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Washington State
Court of Appeals
Division Two

November 16, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of: JOSEPH JOHN DELACRUZ, Petitioner.	No. 55496-8-II UNPUBLISHED OPINION

LEE, C.J.—Joseph J. Delacruz seeks relief from personal restraint imposed following his 2009 plea of guilty to two counts of first degree child molestation that were committed against his daughter. He argues that the following community custody conditions in section (b) of Appendix H to his judgment and sentence should be removed or modified:

> 4) No contact w/minors unless supervised by a responsible adult who is aware of your offense and has been approved in advance by your CCO and therapist;
> 5) Do not enter into a relationship with any person who has minors in their care or custody without approval of your CCO and therapist;
> ….
>
> 8) Not possess or peruse any sexually explicit material as defined by your CCO and therapist;
> ….
>
> 10) Not frequent or loiter areas where children congregate,
> 11) Do not access the Internet or make use of any computer modem;
> ….
>
> 14) No possession or consumption of alcohol;
> ….
>
> 16) Notify your employer of your conviction and rules of supervision and treatment;
> ….

> 20) Submit to polygraph testing as required by your therapist:/CCO to monitor compliance;
> ….
>
> 23) Geographical restrictions as ordered by CCO.

Order Transferring Mot. to Ct. of Appeals for Consideration as Pers. Restraint Pet. under CrR 7.8(c), App. H at 2 (Mar. 4, 2021). Delacruz also challenges the condition "no contact with minors" in paragraph 4.6 of his judgment and sentence. Order Transferring Mot. to Ct. of Appeals for Consideration as Pers. Restraint Pet. under CrR 7.8(c), J&S at 7 (Mar. 4, 2021).

RCW 10.73.090(1) provides:

> No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

Delacruz's judgment and sentence became final on March 9, 2009, when the trial court entered it. RCW 10.73.090(3)(a). He did not file his petition until February 5, 2021, more than one year later.[1] Unless he shows that one of the exceptions in RCW 10.73.100 applies or shows that his judgment and sentence is facially invalid, his petition is time-barred. *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

Delacruz does not argue that any of the exceptions in RCW 10.73.100 applies. Rather, he argues that the conditions are not crime-related. But his claim cannot be determined from the face of judgment and sentence, so those claims are time-barred. *See State v. Johnson*, 180 Wn. App. 318, 325-26, 327 P.3d 704 (2014).

[1] Delacruz filed a Motion and Declaration to Amend Appendix H in the trial court. That court transferred his motion to us under CrR 7.8(c) to be considered as a personal restraint petition.

Delacruz also argues that that the conditions are unconstitutionally vague and, therefore, facially invalid. As to condition 5, the State concedes that the term "relationship" is vague and should be clarified as relating to dating or romantic relationships. *State v. Nguyen*, 191 Wn.2d 671, 682-83, 425 P.3d 847 (2018). As to condition 10, the State concedes that under *State v. Wallmuller*, 194 Wn.2d 234, 243, 449 P.3d 619 (2019), the term "where children congregate" is vague and should be modified to be more explicit, consistent with that in *State v. Johnson*, 4 Wn. App. 2d 352, 361-62, 421 P.3d 969, *review denied*, 192 Wn.2d 1003 (2018). And as to condition 11, the State concedes that an unqualified restriction on internet access is invalid on its face. *State v. Johnson*, 197 Wn.2d 740, 745, 487 P.3d 893 (2021).

Delacruz does not demonstrate that any of the remaining conditions are unconstitutionally vague or facially invalid. A sentencing condition is vague if ordinary people cannot understand what conduct is proscribed or it does not provide ascertainable standard to protect against arbitrary enforcement. *Nguyen*, 191 Wn.2d at 678.

As to condition 4, the condition is not vague because an ordinary person would understand what conduct is prohibited by the condition. *Id*. As to condition 8, the term "sexually explicit material" is not vague. *Id.* at 679-80. As to condition 14, there is nothing vague about prohibiting possession or consumption of alcohol because the prohibited conduct is clearly defined and understandable to an ordinary person. *Id.* at 678. As to condition 16, the requirement to notify an employer of the conviction and rules of supervision and treatment is also understandable by an ordinary person. *Id*. As to condition 20, submission to polygraph testing is not a vague community custody provision because an ordinary person can understand that refusal to submit to a polygraph is the prohibited conduct. *Id*. Finally, as to condition 23, geographical restrictions as ordered by CCO is not vague because once the CCO imposes geographic restrictions the prohibited conduct

is easily understood by an ordinary person and the CCO has imposed explicit restrictions to prevent arbitrary enforcement. *Id.*

We grant Delacruz's petition in part and remand to the trial court to modify or delete community custody conditions 5, 10, and 11, as provided above. We deny the remainder of his petition.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

, C.J.

Lee, C.J.

We concur:

Worswick, J.

Maxa, J.