

May 12, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent.

vs.

ATALANI TILI,

Appellant.

No. 52133-4-II

UNPUBLISHED OPINION

MAXA, P.J. – Atalani Tili appeals two community custody conditions imposed following her conviction of first degree manslaughter: that she have no contact with any unrelated child under the age of 13 and no contact with any child under the age of 5. She argues that these conditions violate her federal and state constitutional rights to free association and assembly. We hold that the conditions are reasonable restrictions on Tili’s liberty. Accordingly, we affirm the imposition of the challenged community custody conditions.

FACTS

In February 2017, Tili had been caring for a family friend’s two-year-old son when the child bit her hand and would not let go. Tili jerked her hand back and in doing so pushed the child backwards and the child fell, hitting his head on an exposed hinge on a dresser. Tili knew the child was not acting normally that night but thought that he would get better after sleeping. The following morning, the child collapsed when Tili was trying to dress him. The child died 10

days later in the hospital having suffered a head injury, a stroke, severe swelling in the brain, and enduring two surgeries.

Tili pleaded guilty to first degree manslaughter. The trial court sentenced her to 102 months of incarceration and 36 months of community custody, and imposed community custody conditions. The two community custody conditions relevant here provide: (1) “No contact with unrelated minors under age 13”; and (2) “No contact with any child under 5 after release from custody, whether related or unrelated. May have contact with her children while she is incarcerated.” Clerk’s Papers at 57. Tili appeals the trial court’s imposition of these two community custody conditions.

ANALYSIS

A. LEGAL PRINCIPLES

We review the imposition of crime-related prohibitions for an abuse of discretion. *State v. Wallmuller*, 194 Wn.2d 234, 238, 449 P.3d 619 (2019). We will reverse only if the decision is manifestly unreasonable or based on untenable grounds. *State v. Sanchez Valencia*, 169 Wn.2d 782, 791-92, 239 P.3d 1059 (2010). However, imposing an unconstitutional condition is always an abuse of discretion. *Id.* at 792.

As part of a term of community custody, a sentencing court has authority to order offenders to “[r]efrain from direct or indirect contact with the victim of the crime or a specified class of individuals,” RCW 9.94A.703(3)(b)¹, and to “[c]omply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). Tili does not appear to question the trial court’s statutory authority to impose the challenged conditions.

¹ RCW 9.94A.703 was amended in 2018. Because those amendments do not affect our analysis, we cite to the current version of the statute.

The First Amendment to the United States Constitution and article I, sections 4 and 5 of the Washington Constitution give people the right to freely associate and assemble with others. Statutorily authorized sentencing conditions may restrict these rights “to the extent it is reasonably necessary to accomplish the essential needs of the state and the public order.” *State v. Riles*, 135 Wn.2d 326, 350, 957 P.2d 655 (1998). But “conditions that interfere with fundamental rights must be sensitively imposed.” *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

B. ANALYSIS

Tili argues that the challenged community custody conditions violate her rights to free association and assembly. She claims that the conditions prohibit her from interacting with a large segment of the population and thereby infringe on a substantial amount of constitutionally protected conduct. Tili points out that the conditions prevent her from attending events in which her own children participate, attending gatherings with her extended family, going to church or to the mall, or even riding a bus. She suggests that the conditions could be narrowed to prohibiting contact with children when no adults are present.

The question here is whether the conditions are reasonably necessary to accomplish the State’s essential needs. *Riles*, 135 Wn.2d at 350. Tili’s reckless conduct of striking the two-year-old child she was caring for and then not seeking medical care caused the child’s death. Therefore, there is no question that she poses a risk to children. The conditions the trial court crafted recognized that the State has a compelling interest in protecting children from harm. *State v. Ancira*, 107 Wn. App. 650, 653-54, 27 P.3d 1246 (2001); *see also State v. Corbett*, 158 Wn. App. 576, 597-601, 242 P.3d 52 (2010) (restricting contact with all children was a reasonable restriction where defendant was convicted of raping his young stepdaughter).

Because Tili's recklessness ended the life of a toddler, we conclude that these conditions are not overbroad but are a reasonable restriction sensitively imposed on Tili to protect children from harm. *Riles*, 135 Wn.2d 347.


In addition, the trial court imposed 36 months of community supervision. These conditions at issue are in effect only during this period, not for the rest of Tili's life.

We hold that the trial court did not abuse its discretion in imposing the challenged community custody conditions.

CONCLUSION

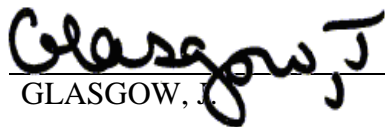
We affirm the two community custody conditions imposed restricting Tili's contact with children.

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.

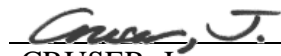


MAXA, P.J.

We concur:



GLASGOW, J.



CRUSER, J.