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NO. 68674-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

AZZAN THOMAS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE BRUCE HILYER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Did the trial court err when it required Department of Licensing notification of the conviction when there does not appear to be any law authorizing such notification for the crime of first degree theft?

2. Did the trial court abuse its discretion when it did not include an expiration date for a specific provision of the six month community supervision term when the law only requires the disposition order identify the length of community supervision?

B. STATEMENT OF THE CASE

Thomas entered a deferred disposition to the charge of theft in the first degree in juvenile court. CP 1, 8-10, 18-22. The court eventually revoked the deferred disposition and proceeded to disposition. RP 20-21; CP 27-30. As part of the disposition, the trial court ordered 6 months of community supervision, 30 hours of community service, and 30 days of detention with 15 days suspended. RP 20; CP 28. Further, the court ordered that the Department of Licensing shall be notified of this conviction, that Thomas have no contact with the victim of his crime, and other standard conditions. RP 21-23; CP 28. Note that the original

disposition order was lost, so the parties appeared before the court four days later to enter the disposition order. RP 26. Thomas did not make any objections to the DOL notification or the lack of a specific expiration date for the community supervision no contact condition. RP 20-29.

C. ARGUMENT

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

The State concedes that the court lacked authority to order that the Department of Licensing (DOL) be notified of this conviction. Several statutes and case law mandate that the court shall notify the DOL of certain types of criminal convictions. See RCW 13.40.265(1); RCW 66.44.365(1); RCW 69.50.420(1); RCW 69.52.070(1); RCW 46.20.285(4); and RCW 9.41.040(5). There does not appear to be any statute or case law that authorize or mandates DOL notification for the crime of theft in the first degree. Therefore, the court should not have ordered DOL notification of the conviction in the disposition order.

The remedy for this error is to amend the disposition order to vacate the DOL notification requirement. In his appeal, Thomas

demands an unavailable remedy to this error by asking that the Court of Appeals order the DOL to vacate the license suspension. First, Thomas has failed to present any evidence that the DOL suspended his license solely because of this conviction. Second, the DOL is not a party to this appeal. A court does not have power over an entity that is not a party in the case. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 502, 909 P.2d 1294 (1996). This is because "one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Martin v. Wilks*, 490 U.S. 755, 761, 109 S. Ct. 2180, 2184, 104 L. Ed. 2d 835 (1989) (quoting *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S. Ct. 115, 117, 85 L. Ed. 22 (1940)). In the present action, this court should simply order the trial court to strike the DOL notification requirement from the disposition order.

2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DID NOT DESIGNATE AN EXPIRATION DATE FOR A NO CONTACT CONDITION OF THE SIX MONTH COMMUNITY SUPERVISION TERM.

Thomas contends that the trial court abused its discretion when it did not include a specific expiration date for the no contact

condition in the disposition order. He is mistaken. There is no law found that requires the court to include a specific expiration date for a no contact condition in a disposition order.

Juvenile dispositions are reviewed under the abuse of discretion standard. *State v. Roberson*, 118 Wn. App. 151, 162, 74 P.3d 1208 (2003).

The juvenile court has broad discretion to fashion an individualized rehabilitative disposition that includes a broad range of community supervision conditions. *State v. D.H.*, 102 Wn. App. 620, 629, 9 P.3d 253 (2000). Under RCW 13.40.0357, the standard range for first degree theft for a juvenile with zero points is "local sanctions." Local sanctions may consist of one or more of the following: 0-30 days of confinement; 0-12 months community supervision; 0-150 hours of community restitution, and a \$0-\$500 fine. RCW 13.40.020(16), .0357.

Community supervision is "an order of disposition by the court of an adjudicated youth" and "an individualized program comprised of one or more of the following: (a) Community-based sanctions; (b) Community-based rehabilitation; (c) Monitoring and

reporting requirements; (d) Posting of a probation bond.”

RCW 13.40.020(4).

Monitoring and reporting requirements are broadly defined to include:

Curfews; requirements to remain at home, school, work or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer’s supervision; and other conditions or limitations as the court may require which may not include confinement.

RCW 13.40.020(18).

Aside from determining the length of community supervision, the State is unable to find any law requiring the trial court to specify the expiration date of each individual condition, including a no contact provision, in the court’s disposition order.

In the case at hand, the trial court ordered that Thomas not have any contact with his crime victim, Brett Skaret. RP 21; CP 28. Since this is not a domestic violence case, the provision was not issued under RCW 10.99. Rather, the no contact provision was issued as a condition of community supervision. The court ordered

community supervision for a period of six months. CP 27.

Therefore, the no contact provision expires when the community supervision term expires or is terminated by the court.

Thomas fails to cite any authority that requires a trial court to impose an expiration date for a no contact condition of community supervision. Rather, Thomas cites *State v. Broadaway*, 133 Wn.2d 118, 942 P.2d 363 (1997), which held that the adult court is required to include the length of community placement an adult offender is sentenced to in the Judgment and Sentence. In the case at hand, the juvenile trial court ordered that the community supervision term was to last for 6 months. CP 27.

In sum, the court did not abuse its discretion when it did not include a specific expiration date for the no contact condition since it is a condition of the six month community supervision term.

D. CONCLUSION

In conclusion, the Court should remand the case to the trial court to strike the DOL notification requirement from the disposition

order and deny Thomas' request to specify a specific expiration date for the no contact condition since there was no error in that regard.

DATED this 21 day of December, 2012.

Respectfully submitted,

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