IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KEVIN DOUGLAS JACKSON, Appellant.	No. 41674-3-II UNPUBLISHED OPINION

Hunt, J. — Kevin Douglas Jackson challenges the domestic violence designation related to his jury trial conviction for second degree child molestation, a related domestic violence no contact order, the trial court's imposition of community custody under former RCW 9.94A.712 (2006),[1] and several community custody conditions. He argues that (1) the trial court erred in characterizing the second degree child molestation as a domestic violence offense when there was no "domestic violence" jury finding; (2) the trial court erred in entering a domestic violence no contact order prohibiting him from contacting the victim for 10 years when the statute authorizes only a two-year sexual assault no contact order; (3) the trial court erred in imposing community custody under former RCW 9.94A.712 rather than former RCW 9.94A.715 (2008),[2] because

[1] The legislature recodified former RCW 9.94A.712 as RCW 9.94A.507, effective August 1, 2009. Laws of 2008, ch. 231, § 56.

[2] The legislature repealed former RCW 9.94A.715 in 2008 and 2009. Laws of 2008, ch. 231,

former RCW 9.94A.712 does not apply to second degree child molestation; (4) several community custody conditions are inappropriate because they are not related to the crime, to his risk of reoffense, or to community safety issues; and (5) the community custody condition prohibiting him from possessing pornography is unconstitutionally vague. The State concedes that the trial court erred in imposing community custody under former RCW 9.94A.712 rather than former RCW 9.94A.715 and in imposing an unconstitutionally vague pornographic materials community custody condition.

We affirm the trial court's designation of Jackson's child molestation conviction as a domestic violence offense and the domestic violence no contact order, but we reverse several of the community custody conditions. We remand for the trial court to strike the reference to former RCW 9.94A.712 from the judgment and sentence, to correct Appendix H of the judgment and sentence to show that it imposed community custody under former RCW 9.94A.715, and to strike or to correct several of his community custody conditions.

FACTS

I. Child Molestation–Domestic Violence

In October 2009, KJ[3] told her mother that her father, Kevin Douglas Jackson, had touched her inappropriately during a visit with her father in the summer of 2008, when she was 13 years old.[4] The State charged Jackson with second degree child molestation and alleged that this was a

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§57; Laws of 2009, ch. 28, §42, effective August 1, 2009.

[3] It is appropriate to provide some confidentiality in this case. Accordingly, initials will be used in the body of the opinion to identify the juvenile involved.

[4] KJ and her mother lived in Texas, but KJ spent her summers with Jackson, who lived in Tacoma, Washington.

"domestic violence incident as defined in RCW 10.99.020." Clerk's Papers (CP) at 1

At trial, the State presented evidence that Jackson had made inappropriate sexual contact with KJ while they were attending a barbeque at a friend's house and that Jackson had been drinking heavily at the time. In a colloquy addressing the admissibility of a video recorded police interview with Jackson, the trial court commented that, although the officer had told Jackson that others present had indicated there were drugs at the barbeque, Jackson had denied there having been drugs at there or having used drugs at that time. The jury watched the recorded interview[5] after the trial court admonished the jury that it was not to consider the officer's questions and statements during the interview "as evidence in this case" and that the jury could consider the officer's interview questions and statements only to provide "context for answers given by the defendant."[6] Verbatim Report of Proceedings (VRP) at 286 (internal quotations omitted). Jackson testified that he had been drinking at the barbeque, that he had become ill, that he had fallen asleep in one of the bedrooms, and that he could not remember KJ's coming into the room where the incident occurred.

The jury found Jackson guilty of second degree child molestation. The parties did not propose an instruction requiring the jury to find that the incident was a domestic violence incident, the trial court did not give any such instruction, and the jury made no domestic violence finding.

II. Sentencing

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[5] The recorded interview is not part of the record before us on appeal.

[6] The trial court later provided the jury with a written instruction similarly limiting the admission of the officer's statements and questions during the recorded interview.

The trial court ordered a presentence investigation report (PSI). The PSI described the incident; noted Jackson had "confirmed" that the incident described in the probable cause statement had occurred[7]; and described Jackson's criminal history,[8] education and employment history, financial condition, family history, living accommodations, activities, companions, emotional and personal status, and "attitude." Suppl. CP at 119, 125. The PSI also described Jackson's alcohol and drug use, noting that he had admitted having alcohol issues and that he was willing to seek treatment for his drinking. Jackson also admitted (1) having "tried 'Mushrooms'" once when he was younger; (2) having used marijuana approximately every other month in social situations until about two years before the December 2010 PSI interview; and (3) that his past marijuana use had contributed to a 2007 traffic accident which, in turn, had led to his losing a job at a security company. Suppl. CP at 125.

In describing Jackson's mental health, the PSI noted:

> Mr. Jackson attested to having never been diagnosed with Depression or any other type of emotional or mental health disorder. He stated that he has never been prescribed any medications for such either. Mr. Jackson claimed that the only formal counseling he has ever had was with a mental health professional was when he and his ex-wife attended marriage counseling for about a month in 1997 prior to their divorce. He claimed that he has never attempted suicide or contemplated suicide, and he stated that no one else in his immediate family has had any treatment for or problems with emotional or mental health disorders to his knowledge. He also stated that he has never been abused by anyone in any way, form, or fashion in his life.

Suppl. CP at 125. The PSI concluded, "Factors which require attention to reduce the risk of Mr.

[7] Jackson objected to this statement.

[8] Jackson's only prior offense was a 1988 juvenile adjudication for second degree possession of stolen property.

Jackson to re-offend include his attitude and orientation awareness, his emotional and personal problem indicators, his alcohol and drug abuse issues, and his recurring sexual deviancy tendencies." Suppl. CP at 126. The PSI also noted, "Intervention applied to these areas would assist in reducing potential risk to community safety." Suppl. CP at 126.

The PSI recommended that (1) the trial court adopt the community custody conditions in the PSI's proposed "Appendix H" to "enable the Department of Corrections (DOC) to effectively monitor and supervise Mr[.] Jackson in the community"; and (2) Jackson "obtain both a Chemical Dependency evaluation and a Mental Health evaluation, . . . follow any/all recommended treatment[, and] participate in DOC's Moral [Reconation] Therapy (MRT) program after release from incarceration while being supervised." Suppl. CP at 126, 127. Neither the PSI nor the trial court explained what the MRT program was or how it related to Jackson's offense, any risk of reoffense, or public safety.

At the December 2010 sentencing hearing, the trial court heard argument from counsel and Jackson's allocution, and it reviewed the PSI and a May 6, 2010 psychosexual evaluation of Jackson.[9] The trial court sentenced Jackson to 17 months of incarceration and 36 months of community custody; it "continue[d]" a domestic violence no contact order prohibiting Jackson from contacting KJ. VRP at 475. The court also required an additional psychosexual evaluation at DOC's discretion, ordered a "chemical dependency evaluation," and incorporated the PSI's proposed Appendix H as part of the judgment and sentence, stating:

> . . . The other recommendations that have been made by [the DOC], as far as a psychosexual evaluation and treatment if it is consistent with what Dr.

[9] The psychosexual evaluation is not part of the record before us on appeal.

> Traywick has, there shouldn't be an issue in regards to that. I think it is important that you get a chemical dependency evaluation. If you haven't had anything to drink since this has come to light, then you realize that issue and take steps and that should come through in that evaluation.
>
> You are to have law abiding behavior when you are on community custody, comply with all the conditions that are set forth in Appendix "H," other than the no contact order as I have limited it.[10]

VRP at 475-76. When the State asked the court whether it was ordering "mental health," the court responded, "If [the DOC] is requesting that, I'll order that as well. They'll make a determination about whether there is an issue in regards to that." VRP at 477.

The court then told Jackson:

> They want to take some steps to find out what the issues are, if you have any issues in regards to that. If there aren't problems, there won't be a need for any additional treatment. We want to make sure we address those issues now while we have the opportunity to do that. Comply with them. I know you haven't gotten off to a very good start with them from the contact you had with the presentence report writer.[11]

VRP at 477-78.

Appendix H to the judgment and sentence provided, in part:

> **COMMUNITY PLACEMENT/CUSTODY**: Defendant additionally is sentenced on convictions herein, for the offenses under *RCW 9.94A.712* committed on or after September 1, 2001 to include up to life community custody.

CP at 103 (second emphasis added). Appendix H also requires Jackson to comply with the following community custody conditions:

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[10] The trial court limited Appendix H's no contact with minors provision to minor females; it also provided that the domestic violence no contact order relating to KJ could be modified under certain circumstances not relevant here.

[11] Jackson had accused the PSI evaluator of misrepresenting or lying about his (Jackson's) statements.

> 14. Do not possess or peruse pornographic materials. Your Community Corrections Officer [(CCO)] will consult with the identified Sexual Deviancy Treatment Provider to define pornographic material[.]
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> . . . .
>
> 22. You shall not have access to the Internet without child blocks in place.
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> . . . .
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> 25. Obtain both a Chemical Dependency evaluation and Mental Health evaluation, and comply with follow-up treatment. You are to sign all necessary releases to ensure your [CCO] will be able to monitor your progress in treatment.
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> . . . .
>
> 28. Successfully complete [MRT] through DOC per CCO.

CP at 104-05. In addition, the body of the judgment and sentence ordered "substance abuse" and "mental health" evaluations and compliance with "all recommended treatment." CP at 93.

The judgment and sentence cited RCW 10.99.020, the definitional section of the "Domestic Violence" chapter; but it did not otherwise state that Jackson's second degree child molestation conviction was a domestic violence offense. CP at 88. The judgment and sentence also included a 10-year "[d]omestic [v]iolence" no contact order prohibiting Jackson from contact with KJ. CP at 91, 106.

ANALYSIS

I. No Jury Finding Required for "Domestic Violence" Designation

Jackson first argues that the trial court erred in including the domestic violence designation in the judgment and sentence because there was no jury finding that the crime involved domestic violence. We disagree.

Jackson cites no authority requiring that the jury, rather than the court, find that the offense was a domestic violence offense. Furthermore, because designation as a domestic violence offense does not alter the elements of the underlying offense, a jury finding is not required; moreover, courts have advised that it is "neither necessary nor advisable to inform the jury that [the] charges have been designated as domestic violence crimes under chapter 10.99 RCW." *State v. Hagler*, 150 Wn. App. 196, 198, 208 P.3d 32, *review denied*, 167 Wn.2d 1007 (2009). Accordingly, this argument fails.[12]

II. Domestic Violence No Contact Order

Jackson next argues that the trial court erred in entering a domestic violence no contact order prohibiting him from contacting KJ for 10 years when RCW 7.90.150(6)(c) authorizes only

[12] In his reply brief on appeal, Jackson asserts that there is nothing in the record showing that the trial court made a domestic violence "finding." Reply Br. of Appellant at 5. We do not address issues raised for the first time in a responsive brief. *See State v. Alton*, 89 Wn.2d 737, 739, 575 P.2d 234 (1978); *State v. Tjeerdsma*, 104 Wn. App. 878, 886, 17 P.3d 678 (2001). Nevertheless, in our view, the judgment and sentence adequately supports such finding.

a 2-year sexual assault no contact order. Although Jackson is correct that RCW 7.90.150(6)(c)[13] limits sexual assault no contact orders to two years, the trial court did not impose a sexual assault no contact order; it imposed a domestic violence no contact order under chapters 10.99 and 26.50 RCW. Jackson fails to show that the trial court lacked authority to impose a domestic violence no contact order, rather than a sexual assault no contact order, in this case.[14]

The legislature has stated that sexual assault no contact orders are intended to protect those who "do not qualify for a domestic violence order of protection." RCW 7.90.005.[15] Courts may impose domestic violence no contact orders during the pendency of trial, may continue such domestic violence no contact orders "as a sentencing condition by indicating on the judgment and sentence that the order is to remain in effect," or impose domestic violence no contact orders as continuing conditions of sentencing at sentencing. *State v. Schultz*, 146 Wn.2d 540, 542, 48 P.3d 301 (2002); *see also* former RCW 10.99.040(3) (2000); RCW 10.99.050(1). The record here

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[13] RCW 7.90.150(6)(c) provides:

> A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

[14] To the extent Jackson suggests that the trial court had no authority to enter a domestic violence no contact order without a jury finding of domestic violence, his argument lacks merit because a no contact order is civil in nature and designed to protect third parties; such no contact order does not increase punishment for a crime. *See State v. Winston*, 135 Wn. App. 400, 407, 144 P.3d 363 (2006) (citing *State v. Felix*, 125 Wn. App. 575, 578-80, 105 P.3d 427, *review denied*, 155 Wn.2d 1003 (2005)).

[15] RCW 7.90.005 provides, in part:

> . . . It is the intent of the legislature that the sexual assault protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order of protection.

shows that trial court "continue[d]" a preexisting domestic violence no contact order, something it clearly had the authority to do at sentencing. VRP at 475. Because the trial court was able to impose a domestic violence no contact order, it was not required to impose a sexual assault no contact order. Jackson's argument fails.[16]

III. Improper Imposition of Community Custody under Former RCW 9.94A.712

Jackson next argues that the trial court erred in imposing community custody under former RCW 9.94A.712 because that statute does not apply to second degree child molestation. The State concedes that former RCW 9.94A.712 does not apply to Jackson's conviction and that the trial court should have imposed community custody under former RCW 9.94A.715 instead.[17] We agree.

With certain exceptions not relevant here, former RCW 9.94A.712 applied to offenders convicted of first or second degree rape, first or second degree child rape, first degree child molestation, indecent liberties by forcible compulsion, or a variety of other offenses with a finding

[16] In his reply brief, Jackson also argues that the trial court could not enter a domestic violence no contact order because it did not make a domestic violence "finding." Reply Br. of Appellant at 5. We need not address issues raised for the first time in a responsive brief. *See Alton*, 89 Wn.2d at 739; *Tjeerdsma*, 104 Wn. App. at 886. Nevertheless, we note that, even if the trial court had not entered a domestic violence "finding," Jackson's argument would fail. *Winston*, 135 Wn. App. at 407 ("[T]he trial court had discretion to impose [a domestic violence] no-contact order even without the 'domestic violence' designation.").

[17] The State argues that this wrong citation is a clerical error and that we should treat Jackson's argument as "a motion for leave to amend the judgment and sentence under RAP 7.2(e)." Br. of Resp't at 6. The State misapprehends RAP 7.2(e). RAP 7.2(e) allows a trial court to hear and to determine various motions that will change a decision being reviewed by the appellate court if the appellate court grants the trial court permission to act. Jackson did not file a motion in the trial court challenging his community custody; thus, this issue is before us on direct appeal. Accordingly RAP 7.2(e) does not apply.

of sexual motivation if the crime was committed on or after September 1, 2001. Former RCW 9.94A.712(1)(a). This statute also applied to certain offenders with a prior sex offense. Former RCW 9.94A.712(1)(b). Jackson did not have a conviction for a prior sex offense under this statute.[18] Thus, the trial court erred in sentencing Jackson to community custody under former RCW 9.94A.712, as reflected in Appendix H to the judgment and sentence. We remand for the trial court to correct Appendix H to show that it sentenced Jackson under former RCW 9.94A.715.

IV. Improper Community Custody Conditions

Jackson next challenges several of his community custody conditions. Specifically, he argues that the trial court erred in imposing (1) the mental health evaluation and treatment requirement; (2) the chemical dependency/substance abuse evaluation and treatment requirement; (3) the child block internet access limitation; and (4) the MRT requirement. He argues that none of these conditions were related to the circumstances of the offense, to his risk of reoffense, or to any community safety issues. We agree.

A. Standard of Review

A defendant may challenge an illegal or erroneous sentence for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *State v. Jones*, 118 Wn. App. 199, 204, 76 P.3d 258 (2003). We review de novo whether the trial court had statutory authority to impose community custody conditions. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the condition is statutorily authorized, we review the imposition of crime-related prohibitions

[18] Second degree child molestation is not among the offenses enumerated in former RCW 9.94A.712(1)(a).

for abuse of discretion. *Armendariz*, 160 Wn.2d at 110 (citing *State v. Ancira*, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001)). But conditions that do not reasonably relate to the circumstances of the crime, the risk of reoffense, or public safety are unlawful, unless those conditions are explicitly permitted by statute. *See Jones*, 118 Wn. App. at 207-08; *see also* former RCW 9.94A.715(2)(a).[19]

B. Mental Health Evaluation and Treatment

As part of community custody condition 25 and in a separate provision in the judgment and sentence, the trial court required Jackson to undergo a "mental health" evaluation and to "fully comply with all recommended treatment." CP at 93. Jackson argues that the trial court erred in imposing the mental health evaluation and treatment requirements because there was no evidence in the record that would allow the trial court reasonably to conclude that (1) he is a mentally ill person as defined in RCW 71.24.025; or (2) "this condition [is] likely [to have] influenced the offense," as required under former RCW 9.94A.505(9) (2006). Br. of Appellant at 12. We agree.

Former RCW 9.94A.505(9) provided:

> The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to

[19] Former RCW 9.94A.715(2)(a) provided:

> Unless a condition is waived by the court, the conditions of community custody shall include those provided for in [former] RCW 9.94A.700(4) [(2003)]. The conditions may also include those provided for in [former] RCW 9.94A.700(5) [(2003)]. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct *reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community*, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(Emphasis added.)

> participate in available outpatient mental health treatment, *if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in* [former] *RCW 71.24.025* [(2008)]*, and that this condition is likely to have influenced the offense*. An order requiring mental status evaluation or treatment *must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity*. The court may order additional evaluations at a later date if deemed appropriate.

(Emphasis added.) Thus, under former RCW 9.94A.505(9), the trial court could not require a mental health status evaluation and require participation in treatment unless it found, based on the PSI or an evaluation for competency or eligibility for insanity defense, that (1) Jackson was a mentally ill person as defined in former RCW 71.24.025, and (2) this condition likely influenced the offense. *See also State v. Brooks*, 142 Wn. App. 842, 850-52, 176 P.3d 549 (2008); *Jones*, 118 Wn. App. at 202, 210. But the trial court made no such findings and the record here would not support them.

At best, the record shows the trial court acknowledged that the DOC might want to determine whether Jackson had any mental health issues that required treatment. Nothing in the PSI indicates that Jackson was a mentally ill person as defined in former RCW 71.24.025 or that the offense, his risk of reoffense, or community safety issues were related to any mental health issues; nor is there anything in the record indicating that anyone ever evaluated Jackson for

competency or for an insanity defense.[20] Thus, the trial court could not impose the mental health and evaluation treatment under former RCW 9.94A.505(9); and we remand this matter back to the trial court to strike the mental health evaluation and treatment requirement.

C. Substance Abuse/Chemical Dependency Evaluation and Treatment

In community custody condition 25 and in the judgment and sentence, the trial court also ordered Jackson to undergo evaluation and treatment for substance abuse/chemical dependency. Jackson argues that there was no evidence that he had chemical dependency or substance abuse issues that contributed to the offense, to his risk of reoffense, or to any community safety issues. The State responds that there was evidence of Jackson's drug use, evidence that his drug use had caused him to be involved in a car accident, and evidence that his drug use had resulted in his loss of a job. The State asserts that the trial court had the authority to impose the substance abuse/chemical dependency requirement "[b]ecause the condition is related to the circumstances of the crime, and defendant's risk of reoffending, and the risk to the community." Br. of Resp't at 10. We disagree.

[20] The State argues that the trial court reviewed the PSI, which "recommended that defendant undergo a mental health evaluation," and "an evaluation conducted by Dr. Traywich conducted on May 6, 2010." Br. of Resp't at 9 (citing CP at 115-130). Although the PSI may have "recommended" a mental health evaluation, nowhere in the PSI does it indicate the evaluator determined that Jackson was a mentally ill person as defined in former RCW 71.24.025 or that Jackson had any mental health issues; nor did the PSI indicate that Jackson had any mental health issues or conditions that likely influenced the crime. And, although no actual evaluation itself is included in the record on appeal, the record shows that Dr. Traywich's evaluation was a psychosocial evaluation, not a "mental status" evaluation to determine Jackson's competency or eligibility for an insanity defense as required by former RCW 9.94A.505(9).

RCW 9.94A.607(1) provides:

> Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

The trial court did not find that Jackson had a chemical dependency that contributed to the offense; nor does the record support any such finding. And nothing in the record suggests that Jackson had any non-alcohol chemical dependency or substance abuse issues related to his risk of reoffense or to any community safety issues.

The PSI indicated that (1) Jackson reported he had used marijuana in the past approximately every two months; (2) his marijuana use may have been a factor in a 2007 car accident that led to his losing his job at a security company; and (3) Jackson reported that he had ingested "Mushrooms" on one occasion. Suppl. CP at 125. The only other mention of any non-alcohol drug use in the record was in the recorded police interview during which the officer interviewing Jackson asked whether he had used marijuana and told Jackson that "people said there were drugs" at the barbeque where the incident occurred. VRP at 187. But Jackson denied any drug activity or use at the barbeque; and the trial court instructed the jury that it could not consider the officer's questions as evidence.

None of this evidence indicates that Jackson used any drugs other than alcohol at or around the time of the incident or that any drugs other than alcohol contributed to this offense. Nor did any of this evidence suggest that Jackson had any drug use issues that would contribute

to a risk of reoffense or to any community safety issues. Although there was evidence that would have supported the trial court's requiring an alcohol evaluation and related treatment, the record does not support the imposition of a broader condition requiring more generalized substance abuse or chemical dependency evaluation and treatment. Accordingly, we strike these conditions and remand for the trial court to impose a more narrowly tailored condition.

D. Child Block Internet Condition

Jackson next challenges community custody condition 23, which provided: "You shall not have access to the Internet without child blocks in place." CP at 105. The State argues that this condition is valid because the trial court had authority to order "an affirmative act from the defendant"[21] and Division Three of this court approved a similar condition under former RCW 9.94A.715(2)(a) in *State v. Castro*, 141 Wn. App. 485, 170 P.3d 78 (2007). Again, we disagree with the State.

Again, nothing in the record relates internet access to this offense, to any risk of reoffense, or to any community safety issues. And the *Castro* court approved a different type of internet restriction without first analyzing whether the restriction was related to the offense, the risk of reoffense, or community safety; therefore, we do not find *Castro* persuasive here. *See Castro*, 141 Wn. App. at 494 (approving requirement that defendant seek permission to use the internet as a "valid affirmative act" under former RCW 9.94A.715(2)(a) without discussion of whether the restriction was related to the offense, risk of reoffense, or community safety). Because there is nothing in the record connecting this community custody condition to the offense, to a risk of

[21] Br. of Resp't at 12.

reoffense, or to any community safety issues, we hold that the trial court erred when it imposed this condition, and we remand for the trial court to strike this condition.

E. Moral Reconation Therapy Condition

Jackson next challenges community custody condition 28, which required that he "'[s]uccessfully complete Moral [Reconation[22]] Therapy (MRT) through DOC per CCO.'" Br. of Appellant at 16 (quoting CP at 105). The State argues that the trial court could impose this condition under former RCW 9.94A.715 as a condition reasonably related to Jackson's risk of reoffending. Again, we disagree.

The PSI evaluator recommended MRT, but he did not explain how this therapy program related to Jackson's crime, to his risk of reoffense, or to community safety; he merely stated that Jackson "will need to participate in DOC's Moral [Reconation] Therapy (MRT) program after release from incarceration while being supervised." Suppl. CP at 127. Similarly, the trial court merely imposed the condition and at no point connected it to the offense, to the risk of reoffense, or to community safety. Rather, the only mention of MRT at the sentencing proceeding was when the State noted that the PSI evaluator had mentioned it in the PSI. Because there is nothing in the record showing any relationship between MRT and the crime, the risk of reoffense, or

[22] There is no explanation of the term "reconation" or of MRT in the record. Nor does the dictionary define the term "reconation." The dictionary does, however, define "conation" as "the conscious drive to perform apparently volitional acts with or without knowledge of the origin of the drive—distinguished from *affection* and *cognition*," or "an instinctually motivated biological striving that may appear in consciousness as volition or desire or in behavior as action tendencies." Webster's Third New International Dictionary 468 (3d ed.1969). This and various websites suggest that MRT is a cognitive behavioral therapy designed to teach inmates how to make better decisions in certain situations. *See e.g.* http://www.doc.wa.gov/facilities/cjc/tacomacjc/docs/TCJCTherapy.pdf (last accessed June 20, 2012).

community safety, the trial court erred in imposing this condition, and we remand for the trial court to strike this community custody condition.

V. Vagueness Challenge

Finally, relying on *Bahl*, 164 Wn.2d at 739, Jackson argues that community custody condition 14, which prohibits possession or "'perus[al]'" of pornographic materials as identified by his CCO following consultation with "'the identified Sexual Deviancy Treatment Provider,'" is unconstitutionally vague. Br. of Appellant at 17-18 (quoting CP at 104). The State concedes that this condition is unconstitutionally vague under *Bahl*. We accept the State's concession and remand for resentencing during which the trial court should either strike this provision or impose a condition that is adequately and constitutionally specific. *See State v. Sansone*, 127 Wn. App. 630, 643, 111 P.3d 1251 (2005).

We affirm the domestic violence no contact order and the trial court's designation of Jackson's child molestation conviction as a domestic violence offense and reverse the mental health and substance abuse/controlled substance evaluation and treatment conditions, the child block internet condition, the MRT condition, and the pornographic materials community custody condition. We remand for the trial court (1) to correct Appendix H of the judgment and sentence to show that it sentenced Jackson under former RCW 9.94A.715, rather than former RCW 9.94A712; (2) to strike the mental health evaluation and treatment, the child block internet, and

the MRT community custody conditions from the judgment and sentence and from Appendix H; and (3) to strike the pornographic material condition and the substance abuse/controlled substance evaluation and treatment conditions from the judgment and sentence and from Appendix H or to impose more specific conditions.

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 pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, P.J.

Penoyar, J.