

NO. 69402-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ROBERT RACHELS,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 JUN -6 PM 3:04

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE PALMER ROBINSON

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

LINDSEY M. GRIEVE
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

TABLE OF CONTENTS

Page

A. ISSUE PRESENTED..... 1

B. STATEMENT OF THE CASE..... 1

C. ARGUMENT..... 6

THE TRIAL COURT DID NOT DELEGATE ITS
SENTENCING AUTHORITY TO THE DEPARTMENT OF
CORRECTIONS WHERE THE DEPARTMENT OF
CORRECTIONS WAS ENFORCING THE CONDITIONS
IMPOSED BY THE COURT 6

D. CONCLUSION 12

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Bahl, 164 Wn.2d 739,
193 P.3d 678 (2008)..... 6

State v. Mulcare, 189 Wash. 625,
66 P.2d 360 (1937)..... 9

State v. Playter, 12 Wn. App. 388,
531 P.2d 831 (1974)..... 8

State v. Sansone, 127 Wn. App. 630,
111 P.3d 1251 (2005)..... 8

State v. Wilkerson, 107 Wn. App. 748,
31 P.3d 1194 (2001)..... 8, 10

State v. Williams, 97 Wn. App. 257,
983 P.2d 687 (1999)..... 8, 10

Statutes

Washington State:

RCW 9.94A.030 7

RCW 9.94A.501 7

RCW 9.94A.704 7, 8, 9

RCW 9.95.204..... 7

RCW 9.95.210..... 3

RCW 9.95.250..... 7

A. ISSUE PRESENTED

The delineation of the terms of probation is a judicial function and courts have the power to delegate some aspects of probation to the Department of Corrections (DOC). As terms of Rachels' probation for a sex offense, the court prohibited Rachels from being near places where minors congregate and having unsupervised contact with minors. As part of its supervision of Rachels' probation, DOC refused his request to live at an apartment located near college dormitories, a high school, and a middle school. At a hearing to clarify the conditions of sentence, the court ordered that Rachels must live in DOC-approved housing. Has Rachels failed to show that the court unlawfully delegated its sentencing authority?

B. STATEMENT OF THE CASE

Defendant Robert Rachels was originally charged by information with one count of child molestation in the first degree and one count of communication with a minor for immoral purposes. CP 1-2. Pursuant to plea negotiations, the State amended the information to charge Rachels with three counts of communication with a minor for immoral purposes. CP 46, 49-50.

All offenses were alleged to have occurred between April 22, 2009 and October 1, 2010. CP 1-2, 49-50. The named victim on all counts was JIB. CP 1-2, 49-50.

The Certification for Determination of Probable Cause described the underlying facts of the charges.¹ CP 4-6. Rachels' nine-year-old granddaughter, JIB, reported that Rachels described to her the details of his past sexual relations with others, took her to locations where he had sexual intercourse, and showed her pornographic magazines. CP 4-5. JIB also disclosed that Rachels squeezed her buttocks and breasts and placed his hand between her underwear and pants. CP 4-5. Regarding his actions, Rachels told his granddaughter, "If you tell anyone[,] I won't be able to see you." CP 5. On a separate occasion, Rachels told JIB that she would be grounded if she told her mother about what Rachels had done. CP 5. JIB disclosed these events to her school counselor and reported that they spanned over the course of several years. CP 4.

¹ Rachels stipulated that the facts set forth in the certification for determination of probable cause are real and material facts for purposes of the sentencing hearing. CP 17.

Rachels pleaded guilty as charged in the amended information. CP 9. On June 1, 2012, the trial court imposed a suspended sentence of 364 days of confinement with credit for time served for Count I, and did not impose any additional days of confinement for Counts II and III. CP 18. Rachels was originally ordered to 24 months of probation. CP 18. The court subsequently entered an order clarifying that the supervision ordered by the court "shall be 12 months of supervised DOC supervision and 12 months of unsupervised supervision." CP 24; RCW 9.95.210(4) (misdemeanant probationers may be supervised by the Department of Corrections for *up to twelve months* of probation).

As a condition of his probation, Rachels was ordered to "comply with the standard rules and regulations of supervision." CP 18. The standard conditions of community custody included that Rachels notify his Community Corrections Officer (CCO) before changing residence and that Rachels "must avoid contact with the victim or minor children of similar age or close proximity where minors congregate, UNLESS authorized by the CCO." CP 38. As additional conditions of probation, Rachels was ordered to "[f]ollow treatment recommendations as set forth in 4/27/12

evaluation by Michael Compte.” CP 20.² At sentencing, the court commanded that Rachels “may not have any contact with any minor unless it is supervised and by that I mean in the same room at all times with somebody that knows about these convictions.” RP 16.³

On September 6, 2012, the trial court held a hearing to clarify whether Rachels was required to live at an address approved by his CCO. RP 20. During the hearing, the court quoted from Compte’s evaluation, “Analysis of static and dynamic risk factors suggest Mr. Rachels is at a moderate risk for further criminal behavior. ... As long as he does not have unsupervised access to children in the future, the risk to repeat that behavior is likely low.” RP 25. After hearing argument, the court continued the hearing to arrange for Rachels’ CCO, Pat Tanaka, to be present. RP 26.

² Although the evaluation and treatment recommendations by Michael Compte were incorporated into the judgment and sentence, they were not filed at sentencing and were either not filed or filed under seal. Thus, they are not designated in the Clerk’s Papers for Appeal. As a result, there is not a complete record of Rachels’ community custody conditions for this Court to review. The quotes from the Compte evaluation and treatment recommendations in this brief are taken from the verbatim report of proceedings.

³ There is one volume of verbatim report of proceedings. It contains three dates: June 1, 2012; Sept. 6, 2012; and Sept. 12, 2012.

On September 12, 2012, the court held a second hearing to clarify, with Tanaka present by phone. RP 31. At the hearing, the prosecutor quoted from Compte's treatment recommendations that, as a condition of his supervision, "Mr. Rachels should not be permitted contact and communication with children in any milieu and any exception should be discussed with his community corrections officer and clinician." RP 31. Tanaka explained that the proximity of Rachels' recently-selected apartment was a "concern to both his therapy and to the Department of Corrections" due to its "close proximity" with female dormitories at Seattle University. RP 32. As a result of those concerns, Rachels' request to transfer to the DOC's Seattle Unit was denied and Tanaka informed Rachels that he could not live at that apartment. RP 32. Tanaka advised Rachels not to sign a lease at that apartment and provided Rachels with available housing options. RP 35, 38.

In addition to the concern due to the proximity of Rachels' apartment to female dormitories, the court noted that Rachels' "apartment is located a couple blocks from a high school and a middle school is a couple blocks beyond that." RP 33. The trial court denied Rachels' motion to live at an address not approved by his CCO. CP 45.

C. ARGUMENT

THE TRIAL COURT DID NOT DELEGATE ITS SENTENCING AUTHORITY TO THE DEPARTMENT OF CORRECTIONS WHERE THE DEPARTMENT OF CORRECTIONS WAS ENFORCING THE CONDITIONS IMPOSED BY THE COURT.

Rachels claims that the Department of Corrections (DOC) lacked authority to impose the probationary condition that he could not reside in a location that was not approved by the DOC. Rachels also argues that the condition was an unlawful delegation of the court's authority. These claims should be rejected. There was no unlawful designation of the court's authority where the DOC was enforcing the probation conditions imposed by the court. In any event, even if the court's original probation conditions were ambiguous regarding DOC approval for housing, at a later hearing the court ratified the condition making it a condition of the court's sentence.

A sentencing court has discretion in imposing sentencing conditions and those conditions are reviewed for an abuse of discretion. State v. Bahl, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). Imposing an unconstitutional condition is manifestly unreasonable. Id. at 753.

Community custody is served in the community and the offender is subject to controls placed on his movement and activities by the DOC. RCW 9.94A.030(5). When a superior court places a defendant convicted of a misdemeanor on probation and orders supervision, the DOC has responsibility for the supervision of the defendant. RCW 9.95.204. The parole officers working under the supervision of the DOC are known as Community Corrections Officers (CCOs). RCW 9.95.250. The DOC is required to supervise offenders convicted of communicating with a minor for immoral purposes. RCW 9.94A.501(1)(a)(iii).

CCOs are authorized to impose specific conditions and requirements on an offender under their supervision, such as requiring participation in rehabilitative programs, obeying all laws, and undertaking affirmative conduct. RCW 9.94A.704(2)-(5). Furthermore, CCOs are authorized to impose additional conditions of community custody on an offender: “[T]he [DOC] shall assess the offender’s risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.” RCW 9.94A.704(2)(a). The DOC “may not impose conditions that are contrary to those ordered by the court

and may not contravene or decrease court-imposed conditions.”

RCW 9.94A.704(6).

The precise delineation of the terms of probation is a core judicial function. State v. Williams, 97 Wn. App. 257, 264, 983 P.2d 687 (1999). However, there is no delegation of the court’s authority when a trial court adopts terms of probation recommended by another, such as a treatment provider. State v. Playter, 12 Wn. App. 388, 391, 531 P.2d 831 (1974). Through the adoption of another’s terms, the court makes those terms its own. Id. Additionally, a trial court need not include all precise terms of probation in the original sentence. State v. Wilkerson, 107 Wn. App. 748, 756, 31 P.3d 1194 (2001). Trial courts do not unlawfully delegate judicial authority when referring cases to probation officers to establish additional conditions of probation not identified at the sentencing hearing, “so long as the court ratifies the terms recommended by probation or a treatment agency, and adopts them as its own.” Id. at 755.

Sentencing courts also have “the power to delegate some aspects of community placement to the DOC.” State v. Sansone, 127 Wn. App. 630, 642, 111 P.3d 1251 (2005). “While it is the function of the judiciary to determine guilt and impose sentences,

'the execution and the application of the various provisions for the mitigation of punishment and the reformation of the offender are administrative in character and are properly exercised by an administrative body, according to the manner prescribed by the legislature.'" Id. (quoting State v. Mulcare, 189 Wash. 625, 628, 66 P.2d 360 (1937)).

Here, the trial court's original conditions of community custody authorized the DOC to prohibit Rachels from living at a location where he would have unmonitored access to minors. Amongst the conditions, the court ordered that Rachels: (1) must avoid contact with minors and close proximity to where minors congregate; (2) is prohibited from having unsupervised contact with minors; and (3) may not have "contact and communication with children in any milieu and any exception should be discussed with his [CCO] and clinician." CP 20, 38; RP 16, 31. Based on these court-imposed conditions, the DOC was authorized to prohibit Rachels from living in a location where he would be in close proximity to minors.

Moreover, the DOC is authorized to specifically establish conditions based upon the risk to community safety. RCW 9.94A.704(2)(a). Here, the CCO explained that the location

of Rachels' apartment was a concern to both the DOC and his therapy provider due to its close proximity to female dormitories. RP 32. As such, the DOC's refusal to approve Rachels' chosen residence was authorized, not only as a violation of community custody conditions, but also as a risk to community safety.

Based on the court's conditions, the DOC's duty to execute those conditions, and the DOC's authority to impose conditions based on a risk to community safety, it was both reasonable and necessary for the agency tasked with supervising Rachels, a sex offender, to have some ability to restrict his choice of residence.

Even if the original conditions of community custody were ambiguous regarding whether the DOC was authorized to restrict Rachels' housing to DOC-approved locations, at the hearing to clarify conditions the trial court clarified that Rachels must live in DOC-approved housing, thus ratifying this condition. Upon ratification, the court adopted the condition as its own and it was no longer a delegation of authority.

Rachels argues that this later ratification constituted an improper delegation of the court's sentencing authority. This argument is misplaced. Rather, the scenario here is analogous to Williams and Wilkerson, where additional terms of probation not

included in the original sentence were later recommended by probation and then ratified by the trial court. 97 Wn. App. 257; 107 Wn. App. 748. In both cases, reviewing courts held that the trial courts did not unlawfully delegate their authority where the cases were referred to probation departments to establish specific terms of probation and the court later approved the conditions. 97 Wn. App. at 265-66; 107 Wn. App. 755-56.

Rachels' argument that the court abused its discretion because its ruling was based on an erroneous view of the law also fails. Rachels quotes the trial court's comments claiming that the court "mistakenly believed the CCO could impose conditions[.]" Brief of Appellant at 9. However, the court did not state or imply that the CCO was responsible for imposing *conditions*; rather, the court recognized the CCO's role in making decisions to carry out the court-ordered conditions of supervision:

I understand Mr. Rachels'... argument... but on the other hand... that's the whole point in having the CCO monitor this and make the decisions is that it is much more tailored[,] I think[,] to the individuals and am I going to kind of micro manage CCOs in general or Mr. Tanaka... specifically in various aspects of *the supervision*? And the answer is no.

RP 38-39 (emphasis added). Furthermore, the hearing to clarify the court's conditions itself demonstrated that the trial court was

aware that it, not the CCO, made the ultimate decision on matters of supervision. If the court believed the CCO had authority, there would have been no reason to involve the court, hold a hearing at all, or have the *court* rule on the hearing.

The condition that Rachels must live in DOC-approved housing was not an unlawful delegation of the court's authority. In any event, even if the condition was originally ambiguous, the court adopted the condition as its own. This Court should deny Rachels' request to reverse the trial court's condition of supervision.

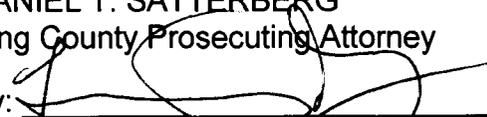
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the trial court's order requiring Rachels to live in housing approved by the Department of Corrections as a condition of his probation.

DATED this 6 day of June, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

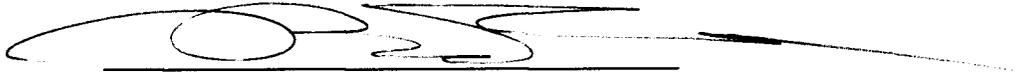
By: 
LINDSEY M. GRIEVE, WSBA #42951
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Casey Grannis, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. ROBERT RACHELS, Cause No. 69402-2 -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.

Dated this 6 day of June, 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Name
Done in Seattle, Washington