

**FILED**  
**MARCH 13, 2012**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>STATE OF WASHINGTON,</b>	)	<b>No. 29666-1-III</b>
	)	
<b>Respondent,</b>	)	
	)	<b>Division Three</b>
<b>v.</b>	)	
	)	
<b>ROBERT R. ELLISON,</b>	)	<b>UNPUBLISHED OPINION</b>
	)	
<b>Appellant.</b>	)	
	)	

Kulik, C.J. — Robert R. Ellison appeals a crime-related prohibition in his sentence for failing to register as a sex offender and escape from community custody. The prohibition barred him from residing in subsidized housing without the permission of the manager. He also appeals the inclusion of court costs in his legal financial obligations. We conclude the court properly considered the crimes, the elements of the crimes, and the circumstances of the case when reviewing the community custody conditions. Here, the trial court articulated tenable reasons for its decisions. The court did not abuse its discretion. Therefore, we affirm the community custody condition. Because of a scrivener’s error regarding legal financial obligations in the judgment and sentence, we remand for correction.

## FACTS

Between 1995 and 1999, Mr. Ellison was convicted of several sex offenses. These previous offenses required him to register as a sex offender with the Spokane County Sheriff's Office. A previous conviction for failing to register also required Mr. Ellison to maintain contact with his community corrections officer (CCO).

*Sex Offender Registration.* To fulfill his sex offender registration obligation, on June 22, 2010, Mr. Ellison reported to the Spokane County Sheriff's Office and registered as a transient. He listed his mailing address as 1423 North Wall, number 7, in Spokane. On the transient registration form, he also listed this address as the "place or area of Spokane" where he was "staying." Ex. P-9. Pursuant to his transient status, Mr. Ellison was required to check in at the Spokane County Sheriff's Office on a weekly basis.

Mr. Ellison reported to the Spokane County Sheriff's Office again on July 6, re-registered as a transient, and listed the same North Wall Street address as the "place or area of Spokane" where he was "staying." Ex. P-10. Mr. Ellison did not return to the Spokane County's Sheriff's Office after July 6.

Mr. Ellison's mother, Shara Walker, lived at the Wall address. Ms. Walker

received subsidized housing assistance. Her lease and the terms of her subsidized housing did not allow her to have people live with her; visitors could stay for two weeks. Ms. Walker testified that Mr. Ellison stayed at her address for approximately three weeks in June or July 2010. After leaving her residence, Mr. Ellison went to his brother's house and then to his sister's house.

Community Custody. For his community custody obligation, Mr. Ellison met with his CCO, James Hathaway, on June 29 and discussed living arrangements for Mr. Ellison. CCO Hathaway reluctantly allowed Mr. Ellison to stay at Ms. Walker's apartment for a few days while Mr. Ellison searched for another residence. CCO Hathaway opposed the housing arrangement because it was unlawful for Mr. Ellison to stay in the subsidized housing where Ms. Walker lived and because of Ms. Walker's previous history with CCOs.

CCO Hathaway met with Mr. Ellison again on July 1 to discuss treatment. Although CCO Hathaway directed Mr. Ellison to report to him again on July 6, Mr. Ellison failed to report to CCO Hathaway on that date.

On July 26, CCO Hathaway requested a warrant for Mr. Ellison's arrest. On August 4, Mr. Ellison called CCO Hathaway but did not disclose where he was living. The Fugitive Task Force arrested Mr. Ellison at his sister's apartment on August 9.

The trial court found Mr. Ellison guilty of failing to register as a sex offender and escape from community custody. Prior to these convictions, Mr. Ellison had two or more convictions for failing to register as a sex offender. The trial court imposed a sentence that included 36 months of community custody and a condition that barred Mr. Ellison “from residing either as a transient ‘visitor’ or fixed resident w/anyone in subsidized housing unless defendant on lease & residing there w/ permission of premises owner/management.” Clerk’s Papers at 26. Mr. Ellison did not object to the imposition of this condition.

The trial court waived court costs. However, the judgment and sentence listed \$200 for court costs, as well as \$500 for victim assessment and \$100 for DNA<sup>1</sup> collection fee. When totaled, the legal financial obligation amounted to \$600.

Mr. Ellison appeals the trial court’s imposition of the crime-related condition and the inclusion of court costs in his judgment and sentence.

#### ANALYSIS

This court reviews crime-related prohibitions or conditions imposed by the trial court for an abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993) (quoting *State v. Parramore*, 53 Wn. App. 527, 530, 768 P.2d 530 (1989)). An abuse of

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<sup>1</sup> Deoxyribonucleic acid.

discretion occurs when the court relies on untenable grounds or reasons. *State v. Teems*, 89 Wn. App. 385, 388, 948 P.2d 1336 (1997). Erroneous or illegal sentences may be challenged for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (quoting *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)).

As a part of any term of community custody, the court may order an offender to comply with any crime-related prohibition. RCW 9.94A.703(3)(f). A “crime-related prohibition” is defined, in relevant part, as “[a]n order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” *State v. Letourneau*, 100 Wn. App. 424, 431, 997 P.2d 436 (2000) (quoting former RCW 9.94A.030(12) (1999)). “Although the conduct prohibited during community custody must be directly related to the crime, it need not be causally related to the crime.” *Id.* at 432.

In *State v. Zimmer*, the court concluded that the trial court abused its discretion when it prohibited Ms. Zimmer from possessing a cellular phone as a condition of her drug conviction. *State v. Zimmer*, 146 Wn. App. 405, 414, 190 P.3d 121 (2008). The court stated that there was no evidence that Ms. Zimmer used a cellular phone in connection with possessing or distributing methamphetamine and, therefore, the condition was not crime related. *Id.*

*Escape from Community Custody.* Escape from community custody occurs when an inmate in community custody willfully discontinues making himself or herself available to the department for supervision by (a) making his or her whereabouts unknown or (b) by failing to maintain contact with the department as directed by the CCO. RCW 72.09.310.

The condition imposed by the trial court relates to Mr. Ellison's escape from community custody conviction. The escape from community custody violation occurred when Mr. Ellison failed to make his whereabouts known to his CCO between July 26 and August 9. Prior to his violation, Mr. Ellison lived with his mother in her subsidized housing and informed his CCO that his mother's address was his temporary residence. CCO Hathaway agreed to Mr. Ellison's temporary housing. Ms. Walker's lease and the terms of her subsidized housing did not allow her to have live-in occupants; visitors could stay two weeks. She testified that Mr. Ellison stayed at her address for approximately three weeks in June or July 2010 and then moved to his brother's and sister's homes. Mr. Ellison lived in subsidized housing longer than the lease allowed. He also continued to use the address as his residence after he moved out.

The trial court prohibited Mr. Ellison from living in subsidized housing without the permission of the premises manager. The court did not abuse its considerable

discretion by requiring Mr. Ellison to have permission before residing in subsidized housing.

*Judgment and Sentence.* Remand is appropriate to correct a scrivener's error. *State v. Naillieux*, 158 Wn. App. 630, 646-47, 241 P.3d 1280 (2010).

The trial court waived court costs associated with Mr. Ellison's convictions. However, the trial court neglected to remove court costs on the judgment and sentence form. The judgment and sentence contained a \$200 fee for court costs, as well as a \$500 victim penalty and \$100 for a DNA fee. The total legal financial obligation due amounted to \$600. As reflected by the total, the trial court did not factor court costs into the total legal financial obligation. The listing of court costs is likely the result of a scrivener's error. We remand to remove court costs from the judgment and sentence. The total legal financial obligation should not change.

We affirm the community custody condition and remand the judgment and sentence to correct the scrivener's error in the legal financial obligations.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

No. 29666-1-III  
*State v. Ellison*

WE CONCUR:

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Sweeney, J.

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Korsmo, J.