

FILED

AUG 19 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

29579-6-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JACIHEL CONTRERAS,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

P.O. Box 5889
Pasco, Washington 99301
(509) 545-3561

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts the Judgment and Sentence may be remanded to correct the term of community and custody and to strike the language prohibiting the possession of alcohol. The Respondent asserts that the superior court did not error in acknowledging the legislative delegation of authority to the Department of Corrections as regards overseeing rehabilitative treatment.

III. ISSUES

1. Is the life term of community custody authorized by law?
2. Is the prohibition against alcohol possession authorized by law?
3. Did the sentencing court err in acknowledging the legislative delegation of authority to the Department of Corrections as regards overseeing the rehabilitative treatment of offenders under the Department's supervision?

IV. STATEMENT OF THE CASE

The Defendant Jacihel Contreras was charged with five counts of assault in the first degree, as well as possessing a stolen firearm, unlawful possession of a firearm in the second degree, and riot. CP 7-10. The information was amended for a change of plea, and the Defendant pled guilty to two counts of assault in the first degree. CP 11-24; RP 1-36, 44.

At the time of guilty plea, the Defendant was advised that he was facing a community custody term of 36 months. CP 15;RP 38. However, the court imposed community custody “for up to life.” CP 31 (para. 4.2(b) of the Judgment and Sentence).

As part of the terms of community custody, the court ordered:

(ix) The defendant shall participate in crime related treatment or counseling services as follows: inpatient or outpatient alcohol/drug treatment at his/her expense, at the discretion of his/her probation/community corrections officer. That the duration of treatment is to be at the discretion of his/her probation/community corrections officer.

....

(x) The defendant shall not consume or possess alcohol.

CP 32 (para. 4.2(b) of the Judgment and Sentence). The Defendant challenges these conditions and the term of community custody.

V. ARGUMENT

A. THE STATE CONCEDES ERROR AS TO THE TERM OF COMMUNITY CUSTODY AND THE PROHIBITION AGAINST POSSESSION OF ALCOHOL.

The Defendant challenges the life term of community custody. The State concedes that the term should be 36 months as set out in RCW 9.94A.701(1)(b).

The Defendant challenges the prohibition against possessing alcohol. The State concedes error. While RCW 9.94A.703(3)(e) grants sentencing courts the discretion to prohibit alcohol consumption, no statutory authority authorizes a prohibition on alcohol possession – in the context of community custody conditions. It is unfortunate that the statute is not written more expansively in this regard. It would better serve a probationer to have a clearer line in order to avoid the temptation or near occasion of violating a condition.

B. THE LEGISLATURE, NOT THE COURT, HAS DELEGATED TO THE DEPARTMENT OF CORRECTIONS THE AUTHORITY TO REQUIRE DRUG/ALCOHOL TREATMENT.

The Defendant complains that the sentencing court did not have the authority to delegate to the Department of Corrections decisions on drug/alcohol treatment. The Defendant fails to observe that the Department

has this authority independent of the sentencing court. It is the statute which authorizes the Department.

“The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.” RCW 9.94A.704(4).

Because the Department has the authority to require an offender under its supervision to participate in rehabilitative treatment, the court did not err in ordering para. 4.2(b)(ix) in the Judgment and Sentence.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court remand to the superior court to amend the term of community custody to 36 months and to strike the language as to possessing alcohol in para. 4.2(b)(x) of the Judgment and Sentence.

DATED: August 18, 2011.

Respectfully submitted:



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