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Division II
State of Washington
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NO. 51160-6-II

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

STATE OF WASHINGTON, Respondent

v.

LEONARD DANIEL LANGDON, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-02089-7

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

I. **The trial court properly imposed crime-related conditions as part of Langdon's community custody.**

STATEMENT OF THE CASE

Leonard Langdon (hereafter 'Langdon') was charged by information with Possession of a Controlled Substance- Methamphetamine, and two counts of Unlawful Possession of a Firearm in the Second Degree. CP 1-2. The charges arose from evidence found after a search of Langdon's residence pursuant to a search warrant. RP 243-57. During the search, police seized a colt revolver, a stunt gun, a glass pipe containing methamphetamine, and a small container containing methamphetamine. RP 255-60, 367-69, 458-67. The glass pipe and container were found in the bedroom of Langdon's residence; the container was found amongst paperwork that included a court document with Langdon's name on it that was regarding the case which was the basis of Langdon's ineligibility to possess a firearm. RP 367, 435, 854.

The jury convicted Langdon of Possession of a Controlled Substance – Methamphetamine, and one count of Unlawful Possession of a Firearm in the Second degree, and acquitted him on the other firearm count. CP 90-92. The trial court sentenced Langdon to a standard range sentence, which included a term of community custody. CP 96-104. The

trial court ordered Langdon to obtain an evaluation for chemical dependency and to comply with any recommended treatment as part of his sentence. CP 100. Langdon did not object to the court's imposition of the chemical dependency condition, and did not argue the court should not impose it. RP 862-74. Langdon then timely filed this appeal.

ARGUMENT

Langdon argues the trial court lacked lawful authority to impose substance abuse evaluation and treatment as a condition of his community custody for his convictions of Possession of a Controlled Substance – Methamphetamine and Unlawful Possession of a Firearm in the *Second* Degree. However, the trial court properly imposed this condition pursuant to RCW 9.94A.703 as it is a reasonably crime-related treatment or rehabilitative program related to the circumstances of Langdon's offense and related to prevent him from reoffending. The trial court did not err and the condition Langdon complains of should be affirmed.

As an initial matter, Langdon did not object to the trial court's imposition of substance abuse evaluation and treatment as a condition of his sentence. *See* RP 862-74. Despite his failure to object this Court may consider his claim as our Courts have held that a sentencing challenge on the basis that the sentence or a portion thereof is contrary to the law may

be raised for the first time on appeal. *State v. Moen*, 129 Wn.2d 535, 546-47, 919 P.2d 69 (1996). However, any limitations or deficiencies of the record should be construed against Langdon as he did not challenge the issue in the trial court. *State v. Armstrong*, 91 Wn.App. 635, 638-39, 959 P.2d 1128 (1998). In *Armstrong*, the Court noted,

If [the defendant] had raised his objections in the trial court, the State could have made a more complete record in support of them. Similarly, the trial court could have either modified the conditions or made a more thorough statement on the record in explaining its reasoning for imposing the challenged conditions.... For these reasons, we adhere to the usual rule that the party seeking review has the burden of perfecting the record so that this court has all relevant evidence.

Id. Langdon did not raise any objection to the imposition of an evaluation and treatment for substance abuse, nor did Langdon ask the court not to impose such a condition. *See* RP 862-74. Accordingly, neither the State nor the trial court were put on notice of the objection at a time when the record could have been developed to more fully support the trial court's imposition of the condition. Therefore, any limitations or deficiencies of the record regarding the trial court's reasoning for imposing the condition should be construed against Langdon. *See Armstrong*, 91 Wn.App. at 638-39.

Trial courts may only impose conditions of community custody that are authorized by the legislature. *State v. Kolesnik*, 146 Wn.App. 790, 806, 192 P.3d 937 (2008). A sentencing court “may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.” RCW 9.94A.505(9). Under RCW 9.94A.703(3)(c), (d), a court may require an offender to participate in crime-related treatment or rehabilitative programs related to the circumstances of the offense. In addition, the SRA authorizes a sentencing court “to order an offender to obtain a chemical dependency evaluation and to comply with recommended treatment only if it finds the offender has a chemical dependency that contributed to his or her offense....” *State v. Warnock*, 174 Wn.App. 608, 612, 299 P.3d 1173 (2013) (citing RCW 9.94A.607(1)). Thus, there are two statutorily-authorized ways the trial court could have ordered a substance abuse evaluation and recommended treatment as part of Langdon’s sentence: 1) pursuant to RCW 9.94A.703(c), (d) if it’s crime-related; or 2) pursuant to RCW 9.94A.607(1) if the court finds Langdon has a chemical dependency that contributed to his offense.

The State agrees the trial court did not make an explicit finding that Langdon had a chemical dependency as is required under RCW 9.94A.607(1) for the trial court to have imposed chemical dependency treatment under that legal authority. “If the court fails to make the required

finding, it lacks statutory authority to impose the condition.” *Warnock*, 174 Wn.App. at 612. Therefore, the trial court did not have authority pursuant to RCW 9.94A.607(1) to impose the contested condition.

However, the trial court properly imposed the contested condition pursuant to RCW 9.94A.703(3)(c), (d). Under that provision, the court is statutorily authorized to order crime-related prohibitions and affirmative conditions, including treatment and rehabilitative programs, that are reasonably related to the circumstances of the offense and/or the offender’s risk of reoffending. RCW 9.94A.703(3)(c), (d). Drug treatment “reasonably relates” to an offender’s risk of reoffending, and to the safety of the community if the evidence showed that drug use contributed to the commission of the offense. *State v. Jones*, 118 Wn.App. 199, 208, 76 P.3d 258 (2003). A trial court’s decision to impose such crime-related treatment is reviewed for an abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). While there is minimal evidence that Langdon’s drug use contributed to his offense, there is sufficient evidence from which the trial court could find that chemical dependency evaluation and treatment was reasonably crime-related and would reasonably relate to Langdon’s risk of reoffending. The very nature of the crime Langdon was convicted of is evidence of a chemical dependency. *See State v. Tait*, 191

Wn.App. 1035 (2015).¹ Further, the evidence from trial showed that a canister with methamphetamine residue was found with a piece of paperwork, a court document, with Langdon's name on it, in the trailer where Langdon lived. RP 367, 435, 854. This shows Langdon's proximity to the illegal substance, a substance which is highly addictive, and which subjects a possessor to potentially significant criminal penalties. It is reasonable to believe no one would risk possessing such a substance, in non-distributable amounts, unless that person was driven by a dependency on the substance. There was sufficient evidence to show that the affirmative condition of obtaining an evaluation to determine if an expert recommends treatment is reasonably related to the circumstances of this crime, and to prevent reoffending. Accordingly, the trial court did not abuse its discretion in ordering chemical dependency evaluation, and to comply with the recommendation for treatment, if one is made, as there was sufficient evidence to warrant a reasonable belief that a substance abuse evaluation and treatment was reasonably related to Langdon's commission of his crimes. Under an abuse of discretion standard, the trial court's decision to impose this crime-related treatment must be upheld unless this Court finds the trial court's decision was "manifestly

¹ GR 14.1 allows citation to unpublished decisions of the Court of Appeals issued on or after March 1, 2013. This decision is not binding on this Court and may be given as much persuasive value as this Court chooses.

unreasonable or based upon untenable grounds or reasons.” *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). Because of the highly addictive nature of methamphetamine, the significant legal risk in possessing it, and the evidence that Langdon possessed this substance, the trial court’s decision to order an evaluation and treatment was not manifestly unreasonable. The trial court had legal authority pursuant to RCW 9.94A.703(3)(c), (d) to impose this condition, and the trial court’s decision to do so was reasonable. The imposition of this condition should be affirmed.

CONCLUSION

The trial court properly imposed community custody conditions that are reasonably related to the crime Langdon committed, and his sentence should be affirmed.

DATED this 2nd day of November, 2018.

Respectfully submitted:

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