

NO. 71150-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

S.A.,

Appellant.

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

The Honorable Linda C. Krese, Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	3
THE COURT ERRED IN FAILING TO SET A DEFINITE NO-CONTACT TERM.	3
D. <u>CONCLUSION</u>	6

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>City of Seattle v. Edwards</u> 87 Wn. App. 305, 941 P.2d 697 (1997).....	4
<u>Grant v. Smith</u> 24 Wn.2d 839, 167 P.2d 123 (1946).....	3
<u>State v. Broadaway</u> 133 Wn.2d 118, 942 P.2d 363 (1997).....	3, 5
<u>State v. Jones</u> 93 Wn. App. 14, 968 P.2d 2 (1998).....	3
<u>State v. Miller</u> 156 Wn.2d 23, 123 P.3d 827 (2005).....	4
<u>State v. W.S.</u> 176 Wn. App. 231, 309 P.3d 589 (2013).....	5

A. ASSIGNMENT OF ERROR

The court erred in ordering no contact with the victim as part of the sentence without specifying the duration of the no contact order. CP 21.

Issue Pertaining to Assignment of Error

Whether the sentence is insufficiently definite and certain in failing to specify the expiration of the no contact order imposed on appellant?

B. STATEMENT OF THE CASE

On July 9, 2013, the Snohomish County prosecutor charged juvenile appellant S.A. with second degree robbery, allegedly committed against T.N.L. on July 3, 2013. CP 46-47. According to the affidavit of probable cause, S.A. pulled T.N.L.'s hair and took her cell phone. CP 42-45.

Pursuant to plea negotiations, S.A. pled guilty to amended charges of first degree theft and fourth degree assault. CP 33-41. The prosecutor agreed to recommend a standard range of local sanctions as part of the agreement. RP (10/17/13) 5. Juvenile Probation gave notice it would seek a manifest injustice disposition of forty weeks, however. RP (10/17/13) 5.

At the disposition hearing, the court found the aggravating factor that S.A. had failed to comply with a recent dispositional order supported imposition of a manifest injustice disposition. RP (10/22/13) 18. However, the court was persuaded to give S.A. a chance to participate in

services within the community and suspended the disposition for twelve months on condition S.A. comply with chemical dependency disposition conditions, such as treatment.¹ CP 13-25; RP (10/22/13) 20-22, 24.

The court initially imposed the forty weeks recommended by probation. CP 23. However, the court modified the suspended sentence to 25 weeks after defense counsel moved for reconsideration on grounds JRA confirmed 25 weeks would be sufficiently lengthy to allow S.A. to participate in chemical dependency services there, if her suspended disposition were subsequently revoked. CP 7-10; RP (11/14/13) 2-3.

As part of the disposition, S.A. is ordered to have no contact with T.N.L. CP 21. As indicated, the court ordered the disposition suspended for twelve months, but gave probation the authority to end the suspension early, after six months. CP 19; RP (10/22/13) 24. This appeal follows. CP 1.

¹ The court suspended all but 30 days of the disposition, which S.A. had already served. RP (10/22/13) 21.

C. ARGUMENT

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

The court ordered S.A. to have no contact with the victim as part of the disposition but did not specify when the no contact order would expire. CP 21. 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 disposition in S.A.'s case is insufficiently specific about the duration of the no-contact order. Under the heading "4.12 NO CONTACT," the court ordered: "The respondent shall have no contact, direct or indirect with T.N.L. DOB 2/9/99." CP 21. There is no reference to an expiration date.

CP 26. Because the court provided no statutory basis or time limit for the 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.² 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

² 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.

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.

This Court recently held juvenile courts have authority to impose domestic violence no-contact provisions for up to the statutory maximum of the offense, even if that maximum sentence exceeds the juvenile's eighteenth birthday. State v. W.S., 176 Wn. App. 231, 309 P.3d 589, 590 (2013). S.A.'s case is not a domestic violence case, the holding in W.S. underscores the importance of identifying the duration of a no-contact provision if the duration is not otherwise clear from the judgment and sentence.

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.

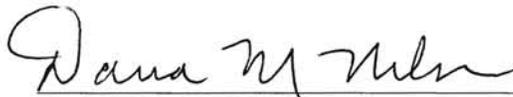
D. CONCLUSION

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

DATED this 27th day of February, 2014.

Respectfully Submitted,

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 71150-4-1
)	
SIMONA AIWORO,)	
)	
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 27TH DAY OF FEBRUARY, 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.

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SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF FEBRUARY, 2014.

x *Patrick Mayovsky*