

No. 74697-9-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE PERSONAL RESTRAINT OF:

KYLE CHRISTOPHER BUCKINGHAM,
Petitioner.

FILED
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Court of Appeals
Division I
State of Washington

SUPPLEMENTAL BRIEF OF PETITIONER

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A STATEMENT OF THE CASE

On March 19, 2008, petitioner Kyle Buckingham was sentenced for one count of first degree child rape to a Special Sex Offender Sentence Alternative (SSOSA) sentence. The court imposed an indeterminate sentence with a minimum term of 93 months, 81 months of the sentence were suspended and Mr. Buckingham was required to spend 12 months in custody. As part of the sentence, the court imposed a term of community custody, with the conditions listed in Appendix

A. Among these conditions were the following:

6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.

7. Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.

...

18. Do not access the internet or any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.

...

22. You may not possess or maintain access to a computer, unless specifically authorized by your supervising Community Corrections Officer. You may not access any computer parts or peripherals, including but not limited to hard drives, storage devices digital cameras, web cams, wireless video devices or receivers,

CD/DVD burners, or any device to store or reproduce digital media or storage.

...

26. Participate in urinalysis, breathalyzer, plethysmograph and polygraph examinations as directed by the supervising Community Corrections Officer.

(A copy of the conditions of community custody are attached in the Appendix).

Subsequently, on April 30, 2009, the trial court revoked Mr. Buckingham's SSOSA and imposed the remainder of the minimum term of the indeterminate sentence.

On October 16, 2015, Mr. Buckingham filed a Motion to Modify or Correct Judgment and Sentence pursuant to CrR 7.8.¹ Mr. Buckingham submitted that the conditions of community custody should be stricken because they were either not crime-related or unconstitutional.

¹ CrR 7.8(c) states in relevant part:

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

The State filed a response, moving to transfer the motion to the Court of Appeals for consideration as a Personal Restraint Petition (PRP). Initially, the State argued the entire motion must be dismissed as it was time-barred under RCW 10.73.090.² The State conceded several of the conditions were invalid, but since the motion contained time-barred claims, the PRP was a “mixed petition,” and as such, should be dismissed. The State conceded that the condition barring possession of a computer and computer access, and the condition requiring plethysmograph testing, were not crime related, thus invalid. The State also conceded that the condition barring Mr. Buckingham

² RCW 10.73.090 states in relevant part:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction . . .

from frequenting places where minor children were known to congregate and the condition barring possession of pornography were invalid on their face.

On February 3, 2016, the trial court transferred the motion to the Court of Appeals for consideration as a PRP. The court concluded that Mr. Buckingham's motion was *not* time-barred under RCW 10.73.090, but that he had not made a substantial showing that he was entitled to relief, and that resolution of the motion would not require a hearing.

B. ARGUMENT

1. **Conditions 6, 7, 18, 22 and 26 are not crime-related and must be stricken.**

a. *Community custody conditions must be crime-related.*

A court may impose only the sentence authorized by statute. *State v. Barnett*, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). Imposing crime-related prohibitions as part of a sentence is generally within the discretion of the sentencing court and will be reversed where they are manifestly unreasonable. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). “[A]n unconstitutional condition will always be ‘manifestly unreasonable.’” *State v. Irwin*, 191 Wn.App. 644, 652, 364 P.3d 830 (2015).

The Sentencing Reform Act (SRA) allows a court to impose crime-related prohibitions that are independent of community custody conditions. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). A “[c]rime-related prohibition’... directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10); *State v. Land*, 172 Wn.App. 593, 605, 295 P.3d 782 (2013). “Although the conduct prohibited during community custody must be directly related to the crime, it need not be causally related to the crime.” *State v. Letourneau*, 100 Wn.App. 424, 432, 997 P.2d 436 (2000).

Under RCW 9.94A.507(1)(a)(i), (5), a person convicted of first degree rape of a child shall be sentenced to community custody under the supervision of the Department of Corrections (DOC) for any time he is released from total confinement before expiration of the maximum sentence. The sentencing court is required to impose certain conditions and has discretion to impose others, such as crime-related prohibitions, affirmative conditions, and statutorily authorized infringements of certain constitutional rights. RCW 9.94A.703(3)(f); *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *State v. Riles*, 135 Wn.2d 326, 346-47, 957 P.2d 655 (1998).

- b. *Conditions 6, 7, 18, 22 and 26 are not crime-related and must be stricken.*

Mr. Buckingham submits the community custody conditions restricting computer and Internet access, conditions 18 and 22, and the condition prohibiting and restricting contact with minors, condition 6, are not crime related and must be stricken.

Here, there was no evidence Mr. Buckingham used a computer or the Internet in committing his offense, thus these conditions barring access to a computer and barring access to the internet are not crime related. *See State v. Johnson*, 180 Wn.App. 318, 330-31, 327 P.3d 704 (2014); *State v. O’Cain*, 144 Wn.App. 772, 775, 184 P.3d 1262 (2008) (condition of community custody prohibiting Internet access is not crime related where the record shows Internet usage was not related to the crime).

Further, the prohibition against frequenting areas where minor children congregate is unconstitutionally vague and is not crime related, thus it must be stricken. *See Riles*, 135 Wn.2d at 350 (condition that limits or prohibits contact with minors must relate to the underlying crime), *abrogated on other grounds by State v. Sanchez Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010); *Irwin*, 191 Wn.App. at 655 (term of condition of custody restricting access where children

are known to congregate is unconstitutionally vague as it does not give sufficient notice of what conduct is proscribed).

Further, Mr. Buckingham also submits that the condition prohibiting the possession of pornographic materials and the condition prohibiting the possession of sexual stimulus materials are also unconstitutionally vague and must be stricken. *See Bahl.*, 164 Wn.2d at 758-61 (condition that prohibits accessing or possessing pornographic materials and condition that prohibits sexual stimulus materials for a deviancy where no deviancy is diagnosed are unconstitutionally vague); *State v. Sansone*, 127 Wn.App. 630, 639, 111 P.3d 1251 (2005) (term “pornography” is unconstitutionally vague).

Finally, Mr. Buckingham contends the condition requiring him to submit to plethysmograph examinations at the discretion of his community corrections officer is an unconstitutional bodily intrusion and must be stricken as well. *See Land* 172 Wn.App at 605 (condition requiring an individual to submit to a plethysmograph examination at the discretion of a community corrections officer is unconstitutional).

The conditions cited are either not crime-related or unconstitutional and must be stricken.

2. To the extent this Court finds Mr. Buckingham’s CrR 7.8 motion was either untimely or a mixed petition, the contested conditions are facially invalid and must still be stricken.

- a. *Even in a mixed petition, conditions that are invalid on their face may still be considered.*

A petition that contains both timely and untimely claims must be dismissed as a mixed petition. *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 220, 76 P.3d 241 (2003). But, even with a mixed petition, however, courts will address challenges to the facial validity of the judgment and sentence. *Stenson*, 150 Wn.2d at 221. “If a petition is based on any grounds other than one of the six listed in RCW 10.73.100,³ it is subject to the one-year limit in RCW 10.73.090 unless

³ The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
 - (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
 - (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;
 - (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
 - (5) The sentence imposed was in excess of the court's jurisdiction;
- or

it qualifies under the exceptions to the time bar in .090 itself.” *In re Stoudmire*, 141 Wn.2d 342, 348, 5 P.3d 1240 (2000).

A petition challenging a judgment and sentence generally must be filed within one year after the judgment becomes final. RCW 10.73.090(1). The time limit may be avoided if the judgment and sentence is invalid on its face. RCW 10.73.090(1). A judgment is invalid on its face under RCW 10.73.090(1) where the trial court exceeded its statutory authority in entering the judgment or sentence. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 135, 267 P.3d 324 (2011).

“Invalid on its face” is a term of art that, like many terms of art, obscures, rather than illuminates its meaning. *Coats*, 173 Wn.2d at 133-40. Generally speaking, a judgment and sentence is not valid on its face if it demonstrates that the trial court did not have the power or the statutory authority to impose the judgment or sentence. “Invalid on its face” does *not* mean that the trial judge committed some legal error. *In*

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100.

re Scott, 173 Wn.2d 911, 916, 271 P.3d 218, 221 (2012). Thus, the general rule is that a judgment and sentence is not valid on its face if the trial judge actually exercised authority (statutory or otherwise) it did not have. *Id.*, at 917.

In addition, a judgment and sentence is invalid on its face if it evinces the invalidity without further elaboration. *See In Re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). The phrase “on its face” includes the documents signed as part of a plea agreement. *Goodwin*, 146 Wn.2d at 866 n. 2, *citing In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000); *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000).

This exemption, however, only allows challenges to the facially invalid defect in the judgment and sentence; it does not bring up otherwise untimely claims. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 424-25, 309 P.3d 451 (2013).

Here, the trial court found Mr. Buckingham’s motion not to be time-barred. But, to the extent this Court disagrees, several of the challenged conditions must still be stricken as they are facially invalid.

- b. *Facially invalid conditions are reviewable under RCW 10.73.090.*

Mr. Buckingham filed his motion more than one year after finality of his case. Therefore, RCW 10.73.090(1) arguably barred the petition as untimely unless the judgment and sentence was invalid on its face. RCW 10.73.100. Mr. Buckingham submits the challenge to the facial validity of his judgment and sentence is nevertheless reviewable under RCW 10.73.090(1). *In re Hankerson*, 149 Wn.2d 695, 704, 72 P.3d 703(2003).

- i. *Condition barring possessing or viewing of pornography as defined by CCO is facially invalid and must be stricken.*

Under the due process clause, a prohibition is void for vagueness if either (1) it does not define the offense with sufficient definiteness such that ordinary people can understand what conduct is prohibited, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement. *Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). Thus, a condition of community custody is unconstitutionally vague if it fails to do either. *Bahl*, 164 Wn.2d at 753.

Mr. Buckingham's challenge to the condition that he not possess or peruse pornographic material is facially invalid because it delegates

the definition of pornography to his community corrections officer. *Bahl*, 164 Wn.2d at 758 (delegating the definition “pornographic” to the community corrections officers makes the condition unconstitutionally vague). In addition, as this Court stated in *Sansone*:

The term has not been defined with sufficient definiteness such that ordinary people can understand what it encompasses. This is supported by the fact that the community placement condition includes a requirement that “pornography” be defined by the probation officer, a requirement that would be unnecessary if “pornography” was inherently definite. Moreover, as discussed further below, the DOC employed varying definitions of pornography.

127 Wn.App. at 639.

Thus, condition 7 is a facially invalid defect because it imposes a sentence not authorized by law and must be stricken. *Snively*, 180 Wn.2d at 32.

ii. Condition 26 requiring plethysmograph testing at the direction of the CCO must be stricken as facially invalid.

The requirement in condition 26 that Mr. Buckingham submit to plethysmograph examinations upon the request of the community corrections officer violates his constitutional right to be free from bodily intrusions. *Land*, 172 Wn.App. at 605.

Plethysmograph testing is extremely intrusive. The testing can properly be ordered incident to crime-related

treatment by a qualified provider. But it may not be viewed as a routine monitoring tool subject only to the discretion of a community corrections officer.

Id. (internal citation omitted).

This condition is also unconstitutional and facially invalid and should be stricken.

iii. The prohibition on frequenting areas where minors congregate must be stricken as it is unconstitutionally vague.

Condition 6, which purports to bar Mr. Buckingham from frequenting places where “minor children are known to congregate” is also facially invalid and must be stricken.

In *Irwin*, this Court struck the same condition of community custody on vagueness grounds:

While *Bahl* and *Sansone* involved the intractably undefinable term “pornography,” this case simply requires ordinary people to understand where “children are known to congregate.” But, as *Irwin* points out, whether that would include “public parks, bowling alleys, shopping malls, theaters, churches, hiking trails” and other public places where there may be children is not immediately clear. Trial counsel requested that, rather than leave the definition of this condition to the discretion of the CCO, the court should list prohibited places as examples. When presented with this argument at sentencing, the trial court explained that that [sic] *Irwin* should not “frequent areas of high concentration of children.” But, the final condition did not include that clarification.

...

It may be true that, once the CCO sets locations where “children are known to congregate” for Irwin, Irwin will have sufficient notice of what conduct is proscribed. But, although that would help the condition satisfy the first prong of the vagueness analysis, it would leave the condition vulnerable to arbitrary enforcement. *See Bahl*, 164 Wn.2d at 753, 193 P.3d 678; *Sansone*, 127 Wn.App. at 639, 111 P.3d 1251. The potential for arbitrary enforcement would render the condition unconstitutional under the second prong of the vagueness analysis. *See Bahl*, 164 Wn.2d at 753, 193 P.3d 678. Therefore, this court reverses the trial court, strikes the condition as being void for vagueness, and remands to the trial court for resentencing.

Irwin, 191 Wn.App. at 654-55 (internal footnotes omitted).

iv. The ban on internet access and computer possession or access violates substantive due process because it is overbroad.

“Overbreadth is a question of substantive due process—whether the statute is so broad that it prohibits constitutionally protected activities as well as unprotected behavior.” *State v. McBride*, 74 Wn.App. 460, 464, 873 P.2d 589 (1994). Overbreadth doctrine creates a limited exception to the general rule that a party “will not be heard to challenge [a] statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court.” *Broadrick v. Oklahoma*, 413 U.S. 601, 610, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Washington courts apply federal overbreadth analysis to

these challenges. *State v. Talley*, 122 Wn.2d 192, 210, 858 P.2d 217 (1993). While overbreadth challenges usually invoke First Amendment to the United States Constitution rights, Washington courts have applied overbreadth analysis to other constitutionally protected rights as well. *See State v. Lee*, 135 Wn.2d 369, 389–90, 957 P.2d 741 (1998) (applying overbreadth analysis to an anti-stalking statute and determining that the statute did not improperly infringe on the constitutional right to travel and move freely in public places); *McBride*, 74 Wn.App. at 465 (applying overbreadth analysis to a statute prohibiting drug traffickers from frequenting areas known for drug activity and noting that such an analysis applies regardless of whether the constitutional right involved is free speech or the right to move about freely and travel).

The first step in overbreadth analysis is determining if a statute reaches constitutionally protected conduct. *Id.* at 464. “Statutes which regulate behavior and not purely speech will not be overturned unless the overbreadth is both real and substantial in relationship to the conduct legitimately regulated by the statute.” *Id.* Even if a statute is substantially overbroad, it “will be overturned only if the court is ‘unable to place a sufficiently limited construction upon the

standardless sweep of [the] legislation.” *Id.* (alteration in original) (internal quotation marks omitted), quoting *City of Seattle v. Webster*, 115 Wn.2d 635, 641, 802 P.2d 1333 (1990).

Overbreadth analysis measures how statutes (or conditions of community custody) that prohibit conduct fit within the universe of constitutionally protected conduct. See *State v. Halstien*, 122 Wn.2d 109, 121, 857 P.2d 270 (1993). A condition of community custody is overbroad if it sweeps within its prohibitions free speech activities protected under the First Amendment. *Id.* Offenders on community custody have a right to access and transmit material protected by the First Amendment. *Bahl*, 164 Wn.2d at 753.

The First Amendment “embraces the right to distribute literature, and necessarily protects the right to receive it.” *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143, 63 S.Ct. 862, 87 L.Ed. 1313 (1943). It protects material disseminated over the internet as well as by the means of communication devices used prior to the high-tech era. *Reno v. ACLU*, 521 U.S. 844, 868, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). Thus, restrictions upon access to the Internet necessarily curtail First Amendment rights. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 124 S.Ct. 2783, 159 L.Ed.2d 690 (2004). A total ban on

internet access would unreasonably encroach on protected liberties because such a ban “prevents use of e-mail, an increasingly widely used for of communication and . . . prevents other common-place computer uses such as ‘do[ing] any research, get[ting] a weather forecast, or read[ing] a newspaper online.’” *United States v. Sofsky*, 287 F.3d 122, 126 (2d Cir. 2002) (citation omitted).

The requirement that Mr. Buckingham gain his CCO’s approval before his access to or use of the internet, computer, and cell phones for all purposes is unconstitutionally overbroad. This condition restricts lawful use of a computer device and deprives Mr. Buckingham of the easiest way to pay his bills, check the weather, stay on top of world events, and keep in touch with friends. *See Bahl*, 137 Wn.App. at 714-15 (a community custody condition is overbroad if the condition encompasses matters that are not crime related.).

The importance of having access to a computer, thus allowing access to the Internet has been expressed by several courts. “Computers and Internet access have become virtually indispensable in the modern world of communications and information gathering.” *United States v. Peterson*, 248 F.3d 79, 83-84 (2d Cir. 2001). The Supreme Court has characterized the Internet as “a vast library including millions of

readily available and indexed publications....” *Reno v. American Civil Liberties Union*, 521 U.S. at 853. In 2004, there are approximately 233.1 million users of the Internet. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 124 S.Ct. 2783, 2794, 159 L.Ed.2d 690 (2004).

Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant to this case are electronic mail (e-mail), automatic mailing list services (‘mail exploders,’ sometimes referred to as ‘listservs’), ‘newsgroups,’ ‘chat rooms,’ and the ‘World Wide Web.’ All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium—known to its users as ‘cyberspace’—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet. E-mail enables an individual to send an electronic message—generally akin to a note or letter—to another individual or to a group of addressees.” (*Reno v. American Civil Liberties Union*, *supra*, 521 U.S. at p. 851, 117 S.Ct. 2329.) “[P]ublic debate is enabled by removing perhaps the most significant cost of human interaction—synchronicity. I can add to your conversation tonight; you can follow it up tomorrow; someone else, the day after.” (Lessig, *Code and Other Laws of Cyberspace* (1999) p. 10 (Lessig).)

...

“The architecture of the Internet, as it is right now, is perhaps the most important model of free speech since the founding [of the Republic]. Two hundred years after the framers ratified the Constitution, the Net has taught us what the First Amendment means.... The model for speech that the framers embraced was the model of the Internet—distributed, noncentralized, fully free and

diverse.” (Lessig, *supra*, at pp. 167, 185.) “Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.” (*Reno v. American Civil Liberties Union, supra*, 521 U.S. at p. 870, 117 S.Ct. 2329.)

In re Stevens, 119 Cal.App.4th 1228, 1236, 15 Cal.Rptr.3d 168, 172 (2004).

The Court in *United States v. Perazza-Mercado* noted the necessity of the Internet is in today’s connected world:

Moreover, we must be cognizant of the importance of the internet in today’s world. An undue restriction on internet use “renders modern life—in which, for example, the government strongly encourages taxpayers to file their returns electronically, where more and more commerce is conducted on-line, and where vast amounts of government information are communicated via website—exceptionally difficult.” *United States v. Holm*, 326 F.3d 872, 878 (7th Cir.2003); *see also United States v. Voelker*, 489 F.3d 139, 145 (3d Cir.2007) (“The ubiquitous presence of the internet and the all-encompassing nature of the information it contains are too obvious to require extensive citation or discussion.”); *United States v. Peterson*, 248 F.3d 79, 83 (2d Cir.2001) (“Computers and Internet access have become virtually indispensable in the modern world of communications and information gathering.”). In addition, there are many legal activities on the internet that are not easily conducted in public. For example, online banking or managing medical records are potentially important activities that one might not wish to conduct in public because of a legitimate interest in keeping the information private.

553 F.3d 65, 72-73 (1st Cir. 2009)

Courts have upheld conditions barring internet access in cases of sexual abuse of a minor only where the offender used the internet to engage in predatory behavior, such as by soliciting sexual contact with children or by otherwise personally endangering children. *See e.g., United States v. Crandon*, 173 F.3d 122, 125 (3d Cir. 1999) (upholding condition restricting all internet access where defendant used internet to contact young children and solicit inappropriate sexual contact with them). But there was no evidence that Mr. Buckingham used the computer or the Internet to access children.

The end result of this blanket ban in Mr. Buckingham's matter is it essentially denies him the ability to communicate with others, access mail, newspapers, books and magazines, etc. This ban is overbroad in that it impermissibly infringes on core First Amendment rights. *See Peterson*, 248 F.3d at 83 ("Although a defendant might use the telephone to commit fraud, this would not justify a condition of probation that includes an absolute bar on the use of telephones. Nor would defendant's proclivity toward pornography justify a ban on all books, magazines, and newspapers. We believe this restriction was

overbroad and therefore was not ‘reasonably related’ to Peterson’s offense or his history and characteristics”).

The blanket ban on Mr. Buckingham’s access to computers and the Internet was overbroad and violated the First Amendment. This Court should strike these two conditions of community custody.

C. CONCLUSION

For the reasons stated, Mr. Buckingham asks this Court to strike conditions 6, 7, 18, 22 and 26 listed in Appendix A to the Judgment and Sentence.

DATED this 24th day of June 2016.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)

tom@washapp.org

Washington Appellate Project – 91052

Attorneys for Petitioner

APPENDIX

FILED

A3

3-19-2008

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

THE STATE OF WASHINGTON,

Plaintiff,

v.

BUCKINGHAM, KYLE CHRISTOPHER

Defendant.

No. 07-1-01892-6

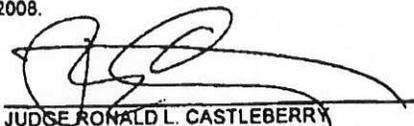
APPENDIX A
ADDITIONAL CONDITIONS
OF COMMUNITY CUSTODY

ADDITIONAL CONDITIONS OF COMMUNITY CUSTODY:

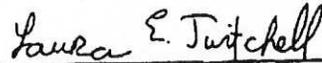
1. Have no direct or indirect contact with S.S.
2. Pay the costs of crime-related counseling and medical treatment required by the court.
3. Have no new law violations.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.
5. Do not seek employment or volunteer positions which place you in contact with or control over minor children.
6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.
7. Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.
8. Do not possess or control sexual stimulus material for your particular deviancy as defined by the supervising Community Corrections Officer and therapist except as provided for therapeutic purposes.
9. Do not possess or control any item designated or used to entertain, attract or lure children.
10. Do not date women nor form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
11. Do not remain overnight in a residence where minor children live or are spending the night.
12. Do not hold employment without first notifying your employer of this conviction.
13. Hold employment only in a position where you always receive direct supervision.

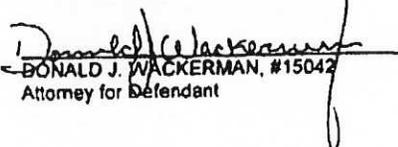
14. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
15. Do not possess or consume controlled substances unless you have a legally issued prescription.
16. Do not possess drug paraphernalia.
17. Find and maintain full time employment and or a combination of employment and full time educational program during the period of supervision, as directed by the supervising Community Corrections Officer. *or demonstrate efforts to comply with this condition*
18. Do not access the Internet on any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.
19. Do not use computer chat rooms.
20. Do not use a false identity at any time on a computer.
21. You must subject to searches or inspections of any computer equipment to which you have regular access.
22. You may not possess or maintain access to a computer, unless specifically authorized by your supervising Community Corrections Officer. You may not possess any computer parts or peripherals, including but not limited to hard drives, storage devices, digital cameras, web cams, wireless video devices or receivers, CD/DVD burners, or any device to store or reproduce digital media or storage.
23. Participate and make progress in sexual deviancy treatment. Follow all conditions outlined in your treatment contract. Do not change therapists without advanced permission of the sentencing Court.
24. Participate in offense related counseling programs, to include Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
25. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.
26. Participate in urinalysis, breathalyzer, plethysmograph and polygraph examinations as directed by the supervising Community Corrections Officer.
27. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
28. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for purposes of visual inspection of all areas of the residence in which you live or have exclusive or joint control and/or access.
29. Register as a sex offender with the county of your residence for the period provided by law.

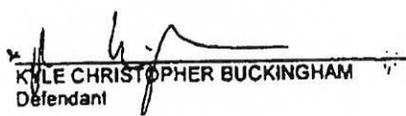
Dated this 17th day of March, 2008.



JUDGE RONALD L. CASTLEBERRY


LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney


DONALD J. WACKERMAN, #15042
Attorney for Defendant


KYLE CHRISTOPHER BUCKINGHAM
Defendant

APPENDIX

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3-19-2008

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SONYA KRASKI
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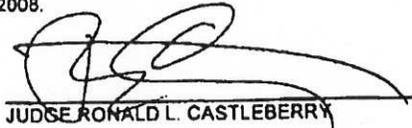
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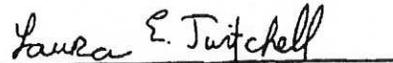
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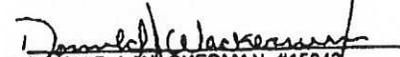
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Dated this 17th day of March, 2008.



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LAURA E. TWITCHELL, #28697
Deputy Prosecuting Attorney


DONALD J. WACKERMAN, #15042
Attorney for Defendant


KYLE CHRISTOPHER BUCKINGHAM
Defendant

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

IN RE THE PERSONAL RESTRAINT PETITION OF)	
)	
KYLE BUCKINGHAM,)	NO. 74697-9-I
)	
Petitioner.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF JUNE, 2016, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] MARY KATHLEEN WEBBER, DPA	()	U.S. MAIL
[kwebber@co.snohomish.wa.us]	()	HAND DELIVERY
SNOHOMISH CO PROSECUTOR'S OFFICE	(X)	AGREED E-SERVICE
3000 ROCKEFELLER		VIA COA PORTAL
EVERETT, WA 98201		
[X] KYLE BUCKINGHAM	(X)	U.S. MAIL
314244	()	HAND DELIVERY
AIRWAY HEIGHTS CORRECTIONS CENTER	()	_____
PO BOX 2049		
AIRWAY HEIGHTS, WA 99001		

SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF JUNE, 2016.

X _____ 

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1511 Third Avenue
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