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King County Prosecutor
Appellate Unit

68674-7

COA NO. 68674-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

A.T.,

Appellant.

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

The Honorable Bruce Hilyer, Judge

REPLY BRIEF OF APPELLANT

CASEY GRANNIS
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A. ARGUMENT IN REPLY

1. THE COURT LACKED AUTHORITY TO NOTIFY THE DEPARTMENT OF LICENSING ABOUT THE CONVICTION.

The appropriately concedes that the Department of Licensing (DOL) notification order must be vacated because A.T. did not commit an offense that subjects him to license revocation. Brief Respondent (BOR) at 2.

The State quibbles with the proposed remedy, claiming the juvenile court on remand need only vacate the DOL notification requirement. BOR at 2-3. That is not quite good enough.

This Court has broad powers to fashion appropriate relief. Under RAP 12.2, "[t]he appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require." The interest of justice requires the juvenile court fix what it broke.

The State asserts there is no evidence the DOL actually revoked his license. BOR at 3. The DOL is presumed to follow the juvenile court's notification order and revoke the license. RCW 46.20.265(1) unequivocally states "the department shall revoke all driving privileges of a juvenile when the department receives notice from a court." The word "shall" in a statute is presumptively imperative and operates to create a

duty. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). It is safe to conclude the DOL followed its unambiguous statutory mandate and revoked A.T.'s license.

Vacating the court's notification order as part of the disposition without notifying the DOL that the order is void does not solve the problem of license revocation.

In J.O., this Court reversed the juvenile court's order compelling a DNA sample where the statute did not allow for the DNA sample to be collected. State v. J.O., 165 Wn. App. 570, 571-72, 577, 265 P.3d 991 (2011). In keeping with RAP 12.2, this Court "[r]everse[d] and remanded with instructions to destroy the DNA sample." J.O., 165 Wn. App. at 577.

A.T.'s case is analogous. The effect of the notification order must be destroyed. This Court should reverse the DOL notification order and instruct the juvenile court to notify the DOL that the notification was in error and that A.T. is not subject to license revocation.

2. THE COURT ERRED IN FAILING TO SET A DEFINITE NO-CONTACT TERM.

The State claims there is no need to specify the length of the no contact order in the disposition because the length of community supervision is specified. BOR at 5-6.

The problem is that the sentence remains indefinite and uncertain regarding the length of the no contact order. The written disposition is divided into subparts by categorical headings. CP 27-29. Heading "V" is entitled "Conditions of Community Supervision For Local Sanctions Dispositions." CP 29. What follows is a long list of community supervision conditions. CP 29. But the no contact requirement is not listed among those supervision conditions.

Instead, the no contact order is found under separate heading "IV" entitled "Other Orders of the Court." CP 28. The face of the disposition does not tie the duration of the no contact order to the duration of supervision. The failure to make the expiration date for the no contact order clear on the face of the disposition violates that mandate that every sentence must be "definite and certain" in its terms. State v. Jones, 93 Wn. App. 14, 17, 968 P.2d 2 (1998) (citing Grant v. Smith, 24 Wn.2d 839, 840, 167 P.2d 123 (1946)).

The ambiguity poses problematic ramifications, as illustrated by City of Seattle v. Edwards, 87 Wn. App. 305, 307-10, 941 P.2d 697 (1997), overruled in part by State v. Miller, 156 Wn.2d 23, 123 P.3d 827 (2005).

In Edwards, this Court reversed a conviction for violation of a no-contact order on the grounds that the duration of the order was ambiguous on its face, resulting in lack of clear notice to the defendant that the order

was still in effect at the time of its alleged violation. Edwards, 87 Wn. App. at 307-10. The Supreme Court in Miller later agreed with Edwards that there must be clear notice regarding a no contact order's expiration date.¹ Miller, 156 Wn.2d at 29 ("In Edwards, the order was vague and was inadequate to give the defendant notice of what conduct was criminal and what conduct was innocent. The court was rightly loath to allow a person to be convicted under such circumstances.").

Edwards and Miller demonstrate why it is important to specify the expiration date of a no contact order in unambiguous terms. First, it protects the innocent from being wrongly prosecuted. Miller, 156 Wn.2d at 29. Second, it avoids the needless waste of limited prosecutorial resources resulting from reversal of a conviction due to lack of insufficient notice. Id.

There are good reasons to unambiguously specify the expiration date of the no contact order as part of A.T.'s disposition. There are no good reasons not to do it. The State has already conceded that this case must be remanded to strike the DOL notification from the disposition. This Court should also remand to enable the trial court to set a definite

¹ Miller disagreed with Edwards only on the issue of whether the validity of the underlying order is an element of the crime or a question of law to be resolved by a judge. Miller, 156 Wn.2d at 30-31.

term for the no-contact order. The disposition can be made definite and certain in a few seconds.

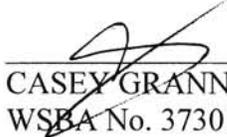
B. CONCLUSION

A.T. requests (1) the DOL notification order be vacated; (2) the juvenile court be directed to notify the DOL that the order has been vacated; and (3) the sentence be made definite and specific as to the duration of the no contact order.

DATED this 24th day of January 2013.

Respectfully Submitted,

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DIVISION ONE

STATE OF WASHINGTON)	
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Respondent,)	
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v.)	COA NO. 686747-I
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A.T.)	
)	
Appellant.)	

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 24TH DAY OF JANUARY 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 24TH DAY OF JANUARY 2013.

X *Patrick Mayovsky*

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