

NO. 65874-3-1

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

STATE OF WASHINGTON,

Respondent,

v.

HAROLD E. JACKSON,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUE

Whether there was sufficient evidence to support a finding that the condition of community custody, that Jackson take his prescription medication, was crime-related?

II. STATEMENT OF THE CASE

Harold Jackson turned himself in to the Snohomish County Jail on September 29, 2009, to serve a 30 day sentence for driving while license suspended. Jackson felt it was “imperative” and “in his best interest” to be able to take his prescription medications while he was incarcerated, so he brought his medications with him to jail. RP 120-123.

During the period of September 29 through October 4, 2009, the only medication Jackson received in jail was methadone. The jail has a “kite” system for inmates to get the attention of the medical staff. Unless it is life threatening, the inmate fills out a form and put it in a box for the medical staff to review. The non-medical staff at the jail does not have access to the kite system. Jackson was concerned about not getting his medications and sent at least 10 “kites” about not getting his medications for his mental health issues. RP 25-26, 124-127, 170.

On October 4, 2009, in module G-1, Officer Williams was overseeing a Med Pass—a nurse comes into the module recreation area with a list of inmates to receive their medications. Officer Williams called out the names; only inmates whose names are called were to approach and get their medication. After the inmate was given medication Officer Williams would do a mouth check and the inmate would return to recreation. Jackson was not on the list of persons to be seen by the nurse on October 4, 2009. RP 24.

During the Med Pass, Jackson became disruptive, demanding to see the nurse. Officer Williams asked Jackson if he had put in a “kite” to be seen and Jackson replied that he been sending “kites” but that he got scabies and needed to be seen. Jackson was seen by the nurse and given some cream for the rash on his arm. After being seen Jackson was still upset and called the nurse a “bitch.” Jackson thought there was a collective effort on behalf of the jail to obstruct his medical treatment. RP 24-27, 30, 55-58, 73, 159.

Officer Williams instructed Jackson to return to his cell for lock down and informed Jackson he was going to write him up on a minor rule violation because of his disruptive behavior. Jackson returned to his cell and Officer Williams started writing the violation.

Officer Williams presented the violation to Jackson and informed him of his options; agree with the violation and sanction or contest the violation or the sanction. Jackson stated that he did not have a pencil, so Officer Williams went to his desk and got a pencil for him. When Officer Williams returned to Jackson's cell and opened the door Jackson asked Officer Williams if he knew what piss was and if Officer Williams had ever had piss thrown on him. Jackson then grabbed a cup sitting on the sink in the cell and threw the contents in Officer Williams' face and on head and shoulders. RP 29-33.

Officer Williams closed Jackson's cell door and went to use the eyewash station at the sink in the module. Officer Williams called for a lock down to secure all the inmates in the module and radioed his supervising sergeant to respond to the module. Sergeant Fairbanks responded and had Jackson moved to module 4-North. After he assaulted Officer Williams, Jackson still appeared upset and frustrated about his medical treatment. RP 37-39, 41, 92-94, 101.

During closing argument defense counsel asked the jurors to remember Jackson's mental health issues and his being without his medications for five days when they considered the issue of self-

defense. The jury found Jackson guilty as charged of custodial assault under RCW 9A.36.100(1)(b). CP 35, 49. RP 200.

At sentencing Jackson asked the court to authorize Electronic Home Monitoring due to Jackson's mental health issues and his need to take his prescribed medications. Attached to Defendant's Sentencing Memorandum were lists of Jackson's prescribed medications and the symptoms associated with a sudden withdrawal from those medications. Also attached to Defendant's Sentencing Memorandum was a letter from Jackson's treatment provider, Barbara Scott, ARNP. Ms. Scott stated that as long as Jackson takes his medication as prescribed "he has maintained a fairly stable mood/conduct history." It was Ms. Scott's opinion that the medications prevent the type of behavior Jackson exhibited in October 2009, during the episode in the jail. The State agreed that Jackson's mental health and the necessity of taking his medications were important factors for the court to consider. The court did not want Jackson to be deprived of his medication and took these issues into consideration when imposing sentence. CP 14, 16-34; Sent. RP 5-9, 14.

The court imposed 4 months to be served on electronic home monitoring, allowing Jackson to attend his bi-weekly doctor

appointments, follow the doctor's instructions, and required that Jackson take his medications as prescribed as a condition of Jackson's supervision on community custody. Jackson indicated his agreement with the condition. CP 6; Sent. RP 16-17.

III. ARGUMENT

A. THE CONDITION OF COMMUNITY CUSTODY WAS CRIME RELATED.

Jackson argues that the court lacked authority to impose the community custody condition that he take his prescribed medications. Jackson bases this argument on his assertion that there was no evidence that his failure to take his prescribed medications contributed to the offense.

A sentencing court has discretion to impose crime-related prohibitions as a condition of supervision. RCW 9.94A.703(3)(a) and (f). A "crime-related prohibition" is a court order directly relating to the circumstances of the crime for which the offender was convicted. RCW 9.94A.030(10). The prevention of coerced rehabilitation is the main concern when reviewing crime-related prohibitions. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Otherwise, the assignment of crime-related prohibitions has "traditionally been left to the discretion of the sentencing judge." State v. Parramore, 53 Wn. App. 527, 530, 768 P.2d 530 (1989). A

sentence will be reversed only if it is “manifestly unreasonable” such that “no reasonable man would take the view adopted by the trial court.” Riley, 121 Wn.2d at 37 (citing State v. Blight, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977)).

1. The Evidence Was More Than Sufficient To Support A Finding That The Condition Was Crime-Related.

Jackson brought his medications with him when he turned himself in to the Jail, because he felt it was “imperative” and “in his best interest” to be able to take his prescription medications while he was incarcerated. RP 120-123. Jackson had not been given his medication and had sent at least 10 “kites” about not getting his medications for his mental health issues. RP 124-127, 170. On October 4, 2009, Jackson was not on the list of persons to be seen by the nurse. Jackson became disruptive, demanding to see the nurse during the Med Pass. RP 24. Officer Williams asked Jackson if he had put in a “kite” to be seen and Jackson replied that he been sending “kites” but that he got scabies and needed to be seen. When the Med Pass was completed Jackson was seen by the nurse and given some cream for the rash on his arm. RP 56-58. Jackson was still upset and called the nurse a “bitch.” RP 73. Jackson thought there was a collective effort on behalf of the jail to

obstruct his medical treatment. RP 159. After assaulting Officer Williams, Jackson was still upset and frustrated about his medical treatment. RP 94, 101.

During closing defense counsel argued that Jackson's mental health issues and his being without his medications for five days had significance to the issue of self-defense:

You also have to remember that Harold has mental health issues. As you saw on the stand, Harold is loud. He likes to talk. Can you imagine a loud man who likes to talk, with mental health issues, sitting in jail for five days without those mental health medications? Because you've got to understand that. There's no video to tell you what happened, and that's not Harold's fault, if you can't be convinced beyond a reasonable doubt that Harold didn't act in self-defense.

RP 200.

A recurring theme of the trial was Jackson not taking his medications and how that fact contributed to Jackson's actions on October 4, 2009. There was substantial evidence that the offense was related to Jackson's failure to take his prescription medications. The condition that Jackson take his prescribed medication falls within the authority granted by RCW 9.94A.703(3)(f). The requirement that Jackson take his prescribed medications is reasonably related to his conviction.

2. The Opinion Of Defendant's Treatment Provider Was That His Prescribed Medication Prevented The Type Of Behavior He Exhibited In Jail.

At sentencing, Jackson asked the court to consider his mental health issues and his need to take his prescribed medications. CP 14; Sent. RP 7-9. The State agreed that these were important factors for the court to consider. Sent. RP 5-6. Attached to Defendant's Sentencing Memorandum was a letter from Jackson's treatment provider, Barbara Scott, ARNP, lists of Jackson's prescribed medications and the symptoms associated with a sudden withdrawal from those medications. CP 16-34. It was Ms. Scott's opinion that the medications prevent the type of behavior Jackson exhibited during the episode in the jail. Ms. Scott stated that as long as Jackson takes his medication as prescribed "he has maintained a fairly stable mood/conduct history." CP 16.

The court took Jackson's medical issues into consideration when imposing sentence:

I know most of what I know about you from the trial. Your attorney has put a pretty good summary of Harold Jackson for me in her Sentencing Memorandum. My sentence takes into consideration what I understand to be your issues, but, also, you need to understand it takes into consideration what I think would be the appropriate punishment.

Sent. RP 14.

The court did not want Jackson to be deprived of his medication. The court imposed 4 months to be served on electronic home monitoring, allowing Jackson to attend his bi-weekly doctor appointments and follow the doctor's instructions. The court required Jackson to take his medications as prescribed as a condition of Jackson's supervision. Jackson agreed with the condition. Sent. RP 16-17.

Here, defense specifically asked the court to consider Jackson's mental health and the need for his medications. Jackson's appropriate treatment includes taking his prescribed medications. The opinion of Jackson's medical provider was that Jackson's prescribed medications prevent the type of behavior Jackson exhibited during the jail episode. The court responded by imposing the requirement that Jackson now challenges.

B. THIS CASE DOES NOT INVOLVE THE INVOLUNTARY ADMINISTRATION OF ANTIPSYCHOTIC DRUGS.

In the present case, the condition that Jackson take his prescribed medications does give rise to restrictions on the involuntary administration of antipsychotic drugs. See Washington v. Harper, 494 U.S. 210, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990). So far as the record reflects, Jackson has not refused to take his

prescribed medications. Most people who are ill accept their physicians' advice on how to treat that illness; Jackson expressed his desire to do the same. RP 16-17.

Jackson knows what mental illness he suffers from and he knows what drugs have been prescribed as treatment. Jackson knows the benefits and detriments of such medications. Jackson has not expressed any reluctance to taking his prescribed medication. To the contrary, he has expressed his desire to continue taking his prescribed medications.

The condition that Jackson take his prescribed medications is not intended to coerce his rehabilitation. See State v. Riley, 121 Wn.2d at 37. If and when Jackson does not wish to take his prescription medication, he can ask the trial court to review the condition. The court can then make an informed decision based on accurate medical information. This court can, if appropriate, review that decision based on a complete record. This court's intervention is not necessary at this time.

IV. CONCLUSION

For the reasons stated above the appeal should be denied.

Respectfully submitted on April 6, 2011.

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