No. 48139-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

MARIAH L. KNIGHT,

Appellant.

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

The Honorable James J. Dixon, Judge
Cause No. 15-1-00740-1

BRIEF OF RESPONDENT

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A. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

Whether the trial court abused its discretion when it terminated Knight's drug court contract after she violated that contract in two different ways.

B. STATEMENT OF THE CASE.

The State accepts the Appellant's statement of the case.

C. ARGUMENT.

The trial court properly exercised its discretion when it terminated Knight from the drug court program.

Knight argues that the trial court abused its discretion when it removed her from the drug court program because the court did not engage in any "real discussion" of the underlying facts or weigh removal from the program against other available options. Appellant's Opening Brief at 5-6. Her only explanation as to why this constitutes an abuse of discretion is that a trial court abuses its discretion when it admits expert testimony without an adequate foundation. Id.

Drug court is a non-adversarial alternative to traditional criminal justice proceedings. State v. Cassill-Skilton, 122 Wn. App. 652, 657, 94 P.3d 407 (2004). When the State seeks to terminate an individual's participation in drug court, it must prove non-compliance with the drug court diversion agreement by a

preponderance of the evidence. State v. Varnell, 137 Wn. App. 925, 929, 155 P.3d 971 (2007). Similar procedures, such as revocation of a suspended or deferred sentence, fall within the 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). Revocation of drug court participation is similar to dealing with probation violation allegations. Cassill-Skilton, 122 Wn. App. at 657.

> Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances without doing so arbitrarily or capriciously.

State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

A reviewing court will find an abuse of discretion when the trial court's decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. State v. Dixon, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006), citing State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A decision is based "on untenable grounds" or made "for untenable reasons" if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. Id. A decision is "manifestly unreasonable" if

the court, despite applying the correct legal standard to the supported facts, adopts a view that "no reasonable person would take," and arrives at a decision "outside the range of acceptable choices." Id. Nothing in this definition requires the trial court to weigh one option against another or to engage in a "real discussion" of the underlying facts.

Knight entered into the drug court contract on July 7, 2015. CP 7-10. Three days later, on July 10, 2015, she failed to appear for a drug court review and a bench warrant was ordered. CP 12. On July 14, the court entered an order imposing sanctions of 6 days in jail because she had missed two UA's, CP 13, which were required by the drug court contract. CP 7, item 6. Just three days later, she received another three-day sanction for a missed UA. CP 15. Finally, on September 11, 2015, the State filed a petition alleging noncompliance, specifying that Knight had had multiple positive UAs and had failed to appear for a drug court review hearing. CP 17-18. The same judge who terminated Knight from drug court, 09/11/15 RP 6-9, ordered the bench warrant, CP 12, and signed both orders imposing sanctions. CP 13, 15.

When Knight appeared before the court on September 11, 2015, she did not contest the allegations of positive UAs and failure

to appear. 09/11/15 RP 6. She had not been seen in drug court since the end of July. Id. The treatment team did not support her participation in the Chemical Dependency Program. 09/11/15 RP 7. When Knight herself had the opportunity to address the court, she apologized but did not request to remain in drug court. 09/11/15 RP 8.

It was not necessary for the court to engage in any discussion of the reasons for revoking Knight's drug court participation or weighing available options. Everybody in the courtroom knew that she had literally done nothing she was required to do to fulfill her drug court contract.

Knight's situation is comparable to that in State v. Smith, 118 Wn. App. 288, 75 P.3d 986 (2003). In that case, Smith had been terminated from a drug court program and convicted of the underlying charges at a bench trial on stipulated facts. He requested a Drug Offender Sentencing Alternative (DOSA). Id. at 291. Without any discussion, the court denied that request, saying that a person who fails to make it through drug court was not amendable to treatment. Id. Smith appealed, arguing that the

court had abused its discretion by refusing to consider a DOSA. Id. at 292. The Court of Appeals found that failure to complete drug court constituted a tenable basis for a refusal to consider a DOSA, and went on to say:

> We see a distinction between refusal to exercise judicial discretion at all, and the exercise of judicial discretion based on reasonable factors that the court considers ahead of time—such as the failure of a candidate to successfully complete drug court as it relates to whether that candidate and the community likely will benefit from a DOSA.

Smith, 118 Wn. App. at 293.

In this case, everybody, including Knight, knew that she had not done one thing to comply with her drug court contract. The court was quite clearly basing its ruling on the history of the case: "[T]his is a pretty simple call. You just haven't been participating in the program. So the Court will terminate Ms. Knight." The court was only referring to "reasonable factors" that it had "considered in advance." Smith, 118 Wn. App. at 293. Smith has not argued that failure to comply with the drug court contract did not constitute reasonable grounds to terminate her from drug court.

There was no abuse of discretion.

D. CONCLUSION.

The trial court had tenable reasons for terminating Knight from the drug court program. There was no abuse of discretion. The State respectfully asks this court to affirm her convictions.

Respectfully submitted this 18th day of May, 2016.

Carol La Verne, WSBA# 19229
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of Brief of Respondent on the date below as follows:

Electronically filed at Division II

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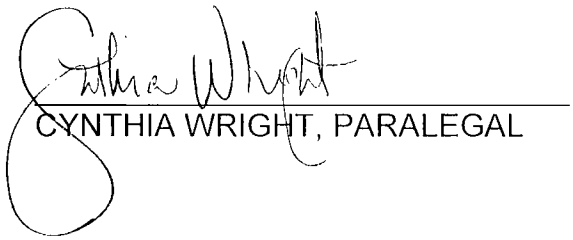
I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 18th day of May, 2016, at Olympia, Washington.



CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTOR

May 18, 2016 - 9:11 AM

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