

72752-4

72752-4

FILED
August 13, 2015
Court of Appeals
Division I
State of Washington

NO. 72752-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN C. COUNTRYMAN,

Appellant.

BRIEF OF RESPONDENT

MARK K. ROE
Prosecuting Attorney

JANICE C. ALBERT
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

TABLE OF CONTENTS

I. ISSUES 1

II. STATEMENT OF THE CASE..... 2

III. ARGUMENT..... 7

 A. THE DEFENDANT WAS AFFORDED DUE PROCESS AT HIS
 SSOSA REVOCATION HEARING WHEN HE HAD NOTICE OF
 THE NEW ALLEGATION AND THE EVIDENCE AGAINST HIM
 AND DID NOT OBJECT TO THE COURT’S CONSIDERATION OF
 OTHER DOCUMENTS IN THE COURT FILE TO DETERMINE
 THE PROPER SANCTION. 7

 B. ANY CONDITIONS THAT ARE NOT STATUTORILY
 REQUIRED OR CRIME-RELATED MUST BE STRICKEN AND
 THOSE THAT ARE OVERLY BROAD SHOULD BE AMENDED. 14

 1. The Prohibition On Using Illegal Drugs Was Statutorily
 Mandatory But Other Drug-Related Conditions Were Not And
 Should Be Stricken..... 15

 2. A Condition Prohibiting Possession Of Pornography Is
 Unconstitutionally Vague And Should Be Modified. 17

 3. Plethysmograph Testing Is Not An Appropriate DOC Monitoring
 Tool But Can Be Required As Part Of Treatment..... 17

 4. Breathalyzer Testing Is Not A Crime-Related Prohibition And
 Should Be Stricken..... 18

 C. THE CONDITION REGARDING CONSENT FOR HOME
 SEARCHES IS NOT RIPE FOR REVIEW..... 19

IV. CONCLUSION..... 21

TABLE OF AUTHORITIES

WASHINGTON CASES

<u>In re Boone</u> , 103 Wn.2d 224, 691 P.2d 964 (1984).....	8
<u>State v. Badger</u> 64 Wn. App. 904, 827 P.2d 318 (1992)	8
<u>State v. Bahl</u> , 164 Wn.2d 739, 193 P.3d 678 (2008).....	14, 17, 20
<u>State v. Bartholomew</u> , 104 Wn.2d 844, 710 P.3d 195 (1985)	14
<u>State v. Cates</u> , ___ Wn.2d ___, ___ P.3d ___, (July 2, 2015). 19, 20	
<u>State v. Dahl</u> , 139 Wn.2d 678, 990 P.2d 396 (1999).....	8, 11, 13, 14
<u>State v. Johnson</u> , 184 Wn. App. 777, 340 P.3d 230 (2014)	18
<u>State v. Land</u> , 172 Wn. App. 593, 295 P.3d 782 (2013).....	16, 18
<u>State v. Lawrence</u> , 28 Wn. App. 436, 624 P.2d (1981)	9, 12
<u>State v. Nelson</u> , 103 Wn.2d 760, 763, 697 P.2d 579 (1985)	8
<u>State v. Parramore</u> , 53 Wn. App. 527, 768 P.2d 530 (1989).....	19
<u>State v. Riles</u> , 135 Wn.2d 326, 846 P.2d 1265 (1993)	18
<u>State v. Robinson</u> , 120 Wn. App. 294, 83 P.3d 376 (2004).....	9, 11
<u>State v. Rohrich</u> , 149 Wn.2d 647, 71 P.3d 638 (2003).....	14
<u>State v. Valencia</u> , 169 Wn.2d 782, 239 P.3d 1059 (2010).....	18

FEDERAL CASES

<u>Morrissey v. Brewer</u> , 408 U.S. 471, 92 S.Ct. 2593, 22 L.Ed.2d 484 (1972).....	9
---	---

WASHINGTON STATUTES

RCW 9.68.130(1)	17
RCW 9.94A.030(13).....	17
RCW 9.94A.300(13).....	17
RCW 9.94A.670	14
RCW 9.94A.670(10).....	7
RCW 9.94A.700(4)(c).....	14, 15
RCW 9.94A.700(5).....	15, 16

I. ISSUES

The court revoked a SSOSA sentence after the defendant stipulated to his second community supervision violation in five months. In reimposing the sentence, and without defense objection, the court said it had reviewed the entire file including the defendant's Presentence Investigation and recent treatment progress report. Did the defendant waive his objection to the alleged due process violation when he failed to object?

The court ordered as a community supervision condition that the defendant refrain from consuming or possessing controlled substances without a lawful prescription, a condition required by the SRA. Did the court err in imposing this statutorily mandated condition?

The court imposed drug- and alcohol-related prohibitions and affirmative conditions including not associating with drug sellers or users, not possessing drug paraphernalia, staying out of drug areas, and participating in substance abuse/dependency drug treatment. Should those conditions be stricken when they were neither statutorily required nor crime-related?

Is a community custody conditions that prohibits access to or possession of "pornography" unconstitutionally overbroad?

Should the court have ordered the defendant to engage in DOC-ordered plethysmograph and Breathalyzer testing when plethysmograph testing should be required only by the treatment provider and there was no prohibition on the consumption of alcohol?

II. STATEMENT OF THE CASE

Following a stipulated bench trial, the defendant Justin Countryman was convicted of Rape of a Child in the First Degree. CP 174-185; 119-120. His stipulation consisted of 53 pages of police reports and interviews and included the defendant's confession to molesting and raping his 4-year old niece. CP 121-73. The court entered findings and conclusions on August 16, 2007. CP 119-20.

In his Presentence Investigation (PSI) interview, the defendant reported that he rarely used alcohol but smoked marijuana "usually daily", both socially and when he was alone. CP 200. He told Norman Glassman in a Comprehensive Psychosexual Evaluation interview that he used marijuana for stress relief. CP 215. He also admitted that he had molested and raped his 4-year old victim. CP 211-13. He said that at ten he had become aroused by a 3-year old bouncing on his knee and at 13 had molested a 5-

year old. CP 213. Glassman found the defendant amenable to treatment and recommended a SSOSA sentence. CP 222.

On August 17, 2007, the court granted the defendant a Special Sex Offender Sentencing Alternative (SSOSA). CP 101-118. The court suspended a 123-month prison term and imposed several conditions including the following:

6. Do not possess or access pornographic materials, as directed by your therapist and the supervising Community Corrections Officer.
...
9. Do not possess or consume controlled substances unless you have a legally issued prescription.
- 10 Do not associate with known users or sellers of illegal drugs.
11. Do not possess drug paraphernalia.
12. Stay out of drug areas, as defined in writing by the supervising CCO.
- 13 Participate in sexual deviancy treatment, substance abuse/chemical dependency treatment, and other offense related counseling programs, to include DOC sponsored offender groups, as directed by the supervising CCO.
14. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.
15. Participate in urinalysis, Breathalyzer, plethysmograph and polygraph examinations as

directed by the supervising [CCO], to ensure conditions of community custody.

...

17. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for purposes of visual inspection of all areas of the residence in which you live or have exclusive or joint control and/or access.

CP 117-18.

The defendant completed sexual deviancy treatment and the court terminated that condition in January 2012. CP 75-76.

In April 2014, DOC alleged that the defendant had violated three more conditions of his sentence. CP 51-73. In May 2014, a violation hearing was held before the Honorable Millie Judge. CP 45-50. Before findings were entered, the State withdrew two of the allegations and the court found that the defendant had committed the remaining violation, having unsupervised contact with two 12-year old girls on facebook. CP 45-50. The court imposed a 60-day jail sanction, ordered the defendant to reengage in deviancy treatment for twelve months, and ordered him to have no electronic or physical contact with minors whatsoever. Id.

Five months later, in September 2014, DOC alleged that the defendant had violated two conditions of supervision, this time by failing to report a change of address and by being in the residence

of and associating with a minor without DOC permission. CP 34-40.

DOC's September 2014 Notice of Violation described the factual basis for both allegations. CP 34-43. Appended to the report was the defendant's latest treatment progress report. CP 41-43. The provider, Stephanie Overton, said that the defendant's treatment progress was "fair" and his risk level "low/moderate". Id.

In October, DOC filed a Supplemental Notice of Violation. CP 31-33. That report reiterated the same two alleged violations and described results of a follow-up polygraph. Id.

The State filed a Motion to Revoke SSOSA. CP 191-195. It said would rely on DOC's September and October Notices of Violation, documents in the court file, and some live testimony. CP 191.

By memorandum, the defendant objected to the court's consideration of any polygraph results. CP 20. The defendant also objected to the court's consideration of "other alleged violations not proven" contained in the two DOC reports and the State's brief. CP 20-21. Specifically, the defendant noted that some allegations considered at the May 2014 violation hearing had been withdrawn. CP 20-21. The defendant was concerned that the defendant's new

Community Corrections Officer (CCO) and author of the new DOC reports author was unaware that some of the earlier allegations had been withdrawn. CP 21.

On November 2, 2014, the Honorable Millie Judge again presided at the revocation hearing. 1RP and 2RP. CCO Kasey Unruh testified on November 2 about both allegations. 1RP 3-32. The hearing was continued to November 13. The State withdrew the first allegation. The defendant stipulated to the second, admitting that he had associated with a minor in the minor's residence without prior DOC approval. 2RP 4.

The court found that the State had proved the remaining violation and that the defendant had violated a condition of his SSOSA by associating with a minor in the minor's residence without prior DOC approval. CP 11.

The court said it had reviewed the entire court file to determine the sanction and found the case "very troubling". 2RP 5. The court began with the defendant's 2007 admissions included in his PSI that he had had sexual contact with children dating back to when he was 13 and that the attraction to children was what the defendant has worked on in treatment. Id. "Most disturbing," the court said, was the rapidity with which the defendant had violated

following his 60-day jail sanction in May. Id. Additionally, the latest treatment progress report described the defendant's compliance with court-ordered treatment as "fair" and his risk level as "low-moderate". Id. The court said it had "no choice but to revoke the SSSA" and to reimpose the prison sentence. 2RP 7.

The court's written order reflected that the revocation was based on the one new violation. CP 11. The court reimposed the original prison term of 123 months to life and the originally-imposed community custody conditions. CP 11-16.

III. ARGUMENT

A. THE DEFENDANT WAS AFFORDED DUE PROCESS AT HIS SSSA REVOCATION HEARING WHEN HE HAD NOTICE OF THE NEW ALLEGATION AND THE EVIDENCE AGAINST HIM AND DID NOT OBJECT TO THE COURT'S CONSIDERATION OF OTHER DOCUMENTS IN THE COURT FILE TO DETERMINE THE PROPER SANCTION.

A defendant who has been granted a SSSA may have that sentence revoked at any time during the period of community custody if the court finds (1) the offender has violated the conditions of the suspended sentence or (2) the offender has failed to make satisfactory progress in treatment. RCW 9.94A.670(10). The decision to revoke is discretionary, based on a determination that the trial court is reasonably satisfied that the defendant has violated

a probation condition. State v. Badger, 64 Wn. App. 904, 908-909, 827 P.2d 318 (1992) (citation omitted).

A probation or parole revocation hearing is not a criminal proceeding within the meaning of either the United States or Washington Constitutions. Thus, a convicted offender does not have the same due process rights as someone accused of a crime. In re Boone, 103 Wn.2d 224, 230-31, 691 P.2d 964 (1984). An offender facing revocation has only minimal due process rights. State v. Nelson, 103 Wn.2d 760, 763, 697 P.2d 579 (1985).

Sex offenders who face revocation of a suspended SSOSA sentence are limited to the same minimal due process rights. State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). They include:

(a) written notice of the claimed violations; (b) disclosure ...of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation.

Id. The minimal due process rights insure that any finding of a violation is based on verified facts. Id. Proper notice must set forth all the alleged violations. Dahl at 684. The rights apply not only to the fact-finding but also to the exercise of discretion when the court

determines whether the facts as proved warrant revocation. State v. Lawrence, 28 Wn. App. 436, 438, 624 P.2d (1981), citing Morrissey v. Brewer, 408 U.S. 471, 484, 92 S.Ct. 2593, 22 L.Ed.2d 484 (1972).

Before a defendant can claim a due process violation, he must object to it at the hearing. State v. Robinson, 120 Wn. App. 294, 299, 83 P.3d 376 (2004). "The accused must, at a minimum, place the court on notice that due process is being violated by making an appropriate objection." Id. at 297.

The defendant has not challenged the fact-finding portion of the revocation hearing. Instead he claims that his due process rights were violated when the court revoked his SSOSA sentence as a sanction for his new violation. That is incorrect.

The defendant was given notice of the alleged violations and of the evidence the State would rely on to prove them. In its Motion to Revoke, the State outlined the evidence: "the DOC prepared Notice of violations dated 9/30/2014 and the Supplemental Notice of Violation dated 10/6/2014", the documents in the court file, and some live testimony. CP 191.

The defendant in a pre-hearing memorandum made two objections to the evidence. CP 20. He objected to the court's

consideration of any polygraph results and he objected to the court's consideration of "other alleged violations not proven" contained in the two DOC reports and the State's brief. CP 20-21. He explained that he was concerned that the court might consider some allegations heard at the May 2014 hearing that the State had withdrawn. CP 20-21.

The State did not revoke the SSOSA sentence based on any allegations raised at the May hearing or at the November hearing that were withdrawn or not proved. In fact, the same judge presided at both hearings. That judge found one violation at each hearing and based her revocation on only one violation proved at the November hearing. CP 11.

The defendant argues that this did not occur. Instead, he claims that the court violated due process when it considered the defendant's 2007 admissions to Norman Glassman and the defendant's most recent treatment progress report when it revoked his case. The defendant did not object to either of those, either at the hearings or in his memorandum.

The defendant's admission to Glassman in of sexual interest in children formed the basis for his SSOSA treatment plan. His current objection to "unproved violations" of the SSOSA could not

have been understood to cover behavior that occurred well before the SSOSA sentence was even imposed.

Nor did the defendant object to the court's consideration of his latest treatment progress report, a report attached to the September 2014 Notice of Violations. The court could not have understood that the defendant intended a blanket objection to unproved supervision violations covered a treatment report.

The failure to object waives the issue. Robinson, 120 Wn. App. at 297. Any objection made must be "appropriate" to put the court "on notice that the process is being violated." Id.

Any claim that the defendant's sexual attraction to minors in 2007 and recent progress reports were covered by the blanket objection as "violations" is incorrect. The reasoning in State v. Dahl is helpful. 139 Wn.2d 678, 990 P.2d 396 (1999). Dahl had been granted a SSOSA which the State claimed he had violated by failing to progress in treatment. During the hearing, the State discussed two troubling incidents of inappropriate behavior. Dahl complained that he had no notice of those should have been listed as violations on his notice.

The Court disagreed. Id. at 684. Those two incidents were not independent violations but rather were examples of Dahl's

failure to progress in treatment and were taken into account for purposes of assessing Dahl's overall progress. Id. (Dahl's revocation was reversed for other reasons.)

The same is true in the present case. The defendant's pre-2007 sexual history and his recent treatment progress were not separate violations. Therefore, the defendant's blanket objection to "unproved violations" was not appropriate because it did not put the court on notice to the issue. No court would have seen them as violations to which the objection applied.

In Lawrence, the defendant was arrested for violating his probation by failing to report to his CCO. 28 Wn. App. 435. The court released him and set a hearing date. Before that date, the State filed two probation violations, failure to report and an accusation that the defendant has assaulted his wife. At the hearing, the defendant admitted to the failure to report but said the assault was only minor and asked to have his wife testify. The court refused. It then revoked his sentence based on "everything I know and did not know at the time I released [the defendant] from jail and what has been going on since." Id. at 437.

The Court of Appeals reversed. Id. at 439. The trial court did not have an accurate knowledge about the alleged assault and had relied on “unarticulated facts” in making its ruling. Id. at 438.

The present case is entirely different. Here, the revocation was based solely on one violation as evidenced by the court’s oral and written rulings. The court did not revoke the SSOSA because of the defendant’s pre-sentence conduct or conduct in treatment. It revoked him for his new violation, a violation that occurred a mere five months after a 60-day jail sanction for violating other SSOSA conditions.

Even if the defendant could overcome his waiver, any error was harmless. Violations of due process at a revocation hearing are subject to harmless error analysis. Dahl, 139 Wn.2d at 688. Unreliable hearsay cannot be the sole basis for a revocation. Id.

That is not what happened in the present case. Here, the court revoked the defendant’s SSOSA sentence because of a new violation that followed closely a prior violation followed by a two-month jail sanction.

A court may revoke a SSOSA sentence when it is reasonably satisfied that an offender has violated a sentence condition. Dahl, 139 Wn.2d at 683. The court’s decision is

reviewed for an abuse of discretion, that is, a decision that is manifestly unreasonable or based on untenable grounds. State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). Here, the defendant stipulated to the new violation, one that came on the heels of a prior violation and a 60-day jail sanction. The court did not abuse its discretion when it violated the defendant based on that one violation.

B. ANY CONDITIONS THAT ARE NOT STATUTORILY REQUIRED OR CRIME-RELATED MUST BE STRICKEN AND THOSE THAT ARE OVERLY BROAD SHOULD BE AMENDED.

Sentencing conditions unsupported by statutory authority may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744-45, 193 P.3d 678 (2008). When a SSOSA sentence is revoked, the original sentence is reinstated. State v. Dahl, 139 Wn.2d at 683; Former-RCW 9.94A.670.¹

The Sentencing Reform Act granted the court authority to impose both mandatory and discretionary sentence conditions for all DOC sentences. RCW 9.94A.700(4)(c).² The use of the word "shall" is presumptively mandatory. State v. Bartholomew, 104 Wn.2d 844, 848, 710 P.3d 195 (1985). The conditions must be

¹ All subsequent references to the Sentencing Reform Act will be to the version in effect in 2007.

imposed unless specifically waived. Other conditions are discretionary. RCW 9.94A.700(5).

1. The Prohibition On Using Illegal Drugs Was Statutorily Mandatory But Other Drug-Related Conditions Were Not And Should Be Stricken.

The SRA in effect in 2007 required a court sentencing a defendant to DOC to impose as a condition of his community custody that he refrain from possessing or using controlled substances without a lawful prescription. to impose a condition A defendant sentenced to DOC under the SRA in effect in 2007 When the defendant was sentenced to DOC, the SRA required the court to impose a prohibition on the use or consumption of illegal drugs.

(4) Unless a condition is waived by the court, the term of any community placement imposed under this section shall include the following conditions:

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions.

RCW 9.94A.700(4)(c).

The court properly imposed condition no. 9, as required by the SRA. However, the court also imposed other drug-related

² The current SRA contains the same condition of community custody and describes it as a "waivable" condition.

prohibitions and affirmative acts that were neither statutorily mandated nor crime-related.

The defendant acknowledged daily marijuana use. In the Comprehensive Psychosexual evaluation, Glassman said the defendant likely had a marijuana addiction. CP 222. However, the defendant's use of marijuana was not identified as crime-related and the defendant denied using marijuana before he molested children. There were no current probation violations relating to marijuana.

Conditions no. 10, 11, 12, 14, and in-part 13 ordered the defendant not to associate with known users/sellers (10); not to possess drug paraphernalia (11); to stay out of drug areas (12); and to participate in drug treatment (13 and 14). Those conditions should be stricken as they were neither mandatory nor not crime-related. See State v. Land, 172 Wn. App. 593, 605, 295 P.3d 782 (2013) (condition prohibiting drug paraphernalia does not survive as monitoring tool for condition prohibiting drug use).

RCW 9.94A.700(5) gave the court discretion to order various conditions, such as staying out of specific areas, crime-related treatment, and crime-related prohibitions. A condition is "crime-related" if it "directly relates to the circumstances of the crime."

RCW 9.94A.030(13). Affirmative acts to monitor compliance can also be ordered. There is no evidence that the defendant's crime was drug-related and those conditions should not have been imposed.

2. A Condition Prohibiting Possession Of Pornography Is Unconstitutionally Vague And Should Be Modified.

Condition no. 6 prohibited the defendant from possessing or accessing pornographic materials, as directed by his therapist and CCO. The Supreme Court, in a decision published subsequently to the imposition of the conditions in this case, found that a prohibition on "pornography" was unconstitutionally vague. State v. Bahl, 164 Wn.2d 739, 758, 164 P.3d 678 (2008). On remand, the court should modify the condition to prohibit possession of "sexually explicit material" defined in RCW 9.68.130(1). See Id. at 760.

3. Plethysmograph Testing Is Not An Appropriate DOC Monitoring Tool But Can Be Required As Part Of Treatment.

Condition no. 15 required the defendant to submit to plethysmograph examinations as directed by his CCO to insure compliance. That condition should be modified.

Under then-RCW 9.94A.300(13), the legislature gave the courts authority to order "affirmative acts necessary to monitor

compliance” that might be required by the “department”, that is, DOC.

A plethysmograph test does not serve any monitoring purpose for ordinary community placement conditions. State v. Riles, 135 Wn.2d 326, 345, 846 P.2d 1265 (1993), abrogated on other grounds, State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010); State v. Johnson, 184 Wn. App. 777, 780, 340 P.3d 230 (2014). However, it does serve a treatment purpose. Johnson, 184 Wn. App. at 781. Thus, the condition should be written to require the defendant to submit to plethysmographs as required for treatment purposes. See State v. Land, 172 Wn. App. 593, 605-06, 295 P.3d 782 (2013) (plethysmograph testing can only be properly ordered by qualified provider).

4. Breathalyzer Testing Is Not A Crime-Related Prohibition And Should Be Stricken.

Condition no. 15 also required the defendant to participate in DOC-ordered Breathalyzer testing. However, there was no evidence that the defendant’s sporadic use of alcohol was crime-related and the defendant was not ordered to refrain from consuming alcohol. The court may order a defendant to submit to

processes that monitor his compliance with conditions imposed. State v. Parramore, 53 Wn. App. 527, 532, 768 P.2d 530 (1989).

In the present case, the defendant was not required to refrain from consuming alcohol. Therefore, he should not have been required to submit to monitoring of his alcohol use. Breathalyzer testing should not have been ordered and the condition should be stricken.

C. THE CONDITION REGARDING CONSENT FOR HOME SEARCHES IS NOT RIPE FOR REVIEW.

Condition no. 17 required the defendant to consent to home visits "to monitor [his] compliance with supervision." His challenge is not ripe.

This issue was decided in the recent Supreme Court case of State v. Cates, ___ Wn.2d ___, ___ P.3d ___, (July 2, 2015). Cates was convicted of child rape and child molestation. He was sentenced to community custody with a condition that he must consent to DOC home visits to monitor compliance with supervision.

The Supreme Court applied a four-part test for determining whether a challenge to a community custody condition is ripe: 1) are the issues primarily legal; 2) do they require further factual

development; 3) is the challenged action final; and 4), whether there is a hardship to the challenger if review is refused. Id. Applied to Cates's challenge, the court found that two prongs had been met: the action was final and raised primarily legal issues. Id.

The issue of home visits was not ripe for review because it required further factual development by way of attempted enforcement. Id. The condition did not in itself authorize searches but rather limited the State's authority to search as a monitoring tool. Id. Additionally, there was not a significant risk of hardship to Cates. Id. The home visit condition was different from the conditions at issue in Bahl and federal cases. Those required a defendant's immediate compliance upon release. This provision did not require Cates to do or refrain from doing anything upon his release. Id.

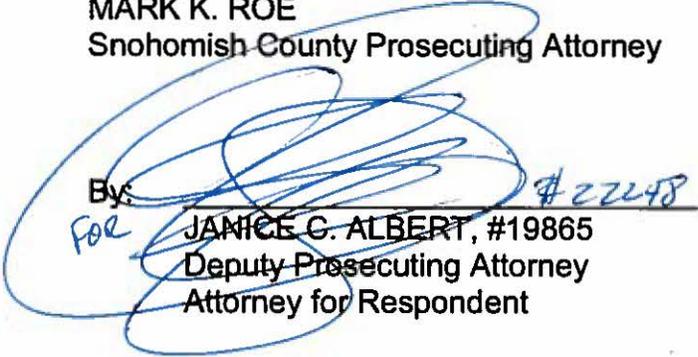
Cates controls in the present case. The defendant's challenge is not yet ripe.

IV. CONCLUSION

Based on the foregoing, the court should affirm the revocation and remand the case to amend the conditions of supervision.

Respectfully submitted on August 11, 2015.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

for

JANICE C. ALBERT, #19865
Deputy Prosecuting Attorney
Attorney for Respondent

#22298

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

THE STATE OF WASHINGTON,

Respondent,

v.

JUSTIN C. COUNTRYMAN,

Appellant.

No. 72752-4-1

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

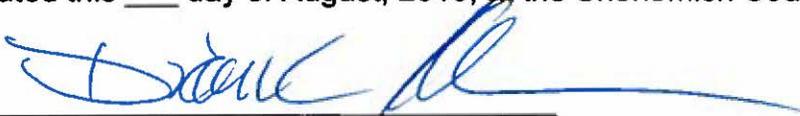
The undersigned certifies that on the 13th day of August, 2015, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Casey Grannis, Nielsen, Broman & Koch, grannisc@nwattorney.net and Sloanej@nwattorney.net.

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

Dated this 13th day of August, 2015, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office