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OCT 31 2012

King County Prosecutor  
Appellate Unit

COA NO. 68674-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

A.T.,

Appellant.

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

The Honorable Bruce Hilyer, Judge

BRIEF OF APPELLANT

CASEY GRANNIS  
Attorney for Appellant

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**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	1
1. THE COURT LACKED AUTHORITY TO NOTIFY THE DEPARTMENT OF LICENSING ABOUT THE CONVICTION.....	2
2. THE TRIAL COURT ERRED IN FAILING TO SET A DEFINITE NO-CONTACT TERM. ....	4
D. <u>CONCLUSION</u> .....	6

**TABLE OF AUTHORITIES**

	Page
 <u>WASHINGTON CASES</u>	
<u>Davis v. State ex rel. Dep't of Licensing,</u> 137 Wn.2d 957, 977 P.2d 554 (1999).....	3
<u>Grant v. Smith,</u> 24 Wn.2d 839, 167 P.2d 123 (1946).....	5
<u>State v. B.E.K.,</u> 141 Wn. App. 742, 172 P.3d 365 (2007).....	3, 4
<u>State v. Broadway,</u> 133 Wn.2d 118, 942 P.2d 363 (1997).....	4, 5
<u>State v. Jones,</u> 93 Wn. App. 14, 968 P.2d 2 (1998).....	5
<u>State v. Paulson,</u> 131 Wn. App. 579, 128 P.3d 133 (2006).....	4
<u>State v. R.J.,</u> 121 Wn. App. 215, 88 P.3d 411 (2004).....	3
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
Chapter 66.41 RCW.....	3
Chapter 69.44 RCW.....	2
Chapter 69.50 RCW.....	3
Chapter 69.52 RCW.....	3
RCW 9.41.040(5).....	3
RCW 13.40.265(1).....	2
RCW 46.20.265(1).....	2

**TABLE OF AUTHORITIES (CONT'D)**

Page

**RULES, STATUTES AND OTHER AUTHORITIES (CONT'D)**

RCW 46.20.285 .....	3
RCW 46.20.285(4).....	3
RCW 69.41.065(1).....	3
RCW 66.44.365(1).....	3
RCW 69.50.420(1).....	3
RCW 69.52.070(1).....	3

A. ASSIGNMENTS OF ERROR

1. The court erred in ordering the Department of Licensing to be notified of the conviction. CP 28.

2. The court erred in ordering no contact with the victim without specifying the duration of the no contact order. CP 28.

Issues Pertaining to Assignments of Error

1. Must the order requiring notification to the Department of Licensing be vacated because appellant did not commit a crime triggering the notification requirement?

2. Is the sentence insufficiently definite and certain in failing to specify the expiration of the no contact order imposed on appellant?

B. STATEMENT OF THE CASE

A.T. entered into a deferred disposition in juvenile court after being charged with first degree theft. CP 1, 8-10, 18-22. The factual basis for the charge was that A.T. took a backpack from B.S. CP 2-4.

The State later moved to revoke the deferred disposition, alleging A.T. committed new criminal offenses. CP 24-25. At a hearing on the matter, A.T. admitted he violated the deferred disposition by committing new offenses. RP<sup>1</sup> 7-8. The court revoked the deferred disposition and

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<sup>1</sup> The verbatim report of proceedings is referenced as follows: RP - 4/19/12, 4/23/12.

entered a new disposition consisting of 30 days detention with 15 days suspended and 6 months of community supervision. CP 27-30; RP 20-21. As part of that disposition, the court ordered that the Department of Licensing be notified of this conviction and that A.T. shall have no contact with B.S. CP 28. This appeal follows. CP 31.

C. ARGUMENT

1. THE COURT LACKED AUTHORITY TO NOTIFY THE DEPARTMENT OF LICENSING ABOUT THE CONVICTION.

As part of the disposition, the court ordered, "The Department of Licensing shall be notified of this conviction." CP 28. The court lacked authority to do this because A.T. did not commit any crime triggering the notification requirement.

When a juvenile is found to have committed certain criminal offenses, the juvenile court is required to notify the Department of Licensing (DOL). The DOL then revokes the juvenile's driver's license for a period of time. RCW 46.20.265(1).

Crimes that trigger DOL notification include:

- juvenile offenses committed "while armed with a firearm or an offense that is a violation of RCW 9.41.040(2)(a)(iii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW." RCW 13.40.265(1);

- alcohol related offenses under chapter 66.44 RCW committed by a juvenile. RCW 66.44.365(1); State v. R.J., 121 Wn. App. 215, 216, 88 P.3d 411 (2004);
- drug convictions under chapter 69.50 RCW committed by a juvenile. RCW 69.50.420(1); Davis v. State ex rel. Dep't of Licensing, 137 Wn.2d 957, 960-61, 977 P.2d 554 (1999);
- legend/prescription drug offenses under chapter 69.41 RCW committed by a juvenile. RCW 69.41.065(1);
- imitation controlled substance offense under chapter 69.52 RCW committed by a juvenile. RCW 69.52.070(1);
- vehicle used in the commission of a felony. RCW 46.20.285(4); State v. B.E.K., 141 Wn. App. 742, 744, 747-48, 172 P.3d 365 (2007).
- vehicular homicide, vehicular assault and driving under the influence. RCW 46.20.285;
- unlawful possession of a firearm inside a vehicle or armed with a firearm during which offense a motor vehicle served an integral function. RCW 9.41.040(5).

A.T. was not convicted of any of these crimes. His conviction for first degree theft did not involve a motor vehicle or a firearm. CP 2-4, 8, 27. As a result, the trial court lacked statutory authority to order notification of the DOL as part of the disposition. CP 28.

A court may impose only a sentence that is authorized by statute. State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). "If the trial court exceeds its sentencing authority, its actions are void." Paulson, 131 Wn. App. at 588. The court's notification order must therefore be stricken and any DOL revocation vacated. See B.E.K., 141 Wn. App. at 744, 748 (setting forth remedy for unauthorized notification and revocation).

2. THE TRIAL COURT ERRED IN FAILING TO SET A DEFINITE NO-CONTACT TERM.

The court ordered A.T. to have no contact with the victim as part of the disposition but did not specify when the no contact order would expire. CP 28. Remand is required to enable the trial court to set a definite term for the no-contact order.

In State v. Broadaway, the boilerplate language in the judgment and sentence contained a similar deficiency. State v. Broadaway, 133 Wn.2d 118, 135-36, 942 P.2d 363 (1997). The Court held when "a sentence is insufficiently specific about the period of community placement required by law, remand for amendment of the judgment and sentence to expressly provide for the correct period of community placement is the proper course." Broadaway, 133 Wn.2d at 136.

The same result is mandated here. A sentence must be "definite and certain." State v. Jones, 93 Wn. App. 14, 17, 968 P.2d 2 (1998) (citing Grant v. Smith, 24 Wn.2d 839, 840, 167 P.2d 123 (1946)). The disposition in A.T.'s case is insufficiently specific about the duration of the no-contact order. CP 28. Under the heading "Other Orders of the Court," the box for "Respondent shall have no contact with [B.S.]" is simply checked without reference to an expiration date. CP 28. Neither the court nor the attorneys referenced the no contact portion of the sentence at the disposition hearing. The sentence remains ambiguous in this regard.

Courts have the authority to clarify insufficiently specific sentences. Broadaway, 133 Wn.2d at 136. This Court should therefore remand the case to allow entry of a definite no-contact term as part of the disposition.

D. CONCLUSION

A.T. requests the DOL notification order be stricken, any DOL revocation be vacated, and that the sentence be made definite and specific as to the duration of the no contact order.

DATED this 31<sup>st</sup> day of October 2012.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

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

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STATE OF WASHINGTON	)	
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Respondent,	)	
	)	
v.	)	COA NO. 686747-I
	)	
A.T.	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 31<sup>ST</sup> DAY OF OCTOBER 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X]    A.T.  
      15008 4<sup>TH</sup> AVENUE S.  
      APT. A  
      BURIEN, WA 98148

**SIGNED** IN SEATTLE WASHINGTON, THIS 31<sup>ST</sup> DAY OF OCTOBER 2012.

x Patrick Mayovsky