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STATE OF WASHINGTON

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NO. 80499-1

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Petitioner,

vs.

GERALD CAYENNE,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. STATEMENT OF ISSUES

1. Whether a court's ability to enforce crime-related prohibitions or other conditions of a sentence, imposed upon a defendant over whom the court has personal jurisdiction, is limited to conduct committed at a location within the court's territorial jurisdiction?

2. Whether an Indian who commits an offense outside the geographic borders of a reservation is exempt from those facially neutral sentencing statutes that might interfere with the Indian's exercise of his federally created fishing rights?

III. STATEMENT OF THE CASE

The defendant, Gerald Cayenne, was charged by amended information filed on August 1, 2005, with two counts of unlawful use of net to take fish in the first degree in violation of RCW 77.15.580. CP 3. The jury found Cayenne guilty of one count, but were unable to reach a verdict as to the other count. CP 14-15.

A standard range sentence was imposed upon Cayenne on March 1, 2006. CP 21-28. The court also ordered the following crime-related prohibitions: "Defendant shall not own any gill net." CP 24.

Cayenne, an enrolled member of the Chehalis Tribe,¹ orally requested

¹The Confederated Tribes of Chehalis Indian Reservation are a federally recognized Indian tribe governing the Chehalis Indian Reservation near the town of Oakville, Lewis County, Washington. The Tribe is the successor to bands and tribes that did *not* enter into treaties with the United States and who therefore have no federally protected rights to fish

that the restriction upon his ownership of gill nets be limited to his off-reservation conduct. RP 3/1/2006 at 5; RP 2/28/2006 at 22. This request was denied. *Id.*

Cayenne filed a timely notice of appeal. CP 29. In his appeal, Cayenne challenged only that portion of the judgment and sentence that precluded him from owning gill nets. *Brief of Appellant*, at 1.

On May 22, 2007, the Court of Appeals issued a published opinion. The Court held that a state court may only impose a crime-related prohibition for activities engaged in by an Indian on state land. *State v. Cayenne*, 139 Wn. App. 114, 116, ¶ 1, 158 P.3d 623 (2007), *review granted*, 163 Wn.2d 1017 (2008). The Court remanded Cayenne's case to the trial court with directions "conduct a hearing and to enter a corrected judgment, which clarifies that the state trial court's imposition of a crime-related prohibition does not apply to activities within the Chehalis Indian Reservation." *Id.*

The State filed a timely motion to reconsider. That motion was denied on July 9, 2007. This Court granted the State's timely filed petition for review.

outside the reservation boundaries. Outside the reservation, tribal members must comply with all state laws concerning the taking of fish. *See generally Confederated Tribes of Chehalis Indian Reservation v. Washington*, 96 F.3d 334 (9th Cir. 1996), *cert. denied*, 520 U.S. 1168 (1997) (finding and concluding that Chehalis Tribe and Shoalwater Bay Indian Tribe have no treaty rights, no *off-reservation* fishing rights, and no unextinguished aboriginal fishing rights).

III. ARGUMENT

A. **A Sentencing Court's Power to Enforce its Crime Related Prohibitions Is Not Limited to That Court's Territorial Borders**

As a general rule, a superior court's jurisdiction extends to all criminal cases amounting to a felony that are committed, in whole or in part, within the state of Washington. *See* Const. art. IV, § 6; RCW 9A.04.030(1). An exception to this rule exists for offenses committed by an Indian upon trust property located within the geographic boundaries of a reservation. *See* Const. art. XXV; RCW 37.12.010. It is undisputed in the instant case that Cayenne committed the instant offense outside the geographic confines of the Chehalis Indian Reservation. RP 02/28/2006 at 6, 10, 38-39. The State, therefore, had jurisdiction over Cayenne's offense. *E.g. State ex rel. Best v. Superior Court for Okanogan County*, 107 Wash. 238, 181 P. 688 (1919) (state has jurisdiction to try Indian offenders for crimes committed outside reservation boundaries); *State v. Williams*, 13 Wash. 335, 43 P. 15 (1895) (same).

The superior court's subject matter jurisdiction is invoked by the filing of an information or indictment that charges an offense. Const. art. 1, § 25; CrR 2.1; RCW 10.37.010. The State filed an information that charged Cayenne with a felony. CP 1-2, 3-4, and 8-9.

A superior court obtains personal jurisdiction over an individual in a criminal case by that individual's presence in court. *State v. Blanchey*, 75 Wn.2d 926, 938, 454 P.2d 481 (1969). The record clearly establishes that Cayenne was personally before the court at trial and at sentencing. RP 2/28/2006, at 6-7; RP 03/01/2006 at 3.

A superior court's power at sentencing is limited to the authority granted to it by the legislature. *State v. Hughes*, 154 Wn.2d 118, 149, ¶ 69, 110 P.3d 192 (2005). With respect to felony matters, the Legislature has adopted the Sentencing Reform Act ("SRA"). See Chapter 9.94A RCW. The SRA applies "equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant." RCW 9.94A.340.

Cayenne was convicted of the unranked felony offense of unlawful use of nets in the first degree. Compare RCW 77.15.580 with RCW 9.94A.515 (list of ranked offenses). When an individual is sentenced for an unranked offense, the SRA authorizes the trial judge to impose a period of confinement of up to 1 year in jail and to impose crime related prohibitions. RCW 9.94A.505(1), (2)(b), and (8). The crime related prohibitions may extend for a period of time not to exceed the statutory maximum for Cayenne's crime. *State v. Armendariz*, 160 Wn.2d 106, 156 P.3d 201 (2007).

The SRA does not contain a list of available crime related prohibitions, but case law indicates that these prohibitions can include restrictions of otherwise lawful behavior. *See, e.g., State v. Riley*, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993) (prohibition against possession of a computer, associating with known hackers, and communication with computer bulletin boards); *State v. Bahl*, 137 Wn. App. 709, 714-15, 159 P.3d 416 (2007), *review granted*, 162 Wn.2d 1011 (2008) (prohibition upon possessing “sexual stimulus material” or frequenting establishments such as bookstores and movie houses devoted to sexually explicit materials); *State v. Simpson*, 136 Wn. App. 812, 150 P.3d 1167 (2007) (prohibition upon future sexual activity with adults unless the sex partner gives explicit consent and the defendant’s therapist and community corrections officer approve of the liaison); *State v. Hearn*, 131 Wn. App. 601, 607-09, 128 P.3d 139 (2006) (prohibition upon associating with known drug offenders). These cases are consistent with other portions of the SRA that explicitly authorize courts to impose conditions upon defendants for which violations are not a crime. *See also*, RCW 9.94A.505(11) (participation in a domestic violence perpetrator program); RCW 9.94A.650(2)(a) (devote time to a specific employment or occupation); RCW 9.94A.660(7)(b) (remain within prescribed geographical boundaries).

Here, Cayenne committed the offense of unlawful use of nets in the first degree with a gill net. RP 02/28/2006 at 11-14, 19-20; Ex. 2. The court's imposed restriction upon ownership of gill nets directly related to the circumstances of the crime for which Cayenne had been convicted. RCW 9.94A.030(13).

The SRA grants the superior court the authority to sanction an individual who violates a crime related prohibition. *See* RCW 9.94A.634. A court's sanctioning of a defendant for violating a term of parole, probation or supervision is not considered a new criminal prosecution. Rather, the sanction is considered punishment for the original crime. *See, e.g., State v. Watson*, 160 Wn.2d 1, 10-11, 154 P.3d 909 (2007) (incarceration for probation violations relates back to the original conviction for which probation was granted); *State v. Prado*, 86 Wn. App. 573, 578, 937 P.2d 636 (1997) (modifications of sentences due to violations of the conditions of community supervision is deemed punishment for the original crime). *Accord United States v. Meeks*, 25 F. 3d 1117, 1122 (2d Cir. 1994) ("the conduct that constitutes a supervised-release violation is often not a criminal offense. If the individual may be punished for an action that is not of itself a crime, the rationale must be that the punishment is part of the sanction for the original conduct that was a crime.").

The SRA contains no provision restricting the trial judge's ability to enforce any crime related prohibitions to acts committed within the territorial jurisdiction of the court. To the contrary, Washington's entry into the Interstate Compact for Adult Offender Supervision. RCW 9.94A.745 through RCW 9.94A.74504 is memorialized in the SRA. The purpose of this Compact is to facilitate the return of an individual who violates the terms of a Washington judgment and sentence while in another state. *See generally* RCW 9.94A.745, Article I. Other provisions facilitate the return of offenders from jurisdictions that are not members of the Compact. *See* RCW 9.94A.74503; RCW 9.95.270-.290.

Prior to the existence of these compacts, probation and parole violators who had left the territorial jurisdiction of the sentencing court were extradited under the authority of the Uniform Criminal Extradition Act² and U.S. Const. Art IV, § 2. Challenges to these earlier transfers were generally directed towards the sentencing court's inability to prove that the violator had not "fled" the sentencing jurisdiction, or was not "charged" with a crime in the sentencing jurisdiction. *See, e.g., Hidalgo v. Purcell*, 6 Ore. App. 513, 488 P.2d 858 (1971) (rejecting the not "charged" argument); *Brown v. Lowry*, 185 Ga. 539, 195 S.E. 759 (1938) (rejecting a defendant's claim that he could

²Washington adopted the Uniform Criminal Extradition Act in 1971. Chapter 10.88 RCW. This statute specifically authorizes the return to this state of "a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole". RCW 10.88.410(2).

not be extradited because he was in Georgia with the consent of the Board of Parole of New York).

In *State ex rel. Westlund v. Nehis*, 43 Wis.2d 379, 168 N.W.2d 866, 868-69 (1969), an individual who returned to Wisconsin following his parole from Texas sought to remove a parole violation detainer that Texas had placed upon him, based upon his commission of a burglary in Wisconsin. The individual and his counsel raised three separate challenges to his return to Texas, but

What trouble[d] petitioner's counsel most is the idea that a state may not punish anyone for an act committed outside its borders. Can something done in Wisconsin result in crime in Texas, his brief asks. The answer is that the crime was committed by petitioner in Wisconsin, but its commission was a breach of the condition of his release from prison and parole in Texas. For the crime against the state committed in Wisconsin, he is to be punished only in Wisconsin. For the breach of the condition upon which his living on parole in Wisconsin was authorized, he can be returned to Texas. There is neither double jeopardy nor double punishment involved.

The crime for which he is returnable to Texas remains the crime committed in Texas for which he was initially sent to the Texas penitentiary. Of his status while on parole, it can be said as the Kansas court phrased it:

". . . a convict, on parole, although permitted to go outside the prison walls, is still in legal custody and subject at any time to be taken back within that institution . . . he is subject to the direction and control of the authorities placed in charge of that institution." *In re Tabor* (1952), 173 Kan. 686, 250 Pac. 2d 793, cited in *Hunt v. Hand* (1960), 186 Kan. 670, 352 Pac. 2d 1.

Neither the federal constitution nor federal enactments have taken from the states the right to maintain such supervision and enforce such conditions as to parolees during the period of their parole. In fact, in this case, there is no conflict whatsoever between the applicable federal and state laws. It is not a requirement under either that a "fugitive from justice" be solely one who has left a particular state to avoid prosecution or trial. It is enough that the person to be extradited was in the demanding state at the time of the commission of the crime for which he is being prosecuted or for which his status as parolee derives. The state's concern with perpetrator of a crime within such state does not end with his being found guilty of the offense involved. It includes and extends to the enforcement of the conditions of his parole which are designed to promote rehabilitation more than as part of a punishment procedure. The alternative result of considering a Wisconsin robbery conviction no legitimate concern of parole authorities in Texas makes neither good law nor sound public policy.

Nehis, 43 N.W.2d at 868-69.

Just as the Wisconsin Supreme Court could locate no provision in the federal constitution or in federal enactments that precludes a state from maintaining supervision over defendant who leave the state's territorial jurisdiction while subject to conditions of sentences, Cayenne has not identified any legal authority to support his contention that the State loses its ability to enforce crime related prohibitions at the border of the Chehalis Indian Reservation.

Neither the Congressional act that created the Chehalis Indian Reservation, nor the general rules applicable to Indian Country provides the immunity that Cayenne seeks. The court of appeals' concern that the Grays

Harbor Superior Court could not enforce its no gill net provision within the Chehalis Indian Reservation is unfounded. *See Cayenne*, 139 Wn. App. at 118–19, ¶ 6 (citing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832)).

In *Nevada v. Hicks*, 533 U.S. 353, 1215 S. Ct. 2304, 150 L. Ed. 2d 398 (2001), the United States Supreme Court confirmed that state authority within Indian reservations is not totally suspended, specifically rejected the statement relied on in *Cayenne*:

Though tribes are often referred to as “sovereign” entities, *it was “long ago” that “the Court departed from Chief Justice Marshall’s view that ‘the laws of [a State] can have no force’ within reservation boundaries. Worcester v. Georgia*, 6 Pet. 515, 561, 8 L. Ed. 483 (1832),” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980). “Ordinarily,” it is now clear, “an Indian reservation is considered part of the territory of the State.” U.S. Dept. of Interior, Federal Indian Law 510, and n.1 (1958), *citing Utah & Northern R. Co. v. Fisher*, 116 U.S. 28, 6 S. Ct. 246, 29 L. Ed. 542 (1885); *see also Organized Village of Kake v. Egan*, 369 U.S. 60, 72, 82 S. Ct. 562, 7 L. Ed. 2d 573 (1962).

Hicks, 533 U.S. at 361–62 (emphasis added) (alternation in original) (footnote omitted); *see also California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 214–15, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987) (“Our cases, however, have not established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent.”).

The *Hicks* Court then explained exactly how the cited statement from *Worcester* reflected that particular case and time:

[The statement in *Worcester*] must be considered in light of the fact that “[t]he 1828 treaty with the Cherokee Nation . . . guaranteed the Indians their lands would never be subjected to the jurisdiction of any State or Territory.” *Organized Village of Kake v. Egan*, 369 U.S. 60, 71, 82 S. Ct. 562 (1962); *cf. Williams v. Lee*, 358 U.S., at 221–222, 79 S. Ct. 269 (comparing Navajo treaty to the Cherokee treaty in *Worcester*).

Hicks, 533 U.S. at 362 n.4 (alterations in original).

The *Hicks* Court acknowledged the rule championed by the court of appeals, that states generally do not exercise power to sanction *on-reservation* crimes by a tribal member:

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State’s regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest. *Bracker, supra*, at 144, 100 S. Ct. 2578.

Id. at 362.

This rule, however, stands in stark contrast with state authority over *off-reservation* crimes by Indians, such as the poaching crimes involved in both *Hicks* and *Cayenne*. There is no barrier to state authority over *off-reservation* criminal activity:

It is also well established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed (as was the alleged poaching in this case) off the reservation. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148–149, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973).

Hicks, 533 U.S. at 362.

The state's authority over off-reservation conduct would be stymied if the state could not serve process, such as a criminal search warrant or arrest warrant, upon a member of an Indian tribe, on the member's property, within his tribe's reservation. The *Hicks* Court specifically held that there is no legal barrier to this exercise of state power. *Hicks*, 533 U.S. at 363-64. This rule is required, in part, to "prevent [such areas] from becoming an asylum for fugitives from justice." *Hicks*, 533 U.S. at 364 (quoting *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 533, 29 L. Ed. 264, 5 S. Ct. 995 (1885)).³ The holding of *Hicks* is consistent with this Court's precedent. *See generally*, *Somday v. Rhay*, 67 Wn.2d 180, 181, 406 P.2d 931 (1965) (deputy sheriff authorized to arrest individuals found upon lands within the geographic boundaries of a reservation that are subject to state jurisdiction under Chapter 37.12 RCW).⁴

³That this risk is not purely hypothetical is demonstrated by *City of Yakima v. Aubrey*, 85 Wn. App. 199, 931 P.2d 927, review denied, 132 Wn.2d 1011 (1997). In *Aubrey*, the defendant sought to avoid the revocation of his deferred prosecution by relocating to the Blackfeet Indian Reservation and by obtaining an ex parte order from the Blackfeet Tribal Court that barred him from responding to the district court summons directing him to report for sentencing. *See also Arizona ex rel. Merrill v. Turtle*, 413 F.2d 683 (9th Cir. 1969) (Ninth Circuit refused to allow Arizona to enter the Navajo Reservation to arrest a member for extradition to Oklahoma after the Navajo Tribal Court refused to extradite the member to Oklahoma because tribal law forbade extradition except to three neighboring States).

⁴This Court in *Somday* upheld the sheriff's right to arrest an Indian found on fee simple land within the reservation. The Court's consideration of the status of the land upon which the Indian arrestee was standing is actually irrelevant to the validity of the arrest. This is established by the *Hicks* Court's rejection of the argument posited by the United States Government as amicus.

To the extent that the court of appeals adopted its rule out of a concern for tribal sovereignty, its uneasiness was unwarranted. As the *Hicks* Court concluded:

tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations -- to "the right to make laws and be ruled by them." The State's interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government.

Hicks, 533 U.S. at 364.

This black letter law illustrates why the court of appeals had no need to undertake the complex review of state power to criminally punish *on-reservation* crimes by members of the Chehalis Tribe. A violation of the sentencing condition is not an *on-reservation* crime. Any sanction for Cayenne's failure to comply with a sentencing prohibition is punishment for Cayenne's conviction for an *off-reservation* crime. The court of appeals'

The Government equated a state's power to serve process on Indians within the reservation with whether the state could exercise criminal authority over Indians *on-reservation*. The Court labeled this approach to the question of state authority as "misleading". *Hicks*, 533 U.S. at 365. It explained that the Government had erred by relying on statutes that concern state authority over *crimes on a reservation*. This point was irrelevant because the state was not attempting to exercise authority over an *on-reservation* crime by an Indian, the state was enforcing laws related to an *off-reservation* crime

The court of appeals in *Cayenne* relied on the same analysis of Public Law 280 to reach its conclusion that the trial court could not sanction Cayenne for violating the no gill net crime related prohibition within the reservation. *See Cayenne*, at 120-124. While the court of appeals may have accurately captured the complicated issue of Public Law 280, *Hicks* demonstrates that it is not relevant to state authority that exists in connection with an *off-reservation* crime.

order to amend the judgment and sentence must, therefore, be reversed.

B. State Laws of General Applicability May Be Enforced Against an Indian Even If it Might Impact the Indian's Exercise of Federally-secured Hunting or Fishing Rights

Both Cayenne and the court of appeals tendered an alternative basis for suspending the no gill net crime related prohibition while Cayenne was within the Chehalis Indian Reservation. This alternative basis was the need to preserve Cayenne's federally-secured fishing rights.⁵ *See Cayenne*, 139 Wn. App. at 123, n. 8. Cayenne's status as an Indian, however, does not serve to restrict the trial court's sentencing authority when an offense is committed within the court's territorial jurisdiction. To the contrary, the Legislature has expressly precluded consideration of a defendant's ethnicity in the imposition of a sentence under the SRA. RCW 9.94A.340.

An Indian defendant who is convicted of a crime maybe incarcerated in prison or jail, even though such detention will interfere with his or her federally-secured hunting and fishing rights. Neither Cayenne nor the court of appeals have claimed that the order of commitment must include a provision directing such a defendant's periodic release during fishing and hunting seasons. Both, however, champion the proposition that probation

⁵Chehalis Indians have no off-reservation treaty fishing rights because they were not signatories to any treaties and there is no other federally created off-reservation fishing right. *See Confederated Tribes of Chehalis Indian Reservation v. Washington*, 96 F.3d 334, 340 (9th Cir. 1996), *cert. denied*, 520 U.S. 1168 (1997) (rejecting the Chehalis Tribe's claim to off-reservation fishing rights under theories of unextinguished aboriginal rights or fishing rights under the Treaty of Olympia).

conditions should be intermittently suspended to accommodate an Indian defendant's desire to engage in federally-secured hunting and fishing rights.

The first problem with this proposition is that conditions of probation may already interfere with a defendant's constitutional rights. *Riley*, 121 Wn.2d at 37-38 ("Limitations upon fundamental rights are permissible, provided they are imposed sensitively."); *Bagley v. Harvey*, 718 F.2d 921 (9th Cir. 1983) (an individual's constitutional right to travel, having been legally extinguished by a valid conviction followed by imprisonment, is not revived by the change in status from prisoner to parolee). *Accord Williams v. Wisconsin*, 336 F.3d 576, 581-82 (7th Cir. 2003) (parolees have no right to control where they live in the United States; the right to travel is extinguished for the entire balance of their sentences); *State v. Winterstein*, 140 Wn. App. 676, 690, 166 P.3d 1242 (2007) (probationers have lessened protection from warrantless searches); *State v. McBride*, 74 Wn. App. 460, 467, 873 P.2d 589 (1994) ("Reasonable restrictions on travel during community supervision do not violate a person's constitutional right to travel."). If a defendant's constitutional rights may be diminished during probation, then surely his non-constitutional rights may be diminished.

Second, an Indian defendant's federally secured hunting and fishing rights may be interfered with by the application of a non-discriminatory state law that is otherwise applicable to all citizens of the state. *See State v. Olney*,

117 Wn. App. 524, 72 P.3d 235 (2003), *review denied*, 151 Wn.2d 1004 (2004) (prosecution for unlawful possession of a loaded firearm in violation of RCW 77.15.460). The provision authorizing a court to impose crime related prohibitions upon an individual who is convicted of a felony is a non-discriminatory state law that is applicable to all citizens of the state who are convicted of a felony. The provision, RCW 9.94A.505(8), is not exclusively directed to fish and game matters. To the contrary, it is directed toward community protection and toward reducing the risk of reoffense by offenders in the community. *See* RCW 9.94A.010 (setting out the purposes of the SRA). Thus, the State need not establish that the crime-related prohibitions imposed are conservation related in order to enforce such prohibitions against an Indian felon.

Third, other courts have upheld sentencing restrictions imposed upon Indian defendants that may impede the defendant's enjoyment of treaty based fishing or hunting rights. In *United States v. Gallaher*, 275 F.3d 784 (9th Cir. 2001), the Ninth Circuit refused to vacate the district court's conviction for being a felon in possession of a firearm and a sentencing provision that precluded the Indian defendant from possessing "any firearms or other dangerous weapons, including but not limited to any bows and arrows or crossbows." *Gallaher*, 275 F.3d at 793. The defendant contended that the statute restricting a felon's ability to possess a weapon impermissibly

interfered with his right to hunt under the Colville Treaty. *Gallaher*, 275 F.3d at 787-88. The argument was rejected on the grounds that the effect of the law and the sentencing restrictions on the defendant's right to hunt is merely incident, and applicable only to him. This limited applicability did not abridge the treaty rights that belong to the tribe as a whole. *Gallaher*, 275 F.3d at 789 (quoting *United States v. Three Winchester 30-30 Caliber Lever Action Carbines*, 504 F.2d 1288, 1292 (7th Cir. 1974)).

A similar result was reached in *United States v. Juvenile #1*, 38 F.3d 470 (9th Cir. 1994). In this case, the Indian juvenile offender protested a condition of probation that precluded him from possessing a firearm prior to his 21st birthday. The Indian juvenile offender contended that an exception to this restriction was required to allow him to participate in ceremonial hunts that are part of his Tribe's rite of passage from boyhood to manhood. The Ninth Circuit refused to second guess the trial court's refusal to create such an exception, noting that the juvenile offender could still participate in tribal hunts, albeit with a weapon other than an firearm. *Juvenile #1*, 38 F.3d at 473.

Here, the sentencing court considered Cayenne's request for an on reservation exception to the no gill net prohibition. RP 3/01/2006, at 5. The sentencing court rejected the request based upon Cayenne's two prior state violations and one prior tribal fishery violation. RP 3/01/2006, at 4-6. It can

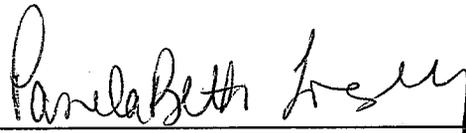
hardly be said that no other reasonable judge would have taken the same position. The restriction, moreover, was reasonably circumscribed. Cayenne is still free to take fish using a rod and reel or other devices.

IV. CONCLUSION

The court of appeals erred by ordering the trial court to modify its crime related prohibitions. Its decision should be reversed.

Respectfully Submitted this 23rd day of May, 2008.

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PROOF OF SERVICE RECEIVED
SUPREME COURT
STATE OF WASHINGTON

I, Amber Haslett, declare that I have personal knowledge of the
2008 MAY 23 P 12: 52
matters set forth below and that I am competent to testify to the matters stated
BY RONALD R. CARPENTER
herein.

CLERK

On the 23rd day of May, 2008, I deposited in the mails of the United
States of America, postage prepaid, a copy of the document to which this
proof of service is attached in an envelope addressed to:

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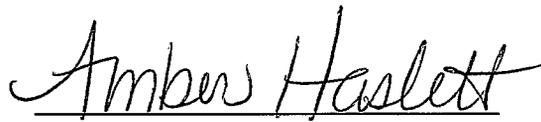
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I declare under the penalty of perjury of the laws of the State of
Washington that the foregoing is true and correct.

Signed this 23rd day of May, 2008, at Olympia, Washington.



AMBER HASLETT