

NO. 63094-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CALVIN WILLIAMS,

Appellant.

2010 MAR -1 PM 4:34
COURT OF APPEALS
CLERK

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRISTOPHER WASHINGTON

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>FACTS</u>	1
C. <u>ARGUMENT</u>	2
D. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Ancira, 107 Wn. App. 650,
27 P.3d 1246 (2001)..... 2

State v. Llamas-Villa, 67 Wn. App. 448,
836 P.2d 239 (1992)..... 3

State v. Parramore, 53 Wn. App. 527,
768 P.2d 530 (1989)..... 3

State v. Riles, 135 Wn.2d 326,
957 P.2d 655 (1998)..... 3

State v. Riley, 121 Wn.2d 22,
846 P.2d 1365 (1993)..... 2

Statutes

Washington State:

RCW 9.94A.030 2

RCW 9.94A.505 2

Other Authorities

Black's Law Dictionary 259
(8th ed.2004)..... 3

David Boerner, Sentencing in Washington,
sec. 4.5 (1985) 3

A. ISSUE PRESENTED

In a prosecution for Failure to Register as a Sex Offender, did the trial court abuse its discretion in considering the fact that the defendant's predicate offense was child rape when the court imposed a no contact order with children at sentencing?

B. FACTS

A jury convicted Williams of Failure to Register as a Sex Offender. CP 12. The Court imposed a high end sentence of 57 months, to be served concurrently with Williams' recent conviction for Rape of a Child in the Second Degree. The predicate offense for Williams' Failure to Register conviction was Rape of a Child in the Third Degree. As part of his sentence for failing to register as a sex offender, the Court imposed a no contact order with minors. Williams had no objection to the restriction of contact. CP 30, 32-33; 4RP 17-18¹

¹ There is one volume of verbatim report of proceedings that is paginated separately for each of the four dates (three for trial, one for sentencing). The different dates are referenced as follows: 1RP - 1/27/09-1/28/09; 2RP - 1/28/09; 3RP - 1/29/09; and 4RP - 2/27/09 (sentencing).

C. ARGUMENT

The imposition of crime-related prohibitions for an abuse of discretion. State v. Ancira, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001). Such a decision will only be reversed if it is manifestly unreasonable or based on untenable grounds. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

Williams challenges the court's imposition of a five-year prohibition against unsupervised contact with minors. He argues that this condition is not directly related to the crime of failure to register as a sex offender, in violation of RCW 9.94A.505(8).

The trial court entered the prohibition regarding contact with minors as a condition of Williams' sentence for failing to register. RCW 9.94A.505(8) provides: 'As part of any sentence, the court may impose and enforce crime related prohibitions and affirmative conditions as provided in this chapter.' Crime related prohibitions are defined as 'an order of the court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.' RCW 9.94A.030(10).

The existence of a relationship between the crime and the condition "will always be subjective, and such issues have traditionally been left to the discretion of the sentencing judge."

State v. Parramore, 53 Wn. App. 527, 530, 768 P.2d 530 (1989) (quoting David Boerner, Sentencing in Washington, sec. 4.5 (1985)). There is no requirement that a causal link be shown between the condition imposed and the crime committed, so long as the condition relates to the circumstances of the crime. State v. Llamas-Villa, 67 Wn. App. 448, 456, 836 P.2d 239 (1992). In Parramore, the court affirmed a community supervision condition as directly related to his drug conviction, despite the absence of evidence of whether the defendant actually used drugs. Parramore, 53 Wn. App. at 533. State v. Riles, cited by Williams, is distinguishable from the facts here insofar as there was no minor involved in Riles' crime. State v. Riles, 135 Wn.2d 326, 352, 957 P.2d 655 (1998). Here, Williams' predicate offense was rape of a child.

The circumstances of Williams' crime of failure to register warrants imposition of a no contact order with minors. 'Circumstance' is defined as 'an accompanying or accessory fact.' Black's Law Dictionary 259 (8th ed.2004). The crime of failure to register is interwoven to Williams' underlying crime, rape of a child in the third degree. The nature of Williams' underlying conviction was an accessory fact properly considered by the court at

sentencing. Thus, the prohibition against unsupervised contact with minors was reasonable because it was directly related to the circumstances of the crime of failure to register. The trial court did not abuse its discretion in imposing the condition.

D. CONCLUSION

For the reasons outlined above, Respondent respectfully requests that the Court uphold the judgment and sentence.

DATED this 1st day of March, 2010.

Respectfully submitted,

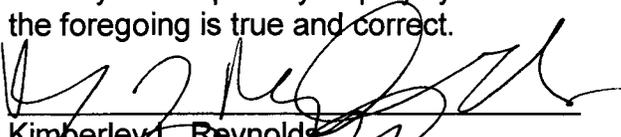
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. CALVIN WILLIAMS, Cause No. 63094-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Kimberley L. Reynolds
Done in Seattle, Washington

3/1/10

Date