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Washington State
Court of Appeals
Division Two

July 11, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ELIZABETH SUE WITT, Appellant.	No. 48954-6-II UNPUBLISHED OPINION

JOHANSON, J. — Elizabeth Sue Witt appeals from the denial of a motion to modify her sentence to rescind a no-contact order entered as part of her judgment and sentence. Her court-appointed appellate counsel has moved to withdraw and had filed a brief under *Anders v. California*,[1] on the ground that there is no basis for a good faith argument on review.[2] We dismiss this appeal as moot.

[1] 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967); *see also State v. Theobald*, 78 Wn.2d 184, 470 P.2d 188 (1970).

[2] Under the normal *Anders* procedures, we would serve Witt with a copy of her counsel's brief and inform her of her right to file a statement of additional grounds for review (SAG) under RAP 10.10. *See Theobald*, 78 Wn.2d at 184-85. Because we could not determine Witt's address and she is no longer in custody or under the Department of Corrections' jurisdiction, we sent the SAG notice to appellate counsel. Witt's counsel filed a declaration in compliance with *Theobald* stating that he had attempted service on Witt but was unable to locate her.

FACTS

Witt pleaded guilty on October 1, 2014. At that time, she was seven months pregnant with her co-defendant Luke Blakeman's child. At sentencing, Witt requested permission to have contact with Blakeman because he was the child's father. The trial court denied this request.

Also on October 1, the trial court sentenced Witt to a total of 29 months of confinement, with credit for 71 days served, and 12 months of community custody. The no-contact provision in the judgment and sentence prohibited Witt from contact with Blakeman only "during the period of supervision." Clerk's Papers (CP) at 44.

In August 2015, Witt filed a motion in the trial court requesting that the court modify her judgment and sentence to allow contact with Blakeman to facilitate the coparenting of their son. The trial court denied the motion. Witt appealed the denial of her motion to modify, and counsel was appointed at public expense. Witt was released from the Department of Corrections' (DOC) custody on July 29, 2016, and is no longer under the DOC's jurisdiction.

ANALYSIS

Appellate counsel has filed an *Anders* brief raising two possible issues. First, appellate counsel suggests that the trial court might have erred when it accepted Witt's guilty plea because it was not knowing, voluntary, and intelligent.[3] Second, appellate counsel suggests that the trial court might have erred in denying her request to modify her judgment and sentence to rescind the no-contact order.

[3] We decline to address this issue because Witt appeals only the trial court's denial of her motion to modify her judgment and sentence.

The no-contact order at issue was effective only "during the period of supervision." CP at 44. All available records show that Witt is no longer under the DOC's jurisdiction. Thus, the no-contact order is no longer in effect and there is no possibility that Witt would suffer future adverse consequences if we do not address the merits of her appeal.

We may, however, review an otherwise moot case under some circumstances. *State v. Peterson*, 145 Wn. App. 672, 675, 186 P.3d 1179 (2008), *aff'd*, 168 Wn.2d 763, 230 P.3d 588 (2010). To determine if review is warranted due to an issue of continuing and substantial public interest, we consider three criteria: (1) the public or private nature of the question presented, (2) the need for a judicial determination for future guidance of public officers, and (3) the likelihood of future recurrences of this issue. *State v. G.A.H.*, 133 Wn. App. 567, 573, 137 P.3d 66 (2006) (quoting *In re Matter of Eaton*, 110 Wn.2d 892, 895, 757 P.2d 961 (1988)). Here, although it is possible that this issue could reoccur in the future in other cases, the issue of a no-contact order affecting parents and children is highly fact dependent and is of a private nature. And there already exists a substantial body of law regarding parental rights. *See, e.g.*, *State v. Foster*, 128 Wn. App. 932, 117 P.3d 1175 (2005); *State v. Ancira*, 107 Wn. App. 650, 27 P.3d 1246 (2001). Thus, this is not a matter of continuing and substantial public interest. Accordingly, we dismiss this appeal as moot. Appellate counsel's motion to withdraw is denied without prejudice, pending compliance with RAP 18.3(a)(3) and (4). *State v. Folden*, 53 Wn. App. 426, 429, 767 P.2d 589 (1989). Witt is hereby notified that failure to move to reconsider this opinion terminates appellate review. *See State v. Rolax*, 104 Wn.2d 129, 135-36, 702 P.2d 1185 (1985).

Appellate counsel has also asked that we not impose appellate costs. A commissioner of this court will consider whether to award appellate costs in due course under the newly revised provisions of RAP 14.2.

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.

JOHANSON, J.

We concur:

WORSWICK, J.

BJORGEN, C.J.