

71108-3

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NO. 71108-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

ELIAS REDA,

Appellant.

REC'D

MAY 16 2014

King County Prosecutor  
Appellate Unit

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

The Honorable Dean S. Lum, Judge

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 MAY 16 PM 3:53

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in ordering no contact with the victim as part of appellant's sentence without specifying the duration of the no contact order. CP 71.

Issue Pertaining to Assignment of Error

Where appellant's Judgment and Sentence includes a no-contact provision but does not also include a specified duration or expiration date for that provision, is the sentence insufficiently definite?

B. STATEMENT OF THE CASE

On April 12, 2013, the King County prosecutor charged appellant Elias Reda with residential burglary. CP 1-5. A jury found him guilty as charged. CP 66. The trial court imposed 80 months of term of confinement. CP 71. As part of the sentence, Reda is also ordered to have no contact with Janet Buck, the homeowner of the burgled house. CP 71. However, the Judgment and Sentence fails to include a specific term of years for the no contact order. CP 71. This appeal follows. CP 81-90.

C. ARGUMENT

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

The trial court ordered Reda to have no contact with the victim as part of his sentence but did not specify when the no contact order would expire. CP 71. Remand is required to enable the court to set a definite term for the no-contact order.

In State v. Broadaway, the boilerplate language in the judgment and sentence contained a similar deficiency. State v. Broadaway, 133 Wn.2d 118, 135-36, 942 P.2d 363 (1997). The Court held when "a sentence is insufficiently specific about the period of community placement required by law, remand for amendment of the judgment and sentence to expressly provide for the correct period of community placement is the proper course." Broadaway, 133 Wn.2d at 136.

The same result is mandated here. A sentence must be "definite and certain." 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 Judgment and Sentence in Reda's case is insufficiently specific about the duration of the no-contact order. There is no reference to an expiration date or a specific duration of

years. CP 71. Instead, the space for this information is left blank. CP 71. Because the trial court provided no specific time limit for the no-contact provision, the intended duration of the provision is unclear.

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.<sup>1</sup> 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

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

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.

Courts have the authority to clarify insufficiently specific sentences. Broadaway, 133 Wn.2d at 136. This Court should therefore remand the case to allow entry of a definite no-contact term as part of the disposition.

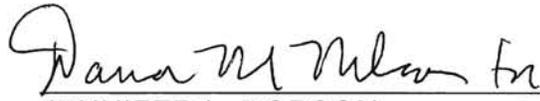
D. CONCLUSION

Reda respectfully requests remand so that the sentence can be made definite and specific as to the duration of the no contact order.

DATED this 16<sup>th</sup> day of May, 2014.

Respectfully Submitted,

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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 16<sup>TH</sup> DAY OF MAY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ELIAS REDA  
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**SIGNED** IN SEATTLE WASHINGTON, THIS 16<sup>TH</sup> DAY OF MAY, 2014.

X *Patrick Mayovsky*