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Court of Appeals
Division III
State of Washington
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No. 366049

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

STATE OF WASHINGTON,

Respondent,

v.

ISABEL ROCHA, JR.,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

- A. The Judgment and Sentence did not reflect new laws relating to interest on legal financial obligations (LFOs).
- B. The trial court imposed a vague condition relating to frequenting places where children congregate.

II. ISSUES RELATED TO ASSIGNMENTS OF ERROR

- A. Does the Judgment and Sentence need to be updated to reflect current law on LFO interest?
- B. Is the condition that Mr. Rocha not “frequent parks, playgrounds, schools or other locations frequented by minors” unconstitutionally vague?

III. STATEMENT OF THE CASE

Isabel Rocha Jr. pled guilty to one count of Rape of a Child in the First Degree and one count of Child Molestation in the First Degree. CP 97. His Judgment and Sentence had not been updated to reflect the most recent changes in legal financial obligation interest laws. CP 106. The Court imposed a condition of community custody that Mr. Rocha not frequent parks, playgrounds, schools or other locations frequented by minors.” CP 73.

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IV. ARGUMENT

A. Interest on legal financial obligations.

The State agrees the language in the Judgment and Sentence must be updated to reflect current statutes. The Court should remand for this purpose.

B. Condition regarding places where children congregate.

The trial court imposed a community custody condition on Mr. Rocha that he not “frequent parks, playgrounds, schools or other locations frequented by minors.” CP 73. He now contends this is unclear. Mr. Rocha tortures the English language to make it unclear, and cites a readily distinguishable federal case.

In *State v. Wallmuller*, 194 Wn.2d 234, 236, 449 P.3d 619, 620 (2019), the Supreme Court upheld a condition that barred a defendant from “places where children congregate” that was cabined by a nonexclusive list of examples. While Mr. Rocha’s condition does not use precisely the same wording as the condition approved of in *Wallmuller*, it carries the same meaning.

As Mr. Rocha states the word “other” means that the frequented places are different, distinct from or in addition to the enumerated places. Sup. Brief of Appellant at 5, citing Merriam-Webster Dictionary (online ed. 2019). In this case because parks, playground and schools are

generally categories of locations frequented by minors it is clear that the word “other” in the condition means in addition to the enumerated places, and the clause other places where children frequent means that parks, playgrounds and schools are meant to be interpreted as places where children frequent. The condition contains a provision preventing the defendant from frequenting places frequented by minors, and provides an illustrative list. This is what is required by *Wallmuller*.

U.S. v. Peterson, 248 F.3d 79, 86 (2nd Cir. 2001), does not counsel otherwise. In that case the condition prohibited the defendant from “being on any school grounds, child care center, playground, park, recreational facility or in any area in which children are likely to congregate.” The Court there ruled that this condition could be interpreted as any area in which children are likely to congregate as being distinct for the illustrative list. Notably, this condition did not contain the word “other” to link back the general clause to the illustrative list. The Court focused on the fact that the illustrative list could be interpreted as being divorced from the general condition. Given the term “other” in Mr. Rocha’s condition, that problem does not exist in this case.

V. CONCLUSION

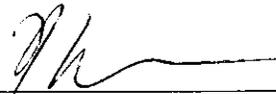
The State agrees this case should be remanded to update the LFO interest clause in the Judgment and Sentence. The do not frequent places

where children congregate condition is as clear as the condition in *Wallmuller*. The trial court should be affirmed on this issue.

Dated this 26th day of December 2019.

Respectfully submitted,

GARTH DANO
Prosecuting Attorney

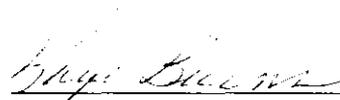
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CERTIFICATE OF SERVICE

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

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Dated: December 27, 2019.



Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

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