

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

In the Matter of the Personal     )  
Restraint of:                             )     No. 65799-2-1  
   )  
   )     DIVISION ONE  
ZELIMIR SHEM McDOWELL,     )  
   )     UNPUBLISHED OPINION  
   )     Petitioner.     )  
   )     FILED: March 19, 2012

PER CURIAM. Zelimir McDowell filed a motion to modify a no-contact order imposed as a condition of his sentence in King County Superior Court Nos. 08-1-05532-5 SEA and 08-1-04929-5 SEA. The superior court transferred the motion to this court for consideration as a personal restraint petition pursuant to Toliver v. Olsen, 109 Wn.2d 607, 612-13, 746 P.2d 809 (1987). McDowell contends that the trial court violated his right to parent by imposing an order prohibiting him from contacting his daughter for 10 years, despite the fact that she was not a victim of the crimes for which he was convicted, nor was she present during McDowell’s commission of the crimes. The State concedes that the record does not indicate if the trial court considered whether the order was reasonably necessary in scope and duration to prevent harm to the child and requests remand for the trial court to consider the “reasonably necessary” standard described in In re Pers. Restraint of Rainey, 168 Wn.2d 367, 377-82, 229 P.3d 686 (2010) (question is whether, on the facts of the case at bar, prohibiting defendant from all contact with his child, including indirect or

No. 65799-2-1/2

supervised contact, is reasonably necessary to realize a compelling State interest); see also, State v. Ancira, 107 Wn. App. 650, 654-55, 27 P.3d 1246 (2001) (State failed to show that no-contact with defendant's nonvictim children was reasonably necessary to protect their safety).

We accept the State's concession and remand for the trial court to hold a hearing, at which McDowell is represented by counsel, to determine whether a 10-year no-contact order is reasonably necessary in scope and duration to realize a compelling State interest, consistent with the reasoning in Rainey.

Remanded.

For the court:

Leach, A.C.J.

Dupre, C.J.

Spencer, J.