NO. 74677-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

WENDY GRANATH,

Petitioner

BRIEF OF *AMICUS CURIAE* WASHINGTON DEFENDER ASSOCIATION IN SUPPORT OF PETITIONER

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I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae is the Washington Defender Association (WDA). WDA is a statewide non-profit organization whose membership is comprised of public defender agencies, indigent defenders, and those who are committed to seeking improvements in indigent defense. WDA is a not-for-profit corporation with 501(c)(3) status. The WDA's objectives and purposes are defined in its bylaws and include: protecting and insuring by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, including the right to counsel, and to resist all efforts made to curtail such rights; promoting assisting and encouraging public defense systems to ensure that all accused persons receive effective assistance of counsel.

WDA representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent defense issues. WDA has been granted leave on prior occasions to file amicus briefs in this Court. WDA represents 30 public defender agencies and has over 1200 members comprising criminal defense attorneys, investigators, social workers and paralegals throughout Washington. WDA attorneys have significant expertise on the issues presented in the instant case based on

the extensive assistance we provide to defense attorneys in violation of no contact order cases and regarding conditions of sentences.

This Court's decision in this case has potentially far-reaching implications to criminal practice in Washington. The purpose of this brief is to address the validity of *State v. W.S.*, which held that the juvenile court's authority to impose a domestic violence no contact order under RCW 10.99.050 is independent from, and unrelated to, the court's statutory jurisdiction over the offender. *State v. W.S.*, 176 Wn. App. 231, 243, 309 P.3d 589 (2013). The lower court's reliance on *W.S.* was misguided, because the decision in *W.S.* incorrectly ignored controlling statutory authority. *See, infra* at 2 – 15.

II. ISSUE TO BE ADDRESSED BY *AMICUS*

Whether this court should consider *State v. W.S.* controlling authority in deciding the case at bar, *State v. Granath*.

III. STATEMENT OF THE CASE

Amicus adopts the facts as stated in the Petitioner's Brief of Appellant.

IV. ARGUMENT

Courts have no inherent authority to issue domestic violence no contact orders (DVNCO); the authority must come from a statute. Nothing in the Juvenile Justice Act authorizes DVNCOs for any time period and

certainly not for a period equal to the statutory maximum for the crime of conviction. Juvenile courts get their authority to impose DVNCOs from Chapter 10.99 RCW. The authority to issue a post-conviction DVNCO comes from RCW 10.99.050(1), which specifies that such DVNCOs are "a condition of the sentence." Nothing in Chapter 10.99 RCW extends a juvenile courts authority beyond a defendant's twenty-first birthday.

Nonetheless, in *State v. W.S.* the Court of Appeals held that a juvenile court may impose a DVNCO that extends beyond a juvenile defendant's twenty-first birthday. *W.S.*, 176 Wn. App. 231. The *W.S.* court relied on two rationales. First, the court reasoned that the legislature sought to afford complaining witnesses in DV cases "the maximum protection authorized by law" when it enacted the Domestic Violence Protection Act, which included Chapter 10.99 RCW. *W.S.*, 176 Wn. App. at 240. Second, the court relied on *State v. Armindariz*, a Washington Supreme Court case that held a trial court had authority to impose a DVNCO pursuant to an adult felony conviction as a crime related prohibition under the Sentencing Reform Act (SRA). *State v. Armendariz*, 160 Wn.2d 106, 156 P.3d 201 (2007). However, neither rationale supports the holding in *W.S.* The *Armindariz* case relies on the Sentencing Reform Act, Chapter 9.94A RCW, which does not apply to juvenile cases, and the legislature's general

intent to protect victims of domestic violence does not serve to extend juvenile court's sentencing authority.

A. In State v. W.S. The Court of Appeals Held That A Juvenile Court May Impose A No Contact Order That Lasts Up To The Statutory Maximum Sentence For The Crime Of Conviction.

In *State v. W.S.* the Court of Appeals held that, when a juvenile court imposes a domestic violence no contact order (DVNCO) as part of a criminal sentence, the court may legally require that the no contact order remain in effect for the statutory maximum of the crime. In other words, "the juvenile court's authority to impose a DVNCO under RCW 10.99.050 for the statutory maximum of the crime is independent and unrelated to the court's statutory jurisdiction over the offender." *W.S.*, 176 Wn. App. at 243. The Court of Appeals relied on two sets of reasoning to reach that decision[1].

First, the court reasoned that the legislature sought to afford complaining witnesses in DV cases "the maximum protection authorized by law." *W.S.*, 176 Wn. App. at 240. Because the longest conceivable time a DVNCO in a juvenile case could last was the statutory maximum for the crime of conviction and the legislature made clear that protecting victims of domestic violence was important, the Court of Appeals reasoned that

[1] W.S.'s appellate counsel apparently did not petition the Washington Supreme Court for review of the Court of Appeals decision.

the legislature intended that a juvenile court have authority to impose a DVNCO that would last for the length of the statutory maximum for the crime of conviction.

Second, the Court of Appeals relied on the Washington Supreme Court's opinion in *State v. Armendariz*, a case that held the SRA allows courts to impose no contact orders pursuant to felony convictions that last up to the statutory maximum for the crime of conviction. *Armendariz*, 160 Wn.2d 106. The *W.S.* court reasoned that because a no contact order linked to a felony conviction could last up to the statutory maximum for the crime of conviction, a no contact order linked to a juvenile conviction should also last up to the statutory maximum for the crime of conviction. This court should not rely on *W.S.* because neither of the rationales it used are sufficient to support its holding.

B. The *W.S.* Court Incorrectly Relied on *Armendariz,* A Case That Interpreted the SRA, To Hold That A Juvenile Court May Impose A No Contact Order That Lasts Up To The Statutory Maximum Sentence For The Crime Of Conviction.

1. *Armendariz* Interpreted The SRA.

In *Armendariz* the Washington Supreme Court relied on the SRA to hold that a court may impose a no contact order pursuant to a felony conviction that lasts as long as the maximum sentence for the felony, even if the no contact order lasts longer than the defendant's community

custody. *Armendariz,* 160 Wn. 2d 106. A jury convicted Mr. Armendariz of third degree assault, which is a Class C felony. *Id.* at 111. The trial court sentenced Mr. Armendariz to three months of jail followed by 12 months of community custody. *Id.* at 109. As part of the adjudication of the felony, the trial court also imposed a DVNCO prohibiting Mr. Armendariz from contacting a witness for five years, the statutory maximum for third degree assault. *Id.* The Washington Supreme Court accepted review "as to the trial court's authority to impose a no-contact order effective for a term equal to the statutory maximum for Armendariz's assault offense." *Id. at* 106.

The Supreme Court held that under the SRA a trial court may impose a DVNCO that lasts up to the statutory maximum for the crime of conviction. In so holding, the Court relied primarily on two sets of reasoning, both related to a subsection of the SRA, former RCW 9.94A.505(8). *See Armendariz,* 160 Wn. 2d at 112 ("RCW 9.94A.505(8) is the key statutory provision in this case"). That subsection is now RCW 9.94A.505(9) and reads in relevant part: "As a part of any sentence, the

court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter."[2]

First, the Supreme Court relied on the plain language of former RCW 9.94A.505(8). This subsection of the SRA grants authority to felony sentencing courts to impose crime related prohibitions, including DVNCOs. That grant of authority is separate and independent from the subsection of the SRA that allows felony sentencing courts to impose conditions of community custody. Therefore, a felony sentencing court need not limit the duration of a crime related prohibition to the duration of community custody. Crime-related prohibitions may extend for a period of time that equals the statutory maximum sentence for the crime. *See also State v. Warren,* 165 Wn.2d 17, 32, 195 P.3d 940 (2008) (noting that under the SRA, trial courts may impose crime-related prohibitions for a term of the maximum sentence to a crime); *State v. Cayenne*, 165 Wn.2d 10, 14, 195 P.3d 521 (2008) (same).

Second, the Washington Supreme Court relied on the legislative history behind former RCW 9.94A.505(8). In 2000 the legislature

[2] Since the Washington Supreme Court decided *Armendariz*, the legislature has added a second sentence to this subsection of the SRA: "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

amended the SRA "to make the act easier to use and understand." RCW 9.94A.015. In setting out its intent in making the amendments, the legislature specifically said that it was not making "a substantive change in the sentencing reform act." *Id.* Until the amendments in 2000, former RCW 9.94A.120(20) specifically allowed a felony sentencing court to impose a no contact order "not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement." *Armendariz*, 160 Wn.2d at 115 (quoting former 9.94A.120(20)). As part of the 2000 amendments to the SRA, the legislature replaced the language in former RCW 9.94A.120(20) with the language in former RCW 9.94A.505(8). The Washington Supreme Court reasoned that former RCW 9.94A.505(8) gave felony sentencing courts the same authority that RCW 9.94A.120(20) had: "Consistent with the legislature's intent, we conclude that the elimination of the specific language regarding no-contact orders in former RCW 9.94A.120(20) did not eliminate the authority provided thereby." *Armendariz*, 160 Wn.2d at 116.

2. Because *Armendariz* Interpreted The SRA, Its Reasoning Cannot Support an Analysis of the Juvenile Justice Act.

The reasoning in *Armendariz* does not support the Court of Appeals' conclusion in *W.S.* There is no section within the Juvenile Justice

Act that is equivalent to former RCW 9.94A.505(8) in the SRA. The Juvenile Justice Act contains no independent statutory authority allowing juvenile courts to issue no contact orders or any crime related prohibitions. Further, nothing in the Juvenile Justice Act indicates a legislative intent to extend juvenile courts' sentencing authority beyond age 18.

The Juvenile Justice Act does not provide juvenile courts with authority to issue DVNCOs. A court has no inherent authority to issue a no contact order; its authority to issue such an order is strictly statutory. *State v. Turner*, 118 Wn. App. 135, 139, 74 P.3d 1215 (2003) (footnote omitted) ("A restraining order can be based on various statutes and rules. The ones pertinent here are RCW 26.09.060 and RCW 26.50.060"); *City of Seattle v. May* (Sanders, J. dissenting), 171 Wn.2d 847, 861, 256 P.3d 1161, 1168 (2011) ("Domestic violence protection orders are creatures of statute. The courts have no inherent authority to issue such orders; they have no power to issue protection orders that do not *strictly* comply with the governing statute").

Unlike the SRA, the Juvenile Justice Act contains no statutory provision allowing sentencing courts to issue no contact orders. As a result, the authority of a juvenile court is limited to issuing post-conviction

no contact orders pursuant to RCW 10.99.050(1). That statute allows a no contact order specifically as a condition of the defendant's sentence:

> When a defendant is found guilty of a crime and **a condition of the sentence** restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

RCW § 10.99.050(1) (emphasis added). *See also State v. Schultz*, 146 Wn.2d 540, 547-48, 48 P.3d 301, 304 (2002) (referring to no contact order court issued pursuant to 10.99.050(1) in misdemeanor case as a "sentencing condition"). The juvenile court's jurisdiction ends when a youth reaches the age of 18, and the juvenile court does not have authority to extend jurisdiction beyond the individual's 21st birthday, other than for the purpose of enforcing an order of restitution or penalty assessment. RCW 13.40.300(3). *See also State v. Bushnell*, 38 Wn. App. 809, 811, 690 P.2d 601 (1984) ("Our Supreme Court strictly construes juvenile court jurisdiction. This jurisdiction ends when a youth becomes 18, unless, prior to that birthday, jurisdiction has been extended pursuant to law"). Nothing in RCW 10.99.050(1) authorizes an extension of a juvenile court's authority beyond a juvenile's twenty-first birthday.

The SRA specifically grants courts authority to impose crime-related prohibitions, including post-conviction no contact orders, that last up to the length of the maximum sentence for the crime in felony cases.

No corollary exists in the juvenile Justice Act. Therefore, *Armendariz*, which specifically relied on the SRA, provides no guidance regarding the permissible length of a post-conviction no contact order in a juvenile case. A juvenile post-conviction no contact order should not exceed the length of the court's jurisdiction over the juvenile.

C. The *W.S.* Court Incorrectly Used Legislative History To Hold That A Juvenile Court May Impose A No Contact Order That Lasts Up To The Statutory Maximum Sentence For The Crime Of Conviction.

The *W.S.* court wrongly reasoned that the legislature intended that a DVNCO in a juvenile case last for the maximum sentence of the crime of conviction. While the legislature did include in the Domestic Violence Act declarations of the importance of protecting victims of DV, nowhere did it specify the time period a DVNCO should last or grant juvenile courts extended jurisdiction to enforce DVNCOs.

At the time the legislature passed the Domestic Violence Act in 1979 a statute said that juvenile courts did not have jurisdiction over juveniles beyond their twenty-first birthdays: "In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday." Former RCW 13.40.300(2) (1979). Since 1979 the legislature has twice altered that statute to allow the juvenile court to extend its jurisdiction. First, the

legislature allowed an extension "for the purpose of enforcing an order of restitution."[3] S.S.H.B. No. 2319 (1994). Later, the legislature allowed an extension for the purpose of enforcing a penalty assessment.[4] S.S.B. No. 6244 (2000). Today the statute reads: "In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment." RCW 13.40.300(3). The legislature has not amended current RCW 13.40.300(3) to allow the juvenile court to extend its jurisdiction for the purpose of enforcing a DVNCO.

Only the legislature may extend a court's jurisdiction, and it must do so using specific language. A court may not impose a sentence in excess of its statutory authority. *In re Goodwin*, 146 Wn. 2d 861, 876, 50

[3] *See also* RCW 13.40.192(1) (extension of juvenile court jurisdiction expressly permitted for collection of legal financial obligations, including restitution).

[4] When the legislature changed RCW 13.40.300 to allow juvenile courts to extend their jurisdiction beyond the usual limits for the purpose of enforcing penalty assessments, it also enacted RCW 13.40.198:

> If respondent is ordered to pay a penalty assessment pursuant to a dispositional order entered under this chapter, he or she shall remain under the court's jurisdiction for a maximum of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of a penalty assessment for an additional ten years.

P.3d 618 (2002) (defendant "cannot agree to a sentence in excess of that statutorily authorized" pursuant to a plea bargain because a sentencing court has no authority to impose such a sentence). Further, when the legislature seeks to change the law, it must use "specific language to that end." *State v. Larson*, 184 Wn. 2d 843, 852, 365 P.3d 740 (2015) (intent to use an item to overcome a security system does not make a defendant guilty of retail theft with extenuating circumstances despite language saying a defendant is guilty of that crime if in possession of an item "designed to overcome security systems;" "[h]ad the legislature wanted to go beyond mere possession and criminalize intent to use a device to overcome a security system, it could have included specific language to that end").

In interpreting a statute, a court must first look to its plain meaning: "The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, we give effect to that plain meaning." *State v. Ervin*, 169 Wn. 2d 815, 820, 239 P.3d 354, 356 (2010) (internal quotation marks omitted). If the plain meaning of a statutory scheme is clear, a court may not engage in statutory construction. *State v. Bolar*, 129 Wn.2d 361, 366, 917 P.2d 125 (1996) ("While one might question the wisdom of this statutory scheme . . ., courts are obliged to follow the plain and unambiguous words the

Legislature has chosen. That being the case, and since the statute is clear, we may not engage in statutory construction"). A court may not rely on a statement of legislative intent in a statutory scheme's preamble to override the unambiguous wording of a statute within that scheme. *State v. D.H.*, 102 Wn. App. 620, 627, 9 P.3d 253 (2000). The *W.S.* court relied on a statement of legislative intent in RCW 10.99.010, the preamble to the Domestic Violence Act, and used statutory construction to interpret the unambiguous words of RCW 10.99.050. *W.S.*, 176 Wn.App. at 240-41. RCW 10.99.010 does contain strong language about the seriousness of domestic violence. However, the Domestic Violence Act simply does not contain language extending a juvenile court's jurisdiction for the purpose of enforcing a DVNCO. The legislature has not enacted a statute with specific language saying a juvenile court may issue a DVNCO that exceeds the court's sentencing jurisdiction in other matters. The Court of Appeals may not judicially extend the juvenile court's jurisdiction in the absence of legislative action.

V. CONCLUSION

The authority the Court of Appeals used in *W.S.* to hold that a DVNCO in a juvenile case may last up to the statutory maximum for the

crime does not support its conclusion. This court should not consider *W.S.* controlling authority.

Respectfully submitted this 12th day of September, 2016.

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