

NO. 48139-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MARIAH L. KNIGHT,

Appellant.

BRIEF OF APPELLANT

**John A. Hays, No. 16654
Attorney for Appellant**

**1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084**

TABLE OF CONTENTS

	Page
A. TABLE OF AUTHORITIES	iii
B. ASSIGNMENT OF ERROR	
1. Assignment of Error	1
2. Issue Pertaining to Assignment of Error	1
C. STATEMENT OF THE CASE	2
D. ARGUMENT	
THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT TERMINATED THE DEFENDANT'S DRUG COURT CONTRACT WITHOUT AN EXAMINATION OF THE UNDERLYING FACTS	5
E. CONCLUSION	7
F. AFFIRMATION OF SERVICE	8

TABLE OF AUTHORITIES

Page

State Cases

State v. Aisbeha, 142 Wn.2d 904, 16 P.3d 626 (2001) 5

State v. Neal, 144 Wn.2d 600, 30 P.3d 1255 (2001) 5

ASSIGNMENT OF ERROR

Assignment of Error

The trial court abused its discretion when it terminated the defendant's drug court contract without an examination of the underlying facts.

Issues Pertaining to Assignment of Error

Does a trial court abuse its discretion if it terminates a defendant's drug court contract without an examination of the underlying facts relevant to issue of termination?

STATEMENT OF THE CASE

By information filed June 6, 2015, the Thurston County Prosecutor charged the defendant Mariah L. Knight with one count of possession of stolen mail and one count of possession of methamphetamine. CP 3. One month later on July 7th the defendant appeared in court upon her request to be allowed into the Thurston County Drug Court program. RP 7/7/15 1-7. At that time the court reviewed a Drug Court Contract with the defendant that she, her attorney and the prosecutor had signed. CP 7-10; RP 7/7/15 1-7. Following a short colloquy the court granted the defendant's request and allowed her to enter into the drug court program. RP 7/7/15 4-7. One week later on 7/14/15 the defendant appeared in court upon an allegation that she had failed to appear for urinalysis tests following her intake interviews. RP 7/14/15 3-5. At that time the court imposed a sanction of six days in jail. RP 7/14/15 4-5.

A little over two months later the defendant again appeared in court upon a state's written motion to terminate the defendant from the program upon an allegation that she had positive urinalyses test and that she had failed to appear. CP 17-18; RP 9/11/15 6-9. The affirmation given in support of the motion contains no factual allegations other than the following:

- Multiple Positive UAs
- Failure to appear for drug court review hearing

CP 18.

At the time of the hearing the defendant did not contest the factual allegations in the supporting affirmation. RP 9/11/15 6-7. Rather, the defense argued that the defendant wanted to remain in the program and that the appropriate action was to impose sanctions. *Id.* When asked, the prosecutor did not continue with the request to terminate. RP 9/11/15 7. Rather, the prosecutor's response was "the State will defer to the treatment team." *Id.* However, the treatment representative simply stated that "we don't support her being in the Chemical Dependency Program." *Id.* After these two brief statements the following colloquy occurred between the defendant and the court:

THE DEFENDANT: I'm really sorry, just really sorry. You guys gave me an awesome opportunity and I don't even have a good excuse or reason, I'm sorry, to help me figure it out, you know. I'm super bummed at myself and I'm really upset with myself for not being able to finish this. It was hard. I'm not saying it wasn't hard but just one slipup, one or two little slipups just bring me down and give up on myself. And I wasn't being fair to myself and didn't give myself a chance to work through everything inside internally and now I have to -- and now I have to suffer for it. Nobody else's fault but my own. I'm sorry I wasted everybody's time.

THE COURT: Well, you don't have to be sorry. Sounds to me like you are upset with yourself, you're not upset at anyone else.

And my recollection is Ms. Knight signed her contract like on the 20 -- early, mid part of July, might have made one, maybe two court appearances and then went on warrant status.

MR. GRIFFITH: July 7th she signed, Your Honor.

THE COURT: Yeah. So I mean zero disrespect to you, Ms. Knight, but this is a pretty simple call. You just haven't been participating in the program. So the Court will terminate Ms. Knight.

RP 9/11/15 8-9.

The court later reviewed the police reports for the defendant's two charges and found her guilty on both counts. RP 9/15/15 10-16; CP 28-44.

The court then sentenced the defendant within the standard range, after which the defendant filed timely notice of appeal. CP 20-27, 28-44, 46-54.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT TERMINATED THE DEFENDANT'S DRUG COURT CONTRACT WITHOUT AN EXAMINATION OF THE UNDERLYING FACTS

The decision whether or not to allow a defendant to remain in a drug court program, as with the decision to suspend or defer a sentence, rests within the sound discretion of the court. *State v. Badger*, 64 Wn.App. 904, 908, 827 P.2d 318 (1992); *State v. J.A.*, 105 Wn.App. 879, 887, 20 P.3d 487 (2001). An abuse of discretion occurs when the trial court's exercise of that discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001). For example, while an appellate court reviews a trial court's decision to admit or exclude expert testimony on an abuse of discretion standard, a trial court that admits expert testimony unsupported by an adequate foundation automatically abuses its discretion. *State v. Atsbeha*, 142 Wn.2d 904, 16 P.3d 626 (2001).

In the case at bar the trial court abused its discretion when it terminated the defendant from the drug court program in which she had been recently admitted because it took this action without any real discussion of the facts underlying the defendant's violation. Further, the trial court did not perform any type of analysis as to why termination was the appropriate option as opposed to some type of lesser sanction such as jail or in-patient treatment. Thus, in the case at bar, the trial court abused its discretion when it revoked

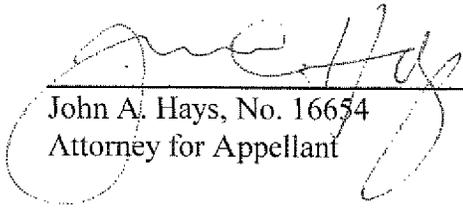
the defendant from the Thurston County Drug Court program. This court should vacate the defendant's conviction and remand for a new hearing on the petition to terminate.

CONCLUSION

The trial court abused its discretion when it terminated the defendant from the Thurston County Drug Court program. As a result, the court should vacate the defendant's conviction and remand for a new violation hearing.

DATED this 14th day of March, 2016.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

NO. 48139-1-II

vs.

**AFFIRMATION
OF SERVICE**

MARIAH L. KNIGHT,
Appellant.

The under signed states the following under penalty of perjury under the laws of Washington State. On this day, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Ms Carol Laverne
Thurston County Prosecutor's Office
2000 Lakeridge Dr. S.W., Building 2
Olympia, WA 98502
lavernc@co.thurston.wa.us
2. Ms Mariah L. Knight
c/o Philip Griffith
Attorney at Law
926 24th Way SW
Olympia, WA 98502

Dated this 14th day of March, 2016, at Longview, WA.


Diane C. Hays

HAYS LAW OFFICE

March 14, 2016 - 4:27 PM

Transmittal Letter

Document Uploaded: 5-481391-Appellant's Brief.pdf

Case Name: State v. Mariah Knight

Court of Appeals Case Number: 48139-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Diane C Hays - Email: jahayslaw@comcast.net

A copy of this document has been emailed to the following addresses:

paoappeals@co.thurston.wa.us