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NO. 94892-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

WENDY GRANATH,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUE PRESENTED

The legislature intended that chapter 10.99 RCW provide victims of domestic violence with “the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. RCW 10.99.050 permits a court to issue a domestic violence no-contact order (“DVNCO”), the violation of which is a separate criminal offense, to protect a victim after sentencing. May DVNCOs be enforced for the maximum term of the court’s sentencing authority, or must protection end once any confinement and probationary period have passed?

B. STATEMENT OF THE CASE

Wendy Granath was convicted in King County District Court of one count of cyberstalking and one count of violation of a court order. CP 35. The jury found both misdemeanors to be crimes of domestic violence. CP 35. The charges arose from emails that Granath sent to her estranged husband, John Agaba. CP 25. On November 8, 2012, the district court imposed a sentence of 364 days in jail and a \$5,000 fine, with 334 days and \$4,900 of that suspended for 24 months. CP 35–36. The court imposed a five-year no-contact order. CP 39.

In the judgment and sentence, the district court ordered that Granath “not go on the property of and have no contact with John Agaba.” CP 35. In a separate document, entitled “Post-Conviction Domestic Violence No-Contact Order,” the court imposed additional restrictions on contact, including, among other things, a prohibition on keeping Agaba under surveillance, a prohibition on contacting him through third parties, and a requirement that Granath stay 500 feet away from Agaba’s “residence, school, or workplace.” CP 39. The order stated that the court was “issu[ing] this Domestic-Violence No-Contact Order under chapter 10.99 RCW,” and that the order would expire “[f]ive years from today,” or November 8, 2017. CP 39–40. Granath signed the order. CP 40.

On October 9, 2014, the district court announced that Granath’s case would “close” after she paid outstanding fines, which Granath did on December 8, 2014. CP 26. The court did not terminate the RCW 10.99.050 order, and the record does not indicate that the court ever designated the case as “closed.”¹

Several weeks after Granath paid her fines, she moved to vacate the DVNCO on the grounds that the trial court no longer had

¹ While courts sometimes speak of “closing” cases, the phrase has no meaning in statute or case law. Instead, it indicates that the defendant has completed all affirmative conditions of her sentence, and no further administrative action by the court is necessary.

probationary jurisdiction over her. CP 26-27. The State objected. CP 26. After a hearing, the trial court denied the motion, finding that it “had lawful authority to issue a separate order under [RCW] 10.99” and that the DVNCO could “survive on its own.” CP 22–23. On RALJ appeal, the superior court affirmed, ruling that such DVNCOs could be issued for the “maximum term of sentence that the district court could impose or suspend.” CP 46.

Granath sought discretionary review in the Court of Appeals, which reversed. State v. Granath, 200 Wn. App. 26, 401 P.3d 405 (2017). The Court of Appeals impliedly held that chapter 10.99 RCW contained no additional authority for sentencing courts, and that an RCW 10.99.050 order is merely a separate recording of a sentence provision the court is otherwise authorized to impose. Id. at 30, 38–39. It reasoned that any *recording* of a sentence provision could not outlast the provision itself, and thus the RCW 10.99.050 order in this case expired at the same time as the district court’s probationary jurisdiction. Id.

C. ARGUMENT

A traditional no-contact sentencing provision issued outside the purview of RCW 10.99, or similar statute, is typically enforced by a sentencing court itself, and cannot be enforced as a new

criminal offense unless contempt powers apply. In recent decades, however, the legislature has authorized courts to issue specialized sentencing orders that protect especially vulnerable victims who have suffered domestic violence (RCW 10.99.050), sexual assault (RCW 7.90.150), or stalking crimes (RCW 7.92.160). These specialized orders are fully enforceable by any court in Washington as new crimes under chapter 26.50 RCW, even if the issuing court never notes a hearing or acknowledges a violation. RCW 10.99.050(2)(a); RCW 7.90.150(7); RCW 7.92.160(7).²

This case involves RCW 10.99.050, in which the legislature “authorized sentencing courts to impose specialized no-contact orders” when a defendant has been found guilty of a domestic-violence crime, and when a judge determines specialized protection is needed. State v. O.P., 103 Wn. App. 889, 892, 13 P.3d 111 (2000); RCW 10.99.050. Together with the rest of the chapter, it “gives a trial court the authority to enter a no-contact order at every possible juncture in the prosecution.” State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002).

² These specialized orders are also enforced by police officers throughout the state. RCW 10.99.050(2)(b); RCW 7.90.150(6)(b); RCW 7.92.160(6)(b). In fact, the legislature requires that “[a] police officer shall arrest... a person without a warrant when the officer has probable cause to believe that the person has violated” one of these specialized orders. RCW 10.31.100(2)(a); accord RCW 26.50.110(2).

As the Court of Appeals acknowledged, and as Granath conceded, RCW 10.99.050 does not define how long DVNCOs may last. See Granath, 200 Wn. App. at 32 (“The legislature has not stated a specific time limit of months or years for the validity” of the DVNCOs); Br. of Petitioner, at 8 (“RCW 10.99.050 does not set the duration of post-conviction no-contact orders.”). Thus, courts must interpret RCW 10.99.050 to determine the permissible length of a DVNCO issued under its authority.

This question of statutory interpretation is reviewed de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

1. RCW 10.99.050 AUTHORIZES SENTENCING COURTS TO ISSUE SPECIALIZED NO-CONTACT ORDERS, AND IS NOT A MERE RECORDING REQUIREMENT.

RCW 10.99.050(1) says: “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.” Other subsections of RCW 10.99.050 repeatedly refer to orders “issued under this section” or “issued pursuant to this section.” 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...”).

In interpreting a statute, a court’s fundamental objective is to ascertain and carry out the intent of the legislature. Dep’t of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Courts first examine the language of the statute to discern the plain meaning “from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010). A “fundamental principle of statutory interpretation is that when the legislature uses different words in statutes relating to a similar subject matter, it intends different meanings.” State v. Flores, 164 Wn.2d 1, 14, 186 P.3d 1038 (2008). Likewise, if “a Legislature had used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using it in the same sense, unless there be something in the context or the nature of things to indicate that it intended a different meaning thereby.” Champion v. Shoreline Sch. Dist. No. 412 of King Cty., 81 Wn.2d 672, 676, 504 P.2d 304 (1972).

- a. Sex-Assault And Stalking Post-Conviction Orders Authorized As A “Condition Of Sentence” Last Longer Than Any Other Term Of Sentence.

Washington’s legislature has used the same language that appears in RCW 10.99.050(1) to authorize sentencing courts in certain other types of cases to impose specialized no-contact orders that explicitly stand apart from—and survive the expiration of—any other term of sentence. RCW 7.90.150(6)(a), (c) (sexual assault post-conviction orders); RCW 7.92.160(6)(a), (c) (stalking post-conviction orders). A post-conviction sex-assault order “shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of...conditional release, probation, or parole.” RCW 7.90.150(6)(c). A post-conviction stalking order “shall remain in effect for a period of five years from the date of entry.” RCW 7.92.160(6)(c).

Because these statutes explicitly authorize specialized orders that do not depend on any suspended sentence, they stand alone. They are not mere recordings of traditional sentencing provisions; they are separate, specialized orders with specific statutory authority. These stand-alone orders are lawful.

E.g., State v. Navarro, 188 Wn. App. 550, 555, 354 P.3d 22 (2015), review denied, 184 Wn.2d 1031, 364 P.3d 119 (2016).

The authority to impose stand-alone no-contact orders in sex-assault or stalking cases is granted using language *identical* to that found in RCW 10.99.050. All three statutes have the same enabling phrase: “When a defendant is found guilty of [the relevant type of crime] and a condition of the sentence restricts the ability to have contact with the victim, such condition shall be recorded” RCW 10.99.050(1); RCW 7.90.150(6)(a); RCW 7.92.160(6)(a). Because all three statutes involve the same subject matter—a sentencing court’s authority to protect crime victims—principles of statutory construction dictate that the enabling language be understood in all statutes to mean the same thing. See Champion, 81 Wn.2d at 676.

Thus, the plain language of RCW 10.99.050 provides sentencing courts with authority to issue stand-alone domestic violence no-contact orders. The statute is not a mere recording requirement; it is a grant of specialized sentencing authority. The full text of RCW 10.99.050, of chapter 10.99 RCW, and of Washington’s statutes for *enforcement* of the orders establishes the same point. Br. of Respondent, at 20–24. Consistent with this

analysis, courts have recognized that the “authority to impose a DVNCO under RCW 10.99.050...is independent and unrelated to the court’s statutory jurisdiction over the offender.” State v. W.S., 176 Wn. App. 231, 243, 309 P.3d 589 (2013).

- b. Victims Of Domestic Violence Sexual Assault Are Only Eligible For Post-Sentencing Protection Under RCW 10.99.050, And Are Ineligible For A Sexual Assault Protection Order.

In 1979, in recognition of the unique harms caused by domestic violence, the Washington Legislature enacted chapter 10.99 RCW. LAWS OF 1979, ch. 105. The chapter recognizes that crimes between “family or household members” are domestic violence crimes, RCW 10.99.020, and it promises these victims “the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. The chapter explicitly extends its protections to sex-assault and stalking victims, but only if the victim and the abuser have a domestic-violence relationship. E.g., RCW 10.99.020(5)(s),(t),(v).

Subsequently, the legislature extended sex-assault victims similar special protections, even if no domestic violence relationship exists. LAWS OF 2006, ch. 138 (codified at chapter 7.90 RCW). As discussed above, these sex-assault orders are special grants of

stand-alone sentencing authority, and last two years beyond the expiration of any confinement and supervision. Supra, at 7–9.

Nevertheless, the sex-assault protection statute emphasizes the unique evil of domestic violence and the broad protection granted by RCW chapter 10.99. Indeed, a sexual-assault order is *not available* to a victim of domestic violence. RCW 7.90.005. “It is the intent of the legislature that the sexual assault protection order created by this chapter be a remedy for victims who *do not qualify* for a domestic violence order of protection.” Id. (emphasis added). Thus, any person who has suffered a sexual assault within a domestic violence relationship is ineligible for the post-sentencing protection under RCW 7.90.150(6).³ If a sentencing court wishes to protect such a victim, the court must use RCW 10.99.050. By making domestic violence orders the primary response in sexual assaults between family or household members, the legislature demonstrated its strong commitment to provide all domestic violence victims “maximum protection from abuse which the law...can provide.” RCW 10.99.010.

³ The post-conviction orders authorized by RCW 7.90.150 are called “sexual assault protection orders.” RCW 7.90.150 (statute title); RCW 7.90.150(6)(a). A person qualifies for a domestic violence order of protection if he or she “alleges that the person has been the victim of domestic violence committed by the respondent.” RCW 26.50.020(1)(a). Domestic violence includes “sexual assault of one family or house member by another.” RCW 26.50.010(3)(b).

Given this statutory scheme, it makes no sense to give a sentencing court special power to protect a sex-assault victim *only if the sex-assault occurred outside a domestic-violence relationship*. By interpreting RCW 10.99.050 as a mere recording requirement—even as RCW 7.90.160 uses the same language to grant stand-alone sentencing power—the Court of Appeals did just that. Granath, 200 Wn. App. at 37–38; see also id. at 38, n.3.

The error of interpreting RCW 10.99.050 as containing *less* sentencing authority than RCW 7.90.160 is further emphasized by the legislative history of the sex-assault protection order statute. The legislation was introduced simultaneously as House Bill 2576, and as a companion bill, Senate Bill 6478. Public hearings in the House and Senate committees were held Jan. 17 and Jan. 18, 2006.⁴ In the committees, legislators heard extensive testimony that the bill was designed to mirror domestic-violence protections. E.g., House Hearing, at 29:58–1:03:42; Senate Hearing, at 0:20–49:20. However, the sex-assault bill was not intended to *exceed* domestic-violence protections. Quite the opposite: There was testimony that

⁴ See Hr'g on H.B. 2576 Before H. Judiciary Comm. 59th Leg., Reg. Sess. (Jan. 18, 2006), available at <https://www.tvw.org/watch/?eventID=2006011258> ("House Hearing"); and Hr'g on S.B. 6478 Before S. Judiciary Comm. 59th Leg., Reg. Sess. (Jan. 17, 2006), available at <https://www.tvw.org/watch/?eventID=2006011277> ("Senate Hearing").

the post-conviction sex-assault order, “unlike the domestic violence restriction, does not go necessarily for life.⁵ It goes for the period of incarceration, supervision, and two years beyond.” Senate Hearing, at 24:20 (testimony of Pam Loginsky, Washington Association of Prosecuting Attorneys). Thus, it subverts legislative intent to interpret the powers and protections under RCW 10.99.050 as less than those available under RCW 7.90.150.

Moreover, the same dynamic exists with stalking victims under chapter 7.92 RCW, enacted in 2013. LAWS OF 2013, ch. 84. The legislature declared its intent “that the stalking protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order of protection.” RCW 7.92.010.⁶

This statutory scheme thus makes clear the legislature’s intent that *domestic violence* protections be a refuge of first resort, including for victims of sexual assault. Given explicit legislative intent about providing “maximum protection” for domestic violence victims, it would be absurd for a sentencing court to have

⁵ After a felony crime of domestic violence, a superior court may issue a DVNCO that lasts for the maximum period of incarceration, regardless of whatever sentence the superior court imposes. See, e.g., State v. Armendariz, 160 Wn.2d 106, 111, 156 P.3d 201 (2007). For a Class A felony, a DVNCO can last for life.

⁶ It is possible that chapter 7.92 RCW allows courts to impose the specialized stalking orders at sentencing. Compare RCW 7.90.160 (6)(a) (“stalking *no-contact* order”) (emphasis added), and RCW 7.92.150(6)(a) (“sex-assault protection order”).

dramatically narrower authority to issue post-sentencing no-contact orders in domestic violence cases than in sexual assault cases.

- c. The Legislature Knows How To Subordinate Special Sentencing Authority To A Term Of Probation, And RCW 10.99.050 Is Not Subordinated.

Finally, when the legislature creates special sentencing authority, it knows how to subordinate that authority to a term of otherwise-authorized probation when it wants to.

In the DUI context, for instance, the legislature has granted special sentencing authority that is explicitly subordinate to a valid suspended sentence. RCW 46.61.5055(11). Under the DUI statute, a sentencing court may impose special “conditions of probation” whose violations, unlike normal probationary conditions, have proscribed penalties. RCW 46.61.5055(11)(b), (c). These probation conditions apply only where a suspended sentence actually exists. RCW 46.61.5055(11)(a). The absence of similar qualifications in RCW 10.99.050 shows that the legislature did not intend to subordinate the special DVNCO authority to a suspended sentence. See Flores, 164 Wn.2d at 14 (“when the legislature uses different words in statutes relating to a similar subject matter, it intends different meanings”).

Nevertheless, the question remains *how long* the legislature intended stand-alone post-conviction domestic violence orders to remain in effect, because chapter 10.99 RCW—unlike the sexual assault and stalking statutes—does not address a time limit.

2. UNDER RCW 10.99.050, COURTS MAY PROTECT A VICTIM FOR THE MAXIMUM TERM OF THE COURT'S AUTHORITY OVER THE OFFENDER, REGARDLESS OF ANY JAIL OR PROBATION ACTUALLY IMPOSED.

- a. It Is Undisputed That Courts *Could* Protect Victims In Courts Of Limited Jurisdiction For Up To Five Years If A Maximum Suspended Sentence Is Imposed.

In courts of limited jurisdiction, domestic violence offenders may be placed on probation for up to five years as part of a suspended or deferred sentence. RCW 3.66.068; RCW 35.20.255. Recognizing this, Granath conceded, and the Court of Appeals held, that a court of limited jurisdiction *can* protect victims under RCW 10.99.050 for as long as five years if the sentence is suspended for that long.⁷ See Granath, 200 Wn. App. at 30, 38–39; see also Br. of Petitioner, at 9–12.

⁷ As noted in the State's Petition for Review, the Court of Appeals did not resolve what sorts of suspended sentences would be permissible. Pet. for Review, at 10–13. Moreover, the focus on the period of suspension has complications related to tolling: If a defendant goes on warrant status during probation, a DVNCO could be extended *after sentencing* for a corresponding term—days, months, or years.

- b. The Legislature Intended To Allow Courts To Provide Maximum Protection To Victims Without Reducing Punishments For Domestic Violence Offenders.

Under the Court of Appeals decision, a maximum term of protection requires the court to retain some suspended punishment over the offender. See Granath, 200 Wn. App. at 38–39. The Court of Appeals reasoned that it was logical for DVNCOs to be tied to the “length [of] the sentence actually imposed,” which—in Granath’s case—meant the two-year suspended sentence.⁸ Id. at 38–39. The court also held that the rule of lenity applied. Id. at 37.

The State respectfully disagrees. The Court of Appeals’ decision has unjust and absurd consequences, and the legislature could never have intended the interpretation adopted below. Moreover, the doctrine of lenity does not apply where—as here—the legislature’s intent is explicit. In re Post Sentencing Review of Charles, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998) (rule of lenity applies only “when a penal statute is ambiguous *and*

⁸ Of course, as noted in the Petition for Review, Granath conceded during oral argument below that a DVNCO issued under RCW 10.99.050 can always be valid for 364 days, even if no part of the sentence is suspended. See State v. Granath, No. 74677-4-1 (July 20, 2017), at 32:45-33:00, available at https://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a01&docketDate=20170720. The recording of Granath’s July 20 oral argument appears at the end of the audio file for Mock v. Wash. Dep’t of Corrections, No. 76097-1-1 (July 20, 2017).

legislative intent is insufficient to clarify the ambiguity”) (emphasis in original) (superseded by statute on other grounds).

The legislature made its intent explicit in RCW 10.99.010: “The purpose of this chapter is...to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.” Id. In addition, the legislature intended to “communicate that violent behavior is not excused or tolerated.” Id. The legislature did not enact RCW 10.99.050 to force trial judges to choose between protecting domestic violence victims and punishing domestic violence abusers. They intended that courts could do both.

The goal of simultaneously providing maximum protection for victims *and* allowing maximum punishment for defendants is thwarted by the decision below. Victims who suffer the worst domestic violence crimes become the least likely beneficiaries of the protections promised in chapter 10.99 RCW, because the people who offend against them are most likely to face maximum punishment—leaving the court without probationary jurisdiction.

Alternatively, sentencing courts might engage in sentencing gamesmanship, and work backwards: they could reduce jail sentences for the worst domestic violence offenders in order to

protect the victim by suspending part of the sentence.⁹ If courts respond this way, then domestic violence offenders will effectively be subject to lower maximum jail sentences than people convicted of the same offense in a non-domestic violence context. And, of course, whatever minimal sanction is suspended could never be revoked without destroying the DVNCO.¹⁰

The decision below also has the absurd effect of forcing courts to retain probationary jurisdiction over misdemeanants where judges do not feel ongoing supervision is necessary, but do wish to keep the defendant away from the victim. The purpose of misdemeanor probation is to rehabilitate offenders, compensate victims, and reduce foreseeable danger to the community. See Wahleithner v. Thompson, 134 Wn. App. 931, 939, 143 P.3d 321 (2006). In Granath's case, the district court did not believe that probation—and its accompanying obligations upon the defendant and the court—was necessary for a full five years; instead, the

⁹ Under the decision below, a district court that imposed only 363 days in jail for an egregious gross misdemeanor offense could suspend the last day, and thus protect a victim for the full 60 months.

¹⁰ Contempt powers would still apply under chapter 7.21 RCW. See RCW 26.50.110(3). However, contempt powers alone are insufficient in the domestic violence context, as they can never constitute a felony offense, unlike orders issued under chapter 10.99 RCW, and they never subject an offender to immediate arrest. See RCW 26.50.110(4), (5); RCW 10.31.100. This is a significant reduction in victim safety. Moreover, contempt, in which the victim is *the court*, misconstrues and minimizes the harms caused by domestic violence.

judge indicated a belief that a separately enforceable DVNCO was sufficient after two years. In this sense, Granath's sentence was relatively common; moreover, many courts impose minimal jail sentences and a DVNCO without suspending any jail, fines, or fees.¹¹ Therefore, one consequence of the Court of Appeals decision, in addition to undermining existing DVNCOs across the state, is to reduce discretion in misdemeanor sentencing, an area where Washington has long preserved it. See id., at 940–41. RCW 10.99 was designed to empower judges, not restrain them.

No plausible reading of legislative intent supports these profoundly unjust results. In chapter 10.99 RCW, 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.

Instead, legislative intent is best advanced when RCW 10.99.050 orders can issue for the *maximum term of the court's authority* over the offender at the time of sentencing. For any felony

¹¹ Although Granath conceded below that a DVNCO can last for 364 days with a non-suspended misdemeanor regardless of how much jail time is imposed, see supra at n.8, other defendants who received short non-suspended sentences have already begun using the opinion below to argue that their DVNCOs must be recalled as soon as their jail time is complete.

offense, this is the statutory maximum period of incarceration. See W.S., 176 Wn. App. at 243. For any misdemeanor offense, this is the maximum period for which a sentence can be suspended. In either context, the DVNCO would be valid for the maximum term regardless of whether a full jail or probationary term was actually imposed.

Importantly, this reading does not allow sentencing courts to impose orders longer than what they would otherwise be allowed to impose. Instead, it simply recognizes what a court *could* do if its sole priority was assuring a domestic violence victim “the maximum protection from abuse which the law and those who enforce the law can provide.” Once this maximum term is determined in a given case, the DVNCO may issue without forcing courts to engage in complicated sentencing gamesmanship.

In both felony and misdemeanor contexts, this allows judges to consider both the victim’s protection and the defendant’s punishment without prioritizing one over the other. It assures victims maximal protection without reducing punishments for the worst misdemeanor domestic violence offenders. And, given the explicit statements of legislative intent, it best carries out the legislature’s goal in RCW 10.99.050 of “assur[ing] 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.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to reverse the Court of Appeals and affirm the trial court’s ruling.

DATED this 3rd day of November, 2017.

Respectfully submitted,

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