

No. 94892-5

NO. 74677-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WENDY GRANATH,

Appellant.

Sep 9, 2016

DISCRETIONARY REVIEW FROM THE
SUPERIOR COURT FOR KING COUNTY

King County Superior Court, RALJ Decision,
The Honorable Judge Douglass A. North, No. 15-1-03405-3 SEA

King County District Court, No. C007141UW

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

With RCW Chapter 10.99, the legislature intended to provide victims of domestic violence “the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. When a domestic violence offender is sentenced by a district court for a gross misdemeanor, did the legislature intend to give the district court authority under RCW 10.99.050¹ to protect the victim with a domestic violence no-contact order (“DVNCO”) for the maximum of the district court’s authority, which is 60 months? Or did the legislature intend to restrict the district court’s authority to the minimum, by making the DVNCO’s protections dependent upon, and restrained by, the sentence actually imposed against the defendant under RCW 3.66.068?

B. STATEMENT OF THE CASE

1. SUBSTANTIVE FACTS

In the summer of 2009, Wendy Granath sent a series of harassing e-mails to her estranged husband, John Agaba. CP 25–26. Based on these e-mails, the State charged her with cyberstalking² and violating a no-contact order,³ and alleged both were crimes of domestic violence.

¹ The full text of the statute is included as Appendix A. RAP 10.4(2)(c).

² RCW 9.61.260.

³ RCW 26.50.110.

After a four-day trial in October 2012, a jury found Granath guilty as charged. This appeal involves the sentence and orders imposed after the jury's verdict, and Granath's attempt to vacate an order entered contemporaneous with the sentence. Her conviction was affirmed in a separate direct appeal. CP 26.

2. PROCEDURAL FACTS

The trial court sentenced Granath on November 8, 2012. At sentencing, the court imposed two no-contact orders: (1) an order that Granath "not go on the property of and have no contact with John Agaba," which was written on Granath's Judgment and Sentence, CP 35-37, and (2) additional orders, including a prohibition on electronic contact with Agaba, and a requirement that Granath stay 500 feet away from Agaba's "residence, school, or workplace," that were contained in a separate document, entitled "Post-Conviction Domestic Violence No-Contact Order." CP 39-40.

This second no-contact order was a "domestic-violence no-contact order" issued under RCW 10.99.050. CP 39-40. On its first page, it stated that it would expire "[f]ive years from today," or November 8, 2017. CP 39. Although this order purported to outlast the court's own jurisdiction—Granath's sentence was only suspended for two years—Granath did not object; she signed the order. CP 35-37, 40. In addition to the restraint

provisions, the court sentenced Granath to 30 days of community work crew. CP 35–37.

After imposing various sanctions relating to sentence violations, the trial court announced at a hearing on October 9, 2014, that Granath’s case would close after she paid outstanding fines. CP 26. On December 8, 2014, Granath paid the fines, and the court closed the case. CP 2, 26. The court did not recall the DVNCO issued under RCW 10.99.050.

On January 23, 2015, Granath filed a pro se motion to “lift” the separate DVNCO. CP 26. The State objected. CP 26. Granath, now represented, filed a motion arguing that the DVNCO must be vacated, because the trial court no longer had probatory jurisdiction over her. CP 26–27. After a hearing on March 12, 2015, the trial court denied Granath’s motion to vacate the no-contact order. In an oral ruling, the court found it “had lawful authority to issue a separate order under [RCW] 10.99.” CP 22. Therefore, the DVNCO could “survive on its own.” CP 23.

Granath filed a RALJ appeal, challenging that decision. The superior court denied the appeal: “[T]he Legislature intended to create a statutory scheme in which a domestic violence no-contact order can be independently enforced outside the jurisdiction of the court that initially issued the order, thereby providing victims of domestic violence with the maximum protection from abuse allowed by law.” CP 46. The superior

court found that such orders could be issued for “maximum term of sentence,” which for this type of crime is a five-year suspended sentence. CP 46. Therefore, the order remained valid. CP 46.

On April 14, 2016, this Court granted discretionary review.

C. ARGUMENT

In 1979, Washington’s legislature enacted RCW Chapter 10.99, which grants trial courts “the authority to enter a no-contact order at every possible juncture in [a criminal] prosecution.” State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002); LAWS of 1979, ch. 105 (codified at RCW Chapter 10.99). The legislature’s intent was explicit: “The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. A violation of any DVNCO issued under RCW Chapter 10.99 is a criminal offense that is “fully enforceable in any jurisdiction in the state.” RCW 10.99.050(2), (3); RCW 10.99.040(6).

This case involves one of that chapter’s statutes, RCW 10.99.050, which “authorizes sentencing courts to impose specialized contact orders” that protect crime victims, and may be imposed after a defendant’s conviction. State v. O.P., 103 Wn. App. 889, 892, 13 P.3d 1111 (2000).

This power to protect victims does not depend—as a matter of enforcement or validity—on the sentence the court actually imposes to punish the defendant. Instead, RCW 10.99.050 authorizes sentencing courts to issue DVNCOs for the “statutory maximum” sentence that the court *could* impose. In district court, that is 60 months of probation for a gross misdemeanor domestic violence offense. Thus, after a defendant’s conviction for a gross misdemeanor domestic violence offense, a district court may issue a DVNCO pursuant to RCW 10.99.050 for up to 60 months.

This brief first addresses the ongoing *validity* of an issued DVNCO under RCW 10.99.050, regardless of how long the sentencing court imposes the order, and it shows that these DVNCOs remain fully enforceable throughout the State regardless of whether the issuing court assumes and retains probationary jurisdiction over the defendant. Next, the brief addresses the maximum *duration* of orders authorized by RCW 10.99.050.

Finally, the brief clarifies the *source* of a district court’s authority to issue a post-conviction DVNCO at sentencing. The plain meaning of RCW 10.99.050 shows that it grants sentencing courts this authority.

Many courts have recognized the same.⁴ However, Granath disputes the point. She argues that a RCW 10.99.050 DVNCO is a “condition[] of [a] suspended sentence,” e.g., Br. of Appellant, at 10, and she claims any DVNCO under RCW 10.99.050 is “dependent upon the actual suspension or deferral of the sentence.” Br. of Appellant, at 15. Granath is wrong. A plain reading of RCW 10.99.050 shows that it grants authority to issue DVNCOs to protect a domestic violence victim, regardless of whatever sentence is imposed, or suspended, in punishing the defendant.

The arguments are addressed in turn.

1. RCW 10.99.050 ORDERS ARE ENFORCEABLE BY ANY COURT IN WASHINGTON, AND ARE VALID REGARDLESS OF WHETHER THE SENTENCING COURT RETAINS PROBATIONARY JURISDICTION.

A sentencing court may impose a RCW 10.99.050 order on two conditions: (1) the defendant has been found guilty, and (2) the defendant has been sentenced. RCW 10.99.050(1); see also Schultz, 146 Wn.2d at 548. The statute does not provide authority to issue DVNCOs prior to conviction *or prior to sentencing*; that authority derives from RCW 10.99.040. Id. An order must be recorded, and a written copy must be provided to the crime victim. Id. Any violation of the order is “a criminal

⁴ E.g., State v. W.S., 176 Wn. App. 231, 243, 309 P.3d 589 (2013) (sentencing court has “authority to impose a DVNCO under RCW 10.99.050 for the statutory maximum”); O.P., 103 Wn. App. at 892 (“[T]he act authorizes sentencing courts to impose specialized contact orders under RCW 10.99.050(2)...”).

offense under chapter 26.50 RCW,” and is “fully enforceable in any jurisdiction in the state.” RCW 10.99.050(1), (2)(b), (3). All “superior, district, and municipal courts of the state of Washington” can enforce them. RCW 26.50.020(5); RCW 26.50.010(1).

Significantly, no provision of RCW 10.99.050 automatically terminates a DVNCO issued at sentencing before its stated expiration. By contrast, pre-arraignment DVNCOs terminate “at arraignment or within seventy-two hours if charges are not filed,” and pretrial and pre-sentencing DVNCOs automatically terminate before their stated expiration date “if the defendant is acquitted or if the charges are dismissed.” Compare RCW 10.99.050, with RCW 10.99.040(3), (5).⁵

Granath acknowledges the lack of any automatic termination provision for RCW 10.99.050 orders. Br. of Appellant, at 8. However, she argues that the DVNCOs are valid for more than a year only if the sentencing court retains probationary jurisdiction over the defendant through a suspended sentence. E.g., Br. of Appellant, at 11 (DVNCO “is only effective during the term of the suspended sentence”).

Such a restrictive view finds no support in the text or plain meaning of RCW 10.99.050, or any related provision or statute; it contravenes explicit legislative purpose by focusing on punishment, rather

⁵ The full text of RCW 10.99.040 is included as Appendix B. RAP 10.4(2)(c).

than victim-protection; and it ignores prior decisions interpreting the scope and validity of post-conviction DVNCOs in Washington. Instead, the crime victim's protections are valid regardless of any probationary jurisdiction retained over the defendant.

- a. The Legislature Intended To Protect Victims, Not To Create Duplicative Methods Of Punishing A Defendant.

Courts use principles of construction to interpret statutes and implement legislative intent. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003). "Unjust and absurd consequences" must be avoided. State v. Vela, 100 Wn.2d 636, 641, 673 P.2d 185 (1983). A court's duty is "to make the statute purposeful and effective." Roy v. City of Everett, 118 Wn.2d 352, 357, 823 P.2d 1084 (1992).

While Granath acknowledges the absence of any automatic termination provision in RCW 10.99.050, she suggests that the legislature intended to create one, and she claims any DVNCO issued under the statute must expire with a sentencing court's probationary jurisdiction.

Br. of Appellant, at 8-12.

This Court recently addressed a similar argument about RCW 10.99.050 in the context of the Juvenile Justice Act of 1977, Chapter 12.40 RCW. In State v. W.S., W.S. challenged a ten-year DVNCO issued under RCW 10.99.050 because it purported to outlast the jurisdiction of the

juvenile court that issued it. 176 Wn. App. 231, 235–36, 309 P.3d 589 (2013). W.S. claimed that his DVNCO “must expire” when he turned 18 or 21 years old,⁶ because the order was valid only if the sentencing court had continuing jurisdiction over him. Id. at 239.

This Court rejected his argument. First, the Court observed the legislature’s “unambiguous and express intent to protect victims of domestic violence.” Id. at 240. The Court also noted that other courts may enforce the DVNCO. Id. Finally, the Court noted that a felony statute that authorizes sentencing courts to issue DVNCOs protecting *non-crime victims* contained a similar ambiguity. Id. at 242; State v. Armendariz, 160 Wn.2d 106, 118, 156 P.3d 201 (2007) (“No provision of the SRA directly addresses the maximum time period....”) (“SRA” is the Sentencing Reform Act, Chapter RCW 9.94A). In Armendariz, the Supreme Court ruled that the legislature intended a post-conviction DVNCO to last for the “statutory maximum term,” even if the sentencing court retained only a small portion of its jurisdiction. Id. at 108 (DVNCO valid for ten years, but defendant only sentenced to three months jail and 12 months of community custody). Although W.S. interpreted RCW 10.99.050 instead of the SRA, the durational ambiguity was the same, and the court in W.S.

⁶ W.S. was 16 years old when the DVNCO was issued. See 176 Wn. App. at 232, 235 n.3 (order ended 2/2/12).

relied on legislative intent to reach the same result: A “court’s authority to impose a DVNCO under RCW 10.99.050 for the statutory maximum of the crime is independent and unrelated to the court’s statutory jurisdiction over the offender.” W.S., 176 Wn. App. at 243. In other words: An RCW 10.99.050 order that was issued for 10 years was enforceable for all 10 years, regardless of the fact that it was issued by a court that would not retain authority over the defendant.

This Court’s reasoning in W.S. applies equally in Granath’s case. Thus, a RCW 10.99.050 order is enforceable as a separate criminal offense regardless of the issuing court’s retained jurisdiction. It is enforceable wherever it might be violated, by any court in that jurisdiction.

A contrary result has absurd and unjust consequences. If a DVNCO under RCW 10.99.050 is invalid unless the sentencing court retains jurisdiction through a suspended sentence, then the statute protects victims only if courts have multiple, simultaneous avenues to punish the defendant’s future conduct. This interpretation errs by putting the focus on *punishment* rather than *protection*. See RCW 10.99.010 (purpose of statute is to protect victims). It also errs by requiring, as a requirement of validity,

that the DVNCO be twice enforceable.⁷ Washington's no-contact order statutory scheme is not so rigid and duplicative.

Civil protection orders obtained after a civil hearing are instructive. Under RCW 26.50.060, any person may petition a court for a civil domestic violence protection order, irrespective of any criminal process. However, the issuing court has no power to directly sanction the respondent. RCW 26.50.060. Instead, the order is only enforceable as a separate criminal offense under RCW 26.50.110—in the exact way that chapter 10.99 orders are enforced. While these DVNCOs are enforced identically, they are imposed differently: RCW 26.50.060 requires a civil process, and RCW 10.99.050 requires a criminal conviction and sentence. Neither requires, as a condition of validity, that the issuing court retain an independent ability to sanction the defendant.

Granath argues that State v. Anaya, 95 Wn. App. 751, 976 P.2d 1251 (1999), supports her position. Br. of Appellant, at 11. But Anaya interprets the “automatic termination” provisions written into RCW 10.99.040, which authorizes a DVNCO before sentencing. The Court held that if a prosecution is dismissed, then any DVNCO authorized as a

⁷ That is, as a new criminal offense and as a sentence violation.

condition of “pretrial release” expires. *Id.* at 756–57.⁸ That interpretation does not apply to RCW 10.99.050, which does not have any automatic termination provision to interpret, as Granath concedes.

b. Requiring A Sentencing Court To Retain Probationary Jurisdiction Over A Defendant Results In Absurd And Unjust Consequences.

In district court, a sentencing court may retain up to 60 months of probationary jurisdiction over a domestic violence offender only if some portion of the sentence is suspended or deferred. RCW 3.66.068. A court’s authority to retain probationary jurisdiction is therefore dependent on the court *not* imposing a maximum punishment against a defendant.

Granath’s claim that the DVNCO is “dependent upon the actual suspension...of the sentence” thus leads to profound injustice. Br. of Appellant, at 15. As she sees it, a district court cannot both punish the defendant to the fullest extent *and* protect the victim for the maximum of 60 months. It must choose between protection *or* punishment.

Such a result is deeply unjust, as victims who suffer the worst domestic violence crimes become the *least likely* beneficiaries of the

⁸ After *Anaya*, the legislature amended RCW 10.99.040 to clarify that a pretrial DVNCO terminates “if the defendant is acquitted or the charges are dismissed.” LAWS of 2000, ch. 119, sec. 18; *Schultz*, 146 Wn.2d at 545 (recognizing the statutory amendment). The pretrial DVNCOs thus are not merely “pretrial” orders. They survive a finding of guilt, and are effective until a defendant is sentenced. *Id.* at 548.

“maximum protection” promised in RCW 10.99.050, because the people who offend against them are most likely to face maximum punishment.

Alternatively, sentencing courts might reduce jail sentences for the worst domestic violence offenders in order to protect the victim by suspending part of the sentence. (As Granath reads the statute, a court that imposed only 363 days in jail for an egregious gross misdemeanor offense could suspend the “last” day, and thus protect the victim for the full 60 months.) If sentencing courts respond this way, then domestic violence offenders will be subject to lower maximum jail sentences than people convicted of the same offense in a non-domestic violence context.

No plausible reading of legislative intent supports these absurd results. The legislature explicitly recognized “the serious consequences of domestic violence to society.” RCW 10.99.010. It did not intend to leave unprotected the most vulnerable victims, nor reduce punishment for domestic violence crimes. Granath’s interpretation has these consequences. Such injustice is avoided by the interpretation reflected in W.S. and adopted by the courts below: A DVNCO issued under RCW 10.99.050 is valid regardless of whether the sentencing court retains probationary jurisdiction over the defendant.

2. **A COURT MAY IMPOSE A DVNCO UNDER RCW 10.99.050 FOR UP TO 60 MONTHS, WHICH IS THE STATUTORY MAXIMUM TERM OF AUTHORITY FOR GROSS MISDEMEANOR DOMESTIC VIOLENCE CRIMES.**

RCW 10.99.050 does not define the maximum duration of a DVNCO issued under its authority. After interpreting legislative intent, however, W.S. declared that a sentencing court may “impose a DVNCO under RCW 10.99.050 for the statutory maximum of the crime.” 176 Wn. App. at 243. W.S. does not say if the “statutory maximum of the crime” means (a) the maximum *term of incarceration*, or (b) the maximum *term of authority*, whether by incarceration or probation. Notably, with all gross misdemeanor crimes of domestic violence, the maximum term of probation is longer than the maximum term of incarceration.

Legislative intent is best advanced, as the lower courts recognized, if the maximum *term of authority* applies.

- a. RCW 10.99.050 Confers Identical Authority Upon District Courts, Juvenile Courts, And Superior Courts.

Neither RCW 10.99.050, nor any part of chapter 10.99, distinguishes between superior, juvenile, district, or municipal courts. Any authority extended under the chapter is granted to all courts that sentence defendants after domestic violence convictions. See RCW Chapter 10.99.

This point is crucial to understanding W.S. As a factual matter, W.S.'s DVNCO was imposed under RCW 10.99.050. E.g., W.S., 176 Wn. App. at 232 (W.S. acknowledged "the juvenile court had the authority to enter the DVNCO under RCW 10.99.050"). On appeal, W.S. argued that the DVNCO could not survive past the juvenile court's jurisdiction, because a juvenile court's authority outside its jurisdiction is limited to enforcing restitution and assessing penalties. Id. at 239. Granath parrots this argument almost exactly. Br. of Appellant, at 16–18 (arguing district court's authority outside its jurisdiction is limited to enforcing restitution, fines, and interlock devices). W.S. squarely rejects this argument.

Granath's attempts to distinguish W.S. must fail. Granath contends that "juvenile sentences may be imposed for up to the statutory maximum of the offense," which is in "contrast" to a district court authority. Br. of Appellant, at 15. There is no contrast. Both juvenile and district courts may impose statutory maximum sentences for whatever crimes they are sentencing; neither court may impose a sentence that exceeds the statutory maximum incarceration or probation. Moreover, both juvenile and district courts are permitted to impose no-contact orders only as authorized by statute. For both courts, the authority to protect domestic violence crime victims at sentencing *comes from RCW 10.99.050*. E.g., W.S., 176 Wn. App. at 243; infra, at 20–26. For both, the validity of an issued RCW

10.99.050 order is “independent and unrelated” to the sentencing court’s retained jurisdiction. See W.S., 176 Wn. App. at 243, supra, at 6–13.

Notably, Granath offers no authority for the proposition that a juvenile court’s authority under RCW 10.99.050 would be distinct from a district court’s. Nor is there any suggestion within W.S., or any other case or statute, indicating differing grants of authority. Instead, under RCW 10.99.050, the powers are coextensive.

- b. The Legislature Intended That DVNCOs Last For The Statutory Maximum *Term Of Authority*, Which In This Case Is 60 Months.

Two cases have directly addressed statutory ambiguities relating to the maximum duration of DVNCOs issued at sentencing. Armendariz, 160 Wn.2d at 118 (interpreting SRA protections for *non-crime victims*); W.S., 176 Wn. App. at 243 (interpreting RCW 10.99.050 protections for victims of domestic violence). Both cases declare that the orders may issue for the “statutory maximum,” relying on legislative intent to reach these results.

Armendariz, 160 Wn.2d at 108 (“statutory maximum term”); W.S., 176 Wn. App. at 243 (“statutory maximum for the crime”). Neither case decides whether the maximum is the “maximum term of incarceration” or the “maximum term of authority, whether by incarceration or probation.”

For gross misdemeanor crimes of domestic violence, the maximum term of incarceration is always 364 days in jail. However, the maximum

term of probation in district court is 60 months. RCW 3.66.068(1)(a). The legislature lengthened the maximum probation for offenders sentenced in district and municipal courts in 2010; the SRA was not similarly modified. LAWS of 2010, ch. 274, sec. 405 (amending RCW 3.66.068); but see RCW 9.95.210(1)(a) (superior court); see also RCW 13.40.160 (juvenile court). Therefore, a superior court sentencing a misdemeanor offender may only impose 24 months of probation. See State v. Rodriguez, 183 Wn. App. 947, 959, 335 P.3d 448 (2014) (interpreting RCW 9.95.210). Notably, Rodriguez suggests (but does not hold) that the “statutory maximum” for a RCW 10.99.050 DVNCO is the *longer* of the maximum incarceration or maximum term of probation. Id. That comports with legislative intent, and supports the State’s position that the maximum term of authority applies.

Given the legislature’s explicit intent to provide crime victims with the “maximum protection from abuse which the law...can provide,”⁹ this Court should squarely hold that a DVNCO imposed under RCW 10.99.050 is valid for the statutory maximum *term of authority*, whether by incarceration or probation. For district courts sentencing gross misdemeanor offenses, this is 60 months.

First, to limit the DVNCO to the maximum period of incarceration contravenes legislative intent by reducing victim protections dramatically.

⁹ RCW 10.99.010.

DVNCOs issued at sentencing after gross misdemeanors would be valid for only one year. Outside of that minimal period, DVNCOs could not be enforced as separate criminal offenses under RCW Chapter 10.99. Notably, even Granath argues against this narrow interpretation. Br. of Appellant, at 12–19. Instead, she proposes a hybrid solution: RCW 10.99.050 may last for the “maximum” period of incarceration or the “retained” period of probationary jurisdiction, which necessarily depends on the sentence actually imposed against the defendant, and also requires ongoing probationary jurisdiction. Br. of Appellant, at 8. While Granath’s proposal better effectuates legislative intent than a pure *incarceration* interpretation, it is not based on a plain reading of the statute, it does not best implement the legislative intent, and it creates powerfully unjust consequences, as discussed above. See supra, at 12–13.

Second, permitting a DVNCO to last for the maximum term of authority better protects victims without further punishing defendants. RCW 10.99.050 orders are crime-related prohibitions that are “clearly regulatory,” and are not punitive in nature. State v. Felix, 125 Wn. App. 575, 579–80, 105 P.3d 427 (2005).

Third, Armendariz and W.S. support imposing DVNCOs for the maximum term of authority. Indeed, in Armendariz, the Court rejected an argument that DVNCOs imposed at sentencing should last for the shorter

of maximum incarceration or maximum probation, and instead elected to apply the longer of the two. 160 Wn.2d at 118–20. It found that limiting the orders to the shorter term—which, in a felony context, is the term of probation—was “illogical.” *Id.* at 119.

Lastly, Granath incorrectly insists that W.S. held that the maximum term of incarceration applies to any order issued under RCW 10.99.050. E.g., Br. of Appellant, at 12, 13, 14. It does not. Because W.S. was convicted of felony assault, the “statutory maximum of the crime” was the same as the maximum incarceration. But W.S. never holds that *incarceration* is always the relevant inquiry. Nor should this Court hold that, particularly when the legislature has expanded the allowable probation beyond the statutory maximum period of incarceration.

Instead, the “statutory maximum” should be interpreted as the maximum *term of authority*, whether it is incarceration or probation. The legislature’s intent is unequivocal: “The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. Here, the lower courts understood this purpose, and honored it. Granath’s interpretation does not.

**3. THE SOURCE OF A DISTRICT COURT'S
AUTHORITY TO IMPOSE DVNCOs AT
SENTENCING IS RCW 10.99.050.**

Finally, the source of a district court's authority to impose DVNCOs at sentencing is *RCW 10.99.050*. RCW Chapter 10.99 authorizes the imposition of no-contact orders at every stage of a criminal prosecution: (1) before arraignment, (2) while trial or sentencing is pending, and (3) at sentencing. See Schultz, 146 Wn.2d at 544 (citing RCW 10.99.040(2), (3), and RCW 10.99.050); see also State v. O'Connor, 119 Wn. App. 530, 547, 81 P.3d 161 (2003) ("upon conviction, sentencing courts are authorized to impose specialized no-contact orders" under RCW 10.99.050(2)), aff'd, 15 Wn.2d 335, 119 P.3d 806 (2005).

Granath disputes the point. She claims that a RCW 10.99.050 DVNCO is a "condition[] of [a] suspended sentence," e.g., Br. of Appellant, at 10, and she claims any DVNCO under RCW 10.99.050 is "dependent upon the actual suspension or deferral of the sentence." Br. of Appellant, at 15. There is no such dependence. Instead, a RCW 10.99.050 DVNCO stands alone, issued under authority unrelated the suspension of any sentence.

This authority to *issue* a DVNCO is contained specifically in RCW 10.99.050, the whole of chapter 10.99 RCW, and related acts and statutes.

This plain meaning is also underscored by both the legislature's statement of purpose and the many courts that have acknowledged it.

- a. A Sentencing Court Can Issue A DVNCO Pursuant To RCW 10.99.050 Whether Or Not The Court Imposes A Suspended Sentence.

Under the plain meaning rule, statutory provisions are not analyzed in isolation. Instead, "an act must be construed as a whole, considering all provisions in relation to one another and harmonizing all rather than rendering any superfluous." State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010). If possible, "no clause, sentence or word shall be superfluous, void, or insignificant." State v. Pannell, 173 Wn.2d 222, 230, 267 P.3d 349 (2011).

First, RCW 10.99.050 repeatedly states that it grants authority to *issue* DVNCOs. RCW 10.99.050(2)(a) ("Willful violation of a court order issued under this section..."); 10.99.050(3) ("Whenever an order prohibiting contact is issued pursuant to this section..."); 10.99.050(4) ("If an order prohibiting contact issued pursuant to this section..."). These uses of "issue" are distinct from "record," as used in RCW 10.99.050(1). Different words are presumed to have different intended meanings. Simpson Inv. Co. v. Dep't of Revenue, 141 Wn.2d 139, 160, 3 P.3d 741 (2000). Significantly, after civil processes, courts "issue" protection orders that become enforceable as criminal prohibitions. E.g., RCW 26.50.060.

Thus, RCW 10.99.050: (1) grants sentencing courts authority to *issue* post-conviction DVNCOs, and (2) mandates the orders be *recorded* and given to the protected party.

Second, the language in the rest of chapter 10.99 RCW demonstrates that section .050 authorizes courts to issue the orders. In two different points, RCW 10.99.040 refers to DVNCOs “issued under this *chapter*.” RCW 10.99.040(3), (7) (emphasis added); compare RCW 10.99.040(4), (6) (referring to orders issued “under subsection[s]” of .040). Only two statutes in the RCW Chapter 10.99 purport to authorize DVNCOs: RCW 10.99.040 and .050. See 10.99.010–.901.¹⁰ As before, “subsection” and “chapter” are different words that must be given different meanings; that is accomplished only if RCW 10.99.050 is understood as independent authority for trial courts to impose DVNCOs at sentencing.

Third, this reading harmonizes Washington’s statutory scheme relating to no-contact orders. Numerous statutes refer to post-conviction orders “issued under chapter 10.99.” E.g., RCW 10.31.100(2) (referring to NCOs “issued under...chapter 10.99”); RCW 26.50.110(1)–(6) (“granted under...chapter 10.99” or “issued under...chapter 10.99”); RCW

¹⁰ RCW 10.99.045 does not authorize the court to issue DVNCOs. E.g., State v. Anaya, 95 Wn. App. at 754 (citing .040 and .050 as only provisions that authorize DVNCOs); see also Schultz, 146 Wn.2d at 550 (same).

9A.46.060(36) (“issued pursuant to...chapter 10.99”). These references necessarily invoke RCW 10.99.050, for the reasons discussed above. What is more, prior versions of RCW 10.31.100 make this point explicit.¹¹ See Dep’t of Ecology v. Campbell & Gwinn, 146 Wn.2d 1, 11–12, 43 P.3d 4 (2002) (plain meaning is “discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent”).

Granath’s reading of RCW 10.99.050 is not supported by its plain language. For instance, she argues a RCW 10.99.050 order “is the ‘recording’ of the sentencing condition.” Br. of Appellant, at 8. While subsection (1) requires that DVNCOs be recorded, subsections (2), (3), and (4) show it also authorizes courts to “issue” them. Granath does not explain how her interpretation of RCW 10.99.050 gives different meanings to “record” and “issue.” Simpson Inv. Co., 141 Wn.2d at 160 (“when different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word”). Granath also argues that a RCW 10.99.050 order is imposed as part of a suspended

¹¹ Until 2000, RCW 10.31.100 authorized warrantless arrests “when [an] officer has probable cause to believe that [a]n order has been *issued...under 10.99.050*” and the suspect violated the order. E.g., LAWS of 2000, ch. 119, sec. 4. The statute also listed RCW 10.99.040. In 2000, the legislature substituted the specific references for the broader—and still applicable—“chapter 10.99.” Id. Nothing in the legislative history suggests the 2000 change was intended to withdraw sentencing authority in domestic violence cases; instead, the bill report summarizes the effort as one “to improve the state’s response to domestic violence.” Final Bill Rep. on E.2d. Sub. S.B. 6400, 56th Leg., Reg. Sess., at 1 (2000) (bill summary).

sentence, and is “only effective during the term of the suspended sentence.” E.g., Br. of Appellant, at 11. This reads into the statute words that are not there.¹² A court may only impose a post-conviction DVNCO under RCW 10.99.050 at *sentencing*; a finding of guilt, by itself, is insufficient. See Schultz, 146 Wn.2d at 545–48.

b. Other Principles Of Statutory Construction Also Show The Statute Authorizes Sentencing Courts To Protect Victims.

Courts use principles of construction to interpret ambiguous statutes and implement legislative intent. State v. J.P., 149 Wn.2d at 450. Here, the legislature adopted RCW 10.99.050 to protect victims of domestic violence by authorizing sentencing courts to issue DVNCOs after a defendant’s criminal conviction.

As a threshold matter, of course, the legislature’s intent is explicit: RCW Chapter 10.99 was enacted to “assure the victim of domestic violence the maximum protection from abuse.” LAWS of 1979 ex. sess. ch. 105, sec. 1 (codified at RCW 10.99.010). To interpret RCW 10.99.050 as a mere “recording” requirement renders incongruous this sweeping statement of purpose. Under such a restrictive reading, sentencing courts have no more authority to protect victims than they already had. Prior to

¹² In effect, Granath reads RCW 10.99.050 to say: “When a defendant is found guilty of a crime and a condition of a *suspended* sentence *under RCW 3.66.068* restricts the defendant’s ability...” These italicized words are not in the statute.

RCW 10.99.050, a district court's only authority to impose a DVNCO at sentencing was RCW 3.66.068, which allows courts to "suspend the execution of all or any part of its sentence upon stated terms." RCW 3.66.068(1). If a court imposes a maximum punishment, there is no suspended sentence—and no authority to impose a DVNCO. Under RCW 3.66.068, therefore, a victim's protections necessarily rely on the punishment imposed against a defendant. This is because RCW Chapter 3.66 is about the defendant.

By contrast, RCW Chapter 10.99 prioritizes the victims of domestic violence, and it represents the legislature's intent to protect them. It authorizes sentencing courts to issue DVNCOs for the maximum term of the defendant's sentence, independent of any punishment imposed on the offender. A contrary interpretation fails to recognize the legislature's desire to remove the barriers to post-conviction victim-protections that are inherent with RCW 3.66.068.

What is more, Washington's courts have consistently recognized that RCW 10.99.050 grants sentencing courts authority to issue post-conviction DVNCOs. Every division of the Washington Court of Appeals has—like the Supreme Court in Schultz—acknowledged this authority. E.g., O'Connor, 119 Wn. App. at 547 ("upon conviction, sentencing courts are authorized to impose specialized no-contact orders," citing

RCW 10.99.050); State v. Vant, 145 Wn. App. 592, 598, 186 P.3d 1149 (2008) (Div. II) (DVNCO was “issued under RCW 10.99.050”); State v. O’Brien, 115 Wn. App. 599, 602, 63 P.3d 181 (2003) (Div. III) (after conviction, court “was authorized to enter the [DVNCO],” citing RCW 10.99.050). Many more cases could be cited.¹³

Therefore, RCW 10.99.050 authorizes a district court to protect victims of domestic violence by issuing a DVNCO at a defendant’s sentencing for up to 60 months, the statutory maximum term of authority for a gross misdemeanor offense. The order is fully enforceable in any jurisdiction in the state, “independent and unrelated” to the retained jurisdiction of the court that issued it.

¹³ The holding has been reiterated consistently across the years. E.g., W.S., 176 Wn. App. at 243 (2013) (sentencing court has “authority to impose a DVNCO under RCW 10.99.050 for the statutory maximum of the crime”); State v. Spencer, 128 Wn. App. 132, 138, 114 P.3d 1222 (2005) (“issued under RCW 10.99.050”); O.P., 103 Wn. App. at 892 (2000) (RCW 10.99.050(2) “authorizes sentencing courts to impose specialized contact orders”); State v. Jackson, 91 Wn. App. 488, 490 n.1, 957 P.2d 1270 (1998) (“orders issued under RCW 10.99.050”).

In subsequently abandoned dictum, two cases suggested another result. Felix, 125 Wn. App. 575 (suggesting statute only specifies additional enforcement measures); State v. Winston, 135 Wn. App. 400, 144 P.3d 363 (2006) (same, citing Felix). These cases were, respectively, from Division One and Division Two, which have since clarified that DVNCOs may be issued under RCW 10.99.050. E.g., State v. Hagler, 150 Wn. App. 196, 201–02, 208 P.3d 32 (2009) (Div. I) (sentencing courts “are authorized to impose specialized no-contact orders” post-conviction under RCW 10.99); Vant, 145 Wn. App. at 598 (2008) (Div. II) (DVNCO “issued under RCW 10.99.050”).

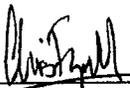
D. CONCLUSION

For the foregoing reasons, the State asks this Court to DENY Granath's appeal, and AFFIRM the rulings below. The DVNCO that protects Granath's estranged husband, the victim of Granath's crimes, remains valid as issued through November 8, 2017.

DATED this 9th day of September, 2016.

Respectfully submitted,

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Appendix A

(RCW 10.99.050)

RCW 10.99.050. Victim contact—restriction, prohibition—violation, penalties—written order—procedures—notice of change.

- (1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.
- (2) (a) Willful violation of a court order issued under this section is punishable under RCW 26.50.110.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.
- (3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.
- (4) If an order prohibiting contact issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

RCW 10.99.050.

Appendix B

(RCW 10.99.040)

RCW 10.99.040. Duties of court—No-contact order.

- (1) Because of the serious nature of domestic violence, the court in domestic violence actions:
 - (a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;
 - (b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;
 - (c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and
 - (d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.
- (2) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.
 - (b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.
 - (c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.
- (3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are

dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring as defined in RCW 9.94A.030. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

- (4) (a) Willful violation of a court order issued under subsection (2), (3), or (7) of this section is punishable under RCW 26.50.110.
 - (b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."
 - (c) A certified copy of the order shall be provided to the victim.
- (5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.
 - (6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.
 - (7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the Appellant, Ms. Christine Jackson, containing a copy of the Brief of Respondent, in STATE V. WENDY GRANATH, Cause No. 74677-4-I, in the Court of Appeals, Division I, for the State of Washington.

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


Name
Done in Seattle, Washington

09-09-16
Date