

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 94883-6
Respondent,)	
)	SECOND STATEMENT OF
vs.)	ADDITIONAL AUTHORITY
)	
HAI MINH NGUYEN,)	
Petitioner.)	
_____)	

Pursuant to RAP 10.8, petitioner cites the following additional authority with respect to his argument that the trial court lacked authority to impose a community custody condition banning possessing, viewing, accessing, or using sexually explicit materials because the condition is not crime-related:

Trial courts may impose crime-related prohibitions while a defendant is in community custody. RCW 9.94A.505(9), 703(3)(f). A “[c]rime-related prohibition” . . . prohibit[s] conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). This court strikes crime-related community custody conditions when the record contains no evidence that the circumstances of the crime related to the condition. [*State v. Irwin*, 191 Wn. App. [644,] 656-57[, 364 P.3d 830 (2015)]. See also *State v. Johnson*, 180 Wn. App. 318, 330-31, 327 P.3d 704 (2014); *State v. O’Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008); *State v. Zimmer*, 146 Wn. App. 405, 413, 190 P.3d 121 (2008). The condition at issue is, per the State’s concession, not crime related.


Notwithstanding the law, the State concedes error. Because we follow established law, and because nothing in the record suggests that sexually explicit materials were related to Starr’s crime, we agree and accept the State’s concession to strike the condition. We need not address whether the condition is unconstitutionally vague.

State v. Starr, noted at ___ Wn. App. ___, No. 49327-6-II, slip op. at 8-9 (Oct. 17, 2017) (unpublished) (first and second alterations in original). (Pursuant to GR 14.1(a), Nguyen cites this unpublished case as a nonbinding authority but, given its relevance to Nguyen’s case, asks that the case be accorded significant persuasive value.)

DATED this 17th day of October, 2017.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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