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Court of Appeals
Division III
State of Washington
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NO. 36853-0-III

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

STATE OF WASHINGTON,

Respondent,

v.

ELIZABETH PARTRIDGE,

Appellant.

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

The Honorable Travis C. Brandt, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant's community custody condition prohibiting association with persons known to have "a felony criminal background" is unconstitutionally vague.

2. The sentencing court erred when it burdened appellant with nonrestitution interest on her legal financial obligation.

Issues Pertaining to Assignments of Error

1. Is the community custody condition prohibiting association with persons known to have "a felony criminal background" unconstitutionally vague because ordinary people cannot understand what is proscribed and the condition lends itself to arbitrary enforcement?

2. No interest may be assessed on nonrestitution legal financial obligations. Must the requirement that appellant pay nonrestitution interest be stricken?

B. STATEMENT OF THE CASE

The Chelan County Prosecutor's Office charged Elizabeth Partridge with two counts of Assault in the Third Degree and one count of Criminal Trespass in the Second Degree. CP 6-7.

Evidence at trial established that, on the morning of July 18, 2018, Marc and Kathy Ball discovered Partridge asleep on patio furniture located in the back yard of their Wenatchee home. RP 100-101, 110-112. Mr. Ball sprayed Partridge with a garden hose, eventually rousing her, and demanding that she leave the property. RP 102-103, 112-113. Partridge briefly argued with Mr. Ball before exiting the back yard and walking down the front driveway toward the street. RP 103-105, 113-114, 166-170.

Mrs. Ball had called police, and officers arrived as Partridge left the property. RP 102, 105, 114, 142. Two officers detained Partridge while a third officer spoke to the Balls. RP 120-121, 136, 142-144. Partridge repeatedly complained that she needed to use the restroom and desired to do so at a nearby Safeway, but officers said she needed to remain for a while longer while they sorted the matter. RP 121, 127-129, 171-173. Eventually, Partridge indicated she could not wait to use the restroom any longer and attempted to walk away, resulting in a physical altercation in which Partridge was forced to the ground and both officers were kicked in the chest as they tried to grab her legs. RP 122-126, 136-138, 173-176.

Partridge testified in her own defense, explaining that she did not think anyone lived in the home when she chose to sleep in

the back yard. RP 164-165. The house was for sale and she believed it had been staged with furnishings, including the patio furniture. RP 164, 182-183. She admitted she had been trespassing. RP 99, 173, 179, 190. But she disputed the two assault charges, testifying that if she kicked the officers during the struggle, it was unintentional. RP 174-175, 232. Jurors nonetheless convicted Partridge on all three counts. RP 240-241; CP 46-48.

At sentencing, the court imposed a prison-based DOSA, resulting in 27.75 months of confinement followed by a similar period of community custody. RP 263; CP 54. The first of several community custody conditions provides, "The defendant shall obey all criminal laws and shall not associate with persons known to have a felony criminal background without the prior approval of the Department of Corrections." CP 67 (emphasis added). Partridge also was ordered to pay a \$500.00 victim penalty assessment and interest on that penalty "from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090." CP 56.

Partridge timely filed her Notice of Appeal. CP 71-91.

C. ARGUMENT

1. THE PROHIBITION ON ASSOCIATING WITH THOSE HAVING A FELONY CRIMINAL BACKGROUND IS UNCONSTITUTIONALLY VAGUE.

As a condition of community custody, the trial court ordered Partridge not to associate with persons known to have “a felony criminal background” without prior approval. CP 67. The condition is unconstitutionally vague because it is insufficiently definite to apprise her of prohibited conduct and permits arbitrary enforcement by the Department of Corrections.

Due process forbids vague laws and requires the State to provide citizens fair warning of proscribed conduct. State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008); State v. Irwin, 191 Wn. App. 644, 652, 364 P.3d 830 (2015). It also protects against arbitrary, ad hoc, or discriminatory enforcement. State v. Halstien, 122 Wn.2d 109, 116-17, 857 P.2d 270 (1993). A prohibition is void for vagueness if it does not (1) define the proscribed conduct with sufficient definiteness such that ordinary people can understand what is proscribed or (2) does not provide ascertainable standards to protect against arbitrary enforcement. Bahl, 164 Wn.2d at 752-53; Irwin, 191 Wn. App. at 652-653.

There is no presumption in favor of the constitutionality of a community custody condition. State v. Sanchez Valencia, 169 Wn.2d 782, 792-93, 239 P.3d 1059 (2010). Community custody conditions are subject to reversal when they are manifestly unreasonable, and the imposition of an unconstitutionally vague condition is ipso facto manifestly unreasonable. Id. at 791-792. Restrictions implicating First Amendment rights, such as freedom of association, must be clear and must be reasonably necessary to accomplish essential state needs and public order. State v. Riley, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993). Vagueness challenges to conditions of community custody may be made for the first time on appeal. Bahl, 164 Wn.2d at 745.

The community custody condition prohibiting Partridge's association with persons known to have "a felony criminal background" is unconstitutionally vague because ordinary people cannot determine what this means. Does "felony criminal background" mean a convicted felon? Does it cover someone who was charged with a felony crime but the charge was dismissed? How about someone who was charged and acquitted by a jury? What about someone who was convicted but later exonerated on appeal? Or maybe it means someone merely suspected by police of

having committed a felony crime? Arguably, any of these situations could result in a “felony criminal background.”

Moreover, the condition also fails the second prong of the vagueness test because it gives rise to arbitrary enforcement. A creative CCO could interpret the condition in such a way that maximizes it, making Partridge’s contact with any person who was even suspected of committing a felony (no matter how thin the evidence and no matter how long ago that person was under suspicion) a violation of her judgment and sentence. Where a condition leaves so much discretion to an individual CCO, it is unconstitutionally vague. Sanchez Valencia, 169 Wn.2d at 795.

This unconstitutional community custody condition must be stricken.

2. THE JUDGMENT ERRONEOUSLY REQUIRES PAYMENT OF INTEREST ON THE VICTIM PENALTY ASSESSMENT.

As previously noted, the judgment in Partridge’s case indicates, “The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.” CP 57. By its terms, this provision applies to all financial obligations, which necessarily includes the victim penalty assessment.

RCW 10.82.090 requires the court to impose interest on restitution costs. RCW 10.82.090(1). The statute also states, "As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations." RCW 10.82.090(1). No restitution was ordered in this case. Therefore, the interest provision must be stricken from Partridge's judgment.

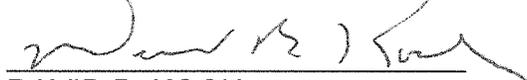
D. CONCLUSION

This Court should remand so that the sentencing court can amend the judgment and sentence by striking the prohibition against associating with those who have "a felony criminal background" and striking the improper interest requirement.

DATED this 14th day of October, 2019.

Respectfully submitted,

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