

69327-1

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NO. 69327-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM AKOL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE MONICA BENTON

BRIEF OF RESPONDENT

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STATE OF WASHINGTON
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A. ISSUES PRESENTED

1. A case is moot if the court can no longer provide effective relief. A moot appeal should be dismissed unless the issue presents a matter of continuing and substantial public interest. Here, Akol challenges the court's imposition of a community custody condition requiring him to obtain a chemical dependency evaluation and follow through with recommended treatment. Because the Judgment and Sentence has been amended striking that condition, he is not subject to the condition he complains of. Akol's claim of error is limited to the facts of his case, and would be of no guidance to others. Should this Court decline to address this moot issue?

B. STATEMENT OF THE CASE

Appellant Akol was convicted following Stipulated Trial to one Count of Attempted Rape in the Second Degree. 1RP 18; CP 9, 10-57. The Honorable Judge Monica Benton sentenced him to an indeterminate term of 85.5 months to life, and as a condition of Community Custody ordered him to obtain alcohol and chemical dependency evaluations. CP 68; 2RP 16. Akol timely appealed, challenging only the imposition of the chemical dependency evaluation. The State agreed, and following discussions with Appellant's Counsel, obtained an amended Judgment and Sentence which

no longer contains the complained of provision. On January 17, 2013, Appellant's Counsel filed a "Motion to Permit Sentencing Court to File Order Amending Judgment and Sentence Under RAP 7.2(e)". That motion was granted by Commissioner Mary Neel on January 30, 2013.

C. ARGUMENT

1. AKOL'S ARGUMENT THAT THE COURT ERRED IN ORDERING A CHEMICAL DEPENDENCY EVALUATION AND TREATMENT AS A CONDITION OF COMMUNITY CUSTODY IS MOOT BECAUSE THE JUDGMENT AND SENTENCE WAS AMENDED AND NO LONGER CONTAINS THAT CONDITION.

Akol appeals the trial court's imposition of a chemical dependency as part of his community custody. However, he is no longer subject to that condition, and as a result, this court can provide him no effective relief. Because Akol's case presents no issue of continuing and substantial public interest, but rather involves a factual issue limited to his own circumstances, the claim should be dismissed as moot.

"As a general rule, we do not consider questions that are moot." State v. Hunley, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). A case is moot if the court can no longer provide effective relief. State v. Gentry, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995). A moot appeal should generally be dismissed. Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).

However, even where an issue is moot, a court may nevertheless decide the issue if it presents a matter of “continuing and substantial public interest.” Hunley, 175 Wn.2d at 907. In determining whether a sufficient public interest is involved, a court will consider, “(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur.” In re Pers. Restraint of Cross, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983) (citing Sorenson, 80 Wn.2d at 558).

Washington courts have invoked the continuing and substantial public interest exception to hear cases involving matters of constitutional interpretation, validity and interpretation of statutes and regulations, and important issues likely to arise in the future. Hart v. Department of Social and Health Services, 111 Wn.2d 445, 449, 759 P.2d 1206 (1988). Cases that are limited to their facts, and that will be of little use or guidance to others, do not fall within the substantial public interest exception. Id. at 451.

In this case, the court ordered that Akol obtain a chemical dependency evaluation as a condition of community custody. However, the State agreed such an order exceeded Her Honor’s sentencing authority, and obtained an amended Judgment and Sentence striking that condition.

Because Akol is now not subject to the condition complained of in the sole issue on appeal, this Court is incapable of providing him with any meaningful relief.

Moreover, Akol's appeal does not involve any matter of continuing or substantial public interest. Cases that are limited to their facts are of little use or guidance to others because the factually-specific scenario is unlikely to recur. Such a possibility is too remote to counteract the harm of what would essentially be an advisory opinion. Hart, 111 Wn.2d at 450-52.

Akol's non-existent condition of community custody requiring a chemical dependency evaluation does not involve a matter of continuing and substantial public interest, and this Court should dismiss the claim as moot.

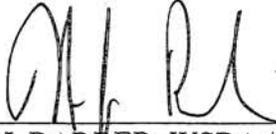
D. CONCLUSION

For the reasons outlined above, this Court should decline to address Akol's moot argument regarding that condition of community custody.

DATED this 24 day of June, 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 David Koch, 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. WILLIAM AKOL, Cause No. 69327-1-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.



Kim Andersen
Done in Seattle, Washington

6-24-14

Date