

February 28, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of:

JEFFREY J. DILKS,

Petitioner.

No. 56855-1-II

UNPUBLISHED OPINION

CRUSER, A.C.J.—In 2016 Jeffrey Dilks pleaded guilty to first degree kidnapping and third degree rape of a child. The resulting judgment and sentence include a community custody condition that Dilks shall not “possess or access any sexually explicit material or frequent adult bookstores, arcades or places where sexual entertainment is provided and shall not access pornography, sexually explicit materials or any information pertaining to minors via the computer.” Pet. Ex. 1. The court sentenced Dilks to the agreed minimum term of 113 months and a maximum term of life on the kidnapping count. As to the child rape count, the court imposed a 34-month sentence with 36 months of community supervision.


In April 2022 Dilks filed a personal restraint petition arguing that the community custody restriction on pornography is unlawful and that the total sentence on third degree child rape exceeds the statutory maximum. The State filed a response conceding that the petition was timely filed because the judgment and sentence was facially invalid. RCW 10.73.090. Specifically, the State conceded that the pornography restriction was unconstitutionally vague based on *State v. Bahl*, 164 Wn.2d 739, 758, 193 P.3d 678 (2008)

(“We conclude that the restriction on accessing or possessing pornographic materials is unconstitutionally vague.”). And the State conceded that the total sentence imposed on the third degree rape of a child count, including in custody and supervision, exceeds the statutory maximum for a C class felony.

The acting chief judge referred this petition to a panel of judges and this court appointed counsel. RCW10.73.150(4). Counsel filed a supplemental brief again arguing that the pornography restriction is void. The State rested on its previous response.


We accept the State’s concessions for the reasons stated and remand to the Kitsap County Superior Court with instructions to correct and amend the judgment and sentence in a manner consistent with this opinion.

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.



Crusier, A.C.J.

We concur:



Price, J.



Che, J.