IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JONATHOM DREW OSIER, Appellant.	No. 41735-9-II UNPUBLISHED OPINION

Worswick, A.C.J. — Jonathom Osier appeals his conviction for failing to register as a sex offender, claiming that the sentencing court in imposing community custody conditions improperly delegated its authority, imposed an unconstitutionally vague community custody condition, and denied him his right to a meaningful appeal. In a statement of additional grounds, Osier argues that his trial counsel failed to interview and subpoena crucial witnesses and thereby denied him his constitutional right to effective assistance of counsel. We affirm.

Facts

Osier has two 1994 convictions of first degree child molestation. Between August 25, 2010 and September 21, 2010, he had a duty to register as a felony sex offender because of these offenses and three subsequent convictions for failure to register as a sex offender.

On August 4, 2010, Osier registered with the Pierce County Sheriff's Department as a

transient and thus had a duty to register on a weekly basis. When Osier registered on August 18, 2010, the registration officer gave Osier a business card listing August 25, 2010, as the date he needed to return and register again. But Osier did not return to the Sheriff's Department to register until September 21, 2010. At that time, Pierce County Sheriff's Deputy, Art Centoni, arrested Osier at the registration window in the county-city building.

The State charged Osier with failure to register as a sex offender. Osier waived his right to a jury trial. At trial, Osier acknowledged that he had a duty to register as a sex offender and that he did not register between August 25, 2010 and September 21, 2010. He testified that he was not in Tacoma on August 25, 2010, as he was enroute to visit his uncle in Miles City, Montana. He believed that he had no duty to register because he did not spend over 24 hours in any one place.

The trial court found Osier guilty, imposed a standard range sentence and, as a condition to his community custody term, ordered: "The defendant shall comply with the following crime-related prohibitions: per CCO [community corrections officer]." Clerk's Papers at 28. Osier appeals.

Discussion

I. Community Custody Condition

Osier argues that the sentencing court's failure to define what prohibitions are included with his community custody violated due process by (1) delegating its authority to the Department of Corrections (DOC) to define crime-related prohibitions; (2) imposing unconstitutionally vague crime-related prohibitions; and (3) denying him his constitutional right of

meaningful appeal under article 1, section 22 of the Washington Constitution because he cannot challenge the legality of the crime-related conditions.

A. *Standard of Review*

A sentencing court has discretion in imposing sentencing conditions and we review those conditions for an abuse of discretion. *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008) (plurality opinion). Imposing an unconstitutional condition is manifestly unreasonable. 164 Wn.2d at 753. *See also State v. Sanchez Valencia*, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010) (plurality opinion) (explaining that we do not presume constitutionality).

B. *Delegation of Authority*

Osier first argues that the sentencing court improperly delegated its authority to DOC to define what crime-related prohibitions apply to him. He argues that this amounts to a "virtual abdication of judicial responsibility for setting the terms of community custody." Br. of Appellant at 6.

The State responds that the sentencing condition is no more than an acknowledgment of the statutory rights the community corrections officer already has and that the sentencing court did not impose any additional conditions. We agree.

RCW 9.94A.704 authorizes a CCO to impose specific conditions and requirements on a person under its control such as requiring participation in rehabilitative programs, obeying all laws, and taking affirmative conduct. *See* RCW 9.94A.704(3)-(5). Furthermore, RCW 9.94A.704(2)(a) instructs the department to place whatever conditions on the defendant that it deems necessary to protect public safety: "The department shall assess the offender's risk of

reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety."

Here, the sentencing court's annotation on the judgment and sentence simply reiterated the statutory requirement that Osier follow his CCO's directives. We find no improper delegation of authority. *See* S*tate v. Smith*, 130 Wn. App. 721, 728 -30, 123 P.3d 896 (2005) (directive to follow DOC's instructions and conditions implicated statutory not constitutional rights).

The present case differs from both *Bahl* and *State v. Sansone*, 127 Wn. App. 630, 642, 111 P.3d 1251 (2005), where the sentencing court imposed a condition prohibiting the defendant from possessing pornography but then delegated the authority to define pornography to the CCO; something the legislature did not authorize the CCO to define. Here, the sentencing court did not delegate any of its authority to DOC to define any crime-related prohibition the statute requires or allows the sentencing court to impose.

C. *Unconstitutional Vagueness*

Osier next argues that the sentencing court's community custody condition is unconstitutionally vague and thereby violates his due process rights.[1] He contends that it does not apprise him of the prohibited behavior nor does it contain ascertainable standards to prevent arbitrary enforcement.

> A statute is unconstitutionally vague if it "(1) . . . does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) . . . does not provide ascertainable standards of

[1] Osier argues and the State concedes that this issue is ripe for review. *See State v. Sanchez Valencia*, 169 Wn.2d 782 n.2, 786, 790–91, 239 P .3d 1059 (2010) (plurality opinion) (claim is ripe for appeal if the issues raised are (1) primarily legal, (2) they do not require further factual development, (3) the challenged action is final, and (4) the defendant is burdened by the condition without further action by the State).

> guilt to protect against arbitrary enforcement." If either of these requirements is not satisfied, the ordinance is unconstitutionally vague.

Bahl, 164 Wn.2d at 752-53 (citation omitted) (quoting *City of Spokane v. Douglass*, 115 Wn.2d 171, 180, 795 P.2d 693 (1990)).

1. *Definiteness*

> In deciding whether a term is unconstitutionally vague, the terms are not considered in a "vacuum," rather, they are considered in the context in which they are used.[2] When a statute does not define a term, the court may consider the plain and ordinary meaning as set forth in a standard dictionary.[3] If "persons of ordinary intelligence can understand what the [law] proscribes, notwithstanding some possible areas of disagreement, the [law] is sufficiently definite." *Douglass*, 115 Wn.2d at 179.

Bahl, 164 Wn.2d at 754 (alteration in original). Here, the sentencing condition does nothing more than inform Osier that he must comply with DOC conditions imposed as part of DOC's statutory obligations under RCW 9.94A.704(2)-(5). The sentencing court did not impose any other crime-related prohibitions and thus nothing is unconstitutionally vague. *See State v. Sansone*, 127 Wn. App. at 642 (leaving definition of pornography to CCO an impermissible delegation of authority).

2. *Ascertainable Standards of Enforcement*

Osier also argues that the condition fails the second vagueness test in that it sets out no enforcement standards and thus is subject to the CCO's unbridled discretion. We disagree. The community custody condition simply informs Osier that he must comply with whatever statutorily

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[2] Quoting *Douglass*, 115 Wn.2d at 180.

[3] *State v. Sullivan*, 143 Wn.2d 162, 184-85, 19 P.3d 1012 (2001); *see also Medina v. Pub. Util. Dist. No. 1 of Benton County*, 147 Wn.2d 303, 315, 53 P.3d 993 (2002); *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074, 1080 (4th Cir. 2006).

authorized conditions that DOC places on his community custody. This is not a situation like that in *Bahl* where our supreme court observed: "The fact that the condition provides that Bahl's community corrections officer can direct what falls within the condition only makes the vagueness problem more apparent, since it virtually acknowledges that on its face it does not provide ascertainable standards for enforcement." *Bahl*, 164 Wn.2d at 758. Here, the sentencing condition is definite and enforceable; it is not unconstitutionally vague.

D. *Meaningful Appeal*

Osier argues that the sentencing court's abdication of its responsibility to identify the crime-related prohibitions violates his right to a meaningful appeal under article 1, section 22 of the Washington Constitution because he cannot challenge the legality of the crime-related conditions. But as we note above, the sentencing court did not impose any reviewable conditions, only requiring Osier to comply with the statutorily authorized conditions that DOC imposes on his community custody. As such, Osier's claim fails.

II. Statement of Additional Grounds

In a statement of additional grounds, Osier contends that his trial counsel's failure to interview and subpoena witnesses denied him any defense. He argues that he had six witnesses that could have provided corroborative details about his trip to Montana and back. We do not consider this argument because a defendant may raise a claim of ineffective assistance of counsel

that relies on facts outside the record only in a personal restraint petition, not in a direct appeal. *State v. McFarland*, 127 Wn.2d 322, 338 n. 5, 899 P.2d 1251 (1995).

Affirmed.

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.

Worswick, A.C.J.

We concur:

Hunt, J.

Johanson, J.