

WASHINGTON SUPREME COURT

State v. Bahl, 164 Wash. 2d 739

193 P.3d 678 (2008) · Decided October 9, 2008

SUMMARY

The Washington Supreme Court held that a defendant may raise a preenforcement vagueness challenge to conditions of community custody on direct appeal when the challenge is sufficiently ripe. The court concluded that Bahl’s challenges were ripe because the issues were primarily legal and withholding review could impose hardship. It further held that several conditions, including restrictions on pornographic materials, were unconstitutionally vague and remanded for resentencing.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Madsen, J.; Alexander, C.J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Owens, J.; Sanders, J.; Stephens, J.
JURISDICTION	Washington
DECIDED	October 9, 2008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from convictions and sentencing conditions of community custody; the Washington Supreme Court reviewed whether Bahl could bring preenforcement vagueness challenges to the conditions.
STANDARD OF REVIEW	The court reviewed the legal questions of ripeness and vagueness de novo. Community-custody conditions are reviewed for manifest abuse of sentencing discretion, and an unconstitutional condition is manifestly unreasonable.
PRECEDENTIAL VALUE	published precedential opinion of the Washington Supreme Court
PARTIES	Eric Bahl v. State of Washington

TOPICS

- sentencing
- void for vagueness
- due process
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a defendant may raise a vagueness challenge to community-custody sentencing conditions for the first time on appeal.
2. Whether a defendant may bring a preenforcement vagueness challenge to community-custody conditions before being accused of violating them.
3. Whether the challenged conditions prohibiting pornographic materials, frequenting businesses dealing in sexually explicit or erotic material, and possessing sexual stimulus material for a particular deviancy were unconstitutionally vague under the Fourteenth Amendment and article I, section 3 of the Washington Constitution.

HOLDINGS

1. A defendant may raise a vagueness challenge to conditions of community custody for the first time on appeal.
2. A defendant may assert a preenforcement vagueness challenge to community-custody sentencing conditions when the challenge is sufficiently ripe.
3. A community-custody condition is unconstitutionally vague if it fails to give ordinary people fair warning of prohibited conduct or fails to provide ascertainable standards to prevent arbitrary enforcement; greater specificity may be required when the condition implicates First Amendment rights.
4. The condition prohibiting Bahl from possessing or accessing pornographic materials, as directed by the supervising community corrections officer, is unconstitutionally vague.
5. The condition prohibiting Bahl from frequenting establishments whose primary business pertains to sexually explicit or erotic material is not unconstitutionally vague.
6. The condition prohibiting possession or control of sexual stimulus material for Bahl's particular deviancy, as defined by the supervising officer and therapist, is unconstitutionally vague.

KEY QUOTATIONS

“Because this is so, the parties’ arguments respecting Bahl’s ability to bring a facial vagueness claim are misplaced.” (at 751)

“We conclude that the restriction on accessing or possessing pornographic materials is unconstitutionally vague.” (at 758)

“Accordingly, the condition is utterly lacking in any notice of what behavior would violate it.” (at 761)

“Preenforcement vagueness challenges can be brought against conditions of community custody, provided the challenges are ripe.” (at 762)

FACTUAL BACKGROUND

Bahl was convicted of second degree rape and first degree burglary after being charged with several additional offenses. The sentencing court imposed community custody conditions prohibiting possession or access to pornographic materials, frequenting businesses primarily dealing in sexually explicit or erotic material, and possession or control of sexual stimulus material for his particular deviancy. Bahl objected that the conditions were unsupported by evidence and later challenged them as vague; the record did not identify any diagnosed deviancy or any prior use of the prohibited materials in his offenses.

PROCEDURAL HISTORY

Bahl was convicted in the trial court of second degree rape and first degree burglary and received community custody conditions restricting pornography, access to sexually explicit or erotic businesses, and sexual stimulus material associated with his particular deviancy. He appealed, arguing that the conditions were vague and overbroad. The Court of Appeals declined to consider the vagueness claims because no violation had yet been alleged, rejected the overbreadth and other claims, and affirmed. The Washington Supreme Court reversed in part and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court for resentencing and correction or reconsideration of the unconstitutional community-custody conditions.

CASES CITED

- State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)
- State v. Moen, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996)
- State v. Jones, 118 Wn. App. 199, 204 n.9, 207-08, 76 P.3d 258 (2003)
- State v. Riles, 135 Wn.2d 326, 347-51, 957 P.2d 655 (1998)
- United States v. Loy, 237 F.3d 251, 256-66 (3d Cir. 2001)
- United States v. Phipps, 319 F.3d 177, 192-94 (5th Cir. 2003)
- United States v. Guagliardo, 278 F.3d 868, 872 (9th Cir. 2002)
- First United Methodist Church v. Hearing Examiner, 129 Wn.2d 238, 255-56, 916 P.2d 374 (1996)
- State v. Farmer, 116 Wn.2d 414, 420, 805 P.2d 200, 812 P.2d 858 (1991)
- City of Spokane v. Douglass, 115 Wn.2d 171, 178-82, 795 P.2d 693 (1990)
- Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)
- Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)
- State v. Riley, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993)
- State v. Sansone, 127 Wn. App. 630, 111 P.3d 1251 (2005)
- United States v. Williams, 444 F.3d 1286, 1306 (11th Cir. 2006), rev'd on other grounds, 553 U.S. 285 (2008)

- State v. Sullivan, 143 Wn.2d 162, 184-85, 19 P.3d 1012 (2001)
- State v. Halstien, 122 Wn.2d 109, 118, 857 P.2d 270 (1993)
- City of Seattle v. Eze, 111 Wn.2d 22, 26, 759 P.2d 366 (1988)
- Will. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-95, 497, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982)
- State v. Ziegenfuss, 118 Wn. App. 110, 113-15, 74 P.3d 1205 (2003)
- State v. Massey, 81 Wn. App. 198, 200-01, 913 P.2d 424 (1996)
- State v. Phillips, 65 Wn. App. 239, 243-44, 828 P.2d 42 (1992)
- State v. Watson, 160 Wn.2d 1, 8, 154 P.3d 909 (2007)
- Farrell v. Burke, 449 F.3d 470, 487 (2d Cir. 2006)
- State v. Nitsch, 100 Wn. App. 512, 519, 997 P.2d 1000 (2000)