Supreme Court No. 99493-5
(COA No. 80879-6-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANDREW ALLEN ECK,

Appellant.

PETITION FOR REVIEW

Sara S. Taboada
Attorney for Appellant

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

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A. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Andrew Eck, petitioner here and appellant below, asks this Court to accept review of a Court of Appeals decision, issued on January 11, 2021, upholding the sentencing court's order requiring him to undergo a particular mental health program. Mr. Eck has attached a copy of this opinion to this petition.

B. ISSUE PRESENTED FOR REVIEW

Sentencing courts cannot impose discretionary community custody conditions unless those conditions directly relate to the crime charged. Here, the sentencing court ordered Mr. Eck to enroll in a therapeutic program that fails to address the circumstances that directly related to Mr. Eck's charged crime. Should this Court accept review because the Court of Appeals erred in holding this treatment modality directly related to the circumstances of Mr. Eck's charged crime? RAP 13.4(b)(1); RAP 13.4(b)(2); RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

After the State charged Mr. Eck with committing two crimes involving his wife, Demetria Murphy, a court entered a no-contact order prohibiting Mr. Eck from contacting her. RP 92-93. Mr. Eck

accumulated numerous misdemeanor violations of that no-contact order for contacting his wife while he was in jail awaiting trial for these two charges. CP 44; RP 95, 121. While the jury acquitted Mr. Eck of the two crimes that resulted in the issuance of the no-contact order, the no-contact order remained in place despite the acquittals and Ms. Murphy's repeated requests for the court to remove the no-contact order. RP 93, 96, 99, 105-06, 120-21.

In 2019, the State charged Mr. Eck with felony violation of a no-contact order after someone reported seeing Mr. Eck in his home with his wife. CP 1-6. Mr. Eck pleaded guilty, and the State and Mr. Eck agreed that both would seek a mitigated sentence. RP 66, 74. However, the State and Mr. Eck disagreed on the length of Mr. Eck's sentence, and they disagreed on the therapy Mr. Eck would receive during his term of community custody. RP 66-68, 110-11. Mr. Eck asked the court to order dual diagnosis (drug and mental health) treatment only, but the State asked the court to impose additional mental health treatment directed at domestic violence. RP 99, 111.

The court ordered Mr. Eck to engage in dual diagnosis treatment, but it also ordered him to complete the Thinking for a

Change program. RP 138. The court opined it would "be helpful" to Mr. Eck, but he maintained it was unnecessary. RP 138.

D. ARGUMENT

This Court should accept review because the sentencing court exceeded its authority when it required Mr. Eck to complete a non-crime-related service during his community custody.

a. Sentencing courts lack the authority to impose affirmative community custody conditions that are unrelated to the defendant's charged crime.

The Sentencing Reform Act (SRA) limits a sentencing court's authority to impose community custody conditions. RCW 9.94A.703, RCW 9.94A.505(9). A sentencing court exceeds its authority when imposes a sentencing condition the SRA fails to authorize. *State v. Murray*, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003). A sentencing court may impose certain prohibitive or affirmative behavioral conditions of community custody, but the SRA mandates that all such conditions be "crime-related." RCW 9.94A.505(9), *see also* RCW 9.94A.703(3)(c)-(d). A condition is crime-related only when it "*directly* relates to the circumstances of the crime of which the defendant has been convicted." RCW 9.94A.030(10) (emphasis added). Moreover, our legislature stated crime-related prohibitions "shall not be construed to mean orders directing an offender affirmatively to participate in

rehabilitative programs or to otherwise perform affirmative conduct." *Id*.

This Court reviews a sentencing court's authority to impose a particular condition de novo. *State v. Button*, 184 Wn. App. 442, 446, 339 P.3d 182 (2014). And this Court's assesses whether a community custody condition is crime-related for an abuse of discretion. *State v. Norris*, 1 Wn. App.2d 87, 96, 404 P.3d 83 (2017). A court abuses its discretion when it imposes a condition based on untenable grounds, for untenable reasons, or if the condition is contrary to law. *State v. Munoz-Rivera*, 190 Wn. App. 870, 890, 361 P.3d 182 (2015). Without substantial evidence that an affirmative condition relates to the crime charged, this Court must strike the condition. *State v. Zimmer*, 146 Wn. App. 405, 413, 190 P.3d 121 (2008).

b. <u>The affirmative condition requiring Mr. Eck to participate in a specific mental health service is not crime-related.</u>

At sentencing, Mr. Eck and members of Mr. Eck's family detailed the circumstances that led to the court imposing a no-contact order prohibiting him from contacting his wife. First, Mr. Eck delivered some background. Mr. Eck and his mother explained that he had some juvenile criminal history due to his turbulent childhood but that he was

able to remain crime-free for 13 years after receiving dual diagnosis treatment for his co-occurring substance abuse and mental health disorder. RP 104, 116-17, 126.

However, Mr. Eck's mental health drastically declined when his brother died in 2017, as the two were very close. RP 115, 118-20. Mr. Eck's brother died of natural causes, but Mr. Eck felt responsible for his death, as his brother lived with him at the time of his passing. RP 118, 120. After this happened, Mr. Eck began to drink excessively and use cocaine. RP 120. He also stopped taking his antidepressants. RP 121.

The court entered a no-contact order after the State instituted charges against Mr. Eck. RP 92-93. These charges stemmed from an incident where Mr. Eck became paranoid after indulging in a four-day binge and told his wife he was going to burn their house down; his wife was not in the home when he made this threat. RP 120-21. The State charged Mr. Eck with arson and with tampering with a witness based on a phone call he made to his wife while in jail, but ultimately, a jury acquitted Mr. Eck of these charges. RP 96, 105-06, 120-21. However, the jury convicted Mr. Eck of six counts of misdemeanor counts of violating a no contact order for calls he made to his wife while he was

in jail awaiting trial. RP 95. Mr. Eck's wife, Demetria Murphy, never asked the court to enter the no-contact order, and she requested to have the no-contact order lifted numerous times. RP 93.

Still, the State charged Mr. Eck with domestic violence felony violation of a court order (predicated on his prior convictions for violating the no-contact order) in 2019 after a relative of Ms. Murphy's reported that Mr. Eck was at their home. CP 1-6. Mr. Eck explained that while the charges the jury acquitted him of were originally designated as domestic violence offenses because they involved his wife, Mr. Eck is not an abuser. RP 106-09. Although what occurred on the date of the purported arson incident scared Ms. Murphy, no ongoing threats or domestic violence issues (unrelated to violations of the no-contact order) have occurred since that date. RP 108-10. Consequently, Mr. Eck told the court he did not believe it was appropriate for it to order him to undergo mental health treatment designed to treat individuals who repeatedly commit domestic violence. He also did not believe he needed the Thinking for a Change treatment program. RP 106. Mr. Eck argued that was "the wrong kind of treatment." RP 111. He also emphasized that "[t]hree kinds of treatment…[was] really starting to push the limits of what a human can do." RP 111.

However, Mr. Eck recognized he needed treatment in order to treat his co-occurring substance abuse disorder and mental health disorder. RP 111. Mr. Eck explained this treatment was appropriate because his co-occurring conditions caused the 2017 incident that led to the no-contact order. RP 112. Mr. Eck admitted that he violated the no-contact order to make up for time he lost with his wife and children, and he further explained that drug treatment could help him establish a "good foundation" moving forward. RP 113, 122.

The court ordered Mr. Eck to undergo a mental health evaluation and treatment together with a substance abuse evaluation treatment, but it also ordered him to undergo the Thinking for a Change program 180 days after his release from jail. CP 46; RP 137. After the court ordered this program, Mr. Eck maintained this program was unnecessary. RP 138.

The court was wrong in ordering Mr. Eck to undergo the Thinking for a Change program because this treatment modality is not directly related to the circumstances of the crime Mr. Eck pleaded guilty to committing. Mr. Eck committed the acts that led to the issuance of the no-contact order after his brother's death re-ignited the co-occurring drug and mental health disorders he treated as a teenager.

Mr. Eck continues to struggle with his co-occurring disorder, which is why he requested treatment to address this particular issue. Indeed, previous treatment designed to treat his co-occurring disorders lead to Mr. Eck living a crime-free life for over a decade.

But the Thinking for a Change program *does not* treat co-occurring disorders. It instead teaches "conflict de-escalation skills" and "coping mechanisms." Alexandra Barton, *Think First and Act Later*, Dep't of Corr. Wash. St. (Jan. 25, 2019).[1] Much of the program addresses anger issues and building empathy towards others. *See* Wash. St. Dep't of Corr., *Think First and Act Later*, YouTube (Jan. 30, 2019).[2] However, neither anger nor a lack of empathy precipitated Mr. Eck's crime.

The sentencing court may have believed Thinking for a Change would benefit Mr. Eck. But a court cannot impose a treatment program simply because it may benefit him. *See State v. Parramore*, 53 Wn. App. 527, 531-32, 768 P.2d 530 (1989) ("Persons may be punished for their crimes and they may be prohibited from doing things which are directly related to their crimes, but they may not be coerced into doing

[1] https://www.doc.wa.gov/news/2019/01252019.htm.
[2] https://www.youtube.com/watch?v=Y18Q6VSM5mQ.

things which are believed will rehabilitate them." (quoting David Boerner, *Sentencing in Washington* §4.6 (1985)).

c. This Court should accept review.

Participation in Thinking for a Change is unrelated to Mr. Eck's conviction. The SRA therefore barred the sentencing court from requiring Mr. Eck to participate in this program. RCW 9.94A.505(9).

Moreover, the court failed to explain how participation in Thinking for a Change related to Mr. Eck's offense. It simply said it believed the program "would be helpful" to him. RP 138. Without first determining that the condition is crime-related, a court may not impose an obligation to receive simply any form of counselling or treatment as a condition of community custody. *See State v. Warnock*, 174 Wn. App. 608, 614, 299 P.3d 1173 (2013).

The court provided no tenable reason for requiring Mr. Eck to complete this program, the program is not directly related to Mr. Eck's crime, and so the Court of Appeals should have stricken the condition. *Munoz- Rivera*, 190 Wn. App. at 890. However, it did not. This Court should accept review.

E. CONCLUSION

Based on the foregoing, Mr. Eck respectfully requests that this Court accept review.

DATED this 10th day of February, 2021.

Respectfully submitted,

/s Sara S. Taboada
Sara S. Taboada – WSBA #51225
Washington Appellate Project
Attorney for Appellant

FILED
1/11/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ANDREW ALLEN ECK, Appellant, v. STATE OF WASHINGTON, Respondent.	)	No. 80879-6-I DIVISION ONE UNPUBLISHED OPINION

MANN, C.J. — Andrew Eck appeals the sentencing court's imposition of a domestic violence program called "Thinking for a Change" as a condition of his community custody. Eck argues that the trial court abused its discretion by imposing Thinking for a Change because the program is unrelated to his crime. We affirm.

I. FACTS

In 2017, Eck damaged the interior of his wife Demetria Murphy's home, smashed her car window, set her bed aflame, and threatened to kill himself with an Airsoft pellet gun. Eck was convicted of six counts of misdemeanor domestic violence and given a no-contact order prohibiting him from being within 1,000 feet of Murphy's home.

On July 20, 2019, King County Sheriff's deputies received a call from Murphy's relative stating that Eck was in Murphy's home and that the relative was concerned for Murphy's safety. Deputies obtained a search warrant for Murphy's home, at which point

Eck surrendered himself outside and was arrested. On October 9, 2019, Eck entered an Alford[1] plea to one count of domestic violence felony violation of a court order. The court imposed an exceptional sentence of 12 months in jail and 24 months of community custody. The court also ordered Eck to obtain substance abuse and mental health treatment, attend grief counseling, and participate in Thinking for a Change as a form of domestic violence treatment.

Eck appeals.

II. ANALYSIS

A. Preservation of Issue for Appeal

As a threshold matter, the State argues that Eck failed to preserve this issue for appeal because he did not object to the Thinking for a Change program at trial. We disagree.

At trial, defense counsel stated:

> So the [S]tate's still asking for [the treatment], and I think the Court already knows from my presentation why we don't think it's appropriate. And it's not just that it's, in my opinion, the wrong kind of treatment, it's that he has a dual diagnosis. He has a substance abuse problem and a mental health problem, and he really needs to focus on those. Two kinds of treatment is a lot. Three kinds of treatment, I think, is really starting to push the limits of what a human can do.

Defense counsel further stated that "[the treatment] seems . . . to be more than what's necessary." As a result of these objections, we review Eck's argument on appeal.

[1] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). In an Alford plea, the accused technically does not acknowledge guilt but concedes there is sufficient evidence to support a conviction. In re Pers. Restraint of Cross, 178 Wn.2d 519, 521, 309 P.3d 1186 (2013).

B. Thinking for a Change Condition

Eck argues that the trial court abused its discretion by imposing his participation in Thinking for a Change as a condition of his community custody. Eck contends the condition was unrelated to the crime charged.

We review a sentencing court's authority to impose a condition of community custody de novo. State v. Button, 184 Wn. App. 442, 446, 339 P.3d 182 (2014). We review whether a community custody condition is appropriately related to a crime for an abuse of discretion. State v. Irwin, 191 Wn. App. 644, 656, 191 P.3d 830 (2015). A sentencing court abuses its discretion "when it is exercised on untenable grounds or for untenable reasons" and if the condition imposed is "manifestly unreasonable." State v. Munoz-Rivera, 190 Wn. App. 870, 890, 361 P.3d 182 (2015); State v. Nguyen, 191 Wn.2d 671, 678, 425 P.3d 847 (2018).

The sentencing court was authorized to impose discretionary community custody conditions as part of a sentence pursuant to RCW 9.94A.703(3). A court may order offenders to "[p]articipate in crime-related treatment or counseling services[,] . . . [p]articipate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community." RCW 9.94A.703(3)(c), (d). Because the sentencing court was authorized by law to order Eck to participate in crime related programs, we review the sentencing court's community custody condition for an abuse of discretion.

Thinking for a Change is a program that provides participants with a process for self-reflection concentrated on uncovering antisocial thoughts, feelings, attitudes, and

beliefs.[2] The sentencing court imposed this program as a result of Eck's domestic violence felony violation of a court order and to assist in mental health evaluation and treatment, substance use evaluation and treatment, and grief counseling.

A court does not abuse its discretion if a reasonable relationship exists between the crime of conviction and the condition of community custody. State v. Irwin, 191 Wn. App. 644, 658-59, 364 P.3d 830 (2015). The court did not abuse its discretion in requiring Thinking for a Change as a condition to Eck's community custody. Eck violated a no-contact order. Requiring Eck to undergo a program that teaches him social skills and self-awareness of how his actions may impact others is not so unrelated as to overcome this standard. Put differently, imposition of this program is not such that no reasonable person would adopt the sentencing court's view. State v. Sutherland, 3 Wn. App. 20, 21, 472 P.2d 584 (1970).

Affirmed.

Mann, C.J.

WE CONCUR:

Andrus, A.C.J.

Verellen J.

[2] Program Profile: Thinking for a Change, OFF. OF JUST. PROGRAMS: CRIMESOLUTIONS (May 4, 2012), https://crimesolutions.ojp.gov/ratedprograms/242.

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 80879-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Ian Ith, DPA
[ian.ith@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit
[PAOAppellateUnitMail@kingcounty.gov]

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: February 10, 2021
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