

NO. 45929-9-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent

vs.

CHRISTOPHER E. THOMPSON,

Appellant

APPEAL FROM THE SUPERIOR COURT
FOR MASON COUNTY
The Honorable Amber L. Finlay, Judge
Cause No. 13-1-00241-8

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in imposing a community custody condition prohibiting Thompson from frequenting places whose primary business is the sale of liquor.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the trial court acted without authority in ordering Thompson not to frequent places whose primary business is the sale of liquor?

C. STATEMENT OF THE CASE

01. Procedural Facts

Christopher E. Thompson was charged by information filed in Mason County Superior Court May 14, 2013, with possession of methamphetamine, contrary to RCW 69.50.4013. [CP 61].

The court denied Thompson's motion to suppress his pretrial statements under CrR 3.5, and trial to a jury commenced the following November 13, the Honorable Amber L. Finlay presiding. [RP 32-39; CP 34-35] Neither objections nor exceptions were taken to the jury instructions. [RP 125].

Thompson was found guilty, sentenced within his standard range, and timely notice of this appeal followed. [CP 3, 10-26, 36].

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02. Substantive Facts

On Friday, May 10, 2013, before going through the metal detector located at the entrance to the Mason County Courthouse, Officer Robert Vasquez observed Thompson remove a small baggie from his pocket that contained what Vasquez suspected was an “illegal substance” and place it along with several other items in a security bin. [RP 41]. Vasquez detained Thompson and called for assistance. [RP 41]. Officer Robert Auderer was dispatched to the scene. [RP 46]. After advisement and waiver of rights, Thompson acknowledged that the bag was his, that the substance therein was methamphetamine, that he was a user, and that he didn’t realize he had left the bag in his pocket prior to entering the courthouse. [RP 44, 48-49]. The substance subsequently tested positive for methamphetamine. [RP 61-63].

Thompson explained that while on a picnic with his wife at a community park, they had gathered up various items of drug paraphernalia and put them in the garbage. [RP 91]. “I put some in my pocket because we was on our way down when we first started picking it up.” [RP 91]. He thought he had thrown everything in the trash until he discovered the baggie in his pocket when he went through the security screening at the courthouse. [RP 93-94, 120].

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D. ARGUMENT

THE TRIAL COURT ACTED WITHOUT
AUTHORITY IN ORDERING THOMPSON
NOT TO FREQUENT PLACES WHOSE
PRIMARY BUSINESS IS THE SALE OF
LIQUOR.

As a condition of community custody, the court
ordered that Thompson:

... shall not go into bars, taverns, lounges,
or other places whose primary business is
the sale of liquor;

[CP 22].

““In the context of sentencing, established case law holds that
illegal or erroneous sentences may be challenged for the first time on
appeal.”” State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008)
(quoting State v. Ford, 37 Wn.2d 472, 477, 973 P.2d 452 (1999)). This
court reviews whether a trial court had statutory authority to impose
community custody conditions de novo. State v. Armendariz, 160 Wn.2d
106, 110, 156 P.3d 201 (2007).

There was no evidence at trial that alcohol played any part in
Thompson’s crimes. In State v. Jones, 118 Wn. App. 199, 76 P.3d 258
(2003), the defendant pleaded guilty to several offenses and the court
imposed conditions of community custody relating to alcohol consumption
and treatment. As here, nothing in the record indicated that alcohol

contributed to Jones's offenses. Id. at 207-08. This court found that although the trial court had authority to prohibit consumption of alcohol, it did not have the authority to order the defendant "to participate in alcohol counseling(,)" Id. at 208, reasoning that the legislature intended a trial court to be able "to prohibit the consumption of alcohol regardless of whether alcohol had contributed to the offense." Id. at 206. In contrast, when ordering participation in treatment or counseling, the treatment or counseling must be related to the crime. Id. at 207-08; see also State v. McKee, 141 Wn. App. 22, 34, 167 P.3d 575 (2007) (community custody provisions prohibiting purchasing and possession of alcohol invalid where alcohol did not play a role in the crime), reviewed denied, 163 Wn.2d 1049 (2008). And while RCW 9.94A.703(3)(e), authorizes the sentencing court to order that an offender refrain from consuming alcohol, there is no such authority forbidding an offender from frequenting places whose primary business is the sale of liquor, sans any evidence and argument that it qualifies as a crime-related prohibition under RCW 9.94A.703, which constitutes "an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted..." RCW 9.94A.030(10).

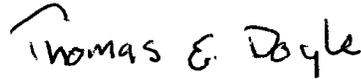
The condition prohibiting Thompson from frequenting places selling liquor is invalid because there was no evidence that alcohol played

any part in his offense, with the result that it is not a crime-related prohibition and must be stricken.

E. CONCLUSION

Based on the above, Thompson respectfully requests this court to remand for resentencing consistent with the argument presented herein.

DATED this 31st day of July 2014.



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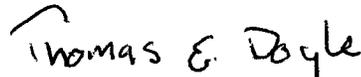
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

Tim Higgs
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DATED this 31st day of July 2014.



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DOYLE LAW OFFICE

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