

69327-1

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NO. 69327-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM AKOL,

Appellant.

REC'D
JAN 14 2013
King County Prosecutor
Appellate Unit

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

The Honorable Monica Benton, Judge

BRIEF OF APPELLANT

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 JAN 14 PM 4:31

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A. ASSIGNMENT OF ERROR

The sentencing court erroneously required appellant to submit to a chemical dependency evaluation and treatment as a condition of community custody.

Issue Pertaining to Assignment of Error

Did the trial court err when it ordered appellant to submit to a chemical dependency evaluation and treatment as a condition of community custody where the statutory prerequisites for this condition were not met?

B. STATEMENT OF THE CASE

The King County Prosecutor's Office charged William Akol with one count of Rape in the Second Degree. CP 1-5. The charge was reduced to Attempted Rape in the Second Degree in exchange for Akol's decision to waive jury trial and have his guilt determined by the court based on stipulated evidence. 1RP¹ 18; CP 9, 10-57.

The court found that on October 22, 2011, 22-year-old R.A.G. was walking in the Northgate area when Akol grabbed her, threw her into the bushes, and punched and choked her. CP 6. He

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – August 20, 2012; 2RP – September 17, 2012.

then digitally penetrated her vagina. RAG managed to escape and sought help at a convenience store across the street. CP 6. Police were called and found Akol hiding in the bushes with his pants around his ankles. R.A.G. identified Akol as her attacker. DNA testing revealed that blood found on Akol's jacket matched R.A.G.'s DNA profile. CP 7.

The Honorable Monica Benton imposed a standard range indeterminate sentence of 85.5 months to life. CP 62; 2RP 15. As a condition of community custody, Judge Benton ordered evaluations for alcohol dependency and chemical dependency and that Akol participate in and complete any recommended treatment. CP 68; 2RP 16.

Akol timely filed his Notice of Appeal. CP 71-85.

C. ARGUMENT

THE COURT ERRED IN ORDERING A CHEMICAL DEPENDENCY EVALUATION AND TREATMENT AS A CONDITION OF COMMUNITY CUSTODY.

A court may impose only a sentence that is authorized by statute. "If the trial court exceeds its sentencing authority, its actions are void." State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). Whether a trial court exceeded its statutory authority under the Sentencing Reform Act is an issue of law

reviewed de novo. State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003). A condition of sentence imposed without statutory authority can be challenged for the first time on appeal. State v. Jones, 118 Wn. App. 199, 204, 76 P.3d 258 (2003); State v. Paine, 69 Wn. App. 873, 884, 850 P.2d 1369, review denied, 122 Wn.2d 1024 (1993).

The trial court exceeded its authority in Akol's case when it required his participation in a chemical dependency evaluation and treatment. There is no statutory authority for such a requirement under the circumstances of this case.

RCW 9.94A.505(8) directs that "[a]s part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter." As a condition of community custody, Judge Benton was authorized to require that Akol "[p]articipate in crime-related treatment or counseling services" and "[p]articipate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community." RCW 9.94A.703(3)(c)-(d).

In addition, RCW 9.94A.607, a statute specifically aimed at chemical dependency, provides:

(1) 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.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences.

RCW 9.94A.607(1)-(2) (emphasis added).

Consistent with these statutory requirements, in State v. Jones, this Court held that any court-ordered counseling or treatment must address a deficiency that contributed to the offense at issue. Otherwise, it does not satisfy the statutory mandate that it be “crime-related.” Jones, 118 Wn. App. at 208. In Jones, the sentencing court erred in ordering alcohol counseling when the evidence showed that only methamphetamines were involved in the crime, not alcohol. Id. at 207-208.

In Akol’s case, the court ordered him to submit to a “chemical dependency evaluation,” in addition to an evaluation for alcohol dependency, despite the absence of any finding a

substance other than alcohol contributed to commission of the crime.² CP 68.

Because the condition pertaining to chemical dependency is unauthorized, it must be stricken. Compare State v. Powell, 139 Wn. App. 808, 819-820, 162 P.3d 1180 (2007) (drug treatment proper where evidence showed defendant had used methamphetamine before committing offense and both the prosecution and defense requested treatment), reversed on other grounds, 166 Wn.2d 73, 206 P.3d 321 (2009).

² Given the evidence that Akol was intoxicated around the time of the crime, he does not challenge the community custody conditions pertaining to alcohol dependency. See CP 13 (officers contact Akol a few hours before incident with R.A.G.; he is intoxicated).

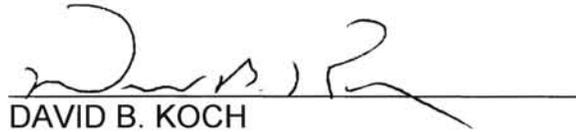
D. CONCLUSION

This Court should order the sentencing court to strike the requirement that Akol submit to a “chemical dependency evaluation” and treatment and instead restrict the requirement to alcohol dependency and treatment.

DATED this 14th day of January, 2013.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

A handwritten signature in black ink, appearing to read "David B. Koch", is written over a horizontal line.

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Appellant.)	

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 14TH DAY OF JANUARY 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] WILLIAM AKOL
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SIGNED IN SEATTLE WASHINGTON, THIS 14TH DAY OF JANUARY 2013.

x Patrick Mayovsky

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