

75258-8

No. 95274-4

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Court of Appeals  
Division I  
State of Washington

75258-8

NO. 75258-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

DOMINIQUE NORRIS,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Patrick Oishi, Judge

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BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENT OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	2
B. <u>STATEMENT OF THE CASE</u> .....	2
C. <u>ARGUMENT</u> .....	4
1. THE COURT EXCEEDED ITS STATUTORY AUTHORITY IN IMPOSING A NUMBER OF COMMUNITY CUSTODY CONDITIONS THAT ARE NOT CRIME-RELATED.....	4
a. <u>The appellate court reviews de novo whether the trial            court exceeded its statutory authority to impose a            community custody condition</u> .....	5
b. <u>The curfew condition is not crime-related</u> .....	6
c. <u>The conditions pertaining to sex-related businesses and            sexual materials are not crime-related.</u> .....	7
d. <u>The condition prohibiting “use” of alcohol is not            crime-related.</u> .....	8
2. THE COMMUNITY CUSTODY CONDITION REQUIRING NORRIS TO INFORM THE COMMUNITY CORRECTIONS OFFICER OR TREATMENT PROVIDER OF ANY DATING RELATIONSHIP IS UNCONSTITUTIONALLY VAGUE.....	9
a. <u>The dating relationship condition is void for vagueness</u> .	10
b. <u>This pre-enforcement challenge is ripe for review.</u> .....	14
3. THE COMMUNITY CUSTODY CONDITION PROHIBITING NORRIS FROM ENTERING PLACES WHERE MINORS CONGREGATE IS LIKEWISE UNCONSTITUTIONALLY VAGUE.....	16

**TABLE OF CONTENTS (CONT'D)**

	Page
4. THIS COURT SHOULD NOT AWARD THE COSTS OF APPEAL .....	20
D. <u>CONCLUSION</u> .....	22

## TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>City of Spokane v. Douglass</u> 115 Wn.2d 171, 795 P.2d 693 (1990).....	13
<u>Methodist Church v. Hr’g Exam’r for Seattle Landmarks Preservation Bd.</u> 129 Wn.2d 238, 916 P.2d 374 (1996)) .....	14
<u>Staats v. Brown</u> 139 Wn.2d 757, 991 P.2d 615 (2000).....	21
<u>State v. Bahl</u> 164 Wn.2d 739, 193 P.3d 678 (2008).....	5, 10, 14, 15, 16, 17, 18, 19
<u>State v. Blazina</u> 182 Wn2d 827, 344 P.3d (2015).....	21
<u>State v. Combs</u> 102 Wn. App. 949, 10 P.3d 1101 (2000).....	5
<u>State v. Halstien</u> 122 Wn.2d 109, 857 P.2d 270 (1993).....	10
<u>State v. Irwin</u> 191 Wn. App. 644, 364 P.3d 830 (2015).....	15, 16, 17, 18, 20
<u>State v. Johnson</u> 180 Wn. App. 318, 327 P.3d 704 (2014).....	5, 8, 13
<u>State v. Jones</u> 118 Wn. App. 199, 76 P.3d 258 (2003).....	9
<u>State v. McCormick</u> 166 Wn.2d 689, 213 P.3d 32 (2009).....	18
<u>State v. Motter</u> 139 Wn. App. 797, 162 P.3d 1190 (2007)	

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. O’Cain</u> 144 Wn. App. 772, 184 P.3d 1262 (2008).....	7
<u>State v. Parramore</u> 53 Wn. App. 527, 768 P.2d 530 (1989).....	6
<u>State v. Riles</u> 135 Wn.2d 326, 957 P.2d 655 (1998).....	17
<u>State v. Sanchez Valencia</u> 169 Wn.2d 782, 239 P.3d 1059 (2010).....	7, 12, 14, 15, 17, 19
<u>State v. Sinclair</u> 192 Wn. App. 380, 367 P.3d 612, <u>review denied</u> , 85 Wn.2d 1034 (2016). ....	21
<u>State v. Zimmer</u> 146 Wn. App. 405, 190 P.3d 121 (2008).....	6
 <u>FEDERAL CASES</u>	
<u>Grayned v. City of Rockford</u> 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).....	19
<u>Kolender v. Lawson</u> 461 U.S. 352, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983).....	13
<u>United States v. Reeves</u> 591 F.3d 77 (2d Cir. 2010) .....	12
<u>United States v. Williams</u> 444 F.3d 1286 (11th Cir. 2006) <u>rev’d on other grounds</u> , 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008).....	19

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<b><u>RULES, STATUTES AND OTHER AUTHORITIES</u></b>	
Former RCW 9.94A.700.....	9
RAP 14.....	20
RCW 9.68.050 .....	1, 8
RCW 9.68.130 .....	1, 8
RCW 9.68A.011 .....	1, 8
RCW 9.94A.670 .....	3
RCW 9.94A.703 .....	6, 8, 9
RCW 9A.44.086 .....	3
RCW 10.73.160 .....	20
U.S. Const. Amend. I.....	19
Webster's Third New Int'l Dictionary 1916 (1993) .....	10

A. ASSIGNMENTS OF ERROR

1. The court erred in imposing a community custody condition requiring the appellant to “[a]bide by a curfew of 10 pm - 5 am unless directed otherwise. Remain at registered address or address previously approved by [Community Corrections Officer (CCO)] during these hours.” CP 43.

2. The court erred in imposing a condition prohibiting the appellant from “enter[ing] sex-related businesses, including: x-rated movies, adult bookstores, strip clubs, and any location where the primary source of business is related to sexually explicit material.” CP 43.

3. The court erred in imposing a condition prohibiting the appellant from possessing, using, accessing, or viewing “any sexually explicit material as defined by RCW 9.68.130 or erotic materials as defined by RCW 9.68.050 or any material depicting any person engaged in sexually explicit conduct as defined by RCW 9.68A.011(4) unless given prior approval by your sexual deviancy provider.” CP 43.

4. The community custody condition prohibiting the appellant from entering “parks/playgrounds/schools or other places where minors congregate” is unconstitutionally vague. CP 44.

5. The condition requiring the appellant to “[i]nform the supervising CCO and sexual deviancy treatment provider of any dating relationship” is also unconstitutionally vague. CP 43.

Issues Pertaining to Assignments of Error

1. Should community custody conditions addressing curfew, entry into sex-related businesses, possession of sexual material, and “use” of alcohol be stricken because they are not crime-related?

2. Does the community custody condition requiring the appellant to inform her CCO and treatment provider of any “dating relationship” violate due process because it does not provide fair warning of proscribed conduct and exposes the appellant to arbitrary enforcement?

3. Does the community custody condition prohibiting the appellant from entering places where minors congregate likewise violate due process?

B. STATEMENT OF THE CASE

The State charged Dominique Norris with two counts of second degree child rape, alleged to have occurred between December 1, 2009 and February 28, 2010. CP 1-2. The complainant, 13-year-old D.T., was the younger brother of Norris’s children’s father. CP 3. The State alleged Norris and D.T. initially had sexual contact at D.T.’s residence, when Norris was staying there, and later at Norris’s own residence. CP 3.

Norris pleaded guilty to three counts of second degree child molestation in March of 2012. CP 11-24, 35; RCW 9A.44.086. The court suspended a standard-range 72-month sentence and imposed a Special Sex Offender Sentence Alternative (SSOSA) under RCW 9.94A.670. CP 38. The court ordered Norris to, among other requirements, undergo sex offender treatment and comply with certain conditions as set forth in Appendix H of the judgment and sentence. CP 39. The court added additional conditions at subsequent hearings. E.g. Supp. CP \_\_\_\_ (sub no. 125, Order on SSOSA Annual Review Hearing, dated October 30, 2014); Supp. CP \_\_\_\_ (sub no. 129A, Order on Violation Hearing, dated April 14, 2015).

The State sought revocation of Norris's SSOSA in April of 2016. CP 70. The State alleged Norris violated the conditions of her suspended sentence by consuming marijuana and consuming oxycodone in excess of the prescribed amount. Supp. CP \_\_\_\_ (sub no. 170, State's Memorandum in Support of Revocation, at pages 4, 7).

Norris agreed the underlying acts occurred. CP 74. But Norris requested that, rather than revoking the SSOSA, the court sanction Norris with jail time and then permit Norris to enter drug treatment. Norris argued in the alternative that even if true the factual allegations did not, as

a matter of law, permit revocation of the SSOSA. CP 72-76; RP 92-104 (defense counsel's argument at May 17, 2016 hearing on revocation).

The court revoked Norris's SSOSA. RP 117; CP 96-97 (written findings, stating that Norris willfully violated the terms of suspended sentence by "ingest[ing] marijuana" and "failing to consume . . . oxycodone . . . as prescribed").

The court imposed the previously suspended sentence including 72 months of confinement and 36 months of community custody. CP 38, 40. The court imposed a plethora of community custody conditions, including those identified in the assignments of error above. CP 43-44.

Norris timely appeals. CP 98.

C. ARGUMENT

1. THE COURT EXCEEDED ITS STATUTORY AUTHORITY IN IMPOSING A NUMBER OF COMMUNITY CUSTODY CONDITIONS THAT ARE NOT CRIME-RELATED.

The court erred in imposing four boilerplate community custody conditions that are not crime-related. "As a policy matter, cautious attention to detail in the sentencing forms will serve to better inform offenders of their rights, ensure protection of those rights, and prevent confusion among judges, defendants and community corrections officers regarding the applicable legal standard." State v. Combs, 102 Wn. App.

949, 953, 10 P.3d 1101 (2000). Several pre-printed community custody conditions in Norris's judgment and sentence are unauthorized by statute because they are not related to the crimes of conviction. Yet Norris is exposed to sanction for violating them upon supervised release. The challenged conditions, set forth below, must be stricken as unauthorized by statute.

- a. The appellate court reviews de novo whether the trial court exceeded its statutory authority to impose a community custody condition.

The trial court's authority to impose sentence in a criminal proceeding is strictly limited to that authorized by the legislature in the sentencing statutes. State v. Johnson, 180 Wn. App. 318, 325, 327 P.3d 704 (2014). Any sentencing condition that is not expressly authorized by statute is void. Id. Whether the court had statutory authority to impose a given condition is reviewed de novo on appeal. Id. In contrast, a trial court's decision to impose a condition is reviewed for abuse of discretion only if that court had statutory authorization to impose it. Id. at 326. While defense counsel did not object to the improper community custody conditions in the court below, erroneous sentences may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

b. The curfew condition is not crime-related.

The curfew condition in this case was not authorized by statute because it was not crime-related. The trial court ordered Norris to “[a]bide by a curfew of 10 pm - 5 am unless directed otherwise. Remain at registered address or address previously approved by CCO during these hours.” CP 43 (special condition 7). This condition prohibits Norris from leaving her place of residence during the specified time period.

RCW 9.94A.703 lists conditions of community custody, some mandatory, some waivable. Curfew is not expressly listed. RCW 9.94A.703. However, a court may impose other “crime-related prohibitions” beyond those specifically listed. RCW 9.94A.703(3)(f). A condition is “crime-related” only if it “directly relates to the circumstances of the crime.” RCW 9.94A.030(10). The condition need not be causally related to the crime, but it must be directly related to the crime. State v. Zimmer, 146 Wn. App. 405, 413, 190 P.3d 121 (2008). Thus, crime-related conditions of community custody must be supported by evidence showing the factual relationship between the crime punished and the condition imposed. State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989). Substantial evidence must support a determination that a condition is crime-related. State v. Motter, 139 Wn. App. 797, 801, 162

P.3d 1190 (2007), overruled on other grounds, State v. Sanchez Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010).

Here, a 10 p.m.-to 5-a.m. curfew bears no relation to the circumstances of the charged crimes. Norris pleaded guilty, so there was no trial. Yet the offenses described in the certification for determination of probable cause occurred in Norris's home, or in D.T.'s residence, when Norris and her family were staying there. CP 3. The curfew condition makes no sense in relation to the circumstances of the offenses. The court therefore exceeded its authority in imposing the curfew because the condition is not crime-related. It should, therefore, be stricken. State v. O'Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008) (remanding to the trial court to strike a condition of community custody that was not crime-related).

c. The conditions pertaining to sex-related businesses and sexual materials are not crime-related.

The conditions related to sex-related businesses and sexual materials are likewise unrelated to the crime of conviction and therefore unauthorized. The trial court ordered that Norris "not enter sex-related businesses, including: x-rated movies, adult bookstores, strip clubs, and any location where the primary source of business is related to sexually explicit material." CP 43 (special condition 10). The court also ordered

that Norris “not possess, use, access or view any sexually explicit material as defined by RCW 9.68.130 or erotic materials as defined by RCW 9.68.050 or any material depicting any person engaged in sexually explicit conduct as defined by RCW 9.68A.011(4) unless given prior approval by your sexual deviancy provider.” CP 43 (special condition 11).

Neither of these conditions is crime-related. There must be a nexus between the crime and the prohibition. Johnson, 180 Wn. App. 330-31. There is no evidence Norris accessed sexually explicit materials, erotic materials, or materials depicting a person engaged in sexually explicit conduct as part of the offenses. Further, there is no evidence that presence in or frequenting of a sex-related business had any connection with the crimes for which Norris was convicted. The conditions are not crime-related under RCW 9.94A.703(3)(f) and should be stricken.

d. The condition prohibiting “use” of alcohol is not crime-related.

The prohibition on the “use” of alcohol, versus consumption of alcohol, is not crime-related and should, likewise, be stricken. As a condition of community custody, the court ordered that Norris “not use or consume alcohol.” CP 43 (special condition 12). The court had authority to prohibit *consumption* of alcohol but lacked authority to prohibit Norris from *using* alcohol, a much broader range of behavior. The “use” aspect

of the condition is not crime-related and therefore should be stricken from the judgment and sentence.

Under RCW 9.94A.703(3)(e), a sentencing court may order an offender to refrain from consuming alcohol. Such a condition is authorized regardless of whether alcohol contributed to the offense. State v. Jones, 118 Wn. App. 199, 207, 76 P.3d 258 (2003) (examining former RCW 9.94A.700, which contained the same operative language as RCW 9.94A.703(3)(e)). But the only possible statutory authority for the prohibition on “use” of alcohol is RCW 9.94A.703(3)(f), which authorizes the court to impose crime-related prohibitions. There is no evidence that Norris used alcohol in connection with the events forming the basis for conviction. The community custody condition prohibiting Norris from using alcohol must therefore be stricken from the judgment and sentence because it is not crime-related.

2. THE COMMUNITY CUSTODY CONDITION REQUIRING NORRIS TO INFORM THE COMMUNITY CORRECTIONS OFFICER OR TREATMENT PROVIDER OF ANY DATING RELATIONSHIP IS UNCONSTITUTIONALLY VAGUE.

The court erred in imposing the following condition of community custody: “Inform the supervising CCO and sexual deviancy treatment provider of any dating relationship.” CP 43 (special condition 5). The condition violates due process because it is insufficiently definite to

advise Norris of prohibited conduct and does not prevent arbitrary enforcement.

- a. The dating relationship condition is void for vagueness.

The due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of the Washington Constitution requires the State to provide citizens with fair warning of proscribed conduct. Bahl, 164 Wn.2d at 752. The doctrine also protects from arbitrary, ad hoc or discriminatory enforcement. State v. Halstien, 122 Wn.2d 109, 116-17, 857 P.2d 270 (1993). A prohibition is therefore void for vagueness if it does not (1) define the prohibition with sufficient definiteness such that ordinary people can understand what conduct is prohibited; or (2) provide ascertainable standards of guilt to protect against arbitrary enforcement. Bahl, 164 Wn.2d at 752-53.

The condition here does not provide Norris with adequate notice of what she must do to avoid sanction and does not prevent arbitrary enforcement. The question is what constitutes a “dating relationship.” Commonly understood, a “relationship” is “a state of affairs existing between those having relations or dealing.” Webster's Third New Int'l Dictionary 1916 (1993). In the context of interaction between people, a “date” means “an appointment or engagement [usually] for a specified

time . . . [especially]: an appointment between two persons of the opposite sex for the mutual enjoyment of some form of social activity” or “an occasion (as an evening) of social activity arranged in advance between two persons of opposite sex.” *Id.* at 576. Referring to a person, a “date” is “a person of the opposite sex with whom one enjoys such an occasion of social activity.” *Id.*

Such behavior conceivably covers a large range of human interaction. The condition, as written, leaves the dividing line between a non-dating relationship and a dating relationship intractably blurry. The condition requires Norris to take affirmative action to avoid running afoul of her sentence but requires her to do so without a standard for determining when she must do so. The condition does not provide Norris adequate notice as to what relationships she is prohibited from forming. A reasonable person cannot describe a standard necessary to avoid arbitrary enforcement. Suppose Norris has dinner with a man in a restaurant. Is that a date? Would that constitute a “dating relationship”? What if it was a one-time occasion? Is that enough to form a “relationship” with someone? Does meeting someone twice for a social activity turn an ordinary relationship into a dating relationship? Three times? Suppose Norris strikes up a relationship with a man online, and then they go out to a movie together. Is that a dating relationship or something else? What if

Norris and another person often enjoy social activities together, but consider themselves “just friends.” Does that nonetheless qualify as a dating relationship?

A condition that leaves so much room for speculation is unconstitutionally vague because it gives too much discretion to the CCO to determine when a violation has occurred. See State v. Sanchez Valencia, 169 Wn.2d 782, 794-95, 239 P.3d 1059 (2010) (striking down prohibition on paraphernalia as follows: “‘an inventive probation officer could envision any common place item as possible for use as drug paraphernalia,’ such as sandwich bags or paper. . . . Another probation officer might not arrest for the same ‘violation,’ i.e. possession of a sandwich bag. A condition that leaves so much to the discretion of individual community corrections officers is unconstitutionally vague.”).

If the phrase “dating relationship” is meant to be limited to a romantic relationship, however, the vagueness problem remains. United States v. Reeves, 591 F.3d 77 (2d Cir. 2010) is instructive. Reeves held a condition of supervision requiring the defendant to notify the probation department upon entry into a “significant romantic relationship” was vague in violation of due process. Reeves, 591 F.3d at 79, 81. The court observed that “people of common intelligence (or, for that matter, of high intelligence) would find it impossible to agree on the proper application of

a release condition triggered by entry into a ‘significant romantic relationship.’” Id. at 81. “What makes a relationship ‘romantic,’ let alone ‘significant’ in its romantic depth, can be the subject of endless debate that varies across generations, regions, and genders.” Id. The condition had “no objective baseline,” as “[n]o source provides anyone—courts, probation officers, prosecutors, law enforcement officers, or Reeves himself—with guidance as to what constitutes a ‘significant romantic relationship.’” Id.

The condition in Norris’s case suffers from the same species of defect. “Subjective terms allow a ‘standardless sweep’ that enables state officials to ‘pursue their personal predilections’ in enforcing the community custody conditions.” Johnson, 180 Wn. App. at 327 (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 180 n.6, 795 P.2d 693 (1990) (quoting Kolender v. Lawson, 461 U.S. 352, 358, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)) (internal quotation marks omitted). Norris’s liberty during supervised release should not hinge on the accuracy of her prediction of whether a given CCO, prosecutor, or judge would conclude that a targeted relationship had been entered into without first informing the CCO or treatment provider. The condition, as written, does not provide a standard by which a reasonable person can understand what

qualifies as “dating relationship,” and what does not, in a non-arbitrary manner.

There is no presumption in favor of the constitutionality of a community custody condition. Sanchez Valencia, 169 Wn.2d at 792-93. Imposition of an unconstitutional condition is manifestly unreasonable. Id. at 792. The condition here is unconstitutional because it fails to provide reasonable notice as to what Norris must do to comply with it. The condition exposes Norris to arbitrary enforcement. As such, the condition does not meet the requirements of due process and should be stricken altogether or modified to comply with due process.

b. This pre-enforcement challenge is ripe for review.

Appellate courts routinely consider pre-enforcement challenges to sentencing conditions. Sanchez Valencia, 169 Wn.2d at 787. Such challenges are ripe for review “if the issues raised are primarily legal, do not require further factual development, and the challenged action is final.” Id. at 786 (internal quotation marks omitted) (quoting Bahl, 164 Wn.2d at 751 (quoting First United Methodist Church v. Hr’g Exam’r for Seattle Landmarks Preservation Bd., 129 Wn.2d 238, 255-56, 916 P.2d 374 (1996))). Norris’s challenge meets these requirements.

First, the issue is primarily legal—the pertinent question is whether the community custody condition violates due process vagueness

standards. See Sanchez Valencia, 169 Wn.2d at 790-91 (condition prohibiting use of drug-related paraphernalia was ripe for vagueness review); Bahl, 164 Wn.2d at 752 (condition prohibiting perusal of pornography was ripe for vagueness review).

Second, the question is not fact-dependent. The condition provides constitutional notice and protection against arbitrary enforcement, or it does not. “[I]n the context of ripeness, the question of whether the condition is unconstitutionally vague does not require further factual development.” Sanchez Valencia, 169 Wn.2d at 788-89.

Third, the challenged condition is final because the trial court sentenced Norris to abide by it. See id. at 789 (“The third prong of the ripeness test, whether the challenged action is final, is indisputably met here. The petitioners have been sentenced under the condition at issue.”).

Norris’s pre-enforcement challenge to the community custody condition is ripe for review. State v. Irwin, 191 Wn. App. 644, 651-52, 364 P.3d 830 (2015). In light of this, Norris asks that this condition be stricken from her judgment and sentence.

3. THE COMMUNITY CUSTODY CONDITION PROHIBITING NORRIS FROM ENTERING PLACES WHERE MINORS CONGREGATE IS LIKEWISE UNCONSTITUTIONALLY VAGUE.

The trial court also prohibited Norris from entering any places where minors congregate. CP 44 (special condition 18). This condition is unconstitutionally vague because it insufficiently appries Norris of prohibited conduct and allows for arbitrary enforcement. The condition should also be stricken from the judgment and sentence.

As stated above, a prohibition is void for vagueness if it does not (1) define prohibition with sufficient definiteness such that ordinary people can understand what conduct is prohibited or (2) does not provide ascertainable standards of guilt to protect against arbitrary enforcement. Bahl, 164 Wn.2d at 752-53. If a community custody prohibition fails either prong, it is unconstitutionally vague. Id. at 753.

In Irwin, 191 Wn. App. at 649, this Court considered a condition like the one at issue here: “Do not frequent areas where minor children are known to congregate as defined by the supervising” CCO. This Court struck this condition because it was unconstitutionally vague and remanded for resentencing. Id. at 655.

The Irwin court explained that “[w]ithout some clarifying language or an illustrative list of prohibited locations . . . the condition does not give

ordinary people sufficient notice to ‘understand what conduct is proscribed.’” Id. (quoting Bahl, 164 Wn.2d at 753). This Court acknowledged that it “may be true that, once the CCO sets locations where ‘children are known to congregate’ for Irwin, Irwin will have sufficient notice of what conduct is proscribed.” Id. However, this Court concluded this was insufficient because it would still “leave the condition vulnerable to arbitrary enforcement,” thereby failing the second prong of the vagueness analysis. Id.

Norris acknowledges that the state Supreme Court upheld the constitutionality of a community custody condition almost identical to the one at issue in Irwin (and here) in State v. Riles, 135 Wn.2d 326, 349, 957 P.2d 655 (1998). However, the Riles Court’s analysis presumed the condition was constitutional, a presumption that the Sanchez Valencia court later expressly repudiated. 169 Wn.2d at 792-93.

Thus, this Court in Irwin correctly concluded Riles did not control and instead relied primarily on the Washington Supreme Court’s more recent decision in Bahl. There, the Supreme Court held a condition prohibiting Bahl from possessing or accessing pornographic material “as directed by the supervising [CCO]” was unconstitutionally vague. 164 Wn.2d at 753. “The fact that the condition provides that Bahl’s community corrections officer can direct what falls within the condition

only makes the vagueness problem more apparent, since it virtually acknowledges that on its face it does not provide ascertainable standards of enforcement.” Id. at 758.

As in Bahl and Irwin, the conditions prohibiting Norris from entering places where minors congregate fails to provide sufficient definiteness. The conditions do not tell Norris where she can and cannot go. Some locations, such as the parks and playgrounds enumerated in the condition, are more or less obvious. But the listed prohibition on schools might or might not reflect a place where children congregate. Institutions of higher learning or vocational programming might very well qualify as “schools,” but Norris would have no way of knowing whether she was allowed to enter them or not. Norris is also left to wonder whether other locations where minors might congregate, such as bowling alleys, places of worship, hiking trails, buses, trains, grocery stores, swimming pools, restaurants, and so on, would be prohibited.<sup>1</sup> Because no ordinary person would know what conduct is prohibited, the conditions fail the first prong of the vagueness test.

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<sup>1</sup> The indefiniteness of this type of condition was fully recognized by the Supreme Court in State v. McCormick, 166 Wn.2d 689, 692-96, 213 P.3d 32 (2009), in which McCormick was held in violation of a similar condition when he went to a food bank that happened to be in the same building as a public school.

“In addition, when a statute or other legal standard, such as a condition of community placement, concerns material protected under the First Amendment, a vague standard can cause a chilling effect on the exercise of sensitive First Amendment freedoms.” Bahl, 164 Wn.2d at 753 (citing Grayned v. City of Rockford, 408 U.S. 104, 109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)). Vagueness concerns “are more acute when a law implicates First Amendment rights and a heightened level of clarity and precision is demanded of criminal statutes because their consequences are more severe.” Id. (quoting United States v. Williams, 444 F.3d 1286, 1306 (11th Cir. 2006), rev’d on other grounds, 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008)).

The condition prohibiting Norris from entering any place where minors congregate implicates the First Amendment. The condition might very well subject Norris to exclusion from most, if not all, houses of worship given children’s likely presence there. Because the condition has the very real effect of precluding Norris’s free exercise of religion and assembly, the condition must satisfy a more definite standard. For this reason as well, the community custody condition does not satisfy the first prong of the vagueness test.

The condition prohibiting entry into places where minors congregate also fails the vagueness test’s second prong. Bahl, Sanchez

Valencia, and Irwin involved delegation to a CCO to define the parameters of a condition. Sanchez Valencia, 169 Wn.2d at 794; Bahl, 164 Wn.2d at 758; Irwin, 191 Wn. App. at 652. Where a condition leaves so much discretion to an individual corrections officer, it suffers from unconstitutional vagueness. Sanchez Valencia, 169 Wn.2d at 795. The condition at issue here does not *explicitly* delegate the parameters of the condition to the CCO, but the problem remains. Irwin, 191 Wn. App. at 656.

The condition prohibiting Norris from entering places where minors congregate is unconstitutional because it fails to provide reasonable notice as to what conduct is prohibited and exposes Norris to arbitrary enforcement. The condition, which is ripe for review for the same reasons explained above in section 2.b. (pages 14-15) should be stricken from Norris's judgment and sentence.

4. THIS COURT SHOULD NOT AWARD THE COSTS OF APPEAL

As a final matter, if Norris does not prevail on appeal, she asks that no costs of appeal be authorized under title 14 of the Rules of Appellate Procedure. This Court has ample discretion to deny the State's request for costs. For example, RCW 10.73.160(1) states the "court of appeals . . . *may* require an adult . . . to pay appellate costs." (Emphasis added.)

“[T]he word ‘may’ has a permissive or discretionary meaning.” Staats v. Brown, 139 Wn.2d 757, 789, 991 P.2d 615 (2000).

Trial courts must make individualized findings of current and future ability to pay before they impose legal financial obligations (LFOs). State v. Blazina, 182 Wn2d 827, 834, 344 P.3d (2015). Only by conducting such a “case-by-case analysis” may courts “arrive at an LFO order appropriate to the individual defendant’s circumstances.” Id.

The existing record establishes that any award of appellate costs would be unwarranted in this case. The record is replete with evidence of Norris’s indigency. For example, Norris, a parent of three young children, lost her job at Subway when she was incarcerated a few months before the revocation of the SSOSA. CP 66, 79. She is, moreover, facing a 72-month sentence, which will greatly impede her ability to pay the costs of her appeal. CP 38.

The trial court found Norris to be indigent and found that she could not contribute anything to the costs of appellate review. CP 93-95 (Order of Indigency); see also CP 88-92 (Declaration of Indigency, declaring that Norris has no assets and is unemployed). Indigence is presumed to continue throughout the appeal. State v. Sinclair, 192 Wn. App. 380, 393, 367 P.3d 612 (citing RAP 15.2(f)), review denied, 85 Wn.2d 1034 (2016).

In summary, in the event that Norris does not substantially prevail on appeal, this Court should not assess appellate costs against her. Provided that this Court believes there is insufficient information in the record to make such a determination, however, this Court should remand for the superior court, a fact-finding court, to consider the matter.

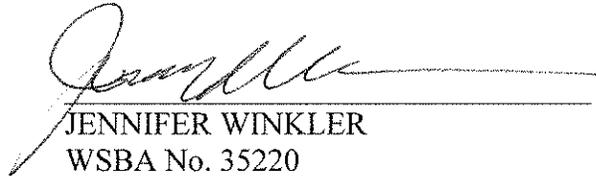
D. CONCLUSION

For the reasons stated, this Court should remand for removal of the challenged conditions.

DATED this 16<sup>TH</sup> day of November, 2016.

Respectfully submitted,

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