IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27306-7-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JOHN JOSEPH COOK,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Schultheis, C.J. — John Cook was convicted of residential burglary, two counts of violating postconviction protection orders, and bail jumping. On appeal, he argues that the trial court improperly instructed the jury that it had to be unanimous to answer "no" to special verdict questions. He also contends the trial court erred in imposing certain sentencing conditions. We affirm.

FACTS

Mr. Cook was convicted of four offenses. The jury unanimously found by special verdicts that two of these offenses, residential burglary and a violation of a protection order, occurred within the sight and sound of the victim's or the defendant's minor child.

Mr. Cook's standard range sentence was 6 to 12 months. Based on the special verdicts, Mr. Cook stipulated to an exceptional sentence of 12 months and 1 day. Mr. Cook also agreed with the State that he should obtain anger management and substance abuse evaluations. Pursuant to the agreement of the parties, the court ordered Mr. Cook to obtain anger management and substance abuse evaluations and follow any treatment recommendations.

Mr. Cook appeals the special verdicts and the sentence.

ANALYSIS

Mr. Cook first assigns error to the trial court's jury instruction regarding the special verdicts. Instruction 24 stated:

> You will also be given two special verdict forms for the crimes of Burglary in the First Degree or Residential Burglary, as charged in Count I, and Violation of a No Contact Order, as charged in Count II. . . . In order to answer the special verdict form[s] "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".

Clerk's Papers at 57 (second alteration in original).

Mr. Cook contends that this instruction is erroneous because it required the jury to unanimously answer "no" to the special verdict question of whether Counts I and II occurred within the sight and sound of Mr. Cook's or the victim's minor child. Relying on *State v. Goldberg*, 149 Wn.2d 888, 72 P.3d 1083 (2003), Mr. Cook argues that the

instruction misstates the law because a jury is allowed to answer a special verdict question with a "no" that is not unanimous. He therefore asks us to strike the special verdicts and vacate the exceptional sentence.

We first note that Mr. Cook failed to object to instruction 24 below. However, a unanimity instruction that does not adequately inform the jury of the applicable law violates a defendant's right to a unanimous jury verdict. *State v. Watkins*, 136 Wn. App. 240, 244, 148 P.3d 1112 (2006). Accordingly, he may raise the error for the first time on appeal. *State v. Levy*, 156 Wn.2d 709, 719, 132 P.3d 1076 (2006).

Mr. Cook correctly points out that our Supreme Court has held that jury unanimity is not required to answer "no" to a special verdict question. *Goldberg*, 149 Wn.2d at 894. In *Goldberg*, upon discovering that jurors were not unanimous in answering "no" to a special verdict question, the trial court ordered the jurors to resume deliberations until they reached unanimity. *Id.* at 891. The *Goldberg* court concluded that the trial court erred in doing so, holding that jury unanimity is not required to answer "no" to a special verdict. *Id.* at 894.

However, even if the jury was erroneously instructed here, Mr. Cook was not prejudiced by the error. The special verdict form shows that the jury was unanimously satisfied beyond a reasonable doubt that the offenses occurred within the sight or sound of the victim's or Mr. Cook's minor child. Unlike *Goldberg,* Mr. Cook does not contend

that the jury was deadlocked or improperly directed or coerced to reach a unanimous decision to vote "no." Because Mr. Cook received his constitutional right to a unanimous jury verdict, he has failed to show he suffered any harm as a result of the instruction. *State v. Badda*, 63 Wn.2d 176, 182, 385 P.2d 859 (1963). Accordingly, the exceptional sentence based on the special verdicts is valid.

Next, Mr. Cook argues that the trial court erred by imposing anger management and drug evaluations as conditions of his sentence. He contends that the court exceeded its authority in ordering these evaluations because there was no evidence that his crimes were related to anger or drug problems.

We review sentencing conditions, including crime-related prohibitions, for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Under RCW 9.94A.505(8), the court may "impose and enforce crime-related prohibitions" as part of a sentence. No causal link need be established between the condition imposed and the crime committed, so long as the condition relates to the circumstances of the crime. *State v. Parramore*, 53 Wn. App. 527, 768 P.2d 530 (1989).

Mr. Cook ignores the fact that he requested drug and anger evaluations at sentencing, where defense counsel stated, "I know the evidence in the case probably suggests both that my client be evaluated for anger and drug problems." Sentencing Report of Proceedings (RP) at 3. Further, contrary to Mr. Cook's claim, the record amply

establishes a crime-related nexus to the imposition of an anger management evaluation. During trial, Mr. Cook's former girl friend testified that during one of the offenses, Mr. Cook threw a telephone, grabbed her by the back of her hair, pushed her to the ground, and yelled in anger. Mr. Cook's mother testified that on the day he missed the court date that resulted in the bail jumping charge, Mr. Cook threw a rock at her car.

In contrast, the evidence in the record supporting the substance abuse evaluation consists simply of defense counsel's reference to Mr. Cook's "drug problems." Sentencing RP at 3. However, we reject Mr. Cook's suggestion that this paucity of evidence requires us to strike the condition. Because Mr. Cook failed to object to the condition that he obtain a substance abuse evaluation, he foreclosed the opportunity to develop a more complete record on the issue. Washington case law prohibits the tactic of creating a barren record by failing to object to a sentencing condition, and then complaining that the record is insufficient to support the condition. *State v. Armstrong*, 91 Wn. App. 635, 638-39, 959 P.2d 1128 (1998). We conclude that the trial court did not abuse its discretion in ordering Mr. Cook to obtain substance abuse and anger management evaluations.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the

Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, C.J.

WE CONCUR:

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Sweeney, J.

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Korsmo, J.