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NO. 89730-1

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF

STEVEN JAMES MONTGOMERY,

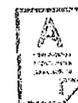
Petitioner.

**CORRECTED SUPPLEMENTAL BRIEF OF RESPONDENT
DEPARTMENT OF CORRECTIONS**

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I. INTRODUCTION

The Department reviewed risks and imposed conditions of community custody that limit Montgomery's contact with minors, including family members, without prior approval. The conditions are proper under RCW 9.94A.704 because they do not conflict with any court-imposed conditions. The conditions do not violate any constitutional right to parent because restricting unapproved contact between Montgomery and minors—including his children—was based on a risk assessment showing that such prior approval is reasonably necessary to protect public safety. Finally, the conditions do not violate the Ex Post Facto Clause. The conditions are not punishment and the same power to impose conditions for supervision existed when Montgomery committed his underlying crime. Therefore, the Court should affirm the Court of Appeals' dismissal of the personal restraint petition.

II. STATEMENT OF THE CASE

A. The Crime and Sentence

On July 13, 2008, Montgomery drove home a 15-year-old girl who babysat for the Montgomery family. *State v. Montgomery*, 169 Wn. App. 1031 (2012) (unpublished opinion) (No. 64604-4-I). In the car, Montgomery gave the girl alcohol, talked about sexually explicit topics, and began masturbating. *Id.* Montgomery tried to put the girl's hand in his

crotch, but she pulled away. *Id.* Montgomery then reached across and touched her breast, but she brushed his hand away. *Id.* When they arrived at the girl's home, she got out of the car, went inside the house, and told her mother about Montgomery's acts. *Id.*

A jury convicted Montgomery of third degree child molestation and communication with a minor for immoral purposes. *Id.* The court sentenced him to sixty months of confinement for the child molestation offense, and to probation for the communication with a minor offense. *See* Appendices (App.) 2 (probation sentence) & 3 (prison sentence).¹ The probation term tolled until Montgomery was released from confinement.²

When the court sentenced Montgomery in 2010, it imposed supervision conditions for the term of probation. *See* App. 2 at 1 & 2 ("defendant shall comply with the list of conditions" in "Appendix A" to prison sentence); App. 3 and App. 21 (the conditions). The prosecutor recommended 25 conditions, including several conditions concerning contact with minors. App. 21. The court imposed 16 conditions, but did not impose nine conditions concerning contact with minors. *Id.* As to

¹ Citations to Appendices 1-17 refer to the appendices attached to the Department's previously filed Response to the Motion for Discretionary Review. Citations to Appendices 18, 19, 21, and 22 refer to the appendices attached to this brief. Former appendices 20 and 23 are removed and not referenced in this corrected brief.

² *See State v. Robinson*, 142 Wn. App. 649, 653, 175 P.3d 1136, 1137 (2008) ("A defendant's suspended sentence probationary period is tolled where the defendant . . . is not subject to the court's control and probation supervision. . . . This includes the time a defendant is . . . in prison . . .").

those nine conditions, the judge simply stated, “I am not at this point imposing or requesting that there be imposed No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 18.” App. 19, at 11. Although the court did not impose those additional conditions “at this point,” *see* App. 19, at 11, the judge did not say the conditions could not or would not be imposed later. Nor does the judgment and sentence state that other conditions could not be imposed later. The record shows that neither the court nor the parties discussed the Department’s authority to later add those conditions. *See* App. 19, at 4 & 11.

B. Montgomery’s Challenge to the Department’s Conditions

After Montgomery finished his prison term for his child molestation conviction, he began serving his probation term in 2013. The Department imposed several conditions of supervision including the condition to have no contact with minor children, except for his biological son, unless he had prior approval from his community corrections officer (CCO) and from his treatment provider, and an approved adult chaperone is present. App. 5, at 4; App. 6, at 9; App. 8, at 1.

Montgomery is the adoptive parent of his wife’s teenage daughter. App. 8, at ¶ 3. The CCO received information from a confidential source indicating that Montgomery may have sexually abused his daughter. App. 8, at 2. The CCO herself witnessed behavior indicating that Montgomery

may have an unhealthy fixation on his daughter. App. 8, at 2. The daughter and the son live at Montgomery's wife's house (which is also his mother's house). In addition, the house is within the proximity of other minors and victim-aged children. App. 11, at 2. During Montgomery's supervision, an official with Child Protective Services (CPS) and the Edmonds Police Department informed Montgomery's CCO that CPS had investigated the home in the past. App. 8, at ¶ 3. CPS also informed the CCO that it had an open investigation regarding possible removal of the children from the home. App. 8, at ¶ 3. For all of these reasons, plus Montgomery's failure to obtain sex offender treatment, and the absence of a therapist's opinion that it is safe for Montgomery to have contact with his children without permission, the Department prohibited Montgomery from being at his wife's house without prior permission as detailed in App. 5, at 4 and App. 6, at 8. *See* App. 8. But on April 8, 2013, less than a week after acknowledging receipt of the conditions, Montgomery was arrested for being at his wife and children's house without permission. App. 7. The Department sanctioned him for that violation. App. 12 and 13.

The record shows that the Department's conditions related to unapproved contact with minors continued to exist as Montgomery moved for Discretionary Review. The conditions reflected the Department's original risk assessment and assessment of circumstances, as well as the

Department's ongoing supervision. These continued to show a need for Montgomery to obtain prior approval before he had contact with minors, including his daughter. For example, the CCO sought information that Montgomery had engaged in treatment addressing sexual deviancy, but he had not obtained treatment. App. 9 (entries dated 7/30/2013; 10/28/2013). The CCO noted that Montgomery faced a problem participating in sexual offender treatment because he denied his past child molestation crimes. App. 10. The CCO contacted Montgomery's daughter's therapist to evaluate risks of approving Montgomery's request for a visit with the daughter. App. 10. In August 2013, the CCO spoke at length with the daughter's therapist and found the therapist did not support visitation. App. 10. Montgomery made subsequent requests to his CCO to see his daughter but he rescinded a previously given release, preventing his CCO from communication with his daughter's therapist. App. 9 (entries dated 01/21/2014, 02/04/2014). In January 2014, When the CCO explained to Montgomery that she needed to communicate with the daughter's therapist to evaluate risk, he became agitated. App. 9 (entry dated 1/21/2014). And in December 2013 and January 2014, Montgomery was arrested and sanctioned for violating probation by using methamphetamine. App. 9 (entries dated 12/03/2013, 01/07/2014).

As discussed in more detail in the Department's answer to Montgomery's Motion for Discretionary Review, Montgomery challenged the Department's conditions using an inappropriate superior court proceeding in May 2013. At first he raised two claims: that the Department's conditions violated the prohibition against ex post facto laws, and that the Department's conditions violated the statutory requirement that Department-imposed conditions not contravene or decrease the sentencing court's conditions. App. 18, at 14-15. The Department submitted an amicus brief to point out the mistakes in Montgomery's procedural approach and asked the court to transfer the case to the Court of Appeals as a personal restraint petition (PRP).

Without addressing the merits of the ex post facto and statutory claims, the superior court agreed with the Department and transferred Montgomery's challenge to the Court of Appeals to be heard as a PRP challenge to the Department's conditions. The Court of Appeals, however, designated the prosecutor's office as the proper respondent and denied the prosecutor's motion to substitute the Department as respondent, eliminating the Department's involvement.

The Court of Appeals granted Montgomery's motion for a reference hearing by the trial court, which found it had not considered at sentencing whether the Department in the future might impose additional

conditions, including ones not imposed by the court. *See* App. 22, at 1. The court also found it had not placed limits on the Department's authority to impose conditions of probation related to contact with minors.

The Court of Appeals dismissed the PRP in November 2013 and this appeal followed. This Court substituted the Department as the proper respondent.

III. ARGUMENT

The issues raised by Montgomery do not demonstrate a basis for relief. First, the Department's conditions are not contrary to the sentencing court's conditions and do not violate RCW 9.94A.704(6). Second, the Department's conditions are reasonably necessary to prevent Montgomery from reoffending and to protect community safety. Montgomery's evidence challenging the conditions of supervision does not impeach the past—or present-day—need for the conditions, and fails to show a violation of his constitutional rights as a parent. Finally, there is no merit to his *ex post facto* challenge because there has been no increase in the quantum of punishment existing at the time Montgomery committed his crimes.

A. The Department's Conditions Do Not Contravene Court-Imposed Conditions

The judgment and sentence expressly directs Montgomery to be under the supervision of a community corrections officer and to “follow implicitly the instructions of that department and rules and regulations promulgated by the department during the term of probation.” App. 2, at 1. RCW 9.94A.501 mandates that the Department supervise Montgomery during his probation, and RCW 9.95.210(5) mandates that the Department “promulgate rules and regulations for the conduct of the person during the term of probation.” In turn, RCW 9.94A.704(2) mandates that the Department assess Montgomery’s risk of reoffense and authorizes the Department to impose additional conditions of supervision based upon his risk to community safety. Thus, current statutes expressly authorize the Department to impose conditions on Montgomery. *In re Golden*, 172 Wn. App. 426, 430, 290 P.3d 168 (2012).

Montgomery’s Motion for Discretionary Review does not dispute that RCW 9.94A.704 applies in this way. *See* MDR at 7. He argues instead that the Department’s conditions are contrary to conditions imposed by the superior court, violating RCW 9.94A.704(6). That statute provides, “The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions.” *See*

also former RCW 9.94A.715(2)(c). The Department's conditions do not conflict with or contravene a condition ordered or imposed by the court.

Montgomery does not claim the Department's conditions conflict with an express condition by the sentencing court. Rather, he argues that the Department's conditions are contrary to conditions that, quite literally, were *not* ordered and *not* imposed by the court. This is because Montgomery relies on an inference from the court declining to impose certain proposed conditions at sentencing. There is, of course, no sentencing court condition that "Montgomery shall have unlimited contact with his children." Accordingly, the Department's conditions are not contrary to and do not contravene or decrease a court-imposed condition.

Two additional facts confirm this conclusion. First, the superior court did not indicate it would never order the conditions later imposed by the Department. It stated only that it was not imposing those conditions "at this point." App. 19, at 11. This statement corresponds with the law and common sense by preserving the power to impose conditions based on future risk assessments. Second, the court in the reference hearing found it had not considered—and therefore did not intend to preempt—the Department's authority to impose necessary conditions. Appendix 22, at 1.

Montgomery's interpretation, if accepted, would create a terrible precedent and a conundrum for superior courts because it converts the

absence or rejection of a condition into an implied right. Montgomery's argument would allow any offender to claim that a condition not imposed by the superior court prevents the Department from adding the condition—a conclusion that defies the intent and plain language of the statute. The statute allows the Department to impose conditions not imposed by the superior court and conditions are not precluded simply because a court at sentencing did not find them necessary at that time. The statute only prohibits the Department from decreasing or contravening conditions actually imposed by the court.

The Court should reject Montgomery's argument and hold that the Department is not required to look behind the express conditions or to infer additional conditions from those not ordered by the sentencing court.

B. The Department's Conditions Are Authorized by Law and Are Reasonably Necessary under the Facts

In his second issue, Montgomery claims the Department imposed a "blanket" prohibition on any contact with his children, and it unreasonably interferes with parenting rights in violation of due process. Montgomery's argument fails because the Department's conditions are reasonable, which distinguishes these conditions from the cases Montgomery cites.

As a starting point, the Department's ability to restrict Montgomery's contact with children is not limited to the victim of his underlying crimes, or

to children similar to the victim of his underlying crimes. RCW 9.94A.704 does not limit the Department to imposing crime-related conditions. *Golden*, 172 Wn. App. at 433 (the statute does not require the conditions be “crime related”). The Department may impose conditions that are related to potential risk to community safety. *Id.* (interpreting RCW 9.94A.704 and former RCW 9.94A.715); *State v. McWilliams*, 177 Wn. App. 139, 154, 311 P.3d 584 (2013) (Department had authority to impose conditions based upon the risk to community safety). Conditions that allegedly interfere with a fundamental right to care, custody, and companionship of one’s children are constitutional if “reasonably necessary to accomplish the essential needs of the State and public order.” *In re Personal Restraint Petition of Rainey*, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010). The Department’s determination of reasonable necessity is reviewed for abuse of discretion. *Id.*³

The Department evaluated Montgomery’s risk to community safety. Its risk assessment found him to be risk level HV (“high violent”). *See App.*

³ As the Court of Appeals discussed in a recent, well-reasoned decision, parents have a fundamental right to raise their children, but that right is not absolute. *State v. Corbett*, 158 Wn. App. 576, 598, 242 P.3d 52 (2010) (“Sentencing courts can restrict fundamental parenting rights by conditioning a criminal sentence if the condition is reasonably necessary to further the State’s compelling interest in preventing harm and protecting children.”). Limits on parenting may be imposed if reasonably necessary to accomplish the needs of community safety. *Id.* (citing *State v. Riles*, 135 Wn.2d 326, 349-50, 957 P.2d 655 (1998)). *See also Rainey*, 168 Wn.2d at 374; *State v. Berg*, 147 Wn. App. 923, 942, 198 P.3d 529 (2008), *abrogated on other grounds by State v. Mutch*, 171 Wn.2d 646, 664, 254 P.3d 803 (2011).

5, at 1. This means he has a high risk of reoffending violently. The Department also considered that victim-aged children live near his wife's home, that Child Protective Services had an open investigation as of early April 2013 regarding possible removal of both children from the home, that confidential information indicates he may have sexually abused his daughter, that his behavior suggested to the CCO he had an unhealthy fixation on her, and that her therapist did not recommend Montgomery have contact with her at that time. App. 8; App. 9; App. 10. The Department exercised discretion based on its assessment of the risks and created the conditions to alleviate the risks. Given these facts, the Department's imposition of conditions was not an abuse of discretion. *Golden*, 172 Wn. App. at 430 (conditions reviewed for abuse of discretion) (citing *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993)).

To challenge the conditions, Montgomery focuses on evidence with limited relevance, while ignoring the overall record. For example, he argues that the conditions are unreasonable because CPS closed its investigation after April 2013. But the Department set its conditions based on a risk assessment, and Department's conditions are implemented by a CCO who monitors Montgomery's substance abuse and failure to participate in sex offender treatment. Additionally, the Department has repeatedly told Montgomery that for him to have contact with his daughter, the Department

must have an open dialogue with her therapist. Montgomery, however, continues to prevent communication between the Department and the daughter's therapist. App. 9. He also has continually violated his other conditions, including repeatedly using methamphetamine. App. 9. The Department's conditions are not premised on the open CPS investigation, and Montgomery's crimes and the risks he presented were not erased when CPS closed that investigation.

Montgomery relies heavily upon *State v. Letourneau*, 100 Wn. App. 424, 997 P.2d 436 (2000), and *State v. Ancira*, 107 Wn. App. 650, 27 P.3d 1246, (2001). Both cases are distinguishable on their facts.

Letourneau found that a condition restricting contact with Letourneau's biological children was unnecessary because they were "not of similar age or circumstances" as Letourneau's victim (a teenage student), and there was no evidence the condition was "necessary to protect the offender's biological children from the harm of sexual molestation." *Letourneau*, 100 Wn. App. at 442. Letourneau was not a pedophile, and she did not otherwise pose a danger of sexual molestation to her own children, which showed that the condition was not related to potential risk. *Id.* Similarly, *Ancira* found a defendant convicted of domestic violence against his wife could not automatically be prohibited from all contact with his biological children. In that case, the condition

was “not reasonably necessary to protect the children against the harm of witnessing domestic violence between their parents.” *Ancira*, 107 Wn. App. at 656.

In contrast, the record here supports a condition restricting Montgomery from having unsupervised and un-approved contact with minors including his teenage daughter.⁴ Montgomery was convicted of two sex offenses committed against a 15-year-old girl that occurred while Montgomery was alone with her. *State v. Montgomery*, 169 Wn. App. 1031 (2012) (unpublished opinion) (No. 64604-4-I). The Department considered its risk assessment of Montgomery and reports that Montgomery has potentially molested his daughter in the past. App. 8. With this evidence, the Department reasonably concluded that requiring prior notice and approval before Montgomery had contact with his daughter was necessary to protect against the risk of harm to minors. *See State v. Warren*, 165 Wn.2d 17, 31-35, 195 P.3d 940 (2008) (upholding condition prohibiting defendant from contacting his wife, who was the mother of the children the defendant had molested); *State v. Autrey*, 136 Wn. App. 460, 467, 150 P.3d 580 (2006) (upholding condition prohibiting defendant convicted of child rape from having sexual contact with anyone without the person’s explicit consent).

⁴ The Department has allowed Montgomery to have unsupervised contact with his son. App. 8.

The Court should limit its review of Montgomery's claim of alleged interference with parenting because he raised this issue first in this court based on a limited record. The Acting Chief Judge in Division One did not address the issue; Montgomery raised it first in his Motion for Discretionary Review as Issue 2, pages 1 to 2. In his Reply Brief for Discretionary Review, Montgomery provided affidavits with anecdotal evidence as of March 2014. Those affidavits suggest he was then looking into treatment for sex offenders; that is not evidence he successfully pursued sex offender treatment and therefore it cannot undermine the original risk assessment. If Montgomery wants to argue that a condition monitored by the Department has become unreasonable, his burden is to litigate today's facts, not ask this Court to infer his present day trajectory from a March 2014 snap shot.

Montgomery has not demonstrated a factual basis to allow him contact with his daughter. Rather, the Department's conditions were and are reasonably necessary conditions in light of the overall risk assessments. The record includes evidence about an offender who was convicted of a sex offense against a minor and who poses a risk to similar minors. It does not show that Montgomery ever engaged in sexual offender treatment, and it shows a continuing problem with substance abuse. This confirms that the Department properly exercised its discretion

and “sensitively imposed” a restriction on Montgomery’s contact with all minors, including his own daughter, unless he has prior permission. *Rainey*, 168 Wn.2d at 374.

C. The Imposition of Conditions under RCW 9.94A.704 Does Not Violate the Ex Post Facto Clause

Montgomery argues that use of RCW 9.94A.704 to impose conditions of supervision violates the Ex Post Facto Clause because the Legislature enacted that statute after he committed his crimes, and because, he claims, the statute disadvantages him. But there is no ex post facto violation because there is no increase in the quantum of punishment existing at the time Montgomery committed his crimes. As shown below, although RCW 9.94A.704 was adopted after the crime, it is merely a reorganization and recodification of the Department’s previously existing authority to impose conditions of supervision.⁵

At the time of the crimes, a superior court could impose conditions of supervision for a term of probation *and* modify those conditions at any time during the course of the probation. RCW 9.92.060 (Laws of 2005, ch. 362, § 2); RCW 9.95.210 (Laws of 2005, ch. 362, § 4); RCW 9.95.230 (Laws of 1982, 1st Ex. Sess., ch. 47, § 11). Thus, a court had two bases for limiting a defendant’s contact with individuals or classes of individuals.

⁵ To the extent the Department’s brief opposing discretionary review was unclear regarding its 2008 authority, the Department hereby clarifies that its legal position is that the authority existed in 2008.

RCW 9.92.064 (Laws of 1982, 1st Ex. Sess., ch. 47, § 9); RCW 9.95.210. Thus, the conditions that Montgomery challenges could have been imposed under these statutes, albeit by a court, and do not reflect “new” conditions on his probation.

Moreover, since well before Montgomery committed his crimes in 2008, the Department *also* had authority to impose conditions of supervision on the offenders under its supervision, including probationers. *See e.g.*, former RCW 9.94A.715 (Laws of 2001, ch. 10, § 5); former RCW 9.94A.720 (Laws of 2000, ch. 28, § 26). The statutes have long authorized the Department to impose various conditions based upon an assessed risk of re-offense and risk to community safety, including conditions prohibiting an offender from having contact with a specific individual or types of individuals. Former RCW 9.94A.720(1)(c) (2008). The Department could not impose conditions that contradict or decrease a condition imposed by the sentencing court. Former RCW 9.94A.715(2)(c) (2008). This long-standing authority continues in RCW 9.94A.704. As to “probationers” in particular, the Department’s pre-existing authority arose from several statutes. *See* RCW 9.94A.501 (Laws of 2005, ch. 362, § 1); RCW 9.92.060(5) (Laws of 2005, ch. 362, § 2); RCW 9.95.210 (Laws of 2005, ch. 362, § 4); former RCW 9.94A.715 (Laws of 2008, ch. 276, § 305); former RCW 9.94A.720 (Laws of 2003, ch. 379, § 7).

Although the Legislature reorganized the statutes and changed the nomenclature of supervision, the Legislature did not alter the Department's existing authority to impose conditions of supervision. *See e.g.*, Laws of 2008, ch. 231, § 6 (expressly declaring that the statutory changes did not increase or decrease the existing authority of either the courts or the Department relating to the supervision of offenders). Rather, the 2008 Legislature consolidated the numerous provisions governing the supervision of different types of offenders. Laws of 2008, ch. 231, § 6. And instead of different names for supervision depending upon the particular applicable statutory subsection and date of offense (*e.g.*, “community custody,” “community placement,” “post-release supervision,” and “community supervision”), the Legislature established one name for supervision (“community custody”). Laws of 2008, ch. 231, §§ 7-58. The Legislature emphasized that these changes did not increase or decrease the authority of the courts or the Department relating to the supervision of offenders. Laws of 2008, ch. 231, § 6.

The Legislature continued this cleanup of the Act in 2009, when it amended RCW 9.94A.501 to change the terminology for probation. With this amendment, probation, like other forms of supervision, was now “community custody.” RCW 9.94A.501(2) (Laws of 2009, ch. 375, § 2) (“Misdemeanor and gross misdemeanor offenders supervised by the

department pursuant to this section shall be placed on community custody.”). Again, the Legislature affirmed that its intent was to clarify the law and the nomenclature of supervision and not to make a substantive change to the authority of the courts or the Department. Laws of 2009, ch. 375, § 10 (amending Laws of 2008, ch. 231, § 6). *See also* RCW 9.94A.030(34) (Laws of 2009, ch. 375, § 4) (the term “offender,” as used in the Sentencing Reform Act, includes a gross misdemeanor probationer like Montgomery). And consistent with it being a clarification and reorganization, the Legislature declared that the amendment applied retroactively and prospectively. Laws of 2009, ch. 375, § 20. Thus, with the 2009 amendment to RCW 9.94A.501 renaming probation as “community custody,” the Legislature continued the Department’s authority to impose conditions on offenders serving a term of probation.

However, even if the Department did not have the authority at the time of Montgomery’s crime to impose the conditions during a future period of community custody, there still is no increase in punishment because, as shown above, the court had such authority. RCW 9.92.060 (Laws of 2005, ch. 362, § 2); RCW 9.95.210 (Laws of 2005, ch. 362, § 4); RCW 9.95.230 (Laws of 1982, 1st Ex. Sess., ch. 47, § 11). The ability of a different entity—the Department—to impose the same conditions of supervision cannot be an increase in the quantum of punishment, as the

Supreme Court held in *Collins v. Youngblood*, 497 U.S. 37, 41-43, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990). At the time of Collins’s crime, Texas law required the trial judge to correct an invalid sentence by holding a new trial and entering a new judgment and sentence. *Collins*, 497 U.S. at 39-40. The statute then changed to permit the appellate court to reform an improper sentence. *Id.* Although the amended law deprived Collins of the protection of a new trial, the Court held the change in law was not an ex post facto violation because it “[did] not punish as a crime an act previously committed, which was innocent when done; nor make more burdensome the punishment for a crime, after its commission; nor deprive one charged with crime of any defense available according to law at the time when the act was committed.” *Id.* at 52.

A law violates the Ex Post Facto Clauses⁶ only if it increases the quantum of punishment for a crime after its commission. *Lynce v. Mathis*, 519 U.S. 433, 441, 117 S. Ct. 891, 137 L. Ed. 2d 63 (1997); *Weaver v. Graham*, 450 U.S. 24, 28-29, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981). “Not every change in a convicted person’s situation violates the Ex Post Facto Clause.” *Rise v. State of Oregon*, 59 F.3d 1556, 1562 (9th Cir. 1995), *overruled on other grounds by Indianapolis v. Edmond*, 531 U.S. 32, 121 S. Ct. 447, 148 L. Ed.2d 333 (2000). “[T]he focus of the ex post facto

⁶ U.S. Const. art. I §10; Const. art. I, § 23.

inquiry is not on whether a legislative change produces some ambiguous sort of ‘disadvantage’” *Cal. Dep’t. of Corr. v. Morales*, 514 U.S. 499, 506 n.3, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995). Rather, the inquiry focuses on whether the amendment “increases the penalty by which a crime is punishable.” *Morales*, 514 U.S. at 506 n.3. To violate the constitution, a change in legislation must produce “a sufficient risk of increasing the measure of punishment attached to the covered crimes.” *Id.* at 509.

Montgomery’s challenge fails even if he could show that the conditioning power was completely new and retroactive, because conditions of supervision like these are not an increase in punishment. A state may impose a variety of requirements on offenders after their crimes without violating the Ex Post Facto Clause. *Rise*, 59 F.3d at 1562. For example, requiring an inmate to participate in a newly created prison treatment program is not an ex post facto violation. *In re Forbis*, 150 Wn.2d 91, 99-101, 74 P.3d 1189 (2003). In *Forbis*, a new statute specifically directed the Department to require inmate participation in anger management training. Forbis alleged that application of the statute to him violated the Ex Post Facto Clause because he committed his crime before the enactment of the statute. This Court, however, held the new statute did not increase the quantum of punishment because the Department had general authority long before Forbis committed his crime

to require participation in such programs. *Id.* at 99-102. Since the Department had general authority to require participation in education and treatment programs, a new statute that specifically directed the Department to exercise its authority so as to require participation in anger management training did not increase Forbis's quantum of punishment. *Forbis*, 150 Wn.2d at 99-102.⁷

Alternatively, the Department's power to impose appropriate conditions based on the 2009 statute may be affirmed based on this Court's holding that legislative amendments do not violate the Ex Post Facto Clause merely by creating a possibility of an increased sentence. *State v. Pillatos*, 159 Wn.2d 459, 476, 150 P.3d 1130 (2007) (it is "well established that the mere risk that an offender could receive a higher sentence under new procedures does not violate the ex post facto clause."). The amended law must alter the punishment that existed under the prior law. *Id.* at 476.

⁷ Other states have reached similar results as *Forbis*. The Connecticut Supreme Court in *State v. Faraday*, 268 Conn. 174, 842 A.2d 567 (2004), noted that "conditions of probation are necessarily flexible, and may be amended by the office of adult probation or the court to meet the current situation, as it presents itself." *Faraday*, 268 Conn. at 200. That court concluded that "it stretches the ex post facto prohibition beyond its proper boundaries to suggest . . . that only those conditions of probation specifically mentioned in the statutes at the time of the underlying conduct may ever be imposed." *Id.*; see also *State v. Griffin*, 339 Mont. 465, 468-70, 172 P.3d 1223, 1225-26 (2007) (holding that court's order modifying conditions of probation did not change original sentence, and therefore did not violate ex post facto principles); *State v. Piller*, 377 Mont. 374, 382, ___ P.3d ___, *reh'g denied* (Feb. 10, 2015) (rejecting ex post facto challenge to retroactive statute that gave more discretion to courts to impose additional or different conditions on probation terms of all offenders under the jurisdiction of the Department of Corrections).

The 2009 law does not involve new authority. But even if it were new authority, it does not increase the quantum of punishment for probationers under the Department's supervision. Montgomery's ex post facto challenge to the conditions should be rejected.

IV. CONCLUSION

The State respectfully requests that the Court of Appeals decision be confirmed.

RESPECTFULLY SUBMITTED this 17th day of April, 2015.

ROBERT W. FERGUSON
Attorney General

s/ Ronda D. Larson
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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the foregoing document with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

US Mail Postage Prepaid

MARK D. MESTEL
ATTORNEY AT LAW
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I certify that I served a copy of the foregoing document on all parties or their counsel of record as follows:

Via Email

LENELL RAE NUSSBAUM nussbaum@seanet.com

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

EXECUTED this 17th day of April, 2015 at Olympia, WA.

s/ Cherrie Melby
CHERRIE MELBY
Legal Assistant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

| | | |
|-----------------------|---|------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | NO. 09-1-00248-1 |
| |) | |
| STEVEN J. MONTGOMERY, |) | |
| |) | |
| Defendant. |) | |

REPORT OF PROCEEDINGS
MOTION HEARING

THE HONORABLE ELLEN J. FAIR, Judge
Snohomish County Superior Court
Department No. 4
Everett, Washington

May 23, 2013

APPEARANCES:

For the Plaintiff: CHARLES BLACKMAN, Deputy Prosecutor
For the Defendant: MARK MESTEL

APPENDIX 18

NORA C. STARR, Official Court Reporter, CSR No. 2701
3000 Rockefeller Avenue
Everett, Washington 98201
(425) 388-3303

1 (The proceedings began at 11:42 a.m.)

2 THE COURT: We are now ready to go.

3 MR. MESTEL: Morning, Your Honor. We're here on State v.
4 Steven Montgomery. It's 09-1-00248-1. I'm Mark Mestel
5 representing Mr. Montgomery, who is present out of custody,
6 and the State is represented by Mr. Blackman.

7 MR. BLACKMAN: Also present telephonically is Ronda
8 Larson, Assistant Attorney General, appearing as amicus
9 representing the Department of Corrections.

10 Also present, if the Court wishes to inquire of them, are
11 Community Corrections Officers Staci Rickey and Gary Rink.

12 THE COURT: Okay. And I think it's Mr. Mestel's motion.

13 MR. MESTEL: It is, Your Honor. My first motion is to
14 strike the amicus brief and to rescind any authority of the
15 AG to participate in this hearing. They have cited no
16 authority that would allow them to participate in a hearing
17 that concerns the conditions of probation imposed by this
18 court. I'm not certain why they filed any pleadings.
19 Unless the County Prosecutor is withdrawing, it seems to me
20 that the State is represented by one entity. We're talking
21 about the Court's authority to impose/modify conditions of
22 supervision that's traditionally handled by the Prosecutor's
23 Office.

24 THE COURT: Although I thought this hearing was to talk
25 about the Department of Corrections' authority to impose

1 conditions.

2 MR. MESTEL: No.

3 THE COURT: I don't think there's any doubt about my
4 authority to impose conditions. I thought the problem was
5 that DOC was imposing conditions that, your position, is
6 inconsistent or in contravention of the Court's conditions
7 and therefore, the request is for DOC not to impose or
8 enforce its conditions on community custody.

9 MR. MESTEL: No, my request is for you to strike those
10 conditions, which I believe you have authority for under RCW
11 9.95.230, which reads that you have the power to modify the
12 conditions of supervision.

13 MR. BLACKMAN: But that skirts the issue, Your Honor, of
14 it's a DOC condition that prompted this.

15 THE COURT: Right.

16 MR. BLACKMAN: It's DOC conditions that are complained
17 of. And to say they can't appear in some form or another
18 when it's their conditions that are complained of, I mean,
19 it goes to the very heart of why they ought to be heard.

20 THE COURT: Right. I mean, I don't think you can have it
21 both ways. I mean, either -- if the Court doesn't have --
22 if DOC doesn't have any authority to be here and impose
23 these conditions, then I think the hearing is done and we
24 all go home.

25 MR. MESTEL: Okay.

1 THE COURT: If they do, then, or if the request is for
2 the Court to order them or to do something with respect to
3 them, then I think they have an absolute right to
4 participate in this hearing.

5 MR. MESTEL: I'll make my record, Your Honor.

6 THE COURT: Okay.

7 MR. MESTEL: It's still my motion still going forward.

8 THE COURT: So the motion to prohibit them from
9 participating is denied.

10 MR. MESTEL: Okay. Your Honor, my motion is to modify
11 the conditions of supervision to remove those conditions
12 which you rejected at the time of sentencing. I was not
13 counsel at the time of sentencing, but I have the paperwork
14 and I have a transcript as to the sentencing hearing.

15 The Department of Corrections, I'm assuming, did a
16 presentence report, because there was a conviction for a sex
17 crime and presentence reports are mandatory. And I'm
18 further assuming in the presentence report that they
19 promulgated conditions of supervision which would have been
20 submitted to you as an Appendix A. And so you had two
21 counts to sentence Mr. Montgomery on. One was a felony
22 count for which he served all of his time.

23 He's now serving the probationary sentence that you
24 imposed pursuant to the probationary statute that was in
25 effect at the time that gave you the power to suspend the

1 imposition of sentence and to set out conditions for
2 supervision.

3 You had Appendix A and you crossed out numerous
4 provisions that had been suggested by the Department of
5 Corrections primarily dealing with my client's right to have
6 contact with his children or other minors.

7 My client went to prison. He had frequent contact with
8 his children during family visiting. He was able to
9 telephone his children whenever he wanted.

10 He then was released. He initially was given new
11 conditions, I believe, on April 2nd which allowed him to
12 have contact with his biological children.

13 And then on April 4th, it was changed so that he could
14 not have any contact with minors, including his biological
15 children, and he could not go to the family home regardless
16 of whether the family children were there or not. And I
17 think on our submission, you can see that certain conditions
18 are delineated as court-imposed and other conditions are
19 delineated as DOC-imposed.

20 The statute I previously cited, 9.95.230, gives this
21 court power to terminate, modify or in any way deal with the
22 conditions of supervision.

23 Reading that the State's position, whether it's the AG or
24 the prosecutor, believes that you don't have the power to
25 modify conditions imposed by the Department of Corrections

1 and that the only relief that is appropriate is to go to
2 Division I of the Court of Appeals on a personal restraint
3 petition, which, almost by definition, will run out most of
4 the time he's on supervision and will result in his either
5 having no contact with his children and no contact with his
6 family home or going to jail over and over again. He's
7 already served 15 days in jail, 14 for being at the family
8 home and one day for posting a comment on his daughter's
9 Facebook page.

10 It strikes me as fundamentally unfair that a change in
11 the statute which occurred after the commission of the crime
12 and after you sentenced my client now deprives you from
13 having any authority over the conduct which you thought, as
14 the judge who heard the case, was appropriate for him and
15 now delegating all that responsibility to the DOC without
16 giving you any authority, even though there is authority, to
17 modify those conditions.

18 So now if we were going to do a straight probation, let's
19 say this was not one of the misdemeanors that falls under
20 9.94A and you were going to seek to modify the conditions to
21 make them more restrictive, my client would be entitled to a
22 hearing and notice and be represented by counsel. Now he's
23 not entitled to any of those things. DOC just does anything
24 they want. And if we have a problem with it, first he's
25 going to be arrested. Then he's going to get somewhere

1 between one day in jail and 60 days in jail. And I can file
2 a PRP, which is of no moment, because I'm not going to have
3 a PRP heard within 60 days.

4 THE COURT: Don't you have administrative remedies as
5 well? I mean, so, in other words, both Mr. Montgomery and
6 you have administrative remedies in addition to the PRP
7 remedies; correct?

8 MR. MESTEL: I have administrative remedies to appeal to
9 some appeal board that's run through DOC.

10 THE COURT: Right.

11 MR. MESTEL: I'm not sure he has the right to counsel on
12 that, because you know he doesn't have the right to counsel
13 in the DOC hearings. All right. He's just there by himself
14 and they do what they want to do.

15 Contrary to what used to be the law under Mempa v. Rhay
16 where probationers had the right to counsel at revocation
17 hearings or modification hearings, there's nothing in the
18 Sentencing Reform Act that says that 9.95.230 isn't still in
19 effect. There's nothing that says, in the Sentencing Reform
20 Act, that you don't have ultimate authority over the
21 conditions. Is there any reason my client can't go to the
22 family home if the children aren't there? Is that a
23 crime-related prohibition? No, this is because my client
24 refuses to admit that he committed the crime and they are
25 going to make the conditions more and more onerous until he

1 either knuckles under or the two years is up.

2 Now, I'm assuming my client could come tell you, "Judge,
3 I'm not complying with any of your conditions. Revoke my
4 supervision," and he'll go do 12 months. And on the 12
5 months, he'll serve 8 months, and there won't be any
6 conditions and his life will be over with DOC and they'll
7 have no authority over him, all right, because if you give
8 him the maximum, there are no conditions you can impose
9 other than the legal financial obligations. Okay?

10 My client isn't asking me to have you revoke his
11 probation, but he is asking that they not be allowed to do
12 whatever they want without you having the ability to review
13 what they're doing. That's our request.

14 THE COURT: All right. Thank you. Mr. Blackman?

15 MR. BLACKMAN: I actually want to defer to Ms. Larson,
16 except I'd like to make three points and then defer to
17 Ms. Larson as amicus. First is that a PRP won't run out the
18 time. I mean, it won't be unduly long if we do this by
19 transfer motion. I'm not suggesting that the defendant has
20 to make a whole new filing. We can transfer it should the
21 Court agree with the State's position, and I have an order
22 to that effect should the Court so rule.

23 Secondly, there remains judicial review through the PRP
24 process. This is not a situation where an administrative
25 body does whatever it likes and there's no judicial review.

1 And lastly, if we look at one of the three statutory
2 provisions that I think are at issue here, if we look at
3 9.94A.704, it certainly indicates that the Department cannot
4 impose conditions that are contrary to those ordered by the
5 Court and may not contravene or decrease court-imposed
6 conditions. So they can't do whatever they want. That's a
7 limitation on them.

8 But defendant argues it's a different standard as if it's
9 inconsistent or different. Then that's wrong, too, but
10 that's not how the statute reads. They're certainly not
11 decreasing court-imposed conditions, and because the Court
12 didn't impose conditions, any affirmative conditions with
13 respect to minors, it's not contravening a court-imposed
14 condition.

15 THE COURT: Well, but what about No. 4 in Appendix A,
16 which says do not initiate or prolong contact with minor
17 children without presence of an adult, which is crossed out?
18 I mean, that would seem to. And my recollection of the
19 sentencing hearing was there was, that that happened because
20 there was a request that Mr. Montgomery did not want there
21 to be a problem with contacting his own children, which I
22 believe the State was not objecting to at that point in
23 time. So if the requirement is not contravening that, I
24 don't know how else you would look at it.

25 MR. BLACKMAN: There wasn't a court-imposed condition.

1 There was a -- the Court struck a condition and DOC added
2 it. And if that's wrong, there's judicial review through
3 the personal restraint petition process or a habeas petition
4 that could be brought in this court as a separate action.

5 I understand the Court's question. I think that a
6 court-imposed condition is different than a condition the
7 Court struck and that was then added by DOC based on
8 information that they had. I'm not supervising the
9 defendant. I don't have a command of the post-release
10 facts.

11 THE COURT: Right, but --

12 MR. BLACKMAN: So I think that's the difference is that
13 it's not court-imposed.

14 THE COURT: Right, but it doesn't say -- it just says may
15 not contravene. I mean, what is --

16 MR. BLACKMAN: I think -- I understand what the Court's
17 saying. I read that as it may not contravene a
18 court-imposed condition, may not contravene a condition
19 that's affirmatively imposed. Maybe this is a good point
20 for me to defer to the Attorney General's Office.

21 THE COURT: Right, because I think there's two issues
22 here. One is whether or not these conditions contravene and
23 the second issue is what is the remedy, and I think those
24 are two separate issues. So I guess -- I've reviewed the
25 material submitted by the Department of Corrections, but if

1 Ms. Larson wants to participate, now would be her chance.

2 MS. LARSON: Thank you, Your Honor. This is Ronda Larson
3 with the Attorney General's Office for the Department of
4 Corrections.

5 And talking about 9.94A.704, subsection 6, it does state
6 specifically that DOC may not impose conditions that are
7 contrary to those ordered by the Court. That means the
8 Court has to have ordered a condition for it to be contrary
9 to. There's nothing in this case for the DOC's conditions
10 to be contrary to. Yet the DOC did something different than
11 what the Court did, but as the prosecutor stated, the issue
12 is not whether it's different. It's whether it's contrary
13 to a condition the Court has imposed.

14 So the Court cannot add words to the statutes that aren't
15 there. The statute does not say contrary to what the Court
16 has done regarding conditions. It is specifically not the
17 way it reads.

18 But even if Mr. Montgomery is correct in his reading of
19 the statute, the Court isn't in a procedural posture to rule
20 on that, because it's in the context of the criminal cause.
21 It can't issue a ruling governing the Department of
22 Corrections when the Department of Corrections is not a
23 party. The Court would be able to issue a ruling governing
24 this if the Department were a party. An example would be if
25 Mr. Montgomery had filed a habeas corpus petition in the

1 county in which he is being supervised. Then the DOC would
2 be a party. That would be proper. But other than that, he
3 is limited to filing a personal restraint petition in the
4 Court of Appeals or a habeas petition.

5 If he files a personal restraint petition, it is not --
6 there's nothing stopping him from moving for accelerated
7 review of that. Courts of appeal are fully capable of
8 speeding up review when it's demonstrated that to delay
9 would prejudice the petitioner.

10 So, again, he is going to get review of this. He's going
11 to get timely review if he files a motion for accelerated
12 review. The issue will be in a proper forum in a court that
13 has jurisdiction unlike in this case where there is no
14 jurisdiction.

15 But even if the Court decides that it has jurisdiction,
16 Mr. Montgomery loses on the merits, and I would request that
17 this court allow Mr. Montgomery's community corrections
18 officer to add a few words to give some perspective on why
19 the DOC imposed the conditions in the first place.

20 And, by the way, these conditions are not a blanket
21 prohibition keeping him from contacting his children. He
22 can contact his children. He just has to have permission
23 first.

24 So they are reasonable conditions, and the DOC has not
25 acted arbitrarily in imposing those conditions. Unlike the

1 Court, the DOC is not prohibited from imposing conditions
2 that are not crime-related. Under 9.94A.704, the
3 Department's conditions must be related to the crime of
4 conviction, the offender's risk of reoffending or the safety
5 of the community.

6 Additionally, under that statute under subsection 10, Mr.
7 Montgomery was required if he didn't like the conditions
8 when they were imposed, he was required to seek
9 administrative review of those conditions. It states, "By
10 the close of the next business day, after receiving notice
11 of a condition...an offender may request an administrative
12 hearing under the rules adopted by the board. The condition
13 shall remain in effect unless the hearing examiner finds
14 that it is not reasonably related to any of the following:
15 The crime of conviction; the offender's risk of
16 reoffending;" or "the safety of the community."

17 So as you can see, Your Honor, the Department of
18 Corrections' authority to impose conditions is based on
19 safety to the community and it's broader, a broader
20 authority than the Court would have at sentencing. There's
21 a good policy reason behind that. That's because the
22 Department of Corrections is often receiving information
23 that the Court did not have at the time of sentencing. You
24 know, new things occur. New instances of misconduct are
25 discovered. It's a reasonable setup for the Legislature to

1 have made it in that respect. So I would request that the
2 Court transfer the motion to the Court of Appeals as a
3 personal restraint petition.

4 MR. MESTEL: Your Honor, you did not sentence my client
5 to community custody. You sentenced him to probation.
6 There was no community custody for this crime at the time
7 you sentenced him.

8 THE COURT: Right. I understand that, but at this point
9 he is on community custody based on the change in the
10 statute.

11 MR. MESTEL: It's arguable whether --

12 THE COURT: And the statute was made retroactive and I
13 don't know that's ever been tested in the courts.

14 MR. MESTEL: And it hasn't been tested as far as I can
15 tell.

16 THE COURT: Right.

17 MR. MESTEL: But the significance and the difference in
18 due process rights between the statutes that were in effect
19 at the time he committed this crime and what now has become
20 the new statutory scheme work is so significant that it
21 strikes me that there are ex post facto violations to making
22 him now jump through all these hoops as well as potential
23 separation of powers where you were given the authority to
24 do all these things on his behalf and now, after rejecting
25 conditions, they can say, well, that's not inconsistent with

1 the Court's ruling even though you said he could have
2 contact, although it's not -- you don't affirmatively say
3 the things you can do. You say the things he can't do. But
4 clearly, the transcript and the order reflect that you said
5 he could have contact. And for them now to come in and play
6 semantics and say, well, that really isn't different,
7 because it doesn't say in the order that he could have
8 contact, so we're not contravening it, is just an
9 inappropriate argument at best, Your Honor.

10 I think the statute I cited, once again, gives you
11 authority to modify the conditions and we're asking that you
12 strike those conditions that are inconsistent with your
13 ruling. The State has the ability to come before you and
14 file a motion to modify the conditions just as I do. If
15 there's a basis to change the conditions, the State has the
16 ability to do that. My position is they don't have the
17 ability just to administratively do that for somebody who
18 never was sentenced to community custody to begin with.

19 THE COURT: Okay.

20 MR. BLACKMAN: None of us briefed constitutional issues.
21 We didn't brief ex post facto. We didn't brief separation
22 of powers.

23 I think that the Legislature can and did rewrite the
24 supervision scheme, held that to be retroactive. There's no
25 case that anyone's found that says that that is

1 unconstitutional. And, again, there is, there is judicial
2 review available. There's also administrative review.

3 And as far as a judicial review, this is pretty well
4 briefed. When it goes to the Court of Appeals, they'll have
5 everything they need to decide this. That's not true of all
6 transfer motions, but I think it's sure true of this one.

7 I don't know if Your Honor wants to get into the merits.

8 THE COURT: No, because I don't -- I mean, I think if one
9 gets into the merits, I really think that's beyond the
10 purview of this particular hearing, which I think the issues
11 are quite narrow. And I think were I to get into the merits
12 that I would be sitting essentially as an administrative
13 reviewer of DOC's decisions, which I don't think is
14 supported by my understanding of the law as it currently
15 stands. The Court of Appeals, I suppose, could reeducate us
16 all on that.

17 I did do a little bit of research, because I recalled
18 that there was the case of State v. Gamble, G-A-M-B-L-E,
19 which is Division I, 146 Wn. App. 813, which I recall --
20 it's a 2008 case. And I recalled it talking about DOC's
21 authority and the Court's authority, and I was hoping that
22 it would provide a little bit more guidance, but really all
23 State v. Gamble stands for is that superior courts retain
24 authority and jurisdiction to enforce conditions of
25 sentences that they impose. That's really what Mr. Mestel

1 is arguing.

2 But the problem is that I'm being asked in this hearing,
3 I think, to go beyond that, to go beyond enforcing
4 conditions, which Gamble would indicate that I still retain
5 authority to do as well as the Department of Corrections,
6 but in addition, that I have the authority to tell
7 Department of Corrections how they can supervise someone on
8 community custody. And I don't think I have the authority
9 to do that and nor do I think that would be good policy for
10 the Court to, A, sit in lieu of the administrative procedure
11 that's set out, and, B, to be essentially acting as a de
12 facto community custody agent. I don't think that's what
13 the statute intends.

14 But that being said, I am bothered by the fact that I
15 think that a pretty decent argument can be made -- I
16 understand we're parsing words, but that some of these
17 conditions, perhaps not all of them, but that some of them
18 are in contravention of the conditions that the Court
19 imposed at the time of sentencing. That is concerning to
20 me, but my problem is I'm just not sure what remedies I have
21 to address that, because it seems very carefully set forth
22 in the statutes that even though I retain some inherent
23 authority to enforce the conditions that the Court imposed,
24 I'm not being asked to do that. I'm being asked to provide
25 some remedy and direct the Department of Corrections. I

1 think there is an administrative proceeding set out to do
2 that. I understand Mr. Mestel's concerns about that, but
3 there is an administrative proceeding set forth to do that
4 and there's also the other remedies in terms of habeas
5 remedies and PRP as well.

6 So I do have the authority to transfer this to the Court
7 of Appeals for consideration as a PRP. I do think that's
8 appropriate, but I would also state that, for what it's
9 worth, that I believe that -- well, I guess it depends on if
10 you look at it prohibiting contact or just making contact
11 conditioned on permission, which is, I guess, not quite the
12 same thing. I think the Department of Corrections, if they
13 are not setting forth conditions that are in contravention,
14 are treading dangerously close to that, but I don't think
15 that I have any authority to strike their conditions of
16 community custody.

17 MR. MESTEL: Your Honor, then I'd like as a proposed
18 finding that you find that the statute that I cited, which I
19 think was 9.92.230 or .250 is inapplicable, that statute
20 that gives you the power to modify the conditions of
21 supervision. It doesn't say the Court's conditions of
22 supervision. It says modify, suspend or terminate
23 probation, which is what you sentenced him to.

24 MR. BLACKMAN: I think the Court's oral ruling is clear
25 enough and we don't want -- we don't need to go beyond that.

1 I've prepared an order --

2 MR. MESTEL: Well, Counsel, I'm not done yet.

3 MR. BLACKMAN: Sorry.

4 THE COURT: Okay.

5 MR. MESTEL: You're suggesting you don't have
6 jurisdiction to modify conditions of supervision if imposed
7 by DOC.

8 THE COURT: I am suggesting that I don't believe that
9 this hearing is the proper forum to do that especially in
10 light of the fact that administrative remedies were not
11 pursued.

12 MR. MESTEL: And I would like something in the record to
13 show that, because I don't want to deal with the Court of
14 Appeals saying it wasn't raised or the Court didn't have the
15 ability to decide that issue and have to jump through 12
16 more procedural hoops.

17 THE COURT: Well, I mean, I could say clearly that I
18 believe that the statute that puts him on community custody
19 is retroactive and in effect and governs.

20 MR. MESTEL: Okay.

21 MR. BLACKMAN: If the minute entry reflects that --

22 MR. MESTEL: I'd like it in the order. There's no reason
23 it can't be.

24 THE COURT: That's fine if it is in the order, because
25 that is consistent with the Court's ruling.

1 MR. BLACKMAN: Okay. I'm going to interlineate, and if
2 the Court and Counsel could help me out. What I'm saying,
3 then, is the Court finds that --

4 THE COURT: That Mr. Montgomery is on community custody.

5 MR. BLACKMAN: Pursuant --

6 MR. MESTEL: You just want to say that RCW 9.94A,
7 whichever one it is, applies retroactively to your grant of
8 probation?

9 THE COURT: Because I think in your brief, you indicated
10 it was -- or the Attorney General indicated it was
11 9.94A.501 --

12 MR. BLACKMAN: (2).

13 THE COURT: (2).

14 MR. BLACKMAN: I can so state. The Court finds --

15 MS. LARSON: That's correct, Your Honor. That's the
16 correct statute.

17 THE COURT: So I'm indicating I'm finding that applies.

18 MR. BLACKMAN: So the Court finds Mr. Montgomery is on
19 community custody. Then I'd add RCW 9.94A.501(2) applies
20 retroactively.

21 THE COURT: Correct.

22 MR. MESTEL: I'd like the AG's signature on it as well,
23 Your Honor, since I'm also concerned about their authority
24 to participate and I want it shown on the order that they
25 were party to the Court's argument.

1 MR. BLACKMAN: I can do that. I can fax back and forth,
2 but --

3 MR. MESTEL: Or she can authorize Mr. Blackman to sign
4 for her after she reviews it, but whatever, but I think it's
5 appropriate since you've given them permission to
6 participate that they sign off on the proposed order.

7 MR. BLACKMAN: I don't have a position one way or the
8 other. Logistically, I don't think I could add a signature
9 after you sign.

10 THE COURT: Right.

11 MR. BLACKMAN: I can get the signature and then present
12 it to you ex parte, if that's okay.

13 MR. MESTEL: That's fine.

14 THE COURT: Any objection to that?

15 MR. MESTEL: No.

16 THE COURT: Okay. We'll do it that way, then.

17 MR. BLACKMAN: Will you be here or at Juvie?

18 THE COURT: No, I have to go back. I have a 1:00 hearing
19 at Juvenile Court, but I will be back here tomorrow for Drug
20 Court. Staffing usually starts at noon.

21 THE LAW CLERK: We have a 11:30 hearing, too.

22 THE COURT: I guess I'll be back at 11:30 tomorrow in
23 Department --

24 THE LAW CLERK: Five.

25 THE COURT: Five.

1 MR. MESTEL: We could just leave it in the Court
2 Administrator's office.

3 MR. BLACKMAN: Either that or I can present it at 11:30
4 tomorrow.

5 MR. MESTEL: I'll waive presence at presentation, Your
6 Honor. He can get it to you whenever he wants and just send
7 me a conformed copy.

8 THE COURT: Okay.

9 MR. MESTEL: Thank you for accommodating us, Judge.

10 MR. BLACKMAN: Thank you, Your Honor, Counsel. Thank you
11 Ms. Larson.

12 THE COURT: We'll be in recess.

13 MS. LARSON: Thank you. Shall I hang up now?

14 (The proceedings were concluded at
15 12:12 p.m.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON,)
)
Plaintiff,)
)
v.)
)
STEVEN J. MONTGOMERY,)
)
)
Defendant.)

NO. 09-1-00248-1
COA NOS. 70389-7-I
64604-1-I

VERBATIM REPORT OF PROCEEDINGS
SENTENCING HEARING

THE HONORABLE ELLEN J. FAIR, Judge
Snohomish County Superior Court
Department No. 12
Everett, Washington

January 21, 2010

APPEARANCES:

For the Plaintiff: HALLEY HUPP, Deputy Prosecutor
For the Defendant: GENE PICULELL

NORA C. STARR, Official Court Reporter, CSR No. 2701
Snohomish County Courthouse
3000 Rockefeller Avenue, M/S 502
Everett, Washington 98201
(425) 388-3303

1 (The proceedings began at 1:04 p.m.)

2 MR. HUPP: Good afternoon.

3 THE COURT: Good afternoon.

4 MR. HUPP: Halley Hupp for the State, Your Honor. This
5 is the matter of Steven Montgomery. It's 09-1-00248-1.

6 As an initial matter, Mr. -- I always mess up your last
7 name.

8 MR. PICULELL: Picullel.

9 MR. HUPP: Picullel, I have problems saying that, is
10 substituting in for Mr. Pandher. I believe if the document
11 hasn't already come up to the Court --

12 MR. PICULELL: We can sign that. The State has no
13 objection to this. We've been in communication with both
14 counsel now for some few weeks.

15 THE COURT: Right. This is the order on substitution of
16 counsel.

17 MR. PICULELL: Good afternoon, Your Honor. Gene Picullel
18 for Mr. Montgomery.

19 First, I appreciate the Court setting this over to allow
20 me to be here, and, of course, we've been acting as if I've
21 been counsel of record in the matter, and I appreciate the
22 Court's approval of that motion.

23 THE COURT: All right. So I will, as a preliminary
24 matter, sign the order here substituting counsel.

25 MR. HUPP: Thank you. That brings us to sentencing. The

1 defendant was found guilty by jury trial on October 28th of
2 2009 to one count of child molestation in the third degree
3 and one count of communicating with a minor for immoral
4 purposes. Count 1 is a felony. Count 2 is a gross
5 misdemeanor.

6 Count 1 is a level 5 offense and his offender's score is
7 an 8. We calculate that -- and I'll hand up the score sheet
8 and criminal history with a VUCSA possession with intent to
9 manufacture; two VUCSA possession of cocaine; two first
10 degree thefts; two second degree thefts; and a VUCSA
11 conspiracy conviction.

12 I've talked to Counsel. They have the J and Ss that I
13 have and I believe there's no disagreement at this time
14 regarding the fact that those convictions exist and
15 therefore, his score is an 8.

16 Because this is a Class C felony, the maximum sentence is
17 60 months. Had this been a Class B felony, on a score of 8,
18 he would have been looking at more than 60 months. But
19 because it is, in fact, Class C, the standard range at a
20 level 8 -- or at a score of 8 is 60 months flat.

21 As a result of that, however, while a child molestation 3
22 charge normally has 36 months of community custody, that
23 would not be able to be ordered, because we are asking that
24 he be sentenced for 60 months.

25 With regards to Count 2, the gross misdemeanor has a high

1 end of 365 days, and the Court can order any amount up to
2 that amount. It could also, in fact, run that consecutive
3 to the other charge, because it is a gross misdemeanor.
4 However, the State does believe there's benefit to community
5 custody in these cases, and we would ask that the Court
6 order 365 days but suspend it and order instead 24 months of
7 community custody for when the defendant comes out of prison
8 so that he may be monitored at least on the gross
9 misdemeanor.

10 I believe that also was the recommendation of the PSI
11 writer. And, for the record, I do believe the Court has a
12 copy of that; correct?

13 THE COURT: Yes.

14 MR. HUPP: Thank you. As part of that recommendation as
15 well, the PSI writer included some 25 conditions. We would
16 ask that those be incorporated.

17 We ask that there be a no-contact order for five years as
18 part of the conviction, that he pay court costs and
19 attorney's fees, and that as part of the conditions that he
20 does have a sexual deviancy evaluation and comply with the
21 appropriate treatment.

22 I do not know if there's going to be restitution at this
23 point. We would reserve that for that possibility.

24 There was also a victim impact letter. Did the Court
25 receive that?

1 THE COURT: I did.

2 MR. HUPP: Okay. Thank you. And, of course, since this
3 was a trial, we heard from the victim and we heard what
4 occurred in this case as well.

5 I think that covers it. Thank you.

6 THE COURT: All right. Thank you. Counsel?

7 MR. PICULELL: Thank you, Your Honor. I guess in the
8 order of Mr. Hupp's recitation, to make a record on his
9 criminal history, my client initially disagreed with that.
10 That was one of the issues, I think, that was set over. We
11 did provide him the Judgment and Sentence on the count that
12 he was disagreeing with, and I reviewed that. It is a
13 felony count. Mr. Montgomery thought that it was a
14 misdemeanor. We were talking about it again this afternoon,
15 but it's clearly a felony count that is applicable in his
16 criminal history. So we concur with the recitation of the
17 prosecutor on that.

18 As I indicated in my presentence report, it was my
19 judgment early on -- obviously, I wasn't the trial attorney.
20 My information in this case is documentary or through Mr.
21 Montgomery as far as the facts of the case and the jury's
22 decision. The Court, I think, has, as I indicate in my
23 presentence report, has little discretion in terms of the
24 sentence it must impose in these circumstances with his
25 criminal history and we defer to the Court on that.

1 The only discretionary aspect that Mr. Hupp addressed was
2 the trailing Count 2 that -- asked that that be suspended.
3 I don't think it's technically community custody. I think
4 it's actually probation since it's not --

5 THE COURT: Right.

6 MR. PICULELL: -- a felonious count. I understand his
7 purpose in asking that that be structured in that fashion to
8 have additional supervision if Mr. Montgomery serves the
9 entire balance of the sentence, but we would ask the Court
10 that that run concurrent with his other counts and the Court
11 to impose the 365 days on that count, run it concurrent.

12 I think there is at least a reasonable argument to make
13 that there's a merger here of the factual events. Again, my
14 information is documentary, but it appears to be part and
15 parcel of the same occurrence of events and I would ask the
16 Court to consider that in imposing -- in structuring the
17 sentence.

18 That is all I have unless the Court has inquiry. I spoke
19 to Mr. Montgomery about his right of allocution, explained,
20 in my view, the discretion of the Court that it has in terms
21 of its imposition of sentence, and he may or may not wish to
22 say something to the Court.

23 THE COURT: All right. Thank you. And, Mr. Montgomery,
24 you do have the right to speak at sentencing, and I would
25 ask if there's anything that you would like to say at this

1 time.

2 THE DEFENDANT: Yes. Lack of knowledge, lack of
3 understanding of getting legal counsel has really paid a big
4 one on me. My family, my kids, are the victims of this
5 thing. It's a travesty that it's gone this far. I take, at
6 a quick stop, and do a motion with my hand that is for
7 stopping at a stoplight real fast, put my arm in front of my
8 child passenger so they don't hit the dash. She comes
9 forward and touches my hand with her clothing. That's all I
10 felt, touching her clothes. I go back in less than a
11 second, and she calls it child molestation and when I was
12 just driving and doing a safety reflex. It's something I
13 would do for my kids, I'd do for my wife, and I'd do for
14 anybody else in the car.

15 I'm being accused of this thing. I didn't recognize what
16 it was until the courtroom until I saw the prosecutor
17 standing there in front of her with his hands and fingers
18 pointed backwards. I started thinking that if somebody's
19 going to do something like this, why would they be touching
20 with the palm of their hand and not their fingertips?
21 Because it never happened. I'm not a child molestor. I
22 protect the women and I protect the children.

23 I've gone through treatment. I've turned my life around.
24 I got married. I have a seven year old and a nine year old.

25 I'm involved in NA and I worked the program hard. I've

1 been good in the program. So after getting accused of this,
2 I fell off the wagon.

3 And I fought it for the last year before this court,
4 because it feels like somebody I've known for 20 years just
5 ripped the heart and soul out of me, accusing me of these
6 things from a teenage daughter that has a drinking problem
7 just like her mom had when she was in high school. That's
8 one of the things I wanted to talk to her about. I just
9 hope this girl gets help for her drinking.

10 The last few times I picked her up for baby-sitting, she
11 was picked up and she was drunk and that was one of the
12 things I wanted to talk to her about. I'm the only male
13 figure in her life that's been responsible and been there
14 for her since the day she was born. And then to turn around
15 and be accused of these facts because I wanted to talk to
16 her about her promiscuity that she would talk about at our
17 house in front of my children, you know, dressing like a
18 floozy, I hate to say, but tops too low. I told my wife to
19 tell her to dress down. And then I get accused, to cover
20 her ass for drinking, of doing the things I didn't do.

21 And the facts get twisted and contorted in this courtroom
22 by someone I know that knows it wasn't misconduct. There
23 was no sexual intent in it, and turns around and accuses me
24 of this.

25 And then the attorney sells me out. I was supposed to

1 take the stand in that trial. He wouldn't let me. I was
2 sitting in the hallway and fought with him and he yelled at
3 me. He told me, "No, you're not taking the stand."

4 And what I'd do this for? I'm in jail for the last 90
5 days for something I didn't do. Now my children ask, "When
6 are you getting out, Daddy?"

7 All my friends know I'm not this person. My kids know
8 I'm not this person. The only people that do are the people
9 that are living and turned in people, worked for the cops
10 and find some way to get something free. Tried to get a new
11 car for their daughter. They're trying to take the
12 limelight off of her drinking problem and then blaming it on
13 somebody else. Teenagers do that, but I don't attack
14 teenagers.

15 MR. PICULELL: Thank you, Mr. Montgomery. Thank you,
16 Your Honor.

17 THE COURT: Anything further, Mr. Hupp?

18 MR. HUPP: Your Honor, just addressing merger, merger is
19 double jeopardy. The elements of these two crimes are
20 different and merger would not apply.

21 With regards to same criminal conduct, that is only
22 within the SRA. Same criminal conduct partly exists because
23 of the fact that a point is considered as part of the felony
24 score. The gross misdemeanor here is not included in the
25 score. It is, the gross misdemeanor is not governed by the

1 SRA and therefore, consecutive sentence is allowed and at
2 the discretion of the Court.

3 Again, I'm not asking that you impose the 365 days for
4 him to actually serve, for a total of six years. What I'm
5 asking is that you suspend it so that we then have 24 months
6 of community custody once he leaves prison. Thank you.

7 THE COURT: All right. Thank you. First of all, I'll
8 indicate that it sounds like the majority of Mr.
9 Montgomery's remarks are directed towards the issue of the
10 conviction, which is not before me. The trial has been
11 held. The jury has rendered its verdict. So --

12 THE DEFENDANT: Yes.

13 THE COURT: -- I certainly understand that Mr. Montgomery
14 is maintaining that he did not commit these crimes, but that
15 is not before me. The jury has spoken. The convictions
16 have entered:

17 The issue before the Court is what is an appropriate
18 sentence. With respect to the felony count, the Court
19 really does not have any discretion. There's certainly no
20 grounds for an exceptional sentence. The maximum is 60
21 months, and given the criminal history score, 60 months is
22 the only sentence that can be imposed on the child molest 3.
23 So I will impose the 60 months on that.

24 I will also impose the \$500 Crime Victims Assessment; the
25 \$100 DNA fee. I will reserve restitution pending more

1 information within the statutory period.

2 And I will waive court costs on that based on the fact
3 that Mr. Montgomery will, in all likelihood, be incarcerated
4 for a fairly lengthy period of time.

5 With respect to the communication count, I'm going to
6 impose a year in jail. I will suspend all of that for a
7 period of 24 months. I agree that some probation is
8 probably appropriate following release, given the nature of
9 this case.

10 In terms of the conditions, I will impose all of the
11 conditions that are recommended in the presentence report
12 with some exceptions. I am not at this point imposing or
13 requesting that there be imposed No. 4, No. 5, No. 6, No. 7,
14 No. 8, No. 9, No. 10, No. 11, No. 18.

15 No. 19, I'm going to change somewhat just to indicate
16 that once Mr. Montgomery is released, that he is to obtain a
17 sexual deviancy evaluation if recommended by the Community
18 Corrections Officer.

19 The rest of the conditions, I will impose.

20 I will also impose the no-contact provision with the
21 victim for a period of five years.

22 And with respect to the financial information, I'll
23 indicate that Mr. Montgomery, since he will be incarcerated,
24 I'll put this, the financial obligations, at a minimum of
25 \$25 a month, his obligation commencing once he's released,

1 although Department of Corrections will, of course, take
2 money off the books during the incarceration.

3 And then I will give him, actually not knowing if there's
4 going to be any restitution asked for, I'll give him 36
5 months to make those payments.

6 MR. HUPP: And I did not hear. Beginning 60 months after
7 release or --

8 THE COURT: Sixty days. I'm sorry.

9 MR. HUPP: Sixty days.

10 THE COURT: After release, and then 36 months after that
11 to make payments.

12 I will remind Mr. Montgomery that he's not allowed to
13 own, possess or control a firearm unless or until that right
14 is restored.

15 That he'll need to cooperate with the DNA testing, if
16 that's not already been done.

17 He'll need to comply with registration requirements as
18 well.

19 Also, I know that Mr. Montgomery is fully aware, but I
20 will also remind him that he does have a right to appeal
21 since this was a trial. That that notice of appeal needs to
22 be filed within 30 days of today's date since today is the
23 day for the sentencing.

24 I think that covers it. Is there anything that I missed?

25 MR. HUPP: I do not believe so.

1 MR. PICULELL: Nothing as far as the Judgment and
2 Sentence. On a post-Judgment and Sentence matter, would the
3 Court consider my presentation on bail pending release?

4 THE COURT: Did you want to do that now?

5 MR. PICULELL: I would, rather than re-note it.

6 THE COURT: That's fine.

7 MR. PICULELL: Thank you. Of course, RCW 10.72.040,
8 except in capital cases, permits bail pending release. I've
9 certainly become acquainted with Mr. Montgomery's history as
10 well as the circumstances of this case. However, I would
11 ask the Court to set bail. There is certainly an indication
12 that Mr. Montgomery would not leave the jurisdiction. He is
13 married. His wife is present. I believe she testified in
14 the trial. His children are here, and he will remain in the
15 jurisdiction. He's indicated to me he would comply with all
16 conditions of the Court, and I believe an appropriate bail
17 should be had in this case.

18 THE COURT: Response?

19 MR. HUPP: Your Honor, I believe there were two instances
20 where the defendant failed to appear in this case. We
21 haven't filed bail jump charges yet. I don't know that we
22 will be, given the results here, but those do exist.

23 My understanding is there are multiple uncharged cases
24 currently sitting in my office. On one of them, I know his
25 wife had omnibus today and has been charged with a crime.

1 He is also a suspect in that crime.

2 Given the nature of this offense -- and I would also
3 point out the outburst in court, an outburst, which I was
4 told, you know, so scared the family that they're not here.
5 I just have real concerns for the safety of this young lady
6 as well, so both a concern for her safety and a concern for
7 flight. He clearly doesn't believe he committed this crime.
8 He clearly doesn't believe that he should be serving 60
9 months for it, and so I believe flight is a concern as well.

10 THE COURT: Anything further, Counsel?

11 MR. PICULELL: Thank you. No, Your Honor.

12 THE COURT: And I appreciate, Counsel, you were not
13 present at the time of the conviction, but I did note that
14 it was one of the most remarkable outbursts that I have
15 witnessed in my tenure on the bench, which has been for
16 some, amazingly, length of time. I would be concerned based
17 on the nature of that outburst, the statements that have
18 been made, apparently these uncharged cases that are
19 pending. I would be concerned about flight. I would be
20 concerned about the victims in this case. And, in addition,
21 this is a case where I believe the -- I can't remember the
22 exact language, but essentially it's whether or not the --

23 MR. HUPP: Immediate punishment.

24 THE COURT: Unduly, it would essentially be unduly
25 improper to defer the punishment in the case, and I think I

1 would find that as well. So it's purely discretionary with
2 the Court. I would not find that it's appropriate to
3 exercise that discretion in this case. So I will have to
4 deny the request.

5 MR. PICULELL: Thank you for the Court's consideration.

6 MR. HUPP: Do you waive presence?

7 MR. PICULELL: Yes, we do waive presence at signing.

8 THE COURT: We'll be in recess, and I'll sign the J and S
9 once it's been reviewed

10 (The Court recessed at 1:25 p.m.)

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FILED

1/28/10

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

MONTGOMERY, STEVEN JAMES

Defendant.

No. 09-1-00248-1

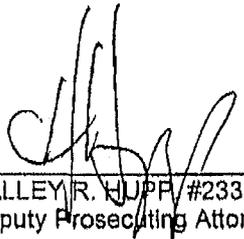
APPENDIX A
ADDITIONAL CONDITIONS
OF COMMUNITY CUSTODY

ADDITIONAL CONDITIONS OF COMMUNITY CUSTODY:

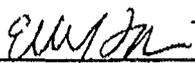
1. Have no direct or indirect contact with C.H. (DOB: 12/11/1992) or members of her family.
2. Pay the costs of crime-related counseling and medical treatment required by C.H. (DOB: 12/11/1992).
3. Obey all municipal, county, state, tribal and federal laws.
4. ~~Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.~~
5. ~~Do not seek employment or volunteer positions, which place you in contact with or control over minor children.~~
6. ~~Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.~~
7. ~~Do not possess or access sexually explicit materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.~~
8. ~~Do not possess or control sexual stimulus material for your particular deviancy as defined by the supervising Community Corrections Officer and therapist except as provided for therapeutic purposes.~~
9. ~~Do not possess or control any item designated or used to entertain, attract or lure children.~~
10. ~~Do not date women or form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.~~
11. ~~Do not remain overnight in a residence where minor children live or are spending the night.~~
12. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
13. Do not possess or consume controlled substances unless you have a legally issued prescription.
14. Do not associate with known users or sellers of illegal drugs.

15. Do not possess drug paraphernalia.
16. Stay out of drug areas, as defined in writing by the supervising Community Corrections Officer.
17. Find and maintain fulltime employment and/or a fulltime educational program during the period of supervision, as directed by the supervising Community Corrections Officer.
18. ~~Do not access the Internet on any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.~~
19. Participate and make progress in sexual deviancy treatment with a licensed provider. Follow all conditions outlined in your treatment contract. Do not change therapists without advanced permission of the supervising Community Corrections Officer. *if recommended by C.C.O.*
20. Participate in offense related counseling programs, to include Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
21. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.
22. Participate in urinalysis, Breathalyzer, polygraph and plethysmograph examinations as directed by the supervising Community Corrections Officer.
23. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
24. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of the residence in which you live or have exclusive/joint control/access.
25. Register as a sex offender with the county of your residence for the period provided by law.

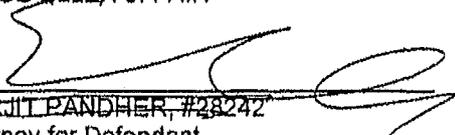
Dated this 21 day of January, ²⁰¹⁰~~2009~~.



 HALLEY R. HUPP #23331
 Deputy Prosecuting Attorney

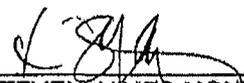


 JUDGE ELLEN J. FAIR



 GURJIT PANDHER, #23242
 Attorney for Defendant

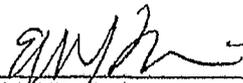
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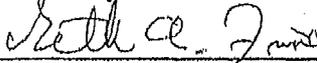
 STEVEN JAMES MONTGOMERY
 Defendant

1 effect after commission of the crime but before sentencing, Laws of 2009, ch. 375. At the time of
2 sentencing, the court did not consider whether that statute applied to this case.

3
4 Entered this 7 day of November, 2013

5 
6 ELLEN FAIR, Judge

7 Presented by:

8 
9 SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney

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To: Melby, Cherrie (ATG)
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Good afternoon. Please find the attached Corrected Supplemental Brief of Respondent Department of Corrections and Certificate of Service.

Case name – In re the Personal Restraint Petition of Steven James Montgomery
WSSC Cause No. 89730-1
By Ronda D. Larson, WSBA #31833
Assistant Attorney General Corrections Division, OID #91025

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