

FILED

JUN 30 2016

WASHINGTON STATE
SUPREME COURT

SUPREME COURT NO. 93315-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRITTANIE OLSEN,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS,
DIVISION TWO

Court of Appeals No. 46886-7-II
Jefferson County No. 14-1-00120-2

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, BRITTANIE OLSEN, by and through her attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Olsen seeks review of the May 24, 2016, published decision of Division Two of the Court of Appeals reversing the Superior Court's decision that the order for random UAs as a probation condition was unconstitutional.

C. ISSUE PRESENTED FOR REVIEW

Whether an order permitting random, suspicionless searches of a misdemeanor DUI probationer is constitutionally permissible.

D. STATEMENT OF THE CASE

On June 11, 2014, Petitioner Brittanie Olsen pled guilty in Jefferson County District Court to one count of driving under the influence in violation of RCW 46.61.502, a misdemeanor offense. CP 5. The court imposed a sentence of 364 days, with 334 days suspended. As a condition of her suspended sentence, the court ordered that she not consume alcohol, marijuana, or non-prescribed drugs. CP 5. Over defense objection, the sentencing court ordered Olsen to submit to "random urine analysis screens ... to ensure compliance with conditions

regarding the consumption of alcohol and controlled substances.” RP 8-10; CP 5.

Olsen appealed, arguing that the random UA provision subjected her to unconstitutional searches in violation of the Fourth Amendment and article I, section 7, of the Washington Constitution. CP 7. On October 14, 2014, the Jefferson County Superior Court entered a Memorandum Opinion and Order vacating the district court sentence and directing the district court to resentence Olsen without the requirement that she submit to random urine tests. CP 29-32. The court cited case law holding that a warrantless search of a probationer requires a well-founded suspicion that a probation violation has occurred, and the collection of biological samples is a search under the state and federal constitutions. CP 30. Because the sentencing provision for random urine testing would permit a warrantless search of Olsen without any well-founded suspicion of sentence violation, the provision was not constitutionally permitted. CP 30-31.

The superior court denied the State’s motion for reconsideration, and the Court of Appeals granted the State’s motion for discretionary review. In a published decision, the Court held that the district court had authority to impose random UAs as a condition of Olsen’s misdemeanor

probation and that the random UA condition does not violate Olsen's constitutional rights.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THE ORDER FOR RANDOM, SUSPICIONLESS SEARCHES VIOLATES OLSEN'S CONSTITUTIONAL RIGHTS, AND THE SUPERIOR COURT PROPERLY VACATED IT.

Both article I, section 7 of the Washington constitution and the Fourth Amendment to the federal constitution protect individuals from warrantless searches. Our state constitution provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const. art. I, § 7. "It is by now axiomatic that article I, section 7 provides greater protection to an individual's right of privacy than that guaranteed by the Fourth Amendment." State v. Parker, 139 Wn.2d 486, 493, 987 P.2d 73 (1999). While article I, section 7 encompasses those legitimate expectations of privacy protected by the Fourth Amendment, its scope is not limited to subjective expectations of privacy. Its broader protection encompasses "those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant." State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984); Parker, 139 Wn. App. at 493-94. The emphasis of article I, section 7 is on protecting the individual's right to privacy, while the emphasis of the Fourth Amendment is on curbing governmental actions.

State v. Rose, 146 Wn. App. 439, 455, 191 P.3d 83 (2008); State v. Lucas, 56 Wn. App. 236, 240, 783 P.2d 121 (1989).

With a few narrowly drawn exceptions, a warrantless search is unreasonable per se. Rose, 146 Wn. App. at 455 (citing State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999)). One such exception is recognized for probationers. Because they have a diminished expectation of privacy, a warrant based on probable cause is not required for search of their persons, homes, or effects. Instead, probationers are subject to search based on a well-founded suspicion that a probation violation has occurred. State v. Massey, 81 Wn. App. 198, 200, 913 P.2d 424 (1996); Lucas, 56 Wn. App. at 243; State v. Patterson, 51 Wn. App. 202, 204-05, 752 P.2d 945 (1988).

In Massey, the sentencing order required Massey to submit to testing and other searches by a community corrections officer to monitor compliance with his conditions of community placement. The order did not explicitly state that the searches must be based on reasonable suspicion, and Massey appealed. Massey, 81 Wn. App. at 199-200. The Court of Appeals held that the challenge was not ripe for review, because Massey had not been charged with violating the order. The court also reiterated the recognized exception to the warrant requirement for probationers, noting that the search of a probationer is reasonable if an

officer has a well-founded suspicion that a probation violation has occurred. While the trial court was not required to include reference to that standard in its sentencing order, the reasonable suspicion standard would apply to any searches conducted pursuant to the order: “We note that, regardless of whether the sentencing court includes such language in its order, the standard for adjudicating a challenge to any subsequent search remains the same: Searches must be based on reasonable suspicion.” Massey, 81 Wn. App. at 425-26.

Whereas the order in Massey could be applied without violating constitutional rights by requiring reasonable suspicion of a probation violation to conduct a search, the challenged order in this case specifically eliminates the reasonable suspicion requirement by authorizing random UAs. CP 5. The Court of Appeals deviated from the recognized standard for searches of probationers by upholding this condition.

Specifically, the Court of Appeals held that “offenders on probation for DUI convictions do not have a privacy interest in preventing random collection and testing of their urine when used to insure compliance with a probation condition prohibiting the consumption of alcohol, marijuana, and/or non-prescribed drugs.” Slip Op. at 7. This holding conflicts with previous decisions holding that interference in bodily functions constitutes a search, and the state constitution offers

heightened protection for bodily functions. York v. Wahkiakum Sch. Dist. No. 200, 163 Wn.2d 297, 307, 178 P.3d 995 (2008) (citing Robinson v. City of Seattle, 102 Wn. App. 795, 813 n. 50, 10 P.3d 452 (2000) (citing Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 617, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989)); In re Juveniles A, B, C, D, E, 121 Wn.2d 80, 90, 847 P.2d 455 (1993); State v. Olivas, 122 Wn.2d 73, 83, 856 P.2d 1076 (1993); State v. Meacham, 93 Wn.2d 735, 738, 612 P.2d 795 (1980); State v. Curran, 116 Wn.2d 174, 184, 804 P.2d 558 (1991)).

In York, this Court considered whether random and suspicionless drug testing of student athletes violates article I, section 7 of the Washington State Constitution. York, 163 Wn.2d at 299. The Court noted that students have a lower expectation of privacy because of the nature of the school environment. Courts have nonetheless required reasonable and individualized suspicion to protect students from arbitrary searches while giving officials sufficient leeway to conduct their duties. York, 163 Wn.2d at 308. Even though students have a lower expectation of privacy, they maintain a genuine and fundamental privacy interest in controlling their bodily functions, and a UA is a significant intrusion on a student's fundamental right of privacy. Id.

The Court noted that when suspicionless searches have been allowed in Washington, it was either based entirely on federal law or in

the context of criminal investigations or dealing with prisoners. See e.g., Juveniles, 121 Wn.2d at 90 (Court upheld mandatory HIV tests of convicted sexual offenders); Olivas, 122 Wn.2d at 83 (applying 4th Amendment analysis, court upheld blood tests of convicted felons without individualized suspicion); State v. Surge, 160 Wn.2d 65, 156 P.3d 208 (2007) (collection of DNA sample from convicted felons was not intrusion into private affairs). The York court distinguished these cases from the testing of student athletes, noting that a felon has already been convicted beyond a reasonable doubt of a serious crime. York, 163 Wn.2d at 315.

While suspicionless searches of felons have been upheld, there is no justification for extending this exception to misdemeanor probationers. Exceptions to the warrant requirement of article I, section 7 must be narrowly applied. York, 163 Wn.2d at 323 (Madsen, J., concurring). Felons are subject to a different sentencing scheme; they have been convicted of serious crimes and therefore pose a greater threat to the community. These considerations may justify a special needs exception for felons as distinguished from misdemeanants. See e.g. Surge, 160 Wn.2d at 82 (Chambers, J., concurring) (concern that extension of RCW 43.43.754 DNA testing requirement to misdemeanants may violate article I, section 7).

The Court of Appeals justified its holding based on Olsen's probationary status and the nature of a DUI. Certainly, as the Court noted, random, suspicionless UAs are effective in ensuring compliance with probation conditions prohibiting the use of alcohol, marijuana, and non-prescribed drugs. But the effectiveness of such searches does not render them necessary or constitutionally permissible. "Drug and alcohol use often involves observable manifestations that would supply the particularized suspicion necessary to support a search." York, 163 Wn.2d at 325 (Madsen, J., concurring). The already-relaxed standard of suspicion for probationers is sufficient to meet the State's need while protecting the misdemeanor probationer's right to privacy.

The Court of Appeals's holding that misdemeanor DUI probationers have no privacy interest in the collection and testing of their urine conflicts with prior cases recognizing such a privacy interest and requiring a well founded suspicion for such searches. The holding further presents a significant question of constitutional law and an issue of substantial public importance. This Court should grant review. RAP 13.4(b).

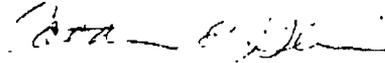
F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse the Court of Appeals decision.

DATED this 23rd day of June, 2016.

Respectfully submitted,

GLINSKI LAW FIRM PLLC

A handwritten signature in black ink, appearing to read "Catherine E. Glinski". The signature is written in a cursive style with a horizontal line extending from the end.

CATHERINE E. GLINSKI

WSBA No. 20260

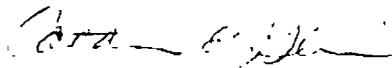
Attorney for Petitioner

Certification of Service by Mail

Today I caused to be mailed a copy of the Petition for Review in
State v. Brittanie Olsen, Court of Appeals Cause No. 46886-7-II, as
follows:

Brittanie Olsen
PO Box 735
Port Hadlock, WA 98339

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
June 23, 2016

GLINSKI LAW FIRM PLLC

June 23, 2016 - 12:58 PM

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May 24, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

BRITTANIE J. OLSEN,

Respondent.

No. 46886-7

PUBLISHED OPINION

MAXA, J. – The State appeals the superior court’s decision to vacate a provision of Brittanie Olsen’s district court sentence requiring her to submit to random urinalysis screens (UAs) as a condition of her misdemeanor probation. The superior court found that a random UA would be an unconstitutional search because it could be required without a well-founded suspicion of a probation violation.

We hold that (1) the district court had the authority, pursuant to RCW 3.66.067 and RCW 46.61.5055,¹ to impose random UAs as a condition of Olsen’s misdemeanor probation, (2) the random UA probation condition does not violate article I, section 7 of the Washington Constitution for an offender on probation for driving under the influence (DUI) because a DUI probationer does not have a privacy interest in preventing the use of his or her urine to ensure

¹ RCW 46.61.5055 has been revised three times since Olsen was arrested in May 2014. LAWS OF 2015, ch 3, § 9; LAWS OF 2015, ch. 265, § 33; LAWS OF 2014, ch. 100, § 1. However, these amendments have not substantively altered RCW 46.61.5055(5)(b), on which we primarily rely.

compliance with a probation condition prohibiting the consumption of alcohol, marijuana, or non-prescribed drugs. Accordingly, we reverse the superior court.

FACTS

In June 2014, Olsen pleaded guilty to driving under the influence. The district court imposed a sentence of 364 days, with 334 days suspended.

As a condition of Olsen's suspended sentence and probation, the district court ordered that she could not consume alcohol, marijuana, or non-prescribed drugs, and that "random urine analysis screens will be used to ensure compliance with conditions regarding the consumption of alcohol and controlled substances." Clerk's Papers (CP) at 5. Olsen objected to the condition and requested that the district court strike it from Olsen's sentence. The district court disregarded Olsen's request to strike the condition.

Olsen appealed to the superior court, which vacated Olsen's sentence and ordered the district court to resentence Olsen without the random UA condition. The State appeals.

ANALYSIS

A. DISTRICT COURT SENTENCING AUTHORITY

The State argues that the district court has authority to impose a random UA probation condition under RCW 3.66.067 and RCW 46.61.5055 for a misdemeanor sentence.² We agree.

Under RCW 3.66.067, a district court may place a defendant on probation and "prescribe the conditions thereof." Based on this authority, a district court has broad discretion to impose probation conditions. *State v. Deskins*, 180 Wn.2d 68, 78, 322 P.3d 780 (2014). This discretion

² Because this case involves a sentence for a misdemeanor conviction rather than a felony conviction, the Sentencing Reform Act of 1981, chapter 9.94A RCW, does not apply.

includes the imposition of conditions tending to prevent the future commission of crimes. *Id.* at 77.

Enforcing a prohibition of alcohol, marijuana, or non-prescribed drug consumption through random UAs would tend to prevent the commission of alcohol-related or drug-related crimes. Given a district court's broad discretion to impose probation conditions, we hold that a district court has statutory authority under RCW 3.66.067 to impose a probation condition that requires random UAs to monitor compliance with a condition prohibiting the consumption of alcohol, marijuana, or non-prescribed drugs.

In addition, RCW 46.61.5055 applies specifically to probation conditions for alcohol and drug violators. RCW 46.61.5055(5)(b) states:

If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, *or other technology designed to detect alcohol in a person's system.*

(Emphasis added.) UAs are "designed to detect alcohol in a person's system" as allowed in this provision. Further, this provision does not expressly require some particularized reason for ordering a UA. The methods specifically listed – breathalyzer and transdermal devices – may involve random testing. Therefore, under the plain statutory language, a district court has authority under RCW 46.61.5055(5)(b) to order random UAs.

RCW 46.61.5055(11) also states:

The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, *or other conditions that may be appropriate.*

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(Emphasis added.) Random UAs monitoring for alcohol, marijuana, or non-prescribed drug use fall under the “other conditions that may be appropriate” catchall provision in RCW 46.61.5055(11).

Accordingly, we hold that the statutory language of RCW 3.66.067 and RCW 46.61.5055(5) and (11) provided the district court with the authority to impose Olsen’s random UA probation condition.

B. CONSTITUTIONALITY OF RANDOM UAS FOR DUI PROBATIONERS

Olsen argues that even if the district court had statutory authority to impose the random UA condition, enforcement of that condition would violate her right to remain free from searches not authorized by law under article I, section 7 of the Washington Constitution. We disagree.

1. Prohibition Against Warrantless Searches

The Fourth Amendment to the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Similarly, article I, section 7 of the Washington Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Our Supreme Court has recognized that article I, section 7 may provide greater protection to an individual’s right of privacy than the Fourth Amendment under some circumstances. *See State v. Meneese*, 174 Wn.2d 937, 946, 282 P.3d 83 (2012). The State concedes that article I, section 7 provides broader protection here, and therefore we analyze this

issue under that provision.³ We review questions of constitutional construction de novo. *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 302, 178 P.3d 995 (2008).

The threshold question under article I, section 7 is whether the challenged action constitutes a disturbance of a person's private affairs. *State v. Surge*, 160 Wn.2d 65, 71, 156 P.3d 208 (2007). The collecting and testing of a person's urine generally constitutes a disturbance of a person's private affairs and is a search. *See, e.g., York*, 163 Wn.2d at 307;⁴ *State v. Rose*, 146 Wn. App. 439, 455, 191 P.3d 83 (2008); *Robinson v. City of Seattle*, 102 Wn. App. 795, 812, 10 P.3d 452 (2000).

Washington courts have held in several cases that suspicionless UA testing is an unconstitutional search. In *York*, the Supreme Court held that article I, section 7 prohibits suspicionless, random UA testing of public school athletes. 163 Wn.2d at 316. In *Rose*, this court held that article I, section 7 prohibits suspicionless, weekly UA testing of criminal defendants released from custody before trial. 146 Wn. App. at 455-58. In *Robinson*, Division One of this court held that article I, section 7 prohibits pre-employment UA testing for positions that do not directly implicate public safety. 102 Wn. App. at 828. However, none of these cases involved a person on probation after being convicted of DUI.

³ Neither party has suggested that we should perform an analysis under *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986) to determine whether article 1, section 7 provides broader protection than the Fourth Amendment under the specific facts of this case.

⁴ *York* involved a lead opinion joined by three justices, a concurring opinion by Justice Madsen joined by three other justices, and a concurring opinion by Justice J.M. Johnson. 163 Wn.2d at 316, 329. Justice Madsen's opinion agreed with the lead opinion that there is a strong privacy interest in excretory functions. *Id.* at 327 (Madsen, J., concurring). Justice J.M. Johnson also agreed that requiring a urinalysis test is a significant invasion of privacy. *Id.* at 334 (J.M. Johnson, J., concurring).

The issue here is whether suspicionless, random UA testing violates article I, section 7 for an offender on district court probation for a DUI conviction.

2. Searches of Probationers

Probationers have a diminished right of privacy under article I, section 7. *E.g.*, *State v. Jardinez*, 184 Wn. App. 518, 523, 338 P.3d 292 (2014); *State v. Lucas*, 56 Wn. App. 236, 240, 783 P.2d 121 (1989). Probationers have diminished privacy rights because they are serving the sentence for their crimes and remain in the custody of the law even though they have been released from confinement. *State v. Reichert*, 158 Wn. App. 374, 386, 242 P.3d 44 (2010). Therefore, the State may supervise a probationer closely. *Jardinez*, 184 Wn. App. at 523.

Because of their diminished privacy rights, probationers may be subject to warrantless searches of their person and property as part of the legitimate operation of the probation process. *Jardinez*, 184 Wn. App. at 523. In general, a warrantless search of a probationer is constitutional if that search is reasonable. *State v. Simms*, 10 Wn. App. 75, 84, 516 P.2d 1088 (1973); *see also State v. Campbell*, 103 Wn.2d 1, 22, 691 P.2d 929 (1984). This court recognized in *Simms* that a probation officer need not have traditional probable cause in order to conduct a constitutionally permissible warrantless search of a probationer. 10 Wn. App. at 85-86. Instead, the test for a constitutional search is whether a probation officer has a “well founded suspicion” that a parole violation has occurred. *Id.* at 88.

Simms addressed only the Fourth Amendment. *Id.* However, subsequent cases have applied the “well founded suspicion” requirement under article I, section 7.⁵ *E.g., Lucas*, 56 Wn. App. at 243-44; *State v. Patterson*, 51 Wn. App. 202, 205, 752 P.2d 945 (1988).

3. DUI Probationers’ Privacy Interest in Bodily Functions

Olsen argues that probationers retain a reasonable expectation of privacy in their bodily functions despite their diminished right to privacy. We hold that offenders on probation for DUI convictions do not have a privacy interest in preventing the random collection and testing of their urine when used to insure compliance with a probation condition prohibiting the consumption of alcohol, marijuana, and/or non-prescribed drugs. Therefore, the “well founded suspicion” requirement is inapplicable here.

A person generally has a privacy interest in his or her bodily functions, including control of urine. *York*, 163 Wn.2d at 307. However, “a person’s privacy rights under article I, section 7 may vary based on that person’s status as an arrestee, pretrial detainee, prisoner, or probationer.” *Surge*, 160 Wn.2d at 74. The court in *Surge* emphasized that there is a difference between the privacy interests of “ordinary citizens” and the privacy interests of convicted felons. 160 Wn.2d at 72. “[A] citizen does lose some expectation of privacy by the fact of conviction and incarceration.” *Id.* at 75. The issue here is whether a DUI probationer, who is legally in the

⁵ The legislature codified an exception to the warrant requirement for felony offenders sentenced under the Sentencing Reform Act. RCW 9.94A.631(1) provides that a community corrections officer may require an offender to submit to a search of his person or property “[i]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence.” Courts have construed the term “reasonable cause” under RCW 9.94A.631(1) as requiring a well founded suspicion that a violation has occurred. *Jardinez*, 184 Wn. App. at 524; *see also State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009).

State's custody because of a DUI conviction, loses the "ordinary" privacy interest in the control of his or her urine.

The Supreme Court addressed a similar issue in *In re Juveniles A, B, C, D, E*, 121 Wn.2d 80, 847 P.2d 455 (1993). In that case, the superior court commissioner ordered five juveniles found to have committed sexual offenses under RCW 9A.44 to submit to human immunodeficiency virus (HIV) tests. *Id.* at 84-85. The juvenile offenders argued that taking a blood sample for an HIV test violated constitutional prohibitions against unreasonable searches and seizures under the Fourth Amendment and article I, section 7. *Id.* at 90.

The court analyzed the reasonableness of the search under the special needs doctrine. *Id.* at 91. In this context, the court noted that the constitutional rights of convicted offenders are subject to substantial limitations and restrictions. *Id.* at 92. The court further stated that sexual offenders' expectation of privacy is even less because of the nature of their crime: "For sexual offenders in particular, their expectation of privacy in bodily fluids is greatly diminished because *they have engaged in a class of criminal behavior* which presents the potential of exposing others to the AIDS virus." *Id.* at 92-93 (emphasis added). The court quoted with approval a commentator's statement that because AIDS can be transmitted through sexual contact, a sexual offender should reasonably expect that his or her blood will be tested for the virus. *Id.* at 93.

In *Surge*, the Supreme Court addressed the constitutionality of a statute that authorized the collection of deoxyribonucleic acid (DNA) from persons convicted of felonies and certain gross misdemeanors. 160 Wn.2d at 69-71. The court began by determining whether collecting DNA was a disturbance of a person's private affairs, noting that if there is no such disturbance, there is no article 1, section 7 violation. *Id.* at 71. The court concluded that a person convicted

of a felony does not have a privacy interest in the collection his or her DNA, at least if its use was limited to identification purposes. 160 Wn.2d at 74. The court stated that a convicted felon is not “entitled to hold” such a privacy interest. *Id.*

Here, Olsen was convicted of DUI. She was sentenced to 364 days in jail, but was allowed to serve 334 days of that sentence on probation. While on probation, she remained under custody of the law. *Reichert*, 158 Wn. App. at 386. As someone serving a criminal sentence under legal custody, she had a greatly diminished expectation of privacy in general.

Further, the nature of Olsen’s crime eliminated any specific privacy interest she had in preventing the collection and use of her urine to enforce a prohibition of the consumption of alcohol, marijuana, and non-prescribed drugs. Olsen “engaged in a class of criminal behavior” that involved the abuse of alcohol. *Juveniles*, 121 Wn.2d at 93. As in *Juveniles*, a person convicted of a DUI should know that he or she will be prohibited from consuming alcohol, marijuana, or non-prescribed drugs and that the normal method of assuring compliance is through random UAs. *See State v. Acevedo*, 159 Wn. App. 221, 231-34, 248 P.3d 526 (2010); *State v. Vant*, 145 Wn. App. 592, 603-04, 186 P.3d 1149 (2008) (both approving random UAs to monitor compliance with community custody conditions imposed under the Sentencing Reform Act of 1981).

Because of Olsen’s conviction involving the abuse of alcohol, she is not “entitled to hold” a privacy interest in the use of her urine. *Surge*, 160 Wn.2d at 74. As in *Surge*, the fact that Olsen was convicted of DUI meant that she had no privacy interest in the use of her urine if limited to monitoring her consumption of alcohol, marijuana, and non-prescribed drugs.

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We hold that Olsen, as a person in legal custody serving her sentence for DUI on probation, did not have a privacy interest in preventing the use of her urine to ensure compliance with a probation condition prohibiting the consumption of alcohol, marijuana, or non-prescribed drugs.

We reverse the superior court.



MAXA, J.

We concur:



E. J. GEN



SUTTON, J.