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SUPREME COURT
STATE OF WASHINGTON
Mar 26, 2014, 2:18 pm
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NO. 89730-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of
STEVEN MONTGOMERY,
Petitioner.

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

The Honorable Ellen Fair, Judge

REPLY IN SUPPORT OF
MOTION FOR DISCRETIONARY REVIEW

LENELL NUSSBAUM
Attorney for Appellant

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ORIGINAL

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A. SUMMARY OF REPLY

This Court's decision should be based on the legal issues presented. See State v. McWilliams, 177 Wn. App. 139, 150, 311 P.3d 584 (2013), review denied, 179 Wn.2d 1020 (2014) (statutory authority to impose sentencing conditions is legal issue reviewed de novo).

The issues petitioner presents to this Court are legal issues regarding whether the Department of Corrections (DOC) had the legal authority to impose conditions of community custody that conflict with what the sentencing court had imposed. See Motion for Discretionary Review at 1 (Issues Presented for Review).

Yet DOC vehemently argues factual innuendo, some not factually supported and others directly false, apparently to persuade this Court it was justified in imposing the conditions it did, and why those conditions are less onerous than petitioner portrays. Response at 3-6.

Because DOC's factual allegations are inaccurate or misleading, based on declarations DOC has added to the record with its response, petitioner is compelled to respond to them.

B. STATEMENT OF FACTS IN REPLY

DOC mischaracterizes the facts in this case.

- DOC has prohibited all contact between Mr. Montgomery and his children or his family's home since his release from prison (with one isolated exception).
- Mr. Montgomery has participated in sex offender treatment since July, 2013.
- Mr. Montgomery's therapist recommended reunification with his family.
- His daughter's therapist did not recommend she have no contact with him.
- CPS has no open investigation, and has not had one since April 15, 2013.

1. DOC'S PROHIBITION OF MR. MONTGOMERY'S CONTACT WITH HIS CHILDREN AND HIS HOME HAS BEEN COMPLETE, NEVER GRANTING THE "PERMISSION" DOC SUGGESTS IS A MERE FORMALITY.

DOC tells this Court:

The DOC is permitting him to contact his children and go to his wife's home, but only by prior permission...Additionally, one's constitutional right to parent does not include the right to wholly unfettered access to one's children.

Response to Motion for Discretionary Review at 2.

This assertion suggests DOC is merely imposing some sort of reasonable time and place conditions on Mr. Montgomery's contact with his children. Nothing could be further from the truth. With one exception, DOC has declined permission for any

contact whatsoever since his April, 2013, release from prison -- where he enjoyed weekly prolonged family contact visits with his wife and children. See Appendices A & B (Declarations of Penny Montgomery and Steven Montgomery).

DOC has not permitted greeting cards or telephone contact with his children, a method of conveying a parent's love or help with homework without posing a risk of abusing a child. DOC denied him even single visits at Christmas or birthdays the past year. See Apps. A & B.

DOC has not permitted Mr. Montgomery supervised visits with his children, although his sex offender treatment provider approved his wife as an appropriate supervisor. See Apps. A & B.

DOC has not permitted Mr. Montgomery to go to the family home even when the children are not there, where he could help care for his mother with cancer and contribute to the family's chores, home repairs, etc., to ease the burden on his wife. See Apps. A & B.

These extremely restrictive conditions are contrary to those imposed by the Court at the time

of sentencing. As shown below, they are not supported by DOC's other claimed justifications.

2. MR. MONTGOMERY HAS PARTICIPATED IN SEXUAL DEVIANCY TREATMENT SINCE AUGUST, 2013.

DOC baldly asserts:

And he [Mr. Montgomery] has not yet entered into sexual deviancy treatment.

Response at 2. DOC cites unattributable passive-voiced assertions that Mr. Montgomery "is viewed as not amenable to sex offender treatment;" and claims Dr. Allmon reported "group is not likely going to be helpful."

In fact, Mr. Montgomery participated in individual sex offender treatment with Dr. Allmon since July, 2013. See App. B.

Dr. Allmon sent progress reports to CCO Rink, which are not included in the Chronos pages DOC deigned to provide this Court. See Appendix C (Declaration of Lenell Nussbaum).

While DOC suggests Mr. Montgomery's lack of treatment supports its decision to keep him from his family, Dr. Allmon instead advised the opposite -- that depriving Mr. Montgomery of his family life increases his risk to the community:

Current factors elevating risk to the community: Fragmented family; away from wife and children.

See App. C.

Ms. Montgomery participated for two sessions of her husband's treatment. Dr. Allmon examined her and approved her as an appropriate supervisor should DOC permit Mr. Montgomery supervised contact with his children. See App. A.

Since Dr. Allmon's health required him to retire early this year, Mr. Montgomery has begun treatment with Robert Hirsch, another Sex Offender Treatment Provider. See App. C (with letter from Robert Hirsch).

Thus lack of amenability to treatment or failure to undertake sex offender treatment does not justify DOC's conditions.

3. CPS DOES NOT HAVE AN OPEN INVESTIGATION REGARDING MR. MONTGOMERY'S CHILDREN.

DOC claims CPS notified it that CPS

had an open investigation regarding possible removal of the children from the home. The DOC also received information from a confidential source indicating that Montgomery may have sexually abused his step-daughter, who is now his adopted daughter.

Response at 5. DOC then claims this unsubstantiated accusation is "evidence" of abuse

to distinguish this case from State v. LeTourneau, 100 Wn. App. 424, 997 P.2d 436 (2000). Response at 9.

First, Mr. Montgomery's daughter has never been his "step-daughter." He was present at her birth, he adopted her upon her birth. She has known no other father. See Apps. A & B.

Second, CPS has no open investigation. CPS came to the Montgomery home shortly after Mr. Montgomery was released from prison. The caseworker interviewed the two children. CPS then notified Ms. Montgomery that the matter was closed.

Your case with Child Protective Services has been closed effective this date: 04/15/13.

See App. A (with attached letter from CPS dated 4/15/2013).

If DOC received "information" from a "confidential" source that Mr. Montgomery "may have" sexually abused his daughter, that report required a report to CPS. RCW 26.44.030. The resulting investigation, RCW 26.44.030-.050, was closed nearly a year ago. Apparently CPS found no evidence to support the information. These rumors do not justify DOC's conditions on Mr. Montgomery.

4. MR. MONTGOMERY'S DAUGHTER'S THERAPIST DID NOT RECOMMEND NO CONTACT WITH HER FATHER.

DOC further claims:

Additionally, in regard to contact with Montgomery's adopted daughter, the daughter's therapist as of August 2013 was not recommending contact with Montgomery due to the daughter's emotional distress related to him.

Response at 5-6.

Emerald Montgomery has worked with a mental health counselor, Michael Marletto of Compass Health, since early 2013. Mr. Marletto reviewed this assertion from DOC.

This statement is literally accurate. I did not make a recommendation that Emerald have contact with her father -- and I also did not make a recommendation that she not have contact with her father. I am not now making a recommendation either that Emerald have contact or not have contact with her father.

See Appendix E (Declaration of Michael Marletto).

Thus DOC cannot justify its restrictive conditions on recommendations from the child's therapist.

C. GROUND S FOR ACCEPTING REVIEW AND ARGUMENT

1. WHETHER DOC HAS THE AUTHORITY TO IMPOSE THE CONDITIONS IT DID IS AN ISSUE OF STATUTORY INTERPRETATION OF FIRST IMPRESSION AND INVOLVES CONSTITUTIONAL ISSUES OF DUE PROCESS AND EX POST FACTO LAWS THAT THIS COURT SHOULD REVIEW.

"[W]e review whether the sentencing court had the statutory authority to impose a sentencing condition de novo." State v. McWilliams, *supra*, 177 Wn. App. at 150. The same standard of review should apply to DOC's statutory authority here.

The Court of Appeals applied the wrong standard to this issue. Rather than determining whether DOC's conditions "are contrary to" the sentencing judge's conditions, it focused on whether "the intent of the sentencing court was to prohibit DOC from imposing these conditions." As Judge Fair clearly stated, she did not consider DOC changing the conditions because at the time of the crime, DOC did not have authority to change them. See Motion for Discretionary Review at 2-8.

There is no case law interpreting RCW 9.94A.704(6). DOC cites none. DOC's conditions directly affect Mr. Montgomery's constitutional right to parent his children, and present constitutional issues of an ex post facto law and

due process. CONST., art. I, §§ 3, 23; U.S. CONST., Art. I, §§ 9, 10, cl.1, and Amend. 14.

For this reason, this case presents a significant issue of law under the Constitution and an issue of substantial public importance that this Court should decide. RAP 13.4(b)(3), (4).

2. DOC'S CONDITIONS ARE A "BLANKET PROHIBITION" OF MR. MONTGOMERY CONTACTING HIS CHILDREN IN ANY WAY WITHOUT JUSTIFICATION, AND SO THIS CASE PRESENTS A SIGNIFICANT ISSUE OF CONSTITUTIONAL LAW AND CONFLICTS WITH OTHER DECISIONS BY THE COURT OF APPEALS.

Petitioner cited to this Court State v. Ancira, 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001), and State v. Letourneau, 100 Wn. App. 424, 439, 997 P.2d 436 (2000), as cases in conflict with the Court of Appeals order in this case.

DOC attempts to distinguish Ancira by claiming it has not imposed a complete prohibition on Mr. Montgomery contacting his children. Response at 8. But in fact, under the guise of requiring "permission" which has never been granted, it has imposed a complete prohibition. DOC has prohibited contact of every kind, even indirect or supervised with the children, and even contact with Mr. Montgomery's own home.

DOC attempts to distinguish LeTourneau by claiming it has "evidence" that Mr. Montgomery "may have abused" his daughter. Response at 9. Yet its "evidence" is a confidential "tip" at best, which has been investigated by CPS, which promptly closed the case nearly a year ago. This is not "evidence" that can support the blanket prohibition imposed here.

3. THE STATUTE PERMITTING DOC TO IMPOSE MORE RESTRICTIVE CONDITIONS VIOLATES THE EX POST FACTO PROHIBITION AND DUE PROCESS BY PERMITTING INCREASED PUNISHMENT BEYOND WHAT THE COURT IMPOSED.

The ex post fact clause "'forbids the application [by the legislature] of any new punitive measure to a crime already consummated.'" Kansas v. Hendricks, 521 U.S. 346, 370, 117 S. Ct. 2072, 183 L. Ed. 2d 501 (1997) (quoting Cal. Dep't of Corr. v. Morales, 514 U.S. 499, 505, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995)); see also U.S. CONST. art. I, § 10, cl. 1; CONST. art. I, § 23.

This is not an issue of Mr. Montgomery having more difficulty making a case for early release, as was rejected in Morales. Response at 10. This is a case in which DOC has imposed more punitive and prohibitive conditions on him than the trial court

did, based on a law passed after his crime was committed. It does not matter if the trial court could have imposed such conditions; it did not do so. In fact, Judge Fair explicitly stated she did not see a need for prohibiting Mr. Montgomery from contacting his children and intended he would have contact with them. Thus these conditions conflict with and are contrary to those set by the court.

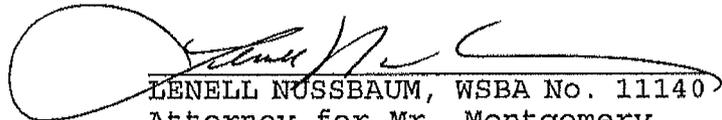
These more punitive conditions based on a law passed after Mr. Montgomery's crime was committed warrant this Court's review of a significant constitutional issue. RAP 13.4(b)(3).

D. CONCLUSION

For the reasons stated above, this Court should grant review of this case, grant Mr. Montgomery's petition, and vacate the unconstitutional conditions DOC added to Mr. Montgomery's community custody.

DATED this 26th day of March, 2014.

Respectfully submitted,


LENELL NUSSBAUM, WSBA No. 11140
Attorney for Mr. Montgomery

APPENDIX A

Declaration of Penny Montgomery
Letter from CPS, 4/15/2013

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IN THE SUPREME COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Personal Restraint of)	
)	
)	NO. 89730-1
vs.)	
)	DECLARATION OF
)	PENNY MONTGOMERY
STEVEN J. MONTGOMERY,)	
)	
Appellant.)	
_____)	

PENNY MONTGOMERY declares to the Court:

1. I am the wife of Steven Montgomery, the petitioner in this matter. I am the mother of Emerald and Clifton, our children. I make this Declaration based on personal knowledge and experience.

2. Steve has been Emerald's father since her birth. She has had no other father in her life.

3. While Steve was incarcerated at the Monroe Correctional Complex, the children and I had weekly contact family visits with him. In addition, we had regular phone communications between visits. Steve spoke with the children, helped them with homework, and they discussed any problems the children were having.

4. Shortly after Steve was released from prison, CPS came

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to my home. The caseworker interviewed both my children while I was present. A few days later I received the attached letter from CPS saying the case was closed. I have had no contact with CPS since that time. There is no ongoing CPS investigation.

5. Steve has participated in sex offender treatment. While he was in treatment with Dr. Doug Allmon, I participated with him at two sessions. Dr. Allmon examined me and certified me as an approved supervisor for our children if Steve would be permitted visits.

6. Steve's CCO has not permitted him to come to our home even when the children are not here. Steve's mother lives with us. She is suffering from cancer. She is undergoing chemotherapy. It would be very helpful if Steve were able to help with caring for his mother and chores around the house when the children are away at school.

I declare under penalty of perjury under the laws of the state of Washington that the above statements, paragraphs 1-6, are true and correct to the best of my knowledge.

3-24-10 Seattle
Date and Place

Penny Montgomery
PENNY MONTGOMERY



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
CHILDREN'S ADMINISTRATION

2031st 52nd Avenue West, Suite 201 • Lynnwood WA • 98036

Reception: (425) 673-3100 • Toll-Free: 800-877-3229 • Fax: (425) 673-3101

04/15/2013

Penny Montgomery
24224 107th Pl W
Edmonds, WA 98020

Dear Mrs. Montgomery,

Your case with:

- Child Protective Services
- Family Voluntary Services

- Child Welfare Services
- Family Reconciliation Services

has been closed effective this date: 04/15/13.

Attached is a list of community resources for your reference. To request further services from Children's Administration of DSHS you can call the toll free Intake Line:

Intake Line: 1-866-829-2153 (daytime) or 1-800-562-5624 (evenings, weekends, holidays).

Case Follow Up and Aftercare:

- No services recommended. Please refer to attached community resource list if desired.
- Based upon your family's needs, it is recommended that you initiate/continue in the following service(s):

Comply with requirements set forth by Department of Corrections.

**** Children's Administration will no longer be monitoring your participation in services. ****

- You do not need to send me any documentation.
- Enclosed is a return envelope for you to send me any documentation showing completion of any recommended service. This documentation will be placed in your file.

If you have any questions or concerns, I can be reached at (425) 673-3252.

Sincerely,

Alexis Stephenson, MSW
Social Worker

APPENDIX B

Declaration of Steven J. Montgomery

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IN THE SUPREME COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Personal Restraint of)	
)	
)	NO. 89730-1
vs.)	
)	DECLARATION OF
)	STEVEN J. MONTGOMERY
STEVEN J. MONTGOMERY,)	
)	
Appellant.)	
<hr/>		

STEVEN J. MONTGOMERY declares to the Court:

1. I am the petitioner in this matter. I make this Declaration based on personal knowledge and experience.

2. While I was incarcerated at the Monroe Correctional Complex, I had contact family visits every weekend with my wife, Penny, and my children, Emerald and Clifton. I have been Emerald's father since I adopted her at birth. She has had no other father in her life.

3. I was released from prison in April, 2013. I was permitted to visit my family and home for three days. Since that date, DOC permitted me one contact with my son, to take him to summer camp with my mother accompanying us, when my wife was not able to take him. I have not been permitted any other

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contact with him. Except for that one event, DOC has not permitted me to have any contact with my children or to visit my home.

4. DOC has prohibited me from having any contact of any kind with my children. I may not telephone, send letters or greeting cards. Even in prison I was able to call them to help them with their homework and offer parental advice and comfort.

5. DOC has not permitted me to visit our family home even when the children are not there. If I could, I would be able to help my wife with family chores or repairs, or help care for my mother who lives there and suffers from cancer.

6. I was not permitted even a one-time visit with my family at Christmas, for birthdays, or any other holiday.

7. I have participated in sex offender treatment. I began individual treatment with Dr. Doug Allmon in July, 2013. Dr. Allmon communicated with my CCO, who was aware I was in treatment. After our January, 2014, meeting, Dr. Allmon was forced to retire due to medical issues. I have transferred my treatment to Robert Hirsch of Hirsch Counseling, another SOTP. I had my first session with him on March 17, 2014. I will see him again March 24. I will continue working with him regularly.

I declare under penalty of perjury under the laws of the state of Washington that the above statements, paragraphs 1-7, are true and correct to the best of my knowledge.

March 24 2014 Spokane WA
Date and Place


STEVEN MONTGOMERY

APPENDIX C

Declaration of Lenell Nussbaum
Reports from Dr. Allmon, SOTP
Letter from Robert Hirsch, SOTP

IN THE SUPREME COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Personal Restraint of)
)
) NO. 89730-1
vs.)
) DECLARATION OF
) LENELL NUSSBAUM
STEVEN J. MONTGOMERY,)
)
) Appellant.)
_____)

LENELL NUSSBAUM declares to the Court:

1. I am counsel for Mr. Montgomery, the petitioner in this matter. I have represented him since July, 2013. I make this Declaration based on personal knowledge and information I have received in this representation.

2. In my representation of Mr. Montgomery, I communicated with his sex offender treatment provider, Dr. Douglas Allmon. I verified that Mr. Montgomery was in treatment with Dr. Allmon beginning in the summer of 2013. Attached to this Declaration are reports I received from Dr. Allmon from October and November, 2013.

3. As the reports themselves show, Dr. Allmon directed them to Mr. Montgomery's CCO, Garry Rinks. In addition, I

personally sent a copy of Dr. Allmon's report to Mr. Rinks in October, 2013, specifically calling to his attention Paragraph 31 of the report:

Current factors elevating risk to the community:
Fragmented family; away from wife and children.

4. Also attached to my declaration is a letter I received from Robert Hirsch, SOTP, regarding Mr. Montgomery's sex offender treatment with him since Dr. Allmon's health required him to retire. I personally confirmed by telephone conversation that Mr. Hirsch is working with Mr. Montgomery.

I declare under penalty of perjury under the laws of the state of Washington that the above statements, paragraphs 1-4, are true and correct to the best of my knowledge.

26 March 2014 Seattle WA
Date and Place


LENELL NUSSBAUM

Douglas J. Allmon, Ph.D.

Licensed Psychologist #1133 • 1122 East Pike PMB #667 • Seattle, WA 98122 • (206) 323-0330 Office

PROGRESS REPORT ▶ Dated: 15 OCT 13

Client:	Steven Montgomery	Cause #:	09-1-00248-1
Intake Date:	08/13	DOB:	01-13-62
Treatment End:	07/15	County/DOC#:	288933
Last Plethysmograph Assessment:	NA	Estimated Balance:	\$ 530.00
Next Scheduled		By Whom?	
Last Polygraph Assessment:	8-1-05	By Whom?	Minnich
Next Scheduled			
Last Progress Report Sent:	09/13		

DISTRIBUTION

AGENCY	NAME / ADDRESS	PHONE / FAX
CCO/PO:	Garry Rinks, CCO3 18710 33 rd Ave W Lynnwood, WA 98037	425-728-0996
Prosecutor:		
Defense Attorney:	Lennell Nussbaum, Attorney at Law 2003 Western Ave, Suite #330 Seattle, WA 98121	206-728-0996
Judge:		

Participation In Individual Treatment

1-POOR, 5-EXCELLENT, NA-NOT APPLICABLE

- | | | |
|-----|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Client attends treatment as scheduled? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 2. | Completes supplemental readings? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> |
| 3. | Romantic partner attends partners' group or couple sessions. | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> |
| 4. | Timely completion of assignments? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 5. | Actively participates without prompting? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 6. | Self-reports problems and pertinent issues without prompting? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 7. | Asks for and listens to feedback without demonstrating denial and defensiveness? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 8. | Has identified and prepared in writing his individual offense pattern (cycle)? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 9. | Identifies self as "opportunistic offender" and employs strategies against feeling "entitled" or behaving impulsively? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 10. | Able to engage in self-observation effectively? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 11. | Demonstrates accountability for all offenses, not just those charged? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 12. | Maintains sobriety using available support systems such as AA? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 13. | Attends substance abuse treatment? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 14. | Should UA/BA's be required? | NO |
| 15. | Should AA/NA be required? | NO |
| 16. | Maintaining stable employment or attending school? If retired, is doing constructive volunteer work? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> |
| 17. | Has demonstrated willingness and ability to minimize contact with risky settings? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 18. | Has fully disclosed to partner, boss, co-workers, family, and friends his offense and risks to reoffend? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |

19. Is maintaining financial responsibility for treatment of self? 1 2 3 4 5
20. Is maintaining financial responsibility for treatment of victim(s)? 1 2 3 4 5 NA
21. Has appropriate romantic partner, or dates appropriately? 1 2 3 4 5 NA
22. Is the romantic partner an approved and trained supervisor for visits to risky locations? NO
23. Is the romantic partner an approved and trained travel companion? YES
24. Should travel be permitted? YES
25. Progress: Average
26. Particular "breakthroughs" or new skills: Ongoing emphasis on boundary issues.

27. Less developed skills: Uniform progress.

28. Next treatment target: Ongoing initial familiarization with treatment concepts.

29. This period monitored by:
- Journal
 - Electronic Device
 - Random Phone Checks
 - Informants – Collateral Information
 - Polygraph as Scheduled
 - Self-Report
 - Work Release
 - CCO Collaboration
 - Home Visits
 - Job Visits
 - Collaboration with Substance Abuse Treaters
 - Other -

30. Living with: Alone Victims
 Spouse Potential Victims
 Minors Adults

31. Current factors elevating risk to the community: Fragmented family; away from wife and children.

32. Pending supervised visits with victims: NA

33. Comments:

Client's Signature

Therapist's Signature

D. Almon, Ph.D.

Therapist's Signature

- Information Copies:
- CCO
 - Prosecutor
 - Court
 - Client
 - File
 - CPS
 - Defense Attorney
 - PSI
 - Other
 - Other

Douglas J. Allmon, Ph.D.

Licensed Psychologist #1133 • 1122 East Pike PMB #667 • Seattle, WA 98122 • (206) 323-0330 Office

PROGRESS REPORT ▶ Dated: 15 NOV 13

Client:	Steven Montgomery	Cause #:	09-1-00248-1
		DOB:	01-13-62
Intake Date:	08/13	County/DOC#	288933
Treatment End:	07/15	Estimated Balance:	\$ 420.00
Last Plethysmograph Assessment:	NA	By Whom?	
Next Scheduled			
Last Polygraph Assessment:	8-1-05	By Whom?	Minnich
Next Scheduled			
Last Progress Report Sent:	10/13		

DISTRIBUTION

AGENCY	NAME / ADDRESS	PHONE / FAX
CCO/PO:	Gary Rinks, CCO3 18710 33 rd Ave W Lynnwood, WA 98037	425-728-0996
Prosecutor:		
Defense Attorney:	Lennell Nussbaum, Attorney at Law 2003 Western Ave, Suite #330 Seattle, WA 98121	206-728-0996
Judge:		

Participation In Individual Treatment

1-POOR, 5-EXCELLENT, NA-NOT APPLICABLE

- | | | |
|-----|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Client attends treatment as scheduled? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 2. | Completes supplemental readings? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> |
| 3. | Romantic partner attends partners' group or couple sessions. | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> |
| 4. | Timely completion of assignments? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 5. | Actively participates without prompting? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 6. | Self-reports problems and pertinent issues without prompting? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 7. | Asks for and listens to feedback without demonstrating denial and defensiveness? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 8. | Has identified and prepared in writing his individual offense pattern (cycle)? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 9. | Identifies self as "opportunistic offender" and employs strategies against feeling "entitled" or behaving impulsively? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 10. | Able to engage in self-observation effectively? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 11. | Demonstrates accountability for all offenses, not just those charged? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |
| 12. | Maintains sobriety using available support systems such as AA? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 13. | Attends substance abuse treatment? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 14. | Should UA/BA's be required? | NO |
| 15. | Should AA/NA be required? | NO |
| 16. | Maintaining stable employment or attending school? If retired, is doing constructive volunteer work? | 1 2 3 4 5 NA
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> |
| 17. | Has demonstrated willingness and ability to minimize contact with risky settings? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |
| 18. | Has fully disclosed to partner, boss, co-workers, family, and friends his offense and risks to reoffend? | 1 2 3 4 5
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> |

19. Is maintaining financial responsibility for treatment of self? 1 2 3 4 5
20. Is maintaining financial responsibility for treatment of victim(s)? 1 2 3 4 5 NA
21. Has appropriate romantic partner, or dates appropriately? 1 2 3 4 5 NA
22. Is the romantic partner an approved and trained supervisor for visits to risky locations? NO
23. Is the romantic partner an approved and trained travel companion? YES
24. Should travel be permitted? YES
25. Progress: Average
26. Particular "breakthroughs" or new skills: Ongoing emphasis on boundary issues.

27. Less developed skills: Uniform progress.

28. Next treatment target: Further emphasis on aspects of boundary issues.

29. This period monitored by:
- Journal
 - Electronic Device
 - Random Phone Checks
 - Informants – Collateral Information
 - Polygraph as Scheduled
 - Self-Report
 - Work Release
 - CCO Collaboration
 - Home Visits
 - Job Visits
 - Collaboration with Substance Abuse Treators
 - Other -

30. Living with: Alone Victims
 Spouse Potential Victims
 Minors Adults

31. Current factors elevating risk to the community: Fragmented family; away from wife and children.

32. Pending supervised visits with victims: NA

33. Comments:

Client's Signature

Therapist's Signature

D. Alvarez, Ph.D.

Therapist's Signature

- Information Copies:
- CCO
 - Prosecutor
 - Court
 - Client
 - File
 - CPS
 - Defense Attorney
 - PSI
 - Other
 - Other

Hirsch Counseling & Consulting

4500 – 9th Ave. NE, Suite 300

Seattle, WA 98105

(206) 829-2425

Robert Hirsch, LCSW
Randy Green, MA
Walter Cardona, LMHCA

March 24, 2014

Dear Ms. Nussbaum,

I wanted to inform you and the Court that I have accepted Mr. Steven Montgomery into our state certified sex offender treatment program. I have reviewed his previous treatment provider's progress reports and also spoke with Dr. Allmon who confirmed that Mr. Montgomery had been in treatment with him since last summer. Dr. Allmon reported that Mr. Montgomery was compliant and did well in his program. Dr. Allmon is now retired.

I have seen Mr. Montgomery twice, March 17th & 24th. He has signed our treatment contract and is adjusting to our program. I am aware that he is on community supervision with DOC and have spoken with his CCO, Gary Rink. Mr. Montgomery will be attending individual treatment every other week.

If you have any questions, please be in touch.

A handwritten signature in black ink, appearing to read "Robert Hirsch", written in a cursive style.

Robert Hirsch
Certified Sex Offender Treatment Provider

APPENDIX D

Declaration of Michael Marletto

IN THE SUPREME COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Personal Restraint of)	
)	
vs.)	NO. 89730-1
)	
STEVEN J. MONTGOMERY,)	DECLARATION OF
)	MICHAEL MARLETTO
)	
Appellant.)	
_____)	

MICHAEL MARLETTO declares to the Court:

1. I am a mental health counselor with Compass Health. I have worked with Emerald Montgomery as her counselor since early 2013. Emerald Montgomery is the daughter of Steven Montgomery.

2. I am informed that DOC has told this Court: "the daughter's therapist as of August 2013 was not recommending contact with Montgomery due to the daughter's emotional distress related to him."

3. This statement is literally accurate. I did not make a recommendation that Emerald have contact with her father -- and I also did not make a recommendation that she not have contact with her father. I am not now making a recommendation

either that Emerald have contact or not have contact with her father.

I declare under penalty of perjury under the laws of the state of Washington that the above statements, paragraphs 1-3, are true and correct to the best of my knowledge.

3-24-14 Lynnwood, WA
Date and Place


MICHAEL MARLETTO

CERTIFICATE OF SERVICE

I certify that on this date I mailed a copy of the attached document, to the following individuals, postage prepaid, addressed as indicated:

Ms. Ronda D. Larson
Attorney General's Office
Corrections Division
P.O. Box 40116
Olympia, Wa 98504

I declare under penalty of perjury under the laws of the State of Washington that the above statement is true and correct to the best of my knowledge.

3/26/2014 SEATTLE, WA
Date and Place


ALEXANDRA FAST

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, March 26, 2014 2:19 PM
To: 'Alexandra Fast'; ronda.larson@atg.wa.gov
Subject: RE: Montgomery, Steven 89730-1

Rec'd 3-26-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Alexandra Fast [mailto:ahfast2@gmail.com]
Sent: Wednesday, March 26, 2014 2:15 PM
To: OFFICE RECEPTIONIST, CLERK; ronda.larson@atg.wa.gov
Subject: Montgomery, Steven 89730-1

Please accept for filing the attached "Reply in Support of Motion for Discretionary Review" in regards to the Personal Restraint of Steven Montgomery 89730-1. A certificate of service is attached to the pleading.

Alexandra Fast
Assistant to:
Lenell Nussbaum, Attorney at Law
Email: Nussbaum@seanet.com
WSBA No. 15277
Lenell Nussbaum, Attorney at Law
2003 Western Ave., Suite 330
Seattle, Wa 98121
USA
Phone: [206-728-0996](tel:206-728-0996)
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