NO. 47773-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

DEREK DOSSANTOS,

Appellant.

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

The Honorable John R. Hickman, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The special sex offender sentencing alternative (SSOSA) community custody conditions requiring Derek John Dossantos not to go to or frequent places where minor children congregate are unconstitutionally vague.

2. The SSOSA and community custody conditions prohibiting Dossantos from perusing or possessing pornography and sexually explicit materials in any medium are unconstitutionally vague.

3. The community custody condition prohibiting Dossantos from joining or perusing social media website, using Skype, and dialing sexually-oriented 900 numbers is not crime-related and therefore exceeds the trial court's authority.

4. The community custody condition requiring Dossantos to obtain a chemical dependency evaluation is not crime-related and therefore exceeds the trial court's authority.

5. The trial court erred in imposing a $200 criminal filing fee without considering Dossantos's ability to pay this legal financial obligation (LFO).

Issues Pertaining to Assignments of Error

1. Are the SSOSA and community custody conditions prohibiting Dossantos from going to or frequenting places were minor children congregate void for vagueness?

2. Are the SSOSA and community custody conditions prohibiting Dossantos from possessing or perusing pornography and sexually explicit materials in any medium void for vagueness?

3. Do the prohibitions on Dossantos joining or perusing social media websites, using Skype, and telephoning sexually oriented 900 numbers exceed the trial court's sentencing authority because they are not crime-related?

4. Does the requirement that Dossantos undergo a chemical dependency evaluation exceed the trial court's sentencing authority because it is not crime-related?

5. Is the $200 criminal filing fee a discretionary LFO that requires consideration of Dossantos's financial circumstances and ability to pay?

B. STATEMENT OF THE CASE

The State charged Dossantos with first degree child molestation. CP 1. Prior to trial, the State amended the information to include an additional

count of indecent liberties by forcible compulsion for the same conduct. CP 7-8.

The charges arose from L.K.'s allegation that Dossantos, while he was swimming with her in a condominium complex swimming pool, grabbed her hand and placed it on his penis over his swimsuit. 4RP[1] 70-73. L.K. described what she felt as a "roll of quarters." 2RP 45; 4RP 121. L.K.'s mother testified that L.K. got out of the pool, stated Dossantos was "really creepy," and that L.K. and her mother then left the pool area. 4RP 116. L.K.'s mother "saw [Dossantos] adjust his bathing suit" from behind. 4RP 117, 139-40.

Following a child hearsay hearing, at which L.K.'s hearsay statements to her mother and forensic interviewer Keri Arnold were determined to be admissible, see 1RP 98-102, a video of the forensic interview was admitted into evidence and played for the jury. 4RP 170, 172.

L.K.'s mother testified that she never discussed the incident after L.K. underwent the forensic interview. 4RP 128. However, sometime later,

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[1] This brief refers to the verbatim reports of proceedings as follows: 1RP—consecutively paginated 687-page transcript dated September 4, 8, 18, and 19, 2014 and March 23, 24, 25, and 26, 2015; 2RP—single volume transcript dated September 4, 2014; 3RP—consecutively paginated 323-page transcript dated September 10, 11, 16, and 17, 2014; 4RP—consecutively paginated 391-page transcript dated March 23 and 25, 2015, April 6, 7, 8, 9, 24, 2015, and June 9, 2015. The transcript referred to as 3RP actually contains 334 pages rather than 323 because the transcript assigns two sets of pages to page numbers 37 through 45.

L.K. said to her mother, "do you think he could have done it by accident or that it was an accident?" 4RP 128, 147-48. L.K.'s mother relayed this information to the prosecutor's office. 4RP 129.

The jury from Dossantos's first trial hung, prompting the trial court to declare a mistrial. 1RP 282-84.

On retrial, the jury convicted Dossantos of both first degree child molestation and indecent liberties by forcible compulsion. CP 238-39; 4RP 328-30.

Contrary to the State's recommendation, the trial court imposed a SSOSA sentence pursuant to RCW 9.94A.670. CP 339, 343, 351; 4RP 385-86. The court sentenced Dossantos to confinement for 68 months to life, ordering 12 months of confinement in Pierce County jail with 56 months to life suspended upon completion of the SSOSA. CP 343. The SSOSA sentence also placed Dossantos on community custody for the remainder of his life. CP 343.

As part of the SSOSA, the trial court ordered that Dossantos "shall not peruse pornography, which shall be defined by the treatment provider." CP 351. The trial court also ordered, "The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades, _____." CP 351.

The trial court also imposed the following community custody conditions:

> 23. Do not go to or frequent places where children congregate. (I.E., Fast-food outlets. libraries, theaters, shopping malls, play grounds and parks, etc.) unless otherwise approved by the Court . . . .
>
> 27. You are prohibited from joining or perusing any public social websites (Face book [sic], Myspace, *Craigslist*, etc.), Skyping, or telephoning any sexually-oriented 900 numbers.
>
> 28. Do not possess or peruse any sexually explicit materials in any medium. Your sexual deviancy treatment provider wi[ll] define sexually explicit materials. Do not patronize prostitutes o[r] establishments that promote the commercialization of sex.
>
> 29. Obtain both a Mental Health Evaluation and a Chemical Dependency Evaluation, and then follow up on receiving any recommended treatment until it is successfully completed as directed.

CP 355.

The trial court also imposed $800 in LFOs, including the $100 DNA collection fee, the $500 victim penalty assessment, and a $200 court filing fee. CP 341; 4RP 386.

This timely appeal follows. CP 336.

C. ARGUMENT

1. THE SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE AND COMMUNITY CUSTODY CONDITIONS THAT PROHIBIT DOSSANTOS FROM GOING PLACES WHERE MINOR CHILDREN CONGREGATE IS UNCONSTITUTIONALLY VAGUE

As separate conditions of both Dossantos's SSOSA and community custody, the trial court ordered that Dossantos not to go to places where minors are likely to be present.[2] CP 351, 355. These conditions are unconstitutionally vague because they insufficiently apprise Dossantos of prohibited conduct and allow for arbitrary enforcement. The conditions should be stricken from the judgment and sentence.

a. The conditions are void for vagueness because they do not provide fair notice and invite arbitrary enforcement

An illegal or erroneous sentence may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Under the due process clauses of the Fourteenth Amendment and article I, section 3, the State must provide citizens fair warning of prohibited conduct. Id. at 752. This due process vagueness doctrine also protects against arbitrary, ad hoc, or discriminatory enforcement. State v. Halstien, 122 Wn.2d 109, 116-

[2] The SSOSA condition reads, "The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades, _____." CP 351. The community custody condition reads, "Do not go to or frequent places where children congregate. (I.E., Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks, etc.) unless otherwise approved by the Court." CP 355.

17, 857 P.2d 270 (1993). A prohibition is unconstitutionally vague if it does not (1) define the prohibition with sufficient definiteness such that ordinary people can understand what conduct is prohibited; or (2) does not provide ascertainable standards of guilt to protect against arbitrary enforcement. Bahl, 164 Wn.2d at 752-53. If it fails either prong, the prohibition is unconstitutionally vague. Id. at 753.

There is no presumption in favor of the constitutionality of a community custody condition. State v. Sanchez Valencia, 169 Wn.2d 782, 792-93, 239 P.3d 1059 (2010). Imposition of unconstitutionally vague conditions is manifestly unreasonable, requiring reversal. Id. at 791-92.

Recently, in State v. Irwin, 191 Wn. App. 644, 649, 364 P.3d 830 (2015), Division One considered a condition like the one at issue here, which read, "Do not frequent areas where minor children are known to congregate, as defined by the supervising" community corrections officer. Division One struck this condition as unconstitutionally vague and remanded for resentencing. Id. at 655.

The Irwin court explained, "Without some clarifying language or an illustrative list of prohibited locations . . . the condition does not give ordinary people sufficient notice to 'understand what conduct is proscribed.'" Id. (quoting Bahl, 164 Wn.2d at 753). The court acknowledged that it "may be true that, once the CCO sets locations where

'children are known to congregate' for Irwin, Irwin will have sufficient notice of what conduct is proscribed." Id. But this is not sufficient because it would still "leave the condition vulnerable to arbitrary enforcement," thereby failing the second prong of the vagueness analysis. Id.

In State v. Riles, the Washington Supreme Court upheld the constitutionality of a community custody condition almost identical to the one at issue in Irwin and at issue here. 135 Wn.2d 326, 349, 957 P.2d 655 (1998), abrogated by Sanchez Valencia, 169 Wn.2d 782. However, the Riles court's analysis presumed the condition was constitutional, a presumption that the Sanchez Valencia court later expressly repudiated. 169 Wn.2d at 792-93.

Thus, the Irwin court concluded Riles did not control and instead relied primarily on the Washington Supreme Court's more recent decision in Bahl. There, the court held a condition unconstitutionally vague where it prohibited Bahl from possessing or accessing pornographic material "as directed by the supervising Community Corrections Officer." Bahl, 164 Wn.2d at 743. "The fact that the condition provides that Bahl's community corrections officer can direct what falls within the condition only makes the vagueness problem more apparent, since it virtually acknowledges that on its face it does not provide ascertainable standards for enforcement." Id. at 758.

As in Bahl and Irwin, the conditions prohibiting Dossantos from going places where children congregate fails to provide sufficient definiteness. The conditions do not tell Dossantos where he can and cannot go. Some locations, such as those enumerated in the conditions are more or less obvious—playgrounds, roller skating rinks, and video arcades. But other locations are not so obvious: bowling alleys, places of worship, hiking trails, buses, trains, grocery stores, swimming pools, restaurants, and so on are not sufficiently definite to distinguish between what is prohibited and what is allowed.[3] Furthermore, many of the prohibited places listed by the trial court as examples, such as theatres and shopping malls and "Fast-food outlets," may or may not be places where children typically congregate. Do comedy clubs qualify as prohibited theatres? Are strip malls proscribed shopping malls? What about department stores? Are all restaurants that speedily process takeout orders disallowed as fast food outlets? Dossantos has no way of knowing, even in spite of the trial court's attempt to provide some examples. Because no ordinary person would know what conduct is prohibited, the conditions fail the first prong of the vagueness test.

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[3] The indefiniteness of this type of condition was fully recognized by our supreme court in State v. McCormick, 166 Wn.2d 689, 692-96, 213 P.3d 32 (2009), in which McCormick was held in violation of a similar condition when he went to a food bank that, unbeknownst to him, happened to be in the same building as a public school.

"In addition, when a statute or other legal standard, such as a condition of community placement, concerns material protected under the First Amendment, a vague standard can cause a chilling effect on the exercise of sensitive First Amendment freedoms." Bahl, 164 Wn.2d at 753 (citing Grayned v. City of Rockford, 408 U.S. 104, 109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)). Vagueness concerns '"are more acute when a law implicates First Amendment rights and a heightened level of clarity and precision is demanded of criminal statutes because their consequences are more severe."' Id. (quoting United States v. Williams, 444 F.3d 1286, 1306 (11th Cir. 2006), rev'd on other grounds, 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008)).

The conditions prohibiting Dossantos from going where children congregate or are likely to be present implicate the First Amendment. Indeed, the conditions might very well subject Dossantos to exclusion from most if not all houses of worship given children's likely presence there. Because the conditions have the very real effect of precluding Dossantos's free exercise of religion and assembly, to be valid they must meet a more definite, clearer standard. The vague SSOSA and community custody conditions cannot satisfy the first prong of Bahl's vagueness analysis. This court should strike the conditions and remand for resentencing.

The conditions also fail the vagueness test's second prong. Both Bahl and Sanchez Valencia involved delegation to a community corrections officer to define the parameters of a condition. Sanchez Valencia, 169 Wn.2d at 794; Bahl, 164 Wn.2d at 758. The Sanchez Valencia court determined that where a condition leaves so much discretion to an individual corrections officer, it suffers from unconstitutional vagueness. 169 Wn.2d at 795.

Here, the SSOSA where-minor-children-are-likely-to-be-present condition does not delegate the parameters of the condition to anyone. See CP 351. As such, there are no ascertainable standards of guilt to protect against arbitrary enforcement; nor is there any mechanism for obtaining such ascertainable standards from a corrections officer or treatment provider. Cf. Bahl, 164 Wn.2d at 752-53.

As for the community custody condition, the prohibition on "where children congregate," is subject to "approv[al] by the Court." CP 355. Because Dossantos would be required to seek approval of the trial court before going anywhere there is even the barest potential that children congregate, the trial court's imposition of the condition "virtually acknowledges that on its face" the condition "does not provide ascertainable standards for enforcement." Bahl, 164 Wn.2d at 758.

The SSOSA and community custody conditions prohibiting Dossantos from going to places where children congregate are unconstitutional because they fail to provide reasonable notice as to what conduct is prohibited and expose Dossantos to arbitrary enforcement. This court should hold that the conditions are void for vagueness and strike them from Dossantos's judgment and sentence.

b. This preenforcement claim is ripe for review

Appellate courts routinely consider preenforcement challenges to sentencing conditions. Sanchez Valencia, 169 Wn.2d at 787. Such challenges are ripe for review "if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." Id. at 786 (quoting Bahl, 164 Wn.2d at 751).

Here, the issue is primarily legal—do the conditions prohibiting Dossantos from going to or frequenting where children congregate or are likely to be present violate due process vagueness standards? See Sanchez Valencia, 169 Wn.2d at 790-91 (condition prohibiting use of drug-related paraphernalia was ripe for vagueness review); Bahl, 164 Wn.2d at 752 (condition prohibiting perusal of pornography was ripe for vagueness review).

This question is not fact-dependent. A written condition provides constitutional notice and protection against arbitrary enforcement or it does

not. Sanchez Valencia, 169 Wn.2d at 788-89 ("[I]n the context of ripeness, the question of whether the condition is unconstitutionally vague does not require further factual development.").

The challenged conditions are final because Dossantos has been sentenced to abide by them. Id. at 789 ("The third prong of the ripeness test, whether the challenged action is final, is indisputably met here. The petitioners have been sentenced under the condition at issue.").

Although the State has not charged Dossantos with violating the conditions, this preenforcement challenge to the conditions is ripe for review. See Irwin, 191 Wn. App. at 651-52. Dossantos asks that this court strike the conditions from his judgment and sentence.

2. THE SSOSA AND COMMUNITY CUSTODY CONDITIONS FORBIDDING DOSSANTOS FROM POSSESSING OR PERUSING "PORNOGRAPHY" AND "SEXUALLY EXPLICIT MATERIALS IN ANY MEDIUM" ARE UNCONSTITUTIONALLY VAGUE AND ARE NOT CRIME-RELATED

As part of Dossantos's SSOSA, the trial court stated, "The defendant shall not peruse pornography, which shall be defined by the treatment provider." CP 351. As a community custody condition, the trial court ordered, "Do not possess or peruse any sexually explicit materials in any medium. Your sexual deviancy treatment provider wi[ll] define sexually

explicit materials." CP 355. These conditions should be stricken because they are unconstitutionally vague and because they are not crime-related.

a. The conditions are void for vagueness because they do not provide fair notice and invite arbitrary enforcement

i. The conditions fail to provide fair notice

As the Bahl court discussed at length, a prohibition on perusing pornography is unconstitutionally vague. 164 Wn.2d at 754-58. The court relied on federal circuit courts of appeals, which

> described the term 'pornography' as 'entirely subjective,' and rejected the argument that any vagueness problem was cured by the probation officer's authority to interpret the restriction because '[t]his delegation . . . creates "a real danger that the prohibition on pornography may ultimately translate to a prohibition on whatever the officer personally finds titillating.

Id. at 755 (alterations in original) (internal quotation marks omitted) (quoting United States v. Guagliardo, 278 F.3d 868, 872 (9th Cir. 2002) (quoting United States v. Loy, 237 F.3d 251, 266 (3d Cir. 2001))). This reasoning is persuasive. Because definitions of pornography can and do differ widely—they may "include any nude depiction, whether a picture from *Playboy Magazine* or a photograph of Michelangelo's sculpture of David," Bahl, 164 Wn.2d at 756—the prohibition on perusing pornography is not sufficiently definite to apprise ordinary persons of what is permitted and what

proscribed. The condition thus violates the first prong of Bahl's vagueness analysis.

The community custody prohibition on perusing or possessing sexual explicit materials in any medium suffers from the same vagueness. Many great works of literature and film describe and depict sex and sexuality in great detail. Dossantos has no way of knowing which of these works he is allowed to peruse or possess and which he is not. The prohibitory condition on any sexually explicit materials in any medium, like the ban on pornography, is unconstitutionally vague.

This is especially true where prohibitions implicate materials protected by the First Amendment. Bahl, 164 Wn.2d at 757-58. Any restrictions on the materials Dossantos may possess or peruse implicate the First Amendment and therefore "must be clear and must be reasonably necessary to accomplish essential state needs and public order." Id. The blanket prohibitions on all sexually explicit materials (or pornography) fail to satisfy the requisite clarity to ensure Dossantos's First Amendment rights are honored. The prohibitory conditions are unconstitutionally vague.

To be sure, the Bahl court discussed and approved of a condition that prohibited Bahl from "frequenting 'establishments whose primary business pertains to sexually explicit or erotic material.'" 164 Wn.2d at 758 (emphasis added). The court discussed dictionary definitions of "sexually

explicit" and "erotic" and also noted that Washington statutes defined the term "sexually explicit." Id. at 758-60. However, in approving the condition, the court was careful to hold that context matters: Because "[t]he challenged terms [we]re used in connection with a prohibition on frequenting businesses," "[w]hen all of the challenged terms, with their dictionary definitions, are considered together, we believe the condition is sufficient clear. It restricts Bahl from patronizing adult bookstores, adult dance clubs, and the like." Id. at 759.

No context saves the blanket prohibition on all sexually explicit materials at issue here. Dossantos was ordered not to peruse or possess any sexually explicit materials in any medium. This extremely broad prohibition gives no context that would enable an ordinary person to understand what is disallowed, distinguishing the prohibition at issue in Bahl. Because more specificity is required to inform Dossantos what is considered sexually explicit and what is not, the ban on possessing or perusing "any sexually explicit materials in any medium" is unconstitutionally vague.

Nor do statutory definitions provide sufficient guidance.[4] RCW 9.68.130(2) defines "Sexually explicit material" as

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[4] The Bahl court did "not decide whether this definition [of sexually explicit material] would be sufficient notice (given that Mr. Bahl was not convicted under this statute) . . . ." 164 Wn.2d at 760. Dossantos was not convicted under the statutes defining "sexually explicit material" and "sexually explicit conduct" either.

> any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

"Sexually explicit conduct" is defined elsewhere as actual or simulated

> (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
>
> (b) Penetration of the vagina or rectum by any object;
>
> (c) Masturbation;
>
> (d) Sadomasochistic abuse;
>
> (e) Defecation or urination for the purpose of sexual stimulation of the viewer;
>
> (f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer . . . . ; and
>
> (g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

RCW 9.68A.011(4).

As regards RCW 9.68.130(2)'s definition, it would be difficult to distinguish with certainty pictures displaying flagellation or torture in the context of a sexual relationship from pictorial material that fell short of depicting such flagellation or torture. It would also be challenging to know

for sure in advance whether a picture, part of which showed adult genitals, actually "emphasiz[ed] the depiction" of the genitals. And, how would an ordinary person know whether certain materials qualified as "works of art or of anthropological significance" and therefore fell outside the definition of sexually explicit material, when reasonable minds would certainly differ on this point? RCW 9.68.130(2)'s definition fails to provide adequate notice of what is prohibited and does not save the blanket prohibition on sexually explicit material from unconstitutional vagueness.

Likewise, the definitions of "sexually explicit conduct" in RCW 9.68A.011(4) are not specific enough for an ordinary person to distill what is allowed from what is disallowed. Perhaps subsections (a) and (b) are sufficiently definitive, but it would be difficult, if not impossible, to fairly identify images of "masturbation" or "sadomasochistic abuse" with sufficient particularity. And to qualify as "sexually explicit conduct" in RCW 9.68A.011(4)(e), (f), and (g), the depictions must be created "for the purpose of sexual stimulation of the viewer." In other words, without knowing the purpose for which a depiction was created, it is impossible to say whether the depiction shows sexually explicit conduct or not under the statute.

Because the prohibitions on possessing or perusing pornography and sexually explicit materials do not give definitive notice of what is

disallowed, the prohibitory conditions are unconstitutionally vague under the first prong of the Bahl analysis.

ii. The conditions fail to protect against arbitrary enforcement

The prohibitions on pornography and sexually explicit materials are also unconstitutionally vague because they allow treatment providers to enforce the prohibitions in an arbitrary manner. Where a condition gives enormous discretion to an individual to define the parameters of the prohibition, the condition is unconstitutionally vague. Sanchez Valencia, 169 Wn.2d at 795; Bahl, 164 Wn.2d at 758. A treatment provider could classify a great breadth of materials pornographic or sexually explicit by virtue of their mention of sex or sexuality. This would give Dossantos's treatment providers unfettered discretion to define what is and what is not illegal. Moreover, to ascertain whether certain materials qualified as sexually explicit or pornographic, Dossantos would have to show them to his treatment provider, thereby exposing himself to the risk that this treatment provider will give an after-the-fact determination that Dossantos violated the conditions. The conditions allow a treatment provider to "direct what falls within the condition," which "only makes the vagueness problem more apparent since it virtually acknowledges that on its face it does not provide ascertainable standards for enforcement." Bahl, 164 Wn.2d at 758. The

SSOSA and community custody conditions fail under Bahl's arbitrary-enforcement prong of the vagueness test. The unconstitutionally vague conditions prohibiting pornography and sexually explicit materials must be stricken.

b. Sexually explicit materials have nothing to do with this case and the trial court has authority only to impose crime-related community custody prohibitions

Under RCW 9.94A.670(5)(b), when imposing a SSOSA, the trial court must impose a term of community custody equal to the length of the maximum term for the offense and may require the offender to comply with any conditions imposed by the department under RCW 9.94A.703. RCW 9.94A.703(1) through (4) provide mandatory, waivable, discretionary, and special community custody conditions, respectively. Under RCW 9.94A.703(3)(f), the trial court may require an offender to "[c]omply with any crime-related prohibitions." The prohibitions on pornography and sexually explicit materials do not qualify as crime-related prohibitions and therefore must be stricken.

There was no evidence presented in this case that possessing or perusing sexually explicit materials played any role in the crime. In State v. Kinzle, 181 Wn. App. 774, 785, 326 P.3d 870 (2014), Division One accepted the State's concession that a condition ordering the defendant to refrain from

possessing sexually explicit material "must be stricken because no evidence suggested that such materials were related to or contributed to his crime." The same holds true here. Because the prohibitions on possessing or perusing pornography and sexually explicit materials are not in any way related to the crimes at issue, the trial court's imposition of these prohibitions exceeded its authority. These conditions should accordingly be stricken.

c. This preenforcement claim is ripe for review

Conditions almost identical to those at issue here were determined to be adequately ripe for review by our supreme court in Bahl, 164 Wn.2d at 751-52. Dossantos's challenge is likewise ripe for appellate review because the issue is primarily legal: this court must answer the legal question of whether, under a due process vagueness standard, the conditions are unconstitutional. Sanchez Valencia, 169 Wn.2d at 790-91; Bahl, 164 Wn.2d at 752. No further factual development is necessary because the question is whether the conditions as written provide the requisite constitutional notice and protection against arbitrary enforcement. See Sanchez Valencia, 169 Wn.2d at 788-89 ("[T]he question of whether the condition is unconstitutionally vague does not require further factual development."). Finally, it is "indisputabl[e]" that the conditions at issue are final because Dossantos has "been sentenced under the condition at issue." Id. at 789. Dossantos's challenges to the SSOSA and community custody conditions

prohibiting him from possessing or perusing pornography and sexually explicit materials in any medium are ripe for review.

3. THE COMMUNITY CUSTODY CONDITION PROHIBITING DOSSANTOS FROM "JOINING OR PERUSING ANY PUBLIC SOCIAL WEBSITES" OR USING SKYPE IS NOT CRIME-RELATED AND IS THEREFORE OVERBROAD

As discussed, under RCW 9.94A.703(3)(f), the trial court may require an offender to "[c]omply with any crime-related prohibitions." Here, the trial court imposed a community custody condition stating, "You are prohibited from joining or perusing any public social websites (Face book [sic], Myspace, *Craigslist*, etc.), Skyping, or telephoning any sexually-oriented 900 numbers." CP 355 (condition 27). The imposition of this condition is not crime-related and therefore exceeds the trial court's authority.

There is no evidence in this case that even remotely indicates Dossantos's use of social media websites, Skype, or 900 numbers is related to the crime. The entire incident at issue occurred in a swimming pool over the course of a few seconds. 4RP 232 (detective testifying regarding the videotape evidence that L.K. and Dossantos were in proximity for a period of 12 to 14 seconds at most). As Division One concluded when it struck a similar condition,

> There is no evidence that [the defendant] accessed the internet before the [crime] or that internet use contributed in any way to the crime. This is not a case where a defendant used the internet to contact and lure a victim into an illegal sexual encounter. The trial court made no finding that internet use contributed to the [crime].

State v. O'Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

O'Cain's analysis is sound and applies here. Because nothing in the record supports the trial court's prohibition on Dossantos's use of social media websites or Skype or telephoning 900 numbers, the prohibitions are not crime-related. "Because the prohibition in this case is not crime-related . . . it must be stricken." Id.

4. THE COMMUNITY CUSTODY CONDITION REQUIRING DOSSANTOS TO OBTAIN A CHEMICAL DEPENDENCY EVALUATION IS NOT CRIME-RELATED AND THEREFORE EXCEEDS THE TRIAL COURT'S AUTHORITY

Like the prohibition on social media websites, the trial court's imposition of a chemical dependency evaluation as a condition of community custody has no relation to the crime.[5] Nor did the trial court make a specific chemical dependency finding as pertinent statutes and case law require. This unlawful condition must also be stricken.

[5] The pertinent condition read, "Obtain both a Mental Health Evaluation and a Chemical Dependency Evaluation, and then follow up on receiving any recommended treatment until it is successfully completed as directed." CP 355 (condition 29).

Sentencing courts have authority to prohibit a defendant from consuming alcohol regardless of the whether the crime involved alcohol. RCW 9.94A.703(3)(e). They also have authority to order an offender to participate in rehabilitative programs or perform affirmative conduct reasonably related to the circumstances of the offense. RCW 9.94A.703(3)(d). However, "[t]he SRA specifically authorizes the court to order an offender to obtain a chemical dependency evaluation and to comply with recommended treatment only if it finds that the offender has a chemical dependency that contributed to his or her offense." State v. Warnock, 174 Wn. App. 608, 612, 299 P.3d 1173 (2013) (emphasis added); see also RCW 9.94A.607(1) ("Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may . . . order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime . . . ." (emphasis added)); State v. Kinzle, 181 Wn. App. at 786 ("[T]he court erred in imposing this condition without first finding that he has a chemical dependency that contributed to the offense."). "If the court fails to make the required finding, it lacks statutory authority to impose the condition." Warnock, 174 Wn. App. at 612.

There is no evidence in the record that any chemical substance, be it alcohol or some other controlled substance, contributed to the crime. The

trial court did not make a finding that chemical dependency was crime-related, ostensibly because there was no evidentiary basis for such a finding. The trial court therefore lacked authority to impose a community custody condition requiring Dossantos to undergo a chemical dependency evaluation. This community custody condition must be stricken.

5. THE $200 CRIMINAL FILING FEE IS NOT MANDATORY AND THE TRIAL COURT SHOULD HAVE INQUIRED INTO DOSSANTOS'S ABILITY TO PAY BEFORE IMPOSING IT

The trial court, at the State's request, imposed a $200 criminal filing fee. CP 341; 4RP 365, 386. Because this fee is discretionary, not mandatory, the trial court erred in imposing it without first inquiring into Dossantos's financial condition and ability to pay.

RCW 9.94A.760 permits trial courts to order LFOs as part of a criminal sentence. However, RCW 10.01.160(3) prohibits imposing LFOs unless "the defendant is or will be able to pay them." To determine whether to impose LFOs, courts "shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3).

The Washington Supreme Court has recognized the "problematic consequences" LFOs inflict on indigent criminal defendants. State v. Blazina, 182 Wn.2d 827, 836, 344 P.3d 680 (2015). LFOs accrue interest at

a 12-percent interest rate so that even those "who pay[] $25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed." Id. This "means that courts retain jurisdiction over the impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs." Id. at 836-37. "The court's long-term involvement in defendants' lives inhibits reentry" and "these reentry difficulties increase the chances of recidivism." Id. at 837.

In light of these concerns, the Blazina court held that RCW 10.01.160(3) requires trial court to first consider an individual's current and future ability to pay before imposing discretionary LFOs. Id. at 837-39. This requirement "means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry." Id. at 838. The "record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay." Id. The court should consider such factors as length of incarceration and other debts, including restitution. Id.

At sentencing, the trial court imposed a $200 filing fee. CP 341; 4RP 386. This court has indicated that this fee is mandatory, not discretionary. State v. Lundy, 176 Wn. App. 96, 102-03, 308 P.3d 755 (2013). But Lundy provided no rationale or analysis of the statutory language supporting its

erroneous conclusion that the fee is mandatory. Lundy is wrong and the pernicious effects of LFOs as recognized in Blazina demonstrate the harmfulness of imposing discretionary LFOs without considering ability to pay. This court should therefore overrule Lundy's determination that the filing fee is a mandatory LFO. See In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970) (stare decisis "requires a clear showing that an established rule is incorrect and harmful before it is abandoned").

The language of RCW 36.18.020(2)(h), which provides authority to impose a filing fee, differs from other statutes authorizing mandatory fees.[6] For instance, the victim penalty assessment statute provides, "When any person is found guilty in any superior court of having committed a crime . . . there shall be imposed by the court upon such convicted person a penalty assessment." RCW 7.68.035 (emphasis added). This statute is unambiguous in its mandate that the assessment shall be imposed. The statute authorizing the DNA collection fee is also unambiguously mandatory: "Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars." RCW 43.43.7541 (emphasis added).

---

[6] RCW 36.18.020(2)(h) provides, in relevant part, "Upon conviction or plea of guilty . . . an adult defendant in a criminal case shall be liable for a fee of two hundred dollars."

RCW 36.18.020(2)(h) is not the same. It provides that upon conviction, "an adult defendant in a criminal case shall be liable for a fee of two hundred dollars." (Emphasis added.) In contrast to the DNA collection fee and victim penalty assessment—both of which demonstrate that the legislature knows how to unambiguously mandate the imposition of a legal financial obligation—RCW 36.18.020(2)(h) does not mandate the imposition or inclusion of a $200 criminal filing fee.

Nowhere in RCW 36.18.020(2)(h)'s language is the requirement that trial courts must impose the $200 filing fee upon conviction. And although RCW 36.18.020(2) states that "[c]lerks of superior courts shall collect" the fee, the statute's language does not indicate that the fee cannot be waived by a judge. In practice, many superior courts, including King County Superior Court, never impose the $200 filing fee. The $200 filing fee is a discretionary LFO, not a mandatory one.

Moreover, being liable for a fee and being required to pay a fee are different things. "Liability" for a fee does not make the fee mandatory given that the term "liable" encompasses a broad range of possibilities, from making a person "obligated" in law to pay to imposing a "future possible or probable happening that may not occur." BLACK'S LAW DICTIONARY 915 (6th ed. 1990). At best, the statutory language is ambiguous as to whether it is mandatory. Under the rule of lenity, the statutory language must be

interpreted in Dossantos's favor. State v. Jacobs, 154 Wn.2d 596, 601, 115 P.3d 281 (2005).

This court should not follow Lundy, which contained no reasoning to support its conclusion that the criminal filing fee is mandatory. Our supreme court recently appeared skeptical that the $200 filing fee was mandatory, noting it has only "been treated as mandatory by the Court of Appeals." State v. Duncan, ___ Wn.2d ___, ___ P.3d ___, 2016 WL 1696698, at *2 n.3 (Apr. 28, 2016). This court should not adhere to Lundy, but instead provide meaningful consideration of RCW 36.18.020(2)(h)'s language and hold that the criminal filing fee is a discretionary LFO.

In response, the State might argue that this court should decline to consider this argument because Dossantos did not object at sentencing. However, RAP 2.5 provides that this court "may refuse to review any claim of error which was not raised in the trial court," giving this court ample discretion. Moreover, RAP 1.2 expresses a clear preference to liberally interpret the rules of appellate procedure "to promote justice and facilitate the decision of cases on the merits." In light of Blazina's call to address a "broken" LFO system, see 182 Wn.2d at 835, and Duncan's recent acknowledgment that it has never determined that the criminal filing fee is mandatory, this court should address Dossantos's claim and decide it on the merits.

6. APPELLATE COSTS SHOULD BE DENIED

In the unlikely event Dossantos does not prevail on appeal, this court should deny any request by the State for appellate costs.

This court indisputably has discretion to deny appellate costs. RCW 10.73.160(1) ("The court of appeals . . . may require an adult offender convicted of an offense to pay appellate costs." (emphasis added)); State v. Sinclair, 192 Wn. App. 380, 388, 367 P.3d 612 (2016) (holding RCW 10.73.160 "vests the appellate court with discretion to deny or approved a request for an award of costs").

There are several reasons this court should exercise discretion and deny appellate costs.

a. Dossantos is presumed indigent throughout review

The trial court determined Dossantos was indigent, finding "that the defendant lacks sufficient funds to prosecute . . . an appeal and applicable law grants defendant a right to review at public expense to the exten[t] defined in this order." Appendix A[7] (Order of Indigency) at 1. The indigency order also states that "Dossantos is entitled to counsel for review wholly at public expense." Appendix A at 1 (emphasis added). In his

[7] Contemporaneously with filing this brief, Dossantos files a supplemental designation of clerk's papers to include the Order of Indigency and Motion for Order of Indigency, both filed October 5, 2015. To facilitate this court's review, the Order of Indigency is attached as Appendix A and the Motion for Order of Indigency is attached as Appendix B.

motion for an order of indigency. Dossantos reported no real property, no income from any source, and a vehicle valued at less than $5,000. Based on the trial court's determination of indigency, Dossantos is presumed indigent throughout this review. RAP 15.2(f); Sinclair, 192 Wn. App. at 393 ("We have before us no trial court order finding that Sinclair's financial condition has improved or is likely to improve . . . . We therefore presume Sinclair remains indigent."). This court should presume Dossantos indigent and deny any request by the State for appellate costs.

b. Attempting to fund the Office of Public Defense on the backs of indigent persons when their public defenders lose their cases undermines the attorney-client relationship and creates a perverse conflict of interest

Furthermore, any reasonable person reading the order of indigency issued by the trial court would believe that Dossantos was entitled to an attorney to represent him on appeal at public expense and that Dossantos would pay nothing due to his indigency, win or lose. Under the current appellate cost scheme, however, this reasonable belief is incorrect and trial court indigency orders are falsehoods.

Because the courts do not do so, appellate defenders must explain to their indigent clients that if their arguments do not win the day, they will be assessed, at minimum, thousands of dollars in appellate costs. Unlike other lawyers whose clients pay them, the client's ability to pay does not factor

into an appellate defendant's representation of his or her client. Yet appellate defenders must still play the role of financial planner, hedging the strength of their arguments against the vast sums of money their clients will owe, and attempt to advise their clients accordingly. This undermines the attorney's fundamental role in advancing all issues of arguable merit on their clients' behalf and thereby undermines the relationship between attorney and client.

Not only do appellate defenders have to explain to clients they will face substantial appellate costs if their arguments are unsuccessful, they also have to explain that the Office of Public Defense gets most of the money. Many clients immediately see the perverse incentive this creates: The Office of Public Defense, through which all appellate defenders represent their clients, collects money only when the appellate defender is unsuccessful. This is readily apparent as a conflict of interest and undermines any appearance that the appellate cost scheme is fair. See RPC 1.7(a)(2) (a conflict exists where "there is a significant risk that the representation . . . will be materially limited . . . by a personal interest of the lawyer"); Wood v. Georgia, 450 U.S. 261, 268-70, 101 S. Ct. 1097, 67 L. Ed. 2d 220 (1981) (acknowledging conflict when interest of third part paying lawyer is at odds with client's interest); Winkler v. Keane, 7 F.3d 304, 308 (2d Cir. 1993) (contingent fee in criminal case creates actual conflict of interest); United

States v. Horton, 845 F.2d 1414, 1419 (7th Cir. 1988) (conflict of interest arises when defense attorney must "make a choice advancing his own interest to the detriment of his client's interests").

The current appellate cost system works as a contingent fee arrangement in reverse: rather than pay their attorneys upon winning their cases, indigent clients must pay the organization that funds their attorneys when they lose. Franz Kafka himself would strain to imagine such a design. The appellate cost scheme creates a perverse conflict of interest implicating the constitutional right to conflict-free counsel. This is a good reason to exercise discretion and deny costs.

c. The trial court waived all discretionary legal financial obligations and so should this court

With the exception of the $200 criminal filing fee, discussed above, the trial court waived all discretionary legal financial obligations, including court costs and fees for court-appointed counsel. CP 341. The State did not seek discretionary LFOs for court costs or counsel fees below. 4RP 365. To impose thousands of dollars in appellate costs now would be incongruous with the trial court's waiver of discretionary legal financial obligations. Division One recently recognized that carrying an obligation to pay thousands of dollars in appellate costs plus accumulated interest "can be quite a millstone around the neck of an indigent offender." Sinclair, 191

Wn. App. at 391. There is no basis in the record to place this millstone around Dossantos's neck. Any request by the State for appellate costs should be denied.

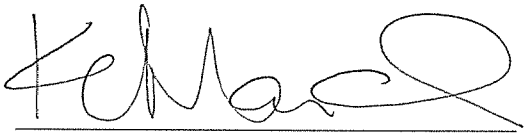
D. CONCLUSION

Dossantos asks that the challenged SSOSA and community custody conditions and discretionary legal financial obligations be stricken from the judgment and sentence.

DATED this 30th day of June, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



KEVIN A. MARCH
WSBA No. 45397
Office ID No. 91051

Attorneys for Appellant

APPENDIX A

13-1-03135-5 45660270 ORIND 10-07-15

FILED
DEPT. 22
IN OPEN COURT
OCT 05 2015
Pierce County Clerk
By ..... DEPUTY

10/7/2015 87356 0126

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. DEREK JOHN DOSSANTOS, Defendant.	No. 13-1-03135-5 ORDER OF INDIGENCY

THIS MATTER having come on regularly upon the motion of the above-named defendant, Derek John Dossantos, by and through his attorney, Wayne C. Fricke, of the Hester Law Group, Inc., P.S., and the court having heard argument of counsel and deeming itself fully advised, the court finds that the defendant lacks sufficient funds to prosecute on an appeal and applicable law grants defendant a right to review at public expense to the extend defined in this order. The court orders as follows:

1. The filing fee has previously been paid.
2. Defendant, Derek John Dossantos is entitled to counsel for review wholly at public expense.

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302

When review is discretionary, counsel will be provided and the expenses detailed below will be paid if review is accepted or as applicable law permits.

3. The appellate court shall appoint counsel for review pursuant to RAP 15.2.

4. Derek John Dossantos is entitled to the following at public expense:

(a) Those portions of the verbatim report of proceedings reasonably necessary for review as follows:

Hearing Dates	Judge	Court Reporter/Transcriptionist
03/23/15	John Hickman	Emily Dirton
03/25/15	John Hickman	Emily Dirton
04/06/15	John Hickman	Emily Dirton
04/07/15	John Hickman	Emily Dirton
04/08/15	John Hickman	Emily Dirton
04/09/15	John Hickman	Emily Dirton
04/24/15	John Hickman	Emily Dirton
06/09/15	John Hickman	Emily Dirton

(b) A copy of the following clerk's papers:

Information	08/08/13
Affidavit/Determination for Probable Cause	08/08/13
Omnibus Order	11/15/13
Amended Information	08/27/14
State's Memorandum	08/29/14
Defendant's Proposed Instructions	09/02/14
Motion to Exclude Child Hearsay	09/03/14

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302

10/7/2015 8:56 0127

10/7/2015 8736 0128

Trial Brief – State's	09/03/14
Trial Brief – Supplemental	09/04/14
Exhibits Received in Vault	09/08/14
Plaintiff's Proposed Instructions	09/11/14
Plaintiff's Proposed Instructions	09/11/14
Findings of Fact & Conclusions of Law	09/16/14
Jury Note from Deliberating Jury	09/19/14
Court's Instructions to the Jury	09/19/14
Verdict Form, Count 1 Blank	09/19/14
Verdict Form, Count 2 Blank	09/19/14
Verbatim Report of Proceedings	01/23/15
Defendant's Proposed Instructions	03/23/15
Plaintiff's Proposed Instructions	04/08/15
Response from Judge to Jury	04/09/15
Court's Instructions to the Jury	04/09/15
Verdict Form 1 – Guilty Count 1	04/09/15
Verdict Form 2 – Guilty Count 2	04/09/15
Motion for Mistrial	04/16/15
Affidavit of Juror Christina Carmichael	04/16/15
State's Response	04/23/15
Order	04/24/15
Letter in/for Support	05/14/15
Memorandum re: Sentencing	05/14/15

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Defendant's Sentencing Memorandum	05/28/15
Stipulation to Prior Record	06/09/15
Judgment and Sentence	06/09/15
Appendix "H"	06/09/15
Notice/Advice of Collateral Attack	06/09/15
Order for Biological Sample	06/09/15
Order for HIV Test	06/09/15
Order Prohibiting Contact Sentencing	06/09/15
Notice of Appeal	07/06/15
Designation of Clerk's Papers	

(c) Preparation of original documents to be reproduced by the clerk as provided in rule 14.3(b).

(d) Reproduction of briefs and other papers on review that are reproduced by the clerk of the appellate court.

(e) The cost of transmitting the following cumbersome exhibits:

(f) Other items: N/A

DONE IN OPEN COURT this 5 day of October, 2015.

Judge of the Superior Court

JOHN R. HICKMAN

FILED
DEPT. 22
IN OPEN COURT
OCT 0 5 2015
Pierce County Clerk
By ..... DEPUTY

Presented by:

HESTER LAW GROUP, INC., P.S.
Attorneys for Defendant

By: _____
WAYNE C. FRICKE
WSB #16550

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302

10/7/2015 5736 0129

APPENDIX B

13-1-03135-5 45660269 MTAFIND 10-07-15

FILED
IN COUNTY CLERK'S OFFICE

OCT 06 2015

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

FILED
DEPT. 22
IN OPEN COURT

OCT 05 2015

Pierce County Clerk
By ..... DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. DEREK JOHN DOSSANTOS, Defendant.	No. 13-1-03135-5 MOTION FOR ORDER OF INDIGENCY - CRIMINAL CASE

Derek J. Dossantos, defendant, filed his notice of appeal on July 6, 2015 in the above-referenced criminal case, and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense.

The following certificate is made in support of this motion.

DATED this 2 day of October, 2015.

DEREK JOHN DOSSANTOS, Defendant

WAYNE C. FRICKE, WSB #16550
Attorney for Defendant

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

10/7/2015 5:33 0123

CERTIFICATE

I, Derek John Dossantos, certify as follows:

1. That I am the defendant and I wish to appeal the judgment that was entered in the above-entitled cause.

2. That I own:

   (X) a. No real property

   ( ) b. Real property valued at _____. That I own: _____.

   ( ) a. No personal property other than my personal effects.

   (X) b. Personal property (automobile, money, inmate account, motors, tools, etc.) valued at approximately $ 45,000 .

3. That I have the following income:

   (X) a. No income from any source.

   ( ) b. Income from employment, disability payments, SSI, insurance, annuities, stocks, bonds, interests, etc., in the amount of $ _____ on an average monthly basis. I received $ _____ after taxes over the past year.

4. That I have:

   ( ) a. Undischarged debts in the amount of $_____.

   (X) b. No debts.

5. That I am without other means to prosecute said appeal and desire that public funds be expended for that purpose.

6. That I can contribute the following amount toward the expense of review:

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

$_____.

7. The following is a brief statement of the nature of the case and the issues sought to be reviewed: Molestation conviction after a mistrial (hung jury). Issues to be reviewed are sufficiency of the evidence, juror misconduct and evidentiary rulings.

8. I ask the court to provide the following at public expense, the following: all filing fees, attorney fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers.

9. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.

10. I certify that I will immediately report any change in my financial status to the court.

11. I certify that review is being sought in good faith. I designate the following parts of the record which are necessary for review:

( )	Pre-trial hearings	Date(s): _____ Judge(s): _____ Court Reporter(s): _____
(XX)	Trial, excluding Opening, voir dire	Dates: 03/23/15; 03/25/15; 04/06/15; 04/07/15; 04/08/15; 04/09/15; Judge: John Hickman Court Reporter: Emily Dirton
( )	Sentencing hearing	Date: 06/09/15

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TACOMA, WASHINGTON 98405
(253) 272-2157

10/7/2015 8736 0124

Judge: John Hickman
Court Reporter: Emily Dirton

(XX) Other: Date: 04/24/15 – Post Trial Motion
Judge: John Hickman
Court Reporter: Emily Dirton

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

10/2/15 Pierce Co. Jail
Date and Place

Derek John Dossantos, Defendant

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
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10/7/2015 9:36 0125

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KEVIN A. MARCH
MARY T. SWIFT

OF COUNSEL
K. CAROLYN RAMAMURTI

State V. Derek Dossantos

No. 47773-4-II

Certificate of Service

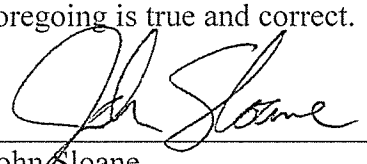
On June 30, 2016, I e-served and or mailed the Brief of Appellant directed to:

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
Via Email per agreement PCpatcecf@co.pierce.wa.us

Derek Dossantos
5904 N 15th St, A103
Tacina, WA 98406

Re: Derek Dossantos
Cause No. 47773-4II, in the Court of Appeals, Division II,

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



John Sloane
Office Manager
Nielsen, Broman & Koch

06-30-2016
Date
Done in Seattle, Washington

NIELSEN, BROMAN & KOCH, PLLC

June 30, 2016 - 11:40 AM

Transmittal Letter

Document Uploaded: 4-477734-Appellant's Brief.pdf

Case Name: Derek Dossantos
Court of Appeals Case Number: 47773-4

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: John P Sloane - Email: sloanej@nwattorney.net

A copy of this document has been emailed to the following addresses:

PCpatcecf@co.pierce.wa.us
marchk@nwattorney.net