IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 66300-3-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
ISAIAS PERALTA-REYES,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 23, 2012
	)	

Ellington, J. — Isaias Peralta-Reyes appeals the conditions of community placement imposed as part of his sentence for two counts of child molestation and one count of tampering with a witness. We conclude the court had authority to impose the conditions and did not improperly delegate its authority to the Department of Corrections. Finding no merit in Peralta-Reyes' statement of additional grounds for review, we affirm.

BACKGROUND

In August 2009, 12-year-old K.L. lived with her baby brother, her mother, and her mother's boyfriend, Peralta-Reyes. On two occasions that month, while K.L.'s mother was at work, Peralta-Reyes touched K.L.'s breasts. Though K.L. protested, he continued to touch her for several minutes each time.

After the second incident, K.L. disclosed the touching to Sylvia Guzman, a

member of her church. Guzman notified one of the pastors, who in turn notified the Federal Way police. When officers contacted Peralta-Reyes, he admitted he had touched and squeezed K.L.'s breasts for sexual reasons and apologized.

The State charged Peralta-Reyes with two counts of child molestation in the second degree–domestic violence. Based on a recorded phone call from jail in which Peralta-Reyes told K.L.'s mother not to come to court and to tell K.L. to recant the allegations, the State also charged Peralta-Reyes with one count of tampering with a witness.

Peralta-Reyes waived his right to an attorney and his right to a jury trial. After a bench trial, Judge Bruce Heller found him guilty as charged. The court imposed a standard range sentence, which included 36 months of community custody.

DISCUSSION

Through counsel, Peralta-Reyes challenges two of the community custody conditions imposed by the court: (1) that he is not to consume, purchase or possess alcohol if his sexual deviancy treatment provider requires abstinence, and (2) that he may not possess or peruse sexually explicit material as defined by his sexual deviancy treatment provider.[1]

We review conditions of community placement for abuse of discretion and will reverse only if the court's decision is manifestly unreasonable or based on untenable

[1] Peralta-Reyes disavows these arguments in a "response" to his counsel's brief and offers others in a statement of additional grounds for review. Because Peralta-Reyes has not requested to conduct his appeal pro se, we consider both the arguments made by counsel and those contained in Peralta-Reyes' statement of additional grounds.

grounds.[2]

The trial court has discretion to order a defendant to participate in crime-related treatment or counseling services, to comply with crime-related prohibitions, and to participate in rehabilitative programs related to the offense, risk of reoffending, or community safety as conditions of community custody.[3] Additionally, the court must order the offender to "comply with any conditions imposed by the [Department of Corrections] under RCW 9.94A.704,"[4] which authorizes the Department to impose noncrime-related conditions related to the risk to the community.[5]

The court ordered Peralta-Reyes to complete a sexual deviancy evaluation and follow all treatment recommendations; refrain from possessing or perusing sexually explicit materials as defined by the sexual deviancy treatment provider; and abstain from purchasing, possessing, or using alcohol if the treatment provider requires abstinence.

Peralta-Reyes first contends the court lacked authority to prohibit his purchase and possession of alcohol because there is no indication that alcohol contributed to his offense, and the prohibition is therefore not "crime-related."[6] He relies on State v. Jones, in which Division Two of this court held it was error to require alcohol

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[2] State v. Vant, 145 Wn. App. 592, 602-03, 186 P.3d 1149 (2008) (a condition may be manifestly unreasonable if the court lacked authority to impose it).

[3] RCW 9.94A.703(3)(c), (d), (f).

[4] RCW 9.94A.703(1)(b).

[5] RCW 9.94A.704(2)(a).

[6] Peralta-Reyes acknowledges that prohibition of the consumption of alcohol is statutorily authorized under RCW 9.94A.703, regardless of whether alcohol contributed to the offense.

counseling where there was no evidence that the crime involved alcohol.[7] His reliance is misplaced.

Here, the alcohol prohibition is contingent on an assessment by the sexual deviancy treatment provider that such a condition is appropriate. The condition arises only "if treatment provider requires abstinence."[8] Thus, the order simply identifies one possible condition of treatment and rehabilitation programs, which the court and the Department have clear statutory authority to impose and which need not be "crime-related."

Peralta-Reyes also challenges the condition that he not possess or peruse sexually explicit materials, as defined by the sexual deviancy treatment provider, without prior approval. By allowing the treatment provider to define "sexually explicit materials," Peralta-Reyes contends the court improperly delegated its judicial authority.

In State v. Sansone, we held that the definition of "pornography" was "not an administrative detail that could be properly delegated" to a community corrections officer.[9] But we limited the decision to the facts in that case, and we observed that "[a] delegation would not necessarily be improper if Sansone were in treatment and the

[7] 118 Wn. App. 199, 207-208, 76 P.3d 258 (2003).

[8] Clerk's Papers at 18.

[9] 127 Wn. App. 630, 642, 111 P.3d 1251 (2005).

sentencing court had delegated to the therapist to decide what types of materials Sansone could have."[10] Since that is precisely what the court in this case has done, we are not inclined to find error. We decline to decide the matter, however, because Peralta-Reyes did not raise this concern below and a claim of improper delegation may not be raised for the first time on appeal.[11]

Additional Grounds for Review

Peralta-Reyes presents several other additional issues pro se. He first contends the court violated his First Amendment rights by admitting into evidence a Miranda[12] waiver form on which he claims his signature was forged. The record provides no support for the forgery allegation, which would not establish a First Amendment violation in any event. To the extent Peralta-Reyes challenges admission of his custodial statements, the evidence supports the court's finding that officers properly informed Peralta-Reyes of his rights, which he validly waived before making voluntary statements.[13]

Peralta-Reyes next argues he was denied his constitutional right to present a

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[10] Id. at 643.

[11] State v. Smith, 130 Wn. App. 721, 123 P.3d 896 (2005); see also State v. Bahl, 137 Wn. App. 709, 719, 159 P.3d 416 (2007), rev'd on other grounds, 164 Wn.2d 739, 193 P.3d 678 (2008).

[12] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[13] A related issue is Peralta-Reyes' allegation that the police committed misconduct by "using midstream Miranda[] warning under the theory of entrapment by stoppel [sic]." Statement of Additional Grounds at 2. We are unable to discern the nature of this complaint. The record indicates that police orally advised Peralta-Reyes of his rights at the time of the arrest, and later provided him a written copy. We see nothing improper in this conduct.

defense because the State failed to provide him discovery. This assertion is unsupported by the record. The court spent considerable time addressing the issue, and repeatedly found that Peralta-Reyes had received all discovery to which he was entitled.[14] The record supports this finding.

Peralta-Reyes' third argument is that the court violated his constitutional rights "when the court stated the defendant will prosede [sic] with standby counsel."[15] The nature of this argument is unclear. Though Peralta-Reyes requested standby counsel shortly before trial, he refused to accept a public defender.[16] Given the delay that appointing standby counsel would necessarily cause, its impact on the victim, and Peralta-Reyes' inability to work with four other previously appointed attorneys, the court ultimately concluded that appointing standby counsel at that late date would not be in the interests of justice.[17] To the extent Peralta-Reyes contends that decision violated his rights, we disagree. There is no federal constitutional right to standby counsel, and once a defendant has validly waived his right to counsel, he may not later demand the assistance of counsel as a matter of right.[18]

Peralta-Reyes also contends he was denied his constitutional right to a speedy trial. This assertion is also unsupported by the record. Peralta-Reyes acknowledged

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[14] See Report of Proceedings (RP) (Sept. 9, 2010) at 268; RP (Sept. 10, 2010) at 321; RP (Sept. 14, 2010) at 341.

[15] Statement of Additional Grounds at 2.

[16] See RP (Sept. 8, 2010) at 124.

[17] See id. at 129.

[18] State v. Silva, 107 Wn. App. 605, 626, 27 P.3d 663 (2001).

that he signed multiple speedy trial waivers.[19] Though he asserted he did so based on poor advice of counsel, he does not allege on appeal that he received ineffective assistance and identifies no prejudice. On the record before us, we see no violation.[20]

Peralta-Reyes alludes to other issues in his "response" to his counsel's brief, including ineffectiveness of appellate counsel. These potential issues have not been articulated with sufficient clarity to inform us of the nature of the alleged errors, and we therefore decline to address them.[21]

Affirmed.

WE CONCUR:

[19] See RP (Jan. 19, 2010) at 9-10.

[20] See In re Pers. Restraint of Benn, 134 Wn.2d 868, 920, 952 P.2d 116 (1998) (no prejudice where defendant agreed to continuances or his counsel requested continuance to more fully prepare).

[21] RAP 10.10(c) ("[A]ppellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. . . . [T]he appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.").