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Court of Appeals  
Division III  
State of Washington

32899-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

GREGORY E. DICKERSON, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT'S ASSIGNMENTS OF ERROR**

1. The trial court improperly imposed the following condition of community custody: "That you do not enter a romantic relationship without the prior approval of the CCO and Therapist." (CP159).

## **II. ISSUES PRESENTED**

1. Did the sentencing court abuse its discretion by imposing a community custody condition that the defendant "not enter a romantic relationship without the prior approval of the CCO and Therapist" where the defendant's conviction was for raping a person with whom he had a romantic relationship?

## **III. STATEMENT OF THE CASE**

On January 22, 2013, Ms. Coe was forcibly raped by the defendant, her ex-boyfriend. RP 378-96. Prior to the rape, they were involved in a romantic relationship for a period of years. RP 378-79. Ms. Coe had left the defendant and his residence approximately four months earlier because he had lied to her and had grabbed her by the face. RP 380. They did not see each other after that. RP 380-81.

The rape occurred at Defendant's residence. Ms. Coe had arranged to go to the defendant's house at 809 S. Pierce to get her W-2 tax form, as she had not changed her mailing address. RP 381-82.

She arrived about noon that day. RP 382. Defendant asked her to go downstairs to see what he had done to their daughter's bedroom. RP 383. Ms. Coe agreed; she walked down the stairs and into the bedroom while the defendant followed her, shutting the door behind them. 383-84. The defendant walked over to a student desk and removed a large knife from inside. RP 384-85. The defendant was holding the knife and moving it around her leg areas while talking to her, telling her that “one of us isn’t leaving here today.” RP 385-87.

The defendant asked Ms. Coe to take off her pants and she said no. RP 388. He repeated his demand more forcefully and then physically removed her pants. RP 389. Defendant told Ms. Coe to masturbate. RP 390. In fear of the defendant and his knife, she complied. Defendant began taking a video of Ms. Coe masturbating. RP 391. Defendant then instructed Ms. Coe to turn around. She turned around and he began masturbating, then penetrated her and ejaculated. RP 393-94.

Defendant was convicted by a jury of first degree rape. CP 108. The jury also found sufficient evidence for a weapons enhancement for being armed with a knife. CP 109. The defendant timely appealed.

The only issue raised by defendant on appeal relates to community custody condition no. 18, requiring that he not enter a

romantic relationship without the prior approval of his CCO and therapist. (CP 170-171, ordering conditions contained in appendix “H”, which conditions are listed at CP 108-09.

#### IV. ARGUMENT

A. THE SENTENCING COURT DID NOT ABUSE ITS DISCRETION BY IMPOSING A COMMUNITY CUSTODY CONDITION THAT THE DEFENDANT “NOT ENTER A ROMANTIC RELATIONSHIP WITHOUT THE PRIOR APPROVAL OF THE CCO AND THERAPIST,” WHERE DEFENDANT’S CONVICTION WAS FOR RAPING A PERSON WITH WHOM THE DEFENDANT HAD HAD A ROMANTIC RELATIONSHIP.

1. Standard of review

The Sentencing Reform Act of 1981(SRA) permits the court to impose crime-related prohibitions as part of a sentence. RCW 9.94A.703. It also allows a court to impose community placement conditions prohibiting contact with a “specified class of individuals,” requiring participation in crime-related treatment or counseling, and requiring the defendant to engage in affirmative conduct reasonably related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community. RCW 9.94A.704(3)(b)-(d)<sup>1</sup>.

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<sup>1</sup> RCW 9.94A.703 provides in relevant part:

When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

**(3) Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

An offender's usual constitutional rights during community placement are subject to SRA-authorized infringements. *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). Freedom of association may be restricted if the restriction is reasonably necessary to accomplish the essential needs of the state and public order. *State v. Riley*, 121 Wn.2d 22, 37–38, 846 P.2d 1365 (1993); *State v. Ancira*, 107 Wn. App. 650, 654, 27 P.3d 1246 (2001) (quoting *Riles*, 135 Wn.2d at 350, 957 P.2d 655). A crime-related prohibition will be reversed only if it is manifestly unreasonable. *Riley*, 121 Wn.2d at 37.

2. Discussion

The defendant argues that the order is not reasonable because “[i]t prohibits Mr. Dickerson from his right to associate which (sic) whom he pleases under the First Amendment.” Brief of Appellant, p. 6 (Br. App. hereafter). His complaint fails to acknowledge an offender's usual constitutional rights during community placement are subject to SRA-authorized infringements. *State v. Ross*, 129 Wn.2d at 287. He has been

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- (b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;
- (c) Participate in crime-related treatment or counseling services;
- (d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

convicted of a serious violent offense, first degree rape, and his regular constitutional rights are subject to infringements. *Id.*

Defendant's second complaint - and his real argument - is that the condition requiring prior approval before entering a romantic relationship has no relationship to his current offense. Br. App. p. 6. However, the defendant has overlooked long standing jurisprudence stating that "no causal link need be established between the condition imposed and the crime committed, so long as the condition relates to the circumstances of the crime." *State v. Llamas-Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992).

In *Llamas-Villa*, the court upheld a condition of community prohibiting contact with people who use, possess, or deal with controlled substances, where the defendant was convicted of possession with intent to deliver cocaine. In doing so, the court noted that *State v. Parramore*, 53 Wn. App. 527, 768 P.2d 530 (1989), upheld a community supervision condition requiring defendant convicted of selling marijuana to submit to urinalysis because the condition was directly related to the defendant's drug conviction despite absence of evidence on whether defendant smoked marijuana.

Even the main case cited by the defendant, *State v. Moultrie*, 143 Wn. App. 387, 177 P.3d 776, 782 (2008), supports the State's position.

See, Br. App. pp. 5-6. In *Moultrie*, the defendant was convicted of raping a developmentally disabled female, and at sentencing, the court imposed a requirement that he not have unsupervised contact with “ill” adults. The appellate court found this requirement was unconstitutionally vague, because the term “ill” covered more than vulnerable or disabled people. However, in doing so the *Moultrie* court noted:

Here, the terms “vulnerable” and “disabled” adults accurately describe the class of people victimized by the crime for which Moultrie was convicted. Thus, an order prohibiting contact with such individuals is reasonably related to the State’s essential need to protect such adults and is not overbroad.

*Moultrie*, 143 Wn. App. 387, 398-99.

In the instant case, Defendant raped a woman with whom he was romantically involved with. Thus, the term “romantic relationship” describes the main characteristic of the class of people victimized by Mr. Dickerson. Defendant’s claim, at its basic level, is that there is no causal relationship between the prohibition without permission and the crime. As this Court has explained:

“Although the conduct prohibited during community custody must be directly related to the crime, it need not be causally related to the crime.” *Letourneau*, 100 Wn. App. at 432, 997 P.2d 436.

. . . .

Next, appellants contend the prior approval condition as it relates to adult sexual contact does not relate to their crimes involving children. We disagree. As noted, a court is generally permitted to impose crime-related prohibitions on a convicted sex offender's period of community custody to protect the public and offer the offender an opportunity for self-improvement. *Letourneau*, 100 Wn. App. at 431, 997 P.2d 436. Here, the offender's freedom of choosing even adult sexual partners is reasonably related to their crimes because potential romantic partners may be responsible for the safety of live-in or visiting minors.

*State v. Autrey*, 136 Wn. App. 460, 467-68, 150 P.3d 580 (2006).

From the circumstances of this case, it may be argued that the only class of individual that was threatened by the defendant's conduct was those that are in, or have been in, a romantic relationship with him. Therefore, the limited prohibition that he not enter into a romantic relationship without prior approval of his CCO and therapist is one that is directly related to the circumstances of his crime. This limited prohibition does not prevent him from having a romantic relationship, it only requires approval first. It does not prohibit other types of relationships; platonic or otherwise. The condition does not prevent him from talking with people or associating with people, it only requires the prior approval before he enters a *romantic* relationship.

The SRA allows a court to impose a community placement condition prohibiting contact with a "specified class of individuals," participate in crime-related treatment or counseling, and perform

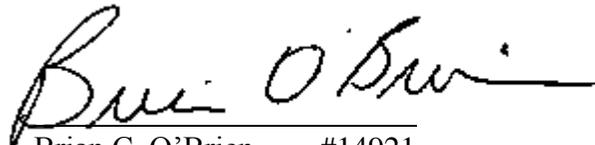
affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community. RCW 9.94A.704(3)(b)-(d). The trial court did not abuse its discretion in ordering the condition.

## V. CONCLUSION

For the reasons stated above, the superior court judgement and sentence should be affirmed.

Dated this 24 day of August, 2015.

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A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

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CERTIFICATE OF MAILING

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I certify under penalty of perjury under the laws of the State of Washington, that on August 24, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Dennis Morgan  
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8/24/2015  
(Date)

Spokane, WA  
(Place)

Crystal McNees  
(Signature)