

66295-3

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NO. 66295-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JASON REEVES LEE,

Appellant.

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COURT OF APPEALS OF THE STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RONALD KESSLER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. A case is moot if a court cannot provide effective relief. Here, the defendant has completed his sentence, and there are no collateral legal consequences of the challenged sentencing provisions. Is the defendant's case moot?

2. A statute should not be given an absurd interpretation when there is a reasonable interpretation that would carry out the intent of the legislature. The Sentencing Reform Act authorizes trial courts to impose treatment as part of a first-time offender waiver regardless of whether the treatment is crime-related, and caselaw recognizes that a trial court may delegate therapeutic decisions to the treatment provider. When granting a first-time offender waiver, may a trial court order a mental health evaluation concomitant to mental health treatment so that the treatment provider can make an informed recommendation regarding the type of treatment needed?

3. The first-time offender waiver statute in effect at the time of the defendant's crime limits the amount of community custody that may be imposed to twelve months "unless treatment is ordered." Here, the trial court ordered the defendant to complete any treatment recommended by a mental health evaluator. Did the

trial court order treatment, such that the 12-month maximum on community custody did not apply?

B. STATEMENT OF THE CASE

On March 26, 2008, Julien Chu's residence was burglarized and various items were stolen, including a safe, briefcases, computers, and cameras. RP 261-62. Information from a neighbor led officers to contact the registered owner of a particular Honda CRV. RP 212, 273. The registered owner was Jean Reeves, the mother of the defendant, Jason Reeves Lee. RP 212, 258. Reeves usually left the vehicle at home during the day while she was at work, and Lee had permission to use it. RP 259. Lee was the only person besides Reeves who was authorized to use the vehicle. RP 258.

Seattle Police Detective Danial Conine contacted Lee, read him his constitutional rights, and obtained a written statement from Lee. RP 216, 219. In his statement, Lee confessed that he had assisted two friends who had burglarized Chu's residence by driving them and the stolen property away from the scene. RP 225-26. Lee had been paid \$200 for his participation. RP 227. Lee identified the two others who were involved, and some of the

stolen property was later recovered from one of their residences.
RP 228, 235.

The State charged Lee with Residential Burglary. CP 2-3. His first jury trial ended in a mistrial after one juror disclosed to others that she had seen Lee escorted to the courtroom in shackles. RP 186-88. Lee was immediately retried, and a new jury found him guilty as charged. RP 304; CP 40.

Lee was sentenced on October 19, 2010. RP 310. The trial court followed the joint recommendation of the parties and granted Lee a first-time offender waiver, imposing only 90 days of confinement, which Lee had already served. RP 311, 316; CP 64. Judge Kessler asked Lee about his aunt's statement in her letter of support that "Jason needs some serious mental health help." CP 83; RP 315. Lee stated, "I have gone to counseling in the past, but I wouldn't say that anything is wrong with me seriously." RP 315. The court indicated that it had also reviewed the certification for determination of probable cause in Lee's other pending case, which involved a charge of rendering criminal assistance in a homicide. RP 315-16.

The trial court imposed 24 months of community custody, and ordered Lee to obtain a mental health evaluation and complete

any treatment recommended by the evaluator. RP 316-17; CP 64, 67. Judge Kessler stated that if the evaluator did not recommend any treatment, Lee could return to court and the remaining community custody would be stricken. RP 317-18. Lee did not object to the terms or length of the community custody imposed. RP 310-20. Lee timely appealed.¹ CP 69.

C. ARGUMENT

1. THIS COURT SHOULD DISMISS LEE'S APPEAL AS MOOT.

Lee contends that his case is not moot and that it involves matters of continuing and substantial public interest. This claim should be rejected. Because Lee has already served the entirety of the challenged sentence and because the arguments he asserts are not likely to be raised again or are of interest only to Lee, his appeal should be dismissed as moot.

¹ As noted in the Brief of Appellant, an unusual procedural history resulted in a delay of several years between filing of the notice of appeal and filing of Lee's opening brief. Brief of Appellant at 4 n.1.

a. No Court Can Provide Lee With Effective Relief.

A case is moot if a court can no longer provide effective relief. In re Pers. Restraint of Mattson, 166 Wn.2d 730, 736, 214 P.3d 141 (2009). An appeal that raises only moot issues should be dismissed. Sorenson v. City of Bellingham, 80 Wn.2d 547, 558-59, 496 P.2d 512 (1972).

The appeal of a sentence that has already been completed is a classic example of mootness. See, e.g., In re Pers. Restraint of Cross, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (case moot where detention that is the subject of the appeal has already ended); In re Pers. Restraint of Bovan, 157 Wn. App. 588, 592-93, 238 P.3d 528 (2010) (case moot where defendant released from confinement while personal restraint petition was pending). Lee challenges the conditions of his community custody, yet the term of community custody imposed has already been completed.² Lee's appeal is therefore moot.

Lee's claim that his case is not moot because he suffers "significant" non-legal collateral consequences from the challenged

² Because Lee had already served all of the jail time imposed at sentencing, the 24 months of community custody would have begun immediately upon sentencing on October 19, 2010. A check of the Department of Corrections' Felony Offender Reporting System confirms that Lee is no longer on community custody.

sentencing provisions should be rejected for several reasons. Brief of Appellant at 13. First, Lee offers no authority, and the State is aware of none, indicating that non-legal collateral consequences are relevant to the question of mootness. See Sibron v. New York, 392 U.S. 40, 57-58, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) (“[A] criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.” (emphasis added)); Cross, 99 Wn.2d at 377 (citing In re Ballay, 482 F.2d 648, 651–53 (D.C.Cir.1973)). If the possibility that a private individual might think worse of Lee as a result of the challenged sentencing provisions were sufficient to save Lee’s case from mootness, no appeal of a sentence would ever be moot.

Second, even if non-legal collateral consequences were relevant, Lee’s bare assertion of possible future harm to his ability to find work or housing is unsupported by any evidence in the record, leaving this Court unable to assess whether the asserted harms are severe enough or certain enough to constitute the kind of “significant and adverse” collateral consequences that render a case not moot. See Cross, 99 Wn.2d at 377. Finally, Lee’s argument illogically assumes that a hypothetical future employer or

landlord would think worse of Lee from seeing that he was ordered to complete an evaluation and treatment if recommended than if the evaluation were stricken from the Judgment and Sentence, leaving only a requirement of treatment. This Court should therefore find that Lee's case is moot.

b. Lee's Appeal Does Not Involve Matters Of Continuing And Substantial Public Interest.

If a case is moot, an appellate court may nevertheless choose to decide it if the case involves "matters of continuing and substantial public interest." In re Pers. Restraint of Mattson, 166 Wn.2d 730, 736, 214 P.3d 141 (2009) (quoting Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). In assessing whether the requisite public interest is involved, the courts consider (1) "the public or private nature of the question presented," (2) "the desirability of an authoritative determination" to guide public officers in the future, and (3) the likelihood that the question will recur. Id.

The resolution of Lee's appeal turns on two questions: (1) whether the trial court had statutory authority to order Lee to complete a mental health evaluation in addition to mental health

treatment; and (2) whether the trial court in this case actually did order Lee to participate in mental health treatment, thereby allowing imposition of more than 12 months of community custody. Lee's argument on the first issue relies on a tortured construction of the Sentencing Reform Act (SRA) to reach an absurd result. It is an argument so odd that, as far as the State is aware, it has never before been raised; it is similarly unlikely to be raised again in the future. The second issue is a purely factual one that turns on the wording of the trial court's ruling in this particular case. As such, it is of interest only to Lee.

Because Lee's appeal is moot and does not involve matters of continuing and substantial public interest, it does not merit a substantive decision from this Court. Even if this Court does choose to reach the merits of Lee's claims, his sentence should be affirmed for the reasons stated below.

2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ORDERING LEE TO COMPLETE ANY TREATMENT RECOMMENDED BY AN EVALUATOR AFTER A MENTAL HEALTH EVALUATION.

Lee contends that, although the trial court had the authority to order Lee to complete mental health treatment as part of a

first-time offender waiver, it had no statutory authority to order Lee to obtain a mental health evaluation prior to that treatment. This claim should be rejected. It would be absurd to interpret the first-time offender waiver statute to allow the trial court to order Lee to complete any mental health treatment recommended by a mental health professional, but to prohibit the court from ordering that an evaluation be done to allow the mental health professional to make an informed recommendation.

The imposition of community custody conditions is reviewed for abuse of discretion, and the trial court's decision will be reversed only if it is manifestly unreasonable or based on untenable grounds. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). A condition is manifestly unreasonable if the trial court has no authority to impose it. State v. Vant, 145 Wn. App. 592, 602-03, 186 P.3d 1149 (2008).

A trial court's sentencing authority is purely statutory. See State v. Shove, 113 Wn.2d 83, 89 n.3, 776 P.2d 132 (1989). A defendant's sentence is governed by the laws in effect at the time the offense was committed. State v. Schmidt, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001).

The first-time offender waiver statute in effect in March of 2006 allows a sentencing court to waive the imposition of a standard range sentence, and instead impose up to 90 days of confinement and a term of community custody. Former RCW 9.94A.650(2) (2006). The term of community custody, “in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following: . . . (b) Undergo available outpatient treatment . . . or inpatient treatment” Former RCW 9.94A.650(2)(b) (2006).

It is thus undisputed that the trial court had the authority to order Lee to obtain mental health treatment, regardless of whether it was related to the crime or not. This represents a deliberate choice by the legislature, in crafting the first-time offender waiver, to depart from the normal requirement that mental health treatment (and the concomitant evaluation) be ordered as a condition of community custody only when there is reason to believe that the defendant’s mental illness influenced the offense. See Former RCW 9.94A.505(9) (2006).

Where a sentencing court orders treatment, it may properly delegate therapeutic decisions to the treatment provider. State v. Autrey, 136 Wn. App. 460, 468-69, 150 P.3d 580 (2006). Thus,

Judge Kessler could have properly ordered Lee to participate in mental health treatment to the degree recommended by his treatment provider, thereby delegating to the provider the decision of when treatment should stop.

In practice, the way in which a treatment provider would determine whether and what kind of treatment was appropriate would be to conduct some sort of an evaluation of the patient. Indeed, understanding a patient's needs is critical to successfully treating him. Such an evaluation would likely occur as part of the normal intake process for any treatment program, regardless of whether the judge specifically ordered it or not. Yet Lee contends that the trial court had no authority to order him to participate in a mental health evaluation.

Lee's interpretation of the first-time offender waiver statute and related provisions leads to the absurd result that Judge Kessler could order Lee to participate in whatever mental health treatment was recommended by a mental health professional, but could not order that an evaluation occur so that the professional could make

an informed recommendation.³ Under Lee's construction of the first-time offender waiver statute, the legislature apparently intended to give sentencing judges complete discretion to order treatment, but wanted to force them to simply guess at what treatment is most appropriate, with no way to base that decision on an evaluation of the defendant's actual needs.

The courts presume that the legislature does not intend absurd results, and "[a] statute should not be given an interpretation which would make it an absurdity when it is susceptible of a reasonable interpretation which would carry out the manifest intent of the legislature." Martin v. Dep't of Soc. Sec., 12 Wn.2d 329, 331, 121 P.2d 394 (1942); State v. Ervin, 169 Wn.2d 815, 823, 239 P.3d 354 (2010). This Court should decline Lee's invitation to interpret the treatment provision of the first-time offender waiver statute to prohibit trial courts from ordering necessary evaluations concomitant to treatment.

³ Similarly, Lee's reasoning would permit Judge Kessler to order Lee to participate in mental health treatment *unless* Lee obtained an evaluation that did not recommend treatment, but would prohibit Judge Kessler from ordering Lee to first obtain a mental health evaluation and then participate in any recommended treatment.

3. THE TRIAL COURT'S ORDER TO COMPLETE ALL RECOMMENDED TREATMENT ALLOWED THE COURT TO IMPOSE MORE THAN 12 MONTHS OF COMMUNITY CUSTODY.

Lee contends that the trial court had no authority to impose more than 12 months of community custody because the trial court did not order treatment. This claim should be rejected. The trial court's order that Lee obtain a mental health evaluation and participate in any recommended treatment constitutes an order for treatment, and thus the trial court was authorized to impose more than 12 months of community custody.

The applicable first-time offender waiver statute authorizes the trial court to impose "up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years." Former RCW 9.94A.650(3)(b) (2006). Lee's claim that the trial court improperly imposed 24 months of community custody rests solely on his contention that the trial court did not actually order any treatment.

Judge Kessler ordered Lee to "obtain a mental health evaluation, and follow up with the treatment recommended by the evaluator, if any is recommended." RP 317; CP 67. Interpreted in

the most plain and logical way, the court did indeed order Lee to participate in treatment to the extent it was recommended by the evaluator. If the evaluator recommended treatment and Lee refused to do it, Lee would face sanctions for violating the conditions of his community custody. Thus, the trial court did order treatment within the meaning of the first-time offender waiver statute, and the one-year limit on community custody did not apply.

Lee relies greatly on the trial court's statement that "I'm not ordering you into treatment." RP 317. When viewed in context, however, this statement does not have the meaning Lee ascribes to it. Lee had stated earlier in the hearing that, although he'd been in counseling in the past, he didn't believe that he had mental health issues requiring treatment. RP 315. After ordering Lee to obtain a mental health evaluation and any treatment recommended by the evaluator, the trial court told Lee, "So if you're right, [and] you've got no problems, the evaluator should show no more problems than the rest of it. The evaluator should show that. I'm not ordering you into treatment. I'm ordering you to follow the conditions of the evaluator." RP 317.

Viewed in context, it is clear that the trial court was not stating that Lee was not required to participate in treatment, but

merely that the extent to which Lee would be required to participate in treatment would be determined by the evaluator. The State is aware of no authority that prohibits a trial court from ordering treatment to the extent a mental health provider finds it necessary, and Lee cites to none. See Autrey, 136 Wn. App. at 468-69 (trial court may delegate therapeutic decisions to treatment provider).

Because the trial court in this case did order treatment as a condition of Lee's community custody, the one-year limit on community custody did not apply.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to dismiss this appeal as moot or, in the alternative, affirm Lee's sentence.

DATED this 28th day of April, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Kevin A. March, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JASON REEVES LEE, Cause No. 66295-3-I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 28th day of April, 2014.

U Brame

Name

Done in Seattle, Washington

