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ORIGINAL

NO. 67571-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
VANLA INTHIRATHVONGSY,
Appellant.

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STATE OF WASHINGTON
DIV I
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE DOUGLASS NORTH

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Whether the trial court properly ordered Inthirathvongsy to submit to a substance abuse evaluation and treatment as a condition of community custody where Inthirathvongsy admitted to being addicted to drugs and was convicted of a drug offense.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Vanla Inthirathvongsy was charged by information with one count of delivery of cocaine. CP 1-8.

Trial began on August 1, 2011. 1RP 3¹. After a bench trial, the Honorable Douglass North found Inthirathvongsy guilty as charged. 2RP 34. Judge North imposed the low end of the standard range of 12 months plus one day and 12 months of community custody. CP 26-34. As a condition of community custody, the court ordered Inthirathvongsy to obtain a substance abuse evaluation and follow all recommended treatment. CP 34; 3RP 7. At the sentencing hearing, Inthirathvongsy's attorney asked

¹ The verbatim report of proceedings consists of three volumes, which will be referred to as follows: 1RP (August 1, 2011); 2RP (August 2, 2011); 3RP (August 16, 2011).

for the low end of the standard range, referred to the fact that Inthirathvongsy was awaiting a bed for a drug treatment facility at the time of the incident, and told the court that Inthirathvongsy was suffering from a very severe addiction to both crack cocaine and heroin. 3RP 3-4.

2. SUBSTANTIVE FACTS.

On February 8, 2011, Seattle Police Officer Maurice Washington called a telephone number and ordered one hundred dollars worth of cocaine from the man who answered. 1RP 59-60. The man directed Officer Washington to an address and told Officer Washington to call back when he had arrived at the location. 1RP 60-61. Officer Washington complied with this request and met with two men, exchanging one hundred dollars for two bindles of cocaine. 1RP 61-68. One of the two men was conversing with Officer Washington on the telephone, directed Officer Washington where to put the money, and placed the cocaine on the ground for Officer Washington to retrieve. This man was later identified as Inthirathvongsy. 1RP 69.

Seattle Police Officer Stephen Smith also identified Inthirathvongsy as the man he saw place something on the ground

for Officer Washington. 1RP 93-94. Washington State Patrol Crime Lab Forensic Scientist Raymond Kusumi tested the substance Officer Washington purchased from Inthirathvongsy and his analysis found that the material contained cocaine.

1RP 113-14.

Inthirathvongsy testified in his defense and referred several times on direct and cross-examination to returning from "detox" the day of the incident and awaiting a bed at a treatment facility at the time of the offense. 1RP 116, 121, 123, 127, 131, 132; 2RP 4, 20-21. In defense closing argument, Inthirathvongsy's attorney referred to the fact that Inthirathvongsy was withdrawing from heroin. 2RP 28.

Inthirathvongsy moved to discharge his counsel before trial began and told the court "...I have a drug problem." 1RP 7. Inthirathvongsy's attorney referred to the fact that Inthirathvongsy was waiting for a bed at a treatment facility at the time of the incident in closing argument and in the defense presentation at sentencing. 2RP 28; 3RP 3. Finally, defense counsel referred to the defendant's struggle with drugs in her presentation at sentencing: "He's suffering from a very severe addiction to both crack cocaine and heroin." 3RP 4.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY ORDERED INTHIRATHVONGSY TO OBTAIN A SUBSTANCE ABUSE EVALUATION AND TREATMENT BECAUSE THE TREATMENT WAS CRIME-RELATED.

Inthirathvongsy claims that the trial court erred in requiring him to continue with his substance abuse 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 Inthirathvongsy admitted that he has a drug problem, his attorney represented to the court that he was suffering from a severe addiction to cocaine and heroin in her request for a sentence at the low end of the standard range, and the trial court was entitled to rely on those representations in imposing this condition of community custody.

As a condition of community custody, courts may order defendants to participate in crime-related treatment or counseling services. RCW 9.94A.703(3)(c). Treatment conditions are appropriate in the absence of an express finding under RCW 9.94A.607 if the record otherwise supports the treatment condition.

Courts review sentencing conditions for abuse of discretion. 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); State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). Such conditions are usually upheld if reasonably crime-related. Id. 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) (citing statutory definition of "crime-related prohibition"); see also State v. Jones, 118 Wn. App. 199, 207, 76 P.3d 258 (2003) (court cannot require alcohol counseling unless alcohol contributed to the offense).

Inthirathvongsy is correct that treatment or counseling may be imposed as a condition of community custody only if the treatment condition is crime-related. See RCW 9.94A.703(3)(c).

Inthirathvongsy 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).

Inthirathvongsy argues that the trial court improperly ordered a substance abuse evaluation and treatment as a condition of community custody because the court did not explicitly state on the record that Inthirathvongsy "has a chemical dependency that...contributed to his offense." Id. Rather, the trial court stated on the record that such treatment was "appropriate." 3RP 7.

Inthirathvongsy cannot establish that the trial court's finding that treatment was "appropriate" is insufficient in light of the record. Put another way, finding that treatment is "appropriate" after a bench trial where the defendant admitted to having a drug problem, admitted to being out of "detox" and waiting for a bed at a treatment facility when the offense occurred, and where his defense counsel advised the court that the defendant was struggling with a severe addiction to crack cocaine and heroin, should be more than sufficient to satisfy the requirements of the statute. In her presentation in support of the low end of the standard range sentence, Inthirathvongsy's attorney detailed her knowledge of

Inthirathvongsy's past struggle to get sober and his current severe addiction to drugs. 3RP 3-4.

There is no question that the treatment requirement is reasonably related to the crime Inthirathvongsy committed. 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, Inthirathvongsy affirmatively acknowledged that he has a drug problem and the crime he was convicted of is a drug offense (delivery of cocaine). This Court should hold that requiring a substance abuse evaluation and treatment is proper when based on the defendant's affirmative acknowledgment that he has a drug problem and when he was convicted of a drug offense. Any other result would elevate form over substance to the point of absurdity.

Lastly, Inthirathvongsy 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 two reasons. First, Inthirathvongsy'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.

D. CONCLUSION

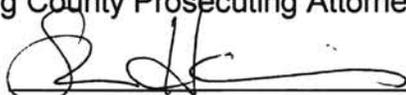
The trial court properly imposed a substance abuse evaluation and treatment as a condition of community custody.

This Court should affirm the judgment and sentence.

DATED this 23RD day of March, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

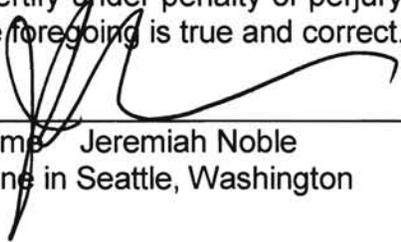
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² Division II held the record supported the imposition of substance abuse evaluation and treatment but reversed Powell's conviction on an evidentiary issue. The Washington Supreme Court reversed Division II's decision as to the evidentiary issue and affirmed the conviction and sentence. Therefore, the portion of Division II's decision that the condition of community custody was proper was ultimately necessary to the disposition of Powell's appeal, and hence, not dicta. Powell, 139 Wn. App. at 818-20; Powell, 166 Wn.2d at 85.

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 M. Winkler, the attorney for the appellant, at 1908 East Madison, Seattle, WA 98122, containing a copy of the Brief of the Respondent in STATE V. VANLA INTHIRATHVONGSY, Cause No. 67571-1-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: Jeremiah Noble
Done in Seattle, Washington

3.26.12
Date

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