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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 37401-7-III

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STATE OF WASHINGTON, Respondent,

v.

D.K.V., Appellant.

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**APPELLANT'S BRIEF**

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**TABLE OF CONTENTS**

**AUTHORITIES CITED**.....ii

**I. INTRODUCTION**.....1

**II. ASSIGNMENTS OF ERROR**.....1

**III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR** .....1

**IV. STATEMENT OF THE CASE**.....2

**V. ARGUMENT**.....3

**VI. CONCLUSION**.....8

**CERTIFICATE OF SERVICE** .....9

## **AUTHORITIES CITED**

### **State Cases**

<i>State v. May</i> , 80 Wn. App. 711, 911 P.2d 399 (1996).....	3
<i>State v. O'Brien</i> , 115 Wn. App. 599, 63 P.3d 181 (2003).....	7
<i>State v. Wiatt</i> , 10 Wn. App. 2d 1049, 2019 WL 5381969 (2019).....	6
<i>State v. Y.I.</i> , 94 Wn. App. 919, 973 P.2d 503 (1999).....	3, 5

### **Statutes**

RCW 9.94A.505(10).....	4
RCW 10.14.020.....	6
RCW 10.14.040(7).....	6
RCW 10.14.080(4).....	6
RCW 10.99.050(2)(c).....	7
RCW 10.99.050(2)(d).....	7
RCW 13.04.450.....	3
RCW 13.40.010(2)(k).....	5
RCW 13.40.020(5).....	4
RCW 13.40.020(9).....	4
RCW 13.40.160(1)(b).....	4
RCW 13.40.185(1).....	4
RCW 13.40.200.....	5
RCW 13.40.210(3).....	4
RCW 13.40.210(4).....	5

### **Court Rules**

GrR 14.1.....	6
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## **I. INTRODUCTION**

As part of D.K.V.'s disposition, the sentencing court imposed a ten-year anti-harassment order prohibiting him from contacting the victim's family. Because the order was not agreed, not requested by the victims, was unsupported by the requisite showings, and not authorized as a condition of a juvenile disposition, the order should be vacated.

## **II. ASSIGNMENTS OF ERROR**

ASSIGNMENT OF ERROR NO. 1: The sentencing court erred in imposing a ten-year anti-harassment order as part of D.K.V.'s juvenile court disposition.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

ISSUE NO. 1: Whether a juvenile court has authority to enter an anti-harassment order as a condition of disposition.

ISSUE NO. 2: Whether a ten-year anti-harassment order can be entered without a stipulation or factual basis that the respondent is likely to resume unlawful harassment without an order in place.

#### **IV. STATEMENT OF THE CASE**

The State charged D.K.V. with first degree arson based upon an allegation that he fired a flare gun at a house, breaking the window and starting a fire inside. CP 1-2. Fortunately, the fire was small and nobody was hurt. RP 8, 9. The State contended that D.K.V. acted in retaliation against another; D.K.V. argued that he acted spontaneously at the urging of an older child with intent only to scare someone. RP 9, 10.

The parties reached a plea bargain. RP 5. Under the agreement, the State would recommend a disposition of 103-129 weeks, \$200 in fees, and the State would dismiss a separate cause. RP 7; CP 9. Nothing in the record establishes any agreement to entry of an anti-harassment or no-contact order by the court.

D.K.V. pleaded guilty and received the recommended disposition. CP 4-10, 16, 18; RP 8-9, 13. However, in addition, the State requested that the court enter a no-contact order protecting the individuals who were present in the home at the time. RP 9. The court granted the request and ordered D.K.V. not to have contact with three individuals, even though it did not place him on community supervision. CP 14-15. It also entered a separate anti-harassment order prohibiting contact with all three individuals besides incidental contact at school, effective for 10 years. CP

11. The individuals were not present at the disposition hearing and nothing in the record indicate that they requested the order.

D.K.V. appealed from the disposition order and has been found indigent for that purpose. CP 22, 25.

### **V. ARGUMENT**

This appeal challenges the disposition court's authority to impose a 10-year anti-harassment order as part of a juvenile disposition. Because the statute providing for such orders does not authorize it under these circumstances and because the order is inconsistent with the goals and structure of the Juvenile Justice Act, the order should be vacated.

The scope of a juvenile court's authority to act is a question of law subject to *de novo* review. *State v. Y.I.*, 94 Wn. App. 919, 922, 973 P.2d 503 (1999). The exclusive authority for adjudication and disposition of juveniles is set forth in chapters 13.04 and 13.40 RCW, unless specifically provided to the contrary. RCW 13.04.450.

In general, juvenile courts have authority to supervise offenders' compliance with disposition requirements only until their period of supervision ends. *See State v. May*, 80 Wn. App. 711, 911 P.2d 399 (1996). However, in cases where the standard range sentence includes a

term of confinement exceeding 30 days, the juvenile is committed to the Department of Children, Youth, and Families (“DCYF”), and no court supervision is imposed. RCW 13.40.160(1)(b); 13.40.020(9). Instead, supervision is by DCYF. RCW 13.40.185(1). Juveniles who are supervised by DCYF may be placed on parole for up to 18 months after their release and may be required to comply with conditions set to enhance the juvenile’s reintegration. RCW 13.40.210(3). At the conclusion of the parole period, the juvenile is discharged from DCYF supervision. *Id.*

This sentencing scheme thus differs substantially from the Sentencing Reform Act (“SRA”) applicable to adult offenders. The SRA allows the sentencing court to “impose and enforce crime-related prohibitions and affirmative conditions.” RCW 9.94A.505(10). No similar authority is extended to the juvenile court when imposing a DCYF commitment. Instead, the juvenile court has authority to impose conditions of community supervision only when the child is not committed to DCYF. RCW 13.40.020(5). Accordingly, unlike the adult sentencing scheme, the Juvenile Justice Act establishes two tracks for juvenile offenders: one track with limited confinement and oversight by the court, and one track with lengthier confinement and oversight by DCYF. Maintaining the distinctions between the respective authorities of

the juvenile court and the DCYF is one of the policies of the Juvenile Justice Act. RCW 13.40.010(2)(k).

This distinction calls into question the juvenile court's authority to impose a no-contact requirement as part of a DCYF disposition. No statute specifically authorizes it, and the structure of the Juvenile Justice Act suggests that where community supervision is not imposed, the authority to impose such conditions reside with DCYF as part of its supervisory powers. Furthermore, although the Juvenile Justice Act allows a juvenile court to enforce conditions of community supervision by imposing a penalty or modifying the disposition order, no similar provision provides for any enforcement authority by the court when the offender is sentenced to DCYF confinement. *See* RCW 13.40.200. Instead, enforcement of conditions imposed upon release from confinement is vested in DCYF. *See* RCW 13.40.210(4). The absence of a grant of jurisdiction from the legislature to the juvenile court to establish and enforce conditions of a DCYF-supervised disposition indicates that the legislature did not intend for the courts to have such authority. *See Y.I.*, 94 Wn. App. at 924 (“If the legislature had so intended, it would have enacted a specific grant of jurisdiction.”).

Compounding the general problem of the juvenile court's lack of authority to impose a no-contact condition in this case is its issuance of a separate, 10-year anti-harassment order. Harassment requires proof of a course of conduct directed at a specific person, which must be comprised of a series of acts over time. RCW 10.14.020. Procedurally, entering an anti-harassment order against a juvenile requires a petition by the parent or guardian of the victim and consideration of specific factors before granting the order. RCW 10.14.040(7). Furthermore, for such orders to exceed one year in length, the court must find "that the respondent is likely to resume unlawful harassment of the petitioner when the order expires." RCW 10.14.080(4).

Here, none of these requirements of the statute are met. There are no facts in the record establishing a course of conduct between D.K.V. and the protected parties, no petition filed by or on behalf of the victim, and no finding (or basis for finding) that D.K.V. would be likely to harass the victim after one year. In an unpublished opinion, the Court of Appeals held that as part of a plea agreement, anti-harassment orders could be entered with a stipulation to their factual basis. *State v. Wiatt*, 10 Wn. App. 2d 1049, 2019 WL 5381969 (2019).<sup>1</sup> But here, nothing in the record

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<sup>1</sup> Consistent with GR 14.1, this case is non-binding and is cited only for such persuasive value as the court deems appropriate.

suggests that the anti-harassment order was agreed to as part of the plea bargain or that D.K.V. stipulated to the factual basis for a 10-year order.

Instructive as well is *State v. O'Brien*, 115 Wn. App. 599, 63 P.3d 181 (2003), in which the Court of Appeals upheld the imposition of a domestic violence no-contact order as a condition of a juvenile disposition. There, the court noted that the juvenile was over the age of 16, met the statutory definition of a “dating relationship” with the victim, and the statute allows entry of no-contact orders in cases where domestic violence crimes are charged and as conditions of their sentences. *Id.* at 601-02. Indeed, the statute expressly contemplates entry of no-contact orders for domestic violence crimes in conjunction with a juvenile disposition. RCW 10.99.050(2)(c), (d). But no similar language is found in chapter 10.14 RCW, the anti-harassment statute.

The absence of statutory authority for conditions to be imposed on a DCYF disposition generally, and for entry of an anti-harassment order in conjunction with a juvenile disposition absent an agreement and a stipulation to the required factual basis, leads to the conclusion that the legislature did not intend to authorize the 10-year order entered in this case. D.K.V. will be 24 years old when the order expires. CP 4. To place him under threat of criminal punishment for such an extended period runs

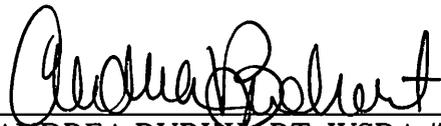
counter to the Juvenile Justice Act's goals of rehabilitation and reintegration. To the extent any such restrictions are necessary, the Act places discretion for making that determination on DCYF at the time of his release from confinement. While the court may have authority under chapter 10.14 RCW to enter anti-harassment orders under some circumstances, those circumstances are not present in this case.

## VI. CONCLUSION

For the foregoing reasons, the condition of D.K.V.'s disposition and the 10-year anti-harassment order prohibiting him from contacting the individuals inside the home at the time of his crime should be vacated.

RESPECTFULLY SUBMITTED this 29 day of June, 2020.

TWO ARROWS, PLLC



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ANDREA BURKHART, WSBA #38519  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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Andrew Kelvin Miller  
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed and sworn this 29 day of June, 2020 in Kennewick, Washington.

  
\_\_\_\_\_  
Andrea Burkhart

**BURKHART & BURKHART, PLLC**

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**Transmittal Information**

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