

30262-8-III

FILED
Mar 28, 2012
Court of Appeals
Division III
State of Washington

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

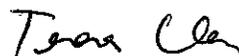
MARY CLUCK,

Appellant.

APPEAL FROM RESENTENCING
BEFORE THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

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RCW 9.94A.0305
RCW 9.94A.6505
RCW 9A.36.0115

I. IDENTITY OF RESPONDENT

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

II. RELIEF REQUESTED

The Respondent concedes that the sentencing condition requiring the Defendant to obey all laws must be stricken.

III. ISSUE

For an offense committed in 1995 for which the Defendant does not qualify as a “first-time offender,” may a court impose a community placement condition that the Defendant obey all laws?

IV. STATEMENT OF THE CASE

In 1997, the Defendant Mary Cluck pled guilty to two counts of assault in the first degree committed on July 30, 1995. CP 1-4, 34-40. In 2011, the term of community placement was made more definite. CP 7, 16-17, 43-45.

The Order Correcting Term of Community Placement states in

relevant part:

(b) COMMUNITY PLACEMENT (RCW 9.94A.120(9)(B)).
The defendant is sentenced to community placement for a period for 24 months. The term of community placement shall include the following conditions:

(i) The defendant shall report to and be available for contact with the assigned community corrections officer as directed.

....

(ix) Defendant shall obey all laws.

CP 16-17.

On appeal from the hearing correcting the term of community placement, the Defendant challenges the provision requiring her to “obey all laws.”

V. ARGUMENT

THE COURTS HAVE INTERPRETED THE SRA TO PROHIBIT THE IMPOSITION OF AN “OBEY ALL LAWS” PROVISION ON ANY, BUT FIRST-TIME OFFENDERS, FOR OFFENSES COMMITTED BEFORE JULY 1, 2000.

The Defendant notes there had been some confusion in the past over a trial court’s authority to impose the “obey all laws” condition. Opening Brief of Appellant at 4-5, citing *State v. Prado*, 86 Wn. App. 573, 578, 937 P.2d 636, review denied, 133 Wn.2d 1018 (1997); *State v. Raines*, 83 Wn. App. 312, 316, 922 P.2d 100 (1996); *State v. Barclay*, 51 Wn. App. 404, 406-08,

753 P.2d 1015, *review denied*, 111 Wn.2d 1010 (1988).

The matter is discussed at length in *State v. Jones*, 118 Wn. App. 199, 76 P.3d 258 (2003).

Before 1984, a trial court had authority to impose probationary conditions that bear a reasonable relation to the defendant's duty to make restitution or that tend to prevent the future commission of crimes." As a result, a trial court could order that an offender obey all laws.

State v. Jones, 118 Wn. App. at 204, quoting *State v. Williams*, 97 Wn. App. 257, 263, 983 P.2d 687 (1999), citing *State v. Summers*, 60 Wn.2d 702, 707, 375 P.2d 143 (1962).

The Sentencing Reform Act, the *Jones* court noted, could be "astoundingly and needlessly complex." *State v. Jones*, 118 Wn. App. at 211-12.

When the SRA took effect in July 1984, it eliminated a trial court's authority to order an offender, ***other than a first-time offender***, to obey all laws. In *State v. Barclay*, Division Three held that [a]lthough a first-time offender may be ordered to refrain from committing new offenses, the statute does not allow such a condition to be imposed upon a repeat offender. In *State v. Raines*, Division One agreed.

State v. Jones, 118 Wn. App. at 204 (emphasis added) (footnotes omitted).

This was an apparent unintended consequence of the poor language used in the definition of community supervision, which permitted an interpretation

that only first-time offenders would be supervised upon release. *State v. Barclay*, 51 Wn. App. 404, 405, 753 P.2d 1015 (1988), quoting former RCW 9.94A.030(4).

In 1999, the SRA was amended to provide that when sentencing for certain crimes committed on or after July 1, 2000 [....]

the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section.

Subsection (15) provided that the department may require the offender ... to obey all laws.

These amendments remain in effect today. By their plain terms, they permit a court to order an offender to perform affirmative conduct reasonably related to the offenders risk of reoffending or to the safety of the community. Such conduct includes obeying the community's laws. Accordingly, we hold that the 1999 amendments legislatively overruled *Barclay* and *Raines*; that a trial court sentencing for first degree burglary committed on or after July 1, 2000, may require an offender to obey all laws or engage in law-abiding behavior; and that the trial court here did not err by doing that.

State v. Jones, 118 Wn. App. at 205 (quoting former RCW 9.94A.120(11)(b)) (footnotes omitted).

The Defendant's offense was committed on July 30, 1995; and she was sentenced on March 12, 1997. CP 4-12, 34-40. In other words, it falls within that period – under the SRA, but before the 1999 amendments took

effect – when the court only had authority to impose the “obey all laws” condition on first-time offenders.

A “first-time offender” is someone who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650. RCW 9.94A.030(27). Although Ms. Cluck had no prior convictions (CP 4-12), she would not have been eligible for the first-time offender waiver, because her convictions are for violent offenses. RCW 9.94A.030(54)(a)(i); RCW 9.94A.650; RCW 9A.36.011(2). Therefore, she is not a first-time offender and, therefore, the courts cannot impose the “obey all laws” condition upon her.

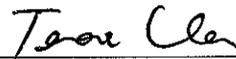
The State is in agreement with the argument and conclusion in the Opening Brief of Appellant.

VI. CONCLUSION

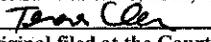
Based upon the forgoing, the State respectfully requests this Court strike the “obey all laws” condition of community placement.

DATED: March 28, 2012.

Respectfully submitted:



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<p>Dana Nelson Nielsen, Broman, & Koch 1908 East Madison Seattle, WA 98122</p> <p>Mary Leandra Cluck - #754918 Washington Corrections Center for Women 9601 Bujacich Road NW Gig Harbor, WA 98332-8300</p>	<p>A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.</p> <p>DATED March 28, 2012, Pasco, WA</p> <p> Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p>
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