

NO. 48065-4-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ALLEN CHAGLUAK BAKER,

Appellant.

RESPONDENT'S BRIEF

RYAN JURVAKAINEN
Prosecuting Attorney
AILA R. WALLACE/WSBA 46898
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
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I. REPLY TO ASSIGNMENTS OF ERROR

The defendant was not erroneously required to undergo a substance abuse evaluation as the judge's findings in combination with the type of crime and the defendant's statements were a sufficient basis for the requirement.

II. STATEMENT OF THE CASE

The State agrees with the factual and procedural history as set forth by the Defendant.

III. ARGUMENT

The defendant was not erroneously required to undergo a substance abuse evaluation as the judge's findings in combination with the type of crime and the defendant's statements were a sufficient basis for the requirement.

RCW 9.94A.703 sets out conditions of community custody that are mandatory, waivable, and discretionary by the court. One of the discretionary conditions the court may order an individual to comply with is to participate in rehabilitative programs 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)(d). Before a court may require an offender to participate in rehabilitative programs, the court must find that the offender has a chemical dependency that contributed to the offense. RCW 9.94A.607.

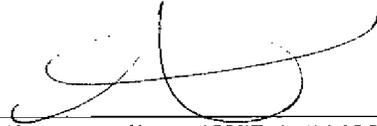
In this case, the Judgement and Sentence included the following language: “The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.” The box next to that language was left blank. However, it is the State’s position that the sentencing judge’s statements upon sentencing and the defendant’s own allocution support a finding that the defendant has such a chemical dependency. The court’s failure to check the box was merely a scrivener’s error.

First, the court noted that “probably the most important thing is the alcohol.” The court went on to state that if the defendant gets his alcohol usage under control, it will help with the defendant’s homelessness. RP 31. In other words, the defendant’s chemical dependency regarding alcohol affected his homelessness, which led him to be in front of the theatre charging his cell phone. Therefore, ordering the defendant to obtain a chemical dependency evaluation is reasonably related to the circumstances of the offense, as required by RCW 9.94A.703(3)(d).

Additionally, the defendant acknowledged that he has a chemical dependency by saying that his main goal is to immerse himself in treatment. RP 30. The judge’s statements, combined with the defendant’s admission to needing treatment and the nature of the charge, are sufficient to support a requirement that the defendant obtain a chemical dependency evaluation and treatment. Therefore, the appeal should be denied.

However, if this court finds error, the appropriate remedy in this case is to remand for the trial court to make a finding regarding chemical dependency.

Respectfully submitted this 24th day of February, 2015.

A handwritten signature in black ink, appearing to read 'Aila R. Wallace', written over a horizontal line.

Aila R. Wallace, WSBA #46898
Attorney for the State

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on February 29th, 2016.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTOR

February 29, 2016 - 4:41 PM

Transmittal Letter

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Court of Appeals Case Number: 48065-4

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