

FILED
Court of Appeals
Division II
State of Washington
12/29/2017 3:06 PM

No. 50226-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

ELLIOTT CRAM
Appellant.

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

The Honorable John C. Skinder
Cause No. 16-1-02187-34

BRIEF OF RESPONDENT

Joseph J.A. Jackson
Attorney for Respondent

2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

TABLE OF CONTENTS

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

B. STATEMENT OF THE CASE 1

C. ARGUMENT 4

1. The trial court had the statutory authority to order domestic violence treatment and did not abuse its discretion by ordering that Cram completed a domestic violence perpetrator program while on community custody for three felony domestic violence offenses..... 4

D. CONCLUSION..... 12

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

<u>State v. Delgado</u> 148 Wn.2d 723, 733, 63, P.3d 792 (2003)	7
<u>State v. J.P.</u> 149 Wn.2d 444, 450, 69, P.3d 318 (2003)	7
<u>National Elec. Contractors Ass'n v. Riveland</u> 138 Wn.2d 9, 19, 978, P.2d 481 (1999)	7
<u>State v. Roggenkamp</u> 153 Wn.2d 614, 621, 106, P.3d 196 (2005)	5
<u>State v. Sanchez Valencia</u> 169 Wn.2d 782, 793, 239, P.3d 1059 (2010)	5
<u>State v. Vela</u> 100 Wn.2d 636, 641, 673, P.2d 185 (198)	7

Decisions Of The Court Of Appeals

<u>State v. Jones</u> 118 Wn. App 199, 76 P.3d 258 (2003).....	7-9
<u>State v. O'Cain</u> 144 Wn. App 772, 775, 184 P.3d 1262 (2008)	5
<u>State v. Rudolph</u> No. 49126-5-II, 2017 Wash. App. LEXIS 2626 2017 WL 559389 (Div. II, 2017)	9, 10
<u>State v. Soria-Nanamkin</u> No. 3246-3-III, 2015 Wash. App. LEXIS 2750 (Div. III, 2015).....	10
<u>State v. Warnock</u> 174 Wn. App 608, 611, 299 P.3d 1173 (2013).....	5

Statutes and Rules

GR 14.1.....	9
RCW 9.94A.703	4-11
RCW 10.99.010.....	5
RCW 10.99.020.....	6, 11
SENTENCING REFORM ACT (SRA)	8, 9
2007 WA HOUSE BILL 2719	8

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the trial court has authority to order an offender, convicted of crimes of domestic violence, to complete domestic violence treatment.

B. STATEMENT OF THE CASE.

Diane Hendry had been in a relationship with Elliot Cram for four years. 1 RP 41. Diane indicated, "Elliot uses words and intimate things in our relationship to twist them up and hurt, and he – he can escalate from there to physical violence." 1 RP 44. On December 13, 2016, Hendry asked Cram for help cleaning up and "he got angry and said all he wanted to do was watch a movie." 1 RP 42, 45. At a point, he "began to get physical" and put his hands on Hendry's wrists. 1 RP 46-47. Hendry tried to pull away and started screaming hoping that someone would hear her. 1 RP 47.

Cram came at Hendry in an aggressive manner and backed her toward the door, at which point she tried to call for the dogs and Cram put his hands on her grabbing her arms. 1 RP 50. Hendry indicated that during the struggle, Cram put his arm up around her neck and squeezed and "everything went black." 1 RP 51. Hendry was able to leave the trailer and later returned in attempt to get the dogs. 1 RP 53, 54. Hendry indicated that Cram "physically launched at" her and pushed her very hard towards the bed. 1 RP

56. Hendry indicated, "I kept trying to go out, trying to go out, and he was pushing – turned me around to face the bed." 1 RP 57. Hendry testified that she struggled with Cram, "kicking and fighting," but he "wouldn't let go." 1 RP 58. She stated, "He wouldn't let go of me. When I tried to move one way, he grabbed me and pushed me back the other way. I just couldn't get around him anymore." Id.

Hendry made it to the living room, and Cram dropped down on her and started to press with his knee in her ribs. 1 RP 59. Hendry stated that Cram picked her up and pushed her to the door and physically threw her out on to the ground where a rock hit her head. 1 RP 61. She stated he then picked her up, with one hand on her hair and on her back and threw her back into the trailer. Id.

As some point, Hendry grabbed for her cellphone and Cram took it from her hands and dialed 911, and threw the phone on the bed. 1 RP 63. Cram then had his knee on the back of her leg, and his hands on the back of her neck while pulling her hair and stated, "I will tear your face off with my teeth and I will cut you into little pieces and I will spread your pieces all over the field." 1 RP 63. During the statement, Hendry indicated he had a fire axe next to him.

Hendry indicated that she thought he was “really going to chop [her] up with the axe.” 1 RP 64. Hendry was able to grab her phone and noticed that 911 was still on the screen as having been dialed. She stated that Cram saw that and became angry that she “called the cops.” 1 RP 65. A portion of the events was recorded by 911, during which it was revealed that a hammer was used during the events. 1 RP 69. Hendry testified that Cram used the hammer to hit her foot. 1 RP 70.

Thurston County Sheriff’s Deputies responded to the residence. 1 RP 127. Thurston County Deputy Per Perez made contact with Cram at the residence and noticed minor injuries to his arms and fresh blood on his sleeves. 1 RP 129. Deputy Perez located a female sitting on the edge of the bed who appeared very distraught and fearful and appeared to be in pain. 1 RP 130. He also collected a ball peen hammer and an axe from the residence. 1 RP132.

Cram was charged with Assault in the Second Degree, Domestic Violence, Assault in the Third Degree, Domestic Violence, Unlawful Imprisonment, Domestic Violence, and Felony Harassment, Domestic Violence. CP 19-20. At trial, the jury found Cram guilty of Assault in the Second Degree, Unlawful

Imprisonment and Felony Harassment, but acquitted him of the Assault in the Third Degree charge. CP 163, 165, 167, 169. The jury returned special verdicts finding that Cram and Hendry were family or household members on each of the charges that he was convicted of. CP 164, 168, 170.

At sentencing, the trial court imposed 17 months on the assault in the second degree count, 12 months on the unlawful imprisonment and 12 months on the felony harassment. The Court also imposed community custody for 18 months with the condition that Cram complete domestic violence treatment. Verbatim Report of Proceedings, April 11, 2017 (6 RP), 37-38; CP 209-218.

C. ARGUMENT.

1. **The trial court had the statutory authority to order domestic violence treatment and did not abuse its discretion by ordering that Cram completed a domestic violence perpetrator program while on community custody for three felony domestic violence offenses.**

The sole issue raised on appeal is whether RCW 9.94A.703(4) prohibits a trial court from ordering a domestic violence offender to complete domestic violence treatment in a case where a child was not involved in the offense. The legislature has recognized the importance of treating domestic violence as a

serious crime against society and assuring that victims of domestic violence are afforded the maximum protection from abuse that the law and those who enforce the law can provide. RCW 10.99.010.

The appellate courts review the imposition of a community custody condition for abuse of discretion. State v. Sanchez Valencia, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010). A trial court may impose a sentence condition that is required or permitted by law. State v. O’Cain, 144 Wn.App. 772, 775, 184 P.3d 1262 (2008). The trial court’s authority to impose a condition of community custody is derived solely from the statute. State v. Warnock, 174 Wn.App. 608, 611, 299 P.3d 1173 (2013). Whether the trial court has 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 legislature has provided the courts with discretion to impose community custody conditions that require the defendant to participate in rehabilitative programs related to the crime. RCW 9.94A.703(3)(d). The legislature has also authorized the courts to order an offender to participate in crime-related treatment or counseling services. RCW 9.94A.703(3)(c). Generally, a discretionary condition should be

supported by evidence in the record that the condition is crime related. O’Cain, 144 Wn.app. at 775.

In this case, Cram was convicted of Assault in the Second Degree, Domestic Violence; Unlawful Imprisonment, Domestic Violence; and Harassment, Domestic Violence. CP 163, 164, 167, 168, 169, 170. “Domestic Violence” includes, but is not limited to, a list of offenses including Assault in the Second Degree and Unlawful Imprisonment. RCW 10.99.020(5).

Here, the trial court was well within its discretion when it ordered Cram to participate in domestic violence treatment as a rehabilitative program pursuant to RCW 9.94A.703(3). 6 RP 37; CP 212. Cram was convicted of crimes of domestic violence and domestic violence treatment is clearly a crime-related rehabilitative program.

Cram argues that RCW 9.94A.703(4)(a) limits the trial court’s ability to impose domestic violence treatment to situations where either the offender or the victim of the offense has a minor child. RCW 9.94A.703(4) authorizes special conditions, stating:

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).

Cram argues that RCW 9.94A.703(4)(a) is more restrictive than RCW 9.94A.703(3) and that this court should read the statute as limiting the trial court's ability to impose domestic violence treatment. This interpretation of the statute is contrary to the clear legislative intent to treat domestic violence offenses seriously and ensure maximum protections to victims of domestic violence abuse. Moreover, such a reading would lead to an absurd result where a defendant convicted of domestic violence could not be ordered to complete domestic violence treatment.

The court's "primary duty in interpreting any statute is to discern and implement the intent of the legislature." State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003); citing National Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). In construing a statute, "a reading that results in absurd results must be avoided because it will not be presumed that the legislature intend absurd results." Id., citing State v. Delgado, 148 Wn.2d 723, 733, 63 P.3d 792 (2003)(Madsen, J. dissenting); State v. Vela, 100 Wn.2d 636, 641, 673 P.2d 185 (1983).

State v. Jones, 118 Wn.App. 199, 76 P.3d 258 (2003), relied upon in Cram's argument, ultimately stands for the proposition that "if reasonably possible," the court must harmonize statutes so that no portion is rendered superfluous. at 208. In Jones, this court observed that prior to that decision, the Sentencing Reform Act (SRA) was amended 175 times and had become "astoundingly and needlessly complex that it cannot possibly be used both quickly and accurately" and called for "thoughtful simplification" of the SRA. Id. at 211.

Effective in 2009, the legislature made an attempt at doing exactly what the Jones Court contemplated and with 2007 Wa.HB 2719 recodified much of the SRA, including the portions that were at issue in Jones. 2007 Wa. HB 2719, 2008 Wa. Ch. 231, 2008 Wa. ALS 231. Sec. 9 of that legislation added the portion of the RCW now codified as RCW 9.94A.703. Id. (Since the original enactment, RCW 9.94A.703 has been amended three times).

Following the recodification, there have been few decisions by the Court of Appeals which have addressed RCW 9.94A.703 in the context of domestic violence treatment. The State has been unable to find a published decision that specifically addresses the issues raised in this case. However, in recent unpublished

decisions, RCW 9.94A.703(3) and (4) have been harmonized by the court. With understanding that the decisions are non-binding, the State points to those decisions pursuant to GR 14.1 for such persuasive value as this court deems appropriate.

In State v. Rudolph, No. 49126-5-II, 2017 Wash.App. LEXIS 2626; 2017 WL 5593789 (Div. II, 2017); the Court considered whether the trial court had exceeded its authority when it imposed a domestic violence evaluation as a condition of community custody. Id. at 17. The Court noted “the SRA vests a sentencing court with discretion to order an offender to ‘participate in crime-related treatment or counseling services’ or ‘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.’” Id. at 18. The Court then cited to State v. Jones, 118 Wn.App at 207-208, stating, “When interpreting these subsections, we have held that a treatment requirement imposed under either RCW 9.94A.703(3)(c) or (d) must concern behavior that was involved in the offense.” Id. The court then noted, “As used throughout the SRA and in another subsection of the community custody conditions statute, RCW

9.94A.703(4)(a), 'domestic violence means offenses perpetrated against a family or household member.' Id.

The Rudolph Court ultimately struck the conditions for a domestic violence evaluation because neither the evidence nor the presentencing report provided facts to show that the victim was in a dating relationship with the offender. Id. at 19. While the decision does not directly address the issue raised here, it clearly indicates that the trial court can impose a domestic violence treatment condition pursuant to RCW 9.94A.703(3) if a domestic violence relationship exists.

In a separate unpublished opinion, State v. Soria-Nanamkin, No. 32461-3-III, 2015 Wash. App LEXIS 2750 (Div III, 2015), the court considered a jury's finding of guilt on burglary, theft, assault and unlawful imprisonment committed upon the defendant's former girlfriend. Id. at 4. The jury did not make specific finding that the defendant and victim were family or household members and Division III of the Court of Appeals considered whether the trial court had the authority to impose a condition that the defendant undergo a domestic violence perpetrator evaluation and treatment prior to the end of his period of community supervision. Id.

The Court discussed both RCW 9.94A.703(3)(d) and RCW 9.94A.703(4)(a), specifically stating, RCW 9.94A.703(4)(a) “states, in part, that the court may order an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, ‘to participate in a domestic violence perpetrator program.’” *Id.* at 11-12. In so doing, the Court harmonized the statutes, effectively looking at RCW 9.94A.703(4)(a) as a list, which allows the court to impose the condition of a domestic violence perpetrator program in a situation where an offender is convicted of a crime of domestic violence or if the offender has a minor child or if the victim of the offense has a minor child.

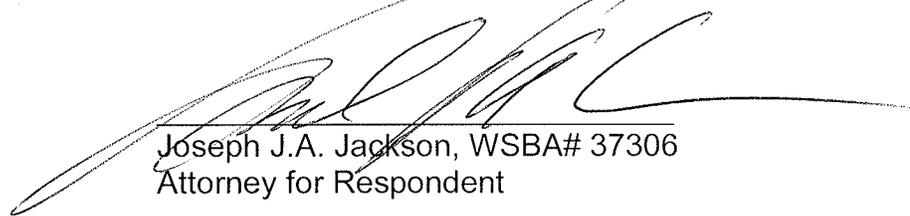
When read in that manner, RCW 9.94A.703(4)(a) acts in harmony with RCW 9.94A.703(3)(c) and (d), and fits into the legislature’s intent to treat domestic violence offenses seriously and ensure that maximum protections are available for victim’s abuse. In this case, the trial court had authority to impose the condition that Cram enter into a Washington State Certified Domestic Violence treatment program both under RCW 9.94A.703(3) and (4). Nothing in those statutes prohibits a trial court from ordering such crime-related treatment where the defendant was charged and convicted of crimes of domestic violence. To interpret the statutes otherwise,

as Cram requests, would lead to an absurd result that is contrary to public policy as evidenced by the expressed intent of the legislature.

D. CONCLUSION.

The trial court acted within its statutory authority when it imposed the community custody condition that Cram complete a Washington State Certified Domestic Violence Perpetrator Program. There was no abuse of discretion and this Court should affirm the conviction and sentence in all regards.

Respectfully submitted this 29 day of December, 2017.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of Response to Motion for Discretionary Review on the date below as follows:

ELECTRONICALLY FILED AT DIVISION II

TO: DEREK M. BYRNE, CLERK
COURT OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA WA 98402-6045

VIA E- MAIL

TO: CATHERINE E. GLINSKI
ATTORNEY AT LAW
PO BOX 761
MANCHESTER, WA 98353-0761

GLINSKILAW@WAVECABLE.COM

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

Dated this 29th day of December, 2017, at Olympia, Washington.



JENA GREEN, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

December 29, 2017 - 3:06 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50226-7
Appellate Court Case Title: State of Washington, Respondent v. Elliot L. Cram, Appellant
Superior Court Case Number: 16-1-02187-9

The following documents have been uploaded:

- 502267_Briefs_20171229150439D2327473_6300.pdf
This File Contains:
Briefs - Respondents
The Original File Name was CRAM BRIEF_001.pdf

A copy of the uploaded files will be sent to:

- glinskilaw@wavecable.com
- jacksj@co.thurston.wa.us
- lipperj@co.thurston.wa.us
- tunheij@co.thurston.wa.us

Comments:

Sender Name: Cynthia Wright - Email: wrightc@co.thurston.wa.us

Filing on Behalf of: Joseph James Anthony Jackson - Email: jacksoj@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

Address:
2000 Lakedrige Dr SW
Olympia, WA, 98502
Phone: (360) 786-5540

Note: The Filing Id is 20171229150439D2327473