

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY JW
DEPUTY

NO. 39001-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

KEATON CARTER FOX EGIZI,

Appellant.

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

The Honorable Barbara D. Johnson, Judge

APPELLANT'S BRIEF

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A. ASSIGNMENT OF ERROR

The Sexual Assault Protection Order issued in conjunction with Mr. Egizi's felony sentence exceeds the statutory maximum term.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The term of a Sexual Assault Protection Order issued in conjunction with a criminal prosecution may not exceed two years beyond the expiration of the associated sentence. The protection ordered issued in conjunction with Mr. Egizi's felony sentence expires January 12, 2014, but the terms of Mr. Egizi's sentence expire in March 2010. Is the protection order illegal because it exceeds the allowed term by nearly 2 years?

C. STATEMENT OF THE CASE

Keaton Egizi pleaded guilty to an amended information charging third degree rape. CP 2; RCW 9A.44.060; RP¹ 1-10. Mr. Egizi had no prior felony history. CP 21. On January 12, 2009, the court imposed a sentence of 6 months in custody plus an additional 12 months of community custody. CP 24, 25; RP 17-18. Because Mr. Egizi had been in custody on the charge since mid-September 2008, the court awarded him 123 days of credit for time served, leaving him with only 57 days to serve in custody and a release date of mid-March 2009. Supplemental

Designation of Clerk's Paper's (sub. nom. 23); RP 18-19. Finally, the court entered a post conviction Sexual Assault Protection Order prohibiting Mr. Egizi from having contact with the complaining witness, A.R.B. The court made the Order valid until January 12, 2014. CP 36.

Mr. Egizi appeals all portions of his judgment and sentence. CP 38-54.

D. ARGUMENT

THE "SEXUAL ASSAULT PROTECTION ORDER" ISSUED IN CONJUNCTION WITH MR. EGIZI'S FELONY SENTENCE IS ILLEGAL BECAUSE IT EXCEEDS THE STATUTORY MAXIMUM TERM.

Sexual assault protection orders entered at sentencing for a sex offense have a statutory limitation: they expire two years after the sentence ends. Mr. Egizi's sentence on a sex offense of time in custody plus community custody ends mid-March 2010. Yet, the trial court ordered that the Sexual Assault Protection Order it entered against Mr. Egizi not end until mid-January 2014. The court's order is illegal as it exceeds its statutory maximum term by almost two years.

RCW 7.90.150 provides:

(6)(a) When a defendant is found guilty of a sex offense as defined in RCW 9.94A.030, . . . and a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition shall be recorded as a sexual assault protection order.

¹ "RP" stands for the single volume of verbatim prepared for this appeal. It includes both the plea hearing and the sentencing hearing.

(b) The written order entered as a condition of sentencing shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of time following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

(d) A certified copy of the order shall be provided to the victim at no charge.

(Emphasis added.)

Third degree rape is a sex offense under RCW 9.94A.030(46)(a)(i). Because Mr. Egizi's was convicted of third degree rape and the resulting sentence precludes contact with the complaining party, A.R.B., it is appropriate for the trial court to enter a Sexual Assault Protection Order. CP 36-37; RCW 7.90.150(6)(a). The term of the Sexual Assault Protection Order issued in conjunction with a sentence, however, may not exceed the expiration of the sentence by more than two years. RCW 7.90.150(6)(c).²

² Note that as of the writing of this brief, there are no *published* opinions addressing this issue.

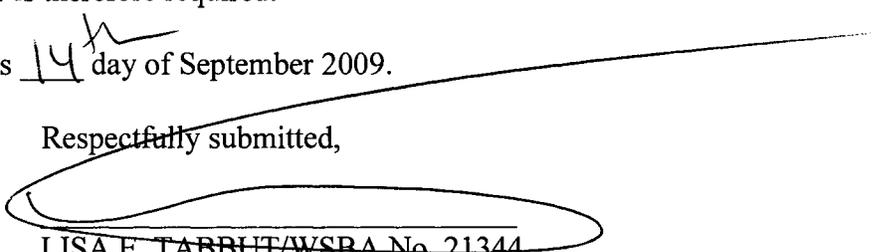
Mr. Egizi was sentenced on January 12, 2009, to the 6 months in jail with credit for the 123 days he had already served. See Supplemental Designation of Clerk's Papers (sub. nom. 23). As Mr. Egizi began serving his six months in custody in mid-September 2008, he was released and began his 12 months of community custody in mid-March 2009. By mid-March 2010, Mr. Egizi's community custody would be complete and his sentence expired. The Sexual Assault Protection Order can only be valid for two years beyond the completion of his community custody. In Mr. Egizi's case, that is mid-March 2012. The Sexual Assault Protection Order should therefore expire in mid-March 2012, not as issued, on January 12, 2014. RCW 7.90.150(6)(c). This court should remand for modification of the order to reflect a legal expiration date.

E. CONCLUSION

The Sexual Assault Protection Order entered against Mr. Egizi exceeds the allowable statutory maximum. Remand for modification of the protection order is therefore required.

DATED this 14th day of September 2009.

Respectfully submitted,


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CERTIFICATE OF MAILING

State of Washington, Respondent, v. Keaton Carter Fox Egizi, Appellant
Court of Appeals No. 39001-9-II

I certify that I mailed copy of Appellant's Brief to:

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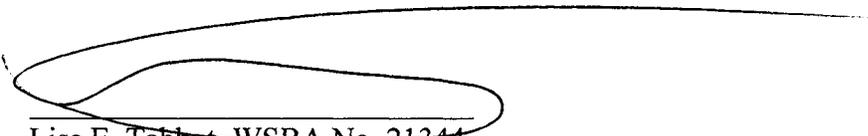
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And that I sent an original and one copy to the Court of Appeals, Division II, for filing.

All postage prepaid, on September 14, 2009.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Mazama, Washington, on September 14, 2009.



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