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DIVISION II

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STATE OF WASHINGTON

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NO. 34585-4-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON,

Respondent,

vs.

CLYDE LOKI HARRISON,

Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

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- 2. WHEN A DEFENDANT IS GIVEN COMMUNITY CUSTODY FOLLOWING A DRUG CONVICTION, CRIME-RELATED PROHIBITIONS ARE LAWFUL. HARRISON WAS PLACED ON COMMUNITY CUSTODY AFTER BEING FOUND GUILTY OF POSSESSING HEROIN. ALCOHOL WAS NEVER MENTIONED AT HIS TRIAL OR DURING SENTENCING. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN, AS A CRIME-RELATED PROHIBITION, IT PROHIBITED HARRISON FROM POSSESSING ALCOHOL, OR BEING IN A BAR, A LIQUOR STORE, A RESTAURANT, A SPORTING EVENT,**

**OR A GROCERY STORE WHERE ALCOHOL IS SERVED
OR SOLD BY THE DRINK?**

III. STATEMENT OF THE CASE

On October 26, 2005, Clyde Loki Harrison appeared at the office of his federal probation officer, Todd Willson, to give a urine sample, or "UA", for testing. RPIV¹ 18-21, 54. Harrison is required to give periodic UA's as a condition of his federal parole. RPIV 21-22, 55. When Harrison appeared at Willson's Vancouver, Washington office, Willson called 911 and asked for assistance from local police officers. RPIV 57. Vancouver police officers Ammerman and Abdala arrested Harrison on a federal parole violation warrant. CP 5; RPIV 57, 63-64, 72-73. Abdala searched Harrison incident to the arrest and found an Altoids tin in his pant's pocket. RPIV 64. Inside the Altoids tin was a green balloon. RPIV 64. Abdala handed Ammerman the tin for further processing. RPIV 6674-75. She removed a substance from inside the balloon that field tested positive for heroin. RPIV 75. She routed the suspected heroin to the Washington State Patrol crime lab for testing. RPIV 75. While the police searched Harrison's person, Willson searched Harrison's backpack. RPIV 57. Inside the

¹ "RPIV" refers to the verbatim report of proceedings for the suppression motion and non-jury trial held on February 27, 2006.

backpack he located a loaded syringe of suspected heroin, unused syringes, cotton, and a spoon. RPIV 57.

The Clark County prosecutor charged Harrison in an amended information with possession of heroin and unlawful use of drug paraphernalia. CP 1. With the assistance of counsel, Harrison waived his right to jury trial. RPIII² 13-14; CP 16.

On February 27, 2006, the court, Judge Nichols, heard Harrison's suppression motion immediately followed by Harrison's bench trial. RPIV. At the suppression motion, Harrison asserted two errors: (1) non-federal officers had no legal authority to serve a federal parole arrest warrant, and (2) there was an unreasonable delay by the probation officer in obtaining and requesting the federal parole violation warrant. CP 2-7; RPIV 48-49. Probation officer Willson was the only witness at the hearing. RPIV 17-43. One of Harrison's many parole conditions is a periodic UA requirement. RPIV 22. On the following pertinent 2005 dates, Harrison's UA was positive for monoacetylmorphine 6 which is indicative of heroin use: April 27, May 11, July 7, August 10, and August 22. RPIV 24. Initially, Willson did not understand the UA reading and believed that Harrison was using legal substances or

² "RPIII" refers to the verbatim report of proceedings for the jury trial waiver held on February 23, 2006.

perhaps controlled substances that were giving certain readings. RPIV 23-24. It came to a point where he thought Harrison was perhaps using heroin so he contacted the testing lab for more information about the readings. RPIV 23-24. He learned from the lab the monoacetylmorphine 6 equated only to heroin usage. RPIV 24. On September 15 and September 28, Harrison failed altogether to give a UA. RPIV 25-26. Willson decided to submit a warrant request. RPIV 25. Per his protocol, warrant requests are sent to Chevy Chase, Maryland, to the United States Parole Commission. RPIV 25. The warrant request was sent on October 5 and authorized on October 12. RPIV 25-26.

The court denied the suppression motion holding that (1) non-federal, local law enforcement has legal authority to arrest on federal parole violation warrants and (2) even if Willson had unreasonably delayed a warrant request on the positive UA's in April through August, the warrant request was timely as to the missed September UA's. RPIV 49-52.

At trial, the state called Willson, Abdala, Ammerman, and Washington State Patrol forensic scientist Catherine Dunn. RPIV 53-96. The essence of the trial testimony of Willson, Abdala, and Ammerman is summarized above in the first paragraph. Dunn

added that she received and tested an item sent to her from the Vancouver Police that tested positive for heroin. RPIV 91-93. This was trial exhibit #2. RPIV 88-89. During her testimony, Ammerman inspected exhibit #2 and identified it as the heroin that she found in the green balloon. RPIV 76-78. The court admitted exhibit #2 over objection. RPIV 84.

After the state rested, Harrison motioned for dismissal due to insufficient evidence on both counts. RPIV 97. As to the heroin possession charge, he argued that the chain of custody for exhibit #2 was faulty and that the amount of substance sent to the crime lab for testing was significantly less than the amount produced at trial as exhibit #2. RPIV 97. As to the paraphernalia charge, he argued that the actual evidence had not been produced. RPIV 97. The court denied the motion as to the heroin possession but dismissed the paraphernalia charge. RPIV 101.

Harrison did not testify; he did not present any defense witnesses. RPIV 101.

In closing, Harrison's argument again focused on reasonable doubt and the faulty chain of custody and the significant weight difference between what was sent to the lab and what came back from the lab and was admitted at trial. RPIV 102. In rejecting

Harrison's argument and finding him guilty, the court said that there simply was not enough evidence that the chain of custody was broken or that the evidence was tampered with. RPIV 103. The court set over sentencing because of issues surrounding foreign convictions and offender score calculation. RPIV 105.

The court heard sentencing on March 10, 2006. RPV.³ The state presented documentation in support of its proposed offender score of four as follows:

- 1977 murder in the second degree, Yukon Territory, Canada;
- 1981 conveyance of a weapon within federal correctional institution, California federal prison;
- 1999 escape, Washington federal institution; and
- 2004 delivery of marijuana for payment, Multnomah County, Oregon

CP 20-57, 71.

Harrison objected to the use of the murder conviction in his criminal history calculation because the state did not establish that he was legally in the United States and because the proposed documentation was not sufficient or correctly certified so as to be self authenticating. CP 17-18: RPV 115-49. As to the weapon

³ "RPV" refers to the verbatim report of proceedings for the March 10, 2006, sentencing hearing.

conveyance and the escape, Harrison argued that neither charge was comparable to a Washington felony and that both washed out for scoring purposes. Finally, Harrison argued that the Oregon marijuana charge was not comparable to a Washington felony. CP 18-19; RPV 115-49.

The court disagreed with each of Harrison's challenges, found that he had an offender score of 4 and sentenced him to 8 months on a standard range of 6-18 months. CP 59, 62; RP 115-54.

Harrison objected to the imposition of any legal financial obligations as he had no ability to pay them. RPV 153. The court agreed that Harrison lacked the ability to pay but nevertheless imposed over \$3,000 in fines and assessments. RPV 153; CP 60-61.

Nothing was said at sentencing about community custody or the conditions thereof. RPV 115-54. The court did impose community custody and specific conditions however. CP 63-66.

Harrison made his appeal in a timely fashion. CP 72.

IV. ARGUMENT

I. THE TRIAL COURT'S ORDER DENYING CLYDE HARRISON'S REQUEST TO NOT IMPOSE LEGAL FINANCIAL OBLIGATIONS BECAUSE HE HAD NO

**PRESENT OR FUTURE CAPACITY TO PAY VIOLATED
RCW 10.01.160(3) AND HARRISON'S RIGHT TO EQUAL
PROTECTION UNDER WASHINGTON CONSTITUTION,
ARTICLE 1, § 12, AND UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT.**

A trial court's authority to impose legal financial obligations as part of a judgment and sentence in the State of Washington is limited by RCW 10.01.160. Section three of this statute states as follows:

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3).

Although the court need not enter written findings and conclusions in regards to a defendant's current or future ability to pay costs, the court must consider this issue and find either a current or future ability before it has authority to impose costs. State v. Eisenman, 62 Wn.App. 640, 810 P.2d 55, 817 P.2d 867 (1991). In addition, in order to pass constitutional muster, the imposition of legal financial obligations, and any punishment for failure to pay, must meet the following requirements:

1. Repayment must not be mandatory;

2. Repayment may be imposed only on convicted defendants;
3. Repayments may only be ordered if the defendant is or will be able to pay;
4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and
7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

The imposition of costs under a scheme that does not meet with these requirements, or the imposition of a penalty for a failure to pay absent proof that the defendant had the ability to pay, violates the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. Fuller v. Oregon, 417 U.S. 40, 40 L.Ed.2d 642, 94 S.Ct. 2116 (1974).

Under our facts, the record reveals that the trial court's imposition of legal financial obligations violates RCW 10.01.160(3),

as well as the third, fourth, and fifth factors listed in Curry, thereby violating Harrison's right to equal protection. The following argument supports this conclusion.

Here, Harrison has been indigent and almost always in prison for the last 28 years after following his murder conviction in 1978. The trial court found him indigent and gave him appointed counsel in this case. As Harrison argued at sentencing, when he was out of custody he had to panhandle in an effort to make ends meet. He has liver cancer, no medical insurance, and no way to pay for his needed medication. He turned to heroin because it was the cheapest substance he could buy to help with his pain. Thus, the record is abundantly clear that Harrison has no current ability or future ability to pay. The court acknowledged Harrison's inability:

HARRISON: So, yeah, I made – made a bad decision, which also brings up another point, financial, if I end up with any fines or financial out of this, there's no way I'm going to be able to pay that.

THE COURT: Yeah, I know.

RPV 153.

In spite of the facts that Harrison has no future ability to pay, the trial court still imposed well over \$3,000 in legal financial obligations. Thus, the trial court's order denying Harrison's

requested relief violates RCW 10.01.160(3). The trial court's order also violates Harrison's right to equal protection as was explained in Curry because (1) the court has ordered the payment of obligations when Harrison does not have the ability to pay (violating the third criterion noted in Curry), (2) the court failed to consider Harrison's financial resources (violating the fourth criterion noted in Curry), and (3) the court persists in requiring Harrison to pay in spite of the fact that there is no likelihood his indigency will end (violating the fifth criterion noted in Curry). As a result, this court should reverse the decision of the trial court and remand this case with instructions to strike Harrison's legal financial obligations.

II. THE TRIAL COURT LACKED LAWFUL AUTHORITY TO IMPOSE ALCOHOL-RELATED CONDITIONS OF COMMUNITY CUSTODY.

Community custody may be imposed on a possession of heroin conviction. RCW 9.94A.545 (2003); RCW 69.50.4013(1). Approved conditions of community custody are found in multiple sections of RCW 9.94A. See RCW 9.94A.545 (2003); RCW 9.94A.700(4) and (5); RCW 9.94A.715(2)(a) and (b) (2003); and RCW 9.94A.720(b). Many of the conditions appear in list form under RCW 9.94A.700(4) and (5) (2003) as follows:

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

No causal link need be established between the condition imposed and the crime committed so long as the condition relates to the circumstances of the crime. State v. Llamas-Villa, 67 Wn. App. 448, 456, 836 P.2d 239 (1992). 'Circumstances' is defined as 'an accompanying or accessory fact.' Black's Law Dictionary 259 (8th ed. 2004).

In addition, the court can also order an offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of re-offending, or the safety of the community, and to obey all laws. RCW 9.94A.715(2)(a) and (b) (2003). Finally, under RCW 9.94A.720(b), the offender shall report as directed to the community corrections officer, remain within prescribed geographic boundaries, notify the community corrections officer of any change of address or employment, and pay supervision costs.

Clyde Harrison is guilty of possessing heroin. There was no mention of alcohol at Harrison's trial or sentencing. Yet, the trial court held, as conditions of Harrison's community custody, that he

could neither possess alcohol⁴, nor be in a liquor store, a bar, a restaurant, a sporting event, or a grocery store if alcohol is sold there by the drink. While Harrison did not object at sentencing to these conditions, he is objecting to them on appeal. Objections to community custody conditions can be raised for the first time on appeal. State v. Jones, 118 Wn. App. 199, 204, 76 P.3d 258 (2003); State v. Julian, 102 Wn. App. 296, 304, 9 P.3d 851 (2000), review denied, 143 Wn.2d 1003 (2001) (“sentences imposed without statutory authority can be addressed for the first time on appeal”).

Imposition of crime-related prohibitions are reviewed for an abuse of discretion and will only be reversed if the decision is manifestly unreasonable or based on untenable grounds. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Here, there is no evidence that alcohol possession or being in a bar, in a liquor store, in a restaurant, at a sporting event, or in a grocery store that serves alcohol by the drink contributed to Harrison’s heroin possession. As such, these conditions are erroneous. The trial court abused its discretion when imposing them.

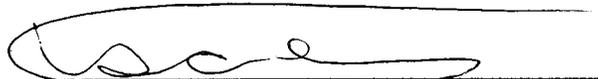
⁴ Harrison is aware that the court can – and did in his case – order that he not consume alcohol while on supervision. See RCW 9.94A.700(5)(d).

V. CONCLUSION

Harrison has no past, present, or future ability to pay his legal financial obligations. As a result, this court should reverse the decision of the trial court and remand this case with instructions to strike Harrison's legal financial obligations.

Additionally, alcohol was never mentioned during any portion of Harrison's proceedings. As such, it was error for the trial court to prohibit, as a crime-related prohibition, Harrison from possessing alcohol or being in a bar, in a liquor store, at a sporting event, in a restaurant, or at a grocery store that serves alcohol by the drink. Harrison's case should be remanded and the erroneous conditions stricken.

Respectfully submitted this 22nd day of August 2006



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APPENDIX OF STATUTES

RCW 9.94A.545 (2003). Community custody

Except as provided in RCW 9.94A.650, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a crime, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll.

RCW 9.94A.700 Community placement.

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

RCW 9.94A.715 (2003).
Community custody for specified offenders

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2) (a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of re-offending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of re-offense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall

supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of re-offending; or (c) the safety of the community.

RCW 9.94A.720
Supervision of offenders.

(1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed. The department may only supervise the offender's compliance with payment of legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.501.

(b) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in RCW 9.94A.715.

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.740 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.737. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010.

RCW 10.01.160

Costs — What constitutes — Payment by defendant — Procedure — Remission.

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail - must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

RCW 69.50.4013

Possession of controlled substance — Penalty.

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

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And that said envelope contained the following:

- (1) APPELLANT'S BREIF
- (2) AFFIDAVIT OF MAILING

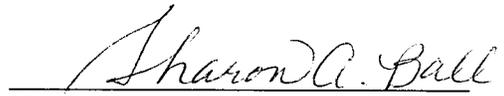
Dated this 22nd day of August 2006.



 LISA E. TABBUT, WSBA #21344
 Attorney for Appellant

SUBSCRIBED AND SWORN to before me this 22nd day of August 2006.





 Sharon A. Ball
 Notary Public in and for the
 State of Washington
 Residing at Longview, WA 98632
 My commission expires 06/10/07