IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DAVID WAYNE VANDERVEER, Appellant.	No. 42665-0-II UNPUBLISHED OPINION

Hunt, P.J. — David Wayne Vanderveer appeals the trial court's imposition of community custody conditions. He argues that the trial court erred in imposing excessively vague community custody conditions, which it impermissibly delegated to the community custody officer (CCO); but he does not develop his vagueness challenge. Holding that the trial court had statutory authority to delegate to the Department of Corrections (DOC) and the CCO its power to set community custody conditions, we affirm.

FACTS

After a bench trial, the superior court found Vanderveer guilty of failure to register as a sex offender and not guilty of various other crimes. During sentencing, the prosecutor mentioned that community custody conditions would be "pursuant to CCO." 2 Report of Proceedings (RP) at 256. The court confirmed, "Whatever the CCO imposes, yes." 2 RP at 256. The superior court sentenced Vanderveer to 18 months in custody plus 36 months of community confinement,

with various conditions to be determined by the CCO. Vanderveer did not object to these conditions or to this delegation. He appeals.[1]

ANALYSIS

Vanderveer argues that we must remand for resentencing because the trial court erred when it imposed excessively vague community custody conditions that additionally involved impermissibly delegating the court's authority to define community custody conditions.[2] The State responds that former RCW 9.94A.704 (2009) gives DOC the power to set, to modify or to enforce community custody conditions. The State is correct.

I. Delegation of Community Custody Conditions

Vanderveer contends that the trial court's broad oral pronouncement that the community custody terms would be "[w]hatever the CCO imposes"[3] was a "'wholesale[ ] abdicat[ation of] its judicial responsibility for setting the conditions of release.'" Br. of Appellant at 6 (quoting *State v. Sansone*, 127 Wn. App. 630, 642, 111 P.3d 1251 (2005)). We disagree.

A review of the community custody conditions set in the Judgment and Sentence entered by the trial court, and signed by Vanderveer and all counsel, illustrates that the trial court did not

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[1] A commissioner of this court initially considered this appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[2] Vanderveer may raise challenges to community custody conditions for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

[3] Br. of Appellant at 6 (quoting 2 RP at 256).

improperly delegate its judicial power.[4] In addition to giving the trial court authority to impose conditions, RCW 9.94A.703(3)(c), the legislature expressly authorizes DOC to "*establish and modify* additional conditions of community custody." Former RCW 9.94A.704(2)(a)[5] (emphasis added). Although Vanderveer's community custody terms included a CCO's exercise of discretion, the trial court had statutory authority to delegate this power in this manner. We hold that the trial court did not err in delegating some community custody condition components to DOC.

II. Conditions not Vague

Vanderveer argues that the community custody conditions are unconstitutionally vague, relying on *State v. Sansone*, in which we determined that the term "pornography" was overly vague. 127 Wn. App. at 638. Vanderveer does not, however, identify any term used in his Judgment and Sentence and challenge it as vague.[6] Therefore, we do not further consider this

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[4] The Judgment and Sentence listed specific community custody conditions for Vanderveer, including that he (1) remain within a geographic boundary set by the CCO, (2) participate in treatment or counseling services per the CCO, (3) comply with crime-related prohibitions set by the CCO, and (4) comply with other conditions set out in "Appendix F & per CCO." Clerk's Papers at 38

[5] Vanderveer argues that this subsection applies only after a superior court has imposed a sentence and that instead RCW 9.94A.703 controls. He is incorrect.

Although RCW 9.94A.703 sets out certain categories of community custody conditions that a court must or may impose, we find nothing in the language of former RCW 9.94A.704 and RCW 9.94A.703 to prevent a sentencing court from recognizing the CCO's delegated authority to set or modify community custody conditions, so long as the CCO's authority does not extend to contradicting or decreasing the court-ordered conditions. Former RCW 9.94A.704(2)(a) & (6).

[6] To the extent that Vanderveer may be arguing that the resulting CCO-determined community custody conditions are vague, these conditions are not before us in this appeal. Moreover, these conditions would be not reviewable without further factual development beyond the record before us.

argument. RAP 10.3(a)(6). Instead, he appears to assert that the community custody condition requiring him to follow the CCO's instructions lacks sufficient definiteness for an ordinary person to understand what conduct is proscribed. But, the trial court's order is not vague simply because it delegates a portion of its former RCW 9.94A.704(2)(a) community custody setting authority. Again, Vanderveer fails to explain how this delegation to the CCO will result in vague conditions. *See State v. Valencia*, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010). Thus, we do not further consider this argument.

We affirm.

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.

Hunt, P.J.

We concur:

Van Deren, J.

Penoyar, J.