

FILED
SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 94883-6
Respondent,)	
)	THIRD STATEMENT OF
vs.)	ADDITIONAL AUTHORITY
)	
HAI MINH NGUYEN,)	
Petitioner.)	
_____)	

Pursuant to RAP 10.8, petitioner cites the following additional authority with respect to his argument that the trial court lacked authority to impose a community custody condition banning possessing, viewing, accessing, or using sexually explicit materials because the condition is not crime-related:

Norris contends condition 10 [prohibiting entry into sex-related businesses] is not crime-related. The State cites State v. Magana, 197 Wn. App. 189, 389 P.3d 654 (2016), to argue the nature of the crime alone justifies imposition of condition 10 as crime-related. In Magana, Division Three held that because the defendant was convicted of “a sex offense, conditions regarding access to X-rated movies, adult book stores, and sexually explicit materials were all crime related and properly imposed.” Magana, 197 Wn. App. at 201. To the extent Magana stands for either a categorical approach or the broad proposition that sex offense conviction alone justifies imposition of a crime-related prohibition, we disagree. As previously noted, there must be some evidence supporting a nexus between the crime and the condition. See State v. O’Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008) (striking condition prohibiting defendant’s Internet use after finding “no evidence” defendant “accessed the Internet

before the rape” or “Internet use contributed in any way to the crime”); State v. Kinzle, 181 Wn. App. 774, 785, 326 P.3d 870 (2014) (State conceded, and we agreed, conditions prohibiting a sex offender from possessing sexually explicit material and frequenting establishments selling such materials were not crime-related “because no evidence suggested that such materials were related to or contributed to his crime.”).

State v. Norris, ___ Wn. App. ___, ___ P.3d ___, No. 75258-8-I, slip op. at 9-10 (Oct. 30, 2017).

Norris, slip op. at 11 (holding prohibition on sexually explicit materials crime-related because there was actual evidence in the record to support the proposition of crime-relatedness).

DATED this 30th day of October, 2017.

Respectfully submitted,

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