

No. 29418-8-III

THE CLERK OF THE COURT
FOR THE STATE OF WASHINGTON
SEATTLE, WASHINGTON

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

ELIZABETH J. HILLING,
Defendant/Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR.....4

B. STATEMENT OF THE CASE.....4

C. ARGUMENT.....5

The sentencing court should have waived a condition of community custody that was not crime-related and/or not reasonable considering current economic conditions.....5

D. CONCLUSION.....9

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Ritter v. Hughes Aircraft Co.</u> , 58 F.3d 454 (9th Cir. 1995).....	8
<u>Fusato v. Washington Interscholastic Activities Ass'n.</u> , 93 Wn.App. 762, 970 P.2d 774 (1999).....	8
<u>State v. Blight</u> , 89 Wn.2d 38, 569 P.2d 1129 (1977).....	5
<u>State v. Crockett</u> , 118 Wn. App. 853, 78 P.3d 658 (2003).....	5
<u>State v. Hearn</u> , 131 Wn. App. 601, 128 P.3d 139 (2006).....	7
<u>State v. Jones</u> , 118 Wn. App. 199, 76 P.3d 258 (2003).....	5
<u>State v. Llamas-Villa</u> , 67 Wn. App. 448, 836 P.2d 239 (1992).....	7
<u>State v. Parramore</u> , 53 Wn. App. 527, 768 P.2d 530 (1989).....	7
<u>State v. Riley</u> , 121 Wn.2d 22, 846 P.2d 1365 (1993).....	5

Statutes

RCW 9.94A.030(13).....	6
RCW 9.94A.505.....	5
RCW 9.94A.505(2)(a)(iii).....	6
RCW 9.94A.505(8).....	5
RCW 9.94A.700(4).....	6
RCW 9.94A.710.....	6
RCW 9.94A.715.....	6
RCW 9.94A.715(2)(a).....	6

Court Rules

ER 201.....	8
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A. ASSIGNMENT OF ERROR

The sentencing court erred in imposing a condition of community custody that was not crime-related and/or not reasonable considering current economic conditions.

Issue Pertaining to Assignment of Error

Should the sentencing court have waived a condition of community custody that was not crime-related and/or not reasonable considering current economic conditions?

B. STATEMENT OF THE CASE

Elizabeth Hilling pled guilty to one count of possession of marijuana over 40 grams. CP 14. She received a standard range sentence. CP 14-26. The sentencing court imposed terms of community custody including a condition that Ms. Hilling maintain full-time employment or education or a combination thereof throughout the duration of [her] probation. CP 23. This appeal followed. CP 27.

C. ARGUMENT

The sentencing court should have waived a condition of community custody that was not crime-related and/or not reasonable considering current economic conditions.

Sentencing conditions are reviewed for abuse of discretion. State v. Crockett, 118 Wn. App. 853, 856, 78 P.3d 658 (2003); *see* State v. Riley, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993). A crime-related prohibition will be reversed if it is manifestly unreasonable. Riley, 121 Wn.2d at 37 (quoting State v. Blight, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977)).

The Legislature has authorized the imposition of prohibitions and affirmative conduct upon a defendant, provided they are related to the circumstances of the crime. Crockett, 118 Wn. App. at 857; State v. Jones, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003). RCW 9.94A.505, the general sentencing statute of the Sentencing Reform Act, provides that, “[A]s a part of any sentence, the Court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. RCW 9.94A.505(8). A “crime-related prohibition” means:

[A]n order of a court prohibiting conduct that *directly relates to the circumstances of the crime* for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to

otherwise perform affirmative conduct. .However, affirmative acts necessary to monitor compliance with the order of a court may be required by the Department [DOC].

RCW 9.94A.030(13) (emphasis added).

Under the sentencing statute, community custody is governed by RCW 9.94A.710 or 9.94A.715. RCW 9.94A.505(2)(a)(iii). RCW 9.94A.710 relates to community custody for sex offenders and thus is not applicable here. RCW 9.94A.715 provides for conditions of community custody as follows:

(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 reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

RCW 9.94A.715(2)(a).

Ms. Hilling challenges the condition imposed pursuant to RCW 9.94A.700(4) that is not related to the circumstances of her conviction for possession of marijuana over 40 grams.

RCW 9.94A.700(4) provides in pertinent part:

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

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

...

It is clear from this statute that the sentencing court has the authority to waive conditions required under RCW 9.94A.700(4) if it deems them inappropriate.

Although no causal link need be established between the condition imposed and the crime committed, the condition must relate to the circumstances of the crime. *See State v. Parramore*, 53 Wn. App. 527, 768 P.2d 530 (1989) (community supervision condition requiring defendant convicted of selling marijuana to submit to urinalysis was directly related to his drug conviction despite absence of evidence on whether defendant smoked marijuana); *State v. Llamas-Villa*, 67 Wn. App. 448, 456, 836 P.2d 239 (1992) (condition prohibiting association with individuals who use, possess, or deal with controlled substances was conduct intrinsic to the crime for which Llamas was convicted and therefore was directly related to the circumstances of the crime of possession of cocaine with intent to deliver); *State v. Hearn*, 131 Wn. App. 601, 128 P.3d 139 (2006) (condition that Ms. Hearn refrain from associating with known offenders was directly related to circumstances of the crime of drug possession).

Herein, the sentencing court required that Ms. Hilling maintain full-time employment or education or a combination thereof throughout the duration of [her] probation. CP 23. There is no showing in the record that this condition is reasonably related to the circumstances of Ms. Hilling's conviction for possession of marijuana over 40 grams. Therefore, the sentencing court should have waived this condition and it should now be stricken.

Furthermore, the condition is unreasonable in light of current economic conditions. Based on daily reports in the news media by leading economists, this Court can take judicial notice that this country's economy and much of the world economy remains in the greatest recession since the Great Depression of the 1930's. See ER 201; Fusato v. Washington Interscholastic Activities Ass'n., 93 Wn. App. 762, 970 P.2d 774, 776 (1999); Ritter v. Hughes Aircraft Co., 58 F.3d 454, 458-59 (9th Cir. 1995). As a result of this recession, the unemployment rate remains at its highest in the past ten years, and is not projected to lower significantly in the coming months and possibly years. Id. Therefore, the sentencing court's requirement that Ms. Hilling maintain full-time employment or education or a combination thereof throughout the duration of [her] probation is unreasonable, considering the current economic situation. Such a

condition is a guaranteed recipe for non-compliance and future probation violations, since it is highly unlikely that Ms. Hilling will be able to obtain or maintain full-time employment.

The sentencing court's alternative requirement that Ms. Hilling be enrolled in and attend a part-time or full-time educational program is also unreasonable. First, there is nothing in the record to indicate Ms. Hilling would even qualify for such a program. Second, she may not be able to afford any educational or vocational programs due to her current economic situation or the continually rising costs of tuition. For these additional reasons the condition of community custody should be stricken.

D. CONCLUSION

For the reasons stated, the condition of community custody that Ms. Hilling maintain full-time employment or education or a combination thereof throughout the duration of [her] probation should be stricken.

Respectfully submitted April 18, 2011.



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