

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

No. 97452-7

IN THE SUPREME OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of DON WESLEY WINTON

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE ISSUES.....1

III. STATEMENT OF THE CASE.....2

IV. STANDARD OF REVIEW.....4

V. ARGUMENT IN OPPOSITION TO REVIEW.....5

 A. The Court of Appeals Applied the Correct Standard in Determining that the Conditions Imposed in Mr. Winton’s Case Violated His Constitutional Rights.....5

 B. The Court of Appeals Did Not Err in Striking the Geographic Restriction Prohibiting Mr. Winton From Traveling to Clark County.....9

VI. CONCLUSION.....15

Appendix A: Order Prohibiting Contact with G.L.D.

Appendix B: Order Prohibiting Contact with A.L.D.

Appendix C: Addendum to Conditions of Release - No Contact with A.L.D.

Appendix D: Correspondence and Decisions of the Board Re: UA Condition

Appendix E: Correspondence and Decisions of the Board Re: Seattle

Appendix F: Correspondence and Decisions of the Board Re: Clark County, Skamania, and Oregon

TABLE OF AUTHORITIES

United States Supreme Court

- Jones v. Cunningham,
371 U.S. 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963)8
- Jones v. Helms,
452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981)7, 8
- Morrissey v. Brewer,
408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)8

Supreme Court of the State of Washington

- State v. Olsen,
189 Wn.2d 118, 124, 399 P.3d 1141 (2017).....5
- State v. Sims,
171 Wn.2d 436, 256 P.3d 285 (2011).....11, 15

Washington Court of Appeals

- In re Pers. Restraint of Martinez,
2 Wn. App. 2d 904, 413 P.3d 1043, (2018)2, 5, 6, 9, 13
- In re Pers. Restraint of Winton,
2019 WL 2811126 (Wash. Ct. App. July 2, 2019).....3, 4, 6, 7, 12, 14
- State v. Alphonse,
147 Wn. App. 891, 197 P.3d 1211 (2008),
review denied, 166 Wn.2d 1011, 210 P.3d 1018 (2009).....5, 15
- State v. Schimelpfenig,
128 Wn. App. 224, 115 P.3d 338 (2005)1, 5, 6, 9, 10, 11, 15

State v. Sims,
 152 Wn. App. 526, 216 P.3d 470 (2009),
 overruled on other grounds by
State v. Sims, 171 Wn.2d 436, 256 P.3d 285 (2011).....1, 6, 10, 11

Other Jurisdictions

Bagley v. Harvey,
 718 F.2d 921 (9th Cir. 1983)8

Berrigan v. Sigler,
 499 F.2d 514 (D.C. Cir. 1974)8

Statutes and Court Rules

RAP 13.4.....4, 15

RCW 9.95.420.....5

I. INTRODUCTION

Don Wesley Winton¹ is a probationer subject to the authority of the Department of Corrections, the Indeterminate Sentence Review Board, and conditions set forth in his Judgment and Sentence for the remainder of his life. Mr. Winton brought and prevailed upon a personal restraint petition before Division II of the Court of Appeals to rectify unlawful conditions of his release, to-wit: geographic restrictions banishing him from the City of Seattle, Clark County, Clallam County, Skamania County, and more than half of the State of Oregon; and an order requiring Mr. Winton to submit to random urinalysis testing for drugs and/or alcohol.

The Indeterminate Sentence Review Board now seeks review of the decision of the court of appeals, but challenges in its motion for discretionary review only the court's decision striking the condition that Mr. Winton not enter Clark County without prior approval of his community corrections officer (hereinafter "CCO").

II. STATEMENT OF THE ISSUE

Should this Court deny review of the decision of the Court of Appeals because the Court of Appeals correctly applied the standard set forth in State v. Schimelpfenig, 128 Wn. App. 224, 115 P.3d 338 (2005); State v. Sims,

¹ The Board referred to Mr. Winton as "Donald Wesley Winton" in its motion for discretionary review. Mr. Winton's first name is "Don," which is not short for Donald. The error is understandable, and no offense is taken by Mr. Winton.

152 Wn. App. 526, 216 P.3d 470 (2009) (overruled in part on other grounds by 171 Wn.2d 436, 256 P.3d 285 (2010)); and In re Pers. Restraint of Martinez, 2 Wn. App. 2d 904, 413 P.3d 1043 (2018) in holding that the geographic restriction prohibiting Mr. Winton from entering Clark County violated Mr. Winton's constitutional right to travel?

III. STATEMENT OF THE CASE

On July 5, 2007, in Clark County Superior Court Cause No. 06-01-02237-8, Mr. Winton pleaded guilty to two counts of child molestation in the first degree involving victim G.L.D. (Mr. Winton's niece) and one count of child molestation in the third degree involving victim A.L.D. (Mr. Winton's stepdaughter).² ISRB Mtn. Disc. Rev., Appendix C. He was sentenced on October 23, 2007 to an indeterminate sentence with a minimum term of 98 months and a maximum term of life imprisonment on count I, a determinate sentence of 98 months on Count II, and a determinate sentence of 44 months on count III. Id. A lifetime no-contact order was entered with respect to victim G.L.D. Appendix A. A five-year no-contact order was entered with respect to victim A.L.D. (referred to erroneously in the order as "A.L.W."), which expired on 10/23/2012. Appendix B.

² The Board inaccurately indicated in its motion for discretionary review that Mr. Winton was convicted of three counts of child molestation in the first degree.

On September 29, 2014, by order of the Indeterminate Sentence Review Board, Mr. Winton was released from total confinement and placed on restrictions and supervision of the Indeterminate Sentence Review Board. ISRB Mtn. Disc. Rev., Appendix E. Mr. Winton is currently under the supervision of the Indeterminate Sentence Review Board and the Department of Corrections with respect to Count II relating to his niece, G.L.D., for the remainder of his life.³ ISRB Mtn. Disc. Rev., Appendix C. Mr. Winton is no longer subject to supervision of the Department of Corrections, and has never been subject to the authority of the Indeterminate Sentence Review Board, for his conviction of child molestation in the third degree involving his stepdaughter, A.L.D., as that offense is a class C felony with a maximum term of 60 months. There is also no longer a no-contact order in effect with Mr. Winton's daughter, A.L.D., as the no-contact order was in effect for the maximum term of 60 months.

Prior to his release in 2014, the Board noted that he was a low risk for future offending.⁴ While in custody, Mr. Winton had no infractions. Since his release, Mr. Winton has obeyed all of the conditions of supervision

³ Count I was a determinate sentence due to the date of offense, but the term of incarceration was identical to the minimum term imposed on Count II.

⁴ Mr. Winton was not released at his first release hearing as the Board did not have a treatment completion report. At the time of his first review, the Board indicated in its Decisions and Reasons that it would defer its final release decision until reviewing his treatment summary, but it was "unaware of any evidence which would likely overcome a presumption of release." ISRB Mtn. Disc. Rev., Appendix B.

including no contact provisions with respect to the two victims and other family members. In re Pers. Restraint of Winton, 2019 WL 2811126 (Wash. Ct. App. July 2, 2019).

Mr. Winton owns a home in Oregon, and he travels regularly from his primary residence in Des Moines, Washington Oregon with permanent approval of the Board.⁵ ISRB Mtn. Disc. Rev., Appendix M. Mr. Winton's biological daughter lives in Oregon, and he visits with her regularly in Oregon. The restriction prohibiting Mr. Winton from entering Clark County barred him from using Interstate-5 to travel from Des Moines to Oregon.

IV. STANDARD OF REVIEW

A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

⁵ To leave the State, Mr. Winton is still required to obtain a travel pass from his Community Corrections Officer (CCO).

This court has the discretion to accept review if one of the four conditions set forth above is met.

V. ARGUMENT IN OPPOSITION TO REVIEW

- a. The Court of Appeals Applied the Correct Standard in Determining that the Conditions Imposed in Mr. Winton's Case Violated His Constitutional Rights.

The Court of Appeals did not err in holding that the geographic restriction prohibiting Mr. Winton's entry into Clark County violates his constitutional right to travel. The law is settled with regard to the imposition of geographic restrictions on probationers in the State of Washington. The Indeterminate Sentence Review Board has the authority to require an offender to remain outside a geographic boundary. In re Pers. Restraint of Martinez, 2 Wn. App. 2d 904, 912, 413 P.3d 1043 (2018), citing RCW 9.95.420(3). However, that authority is subject to constitutional limitations, including the offender's constitutional right to travel. Id.

Restrictions which implicate a probationer's constitutional rights, including the right to travel, are subject to strict scrutiny and therefore must be narrowly tailored to serve a compelling governmental interest. Schimelpfenig, 128 Wn. App. at 226; State v. Alphonse, 147 Wn. App. 891, 909, 197 Wn. App. 891 (2008). *See also* State v. Olsen, 189 Wn.2d 118, 124, 399 P.3d 1141 (2017)(a condition of probation that implicates a probationer's constitutional right to privacy is subject to strict scrutiny).

The Board misconstrues the holding of the Court of Appeals, asserting that the Court of Appeals held that “Mr. Winton has an unfettered right to travel comparative [sic] to persons not serving a criminal sentence.” ISRB Mtn. Disc. Rev. at 9. On the contrary, the Court of Appeals recognized that a probationer’s constitutional right to travel *may* be restricted pursuant to statute, but such restrictions must be narrowly tailored to serve a compelling governmental interest (e.g. rehabilitation of the offender, community safety, or victim safety). In re Pers. Restraint of Winton, 2019 WL 2811126 (Wash. Ct. App. July 2, 2019).

The Board further asserts in its motion for discretionary review that “The Court of Appeals misapplied the precedent of the United States Supreme Court and this Court by equating right to travel cases involving welfare recipients and applicants for civil service jobs with individuals currently serving criminal sentences.” ISRB Mtn. Disc. Rev. at 2. This assertion of the Board is puzzling, as the Court of Appeals clearly rested its decision on precedent involving probationers convicted of criminal offenses: State v. Schimelpfenig, 128 Wn. App. 224, 115 P.3d 338 (2005) (defendant on probation following a murder conviction); State v. Sims, 152 Wn. App. 526, 216 P.3d 470 (2009) (defendant convicted of child molestation in the first degree serving a SSOSA sentence and subject to the authority of DOC and ISRB); and In re Pers. Restraint of Martinez, 2. Wn. App. 2d 904, 413

P.3d 1043 (2018) (defendant convicted of rape of a child in the first degree challenging a geographic restriction imposed by the ISRB and DOC which is nearly identical to the one at issue in Mr. Winton's case). In re Pers. Restraint of Winton, 2019 WL 2811126 (Wash. Ct. App. July 2, 2019).

The Court of Appeals did not equate, or even compare, the geographic restriction placed upon Mr. Winton with a restriction placed upon a non-convicted person. Id. Clearly, criminal convictions will often give rise to compelling governmental interests that would not exist with respect to a non-convicted person, such as rehabilitation, community safety, and victim safety. While such interests give the government the authority to restrict a probationer's travel, that authority is not boundless; such restrictions must also be narrowly tailored to serve these purposes.

The Board seemingly asserts an unqualified right to restrict the travel of offenders, relying in part on Jones v. Helms, 452 U.S. 412, 101 S. Ct. 2434, 69 L.Ed.2d 118 (1981). The Board's reliance on Jones is misplaced. The constitutional validity of geographic restrictions placed upon probationers was not before the court in Jones. The Jones Court considered a provision in Georgia law that enhanced the penalty for the misdemeanor offense of child abandonment if the offender left the jurisdiction of the State of Georgia before he could be prosecuted. Id. The court noted that the enhanced punishment for leaving the jurisdiction was clearly related to the

procedure for ascertaining guilt or innocence and that there was a rational basis for the legislature to exercise the police powers of the State to make abandonment within the State followed by departure from the state a more serious offense than mere abandonment of a child within the State. Id. at 422-23.

The Board similarly relies on a slew of cases in which the constitutional validity of geographic restrictions placed upon offenders was *not* before the court: Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (holding that due process requires a hearing before revocation of probation); Jones v. Cunningham, 371 U.S. 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963) (holding that a parolee may petition for habeas corpus in the federal district court); Bagley v. Harvey, 718 F.2d 921 (9th Cir. 1983) (holding that a federal parolee is not entitled to choose the state he is released to); and Berrigan v. Sigler, 499 F.2d 514 (D.C. Cir. 1974) (holding that the parole board struck the appropriate constitutional balance between its duties of supervision and the *right of parolees to travel* in denying leave for appellants to make a trip to North Vietnam under the circumstances). None of the cases cited by the Board support its position that a criminal conviction extinguishes a parolee's constitutional right to travel.

The Board also argues that the clear precedent in this State holding that geographic restrictions placed upon offenders must be narrowly tailored

to serve a compelling governmental interest should be disregarded because it is the Board, rather than the court, imposing the restriction. That argument ignores the fact that In re Pers. Restraint of Martinez, 2 Wn. App. 2d 904, 413 P.3d 1043 (2018) also involved a geographic restriction imposed by the Board, not the trial court. The Board's argument is not supported by any precedent, and with good reason; the Board is an arm of the State, and as such, is also required to act within the limitations imposed by the Constitution.

b. The Court of Appeals Did Not Err in Striking the Geographic Restriction Prohibiting Mr. Winton From Traveling to Clark County.

In analyzing geographic restrictions imposed upon an offender, the court should consider:

(1) whether the restriction is related to protecting the safety of the victim or witness of the underlying offense; (2) whether the restriction is punitive and unrelated to rehabilitation; (3) whether the restriction is unduly severe and restrictive because the defendant resides or is employed in the area from which he is banished; (4) whether the defendant may petition the court to temporarily lift the restriction if necessary; and (5) whether less restrictive means are available to satisfy the State's compelling interest.

Schimelpfenig, 128 Wn. App. at 229, citing People v. Brockelman, 933 P.2d 1315, 1319 (Colo. 1997).

The court's decision should "turn on a careful analysis of the facts, circumstances, and total atmosphere of the case." Id.

In State v. Schimelpfenig, 128 Wn. App. 224, 115 P.3d 338 (2005), the defendant, who was found guilty of murder in the first degree, was prohibited from residing in Grays Harbor County for the remainder of his life in order to protect the mental well-being of the victim's family. The order did not, however, prohibit the defendant from entering the county for work or recreational purposes. The court of appeals vacated the banishment order because it violated Mr. Schimelpfenig's right to travel within the state. The court declined to determine whether or not the government had a compelling interest in prohibiting the defendant from residing in Grays Harbor, though it did note a distinction between protecting the victim's family from being reminded of the defendant and protecting a victim or witness from a continuing threat. Id. at 229. Instead, the court decided the issue based upon the fact that the order was not narrowly tailored. A more narrowly-tailored restriction would satisfactorily protect the victim's family from being reminded of their loss, and the defendant was already prohibited from contacting the victim's family. Id. at 230.

Similarly, in State v. Sims, 152 Wn. App. 526, 216 P.3d 470 (2009) (overruled in part on other grounds by 171 Wn.2d 436, 256 P.3d 285

(2010))⁶, the court of appeals held that an order, issued as a condition of a Special Sex Offender Sentencing Alternative, which prohibited the defendant from entering Cowlitz County except when driving through the county to another locale, was unconstitutionally broad. The purpose of the order was to protect the mental well-being of the victim and her family, who lived in Cowlitz County. Id. The court of appeals determined that a more narrowly-tailored restriction would accomplish this purpose. Id.

In applying the Schimelpfenig factors to Mr. Winton's case, the Court of Appeals found that the ISRB has a compelling interest in preventing contact between Mr. Winton and the victims and victims' families residing in Clark County, but the geographic restriction was not narrowly tailored to serve that purpose. The court noted that the order at issue in the present case is even broader than the orders at issue in Schimelpfenig and Sims, in that it does not include exclusions for work, recreation, or travel through the county.⁷ The court also accepted the Board's concession at oral argument that a travel

⁶ The Board represented that this court "affirmed but criticized" the holding of the Court of Appeals in Sims. In doing so, the Board suggests that this court cast doubt on the holding of the Court of Appeals in Sims and in the Schimelpfenig case heavily relied upon by the Court of Appeals in Sims. This suggestion is contrary to the record. This court very clearly noted in Sims that "the trial court imposed an *obviously unconstitutional* banishment order." State v. Sims, 171 Wn. 2d 436, 448 (2011) (emphasis supplied).

⁷ The Board, apparently recognizing that its restrictions on Mr. Winton could not withstand a challenge in the Court of Appeals, eliminated most of these restrictions and modified the Clark County restriction to authorize travel through the county. The Court of Appeals denied the Board's motion to supplement the record with the eleventh-hour modification to the Clark County restriction.

restriction that did not allow for travel through Clark County would be overly broad. In holding that the Board's geographic restriction was overly broad, the court took into account the fact that Mr. Winton has abided by all of the conditions of his probation since his release, and there is no indication that he would not continue to abide by no-contact orders.

In addition to the fact that the order is not narrowly tailored, the Court of Appeals held that the internal review process afforded to Mr. Winton by the Board to challenge geographic restrictions does not adequately protect probationers' constitutional rights. The court cited the fact that the Board did not strike any of the other obviously unconstitutional restrictions, including a ban on entering the City of Seattle and half the State of Oregon, until shortly before it responded to Mr. Winton's personal restraint petition. In re Pers. Restraint of Winton, 2019 WL 2811126 (Wash. Ct. App. July 2, 2019); ISRB Mtn. Disc. Rev., Appendix F; ISRB Mtn. Disc. Rev., Appendix H; Appendix E; Appendix F; Appendix G.

The State argues, as it did before the Court of Appeals, that the condition in Mr. Winton's case, that he not be authorized to travel to Clark County without prior approval, is not a banishment order because Mr. Winton could enter Clark County *with prior approval*. In doing so, the State ignores the fact that the geographic restriction at issue in the case at bar is essentially identical to the condition imposed and held to be unconstitutional in In re Pers.

Restraint of Martinez, 2 Wn. App. 2d 904, 413 P.3d 1043 (2018). In that case, the petitioner was prohibited from entering Thurston County without prior written approval of his Community Corrections Officer and the Indeterminate Sentence Review Board. Additionally, just as in Mr. Winton's case, the basis cited by the State for the condition in In re Pers. Restraint of Martinez was a report of the victim liason indicating that the petitioner could not be released to Thurston County due to "victim issues." 2 Wn. App. 2d at 915. In Martinez, the court questioned this vague assertion, as the Board failed to provide any evidence that the victim was residing in Thurston County in response to the Petitioner's assertion that she had moved to Texas. Id.

Beyond the fact that the victims reside in Clark County and vague conclusory statement of the victim liason that there are "concerns," the Board offers nothing to support a county-wide travel ban. The Board asserts that the Court of Appeals recognized that the order prohibiting Mr. Winton from entering Clark County prevented inadvertent contact between Mr. Winton and a family member of a victim on one occasion. ISRB Mtn. Disc. Rev. at 8. While the Court of Appeals acknowledged that the Board represented at oral argument that this had occurred, it did not endorse the Board's representation and there is no support for this representation in the record. Mr. Winton has not requested or attempted to enter Clark County except for the purpose of traveling through the county on Interstate-5 or Interstate-205.

If the restriction is simply meant to ensure Mr. Winton complies with a no-contact order involving G.L.D., the Board has failed to provide a reasonable explanation as to why a county-wide ban is needed to effectuate this goal. There is no evidence that Mr. Winton has made any attempts to contact G.L.D. since his arrest in 2006. He has been out of custody for five years, and he has not made any attempts at contact or given any indication that he intends to seek contact with G.L.D. in that time. Before his release, Mr. Winton completed treatment, and he was evaluated and determined to be a low risk to recidivate. During the past five years that he has been released and monitored by the Board, he has been in full compliance with the conditions of his release.

Moreover, the restriction cannot be used to ensure Mr. Winton complies with a no-contact order involving A.L.D. since the no-contact order involving A.L.D. expired once Mr. Winton served the five-year maximum term for the offense involving A.L.D. Even assuming, *arguendo*, that the Board has the authority to impose and enforce a no-contact order involving A.L.D. when Mr. Winton is no longer subject to the authority of the Board for his offense involving A.L.D.⁸, the Board failed to show that a county-wide ban rather than a no-contact condition is needed to prohibit such contact. Mr.

⁸ The Board has imposed a no-contact restriction with respect to A.L.D., and Mr. Winton has never objected to and does not challenge this restriction in his personal restraint petition. Appendix C.

Winton has not given any indication that he seeks contact with A.L.D. or that he poses a continuing threat to her safety.

VI. CONCLUSION

This court should deny the Board's motion for discretionary review pursuant to RAP 13.4. The Court of Appeals correctly determined, based upon settled case law, that the geographic restriction barring Mr. Winton from entering Clark County was unconstitutional.

The Board conceded at oral argument before the Court of Appeals that its order prohibiting entry into Clark County was overbroad and sought to introduce evidence that it had modified the restriction after it filed its response to Mr. Winton's personal restraint petition. In re Pers. Restraint of Winton, 2019 WL 2811126 (Wash. Ct. App. July 2, 2019).

The standard set forth by Division II of the Court of Appeals in Schimelpfenig, 128 Wn. App. 224 was applied by Division I in Alphonse, 147 Wn. App. 891 and has not been otherwise contradicted by any division of the Court of Appeals. This court has twice declined to overrule the standard set forth in Schimelpfenig: by denying review of the Court of Appeals in State v. Alphonse, 166 Wn.2d 1011, 210 P.3d 1018 (2009), and by affirming the application of the standard and overruling the Court of Appeals on other grounds in State v. Sims, 171 Wn.2d 436, 256 P.3d 285 (2011). There is no conflict in the decisions of the divisions of the Court of Appeals or

a conflict between the decision of the Court of Appeals in Mr. Winton's case and any decision of this court or the United States Supreme Court.

The Court of Appeals properly applied the Schimelpfenig factors to the geographic restriction in Mr. Winton's case. This court should decline to review the decision of the Court of Appeals.

SUBMITTED this 3rd day of September, 2019.



ELIZABETH MOUNT PENNER
WSBA No. 44261
Attorney for Mr. Winton

APPENDIX A

J.C.

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Sherry W. Parker, Clerk, Clark Co.

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SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

No. 06-1-02237-8

STATE OF WASHINGTON, Plaintiff,

**HARASSMENT NO-CONTACT ORDER
(ORAH)
(JUDGMENT AND SENTENCE)**

v.
DON WESLEY WINTON ,
Defendant.

DOB: 11/22/1953

Clerk's action required.

This Harassment No-Contact is entered pursuant to the Judgment and Sentence. The victim protected by this order is: G L D, DOB:8/8/1992

Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

I. FINDINGS

The defendant was found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim.

II. ORDER

THE DEFENDANT IS ORDERED TO:

- Refrain from contacting, intimidating, threatening, keeping under surveillance or otherwise interfering with the victim and from making any attempt to engage in such conduct.
- Stay away from the victim's:
 - home
 - school
 - business
 - place of employment
 - other
- Other: Do not come within 1000 feet of the above-listed locations

73 #

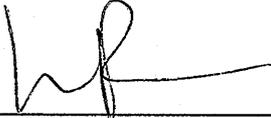
HARASSMENT NO-CONTACT ORDER (ORAH)
(JUDGMENT AND SENTENCE (RCW 9.94A.110,
.120; RCW 9A.46.040, .080 (WPF CR 84.0430
(4/2001)) - Page 1

CLARK COUNTY PROSECUTING ATTORNEY
CHILD ABUSE INTERVENTION CENTER
P.O. BOX 61992
VANCOUVER, WA SHINGTON 98666
(360) 397-6002 (OFFICE)
(360) 397-6003 (FAX)

1 It is further ordered that the Clerk of the Court shall forward a copy of this order on or before the next judicial
2 day to the Clark County Sheriff's Office/Police Department where the above-named victim lives, which
3 shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement
4 to list outstanding warrants.

5 THIS HARASSMENT NO-CONTACT EXPIRES ON IS FOR LIFE

6 Done in Open Court in the presence of the Defendant this date: 23 October 2007

7 

8 Deputy Prosecuting Attorney
Kimberly R. Farr, WSBA #08728

9 

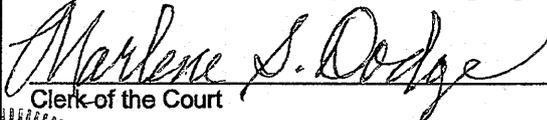
10 JUDGE
Print name:

11 Refused to sign
12 Attorney for Defendant
13 Thomas C. Phelan, WSBA 11373

14 Refused to sign
15 DON WESLEY WINTON

16 Defendant

17 On October 25, 2007, I deposited in the mails of the United States
18 of America a properly stamped and addressed envelope directed to the victim/guardian of victim containing a
19 certified copy of the document to which this affidavit is attached. I declare under penalty of perjury under the
20 laws of the State of Washington the foregoing is true and correct.

21 
22 Clerk of the Court

23 A completed law enforcement information sheet must be attached for identification purposes by the police or
24 sheriff.



APPENDIX B

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OCT 23 2007

Sherry W. Parker, Clerk, Clark Co.

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SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

No. 06-1-02237-8

STATE OF WASHINGTON, Plaintiff,

**HARASSMENT NO-CONTACT ORDER
(ORAH)
(JUDGMENT AND SENTENCE)**

v.
DON WESLEY WINTON,
Defendant.

DOB: 11/22/1953

Clerk's action required.

This Harassment No-Contact is entered pursuant to the Judgment and Sentence. The victim protected by this order is: A L W, DOB:7/2/1986

Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

I. FINDINGS

The defendant was found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim.

II. ORDER

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- Stay away from the victim's:
 - home
 - school
 - business
 - place of employment
 - other
- Other: Do not come within 1000 feet of the above-listed locations

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H

HARASSMENT NO-CONTACT ORDER (ORAH)
(JUDGMENT AND SENTENCE (RCW 9.94A.110,
.120; RCW 9A.46.040, .080 (WPF CR 84.0430
(4/2001)) - Page 1

CLARK COUNTY PROSECUTING ATTORNEY
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P.O. BOX 61992
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(360) 397-6003 (FAX)

1 It is further ordered that the Clerk of the Court shall forward a copy of this order on or before the next judicial
2 day to the Clark County Sheriff's Office/Police Department where the above-named victim lives, which
3 shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement
4 to list outstanding warrants.

5 THIS HARASSMENT NO-CONTACT EXPIRES ON 10-23-2012

6 Done in Open Court in the presence of the Defendant this date: 23 July 2007

7 WR

8 Deputy Prosecuting Attorney
9 Kimberly R. Farr, WSBA #08728

10 Robert A. Farr
11 JUDGE

12 Print name:

13 Refused to sign
14 Attorney for Defendant
15 Thomas C. Phelan, WSBA 11373

16 Refused to sign
17 DON WESLEY WINTON

18 Defendant

19 On October 25, 2007, I deposited in the mails of the United States
20 of America a properly stamped and addressed envelope directed to the victim/guardian of victim containing a
21 certified copy of the document to which this affidavit is attached. I declare under penalty of perjury under the
22 laws of the State of Washington the foregoing is true and correct.

23 Marlene S. Dodge
24 Clerk of the Court

25 completed law enforcement information sheet must be attached for identification purposes by the police or
26

27
28 HARASSMENT NO-CONTACT ORDER (ORAH)
29 (JUDGMENT AND SENTENCE (RCW 9.94A.110,
.120; RCW 9A.46.040, .080 (WPF CR 84.0430
(4/2001)) - Page 1

CLARK COUNTY PROSECUTING ATTORNEY
CHILD ABUSE INTERVENTION CENTER
P.O. BOX 61992
VANCOUVER, WA SHINGTON 98666
(360) 397-6002 (OFFICE)
(360) 397-6003 (FAX)

APPENDIX C



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504-0907

IN THE MATTER OF:

Name: WINTON, Don
DOC#: 308321
County: Clark Cause #: 06-1-02237-8
Sentence Date/ Time Start: 10-23-07 TS 11-02-07
Maximum Expiration Date: Life

**ORDER OF
RELEASE AND CONDITIONS**

ADDENDUM #:

CCB Offenders
RCW 9.94A.507
(Formerly RCW 9.94A.712)

Additional condition:

- a. You are prohibited from having any contact with Alexandre Ireland, Danielle Ireland, and A [REDACTED] D [REDACTED], whether in-person, telephonically, through a third party, by mail or email, or any other means of communication without the prior written approval of the ISRB.

Amend condition "E" listed on the Order of Release dated 9-29-2014 to now read:

You are prohibited from having any contact with Debra, Russell, Cassandra and Cameron Cahoon, and Christina Sparker, whether in-person, telephonically, through a third party, by mail or email, or any other means of communication without the prior written approval of the ISRB.

INDETERMINATE SENTENCE REVIEW BOARD

DocuSigned by:

Thomas N. Sahilberg

1800CE2004MEMEO

Member's signature:

9-17-2014

Date of Decision:

I have read, or have had read to me, the foregoing conditions of my community custody and have been given a copy; I fully understand and I agree, in consideration of granting of community custody, to observe and abide by such conditions.

9/26/14

Date Served on Offender:

Offender's signature:

Witness's signature:

APPENDIX D

May 24, 2017

Department of Corrections
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

RE: Order of Release and Conditions Addendum# (Note: The form has no # on it)

Today, May 24, 2017, I was asked to sign the attached Order of Release and Conditions Addendum. I did not sign the order. Instead I wrote an objection on the form.

That addendum attempts to add a new condition to my release as follows: "a. You must submit to periodic and random drug and/or alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB)"

I object on the basis that the sentencing judge ruled specifically regarding this matter when he executed my Judgement and Sentence. I call your attention to Page 3, Paragraph 2.6 of the Judgement and Sentence (attached hereto) which indicates that Appendix A is added to the Judgement and Sentence. On Appendix A, Page 6, please note that the item regarding UA's was specifically deleted. This was a negotiated item with the sentencing judge and the district attorney. It was not done by accident nor without great consideration by all parties involved. Your action is in direct conflict with the order signed by the sentencing judge and agreed to by the district attorney. Although the power and authority of the ISRB is extensive, the authority to directly overrule the sentencing judge falls outside those boundaries.

Additionally, I object on the basis that said condition does not reasonably relate to any of the following:

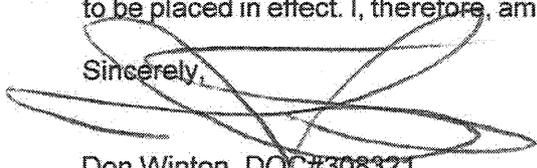
1. "The Crime of Conviction". The judge and district attorney, prior to striking this item, determined that neither alcohol nor drug use had any bearing on my crime. Thus, they deleted the requirement to submit to UA's.
2. "Your risk to reoffend". I have no history of drug or alcohol abuse. They were not a part of my crime and thus are not a factor regarding the likelihood of reoffending.
3. "The safety of the community". Again, I have no history of drug or alcohol abuse and have no history of harming the community other than in relationship to the crime of conviction.

In addition to the above, the ISRB, in 2015, confirmed to my CCO, Jermaine Castillo, and subsequently to my CCO, Amber Siedle, that I had no restrictions requiring that I submit to periodic UA's. The ISRB is now reversing itself and is doing so even though I have had a perfect track record during my community custody time period.

The addition of this new restriction is totally without merit, overrules the sentencing judge, and is, therefore, outside the parameters of the ISRB's authority.

For all of the above reasons, this restriction does not meet any of the conditions that must be met in order to be placed in effect. I, therefore, am appealing the restriction and ask that it be immediately revoked in its entirety.

Sincerely,



Don Winton, DOC#308321
CC: CCO Jermaine Castillo, w/o enclosures, via email

July 7, 2017

Winton, Don #308321
27740 10th Ave S.
Des Moines, WA 98198

Mr. Winton,

The Indeterminate Sentence Review Board (ISRB) is in receipt of your letter dated May 24, 2017 wherein you note objection to the ISRB Order of Release and Conditions Addendum #a dated May 11, 2017 which states:

- a. You must submit to periodic and random drug and/or alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).

You further state that the restriction is "...totally without merit, overrules the sentencing judge, and is therefore outside of the parameters of the ISRB's authority."

Please note that pursuant to your Judgement and Sentence #06-1-02237-8 the Sentencing Court, (Section 4.6 (4)) orders you to not consume controlled substances except pursuant to lawfully issued prescriptions. Section 4.6 also notes that the "Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections".

Additionally, the ISRB Order of Release and Conditions Addendum as noted above is allowed, supported, and required by RCW 9.94A.704. Be advised that the above noted condition of supervision as well as any other conditions as ordered by the Courts and/or ISRB are in full effect.

It is further emphasized that subsequent to your release to parole on September 29, 2014 the Board found you releasable with conditions. As noted in your Order of Release and Supervision Conditions, the ISRB expects compliance with all conditions and your full cooperation with your DOC Community Corrections Officer (CCO). Failure to comply with your conditions of release may jeopardize your ability to remain in the community.

You are encouraged to continue to work with your CCO in hopes that you maintain and achieve successful adjustment to community supervision and integration.

Sincerely



Matt Frank
Hearing Investigator
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

Cc: file



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
 PO BOX 40907 • Olympia Washington 98504-0907

IN THE MATTER OF:

Name: WINTON, Don
 DOC#: 308321
 County: Clark Cause #: 06-1-02237-8
 Sentence Date/ Time Start: 10-23-07 TS 11-2-07
 Maximum Expiration Date: Life

**ORDER OF
 RELEASE AND CONDITIONS**

ADDENDUM #:

CCB Offenders
RCW 9.94A.507
 (Formerly RCW 9.94A.712)

Additional conditions:

- a. You must submit to periodic and random drug and/or alcohol monitoring through an agency approved by your CCO and sign a full release of information allowing the treatment or monitoring agency to release information to your CCO and the Indeterminate Sentence Review Board (ISRB).

INDETERMINATE SENTENCE REVIEW BOARD



 Member's signature:

5-11-2017

Date of Decision:

I have read, or have had read to me, the foregoing conditions of my community custody and have been given a copy; I fully understand and I agree, in consideration of granting of community custody, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S) under County: _____ Cause #: _____

This order overrules and conflicts directly with the terms & conditions of my J&S ⊗

 Offender's signature:

Date Served on Offender: _____

 Witness's signature:

⊗ The board is acting outside of its authority by overruling the sentencing judge

APPENDIX E

DON WINTON
27740 10TH AVE S.
DES, MOINES, WA 98198
DOC #308321, Tel: 253-670-9193

June 29, 2016

Department of Corrections
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

RE: Request for Modification of Order of Release and Conditions Addendum (Note: The form has no # on it)

I am writing to request a modification of the Order of Release and Conditions Addendum which modified my release conditions regarding entering the city limits of Seattle.

That order prohibits my entering the city of Seattle, King County, Washington without ISRB approval. My request is that this prohibition be deleted so that entering the city of Seattle is not prohibited.

I am not requesting any modification of the restrictions regarding contact with any of the individuals on the ISRB issued conditions regarding no contact with the listed people. I respect the decisions each of the people on the no contact list have made regarding wanting no contact with me. Their decisions were made due to my crimes and prior actions. I accept full responsibility for my actions and the decisions they have made. The people on my no contact list include the two victims (A. D. [REDACTED] & J. D. [REDACTED]), my two ex-wives (Debra Cahoon & Danielle Ireland), three of my adult children (Cameron Cahoon, Christina Sparker, & Alexandre Ireland), Russell Cahoon (husband of Debra), and Cassandra Cahoon (wife of Cameron).

If you approve my request, the following are actions I will take to assure that no contact is made with any of the individuals on the list: 1. I will make no attempt of any kind, either direct or indirect, to determine the address or location of any of the people on the list, 2. I will make no attempt, either direct or indirect, to make any contact with anyone on the no contact list, 3. I have not retained the address of any of these people, 4. My trips into the city of Seattle will be for specific purposes including specific locations (I will not be randomly cruising the streets), 5. If I am in any location where I see any of the people on the list, I will immediately leave that place and will not make contact, 6. In the event of any contact, I will promptly notify my CCO and disclose the contact.

The purpose of my request is two-fold. It involves both business purposes and personal interests. The business purposes involve my real estate investment business. I purchase investment properties. The city limits of Seattle contain some of the best real estate investment opportunities in King County. Areas such as Downtown Seattle, Ballard, Queen Anne, Capitol Hill, First Hill, Green Lake, West Seattle, Northgate, North Seattle, and the University District are areas where there is the best opportunity to invest in quality property. When these investments come up for sale, it is critical to tour them immediately and make an offer. Even waiting two or three days can be the difference between an opportunity to make a purchase and them already being in escrow with someone else. Additionally, my CPA that I have used for nearly 40 years has offices in North Seattle near Northgate. The real estate attorneys I have used for most of this same time period have offices in downtown Seattle. Lastly, the bankers and mortgage brokers I have historically used have offices in downtown Seattle. The inability to go to their offices on short notice has caused some difficulties for me.

As to personal interests, I am a sports fan and have historically attended numerous sporting events. I have a desire to attend Seahawk games, Mariners games, Sounders games, and University of Washington football games. I understand that I would need to have approved Safety Plans in place with my CCO before

I could attend any of these games. I am willing to prepare such plans. There are also other community resources in Seattle that I would like to attend such as off Broadway plays and concerts at the Paramount, eating in quality restaurants in downtown Seattle, taking the Fauntleroy Ferry to Vashon Island, etc. I miss all of these social outings very much and would like to participate in them again. The City of Seattle is a beautiful city with so many things to do.

I have worked hard since participating in SOTP at TRU and during my community custody time to follow all restrictions and to have a successful return to society. My conditional freedom is very important to me and I take it very seriously. In this respect, it is my intent to fully comply with all of the terms and conditions of my release. I value my freedom very much. If you are willing to eliminate this restriction, you will find that I will fully comply with all terms of the modified plan just as I have complied with all of the conditions and restrictions of my release. I have been released for more than 21 months now and have a 100% compliance record. I am working very hard to be an example of full compliance and this is very important to me.

I can also assure you that I have not and will not, under any circumstances, make any attempt to contact either victim or any of the people on the no-contact list. I have caused enough pain in their lives by my prior offenses and actions. I understand that they have chosen to have no contact with me and I accept and respect their decisions. I caused them to make their decisions by my prior actions.

Having said all of the above, I respectfully request that you modify the Request for Modification of Order of Release and Conditions to drop the requirement of ISRB approval for me to enter the city limits of Seattle.

Respectfully submitted,

Don Winton, DOC#308321

Cc: CCO Amber Siedle

ISRB - ADMINISTRATIVE DECISION SHEET

Offender Name: WINTON, Don	DOC#: 308321	CCB <input checked="" type="checkbox"/> JUVBRD <input type="checkbox"/> Pre-84 <input type="checkbox"/>
Hearing Investigator: Jill Getty	CRT: Irene	DATE: 7/29/2015
PERTINENT INFORMATION AND RELEVANT DOCUMENTS CONSIDERED: D&R, Order of Release dated 8/21/14, Email from CCO dated 7/15/15		
DESCRIPTION OF ISSUE(S): Mr. Winton was released to community supervision on September 29, 2014. At that time, the Board ordered various conditions of supervision including prohibiting Mr. Winton from entering the City of Seattle, and Clark and Clallam Counties based on community concerns. Since his release, Mr. Winton has not had any violations of supervision. He has maintained stable residence, and has been participating in the community phase of SOTP. On July 15, 2015, Mr. Winton's CCO contacted the Board indicated that Mr. Winton had requested that his travel prohibition regarding King County be removed to allow for his presence there for work purposes and to attend "ball games". The ISRB Victim Liaison was contacted regarding this request who validated that there continue to be community concerns in that location, and that concerned citizens have been "enormously vocal" about his geographic boundary there.		
RECOMMENDATIONS: Continue on Present Status		
RECOMMENDATIONS continued:		
COMMENTS/ANALYSIS: There continue to be community concerns in Mr. Winton's case. Thus far, it does not appear to have caused serious employment problems for Mr. Winton to be prohibited from that area. In addition, Mr. Winton's attendance at "ball games" is not a sufficient reason to overcome community concerns.		
DECISION: Agree with with HI recommendations		
REASONS: Significant community concerns remain in King County that warrant continued geographic restrictions around both employment and/or recreation travel at this time.		
AGREE: INITIAL/DATE	DISAGREE: INITIAL/DATE	
TNS 7/29/15		



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40907, OLYMPIA, WA 98504-0907

July 21, 2016

Don Winton # 308321
27740 10th Ave S.
Des Moines, WA 98198

Mr. Winton,

I am in receipt of your letter dated June 29, 2016 in which you request that your condition that prohibits you from entering the city limits of Seattle, Washington be removed. In your letter you cite that the prohibition hinders your ability to purchase investment properties in the Seattle area and does not allow you to enjoy your personal interests of attending sporting events and experiencing other entertainment venues and restaurants in the city of Seattle.

The Board would like you to take notice that this same request was denied by the Board on July 29, 2015 and that the Board takes the same stance in regards to this request. Your release condition that prohibits your from entering the city limits of Seattle, Washington will remain as written.

You are encouraged to pursue investment properties, personal interest, entertainment, and restaurants in neighboring cities other than that of Seattle, Washington. Furthermore the Board will not continue to entertain future requests to change this prohibition unless there are significant changes in regards to the community concerns that exist in the city of Seattle.

You are encouraged to remain in compliance of the conditions of your supervision and to work with your Community Corrections Officer to continue to have a successful adjustment to community supervision.

Sincerely

Matt Frank
Hearing Investigator
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

Cc: file

APPENDIX F

SAFETY PLAN

Name Dan Winton DOC# 308321 Request Date 10/16/14

Destination Address See Attached

Telephone Contact # 253-670-9193 (My Cell)

Departure Date 10/24/14 Time 1:00 PM

Return Date 10/26/14 Time 11:30 PM

Traveling Companion See Attached Official Sponsor? Yes No (circle)

Does this violate your Judgment & Sentence? No Yes If yes, STOP .. The plan will not be considered.

Others Attending (list age & gender of any minors):

See Attached

CCO's Name: Lauren Knoblauch CCO's Phone # 206-835-7480

Discussed plan with your CCO? Yes No (circle one) on 9/29/14 (date)

My next report date to my CCO is:

11/12/14

CCO's response:

Talk to my therapist and submit Safety Plan

1. What do you want to do?

Attend the Palmer Wirts Antigue show and sale at the Portland Expo Center in Portland, Oregon. (More details in the attachment)

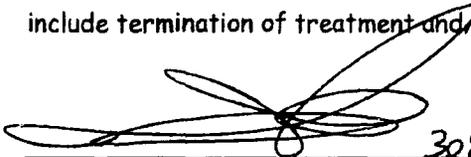
2. When do you want to do it and for how long?

Depart after group on Friday, October 24 and return after the show closes on Sunday, October 26. (More details in the attachment)

3. What are you risks associated with the activity?

See the attachment.

I understand by signing my name below, if I do not follow this Safety Plan as written, I can be sanctioned for failing to comply with Sex Offender Treatment Program as directed, which can include termination of treatment and/or confinement time.

 308321 10/10/14

Client Signature & DOC #

Date

Therapist Signature

Date

CCO Signature

Date

Christine Palmer & ASSOCIATES

From the desk of Christine Palmer

Dear Don —

This is such great news.
It would be wonderful to
see you at the Oct. Show.
I updated your address
and phone for the day we
can send you a contract.

You must be so ready for
this!

— Chris

DON WINTON
27740 10TH AVE S.
DES, MOINES, WA 98198
DOC #308321, Tel: 253-670-9193

October 27, 2014

Department of Corrections
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

RE: My Recent Request to go to Portland

I am writing because I believe it is very important for me to discuss with you information regarding my recent request to go to the Palmer Wirfs Antique show at the Portland Expo center in Portland, Oregon. First, I want to say that I have learned in the SOTP therapy program at TRU that it is imperative that I be open, honest, and transparent in all of my dealings with DOC, with my friends, and with my family. That is exactly what I did in preparing and submitting my Safety Plan for this requested trip. I am enclosing a copy of my Safety Plan. You will see that I described in my plan that my primary purpose was to attend the antique show and to assist my close friend and supporter, Ron Strayer. As part of the trip, I was also planning on spending time with my daughter, Joelle Budinich. Although visiting with Joelle was not the primary purpose of my trip, it was definitely a part of the overall plan.

Apparently, because I was to travel through Clark County, my ex-wife, Danielle Ireland was sent a copy of the approved travel plan. Neither I, nor my daughter, were aware that Ms. Ireland would be given a detailed copy of the plan. Nor were we aware that Ms. Ireland would be informed that I would be seeing Joelle. This was a significant surprise to both of us.

Joelle received a telephone call from Ms. Ireland (Joelle's step-mother) on Thursday, October 23. Joelle tells me that this was the first communication between her and Ms. Ireland in the last four years. Joelle tells me that Ms. Ireland was verbally aggressive and demanded to know if "Don was coming to Portland to see Joelle". Joelle says she stated "no". Joelle tells me that the call ended at that time because Ms. Ireland received another call. Joelle called me immediately and told me what she had told Ms. Ireland. Joelle was in tears when she called me. I asked Joelle why she said "no" to the question. She stated that she was unwilling to suffer the negative consequences and the repercussions of going against Ms. Ireland's wishes. Joelle had previously told me that Ms. Ireland had told her a few years ago that if she ever found out the Joelle was communicating with her father that Ms. Ireland would make certain that Joelle would never have any communication with any of her three siblings ever again (Alexandre Ireland, Christina Sparker, and Cameron Cahoon).

In order to show you that I was open, honest, and transparent in my representation of seeing Joelle in Portland, I'm including the following text thread between Joelle and I. I have saved the text thread on my cell phone and am willing to show it to my CCO or any other DOC representative at any time:

Text from Joelle dated 10/22 7:25pm: "(1/2) Been trying to get a sec to call the last two days. Would like to try and align schedules for this wknd and discuss house stuffs."

Text from Joelle dated 10/22 7:25pm: "(2/2) When are you heading down here? Jah (*Note: Jah is Joelle's boyfriend*) and I have tom afternoon avail to walk the expo if that's an opt. Otherwise my next few days are pretty booked :-/"

Text from me to Joelle dated 10/22, 7:28pm: "I still don't know if I'll be allowed to come down. If they do let me, it will be only one day – Sunday. It's frustrating to me."

Text from me to Joelle dated 10/23, 11:35am: "I will be in Portland Sunday."

Text from Joelle dated 10/23 11:53am: "(1/2) Oh yah! That's fabulous news! Congratulations! I have the day avail to meet up and Jah said he will plan to come as well so u can meet him too! I saved u"

Text from Joelle dated 10/23 11:53am: "(2/2) the last few pcs of my raw superfood chocolate from the last batch in hopes I'd get to share with you!"

Joelle is very stressed over this unexpected conversation with Ms. Ireland. Joelle and I have worked hard over the last eighteen months to paste together our relationship which was broken due to my abuse of my step-daughter and niece. Joelle attended an SOTP family conference at TRU earlier this year and, on that same day, she met in the visit room with my therapist, Ursula Gaweda and I. I completed a therapeutic disclosure to her during that meeting. After that meeting, my relationship with my daughter improved. Joelle states that she has forgiven me and desires to repair the relationship. However, she had not previously communicated any of this to her step-mom nor to her siblings. She knows that none of them have forgiven me and she was trying not to damage her relationships with her siblings.

My CCO has told me that the ISRB intends to modify my release conditions to prohibit me from going to Portland without board approval. This is of great concern to both Joelle and I. This means that I will never be allowed to visit my own daughter without Ms. Ireland having full knowledge of this. I do not believe this will be healthy for either Joelle or myself. It will damage a relationship that Joelle and I are attempting to repair. Further, I believe that such an action by the ISRB places Ms. Ireland in a position of power and authority that she can use to manipulate Joelle into breaking off any contact with me. I believe that, although Ms. Ireland would tell you that she needs this protection from me, that what she is really seeking is a way to control Joelle and to make certain that I do not have any contact with the only child I have who is currently attempting to have a relationship with me. It also puts Ms. Ireland in a position to continue to punish me for the crimes I committed. She should not have the right to control or interfere with my relationship with my daughter. I urge the ISRB to not put such a restriction in place. It could be very disruptive to my relationship with my daughter.

Additionally, I ask the board to modify the existing condition that requires board approval for me to enter Clark County. My request is that I could be allowed to "travel through Clark County in order to get to Oregon with the approval of my CCO" (not the board). Naturally, the condition should make it clear that under no circumstances am I allowed to make any stops for any purpose as I travel through Clark County. This would allow me to further my relationship with my daughter without Ms. Ireland being notified.

In closing I want to say that I have completed the SOTP therapy at TRU and did well in that treatment program. I also had over seven years in confinement without a single infraction, not even a minor. This should help the board to see that I have learned to follow the rules. I hold no grudges against Ms. Ireland, any of my family members, any of Ms. Ireland's family members, or the victims. I have no desire to communicate with or see any of them. I will do everything possible to avoid contact with them. I represent no danger to any of them. In fact, I thank them for making certain that I was prosecuted for my crimes. I am a much better person today than I ever would have been had I not gone to prison and received treatment.

I simply ask that I be allowed the possibility of going to Oregon and passing (non-stop) through Clark County without Ms. Ireland being notified. This will significantly reduce the chances of there being any contact with Ms. Ireland and will improve the chances of Joelle and I being able to continue to mend our relationship. Thank you for your consideration of this request.

Sincerely,



Don Winton, DOC#308321

CC: CCO Lauren Knoblauch, w/o enclosures



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
PO BOX 40907 • Olympia, Washington 98504-0907

IN THE MATTER OF:

Name: WINTON, Don
DOC#: 308321
County: Clark Cause #: 06-1-02237-8
Sentence Date/ Time Start: 10-23-07 TS 11-2-07
Maximum Expiration Date: Life

ORDER OF
RELEASE AND CONDITIONS

ADDENDUM #:

CCB Offenders
RCW 9.94A.507
(Formerly RCW 9.94A.712)

Additional conditions:

- a. You must not enter Skamania County or the state of Oregon north of Highway 20 without prior written approval of your CCO and the ISRB.

INDETERMINATE SENTENCE REVIEW BOARD

DocuSigned by:

Thomas N. Sahlberg

A900E20G04EA4E0...

Member's signature:

10-24-2014

Date of Decision:

I have read, or have had read to me, the foregoing conditions of my community custody and have been given a copy; I fully understand and I agree, in consideration of granting of community custody, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S) under: County: Cause #:

11/5/14
Date Served on Offender:

Offender's signature:

Witness's signature:

DON WINTON
27740 10TH AVE S.
DES, MOINES, WA 98198
DOC #308321, Tel: 253-670-9193

RECEIVED
NOV 07 2014

November 5, 2014

Department of Corrections
Indeterminate Sentence Review Board
P.O. Box 40907
Olympia, WA 98504-0907

INDETERMINATE SENTENCE
REVIEW BOARD

RE: Order of Release and Conditions Addendum# (Note: The form has no # on it)

Today, November 5, 2014, I was asked to sign the attached Order of Release and Conditions Addendum. I signed the addendum under duress and am hereby filing my appeal of that order.

That decision added a new condition to my release as follows: "a. You must not enter Skamania County or the state of Oregon north of Highway 20 without prior written approval of your CCO and the ISRB."

I object on the basis that said condition does not reasonably relate to any of the following:

1. "The Crime of Conviction". This geographical region is unrelated to my crime of conviction.
2. "Your risk to reoffend". There is no relationship between this geographic region and my risk to reoffend.
3. "The safety of the community". The victims do not live in this geographical region. There is no risk to the community in that geographical region that is different from the risk to the community in any other geographical region.

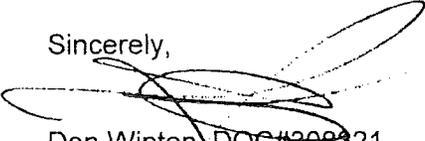
In addition to the above, I own a beach home in Arch Cape, Oregon. This restriction would prohibit me from visiting my beach home without ISRB approval and, therefore, without notice from the ISRB to my ex-wife, Danielle Ireland. She is fully aware that I own this home as it was awarded to me in our divorce. I believe that she is using this new restriction to further punish me for the crime I committed and that this new condition is fully based on her desire to continue to add to my punishment. Such a restriction gives her undo power. I have no desire to have any contact with her and do not see a reason for her to have knowledge as to when I visit my beach home.

I have a friend, Ronald Strayer, who lives in Salem, Oregon. Ron has been a very strong supporter for me during my time in prison and since my release. This restriction also prohibits me from visiting him either at his home in Oregon or at the Portland antique show without the same concerns as stated above.

Also, in my letter, dated October 27 and which is also attached hereto, such a restriction places my daughter, who is not biologically related to my ex-wife, who lives in Portland, in great stress. She will be unable to see me in Portland or at the beach home without my ex-wife knowing about this. This places great concern on her.

For all of the above reasons, this restriction does not meet any of the three conditions. I, therefore, am appealing the restriction and ask that it be immediately revoked in its entirety.

Sincerely,


Don Winton, DOC#308321
CC: CCO Lauren Knoblauch, w/o enclosures

ISRB - ADMINISTRATIVE DECISION SHEET

Offender Name: WINTON, Don	DOC#: 308321	<input checked="" type="checkbox"/> CCB or <input type="checkbox"/> Pre-84
Hearing Officer: Jill Getty	CRT: Irene	DATE: November 21, 2014
PERTINENT INFORMATION AND RELEVANT DOCUMENTS CONSIDERED: Admin Decision – Addendum issued dated 10/24/14, Letters from offender dated 10/27/14 and 11/5/14		
DESCRIPTION OF ISSUE(S): Mr. Winton released to community supervision on September 29, 2014. Since that time, he’s not had any reported violations of supervision. However, during the course of investigation a travel request of Mr. Winton to Portland, Oregon on October 2014, it was discovered that the established community concerns in Clark County actually also extended into Skamania County and the western side of Oregon down to Albany. As a result, Mr. Winton’s travel request was denied. In addition, and Addendum was issued on October 24, 2014 restricting his travel into Skamania County or into the state of Oregon north of Highway 20 without the prior approval of DOC and the ISRB. The ISRB received a letter from Mr. Winton on October 29, 2014 regarding the denial of his travel request to Portland Oregon in October 2014. Mr. Winton had concerns that his victim’s mother had been made aware of his travel request, and plans while in Portland Oregon. Mr. Winton felt this placed his victim’s mother in a position of power over him that she would be able to use to manipulate Mr. Winton’s situation. Therefore, he asked that in the future he be permitted to go through Clark County on his way to Portland, OR without the victim/victim’s mother being notified. The ISRB then received a subsequent letter from Mr. Winton on November 7, 2014 after he had been served with the Addendum dated October 24, 2014, restricting his travel into Skamania County and certain areas of Oregon. Mr. Winton appealed the condition stating that it was not related to either his crime of conviction, risk of re-offense, or community safety. Again, Mr. Winton noted concerns with the “undo power” the condition gave to his victim’s mother. In addition, he advised that he owns a beach home in Oregon that he would not be able to access. Mr. Winton further stated that he currently has a delicate relationship with a biological daughter living in the Portland, Oregon area that could be damaged as a result of the condition.		
RECOMMENDATIONS: Continue on Present Status		
COMMENTS/ANALYSIS: The ISRB has been aware of the significant community concerns for Mr. Winton in Clark County for some time. The condition that was added in October 2014 is to protect the victim in Mr. Winton’s case who currently travels throughout the west side of Oregon for her job – not for her mother. The condition does not inhibit Mr. Winton from meeting his basic needs such as housing, employment, treatment, DOC reporting, grocery/clothing shopping, etc. Nor does it inhibit Mr. Winton from entering Clark or Skamania County, or the state of Oregon provided that he has an appropriate reason and prior approval from his CCO and the ISRB to be there. Mr. Winton having access to his beach house does not seem to be a good enough reason to jeopardize the victim’s sense of well-being. In addition, Mr. Winton can continue having contact		

with his community supports who reside in Oregon via telephone and letter, and they can have contact in unrestricted portions of Washington State for the time being.

DECISION:

Continue on Present Status

REASONS:

Mr. Winton's refusal to sign and/or comply with conditions of community custody that directly relate to expressed community concerns and safety; coupled with his apparent sense of entitlement to travel wherever he chooses are of particular concern to the Board regarding his amenability to supervision. If he continues to refuse to agree to cooperate fully with all conditions, his community custody may be jeopardized.

As soon as this Administrative Action is presented to Mr. Winton, the Board requests immediate notification from the CCO about whether he intends to comply and cooperate.

AGREE: INITIAL/DATE	DISAGREE: INITIAL/DATE
TNS 11/21/14	



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40907, OLYMPIA, WA 98504-0907

November 24, 2014

Mr. Don Winton
27740 10th Ave S
Des Moines, WA 98198

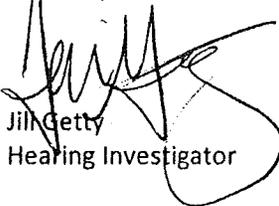
Mr. Winton:

I am in receipt of your letters dated October 27, 2014 and November 5, 2014. The Board has reviewed your request and appeal, and at this time will not be making any changes to your current conditions of supervision. I am unable to provide you with specific information with concerned citizens in your case pursuant to RCW 42.56.240. However, the Indeterminate Sentence Review Board (ISRB) is aware of credible concerns necessitating your current conditions of supervision. In addition, the ISRB believes the conditions are related to community safety.

Your current geographic boundaries permit for travel to/through Clark County, Skamania County, and the state of Oregon north of Highway 20 provided that you have an appropriate reason and prior approval from your CCO and the ISRB. I understand your frustrations regarding the situation with your biological daughter, Ms. Budinich. While the ISRB will continue to notify concerned parties in the area when you have been approved for travel, we will make every attempt to limit information provided regarding the specific location and reason for your travel as much as possible. However, you may want to consider the idea of having in-person contact with support people who reside in southwest Washington and/or Oregon in unrestricted portions of Washington State for the time being.

Please be aware, the ISRB has some concerns with the sense entitlement demonstrated by your request and appeal. Should you refuse to fully cooperate with your conditions, your community supervision may be placed in jeopardy.

Sincerely,


Jill Getty
Hearing Investigator

cc: file

"Working Together for SAFE Communities"

Exhibit 12



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
 PO BOX 40907 • Olympia, Washington 98504-0907

IN THE MATTER OF:

Name: WINTON, Don
 DOC#: 308321
 County: Clark Cause #: 06-1-02237-8
 Sentence Date/ Time Start: 10-23-07 TS 11-2-07
 Maximum Expiration Date: Life

**ORDER OF
 RELEASE AND CONDITIONS**

ADDENDUM #:

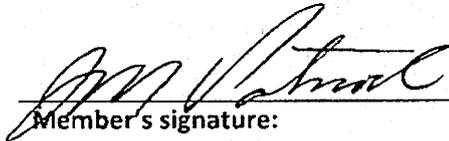
CCB Offenders
RCW 9.94A.507
 (Formerly RCW 9.94A.712)

Additional conditions:

Amend Addendum dated October 24, 2014 as follows:

- a. You must not enter Skamania County or the State of Oregon north of Highway 20 without prior written approval of your CCO and the ISRB, with the exception of Arch Cape, Oregon.
- b. You must not travel to Arch Cape, Oregon without the prior written approval of your CCO.

INDETERMINATE SENTENCE REVIEW BOARD



 Member's signature:

3-4-2016

Date of Decision:

I have read, or have had read to me, the foregoing conditions of my community custody and have been given a copy; I fully understand and I agree, in consideration of granting of community custody, to observe and abide by such conditions. I FURTHER UNDERSTAND THAT I AM ALSO ON SUPERVISION FOR THE FOLLOWING CONVICTION(S) under: County: _____ Cause #: _____

 Date Served on Offender:

 Offender's signature:

 Witness's signature:

DELLINO LAW GROUP

September 03, 2019 - 10:52 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97452-7
Appellate Court Case Title: Personal Restraint Petition of Don Wesley Winton
Superior Court Case Number: 06-1-02237-8

The following documents have been uploaded:

- 974527_Answer_Reply_20190903104944SC289559_9607.pdf
This File Contains:
Answer/Reply - Answer to Motion for Discretionary Review
The Original File Name was Answer To MDR.pdf

A copy of the uploaded files will be sent to:

- mandyr@atg.wa.gov

Comments:

Sender Name: Elizabeth Mount Penner - Email: Elizabeth@dellinolaw.com
Address:
5000 30TH AVE NE STE 105
SEATTLE, WA, 98105-3157
Phone: 206-659-6839

Note: The Filing Id is 20190903104944SC289559