No. 45929-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

V.

CHRISTOPHER E. THOMPSON, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Amber L. Finlay

No. 13-1-00241-8

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

A. STATE'S RESTATEMENT OF APPELLANT'S ASSIGNMENT OF ERROR.....1

B. STATE'S COUNTERSTATEMENT OF ISSUE PERTAINING TO APPELLANT'S ASSIGNMENT OF ERROR.....1

Because the community custody condition at issue in this case is not expressly authorized by statute and is not directly related to the crime of conviction, the State concedes that the condition should be deleted from Thompson's judgment and sentence.

C. FACTS AND STATEMENT OF CASE.....1

D. ARGUMENT 1

E. CONCLUSION.....4

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TABLE OF AUTHORITIES

Page

State Cases

State v. Armendariz,
160 Wn.2d 106, 156 P.3d 201 (2007).....2

State v. Bahl,
164 Wn.2d 739, 193 P.3d 678 (2008).....2

State v. Barnett,
139 Wn.2d 462, 987 P.2d 626 (1999).....2

State v. Jones,
118 Wn. App. 199, 76 P.3d 258 (2003).....2, 3, 4

Statutes

RCWA 9.94A.030(10).....3, 4

RCWA 9.94A.607(1).....3

RCWA 9.94A.703 3

Court Rules

RAP 10.3(b).....1

Mason County Prosecutor
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360-427-9670 ext. 417

A. STATE'S RESTATEMENT OF APPELLANT'S ASSIGNMENT OF ERROR

The trial court erred in imposing a community custody condition prohibiting Thompson from frequenting places whose primary business is the sale of liquor.

B. STATE'S COUNTER-STATEMENT OF ISSUE PERTAINING TO APPELLANT'S ASSIGNMENT OF ERROR

Because the community custody condition at issue in this case is not expressly authorized by statute and is not directly related to the crime of conviction, the State concedes that the condition should be deleted from Thompson's judgment and sentence.

C. FACTS AND STATEMENT OF THE CASE

The State accepts Thompson's statement of facts for the purpose of analyzing the issue on appeal. RAP 10.3(b).

D. ARGUMENT

Thompson was arrested and charged with possession of a controlled substance, methamphetamine, after he passed through a weapons screening station at the courthouse put his methamphetamine in a

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360-427-9670 ext. 417

tray to be passed through an x-ray machine. RP 40-44; CP 61. After a jury trial, the jury returned a guilty verdict. RP 145; CP 36. At sentencing, as a part of the judgment and sentence the trial court ordered a term of community custody and, as a condition of community custody, ordered as follows: "The defendant shall not go into bars, taverns, lounges, or other places whose primary business is the sale of liquor." CP 22. A review of the record shows than neither alcohol nor bars, taverns or lounges contributed in any manner to the crime of conviction. No citation to the record was located where Thompson objected to the condition now at issue on appeal.

A defendant may challenge an illegal or erroneous sentence for the first time on appeal. *State v. Bahl,* 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *State v. Jones*, 118 Wn. App. 199, 204, 76 P.3d 258 (2003). A trial court may only impose a sentence that is authorized by statute. *State v. Barnett,* 139 Wn.2d 462, 464, 987 P.2d 626 (1999). Whether a trial court exceeded its statutory authority in imposing a community custody condition is reviewed de novo on appeal. *State v. Armendariz,* 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

In addition to statutorily mandated community custody conditions, Washington sentencing statutes provide a trial court with discretion to

Mason County Prosecutor
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360-427-9670 ext. 417

impose crime-related prohibitions. RCWA 9.94A.703. The condition at issue in the instant case is not among the statutorily mandated or waivable conditions. RCWA 9.94A.703(1), (2). Conditions that do not reasonably relate to the circumstances of the crime, the risk of reoffense, or public safety are unlawful, unless explicitly permitted by statute. *See Jones*, 118 Wn. App. at 207–08.

Nor is the condition at issue in the instant case specifically allowed as a specified discretionary condition under RCWA 9.94A.703(3)(a)-(e). Thus, the condition at issue is not a lawful condition unless it was imposed in order to enforce "crime-related prohibitions" as authorized by RCWA 9.94A.703(3)(f). The term...

> "[c]rime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

RCWA 9.94A.030(10).

Under RCWA 9.94A.607(1), if the sentencing court finds that the defendant has a chemical dependency that contributed to the offense, the court may order the offender to "perform affirmative conduct reasonably

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Shelton, WA 98584
360-427-9670 ext. 417

related to the circumstances of the crime for which the offender has been convicted...." In the instant case, the trial court found that Thompson "has a chemical dependency that has contributed to the offense." CP 11. But the only evidence in the record to support this finding is evidence of methamphetamine addiction. And the definition of the term "[c]rime-related prohibition" under RCWA 9.94A.030(10) limits the sentencing court's authority to construe the term in a manner to allow the condition at issue in this case.

There is no evidence that alcohol or the patronage of bars, taverns, or lounges contributed to Thompson's crime of possession of methamphetamine. Therefore, the community custody condition prohibiting him from visiting bars, taverns, or lounges should be struck from his judgment and sentence. *Jones*, 118 Wn. App., 204.

E. CONCLUSION

Because there is no evidence that Thompson's patronage of bars, taverns, or lounges is directly related to the crime of conviction, and because there is otherwise no express statutory authorization for a community custody condition that prohibits Thompson from visiting bars,

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taverns, or lounges, the condition should be struck from Thompson's judgment and sentence in the instant case.

DATED: October 1, 2014.

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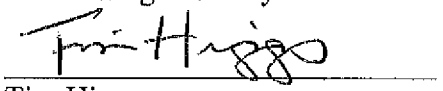
Prosecuting Attorney



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