35601-9-III

No. 96873-0

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SHANNON BLAKE, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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INDEX

TABLE OF AUTHORITIES

WASHINGTON CASES

FEDERAL CASES

OTHER STATE CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court violated the Fourteenth Amendment's Due Process Clause and the Sixth Amendment, by making a finding of fact in the absence of proof beyond a reasonable doubt and without a jury verdict that increased the penalty beyond the standard range.

2. The trial court imposed an erroneous sentence by requiring Ms. Blake to pay the $200 criminal filing fee even though she is indigent.

3. The strict liability statute for possession of a controlled substance violates due process under the Fourteenth Amendment and article 1, section 3, of the Washington Constitution, by shifting the burden on defendants to prove unwitting possession.

4. The community custody conditions violate due process under the Fourteenth Amendment and article 1, section 3, of the Washington Constitution, because they do not provide a fair warning of the proscribed conduct or provide standards to protect against arbitrary enforcement.

II. ISSUES PRESENTED

1. Did the defendant's waiver of jury trial encompass the chemical dependency finding the trial court made at sentencing? If not, did the trial court's chemical dependency finding violate the due process clause of the Fourteenth Amendment and article 1, section 3, of the Washington Constitution?

2. Was the trial court's imposition of the mandatory $200 filing fee lawful?

3. Does the legislatively enacted possession of controlled substance statute violate the due process clause of the Fourteenth Amendment and article 1, section 3 of the Washington Constitution?

4. Do the community custody conditions imposed by the trial court violate the due process clause of the Fourteenth Amendment and article 1, section 3, of the Washington Constitution?

III. STATEMENT OF THE CASE

The defendant was charged by information in Spokane County Superior Court on October 11, 2016. CP 1-3. An amended information was filed on September 25, 2017, charging the defendant with a single count of possession of a controlled substance. CP 18. The defendant then waived jury trial and proceeded to a bench trial before the Honorable Tony Hazel. CP 19.

At trial, Officer Daniel Cole of the Spokane Police Department testified that he contacted the defendant while assisting in the service of a search warrant at a residence on October 3, 2016. RP 18-19. Ms. Blake was arrested at the scene. RP 40. Officer Cole transported her to jail where she was denied booking due to her high blood pressure. RP 31. While at the jail, the defendant was searched. RP 32. Officer Cole observed the jail staff

remove from the defendant what appeared to be a baggie of methamphetamine. RP 33. In Officer Cole's opinion, the baggie contained a user or single dosage amount of methamphetamine. RP 49. Officer Cole then transported the defendant to the Deaconess ER. RP 34.

Jayne Wilhelm, a forensic scientist from the Washington State Patrol Crime Lab, tested the material found on Ms. Blake and found it to be methamphetamine. RP 51, 55-56, 62-63. The court found the defendant guilty of possession of methamphetamine. RP 109.

At sentencing, the court found the defendant to have a chemical dependency. RP 122. The court stated it did not believe the defendant's claim that she was not a drug addict and felt she had a drug problem. RP 121. The court stated she had a drug problem in the past, and had drug treatment in the past, primarily for Percocet. RP 121. The court sentenced her under the First Offender Option, ordering 12 months of community custody and drug treatment. RP 122.

IV. ARGUMENT

A. THE DEFENDANT'S WAIVER OF JURY TRIAL ENCOMPASSED THE CHEMICAL DEPENDENCY FINDINGS THE TRIAL COURT MADE AT SENTENCING.

In *State v. Trebilcock*, 184 Wn. App. 619, 341 P.3d 1004 (2014), the court held that the defendant's waiver of jury trial encompassed the court finding aggravating factors that led to the court imposing an exceptional

sentence upward. The court found the defendant validly waived her right to a jury trial, acquiesced to the trial court deciding the aggravating factors, and never attempted to revoke her waiver. Similarly, here the defendant validly waived her right to a jury trial, acquiesced to the trial court deciding what sentence to impose, and never revoked her waiver. RP 8-9; CP 19.

A criminal defendant has the right to have a jury decide any aggravating factor that supports an exceptional sentence. *Blakely v. Washington*, 542 U.S. 296, 302, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). A criminal defendant, however, may waive that right. *State v. Hughes*, 154 Wn.2d 118, 133-34, 110 P.3d 192 (2005) (citing *Blakely*, 542 U.S. at 310), *abrogated on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). "[A] record sufficiently demonstrates a waiver of the right to trial by jury if the record includes either a written waiver signed by the defendant, a personal expression by the defendant of an intent to waive, or an informed acquiescence." *State v. Cham*, 165 Wn. App. 438, 448, 267 P.3d 528 (2011) (citing *State v. Stegall*, 124 Wn.2d 719, 729, 881 P.2d 979 (1994); *State v. Wicke*, 91 Wn.2d 638, 641-42, 591 P.2d 452 (1979)). The State bears the burden of establishing a valid waiver, and absent a record to the contrary, the court indulges every reasonable presumption against waiver.

Cham, 165 Wn. App. at 447, 267 P.3d 528. This court reviews de novo the sufficiency of the record to establish a valid waiver. *Id.* at at 447.

In general, trial courts are not required to engage in a full colloquy with the defendant on the record to establish that the defendant knew the relative advantages and disadvantages of waiving a jury. *State v. Stegall*, 124 Wn.2d 719, 725, 730, 881 P.2d 979 (1994) (citing *City of Bellevue v. Acrey*, 103 Wn.2d 203, 211, 691 P.2d 957 (1984)). Only a "personal expression of waiver" from the defendant is required. *Stegall*, 124 Wn.2d at 725. Nonetheless, the State bears the burden of proving a defendant waived their constitutional right knowingly, intentionally, and voluntarily. *Id.* at 724. And the validity of any waiver of a constitutional right depends on the circumstances of each case. *Id.* at 725. In the case at bar, the defendant knowingly, intentionally and voluntarily waived her right to a jury trial, both verbally, and by written waiver. RP 8-9; CP 19. It was then in the trial court's purview to sentence her accordingly, including deciding if the defendant had a chemical dependency.

The trial court's chemical dependency finding did not violate the due process clause of the Fourteenth Amendment or article 1, section 3, of the Washington Constitution.

The defendant asserts that the court's finding of chemical dependency was an aggravating circumstance that required notice and a jury determination. The defendant cites *State v. Siers*, 174 Wn.2d 269,

274 P.3d 358 (2012), in support of this argument. The defendant's reliance on *Siers* is misplaced. *Siers* centered on the adequacy of pretrial notice for aggravating circumstances required by the State. *Id*. at 276-77. Aggravating circumstances are exclusively contained in RCW 9.94A.537.

A finding of chemical dependency by a court, on the other hand, is governed by RCW 9.94A.607. It is not an aggravating circumstance that potentially could increase the defendant's standard range, but merely a sentencing condition. It is not a fact that increased the defendant's maximum sentence thereby violating *Apprendi*. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000). Therefore, the finding of chemical dependency did not increase the defendant's sentence.

Additionally, a defendant's "Sixth Amendment jury trial rights are only implicated when the trial court finds facts to impose an exceptional sentence higher than the standard range sentence." *State v. Giles*, 132 Wn. App. 738, 741-742, 132 P.3d 1151 (2006). Such was not the case here. The court's finding of chemical dependency did not affect the defendant's standard range.

Further, the finding of chemical dependency by the trial court increased the community custody from six months to twelve months. Since the trial court then imposed twelve months of community supervision per the statute, the trial court did not increase the "prescribed statutory

maximum" which requires submission to the jury. *Apprendi*, 530 U.S. at 490. The trial court would have had to impose more than twelve months of community custody, which would require an exceptional sentence, in order to implicate *Apprendi*.

B. THE TRIAL COURT'S IMPOSITION OF THE MANDATORY $200 FILING FEE WAS LAWFUL.

The trial court imposed a $200 filing fee pursuant to RCW 36.18.020(2)(h). RP 124. RCW 36.18.020(2)(h) states:

> (2) Clerks of superior courts shall collect the following fees for their official services:
>
> …
>
> (h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars.

As a general rule, courts treat the word "shall" as presumptively imperative – they presume it creates a duty rather than confers discretion. *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985). The statutory inquiry about a defendant's ability to pay is required only for *discretionary* LFOs. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). In this case, the trial court imposed a $500 victim assessment fee, a $200 criminal filing fee, and a $100 DNA collection fee. RP 124. Under current law, RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541

all mandate the fees regardless of the defendant's ability to pay. Trial courts must impose such fees regardless of a defendant's indigency. *Lundy,* 176 Wn. App. at 102. The $800 ordered for the victim assessment, filing fee, and DNA collection fee, under current law, are mandatory obligations not subject to RCW 10.01.160(3). *Id*. at 102.

The sentencing occurred on September 27, 2017. CP 51. Chapter 269 of the Laws of 2018, at section 6, mandates that a court not impose the $200 filing fee if the court finds the defendant indigent, but does not take effect until June 7, 2018. Until then, the law is the $200 filing fee is mandatory.

Additionally, newly enacted statutes are presumed to operate prospectively. *Matter of Shepard*, 127 Wn.2d 185, 898 P.2d 828 (1995) (citing *Yellam v. Woerner,* 77 Wn.2d 604, 607, 464 P.2d 947 (1970)). Ordinarily, there must be some contrary legislative indication for a statute not to apply prospectively. *Macumber v. Shafer,* 96 Wn.2d 568, 570, 637 P.2d 645 (1981). A court must ask whether the new provision attaches new legal consequences to events completed before its enactment to determine if a statute applies retrospectively. *Landgraf v. USI Film Prods.,* 511 U.S. 244, 269-70, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). A statute is not retroactive merely because it relates to prior facts or transactions where it does not change their legal effect. *State v. Scheffel,* 82 Wn.2d 872, 879,

514 P.2d 1052 (1973). However, every statute which creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective. *Id.* at 878. Chapter 269 of the Laws of 2018 does not create a new obligation, a new duty or a new disability. It still requires a fee, but one the court can waive if it finds the defendant indigent.

A statute will be deemed to apply retroactively if it is remedial in nature and retroactive application would further its remedial purpose. *Macumber*, 96 Wn.2d at 570. A statute is remedial if it relates to "'practice, procedure or remedies, and does not affect a substantive or vested right.'" *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 462-63, 832 P.2d 1303 (1992) (quoting *In re Mota*, 114 Wn.2d 465, 471, 788 P.2d 538 (1990)).

Remedial statutes generally "afford a remedy, or better or forward remedies already existing for the enforcement of rights and the redress of injuries." *Haddenham v. State*, 87 Wn.2d 145, 148, 550 P.2d 9 (1976). The general rule is that a remedial statute may be applied retroactively if such an application will further its purpose. *City of Ferndale v. Friberg*, 107 Wn.2d 602, 605, 732 P.2d 143 (1987); *Macumber*, 96 Wn.2d at 570, 637 P.2d 645; *Johnston v. Beneficial Management Corp. of America*, 85 Wn.2d 637, 641, 538 P.2d 510 (1975). However, Washington courts will not apply a remedial statute retroactively if either a clear legislative intent

for prospective application exists or if applying the statute retroactively would affect a vested right. *In re F.D. Processing*, 119 Wn.2d at 463 (finding that even if the amendment was remedial it could not be given retroactive effect because it affected a perfected security interest which is a vested right); *Miebach v. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d 1074 (1984) (declining to apply a statute retroactively which had a remedial aspect but would "severely impinge upon the vested right given with an order of confirmation"); *Department of Labor & Indus. v. Metro Hauling Inc.*, 48 Wn. App. 214, 218, 738 P.2d 1063 (1987) (holding that the legislative intent was "sufficient to reverse the presumption of retroactivity arising from the remedial nature of the amendments"). However, even if this court finds the statutory change to be both retroactive and remedial, the commonsense application would be only on cases where the convictions occurred after June 7, 2018, regardless of the offense date.

The cases cited by the defendant in support of her position that the newly enacted statute be applied retroactively are all distinguishable. In *State v. Heath*, 85 Wn.2d 196, 196-197, 532 P.2d 621 (1975), the newly enacted statute was passed on July 16, 1973, but the stay order that was the issue of the appeal occurred in August of 1973. In *State v. Grant*, 89 Wn.2d 678, 575 P.2d 210 (1978), the newly enacted statute, RCW 70.96A, the Uniform Alcoholism and Intoxication Treatment Act,

became effective on January 1, 1975. *Id.* at 64. The appeal stemmed from a de novo trial which occurred in Adams County Superior Court on May 9, 1975. *Id* at 684. The triggering event occurred ***after*** the newly enacted statute had been passed.

In *State v. Abraham*, 64 Wn. 621, 117 P. 501 (1911), the purpose of the statutory change was to "enact a curative or validating statute retroactive in its application." *Id*. at 626. In the case at bar, the statutory change was neither.

Finally, the defendant also has an adequate remedy under the new legislation effective June 7, 2018. LAWS OF 2018, ch. 269, §§ 8, 13, 15. Under the new law, if the State initiates a show cause proceeding because of nonpayment, and the court determines that the nonpayment is not willful, the defendant could be relieved of the $200 filing fee:

> [T]he court *may*, and if the court finds that the defendant is indigent as defined in RCW 10.101.010(3) (a) through (c), the court *shall* modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage … for each hour of community restitution. The crime victim penalty assessment … may not be reduced, waived or converted to community restitution hours.

Id. at § 13 (emphasis added).

C. THE LEGISLATIVELY ENACTED POSSESSION OF A CONTROLLED SUBSTANCE STATUTE COMPORTS WITH DUE PROCESS.

The defendant asserts that it is a violation of due process to require her to prove unwitting possession by a preponderance of the evidence. Historically, the courts have held that "[t]he State is not required to prove either knowledge or intent to possess, nor knowledge as to the nature of the substance." *State v. Staley,* 123 Wn.2d 794, 799, 872 P.2d 502 (1994). Simply put, possession is a strict liability crime. *State v. Hernandez,* 95 Wn. App. 480, 484, 976 P.2d 165 (1999) (citing *State v. Vike,* 125 Wn.2d 407, 412, 885 P.2d 824 (1994)). Once the State establishes prima facie evidence of possession, the defendant may, nevertheless, affirmatively assert that his possession of the drug was "unwitting, or authorized by law, or acquired by lawful means in a lawful manner, or was otherwise excusable under the statute." *State v. Morris,* 70 Wn.2d 27, 34, 422 P.2d 27 (1966).

Washington courts adopted the unwitting possession defense to "ameliorate[] the harshness of the almost strict criminal liability our law imposes for unauthorized possession of a controlled substance. If the defendant can affirmatively establish that his 'possession' was unwitting, then he had no possession for which the law will convict." *State v. Cleppe,* 96 Wn.2d 373, 381, 635 P.2d 435 (1981).

A case directly on point is *State v. Bradshaw*, 152 Wn.2d 528, 98 P.3d 1190 (2004). RCW 69.50.603, enacted in 1971 as part of the legislation adopting the Uniform Controlled Substances Act, provides "[t]his chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it." RCW 69.50.603; Laws of 1971, 1st Ex. Sess., ch. 308, § 69.50.603. RCW 69.50.603 applies to the whole chapter and its general purpose.

The Washington legislature passed RCW 69.50.401 and .603 at the same time. Laws of 1971, 1st Ex. Sess., ch. 308, §§ 69.50.401, .603. Although RCW 69.50.603 states that the model uniform act is to be read in conformity with other states, the Washington legislature deleted the "knowingly or intentionally" language that was in the model uniform act when it enacted the mere possession statute. In doing so, the Washington legislature made the elements of our crime of mere possession of a controlled substance in Washington different from the model uniform act's elements. RCW 69.50.603 should not be read to imply a mens rea element into the mere possession statute when the legislature has enacted a statute that deleted the language of the model uniform act. *See State v. Jackson,* 137 Wn.2d 712, 723, 976 P.2d 1229 (1999) (concluding that the

legislature's omission of a provision of the Model Penal Code "was purposeful and evidenced its intent to reject" the language).

The defendant attempts to distinguish *Bradshaw* by stating that it turned on a statutory interpretation, not whether the statute violated due process. However, the due process argument asserted by the defendant was squarely addressed in *State v. Schmeling*, 191 Wn. App. 795, 365 P.3d 202 (2015). The *Schmeling* court reviewed two cases from other jurisdictions that held strict liability crimes violate due process, *United States v. Wulff*, 758 F.2d 1121, 1125 (6th Cir. 1985) and *State v. Brown*, 389 So. 2d 48, 51 (La. 1980). The *Schmeling* court stated, "given our Supreme Court's repeated approval of the legislature's authority to adopt strict liability crimes and the express findings in *Bradshaw* and *Cleppe* that the possession of controlled substances statute contains no intent or knowledge elements," it did not find Schmeling's argument persuasive and held that RCW 69.50.4013 did not violate due process by not requiring the State to prove intent or knowledge in a possession of controlled substance case. *Schmeling*, 191 Wn. App. at 802.

The other cases cited by defendant in support of her position are also distinguishable. In *State v. Eaton*, 143 Wn. App. 155, 177 P.3d 157 (2008), the court distinguished between the strict liability crime of mere possession of a controlled substance and an added enhancement to possession of a

controlled substance while in a county jail. Eaton had been arrested for DUI and a search while at jail led to the discovery of the controlled substance and thus the enhancement. *Id*. at 157. The crux of the argument was the ***involuntary*** nature of the possession in a county jail when the defendant was arrested and transported to the jail while already possessing the controlled substance. *Id*. at 161. The court held one must voluntarily introduce the contraband into the jail. *Id*. at 164.

In *State v. Anderson*, 141 Wn.2d 357, 5 P.3d 1247 (2000), the court held that second degree unlawful possession of a firearm was not a strict liability crime because it could potentially criminalize innocent behavior. *Id*. at 364. Notably, however, the court cited *State v. Rivas*, 126 Wn.2d 443, 452, 896 P.2d 57 (1995), which held that the Legislature may create strict liability crimes. *Id*. at 361. Similarly, in *State v. Warfield,* 119 Wn. App. 871, 883, 80 P.3d 625 (2003), the court also held unlawful possession of a firearm was not a strict liability crime.

It has been the long-standing, clear intent of the Washington legislature that possession of a controlled substance be a strict liability crime. Case law has supported that position, including finding no due process violations. This Court should maintain that position.

D. THE CHALLENGED COMMUNITY CUSTODY CONDITIONS IMPOSED BY THE TRIAL COURT ARE NOT RIPE FOR REVIEW AND DO NOT VIOLATE DUE PROCESS.

1. The imposed community custody conditions are not ripe for review.

At sentencing, the trial court imposed community custody provisions to include giving the defendant's community correction officer discretion in proscribing geographical conditions and requiring the defendant to obey all conditions imposed by the DOC. CP 34. The defendant challenges both of those conditions as being unconstitutionally vague. However, the defendant has not presented any facts that the complained of conditions of community custody have actually been imposed. In *State v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008), the court set out a three-part test to determine whether a vagueness challenge to community custody conditions is ripe for review. The test is: (1) are the issues raised primarily legal, (2) do the issues require further factual development, and (3) is the challenged action final.

The defendant's claim fails all three parts of the *Bahl* test. There is no record that any complained of conditions have been imposed. There is no record that any geographical limitations have been imposed, nor is there any record of the CCO imposing any further conditions that the defendant is required to obey. Therefore, the issue raised is not primarily legal. For the same reason, the issues require further factual development. Finally, the

challenged action is not yet final because future conditions could still be imposed. The conditions are not yet ripe for review.

2. The imposed community custody conditions do not violate due process.

If this court finds the defendant's vagueness challenge is ripe for review, the defendant's claim still fails. A defendant may assert a vagueness challenge to a condition of community custody for the first time on appeal. *Bahl,* 164 Wn.2d at 745. "[T]he due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of the state constitution requires that citizens have fair warning of proscribed conduct." *Id.* at 752. This assures that ordinary people can understand what is and is not allowed and are protected against arbitrary enforcement of the laws. *State v. Sanchez Valencia,* 169 Wn.2d 782, 791, 239 P.3d 1059 (2010).

Community custody conditions are reviewed for abuse of discretion. *State v. Irwin,* 191 Wn. App. 644, 652, 364 P.3d 830 (2015). The abuse of discretion standard applies whether this court is reviewing a crime related community custody condition, or reviewing a community custody condition for being unconstitutionally overbroad or vague. *See Irwin,* 191 Wn. App. at 652, 656; *Sanchez Valencia,* 169 Wn.2d at 791-92 (vagueness); *State v. Cordero,* 170 Wn. App. 351, 373, 284 P.3d 773 (2012) (crime related); *State v. Bahl,* 137 Wn. App. 709, 714-15, 159 P.3d 416 (2007)

(overbreadth), *reversed on other grounds*, 164 Wn.2d 739, 193 P.3d 678 (2008).

A review of applicable statutes is appropriate. RCW 9.94A.703, which sets out community custody conditions, states:

> When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.
>
> (1) Mandatory conditions**.** As part of any term of community custody, the court shall:
>
> …
>
> (b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;

RCW 9.94A.704, which sets out supervision for the Department of Corrections, states:

> (1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.
>
> (2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.
>
> …
>
> (3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:
>
> …
>
> (b) Remain within prescribed geographical boundaries;

…

> (7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

As can be seen, RCW 9.94A.703 authorizes the court to impose community custody conditions, including authorizing the Department of Corrections to impose additional conditions under RCW 9.94A.704. Under RCW 9.94A.704, if the Department imposes additional conditions, it shall instruct the defendant to remain within prescribed geographical boundaries, and, most importantly, notify the defendant ***in writing*** of these conditions.

The guarantee of due process contained in the Fourteenth Amendment to the United States Constitution and article 1, section 3 of the Washington Constitution requires that laws not be vague. *Irwin,* 191 Wn. App. at 652; *Bahl,* 164 Wn.2d at 752-53. A community custody condition is not vague so long as it: (1) provides ordinary people with fair warning of the proscribed conduct, and (2) has standards that are definite enough to "'protect against arbitrary enforcement.'" *See Bahl,* 164 Wn.2d at 752-53, (quoting *City of Spokane v. Douglass,* 115 Wn.2d 171, 178, 795 P.2d 693 (1990)).

A trial court has discretion to impose community custody conditions; it is an improper exercise of this discretion, however, to impose

an unconstitutionally vague condition. *Sanchez Valencia,* 169 Wn.2d at 791-793.

In this case, the trial court simply followed the statutory requirement that ordered the defendant to comply with her CCO's directives. Any future conditions imposed by the CCO are required to be put in writing, providing the defendant of fair notice of what is proscribed, thereby comporting with due process. The defendant has not set forth any claim that the statutory scheme followed by the court (or any specific requirement imposed on her under the scheme) is unconstitutional. This court should decline to review this claim. RAP 2.5(a)(3).

V. CONCLUSION

For the foregoing reasons, the defendant's appeal should be denied.

Dated this 6 day of June, 2018.

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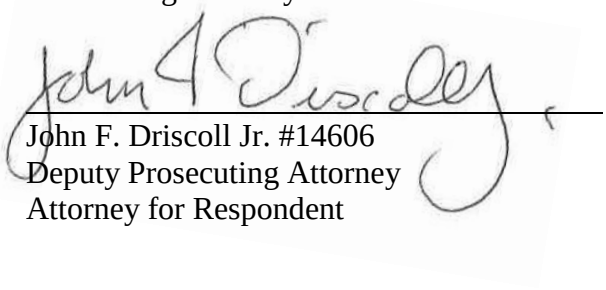

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Respondent, v. SHANNON BLAKE, Appellant.	NO. 35601-9-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on June 6, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Gregory Link and Bridget Grotz
wapofficemail@washapp.org

6/6/2018 **(Date)** Spokane, WA **(Place)** **(Signature)**

SPOKANE COUNTY PROSECUTOR

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