Supreme Court No. _____
COA No. 86045-3-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN PATRICK CURRAN,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT
OF SNOHOMISH COUNTY

PETITION FOR REVIEW

OLIVER R. DAVIS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

John Curran is the petitioner herein and was the appellant in Court of Appeals No. 86045-3-I.

B. COURT OF APPEALS DECISION

John Curran seeks review of the Court of Appeals decision in No. 86045-3-I (decided April 21, 2025), as to which the Court of Appeals denied reconsideration on May 30, 2025. Attachment A, Attachment B.

C. ISSUES PRESENTED ON REVIEW

1. Mr. Curran's waiver of his trial rights in favor of a stipulated bench trial included an agreement that the State would recommend a sentence of 26 months on the primary offense of Count 1, which carried a standard range of 26 to 34 months.

Where Mr. Curran was charged with another crime before sentencing, but not convicted, did the trial court improperly rule that the defendant had breached the stipulated trial agreement, permitting the State to change its

recommendations on the counts, including recommending imposition of an exceptional sentence of 60 months on Count 1?

2. Condition of community custody 11, allowing DOC to invade Mr. Curran's home and private affairs on whim, violates the state constitution. Must the condition be stricken?

D. STATEMENT OF THE CASE

1. <u>Charging and agreement to stipulated trial</u>.

John Curran was charged with offenses under RCW 9A.44.079, and RCW 9A.44.089, which are sex crimes in the third degree. CP 123-24.

The first count of the two-count information included a special allegation that the crime was aggravated by the use of an abuse of trust to facilitate the crime, under RCW 9.94A.535(3)(n). CP 123.

As the case proceeded to trial, Mr. Curran determined that he would agree to a bench trial on stipulated documentary

evidence, including the affidavit of probable cause, and a written factual stipulation by Mr. Curran. CP 56, 63.

2. <u>Stipulation's sentencing provisions</u>.

The stipulation, dated May 18, 2023, addressed the question of criminal history and sentencing in several provisions. The stipulation included a written provision that the defendant's criminal history was as set forth in the stipulation document, and that the defendant Mr. Curran thereby agreed that "[i]f I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions." CP 58 (parag. 3.3).

The stipulation also set forth the State's agreement, addressing discovery of previously unlocated criminal convictions, and convictions occurring post-agreement, stating that "[t]he prosecuting attorney will make the recommendation to the judge as set forth in the attached stipulation agreement, which is incorporated by reference," and further stating, "State

recommends that the defendant be sentenced to a term of total confinement as follows: Count I 26 months." CP 60 (parag. 3.8), CP 67 (parag. 7.A).

The recommendation the State agreed to make was based on an offender score of 3 derived from a standard range of 26 to 34 months. CP 57. The stipulation further stated, "If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase." CP 58 (parag. 3.5).

Paragraph 3.9 of the stipulation provides that "[t]he judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so (except as provided in paragraph 3.7)." [1] Paragraph 11 of the stipulation states,

[1] Paragraph 3.7 addresses offenses committed before September 1, 2001, and offenses including offenses in the first

> If the defendant fails to appear for stipulated bench trial, sentencing, commits a new offense or violates an condition of release prior to sentencing, or violates any other provision of this agreement, the State may recommend a more severe sentence [and] [i]f defendant's violation of the agreement constitutes a crime, the State may charge the defendant with that crime.

CP 69 (parag. 11).

3. <u>Stipulated trial</u>.

On May 18, 2023, during the court's colloquy with Mr. Curran, the court addressed the question of new crimes as follows:

> **THE COURT:** If you are convicted of any new crimes before sentencing or any additional criminal history is discovered, your standard range can change and so can the Prosecutor's recommendation; do you understand that?
>
> **THE DEFENDANT:** Yes, your Honor.

5/18/23RP at 7. The court then reviewed the agreed materials and found Mr. Curran guilty as charged. CP 37 (Findings of fact and conclusions of law upon stipulated bench trial.).

---

and second degree subject to indeterminate sentencing. CP 58-60 (parag. 3.7).

5/18/23RP at 3-9. The parties agreed to a sentencing date in November. 5/18/23RP at 11.

4. <u>Sentencing and objection</u>.

Prior to sentencing held November 21, 2023, the State informed counsel that it would be asking the court to make "a finding that Mr. Curran committed a new crime [and that] it will seek a 60-month sentence on the controlling offense of Count 1 based on the allegation that Mr. Curran committed a new offense in King County." CP 42 (Defense sentencing memo filed November 9, 2023); <u>see</u> Supp. CP ___, Sub # 49 (State's Notice of Intent to Seek Judicial Finding of New Crime Committed) (November 13, 2023).

This offender score, criminal history, and resultant sentencing range, along with the recommended period of incarceration was contrary to the stipulated trial agreement. <u>See</u> 11/21/23RP at 31-32. The defense's responsive memorandum noted that the State's claim was not supported by the agreement:

> The stipulation agreement, ¶ 11, states that "If the defendant … commits a new offense … the State may recommend a more severe sentence." [However,] [w]hile Mr. Curran does find himself accused of a felony charge of second-degree murder in King County, Mr. Curran has not been convicted.

CP 42 (Defense memo); see Supp. CP ___, Sub # 64 (State's sentencing exhibits 1, 2 and 3) (information, bail ruling, and affidavit of probable cause). Over objection, following argument, the trial court rejected Mr. Curran's Due Process contentions and arguments of lack of any breach by Mr. Curran. 11/21/23RP at 26-28. Instead, the court appeared to rely on the fact that Mr. Curran had been notified a week prior that the State would be seeking to include a new conviction, seemingly holding this to be support for a notion that Mr. Curran violated the stipulated trial agreement by being charged. 11/21/23RP at 26-30. The judgment document reflects the court's acceptance of the prosecutor's altered recommendation, of an exceptional sentence of 60 months. CP 18, 19.

Yet the State had posited no change to Mr. Curran's criminal history or corresponding offender score – understandably, since there was no change in either.[2] The document also states that substantial and compelling reasons exist which justify an exceptional sentence above the standard range based on an "aggravating factor[ ] . . . stipulated by the defendant and found by the court, referencing findings of fact as attached in Appendix 2.4." The provisions reads:

[X] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence [X] above [ ] below the standard range for count(s) 1 or [ ] within the standard range for count(s) _____ but served consecutively to count(s) _____.

[ ] The defendant and State stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence furthers and is consistent with the interests of justice and the purpose of the Sentencing Reform Act.

[X] Aggravating factors were [X] stipulated by the defendant, [X] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory. [X] **Findings of fact and conclusions of law are attached in Appendix 2.4.** [ ] The jury's interrogatory is attached. The prosecuting attorney [X] did [ ] did not recommend a similar sentence. See Findings upon stipulated bench trial.

CP 18. Appendix 2.4 states that "Mr. Curran's offense on count I involved an abuse of a position of trust" and "[a]n

[2] The subsequent judgment and sentence document of the trial court likewise states the same, correct criminal history, offender score, and standard sentencing range as the stipulated trial agreement. CP 17 (also setting forth the same standard range of 26 to 34 months).

exceptional sentence in Count I above the standard range is justified." CP 35-36.

The State stipulated to Mr. Curran's indigency for purposes of Legal Financial Obligations. 11/21/23RP at 32. A restitution order was entered. Supp. CP ___, Sub # 69 (agreed order of restitution). Mr. Curran appeals. CP 11-12.

E. ARGUMENT

[1]. Mr. Curran was entitled under Due Process to an adversarial hearing to determine whether there was a breach of the terms of the plea agreement, and in the alternative, even if that hearing was provided, no breach was proved.

(a). Review is warranted.

Due process requires the State to follow a criminal plea agreement's terms and provisions. State v. Sledge, 133 Wn.2d 828, 838, 839, 947 P.2d 1199 (1997) (citing Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971)). Review is warranted in this case where the State's claim to have been relieved of the agreement's provisions presents a

significant issue under the 14th Amendment's Due Process clause. RAP 13.4(b)(3).

(b). Entitlement to hearing.

Like a plea agreement, an agreement to accept a bench trial on stipulated facts is intended by the parties to be an enforceable contract. State v. Talley, 134 Wn.2d 176, 183, 949 P.2d 358 (1998); State v. Sledge, 133 Wn.2d 828, 838, 839 & n. 6, 947 P.2d 1199 (1997). Thus, an analogy to cases discussing a potential breach of plea agreements is reasonable. A plea agreement is a contract with constitutional implications. In re Pers. Restraint of Lord, 152 Wn.2d 182, 188-89, 94 P.3d 952 (2004). If a defendant breaches a plea agreement, the State may rescind it. State v. Thomas, 79 Wn. App. 32, 36-37, 899 P.2d 1312 (1995). However, before doing so there must be a hearing, hearsay may only be admitted if there is a ruling of good cause to do so, and the State must prove breach by a preponderance of the evidence. In re Pers. Restraint of James, 96 Wn.2d 847, 850-51, 640 P.2d 18

(1982); State v. Roberson, 118 Wn. App. 151, 158-59, 74 P.3d 1208 (2003).

(c). Neither the process nor the proof below was constitutionally sufficient and remand is required.

The document of a stipulated trial is a contract between the defendant and the State, under which the defendant admits guilt in exchange for some State concession such as a sentencing recommendation. State v. Barber, 170 Wn.2d 854, 859, 248 P.3d 494 (2011). Due process requires the State to follow a criminal plea agreement's terms and provisions. State v. Sledge, supra, 133 Wn.2d at 839 (citing Santobello v. New York). The plain language of the agreement controls. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 870-71, 50 P.3d 618 (2002). In this case, a new offense means a conviction. See CP 58 (parag. 3.3, parag. 3.5). No new offense of conviction was proved because none existed. The State did not even pretend that a conviction was secured via due process under any requirement- it simply declared that Mr. Curran had been charged. State v. Townsend, 2 Wn. App.2d 434, 439, 409

P.3d 1094 (2018)(citing Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973)); James, 96 Wn.2d at 850-51; Roberson, 118 Wn. App. at 158-59). It is further beside the point – since an affidavit of probable cause is per se not a showing of a conviction absent a subsequent plea or trial - but the State did not show how a sworn accusation of crime by an out of court affiant/declarant could possibly be admissible hearsay.

The Townsend court articulated that individuals accused of breaching plea agreements are entitled to minimal due process rights just like individuals who are accused of violating probation. Townsend, at 439 (citing Gagnon, 411 U.S. at 786). Those rights include the right to written notice of the claimed violations, disclosure of evidence against him, the opportunity to be heard in person and to present witnesses and documentary evidence, and the right to confront and cross-examine adverse witnesses unless there is a finding of good cause to rely on hearsay. Gagnon, 411 U.S. at 786 (citing

Morrissey v. Brewer, 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)).

Here, the State informed the defense it would be submitting a probable cause affidavit at sentencing to support its argument that Mr. Curran violated the stipulated trial agreement. See CP 43. This was not sufficient, and reliance on it violated Mr. Curran's Due Process rights.

Contrary to the trial court's reasoning, if it deemed the documents to establish a new crime, a charging document is simply a reflection of an as-yet unproved accusation in the form leveled against an accused in every criminal case which may or may not, by a future trial held in accord with Due Process, prove out a conviction. See 11/21/23RP at 28.

This case is like Townsend, where the defendant pleaded guilty to two felony charges and as part of the plea agreed to abide by release conditions, including to not commit new law violations. Townsend, 2 Wn. App.2d at 437. While awaiting sentencing, Mr. Townsend was arrested on new felony

allegations in which he admitted to at least some law violations in a police interview, at least according to the probable cause affidavit. Townsend, at 437.

At sentencing, the State argued that Mr. Townsend breached the plea agreement and asked for a higher sentence than it had agreed to seek, on the ground that there was a new law violation, and that the violation was shown by proof by a preponderance of the evidence since another court had already found probable cause. Townsend, at 437. The sentencing court found that Mr. Townsend had breached the plea agreement based on this argument, including documents containing allegations. Townsend, at 437. The court did not hear testimony from any witnesses and Mr. Townsend was not invited to present evidence or testimony in his defense, nor to confront the declarants of the hearsay allegations. Townsend, at 437-39.

On appeal, reviewing the constitutional issue de novo, the Townsend Court held that a hearing was required, and that

hearsay was inadmissible absent good cause or a waiver, absent which confrontation was required. Townsend, supra, (citing State v. Nelson, 103 Wn.2d 760, 764, 697 P.2d 579 (1985). Absent a valid waiver of these rights, Townsend could not be deemed to have breached the agreement. Townsend, at 444-45.

In this case, absent proof of a new conviction following a hearing consistent with Due Process, the State was the party that breached the agreement when it failed to make the agreed recommendation, and Mr. Curran is entitled to remand and specific performance, State v. Van Buren, 101 Wn. App. 206, 213, 2 P.3d 991, review denied, 142 Wn.2d 1015 (2000).

[2]. The sentencing court, over defense objection, erroneously imposed an improper, unconstitutional condition of community custody permitting "home visits" motivated by caprice or whim.

(a). Review is warranted.

The petitioner John Curran retains his right to privacy under the State Constitution. Persons on probation or community custody do not wholesale forfeit their

constitutional right not to have their private affairs disturbed without cause equating to authority of law. Const. art. I, § 7; State v. Comwell, 190 Wn.2d 296, 303, 412 P.3d 1265 (2018).

Review is warranted in this case where the State's condition grants permission to the State to invade private affairs and precludes the petitioner Mr. Curran from challenging the sentencing court's grant of that authority. RAP 13.4(b)(3).

(b). Contrary to the Court of Appeals' reasoning, community custody condition 11 requires no legal cause and must be stricken.

The Court of Appeals wrongly reasoned that the case of State v. Cates, 183 Wn.2d 531, 354 P.3d 832 (2015), is not controlling. The ripeness doctrine permits judicial discretion in its application. State v. Valencia, 169 Wn.2d 782, 787, 239 P.3d 1059 (2010). The doctrine stems from declaratory judgment actions – where there may not be a defined dispute and a party seeks, irrationally, a ruling that can only issue based on future facts found. See First Covenant Church of Seattle,

Wash. v. City of Seattle, 114 Wn.2d 392, 399 n.3, 787 P.2d 1352 (1990), cert. granted, judgment vacated on other grounds, 499 U.S. 901, 111 S. Ct. 1097, 113 L. Ed. 2d 208 (1991); Abbott Labs. v. Gardner, 387 U.S. 136, 148-154, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967).

Because the community custody condition in this case is so broad as to allow DOC "visits" based on caprice and whim – thus requiring no litigation of whether a particular amount of cause or suspicion was made out - this Court must condemn and strike the provision now, rather than wait until the inevitable constitutional injury is inflicted. If a Court waits until that occurs, not only will the intrusion be already inflicted, but Mr. Curran may not have a remedy because once his case is final, the trial court may not be authorized to rewrite the condition. See State v. Hubbard, 1 Wn.3d 439, 452, 527 P.3d 1152 (2023).

Cates did not consider this, so the case is not on point. In re Pers. Restraint of Stockwell, 179 Wn.2d 588, 600, 316 P.3d

1007 (2014); State v. Granath, 200 Wn. App. 26, 35, 401 P.3d 405 (2017), affirmed, 190 Wn.2d 548, 415 P.3d 1179 (2018). Below, Mr. Curran properly objected to several community custody conditions. 11/21/23RP at 32-33; see CP 32-34. The trial court modified certain provisions pursuant to case-law related argument and/or the limits of legal authority. CP 32-33; 11/21/23RP at 48. However, over Mr. Curran's specific constitutional objection, the court declined to strike community custody condition 11, which stated that Mr. Curran "must consent to DOC home visits to monitor . . . compliance with supervision [including home] 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." CP 33 (Condition no. 11).

This provision requires consent to random, suspicionless searches of any home of Mr. Curran's and the entirety of any shared abode of Mr. Curran's, and is unconstitutionally overbroad in violation of article I, section 7 of the Washington

Constitution. People on probation or community custody do not wholesale forfeit their constitutional right not to have their private affairs disturbed without cause equating to authority of law. Const. art. I, § 7; State v. Comwell, 190 Wn.2d at 303. An officer may not search the home or personal effects of a person on community custody without a warrant unless the officer has reasonable cause to believe the supervised person has violated a condition or requirement of the sentence. Comwell, 190 Wn.2d at 304. There must also be a nexus between the property sought to be searched and the alleged probation violation. Comwell, at 306.

The community custody condition set out in condition 11 in the judgment and sentence's appendix squarely violates article I, section 7. The condition granting home visits is overbroad and unconstitutional. State v. Franck, No. 51994-1-II, noted at 12 Wn. App. 2d 1008, 2020 WL 554555 *10-11 (2020) (unpublished, cited pursuant to GR 14.1(a)); State v. Daniels, No. 54094-1-II, noted at 18 Wn. App.2d 1052, 2021

WL 3361672 at *6-7 (2021) (unpublished, cited pursuant to GR 14.1(a)).

(c).<u>The time for this challenge is now</u>.

Mr. Curran's challenge to this condition is ripe. <u>Franck</u>, 2020 WL 554555 at *9-10. As in <u>Franck</u>, the issue is primarily legal and does not require further factual development. The issue is final because it is set forth in the judgment and sentence. And there will be hardship to Mr. Curran if the condition is not stricken because it exposes him to being in violation of community custody conditions if he does not consent to visits by officers of the Department of Corrections. No remedy can make him whole, nor restore his dignity, after the State works a violative invasion of his private affairs. .

Thus the matter must be rectified now. The "purely legal issue is clear and requires no additional factual development and [the defendant] would be subject to such searches as soon as he was released." <u>State v. Reedy</u>, 26 Wn. App 2d 379, 395,

527 P.3d 156 (2023) (unpublished portion, cited pursuant to GR 14.1(a)), review denied, 1 Wn.3d 1029 (2023).

The question presented is both stark, and immediate – may corrections officers enter Mr. Curran's home at any time to see if they might discover a violation of community custody conditions? The answer to that question is "no" – regardless of whether the question is asked now, or later. Mr. Curran is entitled to have that question answered now, not after the intrusion into his privacy.

Certainly, the State cannot force Mr. Curran to live under threat of a judgment document that authorizes plainly unconstitutional state action, and expect him to be mollified by the fact that such action will be deemed wrongful after the invasion of his home is complete.

The Court should remand with instructions to strike community custody condition 11.

F. CONCLUSION

Based on the foregoing, the petitioner argues that this Court should accept review, and reverse Mr. Curran's judgment and sentence.

This document contains 3,446 words formatted in font Times New Roman size 14

Respectfully submitted this 27th day of June, 2025.

s/ Oliver R. Davis
Washington Bar Number 24560
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98102
Telephone: (206) 587-2711
E-mail: Oliver@washapp.org

FILED
4/21/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JOHN PATRICK CURRAN, Appellant.	No. 86045-3-I DIVISION ONE UNPUBLISHED OPINION

CHUNG, J. — John Patrick Curran was charged with rape of a child in the third degree with an aggravating factor of abuse of a position of trust to facilitate the crime and molestation of a child in the third degree. The parties entered into an agreement in which Curran stipulated to a bench trial on agreed documentary evidence and the State agreed to recommend a low-end sentence. The agreement provided that if Curran committed any new crimes prior to sentencing, the State could increase its sentencing recommendation. Before sentencing, Curran was charged with murder in the second degree. The State requested that the court make a judicial finding that Curran had committed a new crime. After a hearing, the court made the requested finding, and the State changed its sentencing recommendation. The court sentenced Curran to 60 months of confinement for count 1 and 15 months for count 2. The court also imposed a community custody condition requiring Curran to consent to visual inspections of his residence. We conclude the court did not violate Curran's due process rights

by finding he had committed a new crime and allowing the State to change its sentencing recommendation. We also conclude that his challenge to the community custody condition is not ripe. We therefore affirm the conviction and sentence.

FACTS

In August 2021, John Curran was charged with rape of a child in the third degree with an aggravating factor of abuse of a position of trust to facilitate the crime. On May 18, 2023, the State filed an amended information that added a second count for molestation of a child in the third degree. Also, in May 2023, Curran stipulated to a bench trial based on agreed documentary evidence that included the affidavit of probable cause and Curran's written factual account admitting his guilt. Based on Curran's offender score, the standard range sentence was 26 to 34 months for count 1 and 13 to 17 months for count 2. In exchange for Curran's stipulation, the State recommended a low-end sentence of 26 months for count 1 and 13 months for count 2, to be served concurrently, and 36 months of community custody.

The stipulation agreement explained the consequences if Curran violated the agreement:

> The Defendant is bound by this agreement and may not withdraw [it] in the event [the defendant] violates the provisions of this agreement. If the defendant fails to appear for stipulated bench trial, sentencing, commits a new offense or violates any condition of release prior to sentencing, or violates any other provision of this agreement, the State may recommend a more severe sentence. . . .

The agreement also provided that if Curran were "convicted of any additional crimes between now and the time [he was] sentenced, [he was] obligated to tell the sentencing judge about those convictions." Further, it provided that if he were "convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase." The agreement explained that the sentencing court was not required to accept either party's sentencing recommendation but was required to impose a sentence within the standard range unless it found "substantial and compelling reasons" to impose an exceptional sentence.

At the stipulation hearing, the trial court explicitly asked Curran if he understood that a conviction of new crimes prior to sentencing could potentially change the standard range and the State's recommendation, and he responded that he did. The court found that Curran knowingly, intelligently and voluntarily waived his rights and agreed to a bench trial on the agreed evidence. The court then set a hearing to conduct formal fact-finding and sentencing.

On October 13, 2023, the State filed unrelated charges of murder in the second degree against Curran for allegedly causing the death of his then-girlfriend on September 29, 2023. On November 13, the State filed a notice of intent to seek a judicial finding that Curran committed a new crime, and thus failed to comply with a condition precedent to the State's obligations under the agreement, so the State could make a new sentencing recommendation. Curran filed a responsive brief.

On November 21, 2023, the court held the fact-finding hearing and found Curran guilty of both counts, rape of a child in the third degree by abusing a position of trust and molestation of a child in the third degree. The court then addressed the State's motion for a judicial finding that Curran committed a new crime. Curran objected, stating that due process required "testimony, the right to confront witnesses, [and] the opportunity to present evidence." The trial court responded, "It is true that during a proceeding short of a criminal trial the defendant does have a due process right to have a hearing if the State alleges a breach of the plea agreement, and that is an evidentiary hearing," and that Curran was entitled "to be heard at a meaningful time and in a meaningful manner." Then, the trial court explained that that the present hearing was an evidentiary hearing on the matter and that "this is [Curran's] opportunity to present that evidence."

The State submitted several exhibits relating to the murder charge, including the order issuing a warrant, the information and the certification for probable cause, and Curran's conditions of release. Curran rested on his briefing and his prior objections to the format of the hearing and argued that the State's evidence did not meet the preponderance standard. However, he did not present evidence or witnesses. The court made an oral finding that "the State has met its burden by a preponderance of evidence based on the submitted exhibits that [Curran] had committed a new criminal offense prior to sentencing."

Upon entering this finding, the court proceeded to the sentencing portion of the bench trial. The State recommended an exceptional sentence of 60

months for count 1 and a standard range sentence of 15 months for count 2, to be served concurrently. Curran recommended a total of 26 months confinement for count 1 and count 2, to be served concurrently. The court imposed an exceptional sentence of 60 months for count 1 and 17 months for count 2, to be served concurrently. The court also imposed various community custody conditions, including condition 11, which required Curran to consent to Department of Corrections (DOC) home visits to monitor compliance with supervision. Curran timely appealed.

ANALYSIS

Curran challenges the trial court's finding that he committed a new crime in breach of his stipulation agreement, thereby allowing the State to increase its sentencing recommendation. He also challenges the trial court's imposition of community custody condition 11.

I. Breach of Stipulation Agreement

On appeal, Curran challenges the court's finding that he "was convicted of a new offense" that constituted a breach of his stipulation agreement. He claims he was not afforded due process at the judicial finding hearing and the State failed to meet its burden of proving he breached the stipulation agreement.

In this context, a stipulation is an agreement between parties that requires mutual assent. State v. Parra, 122 Wn.2d 590, 601, 859 P.2d 1231 (1993). In general, when a defendant agrees to a bench trial on stipulated facts, the State must nevertheless prove guilt beyond a reasonable doubt and the trial court must still determine guilt or innocence, but it is effectively an agreement "that what the

State presents is what the witnesses would say." State v. Johnson, 104 Wn.2d 338, 342, 705 P.2d 773 (1985).

A stipulation agreement, like a plea agreement, implicates the rights of the accused and triggers constitutional due process considerations. State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997), as amended (Jan. 28, 1998). The State must "adhere to the terms of the [stipulation] agreement." Id. However, the State is not required to perform under the agreement if the defendant breaches the agreement's terms. State v. McInally, 125 Wn. App. 854, 867, 106 P.3d 794 (2005). The State must prove a breach by a preponderance of the evidence. State v. Townsend, 2 Wn. App. 2d 434, 443, 409 P.3d 1094 (2018).[1] "Due process requires the State's proof [of defendant's breach] be presented during an evidentiary hearing, at which the defendant must have the opportunity to call witnesses and contest the State's allegations." Townsend, 2 Wn. App. 2d at 439 (citing In re Pers. Restraint of James, 96 Wn.2d 847, 850-51, 640 P.2d 18 (1982)). We review de novo a claim of violation of due process relating to an alleged breach of a stipulation agreement. See Townsend, 2 Wn. App. 2d at 439 (involving claims that court allowed State to rescind plea agreement without either holding an evidentiary hearing or obtaining a valid waiver of defendant's right to a hearing).

[1] The State contends that it is not arguing that Curran breached the plea agreement, but rather that he did not comply with a condition precedent. As such, it asserts that Curran has the burden of proving a breach because he is the one alleging the State breached in failing to recommend a low-end sentence. We need not resolve this issue given our conclusion on Curran's claim in the State's favor.

Curran asserts that the hearing was not consistent with due process and that because the State did not provide proof that Curran was *convicted* of a new crime, it breached the agreement when it failed to make the agreed sentencing recommendation. Both parties rely on Townsend, 2 Wn. App. 2d 434, as a key case establishing what process is required for the State to deviate from a sentencing recommendation in a stipulated plea agreement. In Townsend, pursuant to the defendant's plea agreement, the State agreed to recommend a sentence below the standard range, so long as the defendant did not commit additional law violations prior to sentencing. 2 Wn. App. 2d at 436-37. Subsequently, the defendant was arrested on felony charges and according to an affidavit of probable cause, he admitted to "at least some law violations" in a police interview. Id. at 437. The State argued that defendant's breach of the plea agreement authorized the State to rescind its low-end sentencing recommendation. Townsend, 2 Wn. App. 2d at 437. At sentencing, the defendant argued that the affidavit of probable cause was insufficient to prove his breach, but the trial court disagreed. Id. The trial court did not hear from witnesses, did not enter evidence into the record, or invite the defendant to present evidence or testify. Id. at 437-38. The reviewing court concluded that the trial court did not conduct an evidentiary hearing and that the State had not proved that the defendant waived his due process right to an evidentiary hearing. 2 Wn. App. 2d at 439-40. Because the defendant was not provided an opportunity to establish his position about the alleged violation of the plea agreement, remand was required. Id. at 443.

Here, the State argues that in contrast to Townsend, the trial court satisfied due process by providing an evidentiary hearing. We agree.

At the May 2023 hearing on the stipulated agreement, Curran acknowledged that he was aware of the consequences of a violation of the agreement. Through its motion for a judicial finding that Curran committed a new crime, the State provided written notice of Curran's alleged violations. After the bench trial, when the court turned its attention to the State's motion, upon Curran's objection, the court informed him that the present hearing was the evidentiary hearing, and that it constituted the parties' opportunity to present evidence regarding a violation of the plea agreement. Curran had the opportunity to challenge the State's evidence and present his own evidence. While he argued the State's evidence was insufficient to meet the preponderance standard, he did not present his own evidence or witnesses.

Thus, Curran's situation differs from that in Townsend, in which the court did not hear from any witnesses, no evidence was entered, and Townsend was not invited to present evidence or testimony in his defense. Here, by contrast, the court admitted into evidence the State's proffered exhibits, including the order issuing a warrant, the information and the certification for probable cause, and Curran's conditions of release. We conclude that the evidentiary hearing provided the due process to which Curran was entitled—notice and a meaningful opportunity to be heard.

Second, Curran contends that the State's evidence was inadequate to allow the trial court to make a finding that Curran committed a new offense.

Specifically, he contends that the State's reliance on the certification of probable cause was insufficient to prove that he breached the agreement and, therefore, did not comport with due process. We disagree.

To establish a defendant's violation of a plea agreement, the State need not necessarily produce proof of a criminal conviction. Townsend, 2 Wn. App. 2d at 444. Other evidence is permitted, including hearsay evidence, though if the defendant objects to hearsay, there must be a showing of good cause, including a determination of the hearsay evidence's reliability. Id.

Here, the State offered a certified copy of the order issuing a warrant for Curran's arrest, a certified copy of the information and charging documents that included a case summary and the certification of probable cause, and Curran's signed conditions of release. The trial court found that the State's exhibits constituted hearsay evidence, but that they were reliable and that there was good cause to admit them. Based on that evidence, the court found that "the State has met is burden by a preponderance of evidence based on the submitted exhibits that [Curran] had committed a new criminal offense prior to sentencing."

Curran did not challenge the court's admission of the hearsay evidence below, nor does he attempt to do so on appeal. Instead, Curran argues that the certificate of probable cause is insufficient to prove that he was *convicted* of a new crime. But the stipulated plea agreement did not require that Curran be convicted of a new crime; instead, it states that if Curran "fails to appear for stipulated bench trial, sentencing, *commits a new offense* or violates any condition of release prior to sentencing, or violates any other provision of this

agreement, the State may recommend a more severe sentence . . . ."[2] And the court did not find that Curran was convicted of a new crime, only that he had committed a new crime. Again, the court must find a violation of the agreement based only on a preponderance of evidence—not that the defendant has been convicted of a new crime, i.e., found guilty beyond a reasonable doubt. Here, the State offered unrebutted evidence that Curran committed a new offense of murder in the second degree. This proved by a preponderance that Curran committed a new crime in violation of the stipulation.

Curran's claims of due process violations are unavailing. The trial court's process—conducting an evidentiary hearing, admitting the State's exhibits and inviting Curran to present evidence—comported with minimal due process requirements. Further, the court did not err in relying on the State's evidence to find by a preponderance that Curran had committed a new offense, thereby freeing the State to depart from the agreed-upon sentencing recommendation.

II. Community Custody Condition 11

Condition 11 requires Curran to "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

[2] Similarly, in State v. Babbs, the State agreed, according to the defendant's plea agreement, to recommend a low-end sentence, but prior to sentencing, the defendant was involved in a domestic violence incident that was under investigation. No. 55423-2-II, slip op. at 1-2 (Wash. Ct. App. June 22, 2022) (unpublished) https://www.courts.wa.gov/opinions/pdf/D2%2055423-2-II%20Unpublished%20Opinion.pdf. On appeal, the court concluded that although the sheriff's report was insufficient to prove the defendant was convicted of a new crime, it was sufficient proof that he violated a provision allowing the State to recommend a higher sentence if the defendant "violated the conditions of his release." Under GR 14.1(c), we may cite to unpublished decisions as necessary for a reasoned opinion, as is the case here.

or joint control and/or access." Curran contends that condition 11 is unconstitutionally overbroad in violation of article I, section 7 of the Washington Constitution and should be stricken. He further contends that his constitutional overbreadth challenge to condition 11 is ripe for review.

All persons have a protected right to privacy under both the U.S. Constitution and the Washington Constitution. U.S. CONST. amend. 14; WASH. CONST. art. I, § 7. However, a person under community supervision has a reduced expectation of privacy and can be searched by a community custody officer (CCO) when they have reasonable suspicion. State v. Winterstein, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). Further, a probationer may be subjected to warrantless searches of their property "where there is a nexus between the property searched and the alleged probation violation." State v. Cornwell, 190 Wn.2d 296, 306, 412 P.3d 1265 (2018).

On appeal, a defendant can challenge a community custody condition when it is ripe, meaning " 'if the issues raised are primarily legal, do not require further factual development, and the challenged action is final.' " State v. Bahl, 164 Wn.2d 739, 751 193 P.3d 678 (2008) (quoting First United Methodist Church v. Hr'g Exam'r, 129, Wn.2d 238, 255-56, 916 P.2d 374 (1996)). A reviewing court must also evaluate any hardship the parties may endure if the court declines to consider the claim due to ripeness. State v. Valencia, 169 Wn.2d 782, 786, 239 P.3d 1059 (2010).

The State argues that Curran's challenge to condition 11 is not yet ripe for review because the State has not yet tried to enforce it,[3] citing State v. Cates, 183 Wn.2d 531, 535, 354 P.3d 832 (2015). Cates addressed a home visit and search condition similar to the condition Curran challenges here. Id. at 533. The Cates court acknowledged that an article I, section 7 violation was possible, but explained there was a need for additional factual development, because a claim would depend on the State's attempt to enforce the condition after the defendant's release. Cates, 183 Wn.2d at 533-35 (quoting Valencia, 169 Wn.2d at 789). Recently, the Washington Supreme Court reaffirmed Cates in State v. Nelson, where it concluded that a preenforcement challenge to a home visit condition, such as that here, is not ripe for review until the State "attempt[s] to enforce the condition before the facts would be sufficiently developed to address the defendant's challenge on its merits and determine whether the circumstances of enforcement are unreasonable." No. 102942-0, slip op. at 14-15 (Wash. Mar. 27, 2025), https://www.courts.wa.gov/opinions/pdf/1029420.pdf.

Here, the condition plainly does not "authorize any searches" and the CCO's authority to search Curran's home "is limited to that needed 'to monitor [his] compliance with supervision,' " as in Cates, 183 Wn.2d at 535. Further, a CCO has authority to visually inspect Curran's home only when they have

[3] Curran cites to an unpublished case, State v. Franck, in which Division Two of this court held that comparable conditions were overbroad and unconstitutional. State v. Franck, No. 51994-1-II, slip op. at 21-22 (Wash. Ct. App. Feb. 4, 2020) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2051994-1-II%20Unpublished%20Opinion.pdf. However, as we noted in State v. Holmes, Franck is "not controlling, or persuasive on the issue of ripeness." 31 Wn. App. 2d 269, 293, 548 P.3d 570 (2024) (following Cates and holding preenforcement challenge to condition allowing home search was not ripe).

"reasonable suspicion" of a violation. See Winterstein, 167 Wn.2d at 628. There is additional factual development that is required, meaning the State must attempt to enforce the home inspection. Following our Supreme Court's direction in Cates and Nelson, we conclude Curran's challenge to condition 11 is not ripe for review. Curran does not face a significant risk of hardship by our declining to review the merits in the absence of additional factual development.

Affirmed.

Chung, J.

WE CONCUR:

Díaz, J.

, ACJ

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JOHN PATRICK CURRAN, Appellant.	No. 86045-3-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant John Curran filed a motion for reconsideration of the opinion filed on April 21, 2025 in the above case. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Chung, J.
Judge

WASHINGTON APPELLATE PROJECT

June 27, 2025 - 4:32 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86045-3
Appellate Court Case Title:	State of Washington, Respondent. v. John Patrick Curran, Appellant
Superior Court Case Number:	21-1-00946-9

The following documents have been uploaded:

- 860453_Petition_for_Review_20250627163233D1456964_8093.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.062725-06.pdf

A copy of the uploaded files will be sent to:

- Diane.Kremenich@co.snohomish.wa.us
- matthew.pittman@co.snohomish.wa.us

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Oliver Ross Davis - Email: oliver@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20250627163233D1456964