

NO. 48046-8-II

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

STATE OF WASHINGTON, Respondent

v.

WILLIAM RONDAL STEWART, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-00756-6

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. Stewart is not entitled to withdraw his guilty plea.**
- II. The judgment and sentence should be amended to remove the community custody condition.**
- III. The judgment and sentence should be amended to comply with RCW 9.94A.701 (9).**

STATEMENT OF THE CASE

The State accepts Stewart's Statement of the Case.

ARGUMENT

- I. Stewart is not entitled to withdraw his plea.**

The defendant seeks to withdraw his guilty plea, claiming that the State breached the plea agreement by not objecting to a condition of community custody that was sought by the Department of Corrections in the PSI. This claim fails.

First, the offer form in this case, which formed the basis of the agreement between the parties, specifically contemplates that additional conditions, beyond those expressly stated in the offer form, could be sought by the State. The offer form attached to the Statement of Defendant on Plea of Guilty contained section titled "OTHER CONDITIONS OF SUPERVISION AND AGREEMENT." CP 19. Immediately below that

caption, the form states: “(This list is non-exclusive—the State is free to recommend other usual conditions.)” CP 19. Thus, Stewart pleaded guilty pursuant to an agreement containing a clause allowing the State to ask for additional, as-yet-unspecified conditions. CP 11, 19. The State did not breach the plea agreement by taking no position on the conditions sought by DOC in the PSI.

Second, recommendations made by a community corrections officer are not considered part of the negotiation between the prosecuting attorney and the defendant:

The CCO preparing the presentence investigation report is a neutral and independent participant in the sentencing process; he or she acts not as an agent of the State of Washington but on behalf of the independent judiciary. Because the CCO is not functioning as the State’s agent when preparing the presentence report, the DOC is not a party to the plea agreement entered into by the prosecutor’s office and is not bound by it.

State v. Harris, 102 Wn.App. 275, 287, 6 P.3d 1218, 1225 (2000), *aff’d sub nom. State v. Sanchez*, 146 Wn.2d 339, 46 P.3d 774 (2002), as amended (May 13, 2002).

In this case, the prosecuting attorney did not breach the plea agreement by declining to take a position on the request of the CCO that the defendant be prohibited from possessing sexually explicit material as

defined in RCW 9.68.130 (2). Stewart should not be permitted to withdraw his plea.

II. The judgment and sentence should be amended to remove the community custody condition.

The trial court erred in imposing a condition of community custody that was not crime-related. There was no evidence in the record before the trial court that the viewing or use of sexually explicit material contributed to the crime, or that the defendant used such materials during the crime, in preparation for the crime, or as a result of the crime. *State v. Kinzle*, 181 Wn.App. 774, 785, 326 P.3d 870 (2014). This condition should be stricken in an order amending the judgment and sentence

III. The judgment and sentence should be amended to comply with RCW 9.94A.701 (9).

The trial court erred in imposing a term of community custody that, if served in total, would exceed the maximum penalty for the offense when combined with the term of incarceration. The maximum available community custody term, given the 116 month term of incarceration imposed on the defendant, was four months. See RCW 9.94A.701 (9). See *State v. Hernandez*, 185 Wn.App. 680, 342 P.3d 820, *review denied*, 185 Wn.2d 1002, 366 P.3d 1245 (2016). The term of community custody

should be reduced to four months in the order amending judgment and sentence

CONCLUSION

Stewart should not be allowed to withdraw his plea. His judgment and sentence should be amended in the manner reflected above.

DATED this 19th day of April 2016.

Respectfully submitted:

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