80499-1

No. 34563-3-II

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

STATE OF WASHINGTON,
Respondent,

v.

GERALD CAYENNE,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID FOSCUE, JUDGE

BRIEF OF RESPONDENT

H. STEWARD MENEFEE
Prosecuting Attorney
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BY: _____
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If the trial court exceeded its authority by ordering the appellant to not possess any gill nets as condition of appellant's sentence.

STATEMENT OF THE CASE

The appellant was charged by information with two counts of Unlawful Use of Nets to Take Fish in the First Degree. (CP 8-9) The appellant exercised his right to a jury trial on those charges.

The jury trial was held on February 28, 2006, in front of the Honorable David Foscue in the Grays Harbor Superior Court. For the limited purposes of this appeal the facts presented at trial and in the appellant's brief are not in dispute nor are they the bases of the appellant's argument. The State will, therefore, stipulate to the facts as presented by the appellant regarding the trial.

Upon completion of the trial the jury returned a guilty verdict on Count Two, but was unable to render a verdict as to Count One. (CP 14-15) Sentencing was held on August March 1, 2006, and Judge Foscue ordered the appellant to not possess any gill nets as part of the sentence. (3/1/06 RP 5)

ARGUMENT

The court did not exceed its authority by ordering Mr. Cayenne to refrain from possession of gill nets during the period his sentence is in

effect. Under The Sentencing Reform Act of 1981 (SRA), the court may impose crime-related prohibitions as part of a sentence under RCW 9.94A.505(8). "A crime-related prohibition will be reversed only if it is manifestly unreasonable." *State v. Hearn,* 131 Wash.App. 601, 607-608 128 P.3d 139, 141 (2006) *see State v. Riley*, 121 Wash.2d 22, 37, 846 P.2d 1365 (1993)(quoting *State v. Blight*, 89 Wash.2d 38, 41, 569 P.2d 1129 (1977)). The courts have also held that "[n]o causal link need be established between the condition imposed and the crime committed, so long as the condition relates to the circumstances of the crime." *State v. Hearn* at 609 *citing State v. Llama-Villa*, 67 Wash.App. 448, 456, 836 P.2d 239 (1992).

Mr. Cayenne was convicted of Unlawful Use of Nets, and, as part of that conviction, the jury had to find he had previously been convicted of Unlawful Use of Nets. (CP 16-20) The judge made it part of Mr. Cayenne's sentence that he could not possess a gill net during the pendency of his sentence. This quite obviously relates to the circumstances of Mr. Cayenne's crime, and with his history of similar offense cannot be called "manifestly unreasonable."

The appellant's argument relates to cases in which the court was attempting to regulate on-reservation fishing rights. Particularly, *State v. Stritmatter,* 102 Wn.2d 516, 688 P.2d 499 (1984), which the appellant

argues holds that "the exclusive right to fish is a personal right of individual tribe member and not just of the tribe collectively." (Appellant's Brief 5) According to the appellant the *Stritmatter* court overturned a criminal conviction of a tribal member when it found that the regulation improperly infringed upon the tribe's fishing rights. (Appellant's Brief 5) However, this is not relevant in this case. The appellant is not arguing that the underlying conviction should be reversed, and he has not provided any authority or argument that the crime-related prohibition imposed by the court is "manifestly unreasonable" as required by *Hearn.*

CONCLUSION

The trial court did not err in ordering the appellant to not possess gill nets. The court imposed a proper crime-related as part of Mr. Cayenne's sentence as allowed by RCW 9.94A.505(8).

Based on the forgoing facts and law, the appellant has not made his burden and his motion should be denied.

Respectfully Submitted,

By:

KATHERINE L. SVOBODA
Deputy Prosecuting Attorney
WSBA #34097

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

STATE OF WASHINGTON, Respondent, v. GERALD CAYENNE, Appellant.	No.: 34563-3-II **DECLARATION OF MAILING**

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 10th day of October, 2006, I mailed a copy of the BRIEF OF RESPONDENT to Gregory C. Link and David L. Donnan; Washington Appellate Project; 1511 Third Avenue, Suite 701; Seattle, WA 98101 and to Gerald Cayenne; P.O. Box 317; 411 N. Newton; Oakville, WA 98568, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Barbara Chapman

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