

COA NO. 70614-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

REC'D
NOV 27 2013
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

J.C.,

Appellant.

NOV 27 2013 11:41:03
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Jacqueline Jeske, Commissioner
The Honorable Wesley Saint Clair, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The court erred in ordering no contact with the victims as part of the sentence without specifying the duration of the no contact order. CP 31.

Issue Pertaining to Assignment of Error

Whether the sentence is insufficiently definite and certain in failing to specify the expiration of the no contact order imposed on appellant?

B. STATEMENT OF THE CASE

The State charged J.C. in juvenile court with one count of residential burglary against Alan Metz and one count of residential burglary against Adela Stephenson. CP 3-4. J.C. pled guilty as charged. CP 12-19. The prosecutor recommended a local sanctions disposition. CP 16; RP¹ 6. The juvenile probation counselor recommended a manifest injustice disposition upward. CP 56-58; RP 6-12. A commissioner imposed a manifest disposition upward consisting of 27 to 36 weeks commitment on each count to run consecutively in a Juvenile Rehabilitation Administration facility. CP 29-30. As part of that disposition, J.C. is ordered to have no contact with Stephenson and Metz. CP 31. No term of community supervision was ordered. CP 28-33. J.C.

¹ The verbatim report of proceedings is referenced as follows: RP - 6/5/13 & 6/11/13.

moved to revise the commissioner's disposition. CP 38-177. A judge denied the revision motion, affirming the manifest injustice disposition. CP 191-94. This appeal follows. CP 181-90.

C. ARGUMENT

THE COURT ERRED IN FAILING TO SET A DEFINITE NO-CONTACT TERM.

The court ordered J.C. to have no contact with the victims as part of the disposition but did not specify when the no contact order would expire. CP 31. Remand is required to enable the court to set a definite term for the no-contact order.

In State v. Broadaway, the boilerplate language in the judgment and sentence contained a similar deficiency. State v. Broadaway, 133 Wn.2d 118, 135-36, 942 P.2d 363 (1997). The Court held when "a sentence is insufficiently specific about the period of community placement required by law, remand for amendment of the judgment and sentence to expressly provide for the correct period of community placement is the proper course." Broadaway, 133 Wn.2d at 136.

The same result is mandated here. A sentence must be "definite and certain." State v. Jones, 93 Wn. App. 14, 17, 968 P.2d 2 (1998) (citing Grant v. Smith, 24 Wn.2d 839, 840, 167 P.2d 123 (1946)). The disposition in J.C.'s case is insufficiently specific about the duration of the

no-contact order. Under the heading "Other Orders of the Court," the box for "Respondent shall have no contact with Adela Stephenson, Alan Metz" is simply checked without reference to an expiration date. CP 31. Because the court provided no statutory basis or time limit for the provision, the intended duration of the provision is unclear.

The ambiguity poses problematic ramifications, as illustrated by City of Seattle v. Edwards, 87 Wn. App. 305, 307-10, 941 P.2d 697 (1997), overruled in part by State v. Miller, 156 Wn.2d 23, 123 P.3d 827 (2005). In Edwards, this Court reversed a conviction for violation of a no-contact order on the grounds that the duration of the order was ambiguous on its face, resulting in lack of clear notice to the defendant that the order was still in effect at the time of its alleged violation. Edwards, 87 Wn. App. at 307-10.

The Supreme Court in Miller later agreed with Edwards that there must be clear notice regarding a no contact order's expiration date.² Miller, 156 Wn.2d at 29 ("In Edwards, the order was vague and was inadequate to give the defendant notice of what conduct was criminal and what conduct

² Miller disagreed with Edwards only on the issue of whether the validity of the underlying order is an element of the crime to be decided by a jury or a question of law to be resolved by a judge. Miller, 156 Wn.2d at 30-31.

was innocent. The court was rightly loath to allow a person to be convicted under such circumstances.").

Edwards and Miller demonstrate why it is important to specify the expiration date of a no contact order in unambiguous terms. First, it protects the innocent from being wrongly prosecuted. Miller, 156 Wn.2d at 29. Second, it avoids the needless waste of limited prosecutorial resources resulting from reversal of a conviction due to lack of insufficient notice. Id.

This Court recently held juvenile courts have authority to impose domestic violence no-contact provisions for up to the statutory maximum of the offense, even if that maximum sentence exceeds the juvenile's eighteenth birthday. State v. W.S., 176 Wn. App. 231, 309 P.3d 589, 590 (2013). While J.C.'s case is not a domestic violence case, the holding in W.S. underscores the importance of identifying the duration of a no-contact provision if the duration is not otherwise clear from the judgment and sentence.

Courts have the authority to clarify insufficiently specific sentences. Broadaway, 133 Wn.2d at 136. This Court should therefore remand the case to allow entry of a definite no-contact term as part of the disposition.

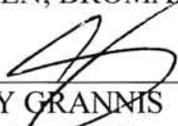
D. CONCLUSION

J.C. respectfully requests remand so that that the sentence can be made definite and specific as to the duration of the no contact order.

DATED this 27th day of November 2013.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 27TH DAY OF NOVEMBER 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

[X] J.C.
ECHO GLEN CHILDREN'S CENTER
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SNOQUALMIE, WA 98065

SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF NOVEMBER 2013.

X *Patrick Mayovsky*