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NO. 68378-1-I

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

REC'D

MAR 31 2012

King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

W.S.,

Appellant.

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

The Honorable J. Wesley Saint Clair, Judge

BRIEF OF APPELLANT

DAVID B. KOCH  
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122  
(206) 623-2373

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION ONE  
MAR 31 10:29 AM '12

**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENT OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	2
<u>THE JUVENILE COURT HAD NO JURISDICTION TO     ENTER AN ORDER PROHIBITING CONTACT FOR TEN     YEARS.</u> .....	2
D. <u>CONCLUSION</u> .....	5

**TABLE OF AUTHORITIES**

Page

**WASHINGTON CASES**

**State v. Armendariz**  
160 Wn.2d 106, 156 Wn.2d 201 (2007)..... 3

**State v. Chapman**  
140 Wn.2d 436, 998 P.2d 282,  
cert. denied, 531 U.S. 984 (2000) ..... 2

**State v. Nicholson**  
84 Wn. App. 75, 925 P.2d 637 (1996)  
review denied, 131 Wn.2d 1025 (1997) ..... 4

**State v. O'Brien**  
115 Wn. App. 599, 63 P.3d 181 (2003)..... 3

**State v. Schultz**  
146 Wn.2d 540, 48 P.3d 301 (2002)..... 2

**RULES, STATUTES AND OTHER AUTHORITIES**

RCW 10.99.050..... 3

RCW 13.40.145..... 5

RCW 13.40.192..... 5

RCW 13.40.198..... 5

RCW 13.40.300..... 4

RCW 26.50.110..... 3

Juvenile Justice Act..... 4

Sentencing Reform Act ..... 3

A. ASSIGNMENT OF ERROR

The sentencing court erred when it entered a domestic violence no-contact order valid for a period of 10 years.<sup>1</sup>

Issue Pertaining to Assignment of Error

Under the Juvenile Justice Act, juvenile court jurisdiction usually terminates when an offender turns eighteen and, at the very latest, when the offender turns twenty-one. Did the juvenile court err when it entered a no-contact order in effect well beyond the termination of juvenile court jurisdiction?

B. STATEMENT OF THE CASE

W.S. was charged with Assault in the Second Degree – Domestic Violence for assaulting his former girlfriend, C.G., with a knife. CP 1-4. After a bench trial, the Honorable J. Wesley Saint Clair found W.S. guilty. Supp. CP \_\_\_\_ (sub no. 71, Findings of Fact and Conclusions of Law).

At disposition, Judge Saint Clair imposed 80 to 100 weeks, a \$100.00 victim penalty assessment, and prohibited contact with C.G. CP 16; RP<sup>2</sup> 24-25. Consistent with that prohibition, Judge Saint

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<sup>1</sup> The no-contact order is attached to this brief as an appendix.

<sup>2</sup> “RP” refers to the verbatim report of proceedings for February 23, 2012.

Clair entered a domestic violence no-contact order prohibiting W.S. from contacting C.G. for a period of 10 years. Supp. CP \_\_\_\_ (sub no. 56, Domestic Violence No-Contact Order). Judge Saint Clair rejected defense counsel's argument that, because W.S. was a juvenile, the no-contact order could only prohibit contact until W.S. turned 18, at which point the juvenile court would lose jurisdiction in the matter. RP 25-27.

W.S. timely filed his Notice of Appeal. CP 19-20.

C. ARGUMENT

THE JUVENILE COURT HAD NO JURISDICTION TO ENTER AN ORDER PROHIBITING CONTACT FOR TEN YEARS.

This Court reviews the validity of a no-contact order de novo.

State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002).

Under the rules of statutory construction each provision of a statute should be read together (*in para materia*) with other provisions in order to determine legislative intent underlying the entire statutory scheme. The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes. Statutes relating to the same subject will be read as complimentary, instead of in conflict with each other.

State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (footnotes omitted), cert. denied, 531 U.S. 984 (2000).

The order at issue in this case was entered pursuant to RCW 10.99.050(1), which provides, "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." Violation of a no-contact order entered under this statute may be a misdemeanor or a felony. RCW 10.99.050(2)(a)-(b); RCW 26.50.110.

The juvenile court was authorized to enter a no-contact order under this statute as a condition of W.S.'s disposition. See State v. O'Brien, 115 Wn. App. 599, 600-603, 63 P.3d 181 (2003). However, nothing in RCW 10.99.050 indicates the maximum duration of such an order. Nor does it appear the issue has been addressed in any case.

In the adult context, the duration of a no-contact order is limited by the maximum sentence the defendant could face for his crime under the Sentencing Reform Act. State v. Armendariz, 160 Wn.2d 106, 118-119, 156 Wn.2d 201 (2007). While no statute expressly imposes such a limitation, in the absence of any contrary guidance, the Supreme Court concluded "it is reasonable to subject these conditions to the same time limit as applies to all other aspects

of a defendant's sentence." Id. at 119. Since no other terms of an adult offender's sentence can exceed the statutory maximum period, the Supreme Court applied this same limitation to no-contact orders. Id.

Applying that same reasoning in the juvenile context, a no-contact order imposed as part of the juvenile's disposition should also be limited to "the same time limit as applies to all other aspects" of a juvenile's disposition. Under RCW 13.40.300(1), the juvenile court's jurisdiction ends upon the juvenile's eighteenth birthday unless extended by the court prior to that birthday. State v. Nicholson, 84 Wn. App. 75, 77, 925 P.2d 637 (1996), review denied, 131 Wn.2d 1025 (1997). Even if extended, however, it absolutely terminates upon the juvenile's twenty-first birthday. RCW 13.40.300(1), (3). The only exception is enforcement of a restitution order or penalty assessment. RCW 13.40.300(3).

When the Legislature seeks to extend juvenile court jurisdiction beyond the usual limits, it certainly knows how. Regarding penalty assessments, the Juvenile Justice Act provides:

If respondent is ordered to pay a penalty assessment pursuant to a dispositional order entered under this chapter, he or she shall remain under the court's jurisdiction for a maximum of ten years after the respondent's eighteenth birthday. Prior to the

expiration of the ten-year period, the juvenile court may extend the judgment for the payment of a penalty assessment for an additional ten years.

RCW 13.40.198; see also RCW 13.40.145 and 13.40.192 (extensions expressly permitted for collection of restitution and other legal financial obligations). That there is no similar provision for no-contact orders is telling. The Legislature did not intend for these orders to extend beyond cessation of the juvenile court's jurisdiction.

D. CONCLUSION

This Court should strike the current no-contact order and remand for entry of an order that terminates upon W.S.'s eighteenth birthday.

DATED this 21<sup>st</sup> day of July, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



DAVID B. KOCH  
WSBA No. 23789  
Office ID No. 91051

Attorneys for Appellant

## APPENDIX

**FILED**  
KING COUNTY, WASHINGTON

FEB 23 2012

SUPERIOR COURT CLERK  
BY LAURIE BELL  
DEPUTY

<b>Superior Court of Washington for King County</b>		
<u>State of Washington</u> Plaintiff		
vs <u>Wilson Laray Smith</u> Respondent (First, Middle, Last Name)		

No 12-8-00009-5  
 Pre-Trial  Post Conviction  
 Replacement Order (paragraph 10)  
**Domestic Violence No-Contact Order**  
 (clj=NOCON, Superior cts =ORNC)  
 Clerk's action required Para 9

**No-Contact Order**

**1 Protected Person's Identifiers**

Chantelle R Grayson  
 Name (First, Middle, Last)  
11-17-94 F B  
 DOB Gender Race

If a minor use initials  
 instead of name, and  
 complete a Law  
 Enforcement Information  
 Sheet (LEIS)

**Respondent's Identifiers**

Date of Birth	
<u>7-20-95</u>	
Gender	Race
<u>M</u>	<u>B</u>

**Respondent**

- A do not cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk, or keep under surveillance the protected person
- B do not contact the protected person, directly, indirectly, in person or through others, by phone, mail, or electronic means, except for mailing or service of process of court documents through a third party, or contact by the Respondent's lawyers
- C do not knowingly enter, remain, or come within 500' (1,000 feet if no distance entered) of the protected person's residence, school, workplace, other \_\_\_\_\_
- D other \_\_\_\_\_

**3 Firearms and Weapons, Respondent**

- do not obtain or possess a firearm, other dangerous weapon or concealed pistol license (Pre-Trial, RCW 9 41 800 See findings in paragraph 7, below )
- do not obtain own, possess or control a firearm (Post Conviction or Pre-Trial RCW 9 41 040 )
- shall **immediately surrender** all firearms and other dangerous weapons within the Respondent's possession or control and any concealed pistol license to the following law enforcement agency \_\_\_\_\_ (Pre-Trial Order, RCW 9 41 800 )

**4 This no-contact order expires on 2-22-22 Five years from today if no date is entered**

**Warning** Violation of the provisions of this order with actual notice of its terms 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 the person protected by this 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

56

order upon written application (Additional warnings on page 2 of this order )

**Findings of Fact**

- 5 Based upon the record both written and oral, the court finds that the Respondent has been charged with, arrested for, or convicted of a domestic violence offense, and the court issues this Domestic Violence No-Contact Order under chapter 10 99 RCW to prevent possible recurrence of violence
- 6 The court further finds that the Respondent's relationship to a person protected by this order is an  Intimate partner (former/current spouse, parent of common child, or former/current cohabitants as intimate partners) or  Other family member as defined by Ch 10 99 RCW Dating relationship
- 7  (Pretrial Order) For crimes not defined as a serious offense, the court makes the following mandatory findings pursuant to RCW 9 41 800  The Respondent used, displayed, or threatened to use a firearm or other dangerous weapon in a felony  The Respondent is ineligible to possess a firearm due to a prior conviction pursuant to RCW 9 41 040, or  Possession of a firearm or other dangerous weapon by the Respondent presents a serious and imminent threat to public health or safety or to the health or safety of any individual

**Additional Warnings to Respondent** This order does not modify or terminate any order entered in any other case The Respondent is still required to comply with other orders

Willful violation of this order is punishable under RCW 26 50 110 State and federal firearm restrictions apply 18 U S C § 922(g)(8)(9), RCW 9 41 040

Pursuant to 18 U S C § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order

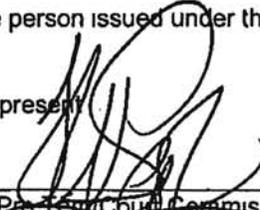
**Additional Orders**

- 8  Civil standby The appropriate law enforcement agency shall, at a reasonable time and for a reasonable duration, assist the Respondent in obtaining personal belongings located at \_\_\_\_\_
- 9 The clerk of the court shall forward a copy of this order on or before the next judicial day to Seattle  County Sheriff's Office  Police Department where the case is filed which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants
- 10  This order replaces all prior no-contact orders protecting the same person issued under this cause number \_\_\_\_\_

Dated 2-23-2012  in open court with the Respondent present

I acknowledge receipt of a copy of this order

Read to respondent refused to sign  
Respondent

  
\_\_\_\_\_  
Judge/Pro Tem Court Commissioner

The protected person shall be provided with a certified copy of this order

I am a certified or registered interpreter or found by the court to be qualified to interpret in the \_\_\_\_\_ language, which the Respondent understands I translated this order for the Respondent from English into that language

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_

Interpreter \_\_\_\_\_ print name \_\_\_\_\_

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

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STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
	)	
vs.	)	COA NO. 68378-1-1
	)	
WILSON SMITH,	)	
	)	
Respondent.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 31<sup>ST</sup> DAY OF JULY, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] WILSON SMITH  
GREENHILL SCHOOL  
375 SW 11<sup>TH</sup> ST.  
CHEHALIS, WA 98532

**SIGNED** IN SEATTLE WASHINGTON, THIS 31<sup>ST</sup> DAY OF JULY, 2012.

x Patrick Mayovsky

2012 JUL 31 PM 4:29  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION ONE