



MAR 15 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

No. 30050-1-III
COURT OF APPEALS
DIVISION III
OF
THE STATE OF WASHINGTON

State of Washington,
Respondent

v.

Carl J. Price,
Appellant

Appeal from the Superior Court of Grant County

REPLY BRIEF OF APPELLANT

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I. ISSUES ON REPLY

1. The government's double jeopardy and ex-post facto analysis ignores that the imposition of continued conditions of release denies the defendant basic Constitutional Rights.
2. The government must meet basic due process protections before imposing a condition made under RCW 9.94A.709.

II. ARGUMENT ON REPLY

- 1. The government's double jeopardy and ex-post facto analysis ignores that the imposition of continued conditions of release denies the defendant basic Constitutional Rights.**

The government response maintains that there is no double jeopardy in this case because any future prosecution is "speculative." (Response Brief p.4) This argument ignores that the defendant has been placed under a longer period of time for which he may be incarcerated for merely being around minors while supervised. The defense argued before the Superior Court that the court had no authority to "extend a period of probation" beyond the period imposed in the judgment and sentence. (May 27, 2011 RP p. 22)

The Fifth Amendment to the United States Constitution and Article I § 9 of the Washington State Constitution provide a prohibition against double jeopardy that protects a defendant from multiple punishments for

the same offense. *State v. McClendon*, 131 Wash.2d 853, 862, 935 P.2d 1334 (1997) The court here returned the defendant to court and increased the punishment imposed after the defendant was sentenced. The increased punishment constitutes double jeopardy based on the original offense.

The new sentencing at a hearing held on May 27, 2011 modified and extended the original sentence. The court thereby places the defendant in a position subjecting him to a criminal sentence of up to 364 days and a five thousand dollar fine. The new sentence allows no contact with minors except in the company of a responsible adult. (CP 76) (May 27, 2011 RP 30)

The effect of the new sentence is that Carl J. Price is denied freedom of association with minors. The prohibition is very broadly worded to all “minors”. The First Amendment to the United States Constitution protects an individual’s right to freedom of speech and association. U.S. Const. Amend 1: *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 104 S. Ct. 3244, 82 L.Ed.2d 462 (1984) The broadly worded prohibition places a severe limitation on a persons’ right to association with a broad segment of society “all minors”.

**2. The government must meet basic due process protections
before imposing a condition under RCW 9.94A.709.**

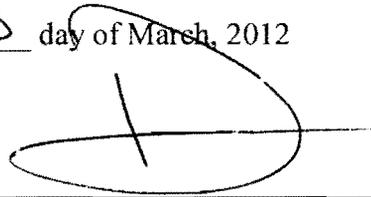
The government argues that the appellant has no “vested right” to contact with minors. (Response Brief p. 7) The government seems to ignore that there is a First Amendment right to freedom of association. A law is unconstitutionally overbroad if it sweeps within its prohibitions conduct protected by the First Amendment. *State v. Halstien*, 122 Wash.2d 109, 121, 857 P.2d 270 (1993)

In conducting the hearing modifying the judgment and extending the conditions the court failed to follow due process standards required in probation hearings. *State v. Abd-Rahmaan*, 154 Wash.2d 280, 111 P.3d 1157 (2005) The hearing conducted failed to meet the due process standards required by *State v. Dahl*, 139 Wash.2d 678, 990 P.2d 396 (1999) The court must not ignore basic requirements for due process protections where defendants suffer deprivation of constitutional rights. The court should remedy the due process deficiency by remanding the case with proper due process requirements enforced on remand.

V. CONCLUSION

The failures of the court in the defendant’s case are of constitutional magnitude. The appellant seeks remand with instruction that the request to extend conditions be denied as a violation of the appellant’s constitutional protection against double jeopardy.

Respectfully submitted this 15 day of March, 2012

A handwritten signature in black ink, consisting of a large, stylized 'D' with a vertical line through it, positioned above a horizontal line.

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