

No. 82731-1

J.M. JOHNSON, J. (concurring)—I agree with the majority that the sentencing condition was too vague. On remand, the sentencing court can easily correct its error by changing the prohibition on “paraphernalia” to “drug paraphernalia.” A ban on “drug paraphernalia” is sufficient to inform the petitioners of what is proscribed and prevent arbitrary enforcement. Even if common parlance fails to adequately dictate the contours of “drug paraphernalia,” two separate criminal statutes, codified by the Uniform Controlled Substances Act, identically define the term as:

all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.

RCW 69.50.102(a), .4121(1). Both statutes proceed to give nonexhaustive

lists of items that qualify as drug paraphernalia, with one subsection explicitly mentioning drug scales. RCW 69.50.102(a)(5).

These statutory definitions and associated examples of drug paraphernalia are presumably known to the public, *see Maynard Inv. Co. v. McCann*, 77 Wn.2d 616, 624, 465 P.2d 657 (1970), and will sufficiently inform the petitioners as to what is prohibited.<sup>1</sup> The definitions are also clear enough to prevent community corrections officers or other government actors from acting in an impermissibly arbitrary manner. By inserting the word “drug” into the prohibition (and the appurtenant use, intent, and design requirements implied by the term), due process would be satisfied. And the concerns of the majority, such as the theoretical innocent possession of a sandwich bag, would be avoided.

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<sup>1</sup> Though neither RCW 69.50.102(a) nor RCW 69.50.4121(1) specifically applies to community custody provisions, RCW 69.50.102(a) does explicitly apply to the entire Uniform Controlled Substances Act. As petitioners were convicted of violating part of the act, its definition of drug paraphernalia should be sufficient to dispel vagueness concerns.

AUTHOR:

Justice James M. Johnson

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WE CONCUR:

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