SUPREME COURT NO. 98779-3

NO. 79942-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES ANDERSON

Petitioner.

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

The Honorable Linda Krese, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner James Anderson asks this Court to grant review of the court of appeals' unpublished decision in State v. Anderson, No. 79942-8-I, filed June 15, 2020 (attached as an appendix).

B. ISSUES PRESENTED FOR REVIEW

1. Is this Court's review warranted under RAP 13.4(b)(1) and (4), to clarify whether the trial court abused its discretion in failing to recognize its discretion to resentence Anderson, where the remand language did not expressly provide for resentencing but also did not prohibit resentencing?

2. Is this Court's review warranted under RAP 13.4(b)(1), (3), and (4) to determine whether prohibiting an individual from frequenting "church services" as a condition of community custody impinges the free exercise of religion and is not narrowly tailored, where all the offenses occurred inside the home?

C. STATEMENT OF THE CASE

James Anderson was convicted by a jury of five offenses involving K.J.: one count of second degree child molestation (count 1), one count of first degree child rape (count 2), two counts of first degree child molestation (counts 3-4), and one count of second degree child rape (count 5). CP 15-16. K.J. lived for a time with her grandmother, who was dating Anderson's

father. CP 26. Anderson is about 10 years older than K.J. and would sometimes babysit K.J., K.J.'s brother, as well as his own brothers. CP 26. All the alleged incidents occurred inside the home. CP 25-26.

With each current offense counting as three points under RCW 9.94A.525(17), Anderson's offender score for all five offenses was 12. CP 17. On the first degree child rape—the most serious offense—the standard range was 240 to 318 months. CP 17. The trial court imposed a mid-range indeterminate sentence of 280 months. CP 19. The court also imposed the following community custody condition: "Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer." CP 20, 30.

On his first appeal, Anderson argued, among other things, that there was insufficient evidence to sustain his conviction for second degree child molestation (count 1) under State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998). 1st Br. of Appellant, 10-14. The court of appeals accepted the State's concession that count 1 should be reversed, holding "the State did not meet its obligation, imposed by the to-convict instruction, to prove the lower age limit." CP 29. The court concluded "[t]he appropriate remedy is to reverse the conviction for second degree molestation and reverse the charge with prejudice." CP 29.

Anderson also challenged the "where minor children are known to congregate" condition as void for vagueness. CP 42. The court of appeals again accepted the State's concession "that the condition should be removed from Anderson's sentence or modified to include specific prohibited locations," pursuant to State v. Irwin, 191 Wn. App. 644, 364 P.3d 830 (2015). CP 42.

In its concluding paragraph, the court of appeals wrote, "we remand for dismissal with prejudice of Anderson's conviction for second degree child molestation in count 1 and for revision of the community custody condition. Otherwise, we affirm." CP 42. The mandate issued on January 11, 2019, ordering "further proceedings in accordance with the attached true copy of the opinion." CP 24.

On remand, defense counsel filed a sentencing memorandum requesting Anderson be resentenced at the bottom of the standard range. CP 72-75. Counsel asked the court to consider Anderson's postconviction rehabilitation efforts. CP 73-74. Specifically, Anderson has had no major infractions while incarcerated and is now classified as long-term minimum custody. CP 73. He has successfully completed an education program, Roots to Success, which is an environmental awareness class. CP 73. He worked for two years as a computer clerk in the commissary and currently works in the Optical Lab, surfacing eyeglass lenses. CP 74.

The trial court held a hearing on April 22, 2019, at which Anderson was present. RP 1; CP 76. The State noted the dismissal of count 1 reduced Anderson's offender score from a 12 to a 9. RP 2; CP 9. This, however, did not reduce the standard range for the most serious offense—still 240 to 318 months—because offender scores top out at "9 or more." RP 2-3; CP 9; RCW 9.94A.510.

The trial court did not believe it had discretion to resentence Anderson. RP 8. The court interpreted the opinion's concluding language to mean "they weren't expecting a resentencing, especially since they didn't say that on resentencing we should change that condition, they said we should just revise that one condition of the sentence." RP 4. The court continued, "if they wanted me to resentence him they would have said on resentencing this condition has to be different. I'm going to assume that they picked their language . . . that they pick their language carefully." RP 7. The court also noted, "There is case law that would, in general, forbid resentencing in the standard range without some grounds for it," reiterating, "I can't just essentially reconsider what I did." RP 4-5.

The court accordingly entered an amended judgment and sentence dismissing count 1, but leaving Anderson's sentence at 280 months. CP 11. The court also adopted the State's recommended change to the community custody condition to read:

> 6. Do not frequent areas where minor children are known to congregate, this includes, but is not limited to: parks used for youth activities, schools, daycare facilities, playgrounds, wading pools, swimming pools being used for youth activities, play area (indoor or outdoor), sports fields being used for youth sports, arcades, church services, restaurants, and any specific location identified in advance by DOC or CCO.

CP 22; RP 2. Anderson again appealed. CP 6.

On his second appeal, Anderson argued the trial court abused its discretion in failing to recognize its discretion to resentence. Anderson acknowledged the court of appeals did not expressly remand for resentencing, but neither did the court of appeals limit the trial court's resentencing discretion on remand. Anderson contended dismissal of a current conviction, even where the sentence range does not change, necessarily implies resentencing. 2nd Br. of Appellant, 6-14.

Anderson also challenged the reworded "where minors are known to congregate" condition on several grounds, including that prohibiting his access to "church services" implicated his right to free exercise of religion, but was not narrowly tailored. 2nd Br. of Appellant, 14-18.

The court of appeals rejected Anderson's resentencing argument, reasoning his case "did not present a situation that warrants resentencing because Anderson's sentencing range remained the same." Opinion, 6. The court further concluded "our mandate in Anderson's original appeal left the

trial court with no discretion as to the actions it could take on remand." Opinion, 6.

As for the community custody condition, the court of appeals agreed "an unrestricted limitation on attending church services is problematic." Opinion, 10. But the court nevertheless concluded Anderson "does not offer any evidence to satisfy his burden of proving that the condition has a coercive effect on his practice of religion," and likewise rejected Anderson's argument. Opinion, 10.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. This Court's review is warranted where the trial court abused its discretion in failing to recognize its discretion to resentence Anderson on remand.

The court of appeals concluded its remand language left the trial court no discretion to resentence Anderson, despite the reduction in his number of convictions. Opinion, 6-7. While the remand language did not expressly provide for resentencing, neither did it prohibit resentencing. The court of appeals decision conflicts this Court's decision in State v. Kilgore, 167 Wn.2d 28, 216 P.3d 393 (2009), warranting review under RAP 13.4(b)(1). This case further presents a scenario not entirely like Kilgore, warranting this Court's guidance under RAP 13.4(b)(4), as the scope of a trial court's discretion on remand is an issue likely to recur.

The law of the case doctrine provides that once there is an appellate court ruling, its holding must be followed in all subsequent stages of the same litigation. State v. Schwab, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008). RAP 2.5(c)(1) restricts the law of the case doctrine, providing that, on remand, a trial court has the discretion to revisit an issue that was not the subject of the earlier appeal and exercise its independent judgment. Kilgore, 167 Wn.2d at 38-39. Where a sentencing court fails to recognize or exercise discretion, it commits reversible error. State v. McFarland, 189 Wn.2d at 47, 58, 399 P.3d 1106 (2017); In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 332-34, 166 P.3d 677 (2007); State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

A trial court's discretion on remand is limited by the scope of the appellate court's mandate. Kilgore, 167 Wn.2d at 42. When the appellate court's opinion states that the court orders remand for resentencing, the resentencing court has broad discretion to resentence on all counts. State v. Toney, 149 Wn. App. 787, 792, 205 P.3d 944 (2009). When the appellate court remands for only a ministerial correction, the resentencing court does not have discretion to resentence on all counts. Id. As this Court has recognized, when remand is necessary to correct a sentencing error, and the trial court has any discretion in light of the needed correction, then the matter is not "merely ministerial" and the defendant is entitled to full resentencing

with all associated rights. State v. Ramos, 171 Wn.2d 46, 49, 246 P.3d 811 (2011).

Here, the trial court erroneously believed it did not have any discretion to resentence Anderson, based on the remand language in the court of appeals decision. Specifically, the court of appeals ordered, "we remand for dismissal with prejudice of Anderson's conviction for second degree child molestation in count 1 and for revision of the community custody condition. Otherwise, we affirm." CP 42. The trial court thought the lack of "remand for resentencing" language prohibited it from resentencing Anderson. RP 7-8.

Dismissal of count 1 for insufficient evidence reduced Anderson's offender score from 12 to 9, which did not change the standard range. CP 9 (amended judgment and sentence), 46 (original). However, Anderson now has only four convictions rather than five. Indeed, Washington courts require dismissal of convictions that violate double jeopardy, even where they do not impact the defendant's offender score because of the "stigma and impeachment value of multiple convictions." State v. Womac, 160 Wn.2d 643, 656-57, 160 P.3d 40 (2007). Dismissal of a current conviction, even where the sentence range does not change, necessarily implies resentencing. True, the court of appeals did not expressly remand for resentencing. But

neither did the court of appeals limit the trial court's resentencing discretion on remand.

Two cases provide a useful contrast to one another, and to Anderson's case. In In re Personal Restraint of Sorenson, 200 Wn. App. 692, 699, 403 P.3d 109 (2017), on direct appeal, the appellate court rejected Sorenson's challenges to his convictions, holding, "We affirm, but remand to correct scrivener's errors in Sorenson's judgment and sentence." These instructions "left the trial court with no discretion as to the actions it could take on remand." Id. Rather, remand was for a purely ministerial correction. Id. at 702.

In Kilgore, the trial court imposed an exceptional sentence based on seven current convictions and several aggravating factors. 167 Wn.2d at 33. The appellate court reversed two of the convictions, affirmed the remaining five counts, and remanded "for further proceedings." Id. On remand, the State declined to retry Kilgore on the two reversed counts. Id. at 34. The court then declined to resentence Kilgore based on Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), which had been decided in the interim, and entered an order striking the two counts and correcting Kilgore's offender score. Kilgore, 167 Wn.2d at 34-35.

This Court recognized the "the trial court had discretion under RAP 2.5(c)(1) to revisit Kilgore's exceptional sentence on the remaining five

convictions." Kilgore, 167 Wn.2d at 41. However, the trial court "made clear that in correcting the judgment and sentence to reflect the reversed counts, it was not reconsidering the exceptional sentence imposed on each of the remaining counts." Id. The trial court therefore did not abuse its discretion in declining to resentence Kilgore on remand. Id. at 42. This Court emphasized "[t]he fact that the trial court had discretion to reexamine Kilgore's sentence on remand is not sufficient to revive his right to appeal." Id. at 43.

Kilgore demonstrates that, here, the trial court had discretion to resentence Anderson based on the dismissal of one of his convictions. The difference, though, is that the trial court in Kilgore actually exercised its discretion in declining to resentence Kilgore. The trial court in Anderson's case, by contrast, believed it did not have any discretion to resentence Anderson. A trial court's "failure to exercise discretion is itself an abuse of discretion subject to reversal." State v. O'Dell, 183 Wn.2d 680, 697, 358 P.3d 359 (2015); cf. Grayson, 154 Wn.2d at 342 ("While no defendant is entitled to an exceptional sentence below the standard range, every defendant *is* entitled to ask the trial court to consider such a sentence and to have the alternative actually considered."). The resentencing court therefore erred in failing to recognize its discretion.

With discretion to resentence Anderson, the court could have considered the reduction in convictions from five to four. Additionally, as defense counsel urged, the trial court could have considered Anderson's postconviction rehabilitative efforts. CP 73-74; United States v. Rhodes, 145 F.3d 1375, 1379-82 (D.C. Cir. 1998). For instance, counsel informed the court that Anderson had no major infractions in prison; he was classified as long-term minimum custody; he had completed an environmental awareness class; and he had maintained consistent employment in prison. CP 73-74. Anderson has also paid off all of his legal financial obligations. CP 77.

This Court should grant review, reverse the court of appeals, and remand for a hearing at which the trial court may properly exercise its discretion to resentence Anderson.

2. This Court's review is warranted to determine whether restricting Anderson's access to church services is narrowly tailored when all the alleged offenses occurred within the family home.

Community custody condition 6 prohibits Anderson from frequenting "church services," even though all the alleged offenses occurred within the family home. CP 22. The court of appeals agreed "an unrestricted limitation on attending church services is problematic." Opinion, 10. The court nevertheless dodged the issue, reasoning "freedom

of religion is not squarely before us" because of the "narrow arguments, undeveloped record, and limited briefing" on appeal. Opinion, 10.

The court of appeals' refusal to reach the issue is in conflict with this Court's decisions in State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008), and State v. Padilla, 190 Wn.2d 672, 416 P.3d 712 (2018). A preenforcement challenge to a community custody condition may be brought for the first time on appeal "where the challenge involves a legal question that can be resolved on the existing record." Padilla, 190 Wn.2d at 677; see also Bahl, 164 Wn.2d at 752. This is particularly true where the condition restricts the exercise of sensitive First Amendment freedoms. Padilla, 190 Wn.2d at 677-78; Bahl, 164 Wn.2d at 757-58.

Prohibiting Anderson from frequently church services plainly implicates his fundamental right to free exercise of religion. U.S. CONST. amend. I; Munns v. Martin, 131 Wn.2d 192, 199, 930 P.2d 318 (1997). It defies logic to claim, as the court of appeals did below, that Anderson failed to prove "the condition has a coercive effect on his practice of religion." Opinion, 10. A condition that restricts the exercise of a fundamental right must be narrowly tailored. Padilla, 190 Wn.2d at 757. This means the condition must be "sensitively imposed" and reasonably necessary to accomplish the essential needs of the state and public order. Id.

It is not clear at all how prohibiting Anderson from frequently church services is reasonably necessary to accomplish essential state needs. All the offenses occurred inside the family home, with someone familiar to Anderson. There is no suggestion anywhere in the record that Anderson preyed on or groomed children at church services (or any other location outside the home, for that matter). Another condition already prohibits Anderson from initiating or prolonging contact with minors. CP 22. This achieves the same goal without restricting Anderson's exercise of religion.

The breadth of this new "where minor children are known to congregate" condition is staggering and certainly not narrowly tailored to Anderson's conduct. This Court's review is therefore warranted under RAP 13.4(b)(1), (3), and (4).

E. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse the court of appeals.

DATED this 15th day of July, 2020.

Respectfully submitted,

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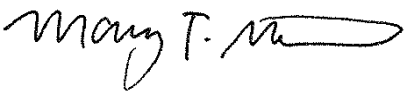

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Appendix

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

STATE OF WASHINGTON, Respondent, v. JAMES BRADLEY ANDERSON, Appellant.	)	No. 79942-8-I UNPUBLISHED OPINION

VERELLEN, J. — James Anderson contends that on remand from a prior appeal overturning one of four child sex offenses, the trial court mistakenly concluded it did not have the authority to resentence. But the mandate narrowly directed the trial court to dismiss the single conviction with prejudice. There was no resulting change to the standard sentencing range. We did not authorize a resentencing.

The mandate also directed the trial court to clarify a condition of community custody restricting Anderson from frequenting areas where minor children congregate. He challenges the revised condition as vague, overbroad, and not crime related. Although the broad limitations on church services and restaurants are problematic, the specific arguments, existing record, and limited briefing do not support any relief on appeal. Therefore, we affirm.

FACTS

A jury convicted Anderson of one count of second degree child molestation (count I), one count of first degree rape of a child (count II), two counts of first degree child molestation (counts III and IV), and one count of second degree rape of a child (count V). The court sentenced Anderson to a standard range sentence of 280 months' incarceration based on an offender score of 12. The court also imposed a community custody condition that required Anderson to avoid "areas where minor children are known to congregate."[1]

Anderson appealed and argued, in part, the State presented insufficient evidence to sustain his conviction for second degree child molestation. Anderson also argued the above condition was void for vagueness. The State conceded both issues. This court accepted the State's concession and remanded for dismissal of count I and revision of the condition.[2]

On remand, Anderson sought resentencing at the bottom of the standard range. To support his request, defense counsel submitted evidence of Anderson's postconviction rehabilitation efforts. At the hearing on remand, the State noted the dismissal of count I reduced Anderson's offender score to 9 but did not reduce the standard range. The trial court focused on this court's

[1] Clerk's Papers (CP) at 59.

[2] CP at 42.

mandate, concluding: "I would have to interpret this language that they didn't intend me to resentence."[3]

The court entered an amended judgment and sentence dismissing count I but left Anderson's sentence at 280 months. The court also revised the community condition to provide examples of "areas where minor children are known to congregate."[4]

Anderson appeals.

ANALYSIS

I. Discretion to Resentence

Anderson contends the trial court failed to recognize its discretion to resentence.

"The trial court's discretion to resentence on remand is limited by the scope of the appellate court's mandate."[5] Here, in the mandate, this court specifically stated: "In summary, we remand for dismissal with prejudice of Anderson's conviction for second degree child molestation in count I and for revision of the community custody condition. Otherwise, we affirm."[6]

At the hearing following remand, the trial court interpreted this court's language "to suggest they weren't expecting a resentencing, especially since

[3] Report of Proceedings (RP) (Apr. 22, 2019) at 8.

[4] CP at 22.

[5] State v. Kilgore, 167 Wn.2d 28, 42, 216 P.3d 393 (2009).

[6] CP at 42.

they didn't say that on resentencing we should change that condition, they said we should just revise that one condition of the sentence."[7] The court also stated it was "not persuaded that [the case was] sent back to me for this purpose given the language."[8] "I don't really see a basis. . . . [I]f they wanted me to resentence him, they would have said on resentencing this condition has to be different."[9] The court determined, given that the dismissal did not change the standard range: "I think I would have to interpret this language that they didn't intend me to resentence on everything else."[10]

Anderson cites to State v. Kilgore[11] and In re Personal Restraint of Sorenson[12] to address the scope of an appellate court's mandate. In Kilgore's initial appeal, our Supreme Court affirmed this court's reversal of two of Kilgore's convictions. The court remanded the case to the superior court for "further proceedings" consistent with the court's opinion.[13] On remand, Kilgore sought resentencing under Blakely v. Washington.[14] The trial court declined to resentence. Kilgore again appealed.

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[7] RP (Apr. 22, 2019) at 4.

[8] Id. at 6.

[9] Id. at 7.

[10] Id. at 8.

[11] 167 Wn.2d 28, 216 P.3d 393 (2009).

[12] 200 Wn. App. 692, 403 P.3d 109 (2017).

[13] Kilgore, 167 Wn.2d at 34.

[14] 542 U.S. 296, 124 S. Ct 2531, 159 L. Ed. 2d 403 (2004).

In the subsequent appeal, our Supreme Court affirmed this court's determination that although "the mandate in Kilgore I did not explicitly authorize the trial court to resentence Kilgore," the mandate was "open-ended" and "in theory, the trial court could have considered resentencing Kilgore."[15]

However, the court acknowledged:

> Where an error in a defendant's offender score affects the applicable sentencing range, resentencing is required. Resentencing is also required where the sentencing range is unaffected "if the trial court had indicated its intent to sentence at the low end of the range, and the low end of the correct range is lower than the low end of the range determined by using the incorrect offender score."[16]

In Kilgore, our Supreme Court determined resentencing was not required because "[a]lthough Kilgore's offender score was reduced from 18 to 12, his presumptive sentencing range remained the same," and "[t]he trial court indicated no intention to sentence Kilgore at the low end of the sentencing range."[17] Ultimately, although the trial court had the discretion to resentence, resentencing was not required under the circumstances.

In Sorenson, Division Two of this court upheld Sorenson's conviction on direct appeal but mandated for correction of scrivener's errors: "We affirm, but remand to correct scrivener's errors in Sorenson's judgment and sentence."[18]

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[15] Kilgore, 167 Wn.2d at 42.

[16] Id. at 41-42 (emphasis added) (quoting In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 868, 50 P.3d 618 (2002)).

[17] Id. at 42.

[18] Sorenson, 200 Wn. App. at 699 (internal quotation marks omitted).

Later, in a personal restraint petition, the court addressed the timeliness of Sorenson's petition: "Our instructions left the trial court with no discretion as to the actions it could take on remand."[19]

Here, our mandate specifically stated: "In summary, we remand for dismissal with prejudice of Anderson's conviction for second degree child molestation in count I and for revision of the community custody condition. Otherwise, we affirm."[20] Anderson argues "[d]ismissal of a current conviction, even where the sentence range does not change, necessarily implies resentencing."[21] But he fails to provide authority to support this proposition. The mandate here is not open ended, as in Kilgore, or strict, as in Sorenson. But consistent with the analysis in Kilgore, Anderson does not present a situation that warrants resentencing because Anderson's sentencing range remained the same, and the trial court did not indicate an intention to sentence Anderson at the low end of the sentencing range.[22] And, similar to Sorenson, our mandate in Anderson's original appeal left the trial court with no discretion as to the actions it could take on remand.[23]

[19] Id.

[20] CP at 42.

[21] Appellant's Br. at 8.

[22] See Kilgore, 167 Wn.2d at 42.

[23] See Sorenson, 200 Wn. App. at 699.

Therefore, the trial court did not abuse its discretion when it determined this court's mandate in Anderson's original appeal did not include resentencing.

Additionally, we decline to rewrite our opinion in Anderson's original appeal. Anderson argues if the mandate did not allow for resentencing, "then this Court should amend the original opinion to so allow" because "[d]ismissal of a current conviction necessarily gives the trial court discretion to resentence."[24] But as previously stated, Anderson does not provide any citation to authority to support this proposition.

We also note that on remand, the trial court indicated: "I don't think it would have made a significant difference to the court's decision as to the ranges."[25] Of course, here, the dismissal lowered Anderson's offender score, but it did not change the standard range. We read the trial court's comment as an indication that even if the mandate allowed for resentencing, the evidence of Anderson's post-sentencing actions would not have swayed the court from the original sentence. This also runs counter to any relief on appeal.

II. Community Custody Condition

Anderson argues the revised community custody condition is unconstitutionally vague, overbroad, and not crime related.

[24] Appellant's Br. at 13.

[25] RP (Apr. 22, 2019) at 8.

We review community custody conditions for abuse of discretion.[26] "A trial court abuses its discretion if it imposes an unconstitutional condition."[27] "A legal prohibition, such as a community custody condition, is unconstitutionally vague if (1) it does not sufficiently define the proscribed conduct so an ordinary person can understand the prohibition or (2) it does not provide sufficiently ascertainable standards to protect against arbitrary enforcement."[28]

Here, in the original judgment and sentence, the court imposed a community custody condition that required Anderson to avoid "areas where minor children are known to congregate."[29] In the first appeal, the State conceded, and this court agreed, the condition was unconstitutionally vague. On remand, the court revised the condition as follows:

> Do not frequent areas where minor children are known to congregate, this includes, but is not limited to: parks used for youth activities, schools, daycare facilities, playgrounds, wading pools, swimming pools being used for youth activities, play area (indoor or outdoor), sports fields being used for youth sports, arcades, church services, restaurants, and any specific location identified in advance by [the Department of Corrections] or [community corrections officer].[30]

As to vagueness, Anderson concedes the revised condition satisfies the first prong of the vagueness test, but he argues the revised condition does not

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[26] State v. Padilla, 190 Wn.2d 672, 677, 416 P.3d 712 (2018).

[27] Id.

[28] Id.

[29] CP at 59.

[30] CP at 22.

satisfy the second prong because "it does nothing to cabin the [community corrections officer's] discretion."[31] We disagree. The community corrections officer's discretion is limited to clarifying the definition by providing specific locations "in advance" to Anderson. The community correction officer's discretion is not unchecked, and the limited discretion allowed does not render the condition unconstitutionally vague. The condition provides fair notice and is not subject to arbitrary enforcement.

"'Overbreadth analysis is intended to ensure that legislative enactments do not prohibit constitutionally protected conduct, such as free speech.'"[32] In part, Anderson argues the condition's prohibition on attending church services is overbroad because it implicates his free exercise of religion. Article I, section 11 of the Washington Constitution and the First Amendment of the United States Constitution protect an individual's religious freedom.[33] "[A]ny burden upon religious free exercise must withstand strict scrutiny."[34] "Under this standard, the complaining party must first prove the government action has a coercive effect on his or her practice of religion."[35]

[31] Appellant's Br. at 17.

[32] State v. Knowles, 91 Wn. App. 367, 372, 957 P.2d 797 (1998) (quoting City of Seattle v. Ivan, 71 Wn. App. 145, 149, 856 P.2d 1116 (1993)).

[33] State v. Balzer, 91 Wn. App. 44, 53, 954 P.2d 931 (1998).

[34] Id.

[35] Id.

Anderson argues the condition "implicates" his right to freedom of religion, but does not offer any evidence to satisfy his burden of proving that the condition has a coercive effect on his practice of religion.[36] Although an unrestricted limitation on attending church services is problematic, on the narrow arguments, undeveloped record, and limited briefing presented by Anderson, freedom of religion is not squarely before us.

Finally, sentencing courts have the general authority to impose crime-related community custody conditions.[37] The imposition of a crime-related prohibition is necessarily fact specific and left to the discretion of the trial court.[38]

Anderson argues the inclusion of church services and restaurants in the prohibition is not crime related because his crimes occurred in "the confines of his home."[39] However, as identified by our Supreme Court:

> A court does not abuse its discretion if a "reasonable relationship" between the crime of conviction and the community custody condition exists. The prohibited conduct need not be identical to the crime of conviction, but there must be "some basis for the connection."[40]

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[36] See id.

[37] RCW 9.94A.030(10).

[38] In re Pers. Restraint of Rainey, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010).

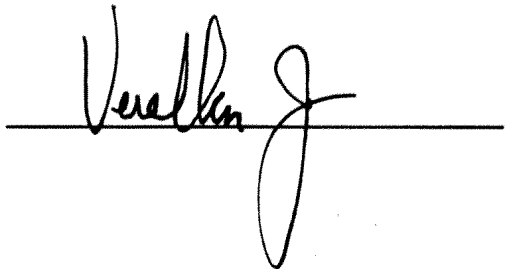
[39] Appellant's Br. at 18.

[40] State v. Nguyen, 191 Wn.2d 671, 684, 425 P.3d 847 (2018) (quoting State v. Irwin, 191 Wn. App. 644, 657-59, 364 P.3d 830 (2015)).

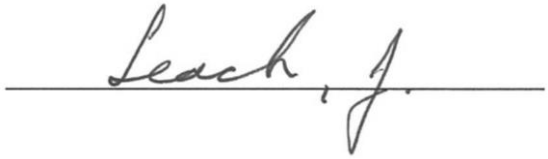
Anderson's criminal activity involved children. There is a reasonable relationship between his crimes of conviction and prohibiting him from frequenting places where children congregate, which might extend to some church services and restaurants.

We conclude the revised condition is not unconstitutionally vague or overly broad. And the condition is crime related.

Therefore, we affirm.



WE CONCUR:



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