

658,14-5

65874-3

NO. 65874-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

HAROLD JACKSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Kenneth Cowsert, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court acted outside its authority when it ordered appellant to take all prescribed medications recommended by medical and psychological professionals as a condition of community custody.

Issue Pertaining to Assignment of Error

Did the trial court act outside its authority when it ordered, as a condition of community custody, that appellant take all prescribed medications recommended by medical and psychological professionals where there is no statutory authorization or compelling state interest to justify that condition, no evidence appellant's mental or physical health issues contributed to his offense and no finding appellant is mentally ill and that illness influenced the crime?

B. STATEMENT OF THE CASE¹

1. Procedural History/Sentence

Harold Jackson was charged by amended information with custodial assault. CP 49; RCW 9A.36.100(1)(b). Following a jury trial Jackson was found guilty as charged. CP 35.

Jackson was sentenced to a standard range sentence of four months of home detention and nine months of community custody. CP 2-12. As a

¹ Reference to the verbatim report of proceedings is as follows: 1RP July 7-8, 2010; 2RP April 29, 2010; 3RP July 13, 2010.

condition of community custody the court ordered that Jackson “shall take all prescribed medications recommended by medical and psychological professionals.” CP 5.

2. State’s Case

On October 4, 2009, Jackson was an inmate in the Snohomish County Jail. That morning, while inmates were having their recreational time outside their cells, a jail nurse came to the area where Jackson was housed to pass out medications to inmates. 1RP 24-25. Officer Randall Williams, who was assigned to the area where Jackson was housed, testified that Jackson became disruptive and demanded to see the nurse. 1RP 24.

At 1:00 p.m., the nurse returned to hand out medication. 1RP25. Jackson again became disruptive and demanded to see the nurse, stating he had scabies. 1RP 27, 56. In order to see a jail medical provider an inmate is required to fill out a Kite. 1RP 25-26. Jackson told Williams he had submitted a number of Kites but still had not been seen by a nurse. 1RP 27.

After the nurse finished dispensing the medications, she saw Jackson and gave him some ointment for his skin. 1RP 27, 29. Williams then instructed Jackson to return to his cell for a lock down because he had

been loud and disruptive earlier. Williams told Jackson because of that behavior he was going to issue Jackson a minor violation. 1RP 29.

Jackson returned to his cell. Williams secured the cell door and went to his desk to write the violation. 1RP 30-31. Williams then returned to Jackson's cell to have Jackson sign the violation paperwork. Jackson told Williams he did not have a pencil so Williams went and got a pencil and returned to Jackson's cell. 1RP 32. According to Williams, when he opened the cell door Jackson asked Williams if he knew what piss was and if Williams had ever had any thrown on him. 1RP 33. At that point Jackson threw the liquid contents of a styrofoam soup cup on Williams' head and shoulders. 1RP 33.

While Williams was cleaning the liquid off his face, Jackson yelled and screamed and swung his crutches at the cell door. 1RP 41. Eventually other officers arrived to remove Jackson to another part of the jail. 1RP 42. Jackson told the officers Williams pushed his buttons, he threw urine on Williams and he [Jackson] was probably going to be charged. 1RP 88-89, 94-95.

Another inmate, Brandon Nease, said Jackson was concerned he had scabies and his arms were red. 1RP 79. Nease said that after Jackson saw the nurse he was upset and called her a bitch. 1RP 73. When Williams returned to Jackson's cell with a pencil Jackson threw something

that Jackson announced was urine on Williams from a plain white cup. 1RP 74, 82. Nease also heard Jackson beat on his cell door with his crutches before he was removed. 1RP 78.

A video camera pans the area where the incident occurred but the video from the camera was not retained by the jail and was either taped over or destroyed. 1RP 53, 64, 99.² The cup containing the liquid Jackson threw on Williams was not preserved and the liquid was never tested to determine if it was urine, though Williams said that later his clothes reeked of urine. 1RP 36, 63-65, 100-102.

3. Defense Case

Jackson testified that on September 31, 2009 he turned himself in to the jail to begin serving a 30 days sentence for driving on a suspended license. 1RP 120. He brought his medications with him so they could be administered to him while he was serving his sentence. 1RP 121-123. The medications were for pain control and Jackson's bi-polar and sleeping issues. 1RP 121-122. Because Jackson was not getting his medications, except for methadone, he submitted a number of medical Kites but was never seen by a nurse. 1RP 124-126.

² When Jackson was released, he wrote asking for a copy of the jail videos during the time he was incarcerated. 1RP 144-145. He was told the videos had been destroyed. 1RP 146-147.

On October 4th, during the morning recreational time, Williams told Jackson to quiet down because he was making too much noise and Jackson complied. 1RP 129. That morning Jackson also noticed he had developed a rash and after talking to other inmates he was concerned it was scabies. 1RP 129-130.

That afternoon when the nurse came to hand out medication, Jackson waited in the back of the line because he wanted the nurse to look at his arm. 1RP 130. When he approached the nurse, Williams told him he would have to write out a medical Kite so Jackson did and was then seen by the nurse. 1RP132. The nurse gave Jackson some cream but Jackson did not believe it was the appropriate treatment for scabies. 1RP 132.

Williams then told Jackson he was going to issue Jackson a violation because of Jackson's behavior earlier that morning. 1RP 132, 136. When Williams came to Jackson's cell to have Jackson sign the violation paperwork, Jackson asked to use Williams' pencil but Williams refused and said he would get Jackson a pencil. 1RP 139.

That morning another inmate had given Jackson some broth. Jackson poured the broth into a plain white styrofoam cup. 1RP 134. While Jackson was signing the violation paperwork, Williams kept rolling a chrome pencil in his hand and he acted frustrated and aggressive. 1RP

139-140. When Jackson turned away after handing Williams the paperwork, Williams started to lunge at him. Jackson was afraid Williams was going to physically attack him so Jackson grabbed the cup with the broth in it and threw it at Williams. 1RP 141.

C. ARGUMENT

THE COURT ACTED OUTSIDE ITS AUTHORITY IN IMPOSING THE COMMUNITY CUSTODY CONDITION THAT JACKSON TAKE ALL PRESCRIBED MEDICATIONS.

A trial court may only impose a sentence authorized by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). A defendant may therefore challenge an illegal or erroneous sentence for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); State v. Julian, 102 Wn. App. 296, 304, 9 P.3d 851 (2000), *review denied*, 143 Wn.2d 1003 (2001). An offender has standing to challenge conditions even though he has not been charged with violating them. State v. Riles, 86 Wn. App. 10, 14-15, 936 P.2d 11 (1997), *aff d.*, 135 Wn.2d 326, 957 P.2d 655 (1988).

As a condition of community custody, the court ordered that Jackson “shall take all prescribed medications, recommended by medical and psychological professionals.” CP 6; 3RP 17. The court improperly imposed this condition.

There may be many reasons why a person would choose not to take prescribed drugs. For example, a person might prefer not to take a drug because the side effects outweigh any perceived benefit or they might prefer to treat the problem in ways that do not require the taking of drugs. The constitutional right to privacy encompasses the right to autonomous decision-making and that interest includes the right to refuse medical treatment. Butler v. Kato, 137 Wn.App. 515, 527, 154 P.3d 259 (2007) (citations omitted). A competent adult has the constitutional and common law right to determine what will be done to their bodies. In re Schuoler, 106 Wn.2d 500, 506, 723 P.2d 1103 (1986) (citations omitted). The government cannot infringe on this right absent a compelling governmental interest. Kato, 137 Wn. App. at 527 (citation omitted).

There is no statutory provision in the Sentencing Reform Act that authorizes a court to order as a condition of community custody that a person take prescribed medications regardless of whether those medications are prescribed for physical or mental health reasons. Likewise, the record here does not show a compelling governmental interest to justify ordering Jackson to take prescribed medications. The court simply did not have the statutory or constitutional authority to order Jackson to take prescribed medications.

As part of a sentence, RCW 9.94A.703(3)(c) allows the court to impose "crime-related treatment or counseling services" as a condition of community custody. RCW 9.94A.703(3)(d) allows the court to order an offender to "[p]articipate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community[.]"

Assuming the condition that Jackson take all prescribed medication is interpreted as "treatment" or "affirmative conduct" authorized under RCW 9.94A.703(3)(c) or (d), it is nonetheless improper. Court-ordered evaluations and treatment must address an issue that contributed to the offense. State v. Jones, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003) (addressing former RCW 9.94A.700 and former RCW 9.94A.715, which contained the same operative language as RCW 9.94A.703(3)(c) and (d)).

Here, there is no evidence the offense was related to Jackson's failure to take any prescribed medications. According to the State's witnesses, Jackson assaulted Williams when Williams tried to have him sign the violation report, which was issued because of Jackson loud and disruptive behavior. According to Jackson, he assaulted Williams because he feared Williams was going to attack him. There was no evidence Jackson's failure to take his prescribed medication in any way contributed to the offense.

Moreover, assuming that part of the condition that Jackson take all prescribed medications recommended by psychological professionals is akin to a requirement he participate in mental health treatment, the court failed to follow statutory requirements before ordering that condition.

RCW 9.94B.080 provides:

The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court 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. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

That provision is identical to former RCW 9.94A.505(9) (Laws of 2006 ch. 73 § 6.). The statute authorizes a trial court to order an offender to submit to mental health evaluations and treatment as a condition of community custody only when the court follows specific procedures. State v. Brooks, 142 Wn. App. 842, 851, 176 P.3d 549 (2008). A court may not order an offender to participate in mental health treatment as a condition of community custody "unless the court finds, based on a presentence report and any applicable mental status evaluations, that the

offender suffers from a mental illness which influenced the crime." Jones, 118 Wn. App. at 202; *accord* State v. Lopez, 142 Wn. App. 341, 353, 174 P. 3d 1216 (2007); Brooks, 142 Wn. App. at 850-52.

The court in sentencing Jackson did not make the statutorily mandated finding that Jackson was a "mentally ill person" as defined by RCW 71.24.025. Additionally, the court never found that Jackson suffered from a mental illness that influenced the crime for which he was convicted.

The court ordered community custody condition, that Jackson "take all prescribed medications, recommended by medical and psychological professionals," is improper. The condition is not authorized by statute, is unsupported by any compelling state interest, is not crime-related and is not based on any finding Jackson is mentally ill and that illness influenced his crime. That condition should be stricken. Jones, 118 Wn. App. at 212; Lopez, 142 Wn. App. at 354.

D. CONCLUSION

This Court should remand this Case and order the trial court to strike the illegal sentencing condition.

DATED this 16 day of January, 2011.

Respectfully submitted,

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DIVISION I**

STATE OF WASHINGTON)	
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Respondent,)	
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v.)	COA NO. 65874-3-I
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HAROLD JACKSON,)	
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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20TH DAY OF JANUARY 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- SNOHOMISH COUNTY PROSECUTOR'S OFFICE
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- HAROLD JACKSON
115 124TH STREET SE, H-4
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2011 JAN 20 10:00 AM
X/5

SIGNED IN SEATTLE WASHINGTON, THIS 20TH DAY OF JANUARY 2011.

x Patrick Mayovsky