

FILED
Court of Appeals
Division III
State of Washington
9/24/2019 4:32 PM

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III
No. 36600-6-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JOSEPH ANDREW RICHMOND,

Defendant/Appellant

Respondent's Brief

Jodi M. Hammond
WSBA #43885
205 W. 5th Ave, Ste. 213
Ellensburg, WA 98926
(509) 962 – 7520
Attorney for Respondent

TABLE OF CONTENTS

A. RESPONSE TO ASSIGNMENTS OF ERROR.....	1
B. ISSUES PRESENTED.....	1
C. STATEMENT OF THE CASE.....	2
D. ARGUMENT	2
E. CONCLUSION.....	3

TABLE OF AUTHORITIES

Cases

State v. O'Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008)..... 2

State v. Kinard, 2019 Wash.App. LEXIS 856 (2019) 2

A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. It was not error for the court to impose conditions of community custody requiring Mr. Richmond to pay supervision fees as determined by DOC and undergo an evaluation for treatment for chemical dependency and fully comply with all recommended treatment when this condition was imposed on re-sentencing and the court was attempting to mirror the previously imposed conditions, although remand is appropriate for the court to make the specified finding supporting the treatment ordered as required by law.
- b. The court should remand and instruct the trial court to strike interest on legal financial obligations as resentencing happened after a change in law requiring the fees not be imposed on indigent defendants

B. ISSUES PRESENTED

- a. What is the proper remedy when a court is resentencing a defendant after remand from the court of appeals and imposes a condition of sentence consistent with the first sentence without first making

the finding required by the law in either sentencing hearing?

C. STATEMENT OF THE CASE

The state agrees with the factual and procedural statement of the case as presented by the appellant in their brief.

D. ARGUMENT

Where the trial court lacked authority to impose a specific community custody condition, the appropriate remedy is remand. State v. O'Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008). In State v. Kinard, 2019 Wash.App. LEXIS 856 (2019) (unpublished), Division I was asked to resolve a similar question – in that case the court ordered the defendant to undergo mental health evaluation without making the requisite finding under RCW 9.94B.080 supporting the condition of community custody. The remedy the court ordered was remanded.

When Mr. Richmond was sentenced for the first time, the court made a record about what, within the record, supported imposing a chemical dependency evaluation and treatment. Specifically the court referenced drug paraphernalia in the home where the murder was committed

as well as the defendant's jail intake paperwork where he admitted to having a daily methamphetamine habit, even though at trial, he denied methamphetamine use.

It was error for the court to not specifically make the finding that a chemical dependency contributed to the offense; although it is clear the court considered whether the condition was crime-related at the first sentencing. The question for this court is what is the proper remedy? The state urges the court to remand on this issue for the court to inquire and make the specific finding, if supported by the record.

Regarding the discretionary LFOs, because that area of the law has quickly and rapidly changed in the past four years, the appellant is correct that the court has no authority to impose discretionary LFOs on an indigent defendant and the proper remedy is to remand with instructions to the court to strike all discretionary LFOs.

E. CONCLUSION

For the reasons stated, the sentence should be affirmed. The case should be remanded to the Superior Court to strike the discretionary Legal and Financial obligations because the

defendant is indigent and make the proper inquiry and finding (if appropriate and crime-related) regarding the imposition of a chemical dependency evaluation and follow up treatment.

Dated this 24th day of September, 2019,

/S/

/S/ Jodi M. Hammond
WSBA #043885
Attorney for Respondent

PROOF OF SERVICE

I, Jodi M. Hammond, do hereby certify under penalty of perjury that on 24th day of September, 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 Respondent's Brief:

Jill S. Reuter,
WSBA #38374
Eastern Washington Appellate Law
P.O. Box 8302
Spokane, WA 99203
509-242-3910
admin@ewalaw.com

/s/ Jodi M. Hammond,
WSBA #43885
Attorney for Respondent
Kittitas County Prosecuting Attorney's Office
205 W 5th Ave
Ellensburg, WA 98926
509-962-7520
prosecutor@co.kittitas.wa.us

KITTITAS COUNTY PROSECUTOR'S OFFICE

September 24, 2019 - 4:32 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36600-6
Appellate Court Case Title: State of Washington v. Joseph A. Richmond
Superior Court Case Number: 14-1-00247-4

The following documents have been uploaded:

- 366006_Briefs_20190924163223D3305125_4512.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Respondent Brief.pdf

A copy of the uploaded files will be sent to:

- admin@ewalaw.com
- greg.zempel@co.kittitas.wa.us
- jill@ewalaw.com
- prosecutor@co.kittitas.wa.us

Comments:

Sender Name: Theresa Burroughs - Email: theresa.burroughs@co.kittitas.wa.us

Filing on Behalf of: Jodi Marie Hammond - Email: jodi.hammond@co.kittitas.wa.us (Alternate Email:)

Address:
205 West 5th Ave
Ellensburg, WA, 98926
Phone: (509) 962-7520

Note: The Filing Id is 20190924163223D3305125