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Washington State
Court of Appeals
Division Two

May 12, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MEAGAN ELIZABETH GREENHAW, Appellant.	No. 52519-4-II UNPUBLISHED OPINION

SUTTON, J. — Meagan E. Greenhaw appeals her judgment and sentence for possession of a controlled substance—methamphetamine. The trial court's to-convict instruction for the possession charge did not contain a knowledge element. Following the guilty verdict, the trial court found that Greenhaw had a chemical dependency which contributed to her crime, and based on that finding, imposed 12 months of community custody.

Greenhaw argues that (1) the trial court erred by failing to instruct the jury that to find her guilty, it must find that she knowingly possessed a controlled substance, (2) RCW 69.50.4013 violates due process because it imposes strict liability without a mens rea requirement, and (3) a remand for resentencing is required for the trial court to amend the community custody supervision provision of the judgment and sentence.

We hold that (1) the trial court did not err when it failed to include a knowledge element in the to-convict instruction, (2) RCW 69.50.4013 does not violate due process, and (3) because Greenhaw is not subject to the Department of Correction's (DOC's) supervision, her argument

regarding community custody supervision is moot. Thus, we affirm the trial court's judgment and sentence.

FACTS

Meagan Greenhaw was arrested after shoplifting in a Walmart. An asset protection associate at Walmart stopped Greenhaw and found that Greenhaw had attempted to steal merchandise from the store.

Chehalis Police Sergeant Mathew McKnight responded to the call and arrested Greenhaw. Sergeant McKnight searched Greenhaw incident to arrest. While searching her, he discovered a small baggie in her front right coin pocket with a substance in it, which was later tested and found to be methamphetamine. Greenhaw told Sergeant McKnight it was methamphetamine, but that she was holding onto it for her boyfriend. The State charged Greenhaw with one count of possession of a controlled substance—methamphetamine, and one count of theft in the third degree.

The State presented testimony from the asset protection associate, Sergeant McKnight, and the forensic scientist who determined that the substance was methamphetamine. Greenhaw testified on her own behalf. Greenhaw testified that she told Sergeant McKnight that the substance was methamphetamine; she thought that it was, but she did not actually know whether it was. She testified that to definitively know whether it was methamphetamine, she "would have had to try it." Verbatim Report of Proceedings (VRP) at 160. The jury found Greenhaw guilty on both counts.

At the sentencing hearing, the State requested the trial court find that Greenhaw had a chemical dependency which contributed to the crime and impose 12 months of community custody

in addition to confinement. The trial court agreed, and after finding that Greenhaw had a chemical dependency, the court sentenced her to a period of confinement plus 12 months of community supervision.

Approximately one month later, the DOC filed a document titled "Court-Special Supervision Closure" with the superior court. Clerk's Papers (CP) at 54. In this document, the DOC stated, "The above cause has been screened and is not eligible for supervision by DOC. Therefore, DOC has closed supervision interest in this cause." CP at 54.

Greenhaw appeals the judgment and sentence.

ANALYSIS

I. Knowledge Requirement

Greenhaw argues that the trial court erred by failing to instruct the jury that to find her guilty of possession of a controlled substance, it must find that she knowingly possessed a controlled substance. We disagree and hold that the trial court did not err by failing to instruct the jury on a knowledge element.

Here, the trial court's to-convict jury instruction stated, in relevant part:

> To convict the defendant of the crime of possession of a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about June 25, 2018, the defendant possessed a controlled substance, to wit: methamphetamine; and
>
> (2) That this act occurred in the State of Washington.

CP at 20.

As we noted in *State v. Schmeling*, our Supreme Court has twice addressed the issue of whether RCW 69.50.4013 contains a mens rea element, and in both cases, it has held that "the legislature deliberately omitted knowledge and intent as elements of the crime and that it would not imply the existence of those elements." 191 Wn. App. 795, 801, 365 P.3d 202 (2015) (citing *State v. Bradshaw*, 152 Wn.2d 528, 534-38, 98 P.3d 1190 (2004); *State v. Cleppe*, 96 Wn.2d 373, 380-81, 635 P.2d 435 (1981)). "The court did not express any concerns in either *Bradshaw* or *Cleppe* that allowing a conviction for the possession of a controlled substance without showing intent or knowledge somehow was improper." *Schmeling*, 191 Wn. App. at 801.

We are bound by our Supreme Court's explicit holding that RCW 69.50.4013 properly has no mens rea requirement. *State v. Hairston,* 133 Wn.2d 534, 539, 946 P.2d 397 (1997); *State v. Gore,* 101 Wn.2d 481, 486–87, 681 P.2d 227 (1984) (Court of Appeals is bound by decisions of the Washington Supreme Court). Thus, we hold that under the principles of stare decisis, the trial court did not err by failing to give a jury instruction that included a knowledge element.

II. RCW 69.50.4013–Due Process

Greenhaw argues that RCW 69.50.4013 violates due process because it does not require a mens rea element. We disagree based on principles of stare decisis.

The Fourteenth Amendment to the United States Constitution provides that no state may deprive a person of liberty without due process of law. *State v. Beaver*, 184 Wn.2d 321, 332, 358 P.3d 385 (2015); U.S. Const. amend XIV, § 1. We review constitutional issues de novo. *State v. Bassett*, 192 Wn.2d 67, 77, 428 P.3d 343 (2018). Statutes are presumed constitutional, and the challenger bears the heavy burden of convincing the court otherwise beyond a reasonable doubt. *Bassett*, 192 Wn.2d at 77.

In *Schmeling*, relying on our Supreme Court's holding in *Bradshaw*, we rejected the same argument Greenhaw raises and held that "RCW 69.50.4013 does not violate due process even though it does not require the State to prove intent or knowledge to convict an offender of possession of a small amount of a controlled substance." 191 Wn. App. at 802. We noted that "[i]n *Bradshaw,* the defendant argued that the possession statute violated due process because it criminalized innocent behavior." *Schmeling*, 191 Wn. App. at 802 (citing *Bradshaw*, 152 Wn.2d at 539). "The [*Bradshaw*] court summarily rejected the argument without discussion, noting that the defendant had offered little analysis in support of the argument and had failed to cite any relevant authority to show how the statute violated substantive due process." *Schmeling*, 191 Wn. App. at 802 (citing *Bradshaw*, 152 Wn.2d at 539). Thus, we adhere to this reasoning, and hold that RCW 69.50.4013 does not violate due process.

III. Community Custody Supervision

Greenhaw argues that a remand is required for resentencing because the trial court erred by improperly finding that she had a chemical dependency which contributed to the crime and ordering 12 months of community supervision. Because Greenhaw is not under supervision by the DOC, we hold that this argument is moot.

An appeal is moot if we lack the ability to provide an effective remedy. *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). And a challenge to a sentence becomes moot if the defendant has already served that sentence. *Hunley*, 175 Wn.2d at 907.

Here, there is no effective remedy this court can provide. The trial court imposed a term of confinement, plus 12 months of community custody supervision. One month later, the DOC notified the superior court that the case was not eligible for the DOC supervision, and DOC closed

the case. Greenhaw has since been released from custody for well over one year, and she was never under the DOC's supervision. Because we can provide no effective remedy, Greenhaw's argument related to community custody supervision is moot.

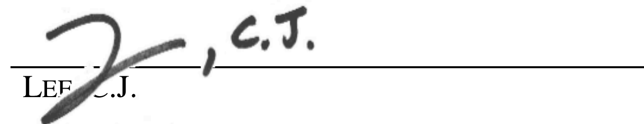
CONCLUSION

We affirm the trial court's judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

SUTTON, J.

We concur:



LEE, C.J.

WORSWICK, J.