IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOSEPH ALLEN ROSARIO, Appellant.	No. 38201-6-II UNPUBLISHED OPINION

Bridgewater, J. — Joseph Allen Rosario entered an *Alford*[1] plea to second degree robbery; the trial court accepted his guilty plea. At sentencing, the trial court imposed, among other things, a no-contact community custody condition between Rosario and his "victim[s]." CP at 21, 23. We hold that the matter is not ripe for review because an alleged violation is purely speculative under the test set forth in *State v. Bahl*, 164 Wn.2d 739, 193 P.3d 678 (2008), We affirm.

Rosario entered the Burger Castle restaurant in Tacoma, Washington, and grabbed approximately $250 from the till. Young Lee worked at and owned the Burger Castle restaurant at the time of the robbery. The State charged Rosario with first degree robbery, and he entered an *Alford* plea to the amended charge of second degree robbery. Both the amended information and the statement of the defendant on plea of guilty specified that Rosario robbed Lee, while the declaration for determination of probable cause specified that Rosario robbed the Burger Castle restaurant. The probable cause declaration provided the factual basis for the plea. Rosario

[1] *North Carolina v. Alford,* 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

agreed as part of the plea to have no contact with the "victim." CP at 8. The judgment and sentence prohibits Rosario from having direct or indirect contact with the "victim[s]." CP at 21, 23.

The Washington State Supreme Court recently held that a defendant may assert a preenforcement vagueness challenge to sentencing conditions if the challenge is sufficiently ripe. *Bahl*, 164 Wn.2d at 751. *Bahl* provides a test for reviewing courts to determine whether a challenge is sufficiently ripe. *Bahl*, 164 Wn.2d at 751. First, a claim is fit for judicial review when the (1) issues raised are primarily legal, (2) issues do not require further factual development, and (3) challenged action is final. *Bahl*, 164 Wn.2d at 751 (citation omitted). Second, the reviewing court must also consider "'the hardship to the parties of withholding court consideration.'" *Bahl*, 164 Wn.2d at 751 (quoting *First United Methodist Church of Seattle v. Hearing Exam'r for Seattle Landmarks Pres. Bd.*, 129 Wn.2d 238, 255, 916 P.2d 374 (1996) (Dolliver, J., dissenting)). We hold that Rosario's challenge is not ripe because it is primarily factual and withholding review will not cause hardship. And because we hold the matter is not ripe we do not address Rosario's vagueness argument.

First, the issue is primarily factual because it involves identifying named victims. Second, withholding review does not cause Rosario hardship. The circumstance of the no-contact order does not have complicated factual issues that require clarification such as whether the business is close in proximity to Rosario's residence, whether there are other franchise businesses of Burger Castle that Rosario cannot enter (e.g., McDonald's), whether Rosario has a job next door to the business, or whether Burger Castle is the only restaurant in the area. Similarly, there is no

evidence that Rosario and the victim attend the same church, have children in the same school, or have any common circumstance that would bring them inadvertently into contact. Rosario's challenge to his community custody condition is not yet ripe.

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.

Bridgewater, J.

We concur:

Armstrong, J.

Penoyar, A.C.J.