

NO. 65676-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
THOMAS WILLIAMS,
Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE JEFFREY RAMSDELL

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Whether the trial court properly imposed a condition of community custody requiring Williams to obtain a substance evaluation and treatment where Williams admitted to having a serious drug addiction that led him to commit the offense.

B. STATEMENT OF THE CASE

The State charged the defendant, Thomas Williams, with assault in the first degree and malicious mischief in the third degree, both with domestic violence designations, for attacking his former girlfriend (causing a serious head injury in the process) and then smashing a window. CP 1-6. After protracted pretrial proceedings, Williams pled guilty to a reduced charge of assault in the second degree. 1RP 152-62.¹

Williams requested an exceptional sentence below the standard range, and filed a memorandum in support of that request. CP 54-64. In his memorandum, Williams asserted that he suffered from a seizure disorder that led to the commission of the offense.

¹ The verbatim report of proceedings consists of two volumes, referenced as follows: "1RP" is 4/19, 4/20, 5/3, 5/4, 5/5, and 5/10/10; "2RP" is 6/16 and 6/29/10.

The memorandum, which included a report from an expert Williams had retained, stated that Williams's seizure disorder and other brain disorders were either caused or exacerbated by his "long-term, chronic, high-dose cocaine use[.]" CP 56. At the sentencing hearing, Williams's defense counsel described Williams's drug usage as "massive[.]" 2RP 7.

The trial court rejected Williams's request for an exceptional sentence because the primary cause of Williams's brain disorders was his voluntary drug use. 2RP 24-25. Based on the information Williams had provided, however, the trial court imposed a sentence at the low end of the standard range. 2RP 25-26; CP 35-43. The trial court also imposed a condition of community custody requiring Williams to obtain a substance abuse evaluation and to follow any treatment recommendations, finding that this condition was "appropriate under the circumstance[s]." 2RP 27; CP 42.

Williams now appeals. CP 43-52.

C. ARGUMENT

- 1. THE TRIAL COURT PROPERLY REQUIRED WILLIAMS TO OBTAIN A SUBSTANCE ABUSE EVALUATION AND TREATMENT BECAUSE WILLIAMS ADMITTED HE HAS A SERIOUS DRUG ADDICTION THAT LED HIM TO COMMIT THE CRIME.**

Williams claims that the trial court erred in requiring him to obtain a substance abuse evaluation and treatment as a condition of community custody. More specifically, he claims that the trial court erred because it did not make an express finding on the record "that the offender has a chemical dependency that has contributed to his or her offense" in accordance with RCW 9.94A.607. This claim should be rejected because Williams admitted that he has a serious drug problem that led to the commission of the offense, and the trial court was entitled to rely on that admission in imposing this condition of community custody.

Williams is correct that treatment or counseling may be imposed as a condition of community custody only if the treatment condition is crime-related. See Former RCW 9.94A.700(5)(c). Moreover, Williams relies upon RCW 9.94A.607, which provides:

Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or

otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

RCW 9.94A.607(1).

As a result, Williams posits that the trial court improperly ordered a substance abuse evaluation and treatment as a condition of community custody because it did not make an express finding on the record that Williams "has a chemical dependency that has contributed to his . . . offense." Id. Rather, the trial court stated on the record that such treatment was "appropriate under the circumstance[s]." 2RP 27.

As a preliminary matter, Williams does not establish that the trial court's finding that treatment was "appropriate under the circumstances" is not sufficient to constitute a finding that Williams is chemically dependent and that this dependency contributed to the commission of the crime in light of the whole record. Put another way, finding that treatment is "appropriate under the circumstances" at a hearing where the defendant conceded that heavy drug use led to the commission of the crime should be more than sufficient to satisfy the requirements of the statute.

But even assuming for the sake of argument that the trial court was required to utter a particular sequence of words in order to make a finding that Williams's drug addiction contributed to the crime, Williams's claim still fails. Williams admitted that his heavy drug use led to the commission of the crime, and the trial court was entitled to rely on that admission.

In his brief in support of the exceptional sentence he requested, Williams's attorney described in detail how Williams became addicted to drugs in the aftermath of a work-related injury. CP 55. Williams admitted to using alarmingly high doses of illegal drugs; his "drug addiction was to the point where he injected both heroin and cocaine directly into the veins of his neck." CP 56. According to the expert that Williams retained, Williams's "long-term, chronic, high-dose cocaine use" led to serious brain disorders, including seizures. CP 56. According to Williams, he committed the assault against his former girlfriend as a direct result of his seizure disorder, which was caused by his severe drug addiction and high-dose drug use. CP 57.

At the sentencing hearing, Williams's attorney described Williams's drug usage as "massive." 2RP 7. In denying Williams's request for an exceptional sentence, the trial court correctly

characterized Williams's expert's opinion "that the cocaine abuse and particularly the high dosage use contributes to the existence of and the occurrence of the seizure disorders," which contributed to the commission of the assault. RP (6/16/10) 25. Given this record, the trial court's imposition of a substance evaluation and treatment as a crime-related condition of community custody is entirely proper.

In the context of calculating a defendant's offender score, the trial court is allowed to rely on a defendant's affirmative acknowledgment of his criminal history, even though the State would otherwise bear the burden of proving the defendant's criminal history by a preponderance of the evidence. State v. Ross, 152 Wn.2d 220, 233, 95 P.3d 1225 (2004). In this case, Williams affirmatively acknowledged that he has a serious drug problem, and that this drug problem was one of the primary reasons that he committed this offense. Similarly, this Court should hold that requiring a substance abuse evaluation and treatment is proper when based on the defendant's affirmative acknowledgment that his drug use influenced the commission of the crime. Any other result would elevate form over substance to the point of absurdity.

Lastly, Williams urges this Court not to follow State v. Powell, 139 Wn. App. 808, 818, 162 P.3d 1180 (2007), rev'd on other grounds, 166 Wn.2d 73, 206 P.3d 321 (2009), holding that a treatment condition is appropriate in the absence of an express finding under RCW 9.94A.607 if the record otherwise supports the treatment condition. This argument should be rejected for three reasons. First, Williams's position that this portion of Powell is dicta is not accurate.² Second, as demonstrated by this case, this aspect of Powell is sound, as it prevents needless, formalistic remands.

Third, this Court need not rely on Powell at all in rejecting Williams's claim. In Powell, the record supported the imposition of a treatment condition because the trial evidence showed that Powell had consumed methamphetamine. Powell, 139 Wn. App. at 820. In this case, by contrast, Williams affirmatively acknowledged that his heavy drug usage directly led to the commission of the offense. Therefore, this case presents a different, more compelling reason to affirm the treatment condition than was present in Powell.

² Division II reversed Powell's conviction based on the admission of what the court deemed to be inadmissible evidence of the defendant's drug use, but the Washington Supreme Court reversed Division II's decision. Therefore, the portion of Division II's decision that the condition of community custody was proper is completely necessary to the disposition of Powell's appeal, and hence, not dicta in any sense of the word.

The trial court was entitled to rely on Williams's express admission that a severe drug addiction resulted in the commission of his crime, and this Court should reject Williams's claim to the contrary.

D. CONCLUSION

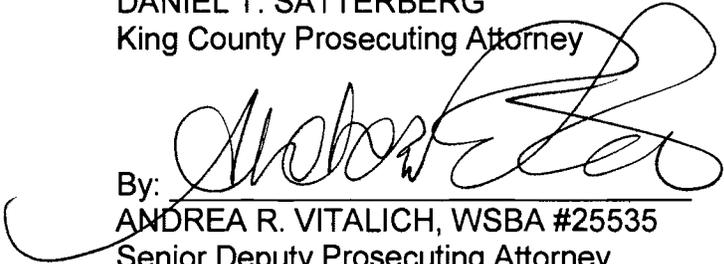
The trial court properly imposed a substance abuse evaluation and treatment as a condition of community custody.

This Court should affirm the judgment and sentence.

DATED this 18th day of January, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

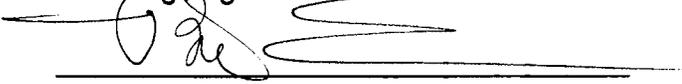
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer Winkler, 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. THOMAS WILLIAMS, Cause No. 65676-7-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.



Name
Done in Seattle, Washington



Date

