SUPREME COURT NO. _____
COURT OF APPEALS NO. 86004-6-I

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

TYRE JOHNSON,

Respondent.

APPEAL FROM KING COUNTY SUPERIOR COURT

PETITION FOR REVIEW

LEESA MANION (she/her)
King County Prosecuting Attorney

SAMANTHA D. KANNER (she/her)
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

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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The Court of Appeals decision at issue is *State v. Johnson*, No. 86004-6-I, 2025 WL 1158447 (unpublished, April 21, 2025).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 Johnson 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 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).

E. STATEMENT OF THE CASE

Tyre Johnson was charged with first-degree kidnapping and first-degree robbery. CP 1-2. The charges arose out of an incident in which Johnson held the manager of a cabaret at gunpoint, forced the manager to restrain himself with duct tape, and then stole money from a safe inside the manager's office. CP 5-11. Johnson had been working at the cabaret under a false identity and had planned the crime having come to the

manager's office under the guise of a pay dispute. CP 5-11. Pursuant to a plea bargain, Johnson pled guilty to one count of first-degree robbery with a deadly weapon enhancement. CP 38-68. The sentencing judge followed the parties' agreed recommendation and imposed a sentence of 60 months in custody and a community custody term of 18 months with standard community custody conditions imposed. CP 74-75, 79. Johnson timely appealed. CP 81-82.

On appeal, Johnson's sole designation 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 and did not explain which particular terms of the community-custody provision are insufficiently defined or 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 involves a significant constitutional issue that should be determined by this Court. RAP 13.4(b)(1), (2), (3).

On January 29, 2025, the State filed a petition for review on *State v. Weeden*, No. 85648-1-I, 2025 WL 253033 (unpublished, January 21, 2025), on this same issue which is currently pending before this Court in Supreme Court No. 1038399. This same issue is also pending in the Court of Appeals in at least eleven other cases from King County alone, and the Court of Appeals has issued numerous divergent opinions on this exact issue.[1] For example, in the following

[1] As of this writing, undersigned counsel is aware of the following pending cases (from King County only): *State v.*

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: *In re Pers. Restraint of Alaniz*, No. 39631-2-III, 2024 WL 1209297 (unpublished, March 21, 2024); *In re Pers. Restraint*

Giovanni Herrin, No. 85768-1-I; *State v. Eldorado Brown*, No. 86224-3-I; *State v. Frankie Robertson-Butler*, No. 86443-2-I; *State v. Zhen Wang*, No. 86453-0-I; *State v. Harlan Blackburn*, No. 86238-3-I; *State v. Brandon Robinson*, No. 85428-3-I; *State v. John Murrieta, Jr.*, No. 86448-3-I; *State v. Kevin Lundstrum*, No. 86537-4-I; *State v. Maygag Warsame*, No. 86116-1-I; *State v. Tommy Gibson*, No. 86725-3-I; and *State v. Gerardo Monge*, No. 85838-6-I.

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) (rejecting vagueness challenge to condition of community custody after consulting a standard dictionary); *State v. Nguyen*,

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

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 determined to be 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 is unconstitutional without considering Johnson's burden of establishing that this provision is unconstitutional 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 in this case made a conclusory pronouncement that a community-custody condition that mirrors a state statute is unconstitutional. The constitutionality of a state statute, enacted by our legislature and signed by our governor, deserves more consideration than an offhanded opinion that offers no depth of analysis or

consideration. 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

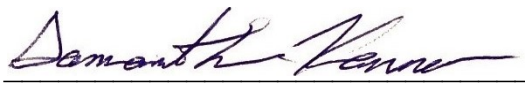
For the foregoing reasons, the State's petition for review should be granted.

This document contains 1,475 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 25th day of April, 2025.

Respectfully submitted,

LEESA MANION (she/her)
King County Prosecuting Attorney

By: 
SAMANTHA D. KANNER, WSBA #36943
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner
Office WSBA #91002

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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. TYRE M. JOHNSON, Appellant.	No. 86004-6-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — Tyre Johnson pleaded guilty to robbery in the first degree. Johnson appeals and challenges a community custody condition requiring him to remain within certain geographic boundaries. We remand for the court to strike the community custody condition.

I

Johnson was charged by amended information with kidnapping in the first degree and robbery in the first degree. Johnson pleaded guilty to robbery in the first degree and the State dismissed the kidnapping charge. Johnson was sentenced to a standard range sentence and community custody. Community custody condition 8 required

Johnson to "remain within geographic boundaries, as set forth in writing by the Department of Corrections Officer or as set forth with SODA[1] order."

Johnson appeals.

II

Johnson argues that community custody condition 8 is unconstitutionally vague. We agree.

We review community custody conditions for abuse of discretion. A trial court necessarily abuses its discretion if it imposes an unconstitutional community custody condition. State v. Wallmuller, 194 Wn.2d 234, 238, 449 P.3d 619 (2019). We review constitutional questions de novo. Wallmuller, 194 Wn.2d at 238.

Under Article I, section 3 of the Washington State Constitution, the due process vagueness doctrine requires the State to provide citizens with fair warning of proscribed conduct. State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008). 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) (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)).

In State v. Irwin, 191 Wn. App. 644, 652, 364 P.3d 830 (2015), the court addressed the constitutional vagueness of a similar community custody condition: "Do not frequent areas where minor children are known to congregate, as defined by the

[1] "Stay out of Drug Area."

supervising CCO." The court held that "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.'" Irwin, 191 Wn. App. at 655; see also State v. Greenfield, 21 Wn. App. 2d 878, 508 P.3d 1029 (2022) (holding "Stay out of drug areas, as defined in writing by the supervising Community Corrections Officer" to be unconstitutionally vague). The court noted that notice may be sufficient once the community custody officers set the prohibited locations but the condition remained "vulnerable to arbitrary enforcement." Irwin, 191 Wn. App. at 655. Like Irwin, community custody condition 8 does not give ordinary people sufficient notice because it does not adequately describe the prohibited geographic boundaries. Nor does it protect against arbitrary enforcement.

The State relies on State v. Johnson, 197 Wn.2d 740, 487 P.3d 893 (2021), and asserts that the condition is not unconstitutionally vague. That case is distinguishable. In Johnson, the community custody condition did not involve geographical boundaries but instead prevented Johnson from soliciting sex with a minor by prohibiting his use of the internet unless specifically authorized by a community custody officer. 197 Wn.2d at 744. 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. Our Supreme Court explained that when 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. But here, community custody condition 8 restricts an individual's physical movement.

That is not the same as restricting internet access through filters to prohibit someone from soliciting sex with a minor online.

The State also relies on State v. Ortega, 21 Wn. App. 2d 488, 506 P.3d 1287 (2022), but that case is distinguishable. In Ortega, the community custody condition required Ortega to comply with "crime-related prohibitions: Per CCO." 21 Wn. App. 2d at 496. The court held that the condition "did not grant Ortega's CCO unbridled discretion to proscribe conduct because the Department's authority is defined by statute. Thus, this condition is not unconstitutionally vague." Ortega, 21 Wn. App. 2d at 496. But unlike Ortega, community custody condition 8 limits Johnson's physical movement.

Without more information, the community custody condition is not sufficiently defined and vulnerable to arbitrary enforcement. We remand for the court to strike the community custody condition.

Mann, J.

WE CONCUR:

Chung, J.

Colum, J.

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

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