

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PATRICK WYCOUGH,

Appellant.

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAY WHITE

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>ISSUES</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL HISTORY	1
C. <u>ARGUMENT</u>	3
1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT IMPOSED ALCOHOL/SUBSTANCE ABUSE TREATMENT	3
2. THE IMPOSING OF WYCOUGH'S MENTAL HEALTH TREATMENT DID NOT FOLLOW THE STATUTORY REQUIREMENTS	6
D. <u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Brooks, 142 Wn. App. 842,
176 P.3d 549 (2008)..... 7, 8

State v. Jones, 118 Wn. App. 199,
76 P.3d 258 (2003)..... 5, 7, 8

State v. Llamas-Villa, 67 Wn. App. 448,
836 P.2d 239 (1992)..... 4

State v. Lopez, 142 Wn. App. 341,
174 P.3d 1216 (2007)..... 7, 8

State v. Parramore, 53 Wn. App. 527,
768 P.2d 530 (1989)..... 5

State v. Warren, 165 Wn.2d 17,
195 P.3d 940 (2008)..... 4

Statutes

Washington State:

RCW 9.94A.607 4

RCW 9.94A.703 4

RCW 9.94B.080 7

RCW 71.24.025..... 7

A. ISSUES

1. The sentencing court may order alcohol/substance abuse treatment as a community custody condition if such treatment is reasonably related to the offense. Here, police found the defendant with alcohol in his hand immediately after the crime. Did the court properly impose "alcohol/substance abuse treatment" at sentencing?

2. The sentencing court may order mental health treatment if it makes a specific finding that the defendant is mentally ill after considering a presentence memorandum. Here, the record does not show that the court made such a finding based on a presentence memorandum before imposing "mental health treatment" at sentencing. Should this condition of mental health treatment be reversed?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

On November 20, 2010, defendant Patrick Wycough came into the house of his ex-wife, Natoya Wycough, with a loaded gun. 5RP 12-13, 41-44, 52, 73-75. Natoya would later tell police that she saw her life flash in front of her eyes and that she thought

Patrick was going to kill her. 6RP 60, 62-63. Natoya called 911 and pleaded for Patrick to put the gun away and leave her house. 5RP 42, 65-66; Ex. 9; Ex 11.

Police arrived at Natoya's house and stand-off ensued in the street with Patrick. 4RP 32-33, 59-61; 5RP 99-102; 6RP 12-14, 49-51. When police first arrived, they saw Patrick put a can of beer down. 2RP 25. Police told him to "get on the ground, show us your hands, get on the ground, you won't be hurt." 6RP 55. Patrick responded to police, "Fuck you, you might be hurt." 6RP 55.

Police ultimately took Patrick into custody and retrieved his firearm nearby. 4RP 45-47, 55-56; 5RP 9-10. After being arrested, Patrick was overheard saying to another man in the jail, "I had the gun like I was going to kill her and shit. She was scared and called the police." 6RP 31. Patrick continued, "I have a fuck the world mentality." 6RP 31.

A jury convicted Patrick Wycough of First Degree Burglary with a Firearm Enhancement and First Degree Unlawful Possession of a Firearm. CP 71-72, 73-76. He was found not guilty of Felony Harassment. CP 71-72, 73-76. Wycough requested an exceptional sentence below the standard range and

submitted a presentence memorandum in support, which the Court considered, but which the defendant did not file. 9RP 5.

The Honorable Jay White sentenced Wycough to a standard range sentence, including community custody conditions that Wycough get alcohol treatment and mental health treatment. 9RP 17. At sentencing, the defendant responded to the alcohol treatment condition by saying, "I'm just not going to do that. It is pointless to even put it on, cause . . . I'm not doing it." 9RP 18.

Wycough now argues as his sole issues on appeal that his alcohol/substance abuse and mental health treatment conditions at sentencing are unlawful.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT IMPOSED ALCOHOL/SUBSTANCE ABUSE TREATMENT.

Wycough claims that the sentencing court erred in imposing "alcohol/substance abuse treatment" as a condition of community custody. More specifically, he claims that the court exceeded its statutory authority "because there was no evidence indicating substance abuse played a role in Wycough's offense." Appellant's Brief at 6. This claim should be rejected because Wycough

neglects to point out that he had alcohol moments after committing the burglary offense. Therefore, the trial court was permitted to impose this crime-related alcohol/substance abuse treatment.

Courts review sentencing conditions for abuse of discretion.

State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

Treatment or counseling may be imposed as a condition of community custody if the treatment condition is crime-related.

See RCW 9.94A.703(3)(c). In particular, courts may impose rehabilitative programs for chemical dependency. See RCW 9.94A.607¹. Such conditions are usually upheld if reasonably crime-related. Warren, 165 Wn.2d at 32. A condition is crime-related when it directly relates to the circumstances of the crime.

State v. Llamas-Villa, 67 Wn. App. 448, 456, 836 P.2d 239 (1992).

¹ RCW 9.94A.607 states that:

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.

The fact that Wycough had alcohol with him moments after the burglary and during his stand-off with police supports the sentencing court's condition that Wycough be evaluated for alcohol/substance abuse treatment. See State v. Jones, 118 Wn. App. 199, 202-03, 76 P.3d 258 (2003).

Wycough argues that "alcohol/substance abuse treatment" is too broad and the treatment program should be dissected, presumably, to just alcohol treatment. He references how this Court has held that conditions that are exclusively alcohol-related (e.g., breathalyzer use and alcohol counseling) should not be imposed at sentencing for crimes based on methamphetamine use and marijuana dealing. See id.; State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989). In those cases, there was no evidence that alcohol contributed to the crime, and thus the separate and additional monitoring and counseling for alcohol use was therefore unrelated. Id. In our case, however, the treatment obligation is related to the evidence of alcohol at trial.

"Alcohol/substance abuse treatment" is being imposed as a singular treatment rehabilitation program. Alcohol abuse is substance abuse. Wycough cites no authority, nor did he object below, to support his position now that another treatment program can better isolate his chemical dependency needs. Indeed, through this condition, the court is clarifying that Wycough's substance needs are alcohol-related. The court was within its discretion to impose this treatment, since it was related to the evidence at trial. The alcohol/substance abuse treatment condition at sentencing is proper.

2. THE IMPOSING OF WYCOUGH'S MENTAL HEALTH TREATMENT DID NOT FOLLOW THE STATUTORY REQUIREMENTS.

Wycough next argues that the trial court erred when it ordered him to obtain a mental health evaluation and follow all treatment recommendations. The State concedes that the trial court did not follow the statutorily-required procedure before ordering mental health treatment.

A trial court may order a mental health evaluation and treatment only when the court has considered a presentence report and has made findings that the defendant's mental illness

contributed to his crimes. RCW 9.94B.080²; State v. Jones, 118 Wn. App. 199, 202, 76 P.3d 258 (2003); State v. Lopez, 142 Wn. App. 341, 353, 174 P.3d 1216 (2007); State v. Brooks, 142 Wn. App. 842, 851, 176 P.3d 549 (2008). Failure to follow this procedure can be raised for the first time on appeal. Jones, 118 Wn. App. at 204.

Here, the court considered the defense presentence memorandum, but did not make a finding that the mental health treatment was based on that memorandum. 9RP 5. While there was a rational basis for the Court to conclude that Wycough suffered from mental illness due to the case facts, the Court did not clarify how it concluded that Wycough was a mentally ill person. 6RP 31, 55; RCW 9.94B.080; RCW 71.24.025. Accordingly, the record does not show that this requisite finding was made based on

² Under RCW 9.94B.080:

The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

the presentence report, and thus under Jones, Lopez, and Brooks, the trial court erred when it ordered mental health treatment. The order of a mental health evaluation should be reversed.

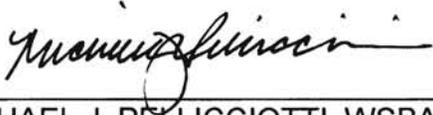
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the alcohol/substance abuse treatment condition and reverse the mental health treatment condition.

DATED this 5th day of April, 2012.

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 Andrew Zinner, the attorney for the appellant, at Nielsen Broman, 1908 East Madison Street, Seattle, Washington 98122, containing a copy of the Brief of Respondent, in STATE V. PATRICK WYCOUGH, Cause No. 67535-4, 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.

Hunter L. Cooper Gordon
Name

4/10/12
Date

Done in ~~Seattle~~, Washington

Kent

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