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83756-7-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SHANE BROWN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

PETITOIN FOR REVIEW

TIFFINIE B. MA
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
tiffinie@washapp.org
wapofficemail@washapp.org

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Shane Brown asks this Court to review the decision of the Court of Appeals in *State v. Brown*, No. 83756-7-I (issued on August 14, 2023). A copy of the opinion is attached in the Appendix.

B. ISSUE PRESENTED

If a court prohibits contact between a parent and his children as a sentencing condition, the condition infringes upon the parent's fundamental right to parent and must withstand strict scrutiny. The condition must also be reasonably necessary and the least restrictive alternative available. Here, the court issued a NCO prohibiting or limiting contact between Mr. Brown and his children when the children are already dependents of the State, and Mr. Brown's contact is limited by the juvenile court to supervised, therapeutic visits. Is the court's order overly broad and

unnecessary under these circumstances, violating Mr. Brown's constitutional right to parent?

C. STATEMENT OF THE CASE

Shane Brown was convicted of interfering with domestic violence reporting and violating a NCO. CP 9-20. The named complainant for both counts was Paula Goebel, with whom Mr. Brown shares two children. CP 1-2. Although the children were present during the incident, neither were alleged to be victims. CP 2.

At sentencing, the trial court imposed five-year NCOs prohibiting all contact between Mr. Brown and his children without any analysis of the necessity of the order, less restrictive alternatives, or the infringement on Mr. Brown's constitutional right to parent. CP 13, 16, 19, 76-79. Mr. Brown appealed the order and the State conceded the issue. *State v. Brown*, 18 Wn. App. 2d 1031, WL 3144937 (2021) (unpublished). This Court

remanded for the trial court to reconsider the NCO between Mr. Brown and his children. *Id.*

On remand, Mr. Brown moved to deny the State's request for NCOs, because the children had been found dependent and were under the exclusive jurisdiction of the juvenile court. CP 34-47.

Despite this Court's mandate to reconsider imposition of the NCOs, the superior court informed Mr. Brown that absent an agreement by the State "to lift" the orders, the court would be unwilling to do so. CP 81-91, 102. After scheduling a hearing on the orders, the court rescheduled it and demanded to know "1) the victim's position on the NCO; 2) the State's position on the NCO; 3) continued progress [by Mr. Brown] in [domestic violence] treatment; and 4) the treatment provider's position on the NCO" before reconsidering the NCO. CP 105.

Counsel provided additional information for the court's consideration, but the court continued to reset the hearing date, requiring additional information from the parties. CP 36, 105-07. The court asked again for the State's and the mother's positions and the position of the children's custodians, and demanded that counsel for the parties in the dependency matter each submit their positions in writing. CP 112-13. The court also conducted its own investigation by discussing the dependency case with the judge overseeing it. CP 112; RP 82-84.

Mr. Brown provided as much information as he could obtain. CP 115-16. His treatment provider told the court Mr. Brown was in compliance with treatment, but took no position on the NCOs because the counselor did not see Mr. Brown interact with his children. CP 107. His dependency attorney, McKay

Campbell, asked the superior court not to impose the orders because it would interfere with visitation and reunification efforts. CP 49-52. Ms. Campbell noted the children's mother was in custody and thus reunification would only be possible with Mr. Brown. *Id*. Ms. Campbell also informed the court the Department of Children, Youth, and Families ("the Department") would be forced to file for termination of Mr. Brown's parental rights unless the criminal NCOs were modified or lifted because reunification would not be possible without contact.[1] CP 50.

Ms. Goebel informed the court that she opposed contact between Mr. Brown and the children, but she did not cite any specific danger Mr. Brown posed to his

[1] The court shall order the Department to file a petition to terminate parental rights once children have been in foster care for 15 of the last 22 months. RCW 13.34.145(5). Mr. Brown's children have been in foster care since May 18, 2021.

children. CP 118. The Department told the court it supported reunification but took no position on the criminal NCOs. CP 120. The State indicated it would seek to maintain the NCOs, but the children's custodian took no position. CP 126-27; RP 95.

After receiving this information, the court finally held the NCO hearing. The court told the parties it had discussed the dependency case with the juvenile court judge. RP 82-84. The juvenile court's visitation order allows Mr. Brown supervised visitation twice a week "subject to [the criminal] no contact order." RP 83; CP 99-100. Visits must be supervised by a therapeutic provider. *Id.*

The superior court recited all of the parties' responses to its repeated inquiries before hearing argument. RP 85-86. Mr. Brown argued the superior court lacked jurisdiction to enter orders regarding the

children because they were under the exclusive jurisdiction of the juvenile court. RP 87-88; CP 34-47. The court rejected this argument. RP 88.

Mr. Brown further argued the NCO was not reasonably necessary because of the children's dependency case and because he did not pose a danger to his children. RP 88-91. He noted the children were not in his custody and his contact with them was limited by the juvenile court's visitation order, which did not allow him unsupervised access to his children. CP 42. Mr. Brown argued a broad criminal NCO would effectively terminate his parental rights because contact with his children was essential to achieving reunification. RP 91.

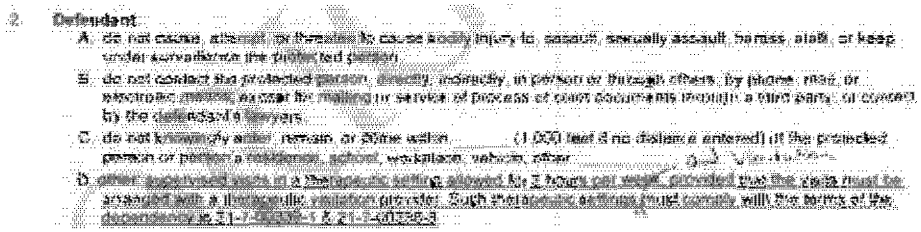
The State asked the court to issue NCOs which track the dependency court's visitation order. RP 96.

The superior court found that NCOs were still necessary "in light of the State's interest in protecting the children in this case from harm." RP 100. The court stated the children "were also victims," even though Mr. Brown was not convicted of any offense involving the children. *Id.* The court also found it was "appropriate to tailor the order in terms of scope and duration." RP 102.

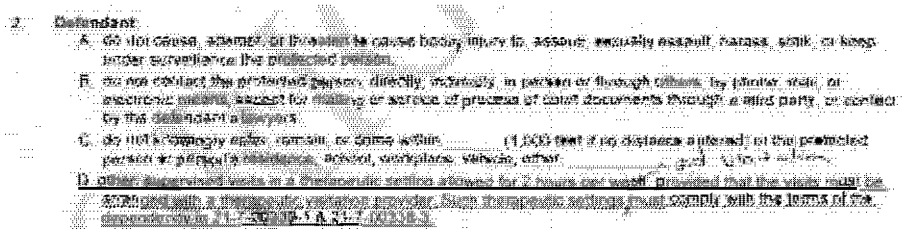
In an attempt to tailor the order, the court sought to allow Mr. Brown contact with his children under the terms set forth in the dependency visitation order, finding this would balance Mr. Brown's right to parent with "the right of the children not to be endangered." RP 103.

Although the superior court intended to allow Mr. Brown to attend visits with his children as directed by

the juvenile court, the NCOs entered by the court remain overly broad:



CP 134 (order protecting Z.G.);



CP 132 (order protecting E.L.B.). As written, the orders conflictingly continue to prohibit contact, full stop, while also allowing weekly visits.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. Whether a criminal court may bar a parent from contact with his children, who are already dependents of the State, presents a significant question of constitutional law and and is an issue of substantial public interest, warranting review.

a. *Sentencing conditions that impose on a parent's fundamental right to the care, custody, and companionship of their children are prohibited unless they are reasonably necessary to protect a compelling state interest.*

During sentencing, a court may impose additional conditions on a defendant so long as those conditions are reasonably related to the offense of conviction. RCW 9.94A.505(9). A "crime-related prohibition" prohibits "conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). While such conditions are generally reviewed under an abuse of discretion standard, "[m]ore careful review of sentencing conditions is required where those

conditions interfere with a fundamental constitutional right." *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008); *see also State v. DeLeon*, 11 Wn. App. 2d 837, 841, 456 P.3d 405 (2020).

If a condition interferes with a fundamental right, it "must be reasonably necessary to accomplish the essential needs of the State and public order." *DeLeon*, 11 Wn. App. 2d at 840-41, (quoting *Warren*, 165 Wn.2d at 32). Such conditions "must be narrowly drawn" and there "must be no reasonable alternative way to achieve the State's interest." *Warren*, 165 Wn.2d at 34-35.

A parent has a fundamental liberty and privacy interest in the care, custody and enjoyment of his children. *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599

(1982); *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001); *State v. Letourneau*, 100 Wn. App. 424, 438, 997 P.2d 436 (2000). It is "perhaps the oldest of the fundamental liberty interests" recognized by the courts, as well as a fundamental privacy right. *Troxel*, 530 U.S. at 65; *Stanley v. Illinois*, 405 U.S. 645, 652, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

In some cases, the State may intervene to protect a child where a parent's "actions or decisions seriously conflict with the physical or mental health of the child." *In re Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980) (citations omitted). However, a parent's right to care, custody, and companionship of a child even under those circumstances "cannot be abridged without due process of law" under Fourteenth Amendment. *In re Key*, 119 Wn.2d 600, 609, 836 P.2d 200 (1992), *cert. denied*, 507 U.S. 927 (1993).

As these cases indicate, prohibiting contact with one's children as a condition of a criminal sentence is only appropriate if reasonably necessary and when the restrictions are narrowly drawn to withstand strict scrutiny, thus protecting the fundamental rights at stake.

b. ***The court's orders prohibiting or limiting contact between Mr. Brown and his children are not reasonably necessary to protect any state interest because the children are already dependents of the State and adequately protected by the juvenile court's dependency orders.***

Here, the court's orders prohibiting or limiting contact between Mr. Brown and his children are not reasonably necessary to protect any compelling state interest. *Ancira*, 107 Wn. App. at 654. Nevertheless, the Court of Appeals incorrectly held otherwise.

In its opinion, the Court of Appeals held that criminal sentencing conditions serve a different

purpose than dependency proceedings. Slip Op. at 5. However, the opinion goes on to note that NCOs between parents and children serve the State's interest in protecting children from harm, which is also one of the purposes of dependency proceedings. Slip Op. at 6; RCW 13.34.020 (". . .the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized."). Thus, the Court of Appeals' reasoning that the NCOs here are reasonably necessary because they serve a different purpose than dependency proceedings is incorrect. Moreover, the implication of this reasoning is that dependency proceedings are somehow insufficient to ensure the safety of children in the State's care, which would undermine child welfare proceedings generally.

The prosecutor's interest in protecting Mr. Brown's children via criminal NCOs is minimal at best.

The Department, a state agency, has already removed the children from their home, and both have been found dependent. Mr. Brown entered an agreed dependency order, recognizing that his children's right to health, nurture, and safety required him to engage in remedial services. At the time of the orders in this case, the juvenile court only allowed Mr. Brown supervised visits twice a week in a therapeutic setting. The visit supervisor must be a therapeutic provider. It does not appear the juvenile court has found any other limitations on Mr. Brown's contact with his children necessary.

The juvenile court's supervision of the ongoing dependency matter is sufficient to protect children who are already under the State's care. As this Court found in *Letourneau*, the juvenile court is a "more appropriate forum[ ] than the criminal sentencing

process to address the best interests of dependent children." 100 Wn. App. at 443. Nevertheless, the superior court here entered separate NCOs prohibiting Mr. Brown from having contact with his children. These orders are not reasonably necessary given the children's dependent status, and rather than protect the children, they only impede the juvenile court in the dependencies.

To the extent the superior court intended its orders to "track" the juvenile court's visitation order, they are duplicative and, by definition, unnecessary. The dependency visitation order already takes the best interests of the children into account, and the juvenile court is best situated to determine if and when changes to Mr. Brown's visitation rights are appropriate.

More importantly, the orders hamstring the juvenile court's ability to increase visitation, relax

visitation conditions, or return the children home to their father. Any proposed changes to Mr. Brown's visits or custody status will require him to move the superior court to alter these NCOs, which requires reappointment of criminal defense counsel every time. As was the case here, these changes take months, wasting precious time in the dependency case.

Although the Department indicated it supports reunifying the children with Mr. Brown, it noted this would not be possible unless Mr. Brown is allowed contact with his children. If the superior court continues to prohibit contact, the Department will ultimately have no choice but to petition to terminate Mr. Brown's parental rights. In short, the NCOs imposed in the criminal matter will circumvent the dependency proceedings which are intend to, and are

the proper venue for, addressing the safety of the children.

The prosecution has little interest in protecting children who are already in the State's care in a dependency action. NCOs in Mr. Brown's criminal case are not reasonably necessary to prevent harm to children under these circumstances, particularly where deferring to the juvenile court in the dependency action is a reasonable alternative that best protects the children. *Warren*, 165 Wn.2d at 34-35.

NCOs prohibiting parent-child contact implicate Mr. Brown's fundamental right to parent. Additionally, the necessity of such orders in light of the fact that the children in question are already dependents of the State presents an issue of substantial public interest, because the public should know whether criminal NCOs may impede dependency proceedings. For these

reasons, this Court should grant review. RAP 13.4(b)(3), (4).

E. CONCLUSION

For the foregoing reasons, this Court should accept review.

Counsel certifies this document complies with RAP 18.17 and contains 2377 words.

DATED this 13th day of September, 2023.

Respectfully submitted,

TIFFINIE B. MA (WSBA 51420)
Washington Appellate Project (91052)
Attorneys for Appellant
tiffinie@washapp.org
wapofficemail@washapp.org

APPENDIX

FILED
8/14/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SHANE MATHEW BROWN, Appellant.	DIVISION ONE No. 83756-7-I UNPUBLISHED OPINION

DWYER, J. — Shane Brown appeals from two orders of the superior court prohibiting contact with his children, E.L.B. and Z.G. In a separate proceeding, E.L.B. and Z.G. were found to be dependent by the juvenile court, which entered a dispositional order pertaining to their visitation with Brown. The no-contact orders challenged here, which were imposed as a result Brown's convictions of domestic violence offenses that occurred in the children's presence, include an exception allowing for supervised visitation consistent with the juvenile court's dispositional order.

On appeal, Brown asserts that the no-contact orders are not reasonably necessary to further a compelling state interest because, he contends, the ongoing dependency action is sufficient to protect E.L.B. and Z.G. Thus, he argues, the orders impermissibly interfere with his constitutional right to parent. Brown further asserts that the sentencing court lacked jurisdiction to enter the no-

contact orders due to the ongoing dependency action pertaining to the children. Finding no error in the sentencing court's imposition of the orders, we affirm.

I

Shane Brown was convicted of domestic violence felony violation of a court order and interfering with domestic violence reporting. The domestic violence no-contact order that Brown was convicted of violating had been entered to protect Paula Goebel. Goebel and Brown have two children, E.L.B. and Z.G. The jury found that the conduct resulting in Brown's convictions occurred in the presence of the children. Thus, at sentencing, the superior court imposed no-contact orders prohibiting Brown from contacting E.L.B. and Z.G. for a period of five years.

Brown appealed from the judgment and sentence, asserting, among other claims of error, that the superior court erred by imposing the no-contact orders pertaining to E.L.B. and Z.G. without analyzing on the record the need for such orders and considering less restrictive alternatives. The State conceded error. In an unpublished opinion, we affirmed Brown's convictions but remanded to the superior court for reconsideration of the terms of the no-contact orders. State v. Brown, No. 80943-1-I (Wash. Ct. App. July 26, 2021) (unpublished), http://www.courts.wa.gov/opinions/pdf/809431.pdf.

Before the cause returned to the superior court on remand, the State filed dependency actions as to E.L.B. and Z.G. The juvenile court entered a dispositional order regarding Brown's visitation with the children, which stated that Brown "shall have supervised visitation twice per week for 2 hours per visit

with the children, subject to a modification of the criminal no contact order such that [E.L.B and Z.G.] are no longer protected parties." The order further specified that visitation "shall only occur in a therapeutic setting."

On remand in this matter, Brown requested that the sentencing court decline to reimpose no-contact orders pertaining to E.L.B. and Z.G. Brown asserted that such orders would violate his constitutional right to parent and that, due to the pending dependency actions, the sentencing court lacked jurisdiction to enter no-contact orders regarding the children. Prior to ruling on Brown's motion, the court sought input from various individuals, including the juvenile court judge presiding over the dependency proceedings; Brown's domestic violence treatment provider; Goebel, the children's mother and the victim of the offenses; and the assistant attorney general representing the State in the dependency proceedings.

The sentencing court concluded that a no-contact order remained reasonably necessary "in light of the State's interest in protecting the children . . . from harm." The court reasoned that E.L.B. and Z.G. had been "directly exposed to the violence that [Brown] engaged in," given the jury's finding that the children had been present during the offenses. The sentencing court noted that Brown's engagement in court-ordered domestic violence treatment was "extraordinarily problematic," such that he had not "fully engaged in treatment for the very issue that caused the Court to issue a no contact order in the first place." The court additionally considered "the condition of the children," noting that one child had been diagnosed with posttraumatic stress disorder and had been "acting out in

violent and sometimes dangerous ways" and that the other child had been diagnosed with attention deficit hyperactivity disorder and was described as "very clingy." The court concluded that, given these considerations, a no-contact order remained "reasonably necessary" to protect the children from harm.

In an effort to "tailor the order in terms of scope and duration," the sentencing court ordered that the no-contact orders pertaining to E.L.B. and Z.G. would "track" the dispositional order of the juvenile court, such that the only contact permitted would be "pursuant to all of the requirements of the dependency order." Thus, the court stated in its oral ruling that contact shall occur only in "therapeutic settings" and only when fully supervised by a "culturally appropriate and trauma informed" provider. Consistent with the dispositional order, the court ordered that such visitation would occur "for a maximum of two times a week for two hours per visit." The sentencing judge stated: "I will modify my no contact order if [the dependency judge] modifies his conditions, and I will only do it then."

In written orders entered on February 3, 2022, the sentencing court ordered that Brown have no contact with E.L.B and Z.G. with the exception that he may engage in "supervised visits in a therapeutic setting . . . for 2 hours per week, provided that the visits must be arranged with a therapeutic visitation provider. Such therapeutic settings and visitation must comply with the terms of the dependency [actions]."[1]

[1] The juvenile court's dispositional order states that, "subject to a modification of the criminal no contact order," Brown "shall have supervised visitation twice per week for 2 hours per visit with the children." In order to "track" the dependency court's dispositional order, the sentencing court stated in its oral ruling that the only contact permitted between Brown and the

Brown appeals.

II

Brown first contends that the no-contact orders pertaining to E.L.B. and Z.G. are not reasonably necessary because the ongoing dependency actions are sufficient to protect the children from harm. Accordingly, he asserts, the orders impermissibly interfere with his constitutional right to parent. We disagree. Criminal sentencing serves a different purpose than do dependency proceedings, and the sentencing court's authority to impose crime-related prohibitions, including no-contact orders, is not circumscribed due to the ongoing nature of such proceedings. The sentencing court did not abuse its discretion by entering the no-contact orders pertaining to E.L.B. and Z.G.

The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, authorizes the superior court to impose "crime-related prohibitions" as a part of any sentence. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008); RCW 9.94A.505(9). A "crime-related prohibition" is "an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). We review the imposition of sentencing conditions, including crime-related prohibitions, for an abuse of discretion. State v. Ancira, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001). The abuse of discretion standard applies even when crime-related prohibitions affect fundamental constitutional rights "because the imposition of [such] prohibitions is

children would occur "for a maximum of two times a week for two hours per visit." However, in the written no-contact orders, the court stated that supervised visits would be "allowed for 2 hours per week." Neither party addresses this discrepancy.

necessarily fact-specific and based upon the sentencing judge's in-person appraisal of the trial and the offender." In re Pers. Restraint of Rainey, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010).

"Parents have a fundamental liberty interest in the care, custody, and control of their children." Ancira, 107 Wn. App. at 653 (citing Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)). Parental rights, however, are not absolute; the State has a compelling interest in preventing harm to children, including by protecting children from witnessing domestic violence. Rainey, 168 Wn.2d at 378 ("Washington law recognizes that the State has a compelling interest in protecting children from witnessing domestic violence."); State v. Letourneau, 100 Wn. App. 424, 439, 997 P.2d 436 (2000) ("Courts have recognized prevention of harm to children to be a compelling state interest."). Sentencing conditions that restrict the fundamental right to parent can be imposed so long as those conditions are reasonably necessary to further the state interest in preventing harm to children. Rainey, 168 Wn.2d at 374; Warren, 165 Wn.2d at 32. Such conditions must be "narrowly drawn," and there must be "no reasonable alternative way to achieve the State's interest." Warren, 165 Wn.2d at 34-35.

Here, the sentencing court determined that the challenged no-contact orders are reasonably necessary to further the state interest in preventing further harm to E.L.B. and Z.G. As sentencing conditions that impact the fundamental right to parent, the no-contact orders are valid if they are both crime-related and reasonably necessary to further the state interest in protecting the children. We

conclude that they are. Brown was convicted of committing domestic violence offenses and found by the jury of having committed those offenses in the presence of E.L.B. and Z.G. The no-contact orders imposed are thus directly related to the circumstances of the crime for which Brown was convicted. RCW 9.94A.030(10) (defining "crime-related prohibition"). Moreover, our state law recognizes that preventing children from witnessing domestic violence is a compelling state interest. Rainey, 168 Wn.2d at 378. The sentencing court additionally tailored the no-contact orders.[2] For these reasons, we conclude that the imposition of the no-contact orders was a proper exercise of the court's discretion.

Brown nevertheless asserts that the no-contact orders are not reasonably necessary to further the state interest of protecting E.L.B. and Z.G. given the juvenile court's dispositional order limiting contact between Brown and the children. According to Brown, the juvenile court's supervision of the ongoing dependency proceedings is sufficient to protect E.L.B. and Z.G. We disagree.

The purposes of no-contact orders imposed on criminal sentencing as opposed to dispositional orders imposed in a dependency matter are fundamentally different. No-contact orders serve to prevent further harm to the victims and witnesses of the crime of conviction. See, e.g., Warren, 165 Wn.2d at 34. Additionally, a no-contact order subjects the offender to further criminal charges if, as here, the offender violates the terms of the order. See RCW

[2] Brown does not argue that the no-contact orders imposed by the sentencing court are not sufficiently tailored, and neither party briefs this issue. Accordingly, we are not called on to decide it.

7.105.450(1), (4); former RCW 26.50.110(1), (4) (2019). In contrast, "[t]he primary purpose of a dependency is to allow courts to order remedial measures to preserve and mend family ties." In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005). Thus, the no-contact orders imposed by the sentencing court serve to protect E.L.B. and Z.G. from harm, while the dispositional order allows Brown to maintain a relationship with his children to promote future reunification. Moreover, an ongoing dependency proceeding does not obviate the need for no-contact orders when dependent children are the victims or witnesses of crime. Dependency proceedings may be dismissed for myriad reasons. When this occurs, a properly imposed no-contact order serves to protect children who have been the victims or witnesses of crime from further harm.

The no-contact orders imposed here are both crime-related and reasonably necessary to further the state interest in protecting E.L.B. and Z.G. from harm. Brown's assertion that the sentencing conditions are rendered unnecessary by virtue of the ongoing dependency proceedings is without merit. The sentencing court did not abuse its discretion in imposing the challenged orders.

III

Brown further asserts that the sentencing court was without jurisdiction to enter the no-contact orders pertaining to E.L.B. and Z.G. while the dependency actions pertaining to the children remained ongoing. Again, we disagree. Although our legislature has assigned to the juvenile court "proceedings" relating

to dependent children, RCW 13.04.030(1)(b), the criminal prosecution here is not such a proceeding. Because the SRA authorizes the imposition of the challenged no-contact orders, the sentencing court did not err by imposing those orders.

Our legislature, in creating the juvenile court, sought to "'distribute and assign a phase of the business of the superior court'" and to "'prescribe the mode of procedure by which the superior court shall initiate, process and apply the remedies made available.'" In re Dependency of E.H., 158 Wn. App. 757, 765, 243 P.3d 160 (2010) (internal quotation marks omitted) (quoting State v. Werner, 129 Wn.2d 485, 492-93, 918 P.2d 916 (1996)). To that end, the legislature enacted a statute providing that "the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings" thereafter enumerated. RCW 13.04.030(1). As relevant here, the statute provides that "the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings . . . [r]elating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161." RCW 13.04.030(1)(b).

Our legislature has additionally prescribed the authority of the superior court to impose punishment on individuals convicted of felony offenses. RCW 9.94A.505(1). Pursuant to the SRA, the superior court is authorized to impose "crime-related prohibitions" and "affirmative conditions" as part of any criminal sentence. RCW 9.94A.505(9). Crime-related prohibitions proscribe conduct "that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). No-contact orders imposed as part of a

criminal sentence are crime-related prohibitions. See, e.g., Rainey, 168 Wn.2d at 376; Warren, 165 Wn.2d at 32.

Here, Brown asserts that the superior court was without jurisdiction to impose the no-contact orders pertaining to E.L.B. and Z.G. because dependency proceedings pertaining to the children were ongoing. We disagree. Our legislature has assigned to the juvenile court "exclusive original jurisdiction over all *proceedings*" relating to children alleged or found to be dependent. RCW 13.04.030(1)(b) (emphasis added). The criminal prosecution of Brown, in which the no-contact orders were imposed, is not such a proceeding. Were it otherwise, the criminal action in which Brown was charged and convicted would have been required to be filed in the juvenile court. See Ledgerwood v. Lansdowne, 120 Wn. App. 414, 420, 85 P.3d 950 (2004) ("If [a court] has exclusive original jurisdiction, the action must be filed there and nowhere else."). Moreover, there is no indication that our legislature, in assigning dependency proceedings to the juvenile court, purported to divest the superior court of its statutory authority to sentence offenders consistent with the SRA.

Indeed, we have previously rejected the argument that the jurisdictional language of RCW 13.04.030 is so broad. See City of Seattle v. Shin, 50 Wn. App. 218, 748 P.2d 643 (1988). In Shin, a mother was charged with contributing to the dependency of a minor pursuant to Seattle Municipal Code § 12A.18.020. 50 Wn. App. at 219. She asserted on appeal that the code provision was preempted by state law because RCW 13.04.030 "lodges exclusive original jurisdiction in the juvenile courts for actions relating to dependent children under

RCW 26.44 and RCW 13.34.030-.170." Shin, 50 Wn. App. at 223-24. We rejected the assertion that "all actions arising under these provisions [RCW 26.44 and RCW 13.34.030-.170] are exclusively lodged in juvenile court." Shin, 50 Wn. App. at 224. Rather, we held that

> [t]he only action so lodged are those "[r]elating to children alleged or found to be dependent . . ." RCW 13.04.030(2).[3] That would include provisions which primarily relate to declaring dependency, removing dependent children from abusive environments, naming guardians, and the like.

Shin, 50 Wn. App. at 224 (alterations in original). We explained:

> RCW 26.44 provides for proceedings not directly relating to children found to be dependent. For example, RCW 26.44.063 relates to parents or others who inflict child abuse and provides for the issuance of temporary restraining orders "in any judicial proceeding" in order to enjoin abuse. Similarly, RCW 26.44.080 provides for criminal proceedings against persons under a duty to report child abuse who fail to do so. These actions relate to adults who are either inflicting or charged with detecting child abuse. *They do not relate to children found to be dependent in the sense contemplated by RCW 13.04.030(2).*

Shin, 50 Wn. App. at 224-25 (emphasis added) (citation and footnotes omitted).

Thus, we held, a judicial proceeding does not "relate to children found to be dependent" for purposes of the statute simply because the proceeding in some manner involves dependent children. Shin, 50 Wn. App. at 224-25. Instead, the proceedings referenced in RCW 13.04.030(1)(b) are those "which primarily relate to declaring dependency, removing dependent children from abusive environments, naming guardians, and the like." Shin, 50 Wn. App. at 224. Likewise, the criminal proceeding here is not a proceeding relating to

[3] Our opinion in Shin cites to RCW 13.04.030(2). See 50 Wn. App. at 225. That provision is now codified, as cited herein, at RCW 13.04.030(1)(b).

dependent children simply because the sentencing condition imposed prohibits the offender from contacting such children.

This conclusion is consonant with our discussion in Letourneau of the distinct roles of the criminal court and the family and juvenile courts. 100 Wn. App. at 443. There, the offender challenged on appeal a sentencing condition requiring that in-person contact with her minor children be supervised. Letourneau, 100 Wn. App. at 427. The record evidenced ongoing proceedings in the family court, including orders of that court that were potentially in conflict with orders entered by the criminal court. Letourneau, 100 Wn. App. at 443. We explained that our legislature "has provided more appropriate forums than the criminal sentencing process to address the best interests of dependent children with respect to most visitation issues." Letourneau, 100 Wn. App. at 443. We did not suggest, however, that the criminal court is divested of its sentencing authority by virtue of ongoing family or juvenile court proceedings. Rather, we articulated the distinction between the roles of those courts:

> It is the business of the criminal courts to protect minor children from being molested by convicted sex offenders by imposing appropriate conditions of community custody designed for that protective purpose. It is the business of the family and juvenile courts to address the best interests of minor children with respect to most other kinds of harm that could arise during visitation with a parent who has been convicted of a crime, including psychological harm that might arise from that parent's communications with the children regarding the crime.

Letourneau, 100 Wn. App. at 443. Thus, we addressed therein whether the sentencing court was authorized pursuant to the SRA to impose the challenged

no-contact orders—*not* whether the sentencing court had jurisdiction to impose such orders.

Brown nevertheless asserts that "the adult superior court must defer any proceedings involving contact with [a dependent] child until the dependency matter is resolved."[4] The decisional authority that Brown cites, however, does not support his assertion that the sentencing court was without authority to enter the no-contact orders pertaining to E.L.B. and Z.G. here. See In re Dependency of J.W.H., 106 Wn. App. 714, 24 P.3d 1105 (2001), reversed on other grounds, 147 Wn.2d 687, 57 P.3d 266 (2002); State v. Mora, 138 Wn.2d 43, 977 P.2d 564 (1999); In re Marriage of Perry, 31 Wn. App. 604, 644 P.2d 142 (1982).

In J.W.H., the aunt and uncle of three children who had been in their care filed a third party custody petition. 106 Wn. App. at 717-18. While the custody action was pending, the children's parents and the State sought to enter agreed orders declaring the children dependent. J.W.H., 106 Wn. App. at 719. The juvenile court entered the orders against the objection of the aunt and uncle. J.W.H., 106 Wn. App. at 719. On appeal, the aunt and uncle asserted that, because their custody action was pending when the State petitioned for dependency, the juvenile court was required to defer a dependency determination until the custody action was concluded. J.W.H., 106 Wn. App. at 726. We rejected that argument, holding that the family court had correctly stayed the custody action pending resolution of the dependency proceeding. J.W.H., 106 Wn. App. at 726-27.

[4] Br. of Appellant at 20.

Similarly, in Perry, Division Three addressed "whether the Superior Court had the authority to proceed with [a custody decree] modification proceeding while a dependency action involving the child was pending in juvenile court." 31 Wn. App. at 605. The court determined that, in enacting RCW 13.04.030, our legislature "intended to provide that matters of dependency should be handled exclusively and originally by the juvenile court and that the superior court defer determination of custody as between the parents in a dissolution proceeding until the juvenile court has made a determination of the dependency matter." Perry, 31 Wn. App. at 608. Because, there, the juvenile court had transferred the dependency action to the superior court, Division Three determined that the superior court could proceed with the petition to modify the custody decree. Perry, 31 Wn. App. at 608. The court reasoned that, if legal custody were granted to the parent not subject to the dependency action, the dependency could be terminated. Perry, 31 Wn. App. at 608.

The decision in neither J.W.H. nor Perry supports Brown's broad assertion that the superior court must, in any proceeding "involving contact with [a dependent] child," stay the matter until the dependency action is resolved.[5] Rather, those cases concerned simultaneous custody and dependency proceedings in which the family and juvenile courts could enter directly conflicting orders regarding the custody of a child.[6] Neither case suggests that, in enacting

[5] See Br. of Appellant at 20.

[6] In apparent recognition of the potential challenges resulting from the interrelatedness of proceedings in the family and juvenile courts, our legislature has provided for concurrent jurisdiction between those courts in some circumstances. RCW 13.04.030(2) ("The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in

RCW 13.04.030(1)(b), our legislature purported to divest the criminal court of its authority to sentence an offender pursuant to the SRA, which includes the authority to impose a no-contact order prohibiting contact with the offender's child when the order is reasonably necessary to protect the child from further crime-related harm. See, e.g., Rainey, 168 Wn.2d at 374; Warren, 165 Wn.2d at 32.

Our Supreme Court's decision in Mora is similarly unsupportive of Brown's position. There, the 17-year-old defendant was initially charged with an offense that subjected him to the juvenile court act's automatic decline provision. Mora, 138 Wn.2d at 45. The State thereafter amended the information to charge offenses that would have brought the defendant under the jurisdiction of the juvenile court. Mora, 138 Wn.2d at 45. The defendant was nevertheless tried in the adult division of the superior court. Mora, 138 Wn.2d at 45. Our Supreme Court held that the court erred when it failed to remand the case to the juvenile court following amendment of the charges, reasoning that "[t]he legislative intent underlying the automatic decline provision is to impose more severe punishment on juveniles who have committed certain criminal offenses." Mora, 138 Wn.2d at 54. Here, there is no question that the adult division of the superior court had jurisdiction in the criminal proceeding against Brown. Mora is inapposite.

The juvenile court act provides that the juvenile court has exclusive original jurisdiction over "all *proceedings* . . . [r]elating to children alleged or found to be dependent." RCW 13.04.030(1)(b) (emphasis added). Contrary to Brown's

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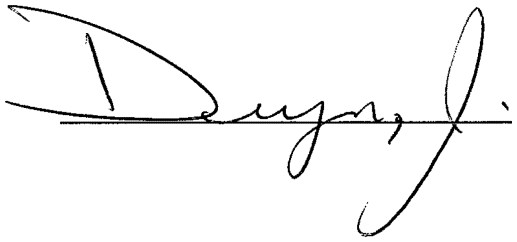
RCW 26.12.010.); RCW 13.04.030(3) ("The juvenile court shall have concurrent original jurisdiction with the family or probate court over minor guardianship proceedings under chapter 11.130 RCW and parenting plans or residential schedules under chapter 26.09, 26.26A, or 26.26B RCW as provided for in RCW 13.34.155.").

suggestion, the criminal action in which he was convicted is not such a proceeding. Nowhere does the juvenile court act purport to divest the criminal court of its sentencing authority pursuant to the SRA, which includes, in appropriate circumstances, the authority to impose sentencing conditions prohibiting contact with dependent children. Brown's assertion that the superior court was without jurisdiction to enter the no-contact orders pertaining to E.L.B. and Z.G. is without merit.[7]

Affirmed.



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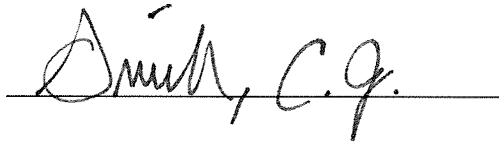

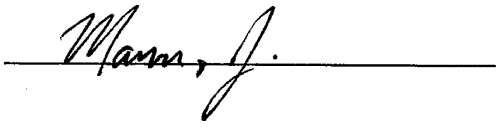

[7] Multiple dependency and criminal law practitioners filed an *amici curiae* brief in this matter, asserting, as did Brown, that the sentencing court was without jurisdiction to impose the no-contact orders pertaining to E.L.B. and Z.G. In their briefing, *amici* additionally note that Brown is an enrolled member of the Navajo Nation and, thus, that E.L.B. and Z.G. are "Indian children" pursuant to the Indian Child Welfare Act (ICWA). However, *amici* nowhere assert that ICWA is pertinent to the resolution of the issues presented in this appeal. Any such assertion would be without merit.

ICWA applies to all "'child custody proceeding[s],'" which include "'foster care placement,'" "'termination of parental rights,'" "'preadoptive placement,'" and "'adoptive placement.'" 25 U.S.C. § 1903(1). Thus, the "heightened protections of ICWA are triggered" only if the matter is a "child custody proceeding[]." In re Adoption of T.A.W., 186 Wn.2d 828, 844, 383 P.3d 492 (2016). Because the criminal proceeding at issue here is not a "child custody proceeding," 25 U.S.C. § 1903(1), ICWA does not apply.

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 83756-7-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Samantha Kanner, DPA
[Samantha.Kanner@kingcounty.gov]
[PAOAppellateUnitMail@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: September 13, 2023

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