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Court of Appeals  
Division III  
State of Washington  
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No. 37401-7-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,

Respondent

v.

D.K.V.,

Appellant

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

NO. 19-8-00283-03

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BRIEF OF RESPONDENT

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## I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State disagrees. The Juvenile Court did not err in entering a No-Contact Order, providing that the respondent not have contact with three individuals for 10 years.

## II. STATEMENT OF FACTS

D.V. pleaded guilty as charged to Arson in the First Degree on January 16, 2020. CP 4-10. According to both the prosecutor and D.V.'s mother, the crime was in retaliation. RP at 9, 12. D.V. knew the juvenile residing in the home and may not have realized that there were two women, one an 87-year-old, occupying the home at the time. RP at 8-9.

The State requested a No-Contact Order for the women in the home and the juvenile. RP at 9. D.V. and his attorney signed the Anti-Harassment Order providing for that no-contact order. CP 11; RP at 20. No one objected to the Anti-Harassment Order and, in fact, D.V.'s attorney handed the court the no-contact order. RP at 20.

## III. ARGUMENT

- A. **This Court should not dismiss the no-contact order.**

1. **D.V. did not object to the Anti-Harassment Order in the trial court and should not now be allowed to claim it was error.**

D.V. does not explain why RAP 2.5 (a) does not apply and why this Court could refuse to review the claim of error. The three exceptions

to that rule are: (1) lack of trial court jurisdiction; (2) failure to establish facts upon which relief can be granted; and (3) manifest error affecting a constitutional right. None of these apply. D.V.'s argument is that the juvenile court did not have *authority* to impose the Anti-Harassment Order, not that the court lacked jurisdiction over him. The second ground, failure to establish facts upon which relief can be granted, is not applicable. The third ground is also inapplicable: D.V. has no constitutional right to contact people he could have harmed and who are not related to him.

**2. If this Court reviews the argument on its merits, the Anti-Harassment Order should be affirmed.**

**a. Standard on review:**

A sentencing court has the discretion to impose crime-related prohibitions, including no contact orders. *State v. Armendariz*, 160 Wn.2d 106, 119, 156 P.3d 201 (2007). The authority to impose no-contact orders is independent of the court's authority to impose conditions of community supervision. *Id.* Crime-related prohibitions are reviewed for abuse of discretion. *Id.* at 110.

**b. The Juvenile Court had the authority to impose the Anti-Harassment Order as a crime-related prohibition and did not abuse its discretion in doing so.**

The trial court had the following information: D.V. shot a flare gun at a window, breaking the window and causing a fire inside the residence. He did so apparently in retaliation for some action by an occupant of the residence. Two women were inside the residence. To protect the occupants of the residence—the two women and the individual D.V. was retaliating against, it was appropriate to enter the Anti-Harassment Order.

Since D.V. was guilty of a class A felony, the Anti-Harassment Order could have been for his life. *State v. W.S.*, 176 Wn. App. 231, 243, 309 P.3d 589 (2013) held that a domestic violence no-contact order could extend past the juvenile court's statutory jurisdiction over the offender.

**c. Response to D.V.'s argument:**

D.V. is correct that community supervision is imposed when an offender receives local sanctions. RCW 13.40.0357, RCW 13.40.020 (5) and (18). However, that does not mean that the Juvenile Court's hands are tied if an offender is sentenced to the Department of Children, Youth and Families (DCYF). As *Armendariz* held, no contact orders are crime related prohibitions and are independent of the court's authority to impose community supervision conditions.

In fact, if D.V.'s argument was accepted, the Juvenile Court would have no authority to impose a no-contact order if the offender's crimes were repeated and serious. For example, if a person committed the offense

of Residential Burglary, he would be subject to local sanctions under RCW 13.40.0357, and a no-contact order could be imposed as part of community supervision. However, if that person committed Residential Burglary against the same family on six separate occasions, and was sentenced to DCYF, the Juvenile Court would have no authority to order the offender to have no contact with that family, under D.V.'s argument.

The Anti-Harassment Order herein was issued under RCW 9A.46, not RCW 10.14 as D.V. argues. CP 11 states, “This *Harassment No Contact Order* is issued pursuant to Chapter 9A.46.RCW” (Italics in the original.) The purposes of RCW 9A.46 are stated in the Legislative Finding of .010:

The legislature finds that the prevention of serious, personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

RCW 10.14 is intended to provide citizens who have suffered “serious, personal harassment through repeated invasions of a person's privacy . . . a speedy and inexpensive method of obtaining civil antiharassment protections orders preventing all further unwanted contact between the victim and the perpetrator.” RCW 10.14.010. D.V. is conflating this statute, meant for disputes between individuals, with RCW

9A.46, which allows the State to seek a no-contact order on a case not involving domestic violence. D.V.’s discussion about a “pattern of conduct composed of a series of acts over a period of time” applies to RCW 10.14.020. RCW 9A.46 does not require a “pattern of conduct” for a court to impose a no-contact order.

Finally, D.V.’s citation of *State v. O’Brien*, 115 Wn. App. 599, 63 P.3d 181 (2003) is not on point. That case dealt with a domestic violence no contact order issued pursuant to RCW 10.99.020 (1). *Id.* at 602. Mr. O’Brien argued that the juvenile court did not have authority because RCW 13.40.0357 listed various offenses for which juveniles could be punished. Because violation of a domestic violence no-contact order was not listed, violation of such an order was not an offense under juvenile law. The *O’Brien* court held that RCW 13.40.0357 did not attempt to list all juvenile offenses and expressly provided for “other offenses.” *Id.* *O’Brien* did not hold that a no-contact order could be imposed only if the respondent was on community supervision or only if a statute authorized the order.

#### **IV. CONCLUSION**

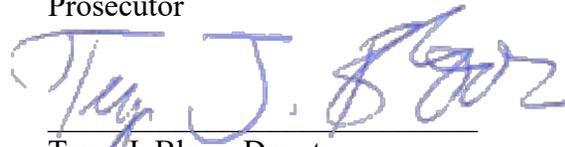
The Anti-Harassment Order should be affirmed. D.V. did not object to it before the trial court. The Court would have been negligent in not imposing the Anti-Harassment Order as a crime-related prohibition;

certainly, the Court did not abuse its discretion in doing so. D.V.'s arguments about RCW 10.14 are inapplicable. The Anti-Harassment order was entered under RCW 9A.46; RCW 10.14 is meant to provide individuals a speedy remedy to obtain a civil antiharassment order.

**RESPECTFULLY SUBMITTED** on September 25, 2020.

**ANDY MILLER**

Prosecutor



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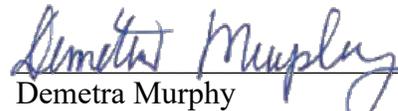
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I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on September 25, 2020.

  
Demetra Murphy  
Appellate Secretary

**BENTON COUNTY PROSECUTOR'S OFFICE**

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