

NO. 65916-2-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

Brian English,

Appellant.

*Handwritten initials*

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT

THE GPS-MONITORING COMMUNITY CUSTODY  
CONDITION MUST BE STRICKEN AS UNRELATED  
TO THE CRIME OF POSSESSION OF A  
CONTROLLED SUBSTANCE.

Mr. English asks that the GPS-monitoring condition of community custody be stricken because it is unrelated to the crime for which the sentence was imposed, possession of a controlled substance. In response, the State argues that the GPS-monitoring was imposed to ensure Mr. English's compliance with agreed-to chemical dependency treatment. The State's argument stretches the record and defies logic.

The State does not disagree that the GPS-monitoring provision was not directly related to the crime of possession of a controlled substance. Instead, the State argues that the court imposed the condition because it believed Mr. English would be more compliant with chemical dependency treatment if he was subject to monitoring.

Significantly prior to the crime at issue here, Mr. English was sentenced on a sex offense charge. See CP 15. Mr. English was apparently subject to GPS monitoring for failing to register in relation to that separate, prior offense. 4RP 5. Counsel for the

State brought Mr. English's Community Custody Officer (CCO) for the prior sentence to the sentencing hearing in this matter. 4RP 2. In making his sentencing recommendation, counsel for the State told the court that the CCO finds Mr. English "to be more responsible and compliant [with the conditions of the prior sentence] when he's on GPS." 4RP 5. The CCO then spoke to the court and did not mention GPS monitoring or Mr. English's compliance. He did state that Mr. English's failures to register on the unrelated, prior offense pertained to homelessness. 4RP 8. The court questioned the CCO but also did not ask about GPS-monitoring or compliance. 4RP 9. Mr. English addressed the court as well; he expressed interest in receiving chemical dependency treatment and acknowledged he has "a drug problem." 4RP 13. Defense counsel did not object to the State's sentencing recommendation but did not discuss the GPS-monitoring condition. 4RP 10.

The discussion at sentencing demonstrates no connection between GPS monitoring and Mr. English's compliance with a condition which he sought. The State argues that because GPS monitoring assisted Mr. English's compliance with a failure to register in a prior matter, it will assure his compliance with chemical

dependency treatment here. However, Mr. English acknowledged his dependency problem in court and asked for treatment. 4RP 13. The record gives no indication that his prior sentencing condition received the same acceptance and understanding by Mr. English. Moreover, Mr. English's noncompliance with prior, unrelated sentencing conditions relate to his former homelessness which (1) is no longer an issue, 4RP 8, and (2) would not affect his ability to attend chemical dependency treatment as it would a duty to register.

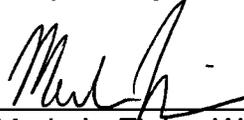
In short, Mr. English's prior failure to register due to homelessness bears no relation to his likelihood of complying here with chemical dependency treatment that he wanted imposed. Because the imposition of GPS monitoring is an unrelated community custody condition, it is an unlawful sentence that must be stricken. See State v. Jones, 118 Wn. App. 199, 212, 76 P.3d 258 (2003).

F. CONCLUSION

Because it is not related to the crime for which the sentence was imposed, possession of a controlled substance, the community custody provision regarding GPS monitoring is unlawful and must be stricken.

DATED this 12th day of May, 2011.

Respectfully submitted,



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Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 65916-2-I
	)	
BRIAN ENGLISH,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 12<sup>TH</sup> DAY OF MAY, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] | BRIAN ENGLISH<br>977311<br>WASHINGTON CORRECTIONS CENTER<br>PO BOX 900<br>SHELTON, WA 98584     | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 12<sup>TH</sup> DAY OF MAY, 2011.

x \_\_\_\_\_ *gnt*

*KA*