

FILED

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Court of Appeals
Division III
State of Washington

29748-9-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN LEE ROBERT FRAME,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



by: Teresa Chen, WSBA 31762
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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the sentence of the Appellant.

III. ISSUES

1. Did the court err in imposing a 24 month term of community custody pursuant to RCW 9.94A.660(7)?
2. Did the court abuse its discretion in imposing a condition that the defendant not possess or sell alcohol as an “appropriate affirmative condition” under RCW 9.94A.660(6)?

IV. STATEMENT OF THE CASE

The Defendant Justin Frame was originally charged with two counts of delivery of marijuana in a school zone. CP 1-3. The Defendant pled guilty to amended charges of four counts of delivery of marijuana – no enhancement. CP 16-28.

He was sentenced under the Drug Offender Sentencing Alternative

(DOSAs), required to serve 24 months in community custody and remain in residential chemical dependency treatment for four months. CP 35 -29-42. Citing RCW 9.94A.660 and echoing language in section (6) of the statute, the judgment and sentence includes language requiring the Defendant to “perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department.” CP 36. The Defendant is ordered not to use any illegal controlled substances or alcohol. CP 36. The language regarding alcohol is handwritten into the order. CP 36. The appendix to the order includes a condition that the “defendant shall not use, possess or sell any unlawful controlled substance or alcohol.” CP 39. Again, the prohibition against alcohol is written into the order by hand. CP 39.

On February 23, 2011, the DOSA was revoked, and the defendant was ordered to serve “the remaining one-half of the midpoint of the mid-point (12 months) of the standard range.” CP 67-68.

V. ARGUMENT

A. THE COURT DID NOT ERR IN IMPOSING THE 24 MONTHS OF COMMUNITY CUSTODY.

The Defendant argues that his community custody sentence is governed by RCW 9.94A.701(3)(c), because his DOSA was revoked. This is

incorrect. The DOSA statutes (RCW 9.94A.660 and RCW 9.94A.664) provide the details of a DOSA sentence at the time of imposition as well as after a violation of the terms of the sentence.

(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court **may** modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court **may** order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

RCW 9.94A.660(7)(emphasis added).

At a progress hearing or treatment termination hearing, the court **may**:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

RCW 9.94A.664(4)(emphasis added).

Initially, a residential DOSA has community custody of not less than 24 months. RCW 9.94A.664(1)(“A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months.”). However, the community custody may be altered in the lifetime of the sentence. RCW 9.94A.660(7)(b); RCW 9.94A.664(4)(b).

No statute suggests that the termination of treatment requires any result. Rather, the sentencing court’s choices are entirely discretionary. The court “may” modify community custody conditions. RCW 9.94A.660(7)(b); RCW 9.94A.664(4)(b). The court “may” impose confinement in the amount of one-half the midpoint of the standard range (RCW 9.94A.664(4)(c)) or simply a full term in the standard range term (RCW 9.94A.660(7)(c)).

As is apparent from the footer of the judgment and sentence and various citations within the document, the Defendant’s sentence is a product of the DOSA statute (RCW 9.94A.660). While the Defendant argues that the sentencing court did not have statutory authority to impose a 24 month term

of community custody, it is apparent that these statutes expressly permit such a term. There is no error.

B. THE COURT HAD LEGAL AUTHORITY FOR IMPOSING CONDITIONS PROHIBITING THE POSSESSION AND SALE OF ALCOHOL.

The Defendant challenges the conditions which prohibit him from *selling or possessing* alcohol. The Defendant argues that the only authority for community custody conditions comes from RCW 9.94A.703 (Appellant's Brief at 7), which only permits a sentencing court to prohibit the *consumption* of alcohol (RCW 9.94A.703(3)(e)). However, the court has authority under both RCW 9.94A.660 and RCW 9.94A.703 for these conditions.

As previously stated, the Defendant's sentence is under RCW 9.94A.660. This DOSA statute permits the court to impose any affirmative conditions the court considers appropriate.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and RCW 9.94A.737.

RCW 9.94A.660. The condition prohibiting sale and possession is

appropriate.

The Defendant received a DOSA, because he suffers from an addiction and can benefit from treatment. *See* RCW 9.94A.660(5). It is appropriate to prohibit the use of all addictive substances in order to promote the offender's rehabilitation. It is also appropriate to prohibit the temptation or near occasion of sin, i.e. the offender's proximity to addictive substances—namely by prohibiting the possession and sale of drugs and alcohol.

The condition is also appropriate under RCW 9.94A.703(3)(f), which permits crime-related prohibitions. The Defendant's crime was a VUCSA offense (the delivery of marijuana). CP 16, 29-30. The Defendant's offense was related to his addiction, and for this reason he requested a treatment sentence. Based on his substance-abuse-related delivery of illegal substances, it is appropriate to prohibit possessions and deliveries of addictive substances.

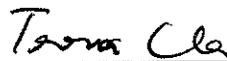
The court has statutory authority for the conditions imposed.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction and sentence.

DATED: October 21, 2011.

Respectfully submitted:



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