

FILED
Court of Appeals
Division III
State of Washington
7/15/2019 10:02 AM
No. 36427-5-III

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

DEAN ERVIN BLEVINS
Defendant/Appellant.

APPEAL FROM THE KLICKITAT COUNTY SUPERIOR COURT
Honorable Randall Krog, Judge

BRIEF OF APPELLANT

SUSAN MARIE GASCH
WSBA No. 16485
P. O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
Attorney for Appellant

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR.....1

B. STATEMENT OF THE CASE.....2

C. ARGUMENT.....7

 1. Where several conditions of community custody conditions are not related to or have no nexus with appellant’s crime, the imposition of the conditions exceeded the trial court’s sentencing authority.....7

 a. The trial court failed to make the requisite findings before ordering appellant to undergo Substance Abuse Evaluation and Treatment.....9

 b. The trial court failed to make the requisite findings before ordering appellant to undergo mental health evaluation and treatment.....10

 2. The prohibited distance restrictions in the Judgment and Sentence and the Domestic Violence No-Contact Order, of 300 feet and 1,000 feet respectively, are in conflict, as is identification of the protected party when considered in context of the trial record, and both discrepancies require remand for clarification.....12

D. CONCLUSION.....14

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>State v. Bahl</i> , 164 Wn.2d 739, 193 P.3d 678 (2008).....	7, 8
<i>State v. Brooks</i> , 142 Wn. App. 842, 176 P.3d 549 (2008).....	11
<i>State v. Cordero</i> . 170 Wn. App. 351, 284 P.3d 773 (2012).....	9
<i>State v. France</i> , 176 Wn. App. 463, 308 P.3d 812 (2013), <i>rev. denied</i> . 179 Wn.2d 2015, 318 P.3d 280 (2014).....	13
<i>State v. Irwin</i> . 191 Wn. App. 655, 364 P.3d 830 (2015).....	9
<i>State v. Johnson</i> , 180 Wn. App. 318, 325, 327 P.3d 704 (2014).....	8, 9
<i>State v. Jones</i> , 93 Wn. App. 14, 968 P.2d 2 (1998).....	13
<i>State v. Kinzle</i> , 181 Wn. App. 774, 326 P.3d 870, <i>review denied</i> , 181 Wn.2d 1019, 337 P.3d 325 (2014).....	8
<i>State v. Kolesnik</i> , 146 Wn. App. 790, 192 P.3d 937 (2008), <i>review denied</i> , 165 Wn.2d 1050 (2009).....	8
<i>State v. Sanchez Valencia</i> , 169 Wn.2d 782, 239 P.3d 1059 (2010).....	7
<i>State v. Warnock</i> , 174 Wn. App. 608, 299 P.3d 1173 (2013).....	9, 10

Statutes

Laws of 2008, ch.231, sec. 55.....	11
RCW 9.94A.030(13).....	8
RCW 9.94A.607(1).....	9
RCW 9.94A.703(3)(c)-(d).....	9
RCW 9.94A.703(3)(f).....	8
RCW 9.94B.080.....	10, 11
RCW 71.24.025,.....	10, 11

A. ASSIGNMENTS OF ERROR

1. The community custody condition that requires appellant to “undergo an evaluation for treatment for substance use disorder and fully comply with all recommended treatment” is not crime-related and the trial court did not make a finding that substance abuse contributed to the offense, thus it exceeds the trial court’s authority. CP 69.

2. The community custody condition that requires appellant to “undergo an evaluation for treatment for mental health and fully comply with all recommended treatment” is not crime-related and the trial court did not make requisite findings that reasonable grounds exist to believe the appellant is a “mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080”, thus it exceeds the trial court’s authority. CP 69.

3. The “no-contact” provisions of the Judgment and Sentence (Paragraph 4.5 at CP 71) and the Domestic Violence No-Contact Order (CP 75–77), both entered at the time of sentencing, contain protected party identification that is not supported by the trial record and contain conflicting distance restrictions, and they should be remanded for clarification.

Issues Pertaining to Assignments of Error

1. Where conditions of community custody are not related to or have no nexus with appellant's crime, and the court does not make the statutorily required findings, do the imposition of the conditions exceed the trial court's sentencing authority?

2. Where the prohibited distance restrictions in the Judgment and Sentence and the Domestic Violence No-Contact Order, of 300 feet and 1,000 feet respectively, conflict with each other or create an ambiguity, as does the identification of the protected party when considered in context of the trial record, do both sets of discrepancies require remand for clarification.

B. STATEMENT OF THE CASE

The State charged Dean Blevins with one count of second degree assault under either (1) deadly weapon prong, or (2) recklessly inflict substantial bodily harm prong. The charge included a domestic violence allegation. CP 53.

The matter proceeded to a bench trial, after which the Court entered its written Ruling of the Court containing Findings of Fact and Conclusions of Law. RP 26–74; CP 55, 58–63. The Findings of Fact (CP 58–60) state as follows.

1. On March 17, 2018, the defendant, Dean Blevins, was residing with his mother, Karen Blevins, at 314 ½ Humboldt Street, City of Bingen, County of Klickitat, State of Washington.

2. Karen Blevins had recently had knee surgery and was still recovering from the knee surgery.

3. At approximately 4:30 a.m. on March 17, 2018, Karen Blevins was awoken by loud noises coming from the defendant's bedroom, which was adjacent to her room.

4. Karen Blevins knocked on the wall to try and quiet down the defendant. She has done this on numerous occasions before whenever the defendant was being loud in his room.

5. Shortly after knocking on the wall, the defendant broke through her bedroom door.

6. The defendant had a baby gate in his hands. The baby gate was made of wood and plastic and weighed approximately 3-4 pounds.

7. The defendant immediately began to strike Karen Blevins with the wooden baby gate.

8. Karen Blevins rolled onto her side and tried to stay under the covers as the defendant struck her multiple times about her head, arms and legs. Karen Blevins is unsure how long the attack lasted or how many

times she was hit. The defendant struck his mother, Karen Blevins, so hard that it resulted in the baby gate being broken.

9. The defendant did not say anything while he was striking Karen Blevins with the baby gate. The defendant finally stopped striking Karen Blevins and returned to his room.

10. As a result of being stricken with the baby gate, Karen Blevins received 2 lacerations on her forehead approximately one inch in length each and multiple contusions to her arm, hand and legs, which resulted in substantial bruising that lasted for weeks.

11. After attempting to stop the bleeding that was coming from the lacerations on her forehead, Karen Blevins went to her vehicle and locked herself in the vehicle and called her daughter.

12. Karen Blevins then went to the hospital where she received medical attention for her injuries, including approximately 7 stitches to each of her forehead lacerations. Bruises were observed to Karen Blevins right arm, right leg, left arm, forehead and ear. Photographs of the injuries were taken and admitted as exhibits.

13. The injury to Karen Blevins['] right shin was still painful to the touch and hurt to even pull up her socks weeks later. The bruise to her

right arm lasted multiple weeks. Photographs admitted as exhibits showed the gravity of the bruising which was substantial.

14. Officer Virgen responded to 314 ½ Humboldt Street residence on the evening of March 17, 2018, to investigate the incident that occurred between Karen Blevins and Dean Blevins.

15. Upon arriving at the residence, Officer Virgen contacted the defendant, Dean Blevins, as the defendant was exiting the residence. Officer Virgen placed the defendant into handcuffs, secured the defendant in the back of his patrol car and read the defendant his Miranda warnings

16. Officer Virgen asked the defendant why his mother, Karen Blevins was at the hospital. The defendant advised "because he had punched her." Officer Virgen then asked the defendant why he punched her. The defendant advised "because she woke him up and was going through his stuff."

17. The defendant then asked if Officer Virgen was "going to go in the house." Officer Virgen asked "why?" The defendant then stated "it is a good one."

18. Officer Virgen then entered the house after receiving permission from the defendant. In the house, Officer Virgen observed that the bedroom door to Karen Blevins bedroom had been forcibly entered as

evidenced by the door broken off hinges. Officer Virgen further observed blood on clothing by bed, blood on the bed, blood on the floor in the bathroom and blood on a pillow in the living room.

19. The broken baby gate was seized as evidence and blood was observed on the baby gate.

20. Karen Blevins was the mother of Dean Blevins.

The trial court concluded the State had proven beyond a reasonable doubt the elements of both charged prongs, and found Blevins guilty of Assault in the Second Degree – Domestic violence. CP 62–63.

At the sentencing hearing the State recommended the top of the standard range sentence, 43 months, arguing that society needs to be protected. RP 84–85. Defense counsel requested the low end of the standard range, 33 months. RP 86. The court imposed a sentence of 43 months. CP 67–68.

The court imposed a \$500 victim penalty assessment fee and community custody of 18 months. CP 68–69. The court ordered in part as conditions of community custody that Blevins undergo evaluations and comply with recommended treatment for domestic violence, substance use disorder, and mental health, (as requested by the State at RP 85), and anger management. RP 88; CP 69.

The court ordered as a condition of sentence that Blevins have no contact with “Karin Marline Blevins” for 10 years and prohibited him from coming within “100 yards” of her home/residence and work place. CP 71 at Paragraph 4.5. A separate 10 year Domestic violence No-Contact Order prohibited contact with “Karen M. Blevins” and “knowingly ... com[ing] within 1,000 feet of [her] residence, school, workplace.” CP 75 at Paragraphs 1, 2.C.

Mr. Blevins now appeals. CP 84–85. The trial court had entered an Order of Indigency, acknowledging lack of sufficient funds and appointing trial counsel at public expense. CP 25. Post-trial the court found Mr. Blevins lacked funds to prosecute an appeal and granted him a right to counsel and review at public expense. CP 82–83.

C. ARGUMENT

1. Where several conditions of community custody conditions are not related to or have no nexus with appellant’s crime, the imposition of the conditions exceeded the trial court’s sentencing authority.

An illegal or erroneous sentence may be challenged for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Appellate courts routinely consider pre-enforcement challenges to

sentencing conditions. *State v. Sanchez Valencia*, 169 Wn.2d 782, 786790, 239 P.3d 1059 (2010). Challenges to sentencing conditions are ripe for review “if the issues raised are primarily legal, do not require further factual development, and the challenged action is final.” *Id.* at 786 (quoting *Bahl*. 164 Wn.2d at 751).

A sentencing court lacks authority to impose a community custody condition unless it is authorized by the legislature. *State v. Kolesnik*, 146 Wn. App. 790, 806, 192 P.3d 937 (2008), *review denied*, 165 Wn.2d 1050 (2009). Any condition imposed in excess of a court’s statutory authority is void. *State v. Johnson*, 180 Wn. App. 318, 325, 327 P.3d 704 (2014).

Under RCW 9.94A.703(3)(f), the trial court is authorized to require an offender to “[c]omply with any crime-related prohibitions.” “‘Crime-related prohibition’ means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.” RCW 9.94A.030(13). Directly related community custody conditions must be “reasonably crime-related” to the underlying offense. *State v. Kinzle*, 181 Wn. App. 774, 785, 326 P.3d 870, *review denied*, 181 Wn.2d 1019, 337 P.3d 325 (2014).

This court reviews a trial court's imposition of crime-related community custody conditions for abuse of discretion. *Johnson*, 180 Wn. App. at 326; *State v. Irwin*, 191 Wn. App. 655, 656, 364 P.3d 830 (2015) (citing *State v. Cordero*, 170 Wn. App. 351, 373, 284 P.3d 773 (2012)). The factual basis supporting a crime-related condition is reviewed for substantial evidence. *Irwin*, 191 Wn. App. at 656.

- a. The trial court failed to make the requisite findings before ordering appellant to undergo Substance Abuse Evaluation and Treatment.

The court may require a defendant to participate in crime-related treatment, counseling services, rehabilitative programs, or other “affirmative conduct reasonably related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community.” RCW 9.94A.703(3)(c)-(d). RCW 9.94A.607(1) authorizes the court to order a defendant to obtain a chemical dependency evaluation and to comply with recommended treatment only if it finds that the offender has a chemical dependency that contributed to his or her offense. “If the court fails to make the required finding, it lacks statutory authority to impose the condition.” *State v. Warnock*, 174 Wn. App. 608, 612, 299 P.3d 1173 (2013).

Here, the trial court ordered Blevins to obtain a substance abuse

evaluation and to fully comply with all recommended treatment. CP 69. In the judgment and sentence there is a box the court can check if it finds that “the defendant has a chemical dependency that has contributed to the offense(s).” CP 66. The box is not checked. Moreover, there was no evidence that substance abuse or chemical dependency played a role in Blevins’ crime. In the absence of evidence and a finding that substance abuse was directly related to the circumstances of the crime, the court lacked authority to require substance abuse evaluation and treatment as a community custody condition. *Warnock*. 174 Wn, App. at 612. This condition must be stricken.

- b. The trial court failed to make the requisite findings before ordering appellant to undergo mental health evaluation and treatment.

RCW 9.94B.080¹ authorizes the court to order a defendant to undergo a mental status evaluation and to participate in available outpatient mental health treatment only if it finds that “reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense.” *Id.*

Thus, RCW 9.94B.080 authorizes a trial court to order a mental

health evaluation as a condition of community custody when the court follows the specific procedures. *State v. Brooks*, 142 Wn. App. 842, 851, 176 P.3d 549 (2008). First, the court must find that reasonable grounds exist to believe the offender is mentally ill. *Id.* Second, the court must find this mental health condition likely influenced the offense. *Id.*

Here, the trial court ordered Blevins to obtain a mental health evaluation and to fully comply with all recommended treatment. CP 69. In the judgment and sentence there is a box the court can check if it finds that “reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense.” CP 66. The box is not checked. Moreover, there was no evidence in the record that mental illness played a role in Blevins’ crime. In the absence of evidence and the statutorily required findings that Blevins is a mentally ill person and that this condition is likely to have influenced the offense, the court lacked authority to require mental health evaluation and treatment as a community custody condition. The court therefore erred in imposing the mental health evaluation/follow recommended treatment condition. This condition must be stricken.

¹ Although the heading to RCW 9.94B.080 indicates that it applies to crimes committed prior to July 1, 2000, the statute is applicable to crimes committed after that date *See* Laws of 2008, ch.231, sec. 55.

2. The prohibited distance restrictions in the Judgment and Sentence and the Domestic Violence No-Contact Order, of 300 feet and 1,000 feet respectively, are in conflict, as is identification of the protected party when considered in context of the trial record, and both discrepancies require remand for clarification.

The “no-contact” provision of the Judgment and Sentence (Paragraph 4.5 at CP 71) prohibits appellant from coming within 100 yards of “Karin Marline Blevins’ ” residence or work place. *Id.* The Domestic Violence No-Contact Order prohibits appellant from “knowingly ... com[ing] within 1,000 feet of “Karen M. Blevins’ ” residence, ... or work place.” CP 75 at 1 and 2.C.

The Amended Information, filed October 1, 2018, stated the victim of the assault was both “Karen Marline Blevins” and “Karin Marline Blevins”. CP 53. The first witness at the bench trial testified she is “Karen Blevins” and she gave no middle name or middle initial or date of birth. RP 29. In its Ruling of the Court filed after the bench trial, Finding of Fact No. 20 states “Karen Blevins” was the mother of Dean Blevins” (CP 60), and the Court refers to the mother throughout the ruling as “Karen Blevins.”²

² Findings of Fact No. 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 20 (CP 58–60); Conclusions of Law No. 9, 12 (CP 60–62).

Thus, in the no-contact provisions of the Judgment and Sentence and the Domestic Violence No Contact Order, the identifications of the protected party are in conflict with and are not supported by the trial testimony or the trial court's ruling filed after the bench trial.

Further, the prohibited distance restrictions in the no-contact provisions of the Judgment and Sentence and the Domestic Violence No-Contact Order, of 300 feet (100 yards) and 1,000 feet respectively, regarding the same locations, are confusing and in conflict.

At the very least, the identification and prohibited distance restrictions create ambiguities in the community custody conditions of Blevins' sentence. Both sets of discrepancies should be remanded to the trial court for clarification. *See State v. France*, 176 Wn. App. 463, 474, 308 P.3d 812 (2013), *rev, denied*. 179 Wn.2d 2015, 318 P.3d 280 (2014) (remand to the trial court to correct the erroneous reference to community custody conditions); *see also State v. Jones*, 93 Wn. App. 14, 19, 968 P.2d 2 (1998) (remand to the trial court to specify period of community placement where the language in appendix H to the judgment and sentence was at odds with the language in the judgment and sentence).

D. CONCLUSION

This Court should strike the offending community custody conditions from Blevins' judgment and sentence and remand to the trial court to clarify the conflicting and ambiguous community custody conditions.

Respectfully submitted on July 15, 2019.

s/Susan Marie Gasch, WSBA #16485
Gasch Law Office, P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
FAX: None
gaschlaw@msn.com

PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on July 15, 2019, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of brief of appellant:

Dean Ervin Blevins (#830813)
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla WA 99362

E-mail: davidq@klickitatcounty.org
David Quesnel
Klickitat County Prosecuting Atty.

s/Susan Marie Gasch, WSBA #16485

GASCH LAW OFFICE

July 15, 2019 - 10:02 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36427-5
Appellate Court Case Title: State of Washington v. Dean Ervin Blevins
Superior Court Case Number: 18-1-00033-7

The following documents have been uploaded:

- 364275_Briefs_Plus_20190715100154D3882992_2327.pdf
This File Contains:
Affidavit/Declaration - Service
Briefs - Appellants
The Original File Name was brief of appellant 2019 07 15 Blevins Dean 364275.pdf

A copy of the uploaded files will be sent to:

- davidq@klickitatcounty.org
- paapeals@klickitatcounty.org

Comments:

Sender Name: Susan Gasch - Email: gaschlaw@msn.com
Address:
PO BOX 30339
SPOKANE, WA, 99223-3005
Phone: 509-443-9149

Note: The Filing Id is 20190715100154D3882992