

69043-4

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NO. 69043-4-1

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

STATE OF WASHINGTON,

Respondent,

v.

KRISTOPHER J. LARSEN-SNYDER,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. Was it an abuse of discretion for the trial court to impose the crime related condition of community custody requiring defendant to participate in a chemical dependency evaluation and fully comply with all recommended treatment?

2. The State concedes that the trial court erroneously imposed 36 months community custody on count 1 when the statute only authorizes 18 months community custody for second degree assault. Is the proper remedy to remand for resentencing consistent with the statutory authority for community custody?

II. STATEMENT OF THE CASE

Defendant, Kristopher James Larsen-Snyder, was charged by amended information with: count 1, Second Degree Assault with Firearm Allegation; count 2, First Degree Unlawful Possession of a Firearm; and count 3, Possession of a Controlled Substance—methamphetamine. CP 84-85; 1RP 40-42.

Following trial the jury found defendant guilty on all three counts and answered affirmatively on the special verdict that defendant was armed with a firearm at the time of the commission of the crime in count 1. CP 23, 24, 26, 27; 2RP 243-246.

Defendant was sentenced to a total of 67 months confinement: 15 months on count 1 plus 36 months for the firearm enhancement; 31 months on count 2; and 12 months on count 3. All counts to be served concurrently, but consecutive to the 36 month enhancement. Defendant was placed on 36 months of community custody on count 1 and 12 months community custody on count 3, with the terms of community custody to run concurrently. As a condition of community custody defendant is required to participate in a chemical dependency evaluation and fully comply with all recommended treatment. CP 3-4, 9-19; 2RP 251-254, 259-262.

III. ARGUMENT

A. THE CONDITION OF COMMUNITY CUSTODY WAS CRIME RELATED.

Defendant argues that the court lacked authority to impose the community custody condition that defendant “shall participate in ... chemical dependency evaluation ... and fully comply with all recommended treatment.” See CP 13; 2RP 253. Defendant bases this argument on his assertion that the court did not find that he had

a chemical dependency under RCW 9.94A.607(1).¹ Appellant's Brief at 4-9.

A sentencing court has discretion to order an offender to participate in crime-related treatment or counseling services as part of any term of community custody. RCW 9.94A.703(3)(c); State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). A "crime-related prohibition" is a court order directly relating to the circumstances of the crime for which the offender was convicted. RCW 9.94A.030(10). The prevention of coerced rehabilitation is the main concern when reviewing crime-related prohibitions. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Otherwise, the assignment of crime-related prohibitions has "traditionally been left to the discretion of the sentencing judge." State v. Parramore, 53 Wn. App. 527, 530, 768 P.2d 530 (1989). A sentence will be reversed only if it is "manifestly unreasonable" such that "no reasonable man would take the view adopted by the trial court." Riley, 121 Wn.2d at 37, citing State v. Blight, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977). In the present case the court's authority to

¹ The statute defendant relies upon, RCW 9.94A.607, was last amended in 1999, prior to the Legislature's 2008 revision of the SRA adding the subheading: Supervision of Offenders in the Community, for RCW 9.94A.700 et. seq. Laws of 2008 c. 231.

impose community custody is found under RCW 9.94A.701(2) for count 1, and RCW 9.94A.701(3)(c) for count 3.

1. The Evidence Was More Than Sufficient To Support A Finding That The Condition Was Crime-Related.

A recurring theme of the trial was defendant's use of methamphetamine. Defendant was charged with possession of a controlled substance. CP 84-85. Evidence was presented that defendant possessed methamphetamine on January 9, 2012. 2RP 119, 138, 158, 182. The jury found defendant guilty of possession of a controlled substance. CP 23; 2RP 244. Defendant admitted both to using methamphetamine and that he had used it on January 9, 2012, prior to the assault. 2RP 179, 185. During closing argument defense counsel acknowledged that defendant has a problem with methamphetamine. 2RP 232.

The condition that defendant participate in a chemical dependency evaluation and fully comply with all recommended treatment is reasonably related to his conviction. That condition falls within the authority granted by RCW 9.94A.703(3)(f). The sentencing court had discretion to impose the crime related condition of community custody.

2. The Court's Failure To Make An Explicit Finding Of Chemical Dependency Is Not Dispositive.

The trial court's failure to make an explicit finding and check the box on the judgment and sentence indicating that defendant had a chemical dependency is not dispositive. State v. Powell, 139 Wn. App. 808, 819-820, 162 P.3d 1180 (2007), reversed on other grounds, 166 Wn.2d 73, 206 P.3d 321 (2009). In addition to possessing methamphetamine, evidence was presented that defendant had consumed methamphetamine before committing the offenses. Both the State and defense commented on defendant substance abuse at sentencing. Defense acknowledged that defendant needed help with his substance abuse and hoped that he could get help while in custody with DOC. 2RP 248-251. The sentencing court's failure to make an explicit finding that defendant had a chemical dependency was not an abuse of discretion.

B. TERM OF COMMUNITY FOR SECOND DEGREE ASSAULT.

The State concedes that the trial court erroneously imposed 36 months of community custody on count 1. CP 13; 2RP 253. The parties and the court mistakenly relied on a score sheet from 2008. CP sub# 45, at 4 (State's Sentencing Memorandum). A trial court may only impose a sentence which is authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999), citing

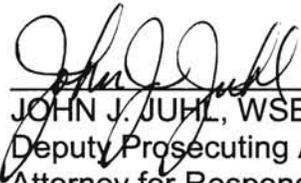
In re Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980). The correct term of community custody for defendant's conviction for second degree assault is 18 months. RCW 9.94A.701(2). "When a sentence has been imposed for which there is no authority in law, the trial court has the Power and the duty to correct the erroneous sentence, when the error is discovered." In re Carle, 93 Wn.2d at 33. The imposition of an unauthorized sentence does not require vacation of the entire judgment or granting of a new trial. In re Carle, 93 Wn.2d at 34. The proper remedy is to remand the cases for the trial court to correct the erroneous term of community custody. State v. Eilts, 94 Wn.2d 489, 496, 617 P.2d 993 (1980); In re Carle, 93 Wn.2d at 34.

IV. CONCLUSION

For the reasons stated above, conditions of community custody should be affirmed. The case should be remanded for resentencing defendant to the correct term of community custody for count 1.

Respectfully submitted on January 23, 2013.

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