

FILED
Court of Appeals
Division III
State of Washington
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No. 36975-7-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

ANDREW LEANDRE SANDERS,

Appellant

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

NO. 17-1-00767-0

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State agrees that a community custody condition can be clarified to provide the defendant does not need approval from his treatment provider to have sexual contact with his wife.

II. STATEMENT OF FACTS

The defendant pleaded guilty to Attempted Rape of a Child in the Second Degree. CP 5-17. His community custody conditions are listed in Appendix H, attached to the Judgment and Sentence, and include:

“Defendant shall:

5. Inform the supervising CCO (community corrections officer) and sexual deviancy treatment provider of any dating relationship. Disclose sex offender status prior to any sexual contact. Sexual contact in a relationship is prohibited until the treatment provider approves of such.”

The sole issue on appeal is whether this provision should be clarified to exclude sexual contact with the defendant’s wife.

III. ARGUMENT

Courts have allowed community custody conditions for sex offenders requiring approval for a dating relationship. *State v. Peters*, 10 Wn. App. 2d 574, 591, 455 P.3d 141 (2019). Courts have also approved community custody conditions requiring a sex offender to have approval from a treatment provider for sexual contact in a relationship. *State v.*

Autrey, 136 Wn. App. 460, 469, 150 P.3d 580 (2006). The basis for those restrictions is that a sex offender, especially a child sex offender, may be a danger to an adult who may be unaware of the defendant's history of abusing children. *Id.* at 468.

These concerns would not apply for a defendant who is married, whose spouse knows about the sexual assault charge and conviction, and who has "stood by her man" until the defendant was released from custody. Therefore, the State will agree to modify condition 5 as follows:

"Defendant shall:

5. Inform the supervising CCO (community corrections officer) and sexual deviancy treatment provider of any dating relationship. Disclose sex offender status prior to any sexual contact. Sexual contact in a relationship is prohibited until the treatment provider approves of such, *except for consensual sexual contact and intercourse with the defendant's spouse.*"

IV. CONCLUSION

Upon remand the State will propose the amendment to No. 5 of the community custody conditions.

RESPECTFULLY SUBMITTED on June 16, 2020.

ANDY MILLER

Prosecutor

A handwritten signature in blue ink, appearing to read "TJ Bloor", is written over a horizontal line.

Terry J. Bloor, Deputy

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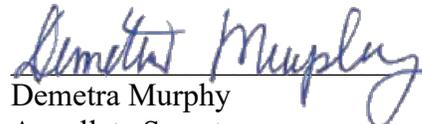
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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was made to the following
parties: ltabbutlaw@gmail.com

Signed at Kennewick, Washington on June 16, 2020.


Demetra Murphy
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

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