SUPREME COURT NO. _____

NO. 59282-7-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AKEEM MOORE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable TaTeasha Davis, Judge

PETITION FOR REVIEW

ERIN MOODY
Attorney for Appellant
NIELSEN KOCH & GRANNIS, PLLC
The Denny Building
2200 Sixth Avenue, Suite 1250
Seattle, Washington 98121
206-623-2373

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A. PETITIONER AND COURT OF APPEALS DECISION

Akeem Moore, the appellant below, seeks this Court's review of the Court of Appeals' decision (Op., attached) affirming the sentencing court's imposition of a vague community custody condition.

B. ISSUE PRESENTED FOR REVIEW

Is a condition requiring petitioner to "[r]emain within geographic boundaries, as set forth in writing by the Department of Correction [DOC] Officer or as set forth with SODA order," CP 101, vague in violation of state and federal due process protections? (Yes. The condition is both confusing and ripe for abuse.)

C. STATEMENT OF THE CASE

In October of 2021, a jury convicted Mr. Moore of two counts of first-degree rape of a child. CP 71, 73, 84. The sentencing court imposed an exceptional term, above the standard range, based on the "free crimes" aggravator. RP 4.

Mr. Moore timely appealed, and the Court of Appeals reversed and dismissed one count for insufficient evidence. CP 59, 80. Mr. Moore was resentenced on February 16, 2024. RP 3-14.

The court imposed the high-end term requested by the State: 381 months to life. CP 85, 90; RP 13. It also imposed several conditions of community custody. CP 92, 101-03.

These included Standard Condition 9, which provides: "Remain within geographic boundaries, as set forth in writing by the [DOC] Officer or as set forth with SODA order." CP 101.

Court of Appeals Decision

Mr. Moore appealed Standard Condition 9, arguing it was vague in violation of due process protections. BOA 4-8. His argument relied on longstanding precedent disapproving conditions that grant unfettered discretion to community corrections officers (CCOs). BOA 4, 7 (citing State v. Bahl, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008); State v. Irwin, 191 Wn. App. 644, 655, 364 P.3d 830 (2015)).

Several recent unpublished Court of Appeals decisions, from Divisions One and Three, have agreed with this argument, striking identical conditions because they confer unfettered discretion on CCOs to determine where the supervised person may go. State v. Johnson, noted at __ Wn. App. 2d __, 2025 WL 1158447, at *1-*2 (Division One); State v. Weeden, noted at 33 Wn. App. 2d 1051, 2025 WL 253033, at *2 (Division One); Matter of Alaniz, noted at 30 Wn. App. 2d 1024, 2024 WL 1209297, at *6 (Division Three); Matter of Bratcher, noted at 30 Wn. App. 2d 1036, 2024 WL 1406540, at *2 (Division Three).

One recent published decision, and several older unpublished decisions, reach a different conclusion, affirming similar or identical geographic boundaries conditions. State v. Lundstrom, No. 86537-4-I (July 28, 2025); State v. Boese, 2025 WL 2207410, at *3-*6; PRP of Strong, 2025 WL 1304513, at *12; Matter of Delacruz, noted at 20 Wn. App. 2d 1007, 2021 WL 5323921, at *2 (Division Two); State v. Blake, noted at 7 Wn. App. 2d 1025, 2019 WL 276047, at *3, rev'd on other grounds 197

Wn.2d 170 (2021) (Division Three); Matter of Rowe, noted at 14 Wn. App. 2d 1012, 2020 WL 4596076, at *1-*2 (Division Two); State v. Landrum, noted at 199 Wn. App. 1037, 2017 WL 2645718, at *9 (Division Three); State v. Davis, noted at 200 Wn. App. 1010, 2017 WL 3228498, at *4-*5 (Division One).

Decisions affirming the geographic boundaries condition have generally contained very little reasoning and have not addressed the problem of the CCO's discretion. E.g., Delacruz, 2021 WL 5323921, at *2 ("geographical restrictions as ordered by CCO is not vague because once the CCO imposes geographic restrictions the prohibited conduct is easily understood by an ordinary person and the CCO has imposed explicit restrictions to prevent arbitrary enforcement"); Rowe, 2020 WL 4596076, at *2 (rejecting pro se petitioner's challenge in one sentence: "[h]e fails to show condition 9 is unconstitutionally vague"); Landrum, 2017 WL 2645718, at *9 ("The fact that approvals and parameters will be decided in the future does not make these conditions vague or

ambiguous. The subject matter and sources of approval are clear.").

Lundstrom, No. 86537-4-I, *3-*4, and Davis, 2017 WL 3228498, at *4-*5, contain more reasoning. In those cases, Division One concluded the challenged condition simply referred, in redundant fashion, to the CCO's authority under RCW 9.94A.704(3)(b).

Division Two embraced this reasoning in Mr. Moore's case. Op. 2-3. And it concluded that the CCO's discretion, under Standard Condition 9, was therefore impliedly cabined by RCW 9.94A.704(7)(b). Op. 3. This statute allows the supervised person to administratively appeal any [DOC]-imposed condition that is not "reasonably related to . . . [t]he crime of conviction, the offender's risk of reoffending, or the safety of the community."

If Division Two is correct, Standard Condition 9 in Mr. Moore's judgment and sentence is totally superfluous. This superfluous condition serves no public safety purpose, but it is

easily misconstrued as an additional grant of authority to the CCO, beyond that codified at RCW 9.94A.704(3)(b).

This Court should grant review, reverse the Court of Appeals, and remand with orders that the condition be stricken.

D. REASONS REVIEW SHOULD BE ACCEPTED

As detailed, conditions similar or identical to Standard Condition 9, in Mr. Moore's judgment and sentence, appear frequently in sentencing boilerplate. The Court of Appeals has issued divergent unpublished decisions addressing vagueness challenges to these conditions. Mr. Moore's petition therefore meets the criteria for review under RAP 13.4(b)(3) and (4): it involves a significant question of law under the state and federal constitutions, and it is a matter of substantial public interest that should be determined by this Court.

Community custody conditions are governed primarily by two statutes: RCW 9.94A.703 and RCW 9.94A.704. The first, RCW 9.94A.703, governs the sentencing court's authority; the second, RCW 9.94A.704, governs DOC's authority.

RCW 9.94A.703(1)(b) requires the sentencing court to impose one broad condition referencing DOC's statutory authority. This broad mandatory condition "shall . . . [r]equire the offender to comply with any conditions imposed by the department under RCW 9.94A.704." RCW 9.94A.703(1)(b). This condition appears in two places in Mr. Moore's judgment and sentence. CP 92 (Community Custody (Sex Offense) condition 8), 101 (Special Condition 2).

Separate from this, RCW 9.94A.703(3)(b) gives the sentencing court discretion to impose a "geographical boundary" condition, so long as the court "specifie[s]" the boundary. The court declined to impose this condition at all, in Mr. Moore's judgment and sentence. CP 99.

Under RCW 9.94A.704(3)(b), DOC is required to "instruct" any person subject to its supervision "to: . . . Remain within prescribed geographical boundaries." DOC "may not impose conditions that are contrary to . . . or decrease court-imposed conditions." RCW 9.94A.704(6).

The supervised person may seek administrative review of any department-imposed condition that is "additional" to or a "modification" of the court-imposed conditions. RCW 9.94A.704(7)(b). In Mr. Moore's case, the Court of Appeals reasoned that this administrative review will limit any geographic restrictions, imposed pursuant to Standard Condition 9, to those "reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community." Op. 2 (citing RCW 9.94A.704(3)(b), .704(7)(b)). But this is far from certain.

Unlike Sex Offense Condition 8 and Special Condition 2, Standard Condition 9 does not reference RCW 9.94A.704. CP 101. Thus, it appears to confer additional authority on the CCO, beyond the authority cabined by the administrative review provisions in RCW 9.94A.704(7)(b). See State v. Preble, 25 Wn. App. 2d 1059, 2023 WL 2417345, at *3 (unpublished) ("Washington courts observe the rule against surplusage, which requires us to avoid interpretations of a condition that would render

superfluous another provision."). Condition 9's plain terms confer unlimited discretion on the CCO.

The State contends Standard Condition 9 silently incorporates the limits in RCW 9.94A.704(7), even though it does not reference that statute. BOR 7. Thus, the State contends Standard Condition 9 is entirely redundant of Special Condition 2. CP 101. But if this is true, it is unclear why the State wishes to retain the condition, since it serves no purpose.

This Court should grant review and disapprove Standard Condition 9, because it creates the potential for confusion.

Indeed, State v. Ortega, 21 Wn. App. 2d 488, 497-98, 502 P.3d 1287 (2022), on which Division Two relied in Mr. Moore's case, expressly recognizes this problem. In Ortega, the judgment and sentence provided boilerplate and a blank for the sentencing court to fill with "crime-related prohibitions," pursuant to the court's discretionary authority under RCW 9.94A.703(3)(f). Ortega, 21 Wn. App. 2d at 492. The boilerplate provided that the defendant "'must comply with the following crime-related

prohibitions,'" and the sentencing court penned in: "'Per CCO.'" Id. at 492.

Although it upheld this penned-in condition, Division Two "recognize[d] there are practical concerns with this practice." Id. at 497. Specifically, the conflation of the sentencing court's authority (under RCW 9.94A.703) and DOC's authority (under RCW 9.94A.704) created "the potential for confusion:"

> The sentencing court's penning in "Per CCO" for crime-related community custody provisions could be misread as conflating these two sources of authority. As noted above, the boilerplate language on the preprinted judgment and sentence form already required Ortega to comply with the Department's community custody conditions pursuant to RCW 9.94A.704. This preprinted language immediately preceded the crime-related prohibitions blank filled in by the sentencing court. In other words, the judgment and sentence already explicitly set forth Ortega's obligation to follow conditions imposed under the Department's authority, regardless of any "Per CCO" addition penned in by the sentencing court.
>
> Looking at the judgment and sentence standard form as a whole, the blank section where the sentencing court penned in "Per CCO" is designed as a place for the court, if it so chooses, to include its own independently determined, specific, crime-

> related prohibitions consistent with its own separately derived authority. By simply filling in the blank with "Per CCO," the sentencing court redundantly referenced the Department's authority. While *perhaps* not error, it was unnecessary and arguably created confusion as to the source of authority for the sentencing court's notation.

Ortega, 21 Wn. App. 2d 497-98 (emphasis added).

The Ortega Court was correct to identify this "potential for confusion." Id. at 497. Unfortunately, that Court underestimated the gravity of the "practical concerns" that will flow from this confusion. Id.

When the Department imposes a condition, the supervisee must seek administrative review within ten business days. RCW 9.94A.704(7)(b). These ten days will almost always occur while the supervisee is unrepresented and either incarcerated or newly released and overwhelmed with tasks such as seeking work. And RCW 9.94A.716(2) gives CCOs the authority to immediately arrest a supervisee, upon suspicion he is violating any condition. This authority exists whether or not the underlying condition is valid.

Given these practical concerns, it is imperative that lifetime community custody conditions be clear. Standard Condition 9, in Mr. Moore's judgment and sentence, is not clear.

Like the judgment and sentence at issue in Ortega, Mr. Moore's judgment and sentence contains boilerplate that already requires him to comply with DOC conditions validly imposed pursuant to RCW 9.94A.704. CP 92. And, like the judgment and sentence at issue in Ortega, Mr. Moore's judgment and sentence imposes *additional* conditions referencing the CCO. CP 101. One of these conditions provides: "Remain within geographic boundaries, as set forth in writing by the [CCO] or as set forth with SODA order." CP 101.

An individual CCO might interpret this as an additional grant of authority, beyond what is conferred (and cabined) by RCW 9.94A.704. This additional grant of authority—unfettered by the criteria in RCW 9.94A.704—is unconstitutional. State v. Johnson, 197 Wn.2d 740, 748-49, 487 P.3d 893 (2021); State v. Bahl, 164 Wn.2d at 758; State v. Casimiro, 8 Wn. App. 2d 245,

251, 438 P.3d 137 (2019). And, if DOC is correct that the condition is entirely redundant, then nothing is lost by striking it.

E. CONCLUSION

This Court should grant review and direct sentencing courts to excise the boilerplate exemplified by Standard Condition 9 in Mr. Moore's judgment and sentence.

I certify that this document was prepared using word processing software, in 14-point font, and contains 1,972 words excluding the parts exempted by RAP 18.17.

DATED this 19th day of August, 2025.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

ERIN MOODY
WSBA No. 45570
Attorneys for Appellant

Filed
Washington State
Court of Appeals
Division Two

July 1, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. AKEEM ALI MOORE, Appellant.	No. 59282-7-II UNPUBLISHED OPINION

PRICE, J. — Akeem A. Moore appeals his sentence for one count of first degree rape of a child, arguing that the superior court imposed an unconstitutionally vague community custody condition. We disagree and affirm.

FACTS

A jury found Moore guilty of two counts of first degree rape of a child. On appeal, Division Three of this court reversed one count and remanded for resentencing. *State v. Moore*, No. 39501-4-III, slip. op. at 22 (Wash. Ct. App. June 27, 2023) (unpublished).[1]

Moore was resentenced on February 16, 2024. As part of Moore's sentence, the superior court imposed the following condition: "Remain within geographic boundaries, as set forth in writing by the Department of Corrections [(DOC)] . . . ." Clerk's Papers at 101.

Moore appeals.

[1] https://www.courts.wa.gov/opinions/pdf/395014_unp.pdf

ANALYSIS

Moore argues that the community custody condition requiring him to stay within geographic boundaries is unconstitutionally vague. We disagree.

Community custody conditions that are vague are unconstitutional under the Fourteenth Amendment of the United States Constitution and article I, section 3 of the Washington Constitution. *State v. Hai Minh Nguyen*, 191 Wn.2d 671, 678-79, 425 P.3d 847 (2018). Community custody conditions are unconstitutionally vague if they do not (1) define the condition " 'with sufficient definiteness that ordinary people can understand what conduct is prescribed' " or (2) provide ascertainable standards to protect against arbitrary enforcement. *Nguyen*, 191 Wn.2d at 678 (quoting *State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008)). Community custody conditions are " 'not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct.' " *State v. Padilla*, 190 Wn.2d 672, 677, 416 P.3d 712 (2018) (internal quotation marks omitted) (quoting *State v. Sanchez Valencia*, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010)).

Moore challenges the community custody condition requiring him to remain within geographic boundaries as set forth in writing by DOC. The conduct proscribed is clear and unambiguous, Moore must comply with the written restrictions provided by DOC; any reasonable person would understand what is prohibited. Further, the condition is not vague because DOC does not have unbridled discretion to set the geographic boundaries. *State v. Ortega*, 21 Wn. App. 2d 488, 496, 506 P.3d 1287 (2022) ("The sentencing court did not grant [defendant's community corrections officer] unbridled discretion to proscribe conduct because the

Department's authority is defined by statute. Thus, this condition is not unconstitutionally vague." (footnote omitted)). Instead, community custody conditions set by DOC (including the mandatory condition requiring an offender to remain within geographic boundaries) must be reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community. RCW 9.94A.704(3)(b),[2] .704(7)(b).

CONCLUSION

The community custody condition requiring Moore to remain within geographic boundaries set by DOC is not unconstitutionally vague. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

PRICE, J.

We concur:

CRUSER, C.J.

GLASGOW, J.

[2] We also note that RCW 9.94A.704(3) provides that, when an offender is under supervision by DOC, DOC "shall at a minimum instruct the offender to: . . . (b) Remain within prescribed geographical boundaries." Moore does not challenge the constitutionality of this statute and, unlike community custody conditions, statutes are presumed constitutional and must be proven to be unconstitutional beyond a reasonable doubt. *Bahl*, 164 Wn.2d at 753. Therefore, it appears that Moore will be subject to DOC's geographical boundary limitations regardless of the specific community custody condition imposed in his judgment and sentence.

NIELSEN KOCH & GRANNIS P.L.L.C.

August 19, 2025 - 10:09 AM

Transmittal Information

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Appellate Court Case Title:	State of Washington, Respondent v Akeem Ali Moore, Appellant
Superior Court Case Number:	20-1-00984-1

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