IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. HOLTON McCOY MILLER, Appellant.	))))))))))	No. 66760-2-I DIVISION ONE UNPUBLISHED OPINION FILED: July 16, 2012

Appelwick, J. — Miller appeals the trial court's imposition of a no-contact order, arguing the trial court failed to weigh the State's interest in imposing such an order and failed to honor the victim's right to share her opinion at sentencing. The trial court did not abuse its discretion. We affirm.

FACTS

In January 2010, the State originally charged Holton Miller with one count of domestic violence felony violation of a court order and one count of assault in the second degree, for his actions on December 29-30, 2009 involving the victim, Corinna Barker. In its July 2010 amended information, the State dropped those two charges, opting to proceed solely on a new count of domestic violence

felony violation of a court order, based on a brief phone call Miller placed to Barker on January 14, 2010. Miller entered a guilty plea, admitting he had called Barker from jail and spoke with her in violation of a no-contact order in place against him.

The State recommended that the trial court impose a 30 month no-contact order with Barker. The prosecuting attorney stated she did not know Barker's opinion about the no-contact order and that "[t]his is just the State's recommendation, and not Ms. Barker's recommendation." The trial court stated that Barker would have the chance to be there and speak at sentencing if she wished to.

Based on an offender score of 12, Miller received a standard range sentence of 60 months. But, the State and Miller agreed to request an exceptional sentence of only 30 months. At the first sentencing hearing on August 27, 2010, the trial court declined to grant an exceptional sentence until both parties provided written briefing on the matter. At the subsequent sentencing hearing, on September 9, 2010, after weighing briefing from both parties, the trial court imposed a sentence of 36 months incarceration and other conditions, including a five year no-contact order with Barker.

The trial court weighed several factors in determining the appropriateness of the sentence and the no-contact order. First, it noted Miller made the phone call from jail and apparently urged Barker to break into his apartment for some reason. It noted he called nearly 100 times, although he got through only once. It also noted Miller had 24 domestic incidents since 2000—eleven with Barker

and thirteen with a different victim. It weighed the fact that Miller had a pending case with that different victim at that same time, and that he had a "25-year violent history of assault, harassment, violating no[-]contact orders, etcetera."

The trial court further stated:

> This case is very troubling to me given the defendant's history, and I have no confidence whatever that he's able to abide by no[-]contact orders and follow those and abstain from the kind of behavior that gets him before the Court.

After the sentence was imposed, Miller asked the trial court if it would reconsider the no-contact order if Barker "was willing to come forward to get this thing dropped and go into counseling and stuff." The trial court reiterated, "You need to stay away from her, sir. I will not be dropping this no[-]contact order."

Miller appeals.

DISCUSSION

Miller argues the trial court abused its discretion by imposing a no-contact order without considering whether such a measure was reasonably necessary to serve the State's interest.

RCW 9.94A.505(8) permits a court to "impose and enforce crime-related prohibitions" as part of a sentence. A "crime-related prohibition" means "an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). A no-contact order is a crime-related prohibition. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 376, 229 P.3d 686 (2010). Such sentencing conditions must be "'sensitively imposed'" so that they are "'reasonably necessary to accomplish the

essential needs of the State and public order.'" Id. at 374 (quoting State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008)). Because the imposition of crime-related prohibitions is fact specific and based upon the sentencing judge's in-person appraisal of the trial and the offender, we review them under the abuse of discretion standard. Id. at 374-75. A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State v. Lord, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007).

Here, the trial court's imposition of a five year no-contact order was directly related to the circumstances for which Miller was convicted. Miller had violated a no-contact order when he called Barker from jail. The trial court considered the underlying facts of the case and the personal history between Miller and Barker. It also expressly considered Miller's violent criminal history, previous domestic violence incidents, and perceived unwillingness or inability to abide by no-contact orders. All of these factors contributed to a reasonable concern for Barker's future safety. The State has a compelling interest in preventing future harm to the victims of the crime. Rainey, 168 Wn.2d at 377.

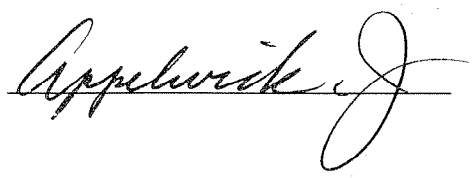
The no-contact order between Miller and Barker was sensitively imposed by the trial court and was not manifestly unreasonable or imposed on untenable grounds. We hold that the trial court did not abuse its discretion.

Miller next argues the trial court erred by failing to obtain or consider Barker's opinion at sentencing. The Washington State Constitution protects victims' rights and ensures them "a meaningful role in the criminal justice system

and to accord them due dignity and respect." Const. art. I, § 35. The provision provides, in part, "Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to . . . attend, and to make a statement at sentencing." Id. Here, there is no evidence that Barker ever notified the prosecuting attorney of a desire to attend or make a statement at sentencing, nor was there any requirement that she do so. Moreover, the same constitutional provision goes on to state, "This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel." Id. The right to attend and participate belongs to Barker, not Miller. Miller is thus plainly precluded from relying on this provision and this argument as a basis for error on appeal.

Miller also submitted a statement of additional grounds. The arguments he raises do not merit review.

We affirm.



WE CONCUR: