

NO. 71836-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANDREW RUSSELL COSBY,

Appellant.

APPELLANT'S BRIEF
FILED
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY BRADSHAW

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

CORINN J. BOHN
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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A. ISSUES PRESENTED

1. A trial court may impose Sexual Assault Protection Orders when a defendant is convicted of a sex offense and is ordered as part of his sentence to have no contact with the victims. Such an order is effective for a period of two years following the expiration of “any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.” Here, the defendant was sentenced on February 21, 2014 to a total term of 120 months on Class A felonies for victims M.C. and L.C. and 75 months on a Class B for victim K.C. and the court imposed SAPOs with expiration dates of February 21, 2029, 15 years from the date of sentencing on both the Class A and Class B felonies. The State concedes that a remand is necessary to account for credit for time served on all the matters. The appellant does not otherwise contest the term of the SAPO for victims M.C. and L.C. Is the SAPO granted for K.C. otherwise valid even though this conviction had a statutory maximum of 10 years because it is a Class B felony?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

By information, the State charged Andrew Cosby with the following: Ct. I – Child Molestation in the First Degree for victim M.C.; Ct. II – Child Molestation in the First Degree for victim M.C.; Ct III – Child Molestation in the First Degree for victim L.C.; Ct. IV – Child Molestation in the Second Degree for victim L.C.; Ct. V – Child Molestation in the Second Degree for victim K.C.; and, Ct. VI – Incest in the Second Degree for victim K.C. Cosby pled guilty to Counts I, III and V and Counts II, IV, and VI were dismissed at sentencing. 1RP 3-13; 2RP 3-4.

At sentencing on February 21, 2014, the State recommended a high-end standard-range sentence for 130 months on Counts I and III and 75 months on Count V. 2RP 5. The trial court imposed a 120-month sentence for each Child Molestation in the First Degree conviction and 75 months for the Child Molestation in the Second Degree conviction, all to run concurrent with each other. 2RP 34. The court also set a community custody period of 36 months (three years). 2RP 5-34. As a condition of the sentence, the court imposed three Sexual Assault Protection Orders (SAPOs) prohibiting contact and protecting M.C., L.C., and

K.C., the defendant's sibling victims. 2RP 35; Supp. CP (sub no. 51, 52 and 53). The SAPOs were set to expire 15 years from the date of sentencing on February 21, 2029. Counts I and III are Class A felonies with a maximum term of life and Count V is a Class B felony with a maximum term of 10 years.

C. ARGUMENT

1. THE SAPOS FAIL TO ACCOUNT FOR TIME SERVED, BUT ARE OTHERWISE VALID.

Cosby contends that the Sexual Assault Protection Orders (SAPOs) entered in this case are erroneous because they each purport to be effective until February 21, 2029, failing to take into account time served before sentencing. Because the SAPO expiration dates depend on the expiration of Cosby's sentence, which in turn depends upon how much credit he received for time served, the State concedes that this Court should remand to the trial court to obtain that information and correct the SAPOs.

Cosby does not assert that the expiration dates of the SAPOs for M.C. and L.C. is inaccurate except for the failure to give credit for time already served. But Cosby does assert that the lawful expiration date of the SAPO protecting K.C. depends on the

statutory maximum sentence for the crime committed against that victim. This Court should reject that proposition, which finds no support in the law. (K.C.'s SAPO does need to be revised to provide credit for the time served.)

When a defendant is found guilty of a sex offense and a condition of the sentence restricts his ability to have contact with the victim, the sentencing court must record the condition as a SAPO. RCW 7.90.150(6)(a). Such orders “*shall* remain in effect for a period of two years following the expiration of *any sentence* of imprisonment and subsequent period of community supervision, conditional release, probation or parole.” RCW 7.90.150(6)(c) (emphasis added). The statute makes no reference to the statutory maximum sentence for the offense of which the defendant was found guilty. Rather, the plain language directs that the protection orders be effective for two years following whatever sentence the court actually imposes.

In this case, the trial court imposed a sentence of 120 months plus a 36-month community custody period for each of the two Class A Child Molestation in the First Degree convictions relating to M.C. and L.C. 2RP 34. The court imposed a sentence of 75 months on the Child Molestation in the Second Degree

conviction relating to K.C. 2RP 34. These sentences all run concurrent with each other. 2RP 34. Accordingly, the total of all terms imposed is 120 months (10 years), plus another 36 months for the community custody. Because the statute directs the court to impose SAPOs effective until two years (24 months) following the expiration of "any sentence" imposed in a criminal case, the SAPOs in this case should have been set to expire 180 months after sentencing (less time served). In fact, all of the SAPOs were set to expire on February 21, 2029, or 180 months (15 years) after the date of sentencing. Supp. CP (sub no. 51, 52 and 53).

Cosby argues that the statutory maximum sentence Cosby faced for the Child Molestation in the Second Degree conviction was 10 years, and therefore the longest term for a SAPO associated with those offenses is twelve years. Brief of Appellant at 4. Subtracting the 280 days he asserts he served before sentencing, Cosby contends that "the court's authority to impose a SAPO [for K.C.] therefore required an expiration date of May 17, 2025, three years shorter than the SAPOs associated with M.C. and L.C. Brief of Appellant at 4.

Cosby provides no authority or meaningful argument to support his assumption that SAPOs must be limited to the statutory

maximum for the crime plus two years, regardless of the actual sentence imposed. He also cites no authority for his assumption that the SAPO may only protect a victim for two years following the statutory maximum for the offense against that victim, rather than for two years following the defendant's release from "any sentence" imposed in that case. This Court should reject these unsupported propositions because they are inconsistent with the language of the statute and the intent of the legislature.

The legislature's intent in creating SAPOs is reflected in its "legislative declaration," codified at RCW 7.90.005. In that declaration, the legislature noted that sexual assaults are heinous crimes that are underreported and sometimes go unprosecuted. RCW 7.90.005. In enacting a civil remedy requiring that the offender stay away from the victim, the legislature created a way to protect victims from offenders who are not otherwise restrained. Id. The intent to protect victims from unrestrained offenders is also manifest in the provision at issue here, because a SAPO associated with a conviction remains effective for two years after the defendant is released from "imprisonment and subsequent period of community supervision, conditional release, probation or parole." RCW 7.90.150(6)(c).

In this case, Cosby will be imprisoned for 10 years (less time served and any earned early release time) on the two Child Molestation in the First Degree convictions. If the SAPO protecting K.C., the Child Molestation in the Second Degree victim, is truncated, K.C. will receive less protection than the legislature mandated in RCW 7.90.150(6)(c).

Statutory constructions that lead to unlikely, strange, or absurd results are to be avoided. State v. Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). Cosby's interpretation of RCW 7.90.150(6)(c) renders the provision largely superfluous and ineffective for any offender sentenced at or near the statutory maximum, surely an absurd result. This Court should reject Cosby's unsupported assumptions about how the SAPO statute works, hold that the orders must be set to expire two years after the expiration of the total term imposed at sentencing, and remand for the trial court to make the necessary corrections.

2 THIS COURT SHOULD REMAND FOR
CORRECTION OF ERRORS IN THE JUDGMENT
AND SENTENCE LIMITED TO THE PROVISION
OF CREDIT FOR TIME SERVED.

The judgment and sentence contains three errors.

Assuming Cosby's calculation of credit is correct at 280 days, the
sentencing court should revise the three SAPOs providing credit for
these 280 days.

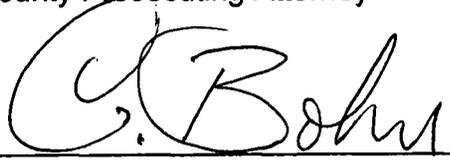
D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this
Court to remand this matter to correct the judgment and sentence
to take into account Cosby's time served in setting the expiration
date and to deny the request to shorten the term for victim K.C.

DATED this 20th day of November, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

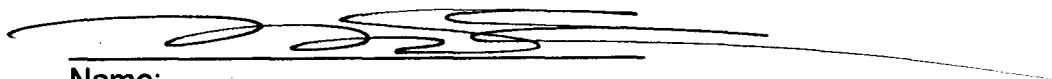
By: 
CORINN J. BOHN, WSBA #16223
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Christopher Gibson, the attorney for the appellant, at Gibsonc@nwattorney.net, containing a copy of the Brief of Respondent, in State v. Andrew Russell Cosby, Cause No. 71836-3, 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.

Dated this 20 day of November, 2014.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Name:
Done in Seattle, Washington