IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28041-1-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
DYLAN TYLER ANSTROM,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Dylan Anstrom challenges the constitutionality of a crime-related prohibition imposed in his sentence by the trial court, arguing that it violates the due process clause of the United States and Washington Constitutions. We conclude that this pre-enforcement due process challenge is not sufficiently ripe for review. Accordingly, we affirm.

FACTS

Mr. Anstrom was involved in an altercation with two cyclists while driving in Spokane near the Centennial Trail on July 17, 2008. He drove up behind the cyclists,

Mark Lang and Bruce Hunt, and started honking his horn. As he sped past them, his car came close to hitting one of them.

While Mr. Anstrom was stopped at a traffic light, Mr. Lang approached his vehicle to tell him that he had nearly caused a serious accident. Mr. Anstrom instantly flew into a rage and started screaming. Mr. Lang, surprised by Mr. Anstrom's rage, immediately left and crossed the street to continue cycling along the trail.

Mr. Anstrom became more enraged when Mr. Lang left, believing that Lang had damaged his car during the encounter. Mr. Anstrom proceeded to chase after Mr. Lang through a parking lot that traveled along the trail, but was unable to catch him. At that point, the second cyclist, Mr. Hunt, reached Mr. Anstrom's location on the trail. Mr. Anstrom approached him and demanded to know the name of the first cyclist. When he did not get the name, he knocked Mr. Hunt off his bicycle, kicked and punched him, and threw his bike down on top of him. Mr. Anstrom also threw Mr. Hunt's bicycle against a telephone pole.

A jury found Mr. Anstrom guilty of second degree malicious mischief and fourth degree assault. At sentencing, the court imposed a first time offender sentence for the felony second degree malicious mischief conviction. The sentence included the following crime-related prohibition: "no incidents relating to temper/anger – including

assaults, reckless driving, malicious mischief, road rage." Clerk's Papers (CP) 71.[1]

Mr. Anstrom timely appealed this portion of his sentence to this court.

ANALYSIS

The sole issue[2] presented is whether the crime-related prohibition imposed by the trial court violates Mr. Anstrom's federal and state due process rights by failing to provide adequate notice of what conduct is prohibited. Because we conclude that this due process challenge is not sufficiently ripe for review, we do not reach the merits of Mr. Anstrom's argument.

Initially, the State contends that this issue should not be reviewed because it was not raised before the trial court. RAP 2.5(a) states that issues not raised at trial generally cannot be raised for the first time on review. However, the Washington Supreme Court has held "that vagueness challenges to conditions of community custody may be raised for the first time on appeal." *State v. Bahl*, 164 Wn.2d 739, 745, 193 P.3d 678 (2008). Thus, Mr. Anstrom's appeal is not barred based on his failure to raise the issue at the trial

[1] The court imposed two years of probation as part of the sentence on the assault conviction. The terms of probation were the same as the conditions imposed on the felony count. CP 80.

[2] Mr. Anstrom also filed a *pro se* Statement of Additional Grounds alleging violation of his speedy trial rights and that he received ineffective assistance of counsel. We have considered these challenges and find that the speedy trial claim is not supported by the appellate record, and that the ineffective assistance of counsel claim is without merit; they will not be further addressed.

court level.

Appellant contends the condition imposed by the trial court is unconstitutional under the due process vagueness doctrine of the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution. A defendant may raise a pre-enforcement vagueness challenge to a sentencing condition if the challenge is sufficiently ripe for review. *Bahl*, 164 Wn.2d at 751. A claim is ripe when (1) the issues raised are primarily legal; (2) the issues do not require further factual development; and (3) the challenged action is final. *Id*. In addition, "[t]he court must also consider 'the hardship to the parties of withholding court consideration.'" *Id.* (quoting *First United Methodist Church v. Hr'g Exam'r*, 129 Wn.2d 238, 255, 916 P.2d 374 (1996) (internal quotation marks omitted)).

In *Bahl*, the court determined whether a due process challenge to a sentencing condition that prohibited possession of or access to pornography was ripe for review. 164 Wn.2d at 745. Applying the test set forth above, the court held that the claim was sufficiently ripe because it implicated First Amendment rights that are subject to a facial challenge. *Id.* at 752. Accordingly, the claim dealt with a purely legal issue that could be determined based on the present record without the need for any additional facts. *Id.*

In contrast, vagueness challenges that do not involve First Amendment rights are

not properly evaluated for facial vagueness and must be considered in light of the particular facts of each case. *City of Spokane v. Douglass*, 115 Wn.2d 171, 182, 795 P.2d 693 (1990). A due process challenge to a sentencing condition that does not implicate the First Amendment is premature until the defendant can allege specific facts to show the condition caused him harm. *State v. Motter*, 139 Wn. App. 797, 804, 162 P.3d 1190 (2007), *review denied*, 163 Wn.2d 1025 (2008); *State v. Massey*, 81 Wn. App. 198, 200, 913 P.2d 424 (1996).

This pre-enforcement challenge to the sentencing condition that prohibits Mr. Anstrom from being involved in "incidents relating to temper/anger" is based specifically on a due process argument, which does not implicate his First Amendment rights. This means the condition cannot be evaluated for facial vagueness. Mr. Anstrom does not allege specific facts to show that he has been harmed by the condition in any way. The challenge requires further factual development. Therefore, it is not ripe for review. *Bahl*, 164 Wn.2d at 751.

Affirmed.

A majority of the panel has determined 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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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.