaining when a community custody condition may be upheld as crime-related).

The trial court erred in imposing the condition of community custody prohibiting Mr. Hart from residing in a “community protection zone.” The trial court lacked statutory authority to impose this condition, and the condition was not crime-related. Therefore, this court should remand this case with an order that the trial court strike this community custody condition.

C. CONCLUSION

Based upon the arguments set forth above and those set forth in Mr. Hart’s opening brief, the case should be reversed and remanded for a new trial, and at a minimum, reversed and remanded for the trial court to strike the impermissible community custody conditions and to correct a scrivener’s error in the judgment and sentence. Mr. Hart also objects to any appellate costs.

Respectfully submitted this 11th day of April, 2018.


Jill S. Reuter, WSBA #38374

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

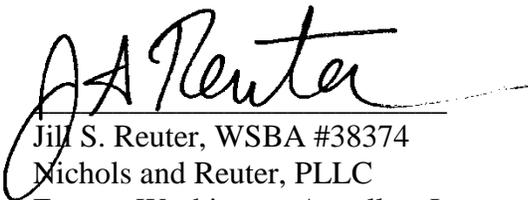
STATE OF WASHINGTON)
Plaintiff/Respondent) COA No. 35381-8-III
vs.) Chelan Co. No. 16-1-00224-3
)
EDWARD LANE HART)
) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on April 11, 2018, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

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Having obtained prior permission from the Chelan County Prosecutor's Office, I also served the Respondent State of Washington at prosecuting.attorney@co.chelan.wa.us using the Washington State Appellate Courts' Portal.

Dated this 11th day of April, 2018.


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