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MAY 10 2012

67535-4

King County Prosecutor
Appellate Unit

NO. 67535-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

PATRICK WYCOUGH,

Appellant.

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

The Honorable Jay V. White, Judge

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAY 10 AM 9:54

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE TRIAL COURT EXCEEDED ITS STATUTORY SENTENCING AUTHORITY BY ORDERING WYCOUGH TO PARTICIPATE IN SUBSTANCE ABUSE TREATMENT.

Wycough argued on appeal that because there was no evidence substance abuse played a role in commission of the crimes, the "substance abuse" portion of the "alcohol/substance abuse" evaluation and treatment condition of community custody should be stricken. Brief of Appellant (BOA) at 6-9. The State responds, "Alcohol abuse is substance abuse." Brief of Respondent (BOR) at 6. This Court should reject the State's argument.

The State notes that "courts may impose rehabilitative programs for chemical dependency. See RCW 9.94A.607." BOR at 4. This is true, if the court finds the offender has a chemical dependency that contributed to the offense. RCW 9.94A.607. The trial court made no such finding here, probably because there was no evidence to support it. In short, RCW 9.94A.607 has no relevance to Wycough's sentence and the State's reliance on the provision is misplaced.

In any event, alcohol abuse is not substance abuse in this context. Substance abuse means drug abuse. Washington's statutory section for substance abuse is called the "Uniform Controlled Substances Act." Ch. 69.50 RCW. It defines "[c]ontrolled substance" as "a drug, substance, or

immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules." RCW 69.50.101(d). Alcohol -- possession and use of which are legal -- appears nowhere in the Controlled Substances Act.

The trial court recognized this fact by including the terms "alcohol" and "substance abuse" in its community custody condition. Wycough has no quarrel with the "alcohol" component of the condition. The "substance abuse" component, however, is unsupported by the evidence. The trial court therefore exceeded its statutory sentencing authority by including it. When this happens, the trial court must correct the erroneous sentence. State v. Kilgore, 167 Wn.2d 28, 41, 216 P.3d 393 (2009). This Court should remand Wycough's sentence to the trial court with an order to vacate the unlawful "substance abuse" component of the community custody condition.

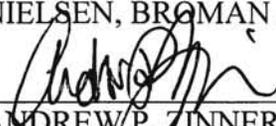
B. CONCLUSION

For the reasons cited herein and in his Brief of Appellant, Wycough asks this Court to find the trial court erred by imposing the "substance abuse" component of the "alcohol/substance abuse" evaluation and treatment community custody condition. The State agrees the trial court erred by imposing the mental health condition, and Wycough asks this Court to so find. This Court should remand with an order to vacate the conditions.

DATED this 9 day of May, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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COA NO. 67535-4-1

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 10TH DAY OF MAY 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] PATRICK WYCOUGH
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P.O. BOX 777
MONROE, WA 98272

SIGNED IN SEATTLE WASHINGTON, THIS 10TH DAY OF MAY 2012.

x 
