

68378-1

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NO. 68378-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILSON SMITH,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE J. WESLEY SAINT CLAIR

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Under the Sentencing Reform Act, the duration of a post-conviction domestic violence no-contact order is limited only by the statutory maximum sentence for the crime. As the Juvenile Justice Act limits a juvenile offender's disposition to the same statutory maximum as an adult, a domestic violence no-contact order issued by a juvenile court should be limited only by the statutory maximum disposition. When Smith was sentenced in juvenile court for the crime of Assault in the Second Degree – Domestic Violence, the trial court imposed a 10-year no-contact order. Did the trial court impose a proper durational limit?

B. STATEMENT OF THE CASE

Wilson Smith was charged with Assault in the Second Degree – Domestic Violence for stabbing his former girlfriend, Chantelle Grayson, with a knife, causing substantial bodily harm to her. CP 1. The charges arose from an incident that occurred on January 6, 2012. CP 23-28 (Findings of Fact).¹ At that time, Smith and Grayson were no longer in a dating relationship, but had an

¹ As the court's written Findings of Fact (FoF) are unchallenged on appeal, the State will refer to those findings for purposes of providing a factual summary of the case.

ongoing friendship where they would sometimes flirt and engage in play-fighting. CP 24 (FoF 1, 2). On January 6, during play-fighting in Grayson's bedroom, Smith bit Grayson several times. CP 24 (FoF 3). When Grayson bit Smith back, Smith yelled out his current girlfriend's name. CP 24 (FoF 3). Grayson felt disrespected by this and slapped Smith in the face. CP 24 (FoF 4).

Smith became enraged and began punching Grayson. CP 24 (FoF 5). While Grayson initially punched Smith back, Smith continued to pummel Grayson when she stopped fighting back and was lying on the ground merely trying to protect herself. CP 24 (FoF 5). During this interaction Smith also threatened to kill Grayson. CP 24 (FoF 5). Smith then grabbed a kitchen knife, which had been within arm's reach, and stabbed Grayson in the shin with a downward motion, leaving a gaping 3-inch gash in her leg. CP 24 (FoF 6). The kitchen knife had an 8-inch blade. CP 24 (FoF 6).

After being stabbed, Grayson was initially able to get away from Smith by running outside. CP 24 (FoF 7). However, after a brief chase, Grayson either tripped or was pushed to the ground by Smith. CP 24 (FoF 7). Smith then kicked Grayson in the head, bit her on the hand, and dragged her through the yard. CP 24 (FoF

7, 8). Eventually Smith stopped assaulting Grayson and left the area by walking down the lengthy driveway. CP 24 (FoF 9). When Smith stopped, Grayson was able to go inside and contact her mother and her sister. CP 24 (FoF 9). Grayson's mother saw her injuries and convinced Grayson to call 911. CP 24-25 (FoF 9, 10).

Police officers arrived and observed Grayson's injuries and found the knife lying on the driveway. CP 25 (FoF 12-14). One police officer saw someone matching Smith's description running through several yards in the vicinity of Grayson's home. CP 25 (FoF 15). A K-9 unit was used to track Smith to a nearby backyard where Smith was hiding underneath debris behind a shed. CP 25 (FoF 15, 16). Grayson went to the hospital for treatment of her injuries. CP 25-26 (FoF 17, 18). Although Grayson had various abrasions and bruises from both consensual and non-consensual contact with Smith, the treatment she sought was primarily for the knife wound and bruising to her hand where Smith had bitten it. CP 26 (FoF 26). These injuries resulted in marks and scars that remained visible and substantially disfiguring for at least a month. CP 26 (FoF 22).

During the days and weeks following the incident, Grayson received threatening phone calls, text messages and online

messages from associates of Smith. CP 26 (FoF 20). She was also confronted by his associates in person and was told to change her story so that Smith would get released from custody. CP 26 (FoF 20). Grayson felt threatened and falsely recanted to try and get Smith released in order to stop the threats, but admitted that her recantation was false when she realized that it was having no effect. CP 26 (FoF 21).

At the fact finding hearing, Smith was found guilty as charged. CP 27-28. At sentencing, the trial court imposed a disposition of 80-100 weeks and prohibited Smith from having contact with Grayson. CP 16. The trial court also imposed a domestic violence no-contact order prohibiting Smith from contacting Grayson for a period of 10 years. CP 21-22. The court rejected defense counsel's argument that the no-contact order should expire on Smith's 18th birthday. RP 25-27.²

² RP refers to the verbatim report of proceedings for the sentencing hearing on February 23, 2012.

C. ARGUMENT

THE TRIAL COURT PROPERLY IMPOSED A 10-YEAR NO-CONTACT ORDER.

Smith concedes that the court had the authority to enter a no-contact order in this case pursuant to RCW 10.99.050, but claims that the juvenile court exceeded its sentencing authority by imposing the no-contact order for a duration of 10 years. Smith is incorrect, as the maximum duration of a post-conviction no-contact order is determined by the statutory maximum for the offense. As the proper duration of a no-contact order involves a question of law regarding statutory meaning, this Court applies a *de novo* review. State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002).

While RCW 10.99.050 does not state the maximum duration of such an order, the Washington Supreme Court has addressed this issue as it pertains to offenders being sentenced under the Sentencing Reform Act of 1981 (SRA). State v. Armendariz, 160 Wn.2d 106, 118-19, 156 Wn.2d 201 (2007). The Supreme Court concluded that the duration of a no-contact order is limited only by the statutory maximum and deemed it “reasonable to subject these conditions to the same time limit as applies to all other aspects of a defendant’s sentence.” Id. at 119.

The parties agree that the same reasoning applies to juvenile cases. However, Smith incorrectly equates the durational limit of no-contact orders issued by a juvenile court to a juvenile court's jurisdiction (until the offender reaches the age of 18 or 21).³ Thus, Smith argues that the trial court here could only impose a no-contact order until his 18th birthday.⁴ However, as it is undisputed that Smith was under the age of 18 when sentenced and thus the juvenile court had jurisdiction over him, his rationale is significantly strained.

Smith attempts to analogize his reasoning to the Supreme Court's holding in Armendariz by arguing that the juvenile court's sentencing power is limited to its jurisdiction (with the only exception being orders of restitution or a penalty assessment).

³ RCW 13.40.300(1)(a) provides that juvenile jurisdiction can be extended until the offender turns 21 if it is extended before the offender's 18th birthday. RCW 13.40.300(1)(c) provides that juvenile jurisdiction is automatically extended if the offender turns 18 after disposition if the sentence imposed extends beyond the offender's 18th birthday. However, the maximum extension is to the age of 21. RCW 13.40.300(1)(c).

⁴ Even if this Court agrees with Smith's logic, it should find that a no-contact order here is properly ordered until Smith turns 21, as the disposition imposed in this case will result in an automatic extension of jurisdiction because Smith's term of confinement extends almost 20 weeks beyond his 18th birthday. CP 15-18. See RCW 13.40.300(1)(c).

That argument fails, as the juvenile court's sentencing power is not limited by the length of its jurisdiction. State v. Bourgeois, 72 Wn. App. 650, 658, 866 P.2d 43 (1994).

In that case, 15-year-old Bourgeois was charged and convicted of two counts of first degree assault. Id. at 652. The juvenile court trial judge imposed a "manifest injustice" disposition (above the standard range) of 290 weeks. Id. at 655-56. On appeal, Bourgeois argued that the juvenile court had exceeded its sentencing authority because the dispositional order of 290 weeks extended approximately 33 weeks beyond his 21st birthday. Id.

While this Court reversed the "manifest injustice" disposition on other grounds⁵ it reached the merits of Bourgeois's claim that the juvenile court had exceeded its dispositional authority and noted that, even if Bourgeois had been sentenced to a standard range sentence, the dispositional order would have extended approximately 3 weeks beyond his 21st birthday. Id. at 657.

⁵ This Court held that the trial court had relied on both appropriate and inappropriate grounds when imposing the "manifest injustice" disposition. Bourgeois, 72 Wn. App. at 664. However, because the trial court had placed significant weight on the inappropriate factors, reversal and remand was necessary for reconsideration of disposition without the inappropriate factors. Id.

In rejecting Bourgeois's claim, this Court held that RCW 13.40.300 imposed a limit on confinement of the juvenile "rather than a limit on the juvenile court's ability to enter a disposition." Id. at 658 (citing State v. Furman, 122 Wn.2d 440, 448, 858 P.2d 1092 (1993)).

While the juvenile court's sentencing authority is not limited by the age of the offender, the Juvenile Justice Act, like the SRA, does place a limit on the juvenile court's authority. Under RCW 13.40.160, the juvenile court's sentencing authority is limited to the maximum sentence an adult could receive for the same offense. See also State v. Miller, 54 Wn. App. 763, 764-66, 776 P.2d 149 (1989) (explaining that RCW 13.40.160 refers to the statutory maximum, not the high end of the standard range that could be imposed under the SRA). The statutory maximum for the crime of Assault in the Second Degree, a class B felony, is 10 years. RCW 9A.36.021; RCW 9A.20.021. Because the trial court here limited the no-contact order to a term of 10 years, the court did not exceed its authority.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David B. Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. WILSON SMITH, Cause No. 68378-1-I, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington

10-05-12
Date