

FILED  
Court of Appeals  
Division II  
State of Washington  
1/31/2019 2:32 PM  
No. 52013-3-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**STEVEN M. FULLERTON,**

Appellant.

---

Appeal from the Superior Court of Washington for Lewis County

---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

SARA I. BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITES ..... ii

I. ISSUE ..... 1

II. STATEMENT OF THE CASE ..... 1

III. ARGUMENT .....5

    A. FULLERTON KNOWINGLY, INTELLIGENGLY, AND  
    VOLUNTARILY ENTERED INTO THE MENTAL  
    HEALTH COURT PROGRAM CONTRACT .....5

        1. Standard Of Review .....6

        2. Fullerton Was Properly Advised Of The Constitutional  
        Rights He Was Waiving By Entering Into The Mental  
        Health Court Contract, Therefore, His Conviction  
        Following Termination Should Be Affirmed.....6

IV. CONCLUSION..... 14

**TABLE OF AUTHORITIES**

**Washington Cases**

*City of Bremerton v. Tucker*, 126 Wn. App. 26, 103 P.3d 1285 (2005) .....8

*City of Richland v. Michel*, 89 Wn. App. 764, 950 P.2d 10 (1998) .....7, 8

*State v. Ashue*, 145 Wn. App. 492, 188 P.3d 522 (2008) .....6

*State v. Drum*, 143 Wn. App. 608, 181 P.3d 18 (2008), *aff'd on other grounds*, 168 Wn.2d 23, 225 P.3d 237 (2010) .....7, 8, 9

*State v. Pierce*, 134 Wn. App. 763, 142 P.3d 610 (2006) .....10, 11

*State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996).....8

*State v. Stegall*, 124 Wn.2d 719, 88 P.2d 979 (1994).....11

*State v. Stone*, 165 Wn. App. 796, 268 P.3d 226 (2012) .....6

*State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001) .....9

**Federal Cases**

*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) .....10

*Sell v. United States*, 593 U.S. 166, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003) .....1

**Washington Statutes**

RCW 10.05.020 .....7, 8

**Other Rules or Authorities**

CrR 4.2 .....7, 8

CrR 6.1(a) .....11

## I. ISSUE

- A. Did Fullerton knowingly, intelligently, and voluntarily enter into the mental health court program contract?

## II. STATEMENT OF THE CASE

On January 17, 2017, the State charged Fullerton with Count I: Assault in the Third Degree, and Count II: Violation of a Civil Anti-Harassment Order. CP 1-2. On February 9, 2017, there was an order entered for competency restoration treatment. CP 9-14. The Community Forensic Evaluation for Service Competency Report noted Fullerton had 26 prior admissions to Western State Hospital, a prior involuntary 72-hour hospitalization, and two involuntary hospitalizations at Thurston/Mason Evaluation and Treatment. CP 15-17. Fullerton's hospitalizations dated back to 1989 with the latest being in 2013 for competency restoration. CP 16-17. Fullerton was diagnosed with an unspecified mood disorder. CP 15.

After a *Sell*<sup>1</sup> hearing, the trial court issued an order authorizing the administration of involuntary medications. CP 21-23. On June 2, 2017, Western State Hospital issued an Inpatient Forensic Evaluation Service Competency Report finding Fullerton's competency to stand trial restored. CP 38-48. The report also

---

<sup>1</sup> *Sell v. United States*, 593 U.S. 166, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003).

modified Fullerton's diagnosis, finding his mental disorder as "Schizoaffective Disorder, Bipolar type, Multiple episodes, currently in partial remission." CP 38. The report further indicated if Fullerton stopped taking his prescribed medications he would likely decompensate to the point where he would no longer have the required capacity to stand trial. CP 47.

The State filed a brief moving the trial court an order clarifying the Lewis County Jail's authority and obligation to involuntarily administer medications to Fullerton. CP 49-55. There was an *Amicus* brief filed on behalf of the Lewis County Jail regarding the authority to medicate. CP 56-70. The trial court issued an order clarifying the involuntary medication authorization for Fullerton in an effort to maintain his competency restoration maintenance. CP 75.

Another order for competency restoration was entered on June 20, 2017. CP 76-81. A second order regarding the authorization for administration of involuntary medication was entered on June 21, 2017. CP 82-84. The State filed an amended information on August 1, 2017, charging Fullerton with Count I: Assault in the Third Degree, and Counts II and III: Violation of a Civil Anti-Harassment Order. CP 85-86.

On September 21, 2017 there was another competency evaluation of Fullerton performed by Western State Hospital after Fullerton had decompensated after refusing to take his medication and the jail not forcing his medication. CP 91-92. Fullerton was not competent but likely to be restored again. CP 96-97. There was an order entered for competency restoration on October 13, 2017. CP 152-57. On March 24, 2018, Western State Hospital once again deemed Fullerton competent to stand trial. CP 158-65.

An order finding competence was entered on March 27, 2018. CP 167. Fullerton was arraigned on the charges. RP (3/27/18) 3-4. Bail was addressed and it was noted by his attorney, Fullerton, seemed amenable to potentially having his case resolved through the pre-conviction mental health court. *Id.* at 4-8.

On March 30, 2018, Fullerton, on the advice of his attorney, executed a waiver of speedy trial and signed the Lewis County Mental Health Court Program Contract. CP 169-174. Fullerton's attorney addressed the trial court, explained the mental health court coordinator, Ms. Limacher, went over the contract with Fullerton, as did Fullerton's attorney. RP (3/30/18) 3. Fullerton's attorney also noted how Fullerton was familiar with the provisions of the contract because it was essentially the same as the prior contract, but this

contract was pre-conviction. *Id.* The contract is a five page document. CP 170-74. Fullerton signed the document and the waiver of speedy trial, which the trial court reviewed with Fullerton. RP (3/30/18) 5-7; CP 169-74.

On June 4, 2018, the State filed a petition to terminate Fullerton from the Mental Health Court Program. CP 192-93. The State alleged Fullerton's Medicare was inactive, he became agitated and verbally abusive to Cascade Mental Health staff when asked to reinstate coverage. CP 192. The petition explained without Medicare coverage Fullerton would not receive his prescriptions, including Fullerton's antipsychotic injectable. CP 192. Fullerton's case manager reported Fullerton had been going to Reliable Place's office and making threats. *Id.* Fullerton was also reported as going to Centralia City Light and having the police called. CP 192-93. Fullerton presented to Cascade Mental Health at three appointments in a row with erratic behavior, talking about conspiracy theories regarding Cascade, which led to Cascade changing their mind about renting to Fullerton. CP 193. Fullerton was discharged from chemical dependency treatment due to his inappropriate behavior. *Id.* Fullerton was found to be non-amenable to services by Community

Integrated Health Services, was verbally abusive to their staff, and non-compliant with his contract. *Id.*

On June 5, 2018, a termination hearing was held. RP (6/5/18); CP 194. Fullerton apologized to the court and to Ms. Limacher (Sophia), and asked for another chance to stay in the program. RP (6/5/18) 2-5. The State requested Fullerton be terminated from the program. *Id.* at 5-6. The trial court ultimately terminated Fullerton from the Mental Health Court Program. *Id.* at 8.

Fullerton was convicted at a separate hearing after a stipulated facts bench trial. RP (6/7/18) 14-20; CP 197-201. Fullerton was sentenced to an exceptional downward sentenced of 24 months, credit for 451 days served. RP (6/7/18) 29; CP 205-11. Fullerton timely appeals his conviction. CP 213.

The State will supplement the facts as necessary throughout its argument below.

### **III. ARGUMENT**

#### **A. FULLERTON KNOWINGLY, INTELLIGENGLY, AND VOLUNTARILY ENTERED INTO THE MENTAL HEALTH COURT PROGRAM CONTRACT.**

Fullerton's waiver of rights upon entry into mental health court were knowing and voluntary. Therefore, contrary to Fullerton's assertion, the trial court did not error when it enforced the mental

health court contract upon Fullerton's failure to comply. This Court should affirm Fullerton's conviction and sentence.

**1. Standard Of Review.**

A defendant may knowingly, intelligently, and voluntarily waive his or her constitutional rights. *State v. Ashue*, 145 Wn. App. 492, 502, 188 P.3d 522 (2008). It is the prosecution's burden to establish a valid waiver of constitutional rights. *Ashue*, 145 Wn. App. at 502. A waiver of constitutional rights is reviewed de novo. *State v. Stone*, 165 Wn. App. 796, 815, 268 P.3d 226 (2012) (citation omitted).

**2. Fullerton Was Properly Advised Of The Constitutional Rights He Was Waiving By Entering Into The Mental Health Court Contract, Therefore, His Conviction Following Termination Should Be Affirmed.**

Fullerton argues he was denied due process due to the mental health court contract failing to notify him of the standard range sentence he would face if he was terminated from the program. There is no requirement when a defendant enters into a deferred prosecution program the contract meet the same rigorous constitutional standards as a knowing, voluntary, and intelligent plea of guilty to the charges. Fullerton's attempt to fashion such a requirement is without merit.

Deferred prosecutions, such as drug courts and mental health courts, are not the equivalent to guilty pleas. *State v. Drum*, 143 Wn. App. 608, 618, 181 P.3d 18 (2008), *aff'd on other grounds*, 168 Wn.2d 23, 225 P.3d 237 (2010). This Court has found the deferred prosecution statute courts of limited jurisdiction analogous to drug court and therefore, mental health court, contracts. *Drum*, 143 Wn. App. at 618-19, *citing*, RCW 10.05.020. A guilty plea is to accept guilt, as compared to a deferred prosecution, which leaves the determination of guilt to a later date. *Id.* at 618.

The determination of later guilt is not changed by stipulations regarding sufficiency of the evidence which may be presented if the defendant is terminated from a drug court or mental health court contract. *Id.* “Courts have continued to hold that a deferred prosecution is not akin to a guilty plea despite the amendment to RCW 10.05.020 that requires a defendant to stipulate that the evidence is sufficient to find him guilty.” *Id.* This is because a mental health court, or a deferred prosecution, is not a guilty plea, but rather more akin to probation or pre-conviction sentencing. *Id.*, *citing City of Richland v. Michel*, 89 Wn. App. 764, 769, 950 P.2d 10 (1998).

In *Michel*, the Court correctly noted the deferred prosecution statute did not require written notice of all consequences of the

deferred prosecution agreement, unlike a guilty plea. *Michel*, 89 Wn. App. 770. The Court contrasted RCW 10.05.020 with CrR 4.2(d) and *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). *Id.* RCW 10.05.020 requires the defendant be advised of their rights, waiver of right to trial, and acknowledge the admissibility, and sufficiency, of the stipulated facts. Whereas a guilty plea requires a defendant to be informed of all the direct consequences of a plea prior to entry. *Ross*, 129 Wn.2d at 284. The procedure for deferred prosecutions was “designed to be somewhat informal.” *Michel*, 89 Wn. App. at 770. This Court “agreed with *Michel* that the deferred prosecution statute does not require written notice of all consequences of the agreement.” *Drum*, 143 Wn. App. at 619, *citing*, *City of Bremerton v. Tucker*, 126 Wn. App. 26, 33, n.8, 103 P.3d 1285 (2005).

In *Drum*, this Court compared a drug court contract to a deferred prosecution, finding the drug court contract even more informal than a deferred prosecution. *Id.* Noting the distinction between guilty pleas and drug court contracts, this Court stated, “[t]here are clearly no court rules that govern them in the same manner that CrR 4.2 governs guilty pleas.” *Id.* The Court rejected the notion a drug court contract was equivalent to a guilty plea. *Id.* at 620.

Fullerton cites extensively to *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), to support his assertion the mental health contract was deficient due to its failure to state the standard range sentences or the statutory maximum sentences. Walsh pleaded guilty to a reduction in charges for an agreed sentencing recommendation by the prosecutor. *Walsh*, 143 Wn.2d at 3-5. The parties made a mutual mistake regarding Walsh's sentencing range due to a calculation of his offender score. *Id.* While the State still recommended bottom of the correct sentencing range, this was nine months more than Walsh had agreed to in the original bargain. *Id.* The Supreme Court held Walsh was entitled to withdraw his guilty plea due to the mutual mistake of the parties and noted "[a] defendant must understand the sentencing consequences for a guilty plea to be valid." *Id.* at 8 (internal quotations and citations omitted).

*Walsh* is distinguishable. Fullerton did not plead guilty. Fullerton entered into a mental health court contract. Mental health contracts are similar to drug court contracts and are not equivalent to guilty pleas. *Drum*, 143 Wn. App. at 620. Therefore, the inquiry is whether the waiver Fullerton entered into as part of his mental health contract was knowing, voluntary, and intelligently made. The simple answer is yes.

The mental health contract stipulated to the admissibility of reports, witness statements, and other possible evidence as well as to the sufficiency of such evidence for a finding of guilt. CP 172. The contract then states:

24. **The defendant acknowledges, understands, and agrees to waive the following rights:**
  - a. **The right to a speedy trial pursuant to CrR 3.3 (the defendant further agrees to a new commencement date of 4/1/20);**
  - b. **The right to a public trial by an impartial jury in the county where the crime is alleged to have been committed;**
  - c. **The right to hear and question any witness testifying against the defendant;**
  - d. **The right at trial to have witnesses testify for the defense, and for such witnesses to be made to appear at no expense to the defendant; and**
  - e. **The right to testify at trial.**

CP 172 (bold original). Fullerton also waived the right to challenge the legality of search and seizure, *Miranda*, and other evidentiary issues. CP 172.

A waiver of rights is evaluated viewing the facts and circumstances surrounding the waiver, including a defendant's experience and capabilities. *State v. Pierce*, 134 Wn. App. 763, 771, 142 P.3d 610 (2006). In matters such as a constitutional right to a

jury trial, if a defendant signs a written waiver of his right to a jury trial, as required by CrR 6.1(a), “it is strong evidence that the defendant validly waived the jury trial right: but it is not determinative. *Pierce*, 134 Wn. App. at 771. While a trial court is not required to have a colloquy with the defendant regarding the waiver of his jury trial right, personal expression of the waiver from the defendant is required. *Id.*, citing *State v. Stegall*, 124 Wn.2d 719, 725, 88 P.2d 979 (1994).

The mental health contract states above the signature line for Fullerton, “My attorney has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all and wish to enter in this Mental Health Court Program Contract. I have no further questions to ask the Judge.” CP 173. Fullerton’s signature is affixed on the line for defendant below this statement. The contract is also signed by Fullerton’s attorney, the deputy prosecutor, and the judge. CP 173-74. Included prior to the judge’s signature is a box checked which declares in open court Fullerton asserted “[t]he defendant’s attorney had previously read to him/her” the entire contract and Fullerton understood it in full. CP 174.

In open court Fullerton’s attorney discussed how Ms. Limacher (the mental health program coordinator) went over the

mental health court contract with Fullerton. RP (3/30/18) 3. Fullerton's attorney also explained he went over the contract again with Fullerton that morning. *Id.* The attorney explained Fullerton understood the waiver of the time for trial, stating, "He's very sharp about the court system." *Id.*

When the trial court questioned Fullerton about the time for trial and speedy trial waiver it asked if arraignment had been done. *Id.* at 5. Fullerton told the court, "Yeah, we did the arraignment." *Id.* The trial court then conducted a colloquy regarding time for trial and the right to a speedy trial. *Id.* at 6.

At Fullerton's arraignment he demonstrated he understood the charges against him and the differences between the felony and gross misdemeanor counts. RP (3/27/18) 3. Fullerton's attorney explained to the trial court, "He's pointed out to me that - - and he's correct, he's pointed out in this process that the anti-harassments don't seem to arise out of the same incident and those might be better suited for District Court." *Id.*

The mental health contract is not a guilty plea. This Court does not require such contracts to adhere to the standards of guilty pleas. Therefore, Fullerton's contract is not constitutionally deficient for omitting his standard sentencing range, nor is the contract

constitutionally deficient for failing to state the maximum penalties under the law. The proper inquiry should be was Fullerton's waiver of rights knowingly, voluntarily, and intelligently made. If so, the contract, Fullerton's termination, and subsequent conviction, do not violate his constitutional rights.

When viewing all of the facts and circumstances surrounding Fullerton's entry into the mental health court program and signing of the contract, Fullerton's waiver of his rights was knowing, voluntary, and intelligently made. Fullerton was not a novice to the criminal justice system. Fullerton understood the charges he faced. Fullerton understood his rights, in particular his right to speedy trial. Fullerton acknowledged in open court he went over the mental health contract with both the program manager and his attorney. RP (3/3/30/18) 7. Fullerton stated he had no questions regarding the contract. *Id.* Fullerton's signature on the contract is further evidence of the validity of the waiver. Therefore, the waiver was knowing, voluntary, and intelligently made. The mental health contract did not violate Fullerton's due process rights, and this Court should affirm his conviction following termination from the program.

**IV. CONCLUSION**

Fullerton knowingly, voluntarily, and intelligently signed the waiver of rights contained within the mental health court contract. A mental health court contract is not analogous with a guilty plea, but rather with a deferred prosecution, therefore a defendant need not be advised of all direct consequences of the contract. As there was no violation of Fullerton's constitutional rights, his subsequent termination and conviction should be affirmed by this court.

RESPECTFULLY submitted this 31<sup>st</sup> day of January, 2019.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**January 31, 2019 - 2:32 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52013-3  
**Appellate Court Case Title:** State of Washington, Respondent v. Steve M. Fullerton, Appellant  
**Superior Court Case Number:** 17-1-00031-5

**The following documents have been uploaded:**

- 520133\_Briefs\_20190131142910D2067778\_4079.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Fullerton.ste Response 52013-3.pdf*

**A copy of the uploaded files will be sent to:**

- appeals@lewiscountywa.gov
- kate@washapp.org
- wapofficemail@washapp.org

**Comments:**

---

Sender Name: Teri Bryant - Email: teri.bryant@lewiscountywa.gov

**Filing on Behalf of:** Sara I Beigh - Email: sara.beigh@lewiscountywa.gov (Alternate Email: teri.bryant@lewiscountywa.gov)

Address:  
345 W. Main Street  
2nd Floor  
Chehalis, WA, 98532  
Phone: (360) 740-1240

**Note: The Filing Id is 20190131142910D2067778**