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Court of Appeals
Division II
State of Washington

NO. 50226-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

ELLIOT CRAM,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable John C. Skinder, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

Glinski Law Firm PLLC
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

Issue pertaining to assignment of error 1

B. STATEMENT OF THE CASE 1

C. ARGUMENT 3

THE TRIAL COURT LACKED AUTHORITY TO ORDER DOMESTIC VIOLENCE TREATMENT AS A CONDITION OF COMMUNITY CUSTODY 3

D. CONCLUSION 6

TABLE OF AUTHORITIES

Washington Cases

State v. Jones, 118 Wn. App. 199, 76 P.3d 258 (2003) 5

State v. Roggenkamp, 153 Wn.2d 614, 106 P.3d 196 (2005) 3, 4

State v. Warnock, 174 Wn. App. 608, 299 P.3d 1173 (2013)..... 3, 5

Statutes

former RCW 9.94A.505(9) 5

former RCW 9.94A.715(2)(b) 5

RCW 9.94A.703(3)..... 2, 4, 6

RCW 9.94A.703(4)(a) 1, 2, 3, 6

A. ASSIGNMENT OF ERROR

The trial court lacked authority to order domestic violence treatment as a condition of community custody.

Issue pertaining to assignment of error

Appellant was convicted of second degree assault, unlawful imprisonment, and felony harassment, and the jury entered special verdicts finding that appellant and the victim were members of the same family or household. As a condition of community custody, the court ordered appellant to participate in a domestic violence perpetrator program. Where RCW 9.94A.703(4)(a) authorizes the sentencing court to order an offender convicted of a domestic violence offense to participate in a domestic violence perpetrator program only if the offender or the victim has a minor child, and where there was no evidence that either appellant or the victim has a minor child, must the order for domestic violence treatment be stricken?

B. STATEMENT OF THE CASE

The Thurston County Prosecuting Attorney charged appellant Elliot Cram with second degree assault, third degree assault, unlawful imprisonment, and felony harassment, each charge containing a domestic violence allegation. CP 19-20. The case proceeded to jury trial before the

Honorable John Skinder. The jury found Cram not guilty on the third degree assault charge but entered guilty verdicts on the remaining offenses. CP 163, 165, 167, 169. The jury returned special verdicts finding that Cram and the victim were members of the same family or household. CP 164, 168, 170.

At sentencing the State asked the court to order Cram to complete domestic violence treatment as a condition of community custody. 6RP[1] 20. The defense objected, arguing that under RCW 9.94A.703(4)(a), the court is authorized to order domestic violence treatment only if the defendant or the victim has a minor child. 6RP 27; CP 12-14. The State conceded that there was no evidence either Cram or the victim had a minor child but argued that the court had authority to order domestic violence treatment because Cram was convicted of a domestic violence offense. 6RP 20-21. The court determined it had authority under RCW 9.94A.703(3) to order Cram to participate in domestic violence treatment as a rehabilitative program. 6RP 37. The Judgment and Sentence orders Cram to complete a "Washington State certified and WAC compliant domestic violence perpetrator's treatment program" as a condition of community custody. CP 212.

[1] The Verbatim Report of Proceedings is contained in six volumes, designated as follows: 1RP—2/21/17; 2RP—2/28/17 and 3/1/17; 3RP—3/2/17 and 3/3/17; 4RP—3/14/17; 5RP—3/21/17; 6RP—4/11/17.

Cram filed this timely appeal. CP 222-23.

C. ARGUMENT

THE TRIAL COURT LACKED AUTHORITY TO ORDER DOMESTIC VIOLENCE TREATMENT AS A CONDITION OF COMMUNITY CUSTODY.

The trial court's authority to impose a condition of community custody is derived solely from statute. *State v. Warnock*, 174 Wn. App. 608, 611, 299 P.3d 1173 (2013). Whether the trial court has statutory authority to impose a community custody condition is reviewed *de novo*. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005).

The Sentencing Reform Act grants the trial court discretion to order a defendant convicted of a domestic violence offense to participate in a domestic violence perpetrator program as a condition of community custody under specified circumstances:

> In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

RCW 9.94A.703(4)(a).

These circumstances are not present in this case. Although the jury entered special verdicts indicating that Cram's offenses were crimes of domestic violence, there was no evidence that either Cram or the victim

has a minor child. Thus, the statute did not authorize the court to order Cram to complete a domestic violence perpetrator program.

The court below determined that it had authority to order domestic violence treatment as a rehabilitative program. 6RP 37. The court was mistaken.

It is true that under RCW 9.94A.703(3)[2], the court is authorized to require an offender, as a condition of community custody, to "[p]articipate in crime-related treatment or counseling services" and 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." But statutes must be construed so that all the language used is given effect, with no portion rendered superfluous. *Roggenkamp*, 153 Wn.2d at 624. Because subsection (4)(a) of the statute specifically sets forth the circumstances under which domestic violence treatment may be ordered, subsection (3) cannot be read so as to negate

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[2] RCW 9.94A.703(3) provides as follows:
(3) Discretionary conditions. As part of any term of community custody, the court may order an offender to:
(a) Remain within, or outside of, a specified geographical boundary;
(b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;
(c) Participate in crime-related treatment or counseling services;
(d) Participate 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;
(e) Refrain from possessing or consuming alcohol; or
(f) Comply with any crime-related prohibitions.

that provision. *See Warnock*, 174 Wn. App. at 612 (where SRA specifically authorizes an order for chemical dependency treatment only if the court finds chemical dependency contributed to offense, court lacks authority to impose condition without the required finding); *State v. Jones*, 118 Wn. App. 199, 210, 76 P.3d 258 (2003) (harmonizing statutes so that no part is rendered superfluous).

In *Jones*, this Court considered whether the trial court had authority to order the defendant to participate in mental health treatment and counseling. The Court noted that the SRA permitted sentencing courts to order mental health treatment as a condition of community custody only when certain procedures were followed, including obtaining a presentence report or mental status evaluation and determining that mental illness contributed to the offense. *Jones*, 118 Wn. App. at 209 (citing former RCW 9.94A.505(9)). The Court also noted that former RCW 9.94A.715(2)(b) authorized the sentencing court to order rehabilitative programs or affirmative conduct reasonably related to the circumstances of the offense, the risk of reoffending, or the safety of the community. If, however, mental health treatment could be imposed as "affirmative conduct" without a determination, based on presentence report or mental status evaluation, that mental illness contributed to the offense, then former RCW 9.94A.715(2)(b) would negate and render

superfluous the requirements of former RCW 9.94A.505(9). To harmonize the statutes, the Court held that mental health treatment reasonably relates to the risk of reoffending only if the sentencing court obtains a presentence report or mental status evaluation and finds the offender's mental illness influenced the offense. *Jones*, 118 Wn. App. at 210.

The same analysis applies here. If the sentencing court were authorized to impose domestic violence treatment under RCW 9.94A.703(3) any time domestic violence reasonably related to the offense, then the requirements of subsection (4)(a) would be rendered superfluous. The only way to harmonize these statutory provisions is to hold that domestic violence treatment constitutes crime related treatment or a rehabilitative program only if the offender or the victim has a minor child.

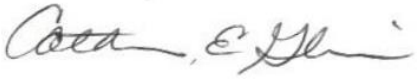
Because the conditions of RCW 9.94A.703(4)(a) were not established, the court lacked authority to order domestic violence treatment. The order must be stricken from Cram's judgment and sentence.

D. CONCLUSION

The trial court lacked authority to order domestic violence treatment, and the order must be stricken from Cram's judgment and sentence.

DATED October 5, 2017.

Respectfully submitted,



_____
CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in *State v. Elliot Cram,* Cause No. 50226-7-II as follows:

Elliot Cram DOC# 849755
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

_____
Catherine E. Glinski
Done in Manchester, WA
October 5, 2017

GLINSKI LAW FIRM PLLC

October 05, 2017 - 3:26 PM

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