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SUPREME COURT NO. _____
COURT OF APPEALS NO. 85648-1-1

Case #: 1038399

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

WILLIAM WEEDEN,

Respondent.

APPEAL FROM KING COUNTY SUPERIOR COURT

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

The State of Washington is the Petitioner in this matter.

B. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is *State v. Weeden*, No. 85648-1-I, 2025 WL 253033 (unpublished, January 21, 2025).

C. ISSUE PRESENTED FOR REVIEW

The State asks this Court to grant review of the Court of Appeals opinion holding that a community custody condition requiring Weeden to "[r]emain within geographic boundaries, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order" is unconstitutionally vague. The opinion is in conflict with opinions of this Court and other decisions of the Court of Appeals, and it involves a significant constitutional question that should be resolved. RAP 13.4(b)(1), (2), (3).

D. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). The State seeks review in accordance with RAP 13.4(b)(1), (2), and (3).

E. STATEMENT OF THE CASE

Weeden was convicted of third-degree assault for repeatedly striking a man with a steel broom handle. CP 19; RP 643-81, 762-63. The victim's most serious injury was a bone-depth laceration to his lower right leg, which bled profusely and required stitches. RP 559-61, 611-14. The defendant received

standard-range sentence that included community custody. CP 297-304, 315.

On appeal, Weeden's sole claim of error was that a community custody provision requiring him to "[r]emain within geographic boundaries, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order" was unconstitutionally vague. The State argued that the condition was not vague because the boundaries needed to be provided to the defendant in writing by a community-corrections officer, that the condition was sufficiently defined such that ordinary people could understand what conduct is prohibited, and that there were ascertainable standards and administrative review to protect against arbitrary enforcement. The State additionally noted that the geographical-boundaries condition was "identical to the guidelines set forth by RCW 9.94A.704, which establish[es] the rules for community custody." Brf. of Respondent at 4. Specifically, under RCW 9.94A.704(3)(b), "[i]f the offender is supervised by the

department, the department shall at a minimum instruct the offender to … [r]emain within prescribed geographical boundaries."

The Court of Appeals declared the condition unconstitutionally vague in a conclusory opinion that did not address the presumption of constitutionality of the statute, did not explain which particular terms of the community-custody provision are insufficiently defined, or explain how administrative review would not adequately protect against arbitrary enforcement. The State seeks review of that decision.

F. THIS COURT SHOULD REVIEW AND REVERSE THE COURT OF APPEALS DECISION STRIKING THE GEOGRAPHIC BOUNDARIES CONDITION

The Court of Appeals' truncated opinion finding the geographic-boundary community custody condition unconstitutionally vague is in conflict with other decisions of this Court and the Court of Appeals, and it involves a significant constitutional issue that should be determined by this Court. RAP 13.4(b)(1), (2), (3).

This same issue is pending in at least five other cases from King County alone, and the Court of Appeals has issued multiple divergent opinions on it.[1] For example, in the following opinions the Court of Appeals has rejected vagueness challenges to this same condition: *In re Pers. Restraint of Delacruz*, No. 55496-8-II, 2021 WL 5323921 (unpublished, November 16, 2021); *State v. Blake*, No. 35601-9-III, 2019 WL 276047 (unpublished, January 22, 2019), *rev'd on other grounds*, 197 Wn.2d 170, 481 P.3d 521 (2021); *In re Pers. Restraint of Rowe*, No. 52575-5-II, 2020 WL 4596076 (unpublished, August 11, 2020); *State v. Landrum*, No. 33812-6-III, 2017 WL 2645718 (unpublished, June 20, 2017). Conversely, in the following opinions, the Court of Appeals found the same or similar conditions unconstitutionally vague:

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[1] As of this writing, undersigned counsel is aware of the following pending cases (from King County only): *State v. Vincent Huff, Jr.*, No. 85795-9-I; *State v. Giovanni Herrin*, No. 85768-1-I; *State v. Tyre Johnson*, No. 86004-6-I; *State v. Eldorado Brown*, No. 86224-3-I; and *State v. Frankie Robertson-Butler*, No. 86443-2-I.

In re Pers. Restraint of Alaniz, No. 39631-2-III, 2024 WL 1209297 (unpublished, March 21, 2024); *In re Pers. Restraint of Bratcher*, No. 39758-1-III, 2024 WL 1406540 (unpublished, April 12, 2024); *State v. Greenfield*, 21 Wn. App. 2d 878, 508 P.3d 1029 (2022).[2]

The Court of Appeals' holding in this case, like the opinions in *Alaniz*, *Bratcher*, and *Greenfield*, is unsupported by reasoned analysis, including any explanation as to what words or terms in the geographic-boundary condition would not be understandable to an ordinary person. The opinion here, like those others, does not identify what words or phrases in the condition are unconstitutionally vague. This opinion, like those others, simply conclude that it is vague. This omission directly conflicts with this Court's cases analyzing constitutional vagueness claims that mandate this step. *See*, *e.g.*, *In re Pers. Restraint of Ansell*, 1 Wn.3d 882, 896-97, 533 P.3d 875 (2023)

[2] As the State conceded this issue in *Greenfield*, this published opinion contains no analysis of the legal standard.

(rejecting vagueness challenge to condition of community custody after consulting a standard dictionary); *State v. Nguyen*, 191 Wn.2d 671, 680-82, 425 P.3d 847 (2018) (same); *State v. Murray*, 190 Wn.2d 727, 737-38, 416 P.3d 1225 (2018) (rejecting vagueness challenge to aggravating circumstance after consulting a standard dictionary); *State v. Kintz*, 169 Wn.2d 537, 547-48, 238 P.3d 470 (2010) (rejecting vagueness challenge to statute defining a crime based on dictionary definitions of words). The Court of Appeals' failure to apply the correct analysis renders its decision in conflict with opinions of this Court.

While conditions of community custody are not presumed to be constitutional like statutes are, the condition that the Court of Appeals deemed vague is also an express statutory requirement of community custody. *See* RCW 9.94A.704(3)(b). In holding that the condition is

unconstitutional, the Court of Appeals effectively held that the statute itself is unconstitutional without considering Weeden's burden of establishing unconstitutionality beyond a reasonable doubt. *State v. Bassett*, 192 Wn.2d 67, 77, 428 P.3d 343 (2018) (statute is presumed constitutional and the challenger bears the burden to prove otherwise beyond a reasonable doubt); *State v. Bahl*, 164 Wn.2d 739, 754, 193 P.3d 678 (2008) (while defendants do not bear the burden of establishing that a condition of community custody is unconstitutional, they bear this burden with respect to statutes). A party meets this standard if argument and research show that there is no reasonable doubt that the statute violates the constitution. *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). As the constitutionality of a statute is an issue of significant importance, this Court should grant review on that basis as well.

In short, the Court of Appeals made a conclusory pronouncement that a community-custody condition that mirrors a state statute is unconstitutional. The constitutionality of a state statute, enacted by the legislature and signed by the governor, deserves more consideration than an offhanded opinion that offers no depth of analysis. In addition, various panels of the Court of Appeals now differ on this issue so often that the question of whether a criminal defendant will have to obey a statutorily supported condition of community custody depends on which panel of judges happen to be assigned the appeal. This Court should accept review and settle this question.

G. CONCLUSION

For the foregoing reasons, the State's petition for review should be granted.

This document contains 1,307 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 29th day of January, 2025.

Respectfully submitted,

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FILED
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State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondents, v. WILLIAM DWAYNE WEEDEN, Appellant.	No. 85648-1-I DIVISION ONE UNPUBLISHED OPINION

SMITH, C.J. — William Weeden was convicted of assault in the third degree. On appeal, Weeden challenges a community custody condition set forth in his judgment and sentence requiring him to remain within certain geographic boundaries. We remand for the court to strike the community custody provision.

FACTS

The facts of this case are undisputed. In April 2020, William Weeden assaulted Robert VanDiver with a broom and was charged by amended information with assault in the third degree with a deadly weapon. Weeden proceeded pro se and waived his right to a jury. The court found Weeden guilty and sentenced him within the standard range.

Weeden's judgment and sentence includes community custody conditions. Condition 8 requires Weeden to "[r]emain within geographic boundaries, as set forth in writing by the Department of Corrections Officer or as set forth with [the]

SODA[1] order." Weeden appeals and challenges the constitutionality of this provision.

Analysis

Standard of Review

Challenges to community custody conditions may be raised for the first time on appeal. *State v. Irwin*, 191 Wn. App. 644, 650, 364 P.3d 830 (2015). This court reviews community custody conditions for abuse of discretion. *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). "A trial court necessarily abuses its discretion if it imposes an unconstitutional community custody condition, and we review constitutional questions de novo." *State v. Wallmuller*, 194 Wn.2d 234, 238, 449 P.3d 619 (2019).

Community Custody Conditions

Weeden claims the community custody condition limiting his movement is unconstitutionally vague. We agree.

Under Article 1, Section 3 of the Washington State Constitution, the due process vagueness doctrine requires the State to provide citizens with fair warning of proscribed conduct. *Bahl*, 164 Wn.2d at 752. A community custody condition is void for vagueness if it " '(1) . . . does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) . . . does not provide ascertainable standards of guilt to protect against arbitrary enforcement.' " *Bahl*, 164 Wn.2d at 752 (alterations in original)

[1] "Stay out of Drug Area."

(quoting *City of Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)).

Here, Weeden's community custody condition requires him to "[r]emain within geographic boundaries, as set forth in writing by the Department of Corrections Officer or as set forth with [the] SODA order." The language deferring to a corrections officer is similar to the conditions prescribed in *State v. Greenfield*, 21 Wn. App. 2d 878, 889, 508 P.3d 1029 (2022) ("Stay out of drug areas, as defined in writing by the supervising Community Corrections Officer.") and *Irwin*, 191 Wn. App at 652 ("Do not frequent areas where minor children are known to congregate, as defined by the supervising CCO."). In both of these cases, the court held the community custody condition to be unconstitutionally vague.

In *Irwin*, the court stated "without some clarifying language or an illustrative list of prohibited locations . . . the condition does not give ordinary people sufficient notice to 'understand what conduct is proscribed.' " 191 Wn. App. at 655 (internal quotation marks omitted) (quoting *Bahl*, 164 Wn.2d at 753). The court noted that once the community corrections officer set specific locations, notice may be sufficient, but the condition would still be subject to arbitrary enforcement and, therefore, would "render the condition unconstitutional under the second prong of the vagueness analysis." *Irwin*, 191 Wn. App at 655. Similar to the condition in *Irwin*, the community custody condition in Weeden's judgment and sentence does not sufficiently describe the prohibited geographic boundaries, nor does it protect against arbitrary enforcement.

The State relies on *State v. Nguyen*, 191 Wn.2d 671, 425 P.3d 847 (2018), and *State v. Johnson*, 197 Wn.2d 740, 487 P.3d 893 (2021) for their claim that Weeden's condition is not unconstitutionally vague and is sufficient to put an ordinary person on notice of what conduct is proscribed. But these cases are distinguishable. First, neither *Nguyen* or *Johnson* concerns geographical boundaries. In *Nguyen* the court addressed the meaning of the terms "sexually explicit material" and "dating relationship" and whether the terms were unconstitutionally vague. 191 Wn.2d at 675. Additionally, the community condition in *Nguyen* did not defer to a community custody officer for clarification. 191 Wn.2d at 679.

In *Johnson*, the community custody condition concerned the defendant's use of the internet, specifically preventing him from soliciting sex with a minor. The condition stated "Johnson shall not use or access the World Wide Web unless specifically authorized by [his community custody officer] through approved filters." *Johnson*, 197 Wn.2d at 744 (alteration in original) (internal quotation marks omitted). Johnson challenged the constitutionality of the condition, claiming it lacked "sufficiently specific standards to prevent arbitrary enforcement by his future community custody officer." *Johnson*, 197 Wn.2d at 748. The Supreme Court noted when read in isolation that may be true, but read in the context of the judgment and sentence and related documents, "there are sufficient benchmarks to prevent arbitrary enforcement." *Johnson*, 197 Wn.2d at 748.

The State cites to *Johnson* for the proposition that documents related to Weeden's conviction can be used to restrict arbitrary enforcement. But, as noted above, *Johnson* is distinguishable. Defining physical boundaries an individual is restricted to is not the same as selecting filters to prohibit someone from soliciting sex with a minor online. As this court noted in *Irwin*, without clarifying language or a list of prohibited locations, a condition restricting geographical boundaries "would render the condition unconstitutional." 191 Wn. App. at 655.

Without more information, such as a list of locations from which Weeden is prohibited,[2] the community custody provision is not sufficiently defined and is vulnerable to arbitrary enforcement. We remand for the court to strike the provision.

Smith, C.J.

WE CONCUR:

Chung, J.

Bowman, J.

[2] The community custody condition fails to even provide a reason or what behavior the geographical location restriction is attempting to address.

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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