Received
Washington State Supreme Court

APR 11 2014

Ronald R. Carpenter
Clerk

No. 87946-0

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ADONIJAH SYKES,

Petitioner.

BRIEF OF AMICUS CURIAE WSADCP

Filed
Washington State Supreme Court

APR 21 2014

Ronald R. Carpenter
Clerk

Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661
Attorneys for Amicus Curiae
Washington State Association of
Drug Court Professionals

ORIGINAL

TABLE OF CONTENTS

Page

Table of Authorities ..... ii-iii

A. INTRODUCTION 1

B. INTEREST OF AMICUS CURIAE 2

C. ISSUE PRESENTED FOR REVIEW 2

D. STATEMENT OF CASE 2

E. SUMMARY OF ARGUMENT 3

F. ARGUMENT 5

(1) The History of Drug Courts Nationally and in Washington 5

(2) Sykes' Participation in King County's Drug Diversion Court 11

(3) This Court's Experience and Logic Test As to Whether Court Proceedings Are Public under Article I, § 10 11

(4) Experience and Logic Dictate that King County Drug Diversion Court Staffings Are Not Public 16

(a) Experience 18

(b) Logic 19

G. CONCLUSION 21

Appendix

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205, 848 P.2d 1258 (1993) 12
Bennett v. Smith Bundy Berman Britton P.S., 176 Wn.2d 303, 291 P.3d 886 (2013) 15
Dreiling v. Jain, 151 Wn.2d 900, 93 P.3d 861 (2004) 13
In re Detention of D.F.F., 172 Wn.2d 37, 256 P.3d 357 (2011) 14
In re Lewis, 51 Wn.2d 193, 316 P.2d 907 (1957) 12
In re Personal Restraint of Copland, 176 Wn. App. 432, 309 P.3d 626 (2013) 5
In re Personal Restraint of Morris, 176 Wn.2d 157, 288 P.3d 1140 (2012) 2
In re Personal Restraint Petition of Yates, 177 Wn.2d 1, 296 P.3d 872 (2013) 15
In re PRP of Orange, 152 Wn.2d 795, 100 P.3d 291 (2004) 13
Mills v. Western Washington University, 170 Wn.2d 903, 246 P.3d 1254 (2011) 12
Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982) 12
State v. Beskurt, 176 Wn.2d 441, 293 P.3d 1159 (2013) 14
State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995) 12, 13, 14
State v. Brightman, 155 Wn.2d 506, 122 P.3d 150 (2005) 13
State v. Carson, ___ Wn. App. ___, 320 P.3d 185 (2014) 15
State v. Chen, 178 Wn.2d 350, 309 P.3d 410 (2013) 14
State v. DiLuzio, 121 Wn. App. 822, 90 P.3d 1141 (2004) 10
State v. Drum, 168 Wn.2d 23, 225 P.3d 237 (2010) 10, 16
State v. Easterling, 157 Wn.2d 167, 137 P.3d 825 (2006) 12, 13
State v. Halverson, 176 Wn. App. 972, 309 P.3d 795 (2013), *review denied*, 179 Wn.2d 1016 (2014) 17
State v. Johnson, ___ Wn. App. ___, ___ P.3d ___, 2014 WL 1226456 (2014) 15
State v. Lindahl, 115 Wn. App. 1, 56 P.3d 589 (2002), *review denied*, 149 Wn.2d 1013 (2003) 20

State v. Little, 116 Wn. App. 346, 66 P.3d 1099,
review denied, 150 Wn.2d 1019 (2003).....10
State v. Lormor, 172 Wn.2d 85, 257 P.3d 624 (2011).....13
State v. Love, 176 Wn. App. 911, 309 P.3d 1209 (2013).....17
State v. Melick, 131 Wn. App. 835, 129 P.3d 816,
review denied, 158 Wn.2d 1021 (2006).....10
State v. Miller, ___ Wn. App. ___, 316 P.3d 1143 (2014).....17
State v. Momah, 167 Wn.2d 140, 217 P.3d 321 (2009).....13
State v. Paumier, 176 Wn.2d 29, 288 P.3d 1126 (2012).....13
State v. Ringhofer, 172 Wn. App. 318, 290 P.3d 163 (2012),
review denied, 177 Wn.2d 1009 (2013).....13
State v. Rivera, 108 Wn. App. 645, 32 P.3d 292 (2001),
review denied, 146 Wn.2d 1006 (2002).....16
State v. Sadler, 147 Wn. App. 97, 193 P.3d 1108 (2008),
review denied, 176 Wn.2d 1032 (2013).....16
State v. Strode, 167 Wn.2d 222, 217 P.3d 310 (2009).....13
State v. Sublett, 176 Wn.2d 58, 292 P.3d 715 (2012).....*passim*
State v. Waldenberg, 174 Wn. App. 163,
301 P.3d 41, *review denied*, 178 Wn.2d 1004 (2013).....10
State v. Wise, 176 Wn.2d 1, 288 P.3d 1113 (2012).....5, 13
Tacoma News Tribune, Inc. v. Cayce, 172 Wn.2d 58,
256 P.3d 1179 (2011).....13

Federal Cases

Press-Enterprise Co. v. Superior Court, 478 U.S. 1,
106 S. Ct. 2735, 92 L.Ed.2d 1 (1986).....15

Constitutions

Wash. Const. art. I, § 10.....*passim*
Wash. Const. art. I, § 22.....1, 12, 15, 16
Wash. Const. art. I, § 35.....20

Statutes

Laws of 2013, ch. 257, § 1.....8, 9
Laws of 1999, ch. 197, § 7.....9

RCW 2.28.165(1) 8
RCW 2.28.165(2) 8
RCW 2.28.170(1) 8
RCW 2.28.170(2) 9
RCW 2.28.170(3)(b) 9
RCW 2.28.175 8
RCW 2.28.180 8
RCW 13.40.020(10) 18
RCW 13.40.080 18

Rules and Regulations

CJC 2.9(A)(1) 10
CJC 2.9(A)(3) 5
RAP 2.3(e) 1
RAP 13.7(b) 1

Other Authorities

All Rise (the magazine of the National Association of Drug Court professionals) Spring 2014 6
Anne Ellington, Jeanine Blackett Lutzenhiser, *In Washington State, Open Courts Jurisprudence Consists Mainly of Open Questions*, 88 Wash. L. Rev. 491 (2013) 14
Denise C. Gottfredson, Brook W. Kearley & Stacy S. Najaka, *Effectiveness of Drug Treatment Courts: Evidence From a Randomized Trial*, 2 Criminology and Pub. Pol'y 171 (2003) 7
Denise C. Gottfredson, Brook W. Kearley, Stacy S. Najaka & Carlos M. Rocha, *Baltimore City Drug Treatment Court: 3-Year Self-Report Outcome Study*, 29 Eval. Rev. 42 (2005) 7
Donald A. Andrews, et al., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, 28 Criminology 369 (1990) 7
George W. Bush, A Blueprint For New Beginnings: A Responsible Budget for America's Priorities 66 (2001) 8
http://publications.rda.dshs.wa.gov/1485/ 8

Jeanine Blackett Lutzenhiser, *An Open Courts Checklist: Clarifying Washington's Public Trial and Public Access Jurisprudence*, 87 Wash. L. Rev. 1203 (2012) 14
John S. Goldkamp, *The Origins of the Treatment Drug Courts in Miami; The Early Drug Courts* (W. Clinton Terry Ill. Ed.) 5
John Roman & Christine DeStefano, *Drug Court Effects and the Quality of Existing Evidence, Juvenile Drug Courts and Teen Substance Abuse* (Jeffrey Butts & John Roman eds., 2004).....7
Michael Rempel et al., Center for Court Innovation, *The New York State Drug Court Evaluation: Polices, Participants and Impacts* (2003) 7
National Assoc. of Drug Court Professionals, Defining Drug Courts: The Key Components (1997).....6
Nat'l Assoc. of Drug Court Professionals, Adult Drug Court Best Practices Standards, Vol. I (2013).....18
National Association of Drug Court Professionals, *2006 Drug Court Month Field Kit 13* (2006).....8
U.S. Gov't Accountability Office, Publ'n No. 05-219, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes* (2005).....7

A. INTRODUCTION

The Washington State Association of Drug Court Professionals ("WSADCP") is the Washington chapter of a national organization of judges, attorney, and other professionals who are involved with the drug court model in our state and nationally.

This case offers this Court the opportunity to address an issue vital to the successful operation of drug courts in Washington: are "staffings" in which judges, counsel, staff, and the participant discuss treatment-related issues pertaining to the participant without making any actual decision, the type of proceeding to which article I, § 10 of the Washington Constitution applies?[1]

As the late Justice Thomas Chambers observed, "[t]his court's jurisprudence regarding public trials under article I, sections 10 and 22 is

---

[1] Petitioner Adonijah Sykes purports to raise issues under article I, § 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution with respect to her personal right to a public trial. Sykes, however, specifically *waived* her personal right to a public trial in her Drug Court Waiver and Agreement. CP 24. She should not now be heard to try to revive a right she specifically waived. Moreover, the *sole* issue presented in Sykes' motion for direct discretionary review to this Court was her claim that King County Drug Diversion Court staffings violate article I, § 10 of the Washington Constitution. She should not be permitted to distort the scope of review she sought and was granted by this Court's Commissioner. *See* Ruling on Discretionary Review; RAP 2.3(e); RAP 13.7(b). A copy of Sykes' King County Drug Court Agreement is in Appendix A. A copy of the Snohomish County waiver and the usual findings and conclusions for entry into that County's drug court are in Appendix F.

still developing."[2] However, the decision in this case has serious implications for the future viability of all of Washington's therapeutic and specialty courts. Under this Court's experience and logic test for whether article I, § 10 applies to King County Drug Diversion Court staffings, such proceedings are not public.

B. INTEREST OF AMICUS CURIAE

WSADCP's interest in this case is articulated in its motion for leave to submit an amicus brief.

C. ISSUE PRESENTED FOR REVIEW

> Are drug court staffings, which involve counsel, judges, and therapeutic personnel in discussions that do not involve an actual decision by the court, but are central to the therapeutic thrust of drug court proceedings, the type of specialized proceedings under this Court's logic and experience test to which the open court requirements of article I, § 10 of the Washington Constitution apply?

D. STATEMENT OF THE CASE

WSADCP acknowledges the statements of the case in the parties' briefing and supplements the facts there presented only as necessary with respect to its argument.

WSADCP notes that participants in King County's Drug Diversion Court, like Sykes, knowingly waive their public trial rights. CP 24, 28;

---

[2] *In re Personal Restraint of Morris*, 176 Wn.2d 157, 173, 288 P.3d 1140 (2012) (Chambers, J. concurring).

Appendix B. This is also part of the King County Drug Diversion Court's Handbook for participants. Appendix A at 11.

Here, there was correspondence between the King County Prosecutor's Office and the King County Superior Court in 2011-12 regarding whether staffings are open. CP 94-95, 97-104, 106-08, 110-11. Appendix D.

In this case, staffing in the King County Drug Diversion Court did not result in a decision about the participant, who is not present. Rather, staffings are for the therapeutic professionals to converse about a course of action for the participant. CP 71; RP (9/4/12):3-4. When Sykes implies that the trial court made a decision in her case in a staffing, br. of appellant at 5, that is not entirely accurate. Any decision by the judge occurred in a formal court session at which Sykes was present and had the full opportunity to offer her input; the court may choose not to follow any consensus developed at the staffing. RP (9/4/12):4-5.

Ultimately, in Sykes' case, the trial court, the Honorable Gregory Canova, issued a thorough and thoughtful order denying Sykes' effort to rescind the waiver agreement she knowingly signed. CP 163-66. Appendix C.

This Court granted direct discretionary review. Appendix E.

E. SUMMARY OF ARGUMENT

Drug courts and other therapeutic courts are a relatively recent phenomenon in Washington that are designed to address an underlying therapeutic issue that causes a person to interact with the justice system. They are designed to avoid the more punitive approach of the traditional criminal and civil justice systems.

Staffings are a critical therapeutic component of drug courts in which therapeutic issues pertaining to the drug court participant are discussed by his/her counsel, the State's counsel, the judge, and therapeutic personnel. No decision is made at such staffings. Such staffing can help the professionals involved develop a consensus on the best therapy for the participant, but any actual decision on a course of action for the participant awaits the later, more formal court action. Washington drug court judges have often changed the proposed course of action once they receive input from the participant in the formal hearing.

Under the Court's logic and experience test for article I, § 10 of the Washington Constitution pertaining to open courts, the King County Drug Diversion Court staffings were properly closed. The efficacy of drug courts in reducing drug offender recidivism will be dramatically impacted if staffings must be done in open court. The willingness to share crucial, often sensitive therapeutic information such as history of abuse, medical conditions and the like will be chilled. It is illogical, and contrary to the

express rationale for drug courts for staffings to be public, just as it would be illogical, and contrary to the experience of the courts for such proceedings as post-argument appellate conferences, discussions with other judges by a judge regarding decision permitted by CJC 2.9(A)(3), or mediations and settlement conferences to be public.

F. ARGUMENT[3]

(1) The History of Drug Courts Nationally and in Washington

Drug courts represent a combined effort on the part of judges, prosecutors, defense attorneys, treatment professionals, and federal, state, and local governments to break the cycle of drug addiction and drug-related crime by using the potential of conviction to impel drug court participants to seriously participate in their rehabilitation.

The first drug court was established in Miami/Dade County, Florida in 1989, John S. Goldkamp, *The Origins of the Treatment Drug Courts in Miami*; *The Early Drug Courts* at 19, 22 (W. Clinton Terry Ill. Ed.), and the model spread across the United States. Today there are over 2840 drug courts in all 50 states and U.S. territories. *All Rise* (the

[3] WSADCP confines its argument here to the question of whether article I, § 10 applies to drug court staffings. It does not address issues such as Sykes' standing to assert an article I, § 10 violation, an open question in Washington law, *State v. Wise*, 176 Wn.2d 1, 16 n.9, 288 P.3d 1113 (2012), *In re Personal Restraint of Copland*, 176 Wn. App. 432, 448, 309 P.3d 626 (2013), or the remedy were this Court to decide that article I, § 10 was violated in Sykes' case. It notes that Sykes specifically waived his right to a public trial. CP 24. *See* Appendix B.

magazine of the National Association of Drug Court Professionals) Spring 2014 at 12.

While the nature of drug courts varies from state to state, drug courts share certain common elements. *See National Assoc. of Drug Court Professionals, Defining Drug Courts: The Key Components* (1997). Many drug courts require an admission of guilt before a participant enters the program. Successful participants are offered a legal incentive for completion of the program, including vacation of a plea and dismissal of charges, reduction of a felony to a misdemeanor, or favorable discharge from a probation term.[4]

Before participating in a drug court program, defendants are screened for eligibility based on their criminal history, eligibility for drug treatment, and current case information, and participation in drug court programs is generally limited to defendants charged with drug possession or other nonviolent offenses.

[4] While other drug courts require such an admission of guilt, King County's Drug Diversion Court does not. As will be discussed *infra*, a drug court in Washington is a pre-trial diversionary program and guilty pleas are not required.

The drug court model has met with proven success with reductions in recidivism for drug court participants.[5] It has enjoyed powerful support across the political spectrum.[6]

---

[5] U.S. Gov't Accountability Office, Publ'n No. 05-219, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes* (2005) (finding recidivism reductions in the majority of programs studied); John Roman & Christine DeStefano, *Drug Court Effects and the Quality of Existing Evidence, Juvenile Drug Courts and Teen Substance Abuse* at 107 (Jeffrey Butts & John Roman eds., 2004) (summarizing research on the effectiveness of drug courts in reducing recidivism, among other outcomes); Michael Rempel et al., Center for Court Innovation, *The New York State Drug Court Evaluation: Polices, Participants and Impacts* at 33 (2003) (reporting a 29% recidivism reduction over a three-year post-arrest period and an average 32% reduction over a one-year post-program period when compared with cases processed in conventional courts); Denise C. Gottfredson, Brook W. Kearley & Stacy S. Najaka, *Effectiveness of Drug Treatment Courts: Evidence From a Randomized Trial*, 2 Criminology and Pub. Pol'y 171 (2003) (detecting significant reductions in recidivism over a two-year measurement period as a result of participation in the Baltimore City Treatment Court); Denise C. Gottfredson, Brook W. Kearley, Stacy S. Najaka & Carlos M. Rocha, *Baltimore City Drug Treatment Court: 3-Year Self-Report Outcome Study*, 29 Eval. Rev. 42 (2005) (three-year follow-up report). *Compare,* Donald A. Andrews, et al., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis,* 28 Criminology 369, 400-04 (1990) (noting that, in the absence of additional treatment interventions, more than half of all offenders, on average, recidivate within three years of their release from incarceration).

Washington's Department of Social and Health Services issued a report in July 2013 that detailed remarkable data for drug court participants:

- Over the three-year follow-up period, drug court participants were less likely to be incarcerated during the follow-up period than individuals in the comparison group (17 versus 23 percent).

- Controlling for other factors leading to arrest, drug court participants were twice as likely to remain free of arrest as those in the comparison group (30 versus 145 percent).

- Nearly universal participation in chemical dependency treatment was obtained by drug court participants (97 percent compared to 46 percent in the comparison group).

The Washington Legislature first enacted legislation authorizing counties to establish and operate drug courts in 1999. RCW 2.28.170(1).[7] The Legislature defined a drug court as:

> a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment;

---

* Drug court participants were over 3 times more likely to enter treatment within 90 days and 4 times more likely to be in treatment -- primarily outpatient -- for 90 or more days.

* The reductions in crime observed in this analysis translate into a net benefit to tax payers and society of approximately $22,000 -- or about $4.02 in benefits per dollar spent.

http://publications.rda.dshs.wa.gov/1485/

[6] President George W. Bush stated: "[d]rug courts are an effective and cost efficient way to help non-violent drug offenders commit to a rigorous drug treatment program in lieu of prison. By leveraging the coercive power of the criminal justice system, drug courts can alter the behavior of non-violent, low-level drug offenders through a combination of judicial supervision, case management, mandatory drug testing, and treatment to ensure abstinence from drugs, and escalating sanctions. George W. Bush, A Blueprint For New Beginnings: A Responsible Budget for America's Priorities 66 (2001). President Bill Clinton, who authorized the first federal funding for drug courts, similarly declared: "Three quarters of the growth in the number of federal prison inmates is due to drug crimes. Building new prisons will go only so far. Drug courts and mandatory testing and treatment are effective. I have seen drug courts work. I know they will make a difference." National Association of Drug Court Professionals, *2006 Drug Court Month Field Kit 13* (2006).

[7] The Legislature subsequently created other specialty or therapeutic courts. *E.g.*, mental health courts in 2005, RCW 2.28.180; and DUI courts in 2011, RCW 2.28.175. The Legislature asked this Court in 2013 to adopt "any administrative orders and court rules of practice and procedure it deems necessary to support the establishment of effective specialty and therapeutic courts." RCW 2.28.165(1). The Legislature further directed that local governments employing such courts adopt best practices of state and national court agencies in structuring them. RCW 2.28.165(2). The Legislature found such specialty or therapeutic courts to be valuable. Laws of 2013, ch. 257, § 1. *See* Appendix.

> mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

RCW 2.28.170(2). The Legislature also set minimum standards for a drug court. RCW 2.28.170(3)(b). *See* Appendix. The 1999 Legislature specifically recognized the benefits of the drug court model. "The legislature recognizes the utility of drug court programs in reducing recidivism and assisting the courts by diverting potential offenders from the normal course of criminal trial proceedings." Laws of 1999, ch. 197, § 7.[8]

This Court, too, has recognized the importance and vitality of the drug court model. For example, this Court approved changes to the Code of Judicial Conduct relating to ex parte contact with judges; ex parte communications are banned except:

> When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, *or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted*, provided:
>
> (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
>
> (b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

[8] This purpose was reaffirmed in the 2013 legislation on specialty and therapeutic courts. Laws of 2013, ch. 257, § 1.

CJC 2.9(A)(1) (emphasis added).[9]

Finally, the decisional law in Washington on drug courts reveals certain key points about their nature and operation. The cases make clear that a drug "court" is not truly a "court" but rather an intensive treatment program, a pretrial diversion program for nonviolent drug-related offenders. *State v. Drum*, 168 Wn.2d 23, 31-32, 225 P.3d 237 (2010); *State v. Little*, 116 Wn. App. 346, 349, 66 P.3d 1099, *review denied,* 150 Wn.2d 1019 (2003) ("nor, as Little contends, does the statute create a "court" to which all state citizens have a right of access.").[10] This fact is echoed in the description of King County's Court as a "Drug Diversion Court." CP 24. This Court has concluded that a drug treatment contract is not the equivalent of a guilty plea. *Drum*, 168 Wn.2d at 39.

The status of drug courts as a pretrial diversion program is important to this Court's article I, § 10 analysis. A *diversion* program

---

[9] Comment [4] to that rule explains:

> A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[10] Washington courts have struggled with the question of whether a drug court is analogous to a deferred prosecution. *See, e.g., State v. Waldenberg*, 174 Wn. App. 163, 44, 301 P.3d 41, *review denied,* 178 Wn.2d 1004 (2013) (no as to prosecutor's decision to recommend referral to drug court); *State v. DiLuzio,* 121 Wn. App. 822, 90 P.3d 1141 (2004) (same); *but see, State v. Melick*, 131 Wn. App. 835, 129 P.3d 816, *review denied,* 158 Wn.2d 1021 (2006) (drug court termination analogous to termination of deferred prosecution).

avoids the adversarial structure of the traditional court system. It is not subject to article I, § 10.

(2) Sykes' Participation in King County's Drug Diversion Court

As a condition of her participation in the King County Drug Court, Sykes signed a document in which she specifically waived her right to a speedy and public trial. CP 24. Her waiver was knowing, with the advice of counsel. CP 24, 28. ("I have been informed and fully understand that I have the following important rights. I understand that I give up the following important rights by entering Drug Diversion Court.").

Moreover, Sykes agreed to participate in King County's Diversion Court. CP 25. ("I understand and agree that I am responsible for obtaining a Participant Handbook from the Court and for knowing *all* of the rules and procedures contained in it, including any future amendments of which I am provided written notice.") (emphasis in original). Nothing in that Handbook provides for staffings to be conducted in public. In fact, the Handbook at 11 reiterated that a participant's trial rights are waived. *See* Appendix A.

(3) This Court's Experience and Logic Test As to Whether Court Proceedings Are Public under Article I, § 10

Article I, § 10 of the Washington Constitution provides that "Justice in all cases shall be administered openly, and without unnecessary

delay."[11] The public under this provision has a right to open court proceedings. *State v. Bone-Club,* 128 Wn.2d 254, 906 P.2d 325 (1995), *Allied Daily Newspapers v. Eikenberry*, 121 Wn.2d 205, 210, 848 P.2d 1258 (1993); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982). If the court proceeding is one to which the constitutional provision applies, then a court may only close the proceeding if five factors articulated in *Ishikawa* are established. *Id.* at 36-39.

Washington courts have made clear that public's right of access to the courts under section 10 is not absolute, although the constitutional openness principle enjoyed a high order of constitutional status. *Bone-Club*, 128 Wn.2d at 258.

Washington courts have concluded that certain types of judicial proceedings are *categorically exempt* from the reach of section 10. Indeed, juvenile court proceedings may be closed to the public, despite section 10. *In re Lewis*, 51 Wn.2d 193, 316 P.2d 907 (1957). *See also, Mills v. Western Washington University,* 170 Wn.2d 903, 246 P.3d 1254 (2011) (article I, § 10 inapplicable to administrative proceedings).

---

[11] This provision protects the public's right of access to the courts while article I, § 22 of the Washington Constitution protects a defendant's right to the open administration of justice. *See, e.g., State v. Easterling*, 157 Wn.2d 167, 174, 137 P.3d 825 (2006).

Moreover, this Court has specifically authorized closure of court proceedings in a number of recent cases without applying the *Ishikawa* factors. *See, e.g., Tacoma News Tribune, Inc. v. Cayce*, 172 Wn.2d 58, 256 P.3d 1179 (2011) (discovery conducted before a judge);[12] *State v. Lormor*, 172 Wn.2d 85, 257 P.3d 624 (2011) (exclusion of 4-year-old child from court; no exclusion of all spectators). *See also*, *State v. Ringhofer*, 172 Wn. App. 318, 290 P.3d 163 (2012), *review denied*, 177 Wn.2d 1009 (2013) (upholding statute restricting public access to juror disqualification information; section 10 did not extend to information outside court's decision making process, the "core concern" of section 10).

Certainly, at the same time, various proceedings directly involved with trials are *categorically subject* to section 10 and may only be closed upon establishment of the *Ishikawa* factors. *E.g., suppression hearings*: *Bone-Club, supra*; *jury voir dire*: *In re PRP of Orange*, 152 Wn.2d 795, 100 P.3d 291 (2004); *State v. Brightman*, 155 Wn.2d 506, 122 P.3d 150 (2005); *State v. Strode*, 167 Wn.2d 222, 217 P.3d 310 (2009); *State v. Momah*, 167 Wn.2d 140, 217 P.3d 321 (2009); *State v. Wise*, 176 Wn.2d 1, 288 P.3d 1113 (2012); *State v. Paumier*, 176 Wn.2d 29, 288 P.3d 1126 (2012); *plea bargaining hearings*: *State v. Easterling*, 157 Wn.2d 167,

[12] This echoes this Court's decision in *Dreiling v. Jain*, 151 Wn.2d 900, 909-10, 93 P.3d 861 (2004) that section 10 is inapplicable to "mere discovery."

137 P.3d 825 (2006); *mental health involuntary treatment proceedings*: *In re Detention of D.F.F.*, 172 Wn.2d 37, 256 P.3d 357 (2011); *competency evaluation information*: *State v. Chen*, 178 Wn.2d 350, 309 P.3d 410 (2013).

The general question of which court proceedings are categorically exempt from section 10 has been a difficult one for Washington courts.[13] Plainly, there are proceedings to which article I, § 10 does not apply. Historically, courts have conducted in-chambers conversations with counsel regarding jury instructions, for example. Courts have routinely conducted settlement conferences or mediations. Indeed, this Court, like all three divisions of the Court of Appeals, decides cases post-argument outside the view of the public without the application of article I, § 10 or the *Ishikawa* factors. There is a limiting principle to the reach of section 10. This Court established that limiting principle in *State v. Sublett*, 176 Wn.2d 58, 292 P.3d 715 (2012).[14]

---

[13] *See* Jeanine Blackett Lutzenhiser, *An Open Courts Checklist: Clarifying Washington's Public Trial and Public Access Jurisprudence*, 87 Wash. L. Rev. 1203 (2012); Anne Ellington, Jeanine Blackett Lutzenhiser, *In Washington State, Open Courts Jurisprudence Consists Mainly of Open Questions*, 88 Wash. L. Rev. 491 (2013).

[14] The Court has also applied what is essentially a categorical rule to certain court records under article I, § 10 without referencing *Sublett's* analysis. In *State v. Beskurt*, 176 Wn.2d 441, 293 P.3d 1159 (2013), this Court found no article I, § 10 violation where the trial court sealed juror questionnaires without a *Bone-Club* analysis. The Court concluded that the sealing of the juror questionnaires was not tantamount to a closure of the court to the public. Such questionnaires are a screening tool for counsel

In *Sublett*, a consolidated case, this Court addressed cases in which the trial judge, with attorneys present, considered and responded to a question from the jury. The case was argued on the basis of article I, § 22, but this Court noted that it "historically analyzed allegations of a court closure either under article I, section 10 or article I, section 22 analogously, although each is subject to different relief depending upon who asserts the violation." 176 Wn.2d at 71 n.6. The *Sublett* court rejected an analysis based on a label for the proceeding, or whether it was legal or ministerial in nature and instead adopted the First Amendment open court "logic and experience" test of the United States Supreme Court in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S. Ct. 2735, 92 L.Ed.2d 1 (1986), stating:

> The first part of the test, the experience prong, asks "whether the place and process have historically been open to the press and general public." *Press II*, 478 U.S. at 8, 106 S. Ct. 2735. The logic prong asks "whether public access plays a significant positive role in the functioning of

---

and any voir dire of prospective jurors occurs publicly. *Id.* at 447-48. With regard to the public's right of access under article I, § 10, the Court noted that court rules offer a presumption of privacy for prospective jurors' personal information. *Id.* at 448. Moreover, as the Court observed: "Not every document in a court's possession is a court record subject to [GR 31]." *Id.* at 448 n.8. *See also, In re Personal Restraint Petition of Yates*, 177 Wn.2d 1, 29-30, 296 P.3d 872 (2013); *State v. Johnson*, ___ Wn. App. ___, ___ P.3d ___, 2014 WL 1226456 (2014); *State v. Carson*, ___ Wn. App. ___, 320 P.3d 185, 189-90 (2014).

In civil proceedings, materials obtained in discovery may be sealed if they are not utilized in the disposition of a case, i.e., in the administration of justice, without violating article I, § 10. *Bennett v. Smith Bundy Berman Britton P.S.*, 176 Wn.2d 303, 312, 291 P.3d 886 (2013).

> the particular process in question." *Id.* If the answer to both is yes, the public trial right attaches and the *Waller* or *Bone-Club* factors must be considered before the proceeding may be closed to the public. *Press II*, 478 U.S. at 708, 106 S. Ct. 2735.

176 Wn.2d at 73. The Court concluded no constitutional violation was present in considering the jury's note in chambers because traditionally jury instruction questions were often discussed informally with counsel outside the courtroom. *Id.* at 75-76.[15]

The application of the Court's logic and experience analysis requires careful attention to the facts of the particular case.

(4) Experience and Logic Dictate that King County Drug Diversion Court Staffings Are Not Public

The King County Drug Diversion Court is a pretrial diversion program. *Drum, supra.* As such, by logic and experience, drug court staffings relating to such a pretrial diversion program need not be open under article I, § 10 of the Washington Constitution because they are not truly adversarial proceedings to which article I, § 10 applies; as *diversion* programs, they are designed specifically to *avoid* the adversarial system.

[15] *Sublett* overruled or called into question a number of earlier cases. *See, e.g.*, *State v. Rivera*, 108 Wn. App. 645, 32 P.3d 292 (2001), *review denied*, 146 Wn.2d 1006 (2002) (closing of courtroom for hearing on juror's complaint about the personal hygiene of another juror held not violate article 1, § 22); *State v. Sadler*, 147 Wn. App. 97, 193 P.3d 1108 (2008), *review denied*, 176 Wn.2d 1032 (2013) (conduct of *Batson* hearing on juror selection held outside courtroom in jury room violated article 1, § 22).

Moreover, the cases since *Sublett* provide an appropriate context to the application of the logic and experience test here. In a number of recent opinions, the Court of Appeals has applied *Sublett's* experience and logic test.

Division II: *State v. Wilson*, 174 Wn. App. 328, 298 P.3d 148 (2013) (no public trial right implicated where bailiff dismissed two prospective jurors prior to voir dire because they were ill); *State v. Halverson*, 176 Wn. App. 972, 978-79, 309 P.3d 795 (2013), *review denied*, 179 Wn.2d 1016 (2014) (trial court's in camera questioning of a juror for misconduct during deliberations was proper because such a practice occurred historically in Washington); *State v. Miller*, ___ Wn. App. ___, 316 P.3d 1143 (2014) (no constitutional violation in pretrial in-chambers discussion of a statute or a subsequent in-chambers discussion of jury instructions, as such proceedings historically occurred privately; in particular as to jury instructions, the court observed that the criminal rules seemingly support informal instructions conferences).

Division III: *State v. Love*, 176 Wn. App. 911, 918-20, 309 P.3d 1209 (2013) (a sidebar conference to hear the parties' for-cause and peremptory to challenges to jurors did not violate article I, § 22; sidebar conference to handle challenges to jurors occurred in Washington and that the practice was appropriate.).

Applying the test to drug court staffings, such proceedings need not be open.

(a) Experience

The experience prong of the test looks to whether the place and process have historically been open to the public and the media. *Sublett*, 176 Wn.2d at 73.

Staffings in King County's Drug Diversion Court have *never* been open to the public since that court's inception in 1994. CP 97-99. Similarly, drug court staffings in Spokane and Snohomish drug courts are not public. Moreover, nationally, drug court staffings are not conducted in public.[16]

Finally, pretrial diversion programs generally have not been conducted in public proceedings. For example, in the juvenile setting, pretrial diversion programs are conducted outside the purview of the public by diversion units. RCW 13.40.020(10); RCW 13.40.080.

In sum, the experience prong of the test does not require King County Drug Diversion Court staffings to be conducted in open court.

---

[16] The National Association of Drug Court Professionals has indicated in a recent publication discussing "best practices" for drug courts that best practices are the participation of the judge in the staffings and that staffings not be conducted in public. *Nat'l Assoc. of Drug Court Professionals, Adult Drug Court Best Practices Standards, Vol. I* (2013) at 20 ("The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.").

(b) Logic

The logic prong of *Sublett* looks to the question of whether the public plays a significant positive role in the functioning of drug court staffing. 176 Wn.2d at 73. It does not.

As the trial court here noted, the function of staffings is to focus on the therapeutic issues of the drug-affected offender. CP 98 ("Staffing discussions frequently focus on treatment issues, such as level of care, mediations, co-occuring disorders, housing, employment, education and whether in-patient treatment or out-patient treatment are believed necessary.").[17] Such staffings do not result in a formal judicial decision. That is a matter for another day in the formal court process. Thus, none of the usual factors animating the need for open courts is present. This is not a situation where potential corruption or abuse of the process is implicated

---

[17] The trial court here pointedly observed that staffings address "intensely personal matters" whose public discussion would have a "chilling effect" on drug court participation. CP 164. Critically, federal health care privacy issues may be implicated:

> The disclosure of such mental and physical health information in open court would also clearly violate the privacy protections of the Health Insurance Portability and Accountability Act (HIPAA). Participants in Drug Court are asked to sign specific confidentiality waivers under the Act, but only to allow drug court team members to discuss health and treatment records with treatment providers and other DDC team members. The secondary disclosure of such information is not permitted under HIPAA and that restriction may not be waived by the patient. The disclosure of this information is limited to those in the criminal justice system who are working to monitor the patient/participant's progress. 42 C.F.R. § 235(a). *See also,* the disclosure restrictions set forth in 42 U.S.C. § 290 dd.

CP 165.

-- no decision is made. Further, this is not a situation where the public needs to "keep an eye" on the prosecution, defense, or the judicial participants -- again, no decision is being made. This is not even a situation where victims of the offender's crime have an interest as articulated in article I, § 35; *State v. Lindahl*, 115 Wn. App. 1, 13-15, 56 P.3d 589 (2002), *review denied*, 149 Wn.2d 1013 (2003) (victim's attorney and family members had right to present memorandum and address court on sentencing hearing on crime victim's behalf). The crimes of drug court participants are often "victimless" in nature, and, more saliently, no penalty is being assessed.

Rather, drug court staffings permit the free exchange of therapeutic data relating to the offender's progress in kicking his or her drug habit. To make such proceedings public would fundamentally undercut the continued viability and effectiveness of drug courts. The trial court's order here carefully reflected this fact:

> A DDC staffing is not an "adversarial proceeding" i.e., it is not a proceeding where disputed facts are resolved. DDC staffings involve the discussion of issues relevant to the best course of individualized treatment for each drug court participant. At a staffing, the Court hears recommendations from the case manager, the deputy prosecuting attorney and the attorney for the participant. The judge considers those recommendations for purposes of the next court hearing for the participant. At that hearing, the parties may modify or make their additional recommendations to the Court. After considering any

> additional input from the participant, the Court makes a decision on the course of treatment.
>
> These staffings are non-judicial in nature and are more akin to staffing of health care professionals discussing and recommending the best medical treatment strategy for a particular patient. These staffings are an integral part of the collaborative approach to the treatment of drug addiction and abuse. *See* Appendices A and B, attached hereto and incorporated herein in their entirety by reference, for further analysis and discussion of these issues. The Court also incorporates by reference its oral decision of September 4, 2012.
>
> A conclusion that the DDC staffings must be open to the public, pursuant to Article I, Section 10 of the Washington State Constitution, would have a chilling effect on the willingness of individuals to choose to participate in Drug Court. In reality, discussions in open court of intensely personal matters relating to such issues as childhood and adult physical, psychological and sexual abuse and mental illness diagnoses and treatment histories would, understandably, discouraged many of those in desperate need of treatment for drug addiction from seeking that treatment through Drug Court.

CP 164-65.[18]

In sum, by experience, drug court staffings are not appropriately matters for consideration in open court.

G. CONCLUSION

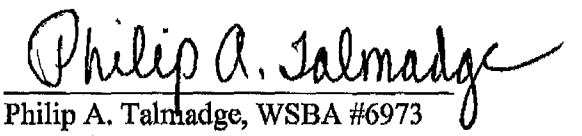
The trial court here correctly concluded that article I, § 10 did not apply to King County Drug Diversion Court staffings. Under *Sublett*'s

[18] Either Sykes or the State may contend that the judge is not a necessary participating in staffings. That would be unwise. A December 2010 study of the National Association of Drug Court Professionals reports at 4 that the absence of the judge, defense counsel, prosecutors, treatment providers, or law enforcement officers at staffings reduces their effectiveness by 50%. Appendix G.

"experience and logic" test, drug court is a pretrial diversion program whose staffing are not public proceedings.

DATED this 14th day of April, 2014.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98199
(206) 574-6661
Attorneys for Amicus Curiae
Washington State Association of
Drug Court Professionals

APPENDIX

RCW 2.28.170(3)(b):

> Any jurisdiction that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:
>
> (i) The offender would benefit from substance abuse treatment;
>
> (ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and
>
> (iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:
>
> (A) That is a sex offense;
>
> (B) That is a serious violent offense;
>
> (C) During which the defendant used a firearm; or
>
> (D) During which the defendant caused substantial or great bodily harm or death to another person.

Laws of 2013, ch. 257, § 1:

> In the state of Washington, there exists a type of court administered by the judiciary commonly called a specialty or therapeutic court. Judges in the trial courts throughout the state effectively utilize specialty and therapeutic courts to remove defendants with their consent and the consent of the prosecuting authority from the normal criminal court system and allow those defendants the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest

in exchange for dismissal of the charges. Trial courts have proved adept at creative approaches in fashioning a wide variety of specialty and therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity.

The legislature also finds that there are presently more than seventy-four specialty and therapeutic courts operating in the state of Washington that save costs to both the trial courts and law enforcement by strategic focus of resources within the criminal justice system. There are presently more than fifteen types of specialty and therapeutic courts in the state including: Veterans treatment court, adult drug court, juvenile drug court, family dependency treatment court, mental health court, DUI court, community court, reentry drug court, tribal healing to wellness court, truancy court, homeless court, domestic violence court, gambling court, and Back on TRAC: Treatment, responsibility, accountability on campus.

The legislature recognizes the inherent authority of the judiciary under *Article IV, section 1 of the state Constitution* to establish specialty and therapeutic courts. The legislature recognizes the outstanding contribution to the state and a local community made by the establishment of specialty and therapeutic courts and desires to provide a general provision in statute acknowledging and encouraging the judiciary to provide for such courts to address the particular needs within a given judicial jurisdiction.

A

Table of Contents

Welcome 2
Program Description 3
Drug Court Phases and Requirements 4
A Special Note about Urinalysis Testing 5
Confidentiality 7
Drug Court Rules 7
Sanctions and Incentives 7-9
Treatment Reports 9
Court Attendance and Bench Warrants 10
Waiver and Agreement 11
Sober Birth Date 12
Drug Diversion Court Fee 12
Residential Treatment 12
Court Behavior 12
Other Requirements 13
New Offenses 13
Prescription Medication 13
In Custody Treatment Program 15
Termination from the Drug Diversion 16

Court Program

Re-entry to Drug Court Following Graduation 17
Graduation 17
Useful Numbers and Addresses 18

Welcome to the King County Drug Diversion Court Program

The King County Drug Diversion Court Program provides drug treatment to eligible drug offenders who desire to break the cycle of drug dependency and change their lives.

This handbook provides information about the Drug Diversion Court Program and what is expected of you as a participant.

Please read the handbook carefully. It is your responsibility to be familiar with its contents. You will be sanctioned if you fail to abide by the rules and requirements contained in this handbook.

Drug Diversion Court Program Description

After you, the Court, and the treatment professionals have agreed that Drug Diversion Court (DDC) is a good choice for you, outpatient or inpatient treatment will be offered to you at one of the DDC treatment agencies. DDC may pay for your treatment in full or in part if you choose one of these agencies; however, DDC funding of methadone treatment may be limited to six months.

Under certain circumstances you may obtain treatment at a non-DDC agency, if you find an alternative funding source.

You may try out treatment during Phase I for a few weeks before deciding whether to formally join the DDC program (referred to as opting in). If you want to be accepted into DDC you must attend treatment and other activities as directed during this try-out period.

After opting in, DDC participants remain in treatment for a minimum of 10 months although the average length of treatment is 18 months. Participants pass through three DDC Phases, after opt-in. If you successfully complete the requirements of DDC, you graduate from the program and your charge is dismissed.

Drug Diversion Court Phases and Requirements

DDC divides a participant's progress into four phases These are not the same as treatment phases used by your treatment agency. You will be advanced to the next phase of DDC based on the length of continuous sobriety and attendance at your treatment sessions and sober support/ twelve step meetings. If you relapse after being promoted, you may be demoted back to the earlier phase until you have a sufficient period of sobriety again. You are expected to remain in full compliance with your treatment agency conditions including additional UA's as directed. DDC may require more attendance at sober support meetings and drug testing than your treatment agency.

The Drug Diversion Court minimum requirements for the Phases are:

Phase I (pre-opt-in)

All treatment and other activities as directed.

Phase II

All treatment sessions required by the treatment agency; a minimum of 2 random, observed urinalyses (UAs) per week; verified attendance at 3 treatment-approved sober support group meetings per week.

Payment of at least 20% of any restitution owed on DDC cases.

Phase III

All treatment sessions required by the treatment agency; a minimum of 2 random, observed UAs per week; verified attendance at 3 treatment-approved sober support group meetings per Week.

Payment of at least 50% of any restitution owed on DDC cases.

Phase IV

All treatment sessions required by the treatment agency; a minimum of 2 random, observed UAs per week; verified attendance at 3 treatment-approved sober support group meetings per week.

Graduation Requirements

To graduate you must be abstinent from drugs and alcohol for a minimum of 6 months; be involved in a productive activity such as employment, job training, education or community service; and pay in full of any restitution owed. You are also required to either pay the $100 DDC fee, complete of 24 hours of community service, or a 50/50 combination of the two.

A Special Note about Urinalysis (UA) Testing

The observed collection and scientific testing of your urine for drugs and alcohol is an important part of DDC. DDC uses the results of these tests to determine whether or not you are using drugs and alcohol which are both prohibited while in DDC. Positive UA's are taken very seriously by the

Court and may result in you receiving a sanction or being terminated from the program. You are responsible to make sure you are UA'd as often as is required by your phase in DDC and by your treatment agency.

You must be very careful not to ingest the following:

- alcohol;
- poppy seeds in any form (no poppy seed cake, bread, muffins, etc.);
- any prescription medication without prior approval from your treatment counselor;
- any over-the-counter medications, such as Nyquil or Sudafed, without prior approval from your treatment counselor;
- natural or herbal remedies or supplements such as those commonly sold in health food stores, without prior approval from your treatment counselor.

If you receive a positive UA result because you ingested one of the above substances **without prior approval, it will be treated as a positive UA by DDC.**

You will receive a sanction and/or may be terminated from the program.

You may be directed to obtain a UA at anytime by a Drug Court Case Manager.

Request for Confirmation Tests

If you have received a positive-UA result which you believe is in error, you may request a confirmation test from the court or treatment provider; however, a double sanction will be imposed if the original results are confirmed.

Do not attempt to beat the drug test by drinking excessive amounts of water or taking an adulterant prior to providing a urine specimen. If you do, you may produce a urine specimen with an out-of-range, Creatinine level or Specific Gravity. An out-of-range UA result will be treated as a positive UA, unless you can provide a medical explanation for the out-of-range result from a medical professional within two weeks.

Confidentiality

You will be required to sign a release of information which gives your treatment provider your permission to give treatment information to your attorney, the DDC judge, prosecuting attorney, other treatment agencies as appropriate and other members of the DDC team.

Your privacy is respected in DDC. DDC staff will make every effort to protect your identity by not using your name in research or evaluation activities.

Drug Diversion Court Rules

1. **Sanctions**
   If you use illegal or unauthorized drugs or alcohol or fail to follow DDC requirements, you will receive a sanction. Further, you may be sanctioned or terminated from DDC if you conduct yourself in a manner contrary to the

rules and regulations of DDC. Sanctions are imposed according to the current sanction grid. Sanctions include but are not limited to:

- In-court "jury box observation";
- community service hours
- CCAP (Community Corrections Alternative Program)
- CWP (Community Work Crew)
- Work Release;
- jail-time;
- other: essay writing, increased attendance at sober support group meetings, demotion to a prior drug court phase or termination.
- Failure to complete a sanction in a timely manner may result in the issuance of a bench warrant.

2. **Reducing Your Sanction through Honesty**
If you use alcohol or illegal drugs while in the DDC program, you can cut your sanction in half by **promptly and voluntarily** disclosing your use to your treatment provider and to the Court. For example, if you would normally be facing a 2-day jail sanction for a positive UA, you can save yourself a day in jail by **promptly and voluntarily** disclosing the use. To earn a reduction, you must do the following:

Disclose any use **immediately** to your treatment provider **before** you check to see whether you owe a UA that day,

and

Present yourself to DDC immediately following your use regardless of your next scheduled court date. If your use occurs on a day that DDC or treatment is closed, immediately call your attorney (ACA-624-8105) and Drug Court Services at 206-296-7884; leave voice messages to disclose your use and present yourself to DDC on the next court day.

This rule applies only to jail sanctions.

Honesty is essential to your recovery and to your success in DDC. This rule is intended to encourage and reward upfront honesty that supports sobriety and will be applied accordingly.

3. **Incentives**
   If you comply with treatment requirements and DDC rules you will be rewarded and encouraged by the Court through incentives which include:

   - verbal praise;
   - an award, such as a recovery book, coupons or tickets;
   - promotion to the next DDC phase
   - placement in a special "express" group whose cases are heard first on the calendar.

4. **Treatment Reports**
   You must meet with your treatment counselor and sign progress reports prior to your hearing. If your report is unsigned and you dispute any of the information,

your hearing will be rescheduled for one week to allow you to resolve the dispute and get a revised report from your counselor if appropriate. Additionally, your treatment counselor must verify your sober support group attendance slips. Bring your attendance slips to court with you for every hearing in case your attendance is not reported by your counselor.

If you get a favorable report, you may be put into a group that merits special recognition. If you are in this express group, and you arrive on time, you will be called at the beginning of the court calendar.

5. **Court Attendance and Bench Warrants**
While in Phase I and II, you will be required to report to court at least every four weeks. When you advance to Phases III and IV, you must report to court at least every six weeks. At each hearing you will be notified in writing of your next court hearing.

This is the only notice you will receive. If you lose your hearing notice, call the court at 206-296-9165 to determine your next hearing date.

If you have a scheduling conflict you may call the court before the day of the hearing and ask permission to reschedule the hearing. If you don't call prior to the hearing day, you will be expected to come to court. A bench warrant will be issued if you do not appear. Calls made the day of the hearing will not excuse you absent, unless you have a verifiable emergency.

It is your responsibility to address the bench warrant.

If you wish to ask the Court to quash a bench warrant, you must come to DDC .You can call the DDC to find out the best day and time for addressing warrants at each location.

The Court may or may not quash the warrant depending on the circumstances.

If you are arrested on the bench warrant, you will remain in custody for a until the next "in-custody" calendar, which could be from one to four days depending on what day you are arrested. You are less likely to spend time in jail if you voluntarily appear in court to address your warrant.

If you are receiving methadone and a bench warrant is issued, your methadone clinic will begin a 7-day detox unless you appear in court on the next court day to address the warrant.

6. **Drug Diversion Court Waiver and Agreement**
   At the time of opt-in to the DDC Program, you will be required to sign the DDC Waiver of Rights and Agreement of the Parties (Waiver and Agreement). By signing the Waiver and Agreement you will give up certain rights such as the right to a jury trial and the right to a speedy trial. You must abide by all of the terms in the DDC Waiver and Agreement you signed upon opting in to the program.

7. **Sober Birth Date**
   You are expected to keep track of your sober birth date (the last time you used alcohol or any unauthorized drugs) and report the date to the Court each time you come to court. You do this by filling out an information form next to the sign in sheet in the courtroom. Give the completed form to your attorney who will provide the form to the Judge.

8. **Drug Diversion Court Fee**
   You are required to pay a $100 fee or perform 24 hours of community service, or a 50/50 combination of the two, before graduating from the program. Payments can be made in person at the King County Courthouse, E-609, or mailed to King County Superior Court Clerk, 516 Third Avenue, E-609, Attn: Cashier, Seattle, WA 98104-2386. Acceptable payment includes money order, cashier's check or certified check (no personal checks). Write your case number on the check or money order.

9. **Residential Treatment**
   If you enter residential treatment ordered by DDC, you must complete the treatment as directed by the treatment center. If you leave treatment against the advice of the treatment center you may be sanctioned or terminated from the DDC program.

10. **Courtroom Behavior**
    You will be expected to maintain appropriate behavior at all times during DDC hearings and while in the courthouse, including but not limited to:

    * Remaining quiet while seated in the jury box.

- Turning off beepers and cellular phones before entering the courtroom.
- Not sleeping in the courtroom.
- Not eating or drinking in the courtroom.
- Removing gum before approaching the bench to talk with the Judge.
- Not wearing hats in the courtroom.

11. Other Requirements

- You cannot leave the state without first obtaining permission from treatment and the court.
- Possession, use or ownership of any firearms is prohibited. You cannot reside where a firearm is present.
- Threatening, harassing or assaultive behavior of any kind will not be tolerated and may be grounds for immediate termination from the program.

12. New Offenses

If you are charged with a new crime, you may be terminated from the program.

13. Prescription Medications

As a general rule, you are expected to be drug free, including the use of mood-altering prescription medications. If you take prescription medications, or other mood-altering substances that would cause a positive urinalysis result while in DDC you may be sanctioned or terminated according to the following guidelines:

A. **Participants with chronic pain**
DDC participants with chronic pain requiring repeated use of prescription pain medication (opiate, opiate-based or benzodiazepine medications) are not good candidates for the DDC program. If you choose to participate in the DDC program you are required to work with your physician to detox from pain medication in a timeframe established by DDC.

B. **Participants who opt into the program and then experience an "episode" of acute pain.**
Participants who opt into DDC and then experience an episode of acute pain requiring prescription pain medication must have a special form completed by their doctor. The doctor must indicate on the form that he or she is aware that the participant presenting the form is in DDC and is expected to remain drug free except in extreme instances.

Forms are available through the court. Completed forms should be provided to your treatment provider at your next appointment and shown to the court at your next hearing. The form should include the following:

- the doctor's name, signature and contact information;
- description of the medication prescribed;
- amount prescribed (including refills);
- reason for prescription, and
- duration of treatment.

C. **Participants on other medications**
Participants must get approval from their treatment agency for any over-the-counter or prescribed medication prior to using such medication.

14. **Prescription Drug Offenders**

- DDC participants charged with a prescription drug offense are prohibited from using any of the following types of medications: narcotics, tranquilizers, sedatives, muscle relaxants, stimulants, diet pills, or any scheduled drugs. Emergency exceptions will be evaluated on a case by case basis.
- Use of prescription drugs, (other than psycho-tropics and antibiotics) may impact a participant's clean time and progress in DDC.
- You will be expected to sign a Prescription Drug Offender Prescription Drug Policy form indicating your understanding of this restriction.

15. **In Custody Treatment Program**
Completion of an in custody treatment program in the King County Adult Detention Facility is required for

- DDC participants charged with the crime of Delivery of a controlled substance and possession with intent to deliver a controlled substance.
- DDC participants who have had two failures to appear or two missed outpatient intake appointments during Status Phase prior to opt-in to DDC. DDC may require participation in an in custody treatment program as a condition of remaining in the DDC program.

16. Termination

Due to many factors, there are instances when a DDC participant's continuation in the DDC program is unproductive for the participant, the program, or both. In making the decision whether to terminate a participant from DDC, the court may consider a participant's past efforts regarding compliance and progress in the program.

Examples of violations, which may result in termination:

- Positive Urinalysis or Breath Analysis
- Missing UA's or treatment sessions.
- Not attending sober support group meetings as required.
- Non-compliance with required treatment program.
- Falsifying UA's, community service, or sober support group meeting lists.
- Dishonesty to the court.
- Failure to abide by the terms of the DDC agreement or rules in the handbook.
- Threatening, harassing or assaultive behavior of any nature at treatment or in the community at large.
- Arrest for a new offense of any kind;
- Using prescription drugs or over-the-counter drugs without first obtaining the approval of treatment.

- Failure to pay restitution.
- Failure to appear at hearings.
- Any other act that is deemed in violation of the requirements of DDC.
- Inability of the participant to regularly participate in required treatment, including urinalysis testing; treatment sessions, sober support meetings, and/or review hearings with the court.

Termination from the DDC may be voluntary or involuntary. A participant may decide to terminate from the program because the program no longer serves the needs of the participant (voluntary), or the DDC team may, at any time during the program, request a participant's termination (involuntary) for non-compliance or breach of any of the rules of the DDC.

If a participant is terminated, a determination of guilt shall be made immediately based upon the stipulated police report.

17. **Re-entry to Drug Diversion Court Following Graduation**
If you receive new charges following graduation from DDC you will not be allowed to re-enter DDC unless those charges occur at least three years after your graduation date.

18. **Drug Diversion Court Graduation**
When you have successfully completed the DDC Program, you will graduate, and your case(s) will be

dismissed. The DDC Judge will determine the time frame for your graduation.

Your family and friends, counselors, and sponsors are invited to attend your graduation ceremony that honors your successful completion of the DDC Program and your achievement of a drug and alcohol-free life.

Drug Diversion Court Personnel

King County Drug Diversion Court
King County Courthouse, Seattle Site
516 Third Avenue, Room E912
Seattle, WA 98104 206-296-9165

King County Drug Diversion Court
Regional Justice Center, Kent Site
401 Fourth Ave, Rm. 3A
Kent, WA 98032-4429 206-296-9165

King County Drug Diversion Court Services
516 3rd Ave. Room E-917
Seattle, WA 98104 ..... Phone: 206-296-7884
Fax: 206-296-7885

Office of Public Defense
123 Third Ave. S.
Seattle, WA 98104 206-296-7662

Drug Court Public Defender
Associated Counsel for the Accused
110 Prefontaine Place South, Suite 200
Seattle, WA 98104 206-624-8105

420 West Harrison Street, Suite 201
Kent, WA 98032 253-520-6509

Drug Court Prosecuting Attorney
516 3rd Avenue, Room W554
Seattle, WA 98104.....206-296-9000

Drug Diversion Court Contract Treatment Agencies
Catholic Community Services
1229 W. Smith
Kent, WA 98032 253-850-2527

Center for Human Services
17018 15th Ave. N.E.
Shoreline, WA 98155-5126 206-362-7282

Community Psychiatric Clinic

Bridgeway Branch	**Impact Program**
3825 Bridgeway North	1008 James Street, Suite A
Seattle, WA 98103	Seattle, WA 98104
206-632-5009	206-461-3209

Consejo Counseling & Referral – Seattle
3808 S. Angeline
Seattle, WA 98118 206-461-4880

Downtown Emergency Service Center
Chemical Dependency Treatment Program
216 James Street
Seattle, WA 98104.....206-464-6454 ext.4014

Evergreen Treatment Services (ETS)
1700 Airport Way S.
Seattle, WA 98134.....206-223-3644

Harborview Medical Center Addictions Program
401 Broadway (enter at Boren)
Seattle, WA 98122.....206-744-9696

New Traditions
9045 16th Ave SW
Seattle, WA 98106.....206-762-7207

Pioneer COPE
105 14th Avenue, Suite A
Seattle, WA 98122.....206-464-1684

Recovery Centers of King County

RCKC – Main
464 12th Ave, Suite 300
Seattle, WA 98122
206-322-2970

RCKC – Kent
505 Washington Avenue South
Kent, WA 98032
253-854-6513

RCKC – Detox
1701 18th Ave. S.
Seattle, WA 98144
206-325-5000

Seattle Counseling Service for Sexual Minorities
1216 Pine St., Suite 300
Seattle, WA 98101.....206-323-1768

Sound Mental Health

Seattle Start and COD
1600 East Olive
Seattle, WA 98122
206-302-2200

Tukwila Start and COD
6100 Southcenter Blvd.
Tukwila, WA 98188
206-444-7830

NCI Auburn
4240 Auburn Way North
Auburn, WA 98002
253-876-8900

Counseling Srv Ctr Auburn
4238 Auburn Way N.
Auburn, WA 98032
253-876-7610

Therapeutic Health Services
Chance to Change Program (CTC)
1901 Martin Luther King Jr. S.
Seattle, WA 98144
206-322-7676

Eastside Branch
Rockwood Office Park
1412 140th Place NE
Bellevue, WA 98007
425-747-7892

Everett Branch
9930 Evergreen Way
Building Z150
Everett, WA 98204
425-347-5121

Summit Branch
1116 Summit
Seattle, WA 98101
206-323-0930

Shoreline Branch
16715 Aurora Avenue N, Suite 102
Seattle, WA 98133
206-546-9766

Other Treatment Agencies and Services

Oaks Program (Women)
Union Gospel Mission
3802 S Othello
Seattle, WA 98118
206-628-2008

Matt Talbot New Hope
Recovery Center
2313 Third Ave.
Seattle, WA 98121
206-256-9865

Parent Child Assistance
Program (PCAP)
206-323-9136

Salvation Army
1000 Fourth Avenue South
Seattle, WA 98124
206-628-0593

Veterans Affairs
Puget Sound Health
Care System
1660 S Columbian Way
Seattle, WA 98108
206-764-2457

VA Inpatient Psychiatry
206-762-1010
TTY: 206-764-2327

VA Seattle/Tacoma Divisions
206-764-2457

VA Mental Health Center
206-764-2007
TTY: 206-764-2327

VA Seattle/Tacoma Divisions
206-762-1010

Support Groups

12 - Step:

Al-Anon/Alateen Information Service
Seattle: .....(206) 625-0000

Alcoholics Anonymous (AA)
Seattle Intergroup of AA: .....(206) 587-2838
www.seattleaa.org (24 Hour)

Narcotics Anonymous (NA)
Seattle NA: .....(206) 790-8888
www.seattlena.org (24 Hour)
South King County NA: .....(253) 872-3494
www.skcna.org

Cocaine Anonymous
Seattle Area: .....(800) 723-1923
www.caofwa.org

Crystal Meth Anonymous
Meetings listed online: ..... www.crystalmeth.org

Strength Over Speed (for Crystal Meth)
Meetings listed online: .....www.strengthoverspeed.org

Marijuana Anonymous
Seattle: .....(206) 548-9034
www.marijuana-anonymous.com

Nar-Anon Family Groups
Seattle: .....(206) 626-7171

Recovery Café .....(206) 374-8731
www.recoverycafe.org

NON-12 STEP:

LSR (LifeRing Secular Recovery)
Meetings listed online: ..... www.unhooked.com

SKIP (Sobriety Knowledge Is Power)
Email for more information: .....justskipit@hotmail.com

SMART (Self Management and Recovery Training)
Meetings listed online: ..... www.smartrecovery.org

SOS (Secular Organizations for Sobriety / Save Our Selves)
Meetings listed online: ..... www.cfiwest.org/sos

FAITH-BASED:

Alcoholics Victorious
Meetings listed online: .....www.alcoholicsvictorious.org

Celebrate Recovery
Meetings listed online: .....www.celebraterecovery.com

Matt Talbot Center .....(206) 256-9865
http://www.matttalbotcenter.org/meetings.html

Overcomer's Anonymous
Meetings listed online: .....www.overcomersoutreach.org

Help Lines

24-Hour Crisis Intervention (Crisis Clinic) 206-461-3222
(866) 4CRISIS

Alcohol/Drug 24 Hour Help Line .....V/TTY 206-722-3700
V/TTY 1-800-562-1240

Housing / Shelter Resources

Aloha Inn 206-283-6070
www.alohainn.org
Apply in person at YWCA Opportunity Place (Third & Virginia)
Wednesday: 10-noon, Thursday: 5-7 p.m.

AHAAS 253-709-9192

Bread of Life Shelter (Men) 206-682-3579

Catholic Community Services –
South King Men's Shelter (Kent) 253-854-0077

Domestic Violence Shelter Openings 1-800-562-6025

Downtown Emergency Service Center (DESC) Shelter 206-464-1570 x3033

Fair Haven 206-829-9332

Hospitality House Shelter (Women) – near Burien 206-242-1860

HUD Housing List 206-220-5140

King County Housing Authority 206-244-7750

Lutheran Compass Center Men's Shelter 206-357-3206
Apply in person at 77 S. Washington St.,
Mon.-Fri.: 9 a.m.-3 p.m.
Compass Ctr Men's Transitional Housing 206-357-3250

Compass Cascade Women's Transitional 206-357-3150

Oaks Program – Union Gospel Mission

Women and Children's Shelter 206-628-2008
Phone screen: Mon.-Fri.: 9 -10:30 a.m.

New Life 206-769-7951

Oxford Houses Locations and Vacancies 1-800-562-1240
www.waoxfordhouse.org/home

Pioneer Housing ..... www.pioneerhumanservices.org

Renton Housing Authority 425-226-1850

Sacred Heart Shelter (Women) 206-285-7489

Salvation Army (Women) 206-447-9944

Seattle Housing Authority / Porchlight 206-615-3340

Share-Wheel Shelters (Men) 206-448-7889
Apply in person at Josephinum, 1902 Second Avenue

Taylor Houses (south end) 253-720-5073

Union Gospel Mission (Men) 206-622-5177

William Booth (Men) 206-621-0145

Women's Referral Center 206-441-3210
Apply in person at YWCA Opportunity Place (Third & Virginia)
Daily 6 a.m.- 8:30 p.m.

YWCA (Women) 206-461-4882

Vocational Services

DSHS – Division of Vocational Rehabilitation (DVR)
Rainier Worksource
2523 Rainier Ave. S., Seattle, WA.....206-721-7300

Farestart (Culinary Arts Training)
1902 Second Avenue, Seattle, WA 206-443-1233
www.farestart.org

Seattle Jobs Initiative (SJI) 206-628-7919

Seattle Conservation Corps
City of Seattle (Paid Transitional Employment and Training)
7400 Sand Point Way N.E., Bldg. #2
Seattle, WA 206-684-0190

YWCA of Seattle / King County / Snohomish County
Employment Services 206-436-8610
www.ywcaworks.org

Other

Community Information Line 206-461-3200
Information on shelter availability and location of food banks.

Country Doctor 206-299-1600
www.countrydoctor.org

Metro Rider Information 206-553-3000
http://tripplanner.kingcounty.gov

Pike Market Medical Clinic 206-728-4143www.pikemed.org

Pioneer Square Clinic 206-521-1750
Voicemail (free) 206-376-1000

This material is provided in alternative formats for individuals with disabilities upon request by calling Mary C. Taylor, 206-296-7884.

B

FILED
KING COUNTY, WASHINGTON
FEB 28 2011
SEA
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

STATE OF WASHINGTON, Plaintiff vs. Adonijah Sykes Defendant CCN 1759006	No. 10-1-04372-8 SEA DRUG DIVERSION COURT WAIVER AND AGREEMENT CLERK'S ACTION REQUIRED (AG)

DRUG DIVERSION COURT WAIVER OF RIGHTS AND AGREEMENT OF THE PARTIES

* I have been informed and fully understand that I have the following important rights.
* I understand that I give up the following important rights by entering Drug Diversion Court:

1. The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

2. The right to remain silent before and during trial, and the right to refuse to testify against myself;

3. The right at trial to testify and to hear and question the witnesses who testify against me;

4. The right to have witnesses testify for me at trial. These witnesses can be made to appear at no expense to me.

5. With respect to this/these charge(s), I understand that I have a right to contest and object to evidence that the State may present against me and to present evidence on my own behalf. With respect to this/these charge(s), I give up the right to contest and object to any evidence presented against me and to present evidence on my own behalf as to my guilt or innocence. I understand and agree that if I do not comply with the conditions of this agreement, a hearing will be held at which the State will present evidence related to this/these charge(s) including but not limited to the police report and the results of any law enforcement field test. I stipulate that the field test used in this case was accurate and reliable, and is admissible. This stipulation is not an admission of guilt, and is not sufficient, by itself, to warrant a finding of guilt. I understand that the judge will review the evidence presented by the State and will decide if I am guilty or not guilty of this charge based solely on that evidence. I waive my right under Criminal Rule 6.1(d) to written findings of fact and conclusions of law.

6. I agree to complete the treatment program as instructed by the Court. I agree that I will not change treatment programs without first getting approval of the Court.

7. I agree to sign a waiver allowing the treatment provider to release information regarding my treatment to the Court, defense counsel, prosecuting attorney, and Drug Diversion Court Services staff. This information shall only be used to monitor compliance in this case and for no other purpose.

8. I understand and agree that I am responsible for obtaining a Participant Handbook from the Court and for knowing all of the rules and procedures contained in it, including any future amendments of which I am provided written notice.

9. I agree that I will not knowingly associate with any person possessing or using illegal drugs. I also agree that I will refrain from loitering in any area known for drug trafficking, and if ordered by the court, will stay out of specific areas associated with drug trafficking.

10. I understand and agree that I may not possess or use any firearm while I am in Drug Diversion Court.

11. I agree that I will not work with any police agency on any criminal cases or on any case where I may come into contact with illegal drugs. Nothing in this agreement shall prevent me from voluntarily providing information to a police agency regarding my past involvement with illegal drugs.

12. I agree to pay a $100 participation fee on a schedule set by the Court OR, in the alternative, to complete 24 community service hours done only for the purpose of satisfying this participation fee. Funds paid are not refundable. (I understand that no one is excluded from participation in Drug Court because of inability to pay participant fees.)

13. I agree to pay any and all restitution owing as a result of the crimes encompassed in these case number(s). I understand that I will not be allowed to graduate from Drug Court or have my case(s) dismissed, unless restitution is paid in full. I further understand that my progress in Drug Court will be affected by my progress in restitution payments. I acknowledge and accept that I may be terminated from Drug Court if I do not satisfy my restitution obligation in a timely manner, whether the failure to pay is willful or not.

☒ No restitution owed ☐ Restitution order attached

14. I understand and agree that any violation of Drug Court requirements such as dirty urinalysis tests, missing treatment sessions, any failure to abide by the terms of this agreement, or commission of a new crime, may result in modification of the treatment program, imposition of a sanction, revocation of my conditional release, and/or termination from the program.

15. In considering the consequences of my entry into this waiver and agreement I understand that if I am terminated from Drug Diversion Court:

COUNT I VUCSA PWI Cocaine

The crime with which I am charged carries a sentencing range of 24 to 60 months with a maximum penalty of five/ten (5/10) years in prison and a $10,000/$20,000 fine. ☐ Disputed

COUNT II VUCSA Marijuana

The crime with which I am charged carries a sentencing range of ____to____ months with a maximum penalty of five/ten (5/10) years in prison and a $10,000/$20,000 fine. ☐ Disputed

365 Days in Jail $1,000 Fine

COUNT III _____

The crime with which I am charged carries a sentencing range of ____to____ months with a maximum penalty of five/ten (5/10) years in prison and a $10,000/$20,000 fine. ☐ Disputed

a. I believe that the standard range(s) as set forth above, unless otherwise noted, accurately reflect(s) my criminal history known at this time. If I am convicted of any additional crimes between now and the time I am sentenced on this charge, I am required to tell the sentencing judge about those new convictions. If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, this agreement is binding on me and I cannot change my mind even though the standard sentencing range and prosecuting attorney's recommendation may increase.

b. In addition to sentencing me to confinement for the standard time, the judge will order me to pay $500 to a victim's compensation fund. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and incarceration, lab, and attorney fees. In addition, the judge may place me on community supervision, community placement or community custody, impose restrictions on my activities, require rehabilitative programs, treatment requirements, or other conditions, and order me to perform community service.

c. The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the State or I can appeal the sentence.

d. In addition to confinement, the judge will sentence me to a period of community supervision, community placement or community custody:

- For crimes committed prior to July 1, 2000, the judge will sentence me to: community supervision for a period of up to one year; or

- to community placement or community custody for a period of up to three years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.____

- For crimes committed on or after July 1, 2000, the judge will sentence me to the community custody range which is from 9 months to 12 months or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer, unless the judge finds substantial and compelling reasons to do otherwise. During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will result in the Department of Corrections transferring me to a more restrictive confinement status or imposing other sanctions. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge. _____]

e. The judge may sentence me as a first time offender instead of imposing a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence may include as much as 90 days of confinement and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph 15.b.The judge may also require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge. _____]

f. The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). (Effective for sentences imposed on or after October 1, 2005, the court may sentence me to a prison based alternative.) This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 15.b.. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range. Effective for sentences imposed on after October 1, 2005, the judge may sentence me to a residential chemical dependency treatment-based alternative. This sentence could include a term of community custody for one-half of the midpoint of the standard range or two years, whichever is greater, on the condition that I enter and remain in residential chemical dependency treatment for three to six months, plus all of the conditions described in paragraph 15.b. During community custody, I will be required to undergo substance abuse assessment and participate in treatment as provided by the Department of Corrections. At a treatment termination hearing scheduled three months before the expiration of the term of community custody, the judge could impose a term of total confinement equal to one-half of the midpoint of the standard sentence range followed by a term of community custody. During confinement, I would be required to undergo substance abuse assessment and participate in treatment as provided by the Department of Corrections. Any term of community custody imposed upon me under the special drug offender sentencing alternative must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay $30.00 per month to offset the cost of monitoring and require other conditions, including affirmative conditions.

g. If I am not a citizen of the United States, I understand that a finding of guilty on this/these offense(s) is grounds for deportation. I also may not be allowed to enter the United States, or be denied naturalization according to the laws of the United States.

h. If found guilty, I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

i. If found guilty, I understand that I will be ineligible to vote until that right is restored in a manner described in RCW 10.64 [2005 Wash. Laws 246 1] If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, 3, RCW 29A.04.079, 29A.08.520.

j. If I am found guilty of a drug offense that involves a motor vehicle, I understand that my driver's license or privilege to drive will be suspended or revoked.

k. If I am found guilty of a violation of the state drug laws, I understand that my eligibility for state and federal food stamps, welfare, housing, and education benefits will be affected. 20 U.S.C. 1091 (r) and 21 U.S.C. 862a.

16. I freely and voluntarily enter into this agreement.

17. No one has threatened to harm me or any other person to get me to enter into this agreement.

18. No person has promised me anything to get me to sign this agreement except as written in this document.

19. Upon successful completion of Drug Court, including the full satisfaction of any restitution obligation, all criminal charges pending against me under this (these) cause number(s) will be dismissed with prejudice.

My lawyer and I have reviewed and discussed all of the above paragraphs 1 through 19.I understand them all and do hereby knowingly give up these rights and enter into these agreements with the State

Dated: _____ _____
Deputy Prosecuting Attorney

_____ _____ 35345
Defendant Attorney for Defendant

I am fluent in the _____ language, and I have translated this entire document for the Defendant from English into that language. The Defendant has acknowledged his/her understanding of both the translation and the subject matter of this document. I certify under penalty of Perjury, under the laws of the State of Washington, that the foregoing is true and correct.

_____
Interpreter

C

FILED
KING COUNTY, WASHINGTON
SEP 19 2012
SEA
SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADONIJAH L. SYKES, Defendant.	NO. 10-1-04372-8 SEA 10-1-06021-5 SEA ORDER DENYING DEFENDANT'S MOTION TO RESCIND AND VACATE DRUG DIVERSION COURT WAIVER AND AGREEMENT

THIS MATTER came before the Court upon defendant's Motion to Rescind and Vacate Drug Diversion Court Waiver and Agreement, and the State appearing by and through counsel, Denis O'Leary and Jim Whisman, and the defendant appearing personally and by and through counsel, Amy King, and the Court heard argument of counsel and considered the pleadings in support of and in opposition to said motion.

This decision involves four drug court participants who are to be scheduled for a hearing on the State's motion to terminate their involvement in King County Drug Diversion Court (DDC) based upon alleged violations of their DDC Waiver and Agreement. These four participants have filed motions seeking to rescind and vacate their DDC Waiver and Agreement and to return their cases to the regular criminal calendar to proceed as if the Waiver and Agreement had never been agreed to. They each rely upon Article 1, Section 10 of the

JUDGE GREGORY P. CANOVA
KING COUNTY SUPERIOR COURT
516 THIRD AVE
SEATTLE WA 98104
(206) 296-9290

ORIGINAL

Washington State Constitution and argue, primarily, that DDC staffings are adversarial proceedings which must be open to the public. From this premise, they argue that the Court's repeated failure to satisfy this constitutional mandate requires imposition of the remedy they seek.

A DDC staffing is not an "adversarial proceeding," i.e., it is not a proceeding where disputed facts are resolved. DDC staffings involve the discussion of issues relevant to the best course of individualized treatment for each drug court participant. At a staffing, the Court hears recommendations from the case manager, the deputy prosecuting attorney and the attorney for the participant. The judge considers those recommendations for purposes of the next court hearing for that participant. At that hearing, the parties may modify or make their additional recommendations to the Court. After considering any additional input from the participant, the Court makes a decision on the course of treatment.

These staffings are non-judicial in nature and are more akin to a staffing of health care professionals discussing and recommending the best medical treatment strategy for a particular patient. These staffings are an integral part of the collaborative approach to the treatment of drug addiction and abuse. *See* Appendices A and B, attached hereto and incorporated herein in their entirety by reference, for further analysis and discussion of these issues. The Court also incorporates by reference its oral decision of September 4, 2012.

A conclusion that the DDC staffings must be open to the public, pursuant to Article 1, Section 10 of the Washington State Constitution, would have a chilling effect on the willingness of individuals to choose to participate in Drug Court. In reality, discussions in open court of intensely personal matters relating to such issues as childhood and adult physical, psychological and sexual abuse and mental illness diagnoses and treatment histories would, understandably,

JUDGE GREGORY P. CANOVA
KING COUNTY SUPERIOR COURT
516 THIRD AVE
SEATTLE WA 98104
(206) 296-9290

discourage many of those in desperate need of treatment for drug addiction from seeking that treatment through Drug Court.

The disclosure of such mental and physical health information in open court would also clearly violate the privacy protections of the Health Insurance Portability and Accountability Act (HIPAA). Participants in Drug Court are asked to sign specific confidentiality waivers under the Act, but only to allow drug court team members to discuss health and treatment records with treatment providers and other DDC team members. The secondary disclosure of such information is not permitted under HIPAA and that restriction may not be waived by the patient. The disclosure of this information is limited to those in the criminal justice system who are working to monitor the patient/participant's progress. 42 C.F.R. § 2.35(a). *See also* the disclosure restrictions set forth in 42 U.S.C. §290 dd.

While this Court fully supports the right of public access to court proceedings as envisioned by Article 1, Section 10 of the Washington State Constitution:

> Because these staffing discussions are collaborative, nonadversarial, and do not relate to the adjudication of the underlying charge, they may be conducted as if they were not hearings without offending the rights embodied in Article 1, section 10 of the state constitution."

Appendix A, p. 3. Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the defendant's Motion to Rescind and Vacate Drug Diversion Court Waiver and Agreement is DENIED.

Pursuant to RAP 2.3(b)(4), this Court certifies that this Order involves a controlling question of law as to which there is a substantial ground for a difference of opinion. Immediate review of the Order may materially advance the ultimate termination of this litigation and may

JUDGE GREGORY P. CANOVA
KING COUNTY SUPERIOR COURT
516 THIRD AVE
SEATTLE WA 98104
(206) 296-9290

materially assist the trial courts in applying open courtroom principles to drug courts in this county and in other counties.

DATED this 19th day of September, 2012.

GREGORY P. CANOVA
Judge of the Superior Court

JUDGE GREGORY P. CANOVA
KING COUNTY SUPERIOR COURT
516 THIRD AVE
SEATTLE WA 98104
(206) 296-9290

D

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY

Office of the Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

7 March 2011

MEMORANDUM

TO: Judge Harry J. McCarthy and Judge J. Wesley St. Clair

FROM: Denis O'Leary

SUBJECT: Open Courts

King County Drug Diversion Court's practice of closing staffings to the public is unconstitutional.

Article 1 section 10 of the Washington State Constitution provides: "Justice in all cases shall be administered openly, and without unnecessary delay." Our State Supreme Court has vigorously guarded the public's access to court proceedings. "Justice must be conducted openly to foster the public's understanding and trust in our judicial system and to give judges the check of public scrutiny. Secrecy fosters mistrust. This openness is a vital part of our constitution and our history." Drelling v Jain, 151 Wn.2d. 900, 93 P.3d 861 (2004). In the Matter of the Detention of DFF, 144 Wn. App. 214, 183 P.3d 302 (2008), review granted, 164 Wn.2d 1034 (2008) (argued 9/15/09).

Drug Court staffings are designed to assess the defendant's treatment compliance. Evidence regarding drug use, criminal law violations, attendance, and defendant's behavior is routinely presented and discussed. These discussions include the presentation of differing positions from the parties and the case manager. The court participates in the discussions by sharing observations and asking questions. Additionally, the court will frequently notify the parties of its preliminary thoughts on changes to the defendant's treatment plan that will be ordered, or sanctions the court is considering. These staffing discussions are adversarial, evidentiary, and subject to the open court provision of the constitution. Were these staffings simply to address ministerial matters, or simple legal matters, an argument could be made that they were exempt from public trial rights. In re Detention of Tiegson, 2011 WL 167476, Div. I Jan. 18, 2011. Clearly, however, staffings are far more involved then the limited type of court action that might fall outside of the public trial requirements.

While the right to a public trial is not absolute, the right is rigorously enforced to assure that proceedings occur outside the public view in only the most unusual of circumstances. State v. Strode, 167 Wn.2d 222, 217 P.3d (2009). This constitutional provision provides the public and press a right to open and accessible court proceedings. Seattle Times Co. v Ishikawa, 97 Wn.2d 30, 36, 640 P.2d 716 (1982). To protect the constitutional right to public proceedings, the trial court may not close a courtroom without first considering the five factors enumerated in

Ishikawa. The Court must enter specific findings to justify closure. State v Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995); State v. Russell, 141 Wn. App. 733, 738, 172 P.3d 361 (2007).

The five factors are:

1. The proponent of closure must make some showing of a compelling interest and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a serious and imminent threat to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.

4. The court must weigh the competing interests of the proponent of closure and the public.

5. The order must be no broader in its application or duration than necessary to serve its purpose.

In re Personal Restraint Petition of Orange, 152 Wn.2d 795, 806-07, 100 P.3d 291, 296-97 (2004).

If the court is to continue with its practice of staffing cases, it must enter findings each time it closes the courtroom for every case it orders closure. Setting aside the impracticality of undertaking such a time-consuming procedure, it is clear that when weighing the Ishikawa factors, closed court staffings are improper. The State is not the proponent of closure. If the defense asks for closing the courtroom, they must demonstrate a serious and imminent threat to their right to a fair trial. The State recognizes that although some staffing discussions are of a sensitive nature, the topics discussed in staffings are no more sensitive than those that might come up during the ordinary course of a trial or sentencing hearing. While the court should mandate proper decorum in how that information is brought out, it is only the most extraordinary of cases in which the public might be denied access to the hearing.

It is impossible to fairly assess each of the Ishikawa factors without first having a proponent identify what they are claiming to be the serious and imminent threat to their right to a fair trial. If the defense does propose closing the courtroom, the State respectfully asks this Court to permit further argument as to the application of the Ishikawa factors. This analysis will need to be done on a case-by-case hearing-by-hearing basis.

The State of Washington respectfully requests this Court to open Drug Court staffings. The staffings should be closed only under the most unusual circumstances, and only after consideration of the appropriate factors.

Superior Court for the State of Washington
For the County of King

King County Courthouse
Seattle, WA
98104

April 27, 2011

Denis O'Leary
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office
516 Third Ave.
Seattle WA 98104

Dana Brown
Supervisory Attorney
ACA
110 Prefontaine Pl. So. Ste. 200
Seattle, WA 98104

Elinor Cromwell
SCRAP
1401 E. Jefferson St., Suite 200
Seattle, WA 98122

Dear Counsel:

As you know, during the last several months both judges and attorneys of our therapeutic courts have engaged in discussions concerning whether the staffings of Drug Court may be contrary to Article I, section 10 of the Washington State Constitution requiring that court proceedings be open to the public.

From the origins of Drug Courts in the late 1980s, and beginning in King County in1994, staffings have been recognized as an integral part of the collaborative, problem solving approach that has been responsible for the recovery of thousands of chemically dependent participants. In an article titled "Need to know, " published in December 2010 by the National Association of Drug Court Professionals (NADCP), Dr. Douglas B. Marlowe, in discussing the multidisciplinary team approach of therapeutic courts, noted:

> The most effective Drug Courts require regular attendance by the judge, defense counsel, prosecutor, treatment providers and law enforcement officers at staff meetings and status hearings. When any one of these professional disciplines was regularly absent from team discussions, the programs tended to have outcomes that were, on average approximately 50% less favorable. In other words, if any one professional discipline walks away from the table, there is reason to anticipate the effectiveness of a Drug Court could be cut by as much as one half. (citations omitted)

The question currently being posed is whether, despite almost 17 years of success in King County DDC, staffings should now be significantly modified into a more formal, adversarial model. It is clear that should the judge be absent from staffings, DDC will inevitably become more adversarial and judicial involvement, one of

the ten key components of Drug Courts, will be significantly diminished. Judges also derive considerable benefit from being involved in staffing. The judge listens and engages in the give and take of the far-ranging discussions held in staffings. It is a completely different judicial role as team leader evaluating therapeutic recommendations than the traditional judicial decision—making role in the courtroom.

Article I, section 10 of the Washington State Constitution provides that "[j]ustice in all cases shall be administered openly". The Sixth Amendment to the United States Constitution and Article I, section 22 of the State Constitution guarantees a criminal defendant the right to a public trial by an impartial jury. These provisions have a commonality: they protect the right to a public proceeding. State v. Momah, 167 Wn. 2d 140, 147, 217 P.3d 321 (2009). Cases such as Momah have as their primary focus the preservation of the requirements of a public trial. It is a fundamental right in a free society for the public to be able to witness adversarial proceedings to ensure that transparent justice is being administered in an open and fair manner.

A defendant's right to a public trial hinges on the question of whether the court proceeding is evidentiary or adversarial. See State v. Rivera, 108 Wn. App. 645, 652-53, 32 P. 3d 292 (2001). In State v. Sadler, 147 Wn. App. 97, 193 P.3d 1108(2008), the Court of Appeals observed:

> "The right to an open public trial ensures that the defendant receives a fair trial in part by reminding the officers of the court of the importance of their functions, encouraging witnesses to come forward, and discouraging perjury. Although the right to a public trial can serve the public or the defendant, the public's right and the defendant's right "serve complementary and interdependent functions in assuring the fairness of our judicial system. In particular, the public trial right operates as an essential cog in the constitutional design of fair trial safeguards. State v. Bone Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995). (Other citations and footnotes omitted). Id at 109-110.

Further, in Detention of Ticeson, 159 Wn. App 374 (2011), Division One spoke about the constitutional open courts requirement in the context of chambers conferences concerning evidentiary issues. The court discussed the crucial importance of open courts:

> Public trial rights "ensure a fair trial", foster the public's understanding and trust in our judicial system, and ... give judges the check of public scrutiny. None of these purposes is served by eliminating trial judge's discretion to handle ministerial or purely legal matters informally in chambers. Rather, public trial rights apply to "adversary hearings," including presentation of evidence, suppression hearings and jury selection. The resolution of purely ministerial or legal issues that do not require the resolution of disputed facts is not an adversarial proceeding. Id at 383-384. (Footnotes omitted).

The state argues that staffings are adversarial in nature and therefore subject to the open court provision of the state constitution. There have been precious few Washington State appellate decisions concerning Drug Courts in general and absolutely none on this specific issue. The undersigned judicial officers, with several years of therapeutic court experience, believe that staffings are intended to promote robust conversation on a wide range of treatment issues and are by no means essentially adversarial in nature. Moreover, public trial rights would not be compromised simply because possible behavioral sanctions are discussed among the myriad of other therapeutic concerns covered in staffings.

Staffing discussions frequently focus on treatment issues, such as level of care, medications, co-occurring disorders, housing, employment, education and whether in patient treatment or outpatient treatment are believed necessary. The list could go on and on. To be sure, incentives and sanctions are discussed as well, but it is important to understand that staffing recommendations for sanctions are preliminary in nature and are

imposed in open court only when the defendant is present with counsel. It is also worth noting that staffings serve another important function— that of providing an appropriate place where confidential personal, medical and mental health matters can be openly discussed.

Drug court discussions that pertain to monitoring of a drug court participant's recovery from addiction, or the imposition of sanctions or incentives to encourage behavioral change, have nothing whatever to do with the question of guilt or innocence in the underlying criminal case. Richard C. Boldt, *Rehabilitative Punishment and the Drug Treatment Court Movement*, 76 Wash. U.L.Q. 1205, 1252-54 (1998). In a criminal matter, the public has a right to observe all proceedings that relate to the question of guilt or innocence, and those matters cumulatively comprise the open administration of justice. Because these staffing discussions are collaborative, nonadversarial, and do not relate to the adjudication of the underlying charge, they may conducted as if they were not hearings without offending the rights embodied in Article I, section 10 of the state constitution.

As therapeutic courts have proven their effectiveness over the past two decades, the Washington Supreme Court has recognized the necessity of making an exception to certain ex parte communications by a judge who presides over mental health court, drug court or other therapeutic courts. Rule 2.9 (A) (1) Code of Judicial Conduct. The comment to that Rule states that "[a] judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem solving court, mental health courts or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers and others. (Emphasis added).

This comment to Rule 2.9 (A) (1) strongly supports the notion that therapeutic courts are unique and that judges who serve in these courts have a need to interact with the participants in order to advance the therapeutic mission that defines drug courts. Staffings are the ideal environment where the vast array of therapeutic ideas and options can be freely discussed.

For these reasons, the undersigned judicial officers believe that it would be inappropriate and damaging to the Drug Court model to change how staffings function.

Sincerely Yours,

Presiding Judge Richard F. McDermott

Judge Harry J. McCarthy

Judge J. Wesley SaintClair

Judge Philip Hubbard
(UNAVAILABLE TO SIGN)

Judge Michael Trickey

Judge Laura Inveen

Judge Patricia Clark

Judge LeRoy McCullough

Commissioner Julia Garratt

cc: Mary Taylor

Judge Michael Trickey

Judge Laura Inveen

Judge Patricia Clark

Judge LeRoy McCullough

Commissioner Julia Garratt

cc: Mary Taylor

Judge Michael Trickey

Judge Laura Inveen

Judge Patricia Clark

Judge LeRoy McCullough

Commissioner Julia Garratt

cc: Mary Taylor

Judge Michael Trickey

Judge Laura Inveen

Judge Patricia Clark

Judge LeRoy McCullough

Commissioner Julie Garratt

cc: Mary Taylor

Judge Michael Trickey

Judge Laura Inveen

Judge Patricia Clark

Judge LeRoy McCullough

Commissioner Julie Garratt

cc: Mary Taylor

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY

Office of the Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

August 5, 2011

The Honorable Harry McCarthy
The Honorable Ronald Kessler
The Honorable Richard McDermott
King County Superior Court
516 Third Avenue, KCC-SC-0203
Seattle, WA 98104

Re: Drug Court Staffings

Your Honors,

We recently exchanged letters over the King County Superior Court's practice of closing Drug Court staffings to the public. While we respect the Court's explanation for adhering to existing practices, three recent appellate court decisions cause us to ask for reconsideration.

On July 14, 2011, the Washington State Supreme Court filed its decision in In re Det. of D.F.F., 2011 WL 2790943. That case concerned the closing of a Superior Court involuntary commitment proceeding. A court rule presumed that such proceedings should be closed and the court rejected that presumption. It held that all proceedings were presumed open, even proceedings dealing with sensitive mental health matters, and that a proceeding could be closed only based on individualized considerations.

In reversing the commitment order and remanding the matter for new contempt proceedings, the Washington State Supreme Court noted that "[a] fundamentally different brand of justice is administered when courts are open and the parties, witnesses and the judge all conduct their affairs in the light of day." The Court went on to state that the open court requirement is not contingent upon a member of the public exercising his or her right to be present. The Court recognized that "[a]s a practical matter, family, friends, and other interested individuals may wish to attend but be unwilling to assert their legal right to do so — whether due to their unfamiliarity with their rights, a lack of time or money to invest in doing so, or a desire not to be formally involved." Essentially, the court found that just because no member of the public is asserting the right to come to court, does not mean that the court may close.

In State v. Tinh Trinh Lam, 161 Wn. App. 299, 254 P.3d 891 (2011), the Court of Appeals, Division One reversed a murder in the first degree conviction because the trial court failed to conduct a Bone-Club analysis prior to closing the court for the questioning of a juror. In Lam, the State argued the closing was of a *de minimis* nature and should not result in the reversal of the conviction. In rejecting this argument, Judge Ellington wrote: "No *de minimis* rule is applicable to a public trial right violation."

In Tacoma News, Inc. v. Cayce, 2011 WL 2790944, the Washington State Supreme Court found that a judge's presence during the taking of a witness' deposition in accordance with the Civil Rules of Procedure so as to preserve testimony in a criminal trial did not elevate that discovery process to a hearing whereby the open courts doctrine applied. The deposition of that key witness was never introduced at trial nor filed with any motions. Since the deposition was never used at trial, it was mere discovery, it was not part of the decision making process and therefore not subject to Article 1 section 10 of the Constitution. This is in contrast with Drug Court staffings where frequently the information discussed, arguments heard and opinions expressed, (including the judge's opinions) are part of the decision making process.

Finally, in State v. Joseph Jougma Nionge, 161 Wn. App. 568, 2011 WL 1648243 (2011), the Court of Appeals, Division One reversed a murder conviction due to the trial court closing the courtroom during portions of *voir dire*. The circumstances leading to the closure were related to sufficient physical space to house potential jurors and members of the public. The appellate court found that there must be a specific concern, not a general concern, that necessitates closure and the trial court must weigh that specific concern in the manner required under Bone-Club. The Nionge trail court failed to conduct a Bone-Club analysis; the court reversed.

It is the Prosecutor's view that these cases show that closed Drug Court staffings run afoul of the Article 1 sections 10 and 22 of the Washington State Constitution. Staffings, presided over by the Drug Court judge, routinely involve discussions centering on compliance issues. It is common for staffing discussions to include the validity of urinalysis (UA) results, errors in treatment reports, and allegations of new criminal behavior on part of the defendant. The Court hears from treatment staff, the defense counsel, and the prosecutor. Defense attorneys frequently share their client's views regarding compliance and whether sanction is appropriate. Although the judge does not announce a final determination until he/she hears from the defendant, the judge at staffing does indicate his/her preliminary assessment of the compliance issue, and does ask the parties detailed questions about a participant's progress.

In light of these recent pronouncements by our appellate courts, I believe Drug Court will need to change its practice regarding case-staffing. While there may be many ways to accomplish this, I wish to outline three that seem most obvious. First, the judge could remove themselves from the staffings.. All of the issues routinely discussed at staffings could be addressed with counsel and treatment staff outside of the judge's presence. The parties could then report back to the court about the results of the staffings. King County Mental Health Court employs this model with reasonable success. The model recognizes the value of the parties and treatment providers collaborating on difficult issues. And, because any judicial proceedings are conducted in open court, the procedure does not run afoul of Article I, Section 10.

A second option is to conduct staffing as it is done now, but in open court and on the record. Such an approach might not result in much of a practical change at all as it is hard to imagine many people actually choosing to attend those staffings. Still, this approach would clearly comply with the State Constitution.

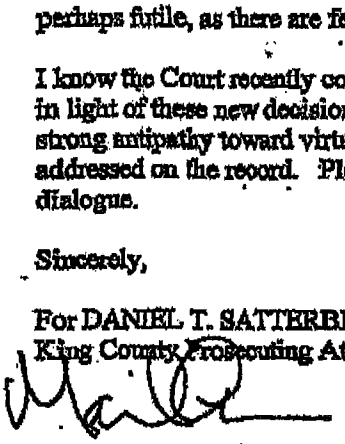
A third option would be for the Court to take the bench before each calendar and, as to each individual case, conduct a Bone-Club analysis on whether the extraordinary remedy of court closure was fitting If, in the court's analysis, Bone-Club supports closing the staffing, the court

would need to conduct the staffing on the record. This option would be time-consuming and perhaps futile, as there are few legal justifications for conducting staffings off the record.

I know the Court recently considered this issue. Nonetheless, we feel compelled to raise it again in light of these new decisions, each of which supports an expansive view of open courts and a strong antipathy toward virtually any court closure, and especially one that is routine and not addressed on the record. Please let me know if the Court would like any further information of dialogue.

Sincerely,

For DANIEL T. SATTERBERG,
King County Prosecuting Attorney



Mark Larson
Chief Deputy, Criminal Division

cc: The Honorable Wesley Saint Clair, King County Superior Court
The Honorable Philip Hubbard, King County Superior Court
Pam Pasion, ACA
Don Madsen, ACA
Jennifer Beard, SCRAP
Anne Daly, SCRAP
Mary Taylor, Drug Court Program Manager

Superior Court of the State of Washington
for the County of King

Harry J. McCarthy
JUDGE

King County Courthouse
Seattle, WA
98104-2381

January 11, 2012

Mark Larson
Chief Criminal Deputy
Office of the Prosecuting Attorney
King County Courthouse W554
516 Third Ave
Seattle, WA 98104

RE: Drug Court Staffings

Dear Mr. Larson:

We have carefully considered your letter of August 5, 2011 and the case authority cited therein. We have also obtained the views of counsel on this matter and have had the benefit of the experience of Drug Court judges nationally, within King County and the State of Washington.

It is our strong conviction that the 18 year old practice of conducting staffings within King County Drug Diversion Court is consistent with state constitutional principles. The non-adjudicative, collaborative nature of drug court staffings is also consistent with and based upon nationally recognized best practices, and has been an integral part of King County Drug Diversion Court success. As you know, that success has led this Court to become a leader and a model for the other Drug Courts in Washington. We do not believe there is a basis to abandon that position.

We believe there are crucial distinctions between the non-adversarial, collaborative, team discussions held as Drug Court staffings and the cases which have held that certain adjudicative proceedings have been conducted contrary to the state constitutional requirement of full and open access to courts in the administration of justice. We therefore decline to change the current drug court staffings and adhere to our analysis set forth in our letter of April 27, 2011.

Ph. (206) 296-9205 E-mail: Harry.McCarthy@kingcounty.gov Fax No. (206) 205-0721

Sincerely Yours,

Judge Harry J. McCarthy

Judge Gregory P. Canova

cc: R. McDermott
W. Saint Clair
Don Madsen, ACA
Jennifer Beard, SCRAP
Mary Taylor

E

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ADONIJAH LACROY SYKES, Petitioner.	NO. 87946-0 (consolidated with 87947-8) **ORDER** King County Superior Court No. 10-1-06021-5 SEA King County Superior Court No. 10-1-04372-8 SEA
STATE OF WASHINGTON, Respondent, v. ADONIJAH LACROY SYKES, Petitioner.	

Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Fairhurst, Stephens and González, considered this matter at its April 3, 2013, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That both of the Petitioner's Motions for Discretionary Review are granted and this Court will retain the case for direct review.

DATED at Olympia, Washington this 3rd day of April, 2013.

For the Court

FILED
SUPREME COURT
STATE OF WASHINGTON
2013 APR -3 P 3:08
BY RONALD R. CARPENTER
CLERK

Madsen, C.J.
CHIEF JUSTICE

E/M

659/100

F

Adult Drug Treatment Court Acknowledgment

I request that any discussion(s) about my case within the drug court team not occur in open court. This is due, in part or in whole, to concerns over my privacy and sensitive health care information which I prefer not to have discussed in open court. With that said, I recognize that there will be open status hearings in open court, at which time there may be some reference to matters which had been discussed in more detail in such confidential staffing.

Furthermore, I expressly waive my presence at any drug court team staffing regarding my case.

_____
Printed Name

_____ _____
Signature Date

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON, Plaintiff(s), v. Defendant(s).	No. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come on before the undersigned judge for contract approval and entry into Snohomish County's Adult Drug Treatment Court (ADTC), and the participant having requested to waive his/her presence at informal staffing discussions prior to status hearings and further requesting that such informal staffing discussions not occur in open court, now, therefore the court enters the following:

Findings of Fact

1. Status hearings, which are held weekly for ADTC and always occur in open court and on-the-record, are typically preceded by informal staffing discussions, in which information is shared by the treatment agencies (presently Evergreen Manor and Catholic Community Services) and the entire treatment team (judge, prosecutor, defense attorney, drug court coordinators, law enforcement liaison, and treatment agency liaisons).
2. Open discussion and participation in those staffing discussions by the entire drug court team is one of the ten key components and a "best practice" for adult drug treatment courts.
3. While the defendant is represented during those discussions by his/her attorney, the actual presence of the defendant would have a chilling effect on those frank and

sometimes pointed discussions and would extend those discussions beyond the time available.

4. Interested persons, including the media, upon request are typically allowed to sit in and observe those staffing discussions provided they agree to respect the confidentiality of those discussions.
5. Full discussion of the defendant's participation in treatment and compliance or noncompliance with drug court expectations and requirements, together with ongoing case planning, decisions about sanctions or incentives, all have been shown to increase the likelihood of a successful outcome for the participant in drug court.
6. Information shared in those staffing discussions has nothing to do with the question of guilt or innocence for the underlying criminal charge(s) which prompted the participant to request admission into drug court, which question is either never considered (if the participant successfully completes the drug court program requirements) or is considered only in open court following termination from drug court, and every participant is accorded full due process to request a formal adversarial hearing before an independent judge unless he/she consents to termination from drug court, and the waiver of any due process adversarial hearing also occurs in open court and on-the-record following a colloquy with the judge.
7. Information which is shared in those staffing discussions typically involves the participant's health care and treatment history and often includes discussion of otherwise private, confidential or privileged information, such as ongoing criminal investigations, ongoing drug use, intimate relationships, housing, employment, family relations and history, medications, injuries and illnesses (including hepatitis, MRSA, sexually transmitted diseases, HIV/AIDS, PTSD, eating disorders, and other very sensitive information).
8. The participant has requested that such information not be discussed in open court due to confidentiality and privacy concerns, and federal laws prohibit the secondary dissemination of most of that health care information, notwithstanding the release(s) signed by the participant.
9. The participant has a compelling interest in having those discussions not take place in open court in front of other drug court participants, the media or the public, particularly where the subsequent status hearings (at which time any sanctions or incentives are announced and the participant is invited to address the court, which may choose to recess the status hearing to hold further staffing discussions before resuming the status hearing) are conducted in open court and are on-the-record.
10. At the time this matter was presented to the court, no one in the courtroom objected to the request for confidential staffing discussions or requested to be heard on the issue of whether such staffing discussions should occur in open court.
11. Conducting such staffing discussions in open court would transform the nature of all drug court proceedings, not just motions to terminate a participant, into adversarial hearings which is directly contrary to the unique nature of drug courts and the ten key components which have been shown to be successful and to which drug courts are expected to adhere, whenever possible.
12. While the public has a right to be present and observe drug court proceedings, the public has no right to be present during discussions involving a participant's health care and the other confidential matters noted in paragraph 6, above.

13. The practice of conducting informal staffing discussions where confidential information and compliance/noncompliance may be openly shared, sanctions and incentives discussed, and ongoing case planning may occur, together with having on-the-record hearings immediately thereafter where the results of such discussions may be announced and the participant is given an opportunity to be heard, represents the best balance between the conflicting interests of open courts and an participant's request that his/her confidential or private matters not be made a matter of public record.
14. No other method adequately protects the compelling privacy interests and federal prohibitions upon disclosure of confidential health care information which the participant wishes to protect, while still granting public access to drug court proceedings.

FROM THE FOREGOING Findings of Fact, the court now enters the following

Conclusions of Law

1. Staffing discussions concerning the participant's progress in treatment, compliance and noncompliance with expectations and program requirements of ADTC, will not occur in open court due to both the participant's request and the compelling privacy and confidentiality considerations noted above.
2. Upon request, access to such staffing discussions may be granted to interested persons, provided the participant's confidentiality and privacy concerns are fully respected.
3. Scheduled status hearings involving the participant will take place in open court, on-the-record, and the defendant and other interested persons shall be given the opportunity to be heard and participate, and any decisions related to sanctions or incentives shall be announced in those open court hearings.
4. In the event of a recommendation to terminate the defendant from ongoing participation in ADTC, he/she shall be given the opportunity for a fully contested adversarial hearing before an independent judge, at which time the defendant will be present and represented by counsel and afforded the opportunity to be heard, and the prosecutor will bear the ultimate burden of proof by a preponderance of the evidence of sufficient violations or program noncompliance to warrant termination.
5. Adjudication on the underlying criminal charge(s) will occur only in the event of termination from ongoing participation in ADTC, and such adjudication may be considered by either the drug court judge or the judge who presided over the termination hearing.

DONE IN OPEN COURT this _____ day of _____, _____.

_____
Presiding Adult Drug Treatment Court Judge

G

NADCP
National Association of
Drug Court Professionals

need to Know

Research Update on Adult Drug Courts

*By **Douglas B. Marlowe**, J.D., Ph.D.*
Chief of Science, Law & Policy
December 2010

The effectiveness of adult Drug Courts is not a matter of conjecture. It is the product of more than two decades of exhaustive scientific research. From their inception, Drug Courts embraced science like no other criminal justice program. They endorsed best practices and evidence-based practices; invited evaluators to measure their outcomes; and encouraged federal agencies like NIDA, BJA, NIJ and CSAT, as well as a myriad of state agencies, to issue calls to the scientific community to closely examine the model and learn what makes it tick and how it might be improved. The result? We know beyond a reasonable doubt that Drug Courts significantly reduce drug use and crime and do so with substantial cost savings.

The effectiveness of Drug Courts is not a matter of conjecture. It is the product of more than two decades of exhaustive scientific research.

We know beyond a reasonable doubt that Drug Courts significantly reduce drug use and crime and do so with substantial cost savings.

Effectiveness

More research has been published on the effects of adult Drug Courts than virtually all other criminal justice programs combined. By 2006, the scientific community had concluded beyond a reasonable doubt from advanced statistical procedures called *meta-analyses*[1] that Drug Courts reduce criminal recidivism, typically measured by fewer re-arrests for new offenses and technical violations. Table 1 summarizes the results of five independent meta-analyses all reporting superior effects for Drug Courts over randomized or matched comparison samples of drug offenders who were on probation or undergoing traditional criminal case processing. In each analysis, the results revealed that Drug Courts significantly reduced re-arrest or reconviction rates by an average of approximately 8 to 26 percent, with the "average of the averages" reflecting approximately a 10 to 15 percent reduction in recidivism.

Because these figures reflect *averages*, they mask substantial variability in the performance of individual Drug Courts. Approximately three quarters of the Drug Courts (78%) were found to have significantly reduced crime (Shaffer, 2006), with the best Drug Courts reducing crime by as much as 35 to 40 percent (Lowenkamp et al., 2005; Shaffer, 2006). In well-controlled experimental studies, the reductions in recidivism were shown to last at least three years post-entry (Gottfredson et al., 2005, 2006; Turner et al., 1999), and in one study the effects lasted an astounding *14 years* (Finigan et al., 2007).

More research has been published on the effects of adult Drug Courts than virtually all other criminal justice programs combined.

In 2005, the U.S. Government Accountability Office (GAO, 2005) similarly concluded that Drug Courts reduce crime; however, relatively little information was available at that time about their effects on other important outcomes, such as substance abuse, employment, family functioning and mental health. In response to the GAO report, the National Institute of Justice sponsored a national study of adult Drug Courts, entitled the *Multisite Adult Drug Court Evaluation (or MADCE)*. The *MADCE* compared outcomes for participants in 23 adult Drug Courts located in seven geographic clusters around the country (n = 1,156) to those of a matched comparison sample of drug offenders drawn from six non-Drug Court sites in four geographic clusters (n = 625). The participants in both groups were interviewed at entry and at 6 and 18-month follow-ups, and provided oral fluid specimens at the 18-month follow-up. Their official criminal records are also being examined for up to 24 months.

The 6 and 18-month findings were presented at the 2009 Annual Conference of the American Society of Criminology (Rempel & Green, 2009; Rossman et al., 2009). In addition to significantly less involvement in criminal activity, the Drug Court participants also reported significantly less use of illegal drugs and heavy use of alcohol.[2] These self-report findings were confirmed by saliva drug tests, which revealed significantly fewer positive results for the Drug Court participants at the 18-month assessment (29% vs. 46%, $p < .01$). The Drug Court participants also reported significantly better improvements in their family relationships, and non-significant trends favoring higher employment rates and higher annual incomes. These findings confirm that Drug Courts elicit substantial improvements in other outcomes apart from criminal recidivism.

Table I

Citation	Institution	Number of Drug Courts	Crime Reduced on Average
Wilson et al. (2006)	Campbell Collaborative	55	14% – 26%
Latimer et al. (2006)	Canadian Department of Justice	66	14%
Shaffer (2006)	University of Nevada	76	9%
Lowenkamp et al. (2005)	University of Cincinnati	22	8%
Aos et al. (2006)	Washington State Institute for Public Policy	57	8%

[1]Meta-analysis is an advanced statistical procedure that yields a conservative and rigorous estimate of the average effects of an intervention. It involves systematically reviewing the research literature, selecting out only those studies that are scientifically defensible according to standardized criteria, and statistically averaging the effects of the intervention across the good-quality studies (e.g., Lipsey & Wilson, 2002).

[2]"Heavy use" of alcohol was defined as ≥ 4 drinks per day for women, and ≥ 5 drinks per day for men.

Cost-Effectiveness

In line with their positive effects on crime reduction, Drug Courts have also proven highly cost-effective (Belenko et al., 2005). A recent cost-related meta-analysis concluded that Drug Courts produce an average of $2.21 in direct benefits to the criminal justice system for every $1.00 invested — a 221% return on investment (Bhati et al., 2008). When Drug Courts targeted their services to the more serious, higher-risk offenders, the average return on investment was determined to be even higher: $3.36 for every $1.00 invested.

Drug Courts have also proven highly cost-effective.

These savings reflect measurable cost-offsets to the criminal justice system stemming from reduced re-arrests, law enforcement contacts, court hearings, and use of jail or prison beds. When more distal cost-offsets were also taken into account, such as savings from reduced foster care placements and healthcare service utilization, studies have reported economic benefits ranging from approximately $2.00 to $27.00 for every $1.00 invested (Carey et al., 2006; Loman, 2004; Finigan et al., 2007; Barnoski & Aos, 2003). The result has been net economic benefits to local communities ranging from approximately $3,000 to $13,000 per Drug Court participant (e.g., Aos et al., 2006; Carey et al., 2006; Finigan et al., 2007; Loman, 2004; Barnoski & Aos, 2003; Logan et al., 2004).

The result has been net economic benefits to local communities ranging from approximately $3,000 to $13,000 per Drug Court participant.

Target Population

No program should be expected to work for all people. According to the criminological paradigm of the *Risk Principle,* intensive programs such as Drug Courts are expected to have the greatest effects for high-risk offenders who have more severe antisocial backgrounds or poorer prognoses for success in standard treatments (e.g., Andrews & Bonta, 2006; Taxman & Marlowe, 2006). Such high-risk individuals ordinarily require a combined regimen of intensive supervision, behavioral accountability, and evidence-based treatment services, which Drug Courts are specifically structured to provide.

Consistent with the predictions of the Risk Principle, Drug Courts have been shown to have the greatest effects for high-risk participants who were relatively younger, had more prior felony convictions, were diagnosed with antisocial personality disorder, or had previously failed in less intensive dispositions (Lowenkamp et al., 2005; Fielding et al., 2002; Marlowe et al., 2006, 2007; Festinger et al., 2002). In one meta-analysis, the effect size for Drug Court was determined to be twice the magnitude for high-risk participants than for low-risk participants (Lowenkamp et al., 2005). In a county-wide evaluation of Drug Courts in Los Angeles, virtually all of the positive effects of the Drug Courts were determined to have been attributable to the higher-risk participants (Fielding et al., 2002).

Drug Courts are expected to have the greatest effects for high-risk offenders who have more severe antisocial backgrounds or poorer prognoses for success in standard treatments.

Fidelity to the 10 Key Components

In fiscally challenging times, there is always the pressure to do more with less. This raises the critical question of whether certain components of the Drug Court model can be dropped or the dosage decreased without eroding the effects. The "key components" of Drug Courts are hypothesized to include a multidisciplinary team approach, an ongoing schedule of judicial status hearings, weekly drug testing, contingent sanctions and incentives, and a standardized regimen of substance abuse treatment (NADCP, 1997). Each of these hypothesized key components has been studied by researchers or evaluators to determine whether it is, in fact, necessary for effective results. The results have confirmed that fidelity to the full Drug Court model is necessary for optimum outcomes — assuming that the programs are treating their correct target population of high-risk, addicted drug offenders.

NADCP
National Association of Drug Court Professionals

Multidisciplinary Team Approach

The most effective Drug Courts require regular attendance by the judge, defense counsel, prosecutor, treatment providers and law enforcement officers at staff meetings or status hearings (Carey et al., 2008). When any one of these professional disciplines was regularly absent from team discussions, the programs tended to have outcomes that were, on average, approximately 50 percent less favorable (Carey et al., in press). In other words, if any one professional discipline walks away from the table, there is reason to anticipate the effectiveness of a Drug Court could be cut by as much as one half.

The most effective Drug Courts require regular attendance by the judge, defense counsel, prosecutor, treatment providers and law enforcement officers at staff meetings and status hearings.

Judicial Status Hearings

Research clearly demonstrates that judicial status hearings are an indispensible element of Drug Courts (Carey et al., 2008; Festinger et al., 2002; Marlowe et al., 2004a, 2004b, 2006, 2007). The optimal schedule appears to be no less frequently than bi-weekly hearings for at least the first phase (first few months) of the program. Subsequently, the frequency of status hearings can be ratcheted downward; however, it appears that status hearings should be held at least once per month until participants have achieved a stable period of sobriety and have completed the intensive phases of their treatment regimen.

Drug Testing

The most effective Drug Courts perform urine drug testing at least twice per week during the first several months of the program (Carey et al., 2008). Because the metabolites of most common drugs of abuse remain detectable in human bodily fluids for only about one to four days, testing less frequently can leave an unacceptable time gap during which participants can use drugs and evade detection. In addition, drug testing is most effective when it is performed on a random basis. If participants know in advance when they will be drug tested, they may adjust their usage accordingly or take other countermeasures in an effort to beat the tests.

The most effective Drug Courts perform urine drug testing at least twice per week during the first several months of the program.

Graduated Sanctions & Rewards

The pervasive perception among both staff members and participants in Drug Courts is that sanctions and incentives are strong motivators of positive behavioral change (Lindquist et al., 2006; Goldkamp et al., 2002; Harrell & Roman, 2001; Farole & Cissner, 2007). Two randomized, controlled experiments have confirmed that the imposition of gradually escalating sanctions for infractions, including brief intervals of jail detention, significantly improves outcomes among drug offenders (Harrell et al., 1999; Hawken & Kleiman, 2009). Comparatively less research has

The imposition of gradually escalating sanctions for infractions, including brief intervals of jail detention, significantly improves outcomes among drug offenders.

addressed the use of positive rewards in Drug Courts, but preliminary evidence suggests that tangible incentives may improve outcomes especially for the more incorrigible, higher-risk participants (Marlowe et al., 2008).

Substance Abuse Treatment

Longer tenure in substance abuse treatment predicts better outcomes (Simpson et al., 1997) and Drug Courts are proven to retain offenders in treatment considerably longer than most other correctional programs (Belenko, 1998; Lindquist et al., 2009; Marlowe et al., 2003). The quality of treatment is also a critically important consideration. Significantly better outcomes have been achieved when Drug Courts adopted standardized, evidence-based treatments, including Moral Reconation Therapy (MRT; Heck, 2008; Kirchner & Goodman, 2007), the MATRIX Model (Marinelli-Casey et al., 2008) and Multi-Systemic Therapy (MST; Henggeler et al., 2006); as well as culturally proficient services (Vito & Tewksbury, 1998). What all of these evidence-based treatments share in common is that they are highly structured, are clearly specified in a manual or workbook, apply behavioral or cognitive-behavioral interventions, and take participants' communities of origin into account.

Drug Courts are proven to retain offenders in treatment considerably longer than most other correctional programs.

Recommendations to Drug Courts

The scientific evidence is overwhelming that adult Drug Courts reduce crime, reduce substance abuse, improve family relationships, and increase earning potential. In the process, they return net dollar savings back to their communities that are at least two to three times the initial investments. The optimal target population for Drug Courts has been identified, and fidelity to several key ingredients of the Drug Court model has been demonstrated to be necessary for favorable results.

The challenge now is to extend the reach of adult Drug Courts without diluting the intervention below effective levels. Any program can be made cheaper simply by lowering the dosage or by providing fewer services to more participants. The difficult task is to maintain effectiveness in the process. Rather than drop essential components of the Drug Court model, research indicates that the better course of action is to standardize the best practices of Drug Courts so they can be reliably implemented by a larger number of programs, each serving a larger census of clients. This is the next great challenge for the Drug Court field.

References

Andrews, D. A., & Bonta, J. (2006). *The psychology of criminal conduct* (4th ed.). Cincinnati: Anderson.

Aos, S., Miller, M., & Drake, E. (2006). *Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates.* Olympia, WA: Washington State Institute for Public Policy.

Barnoski, R,. & Aos, S. (2003). *Washington State's Drug Courts for adult defendants: Outcome evaluation and cost-benefit analysis.* Olympia, WA: Washington State Institute for Public Policy.

Belenko, S. (1998). Research on Drug Courts: A critical review. *National Drug Court Institute Review, 1,* 1-42.

Belenko, S., Patapis, N., & French, M. T. (2005). *Economic benefits of drug treatment: A critical review of the evidence for policy makers.* Missouri Foundation for Health, National Rural Alcohol & Drug Abuse Network.

Bhati, A. S., Roman, J. K., & Chalfin, A. (2008). *To treat or not to treat: Evidence on the prospects of expanding treatment to drug-involved offenders.* Washington, DC: The Urban Institute.

Carey, S. M., Finigan, M., Crumpton, D., & Waller, M. (2006). California Drug Courts: Outcomes, costs and promising practices: An overview of phase II in a statewide study. *Journal of Psychoactive Drugs, SARC Supplement 3,* 345-356.

Carey, S. M., Finigan, M. W., & Pukstas, K. (2008). *Exploring the key components of Drug Courts: A comparative study of 18 adult Drug Courts on practices, outcomes and costs.* Portland, OR: NPC Research. Available at www.npcresearch.com.

Carey S. M., Waller, M., & Weller, J. (in press). *California Drug Court cost study - Phase III: Statewide costs and promising practices, final report.* Portland, OR: NPC Research.

Farole, D. J., & Cissner, A. B. (2007). Seeing eye to eye: Participant and staff perspectives on Drug Courts. In G. Berman, M. Rempel & R. V. Wolf (Eds.), *Documenting Results: Research on Problem-Solving Justice* (pp. 51-73). New York: Center for Court Innovation.

Festinger, D. S., Marlowe, D. B., Lee, P. A., Kirby, K. C., Bovasso, G., & McLellan, A. T. (2002). Status hearings in Drug Court: When more is less and less is more. *Drug & Alcohol Dependence, 68,* 151-157.

Fielding, J. E., Tye, G., Ogawa, P. L., Imam, I. J., & Long, A. M. (2002). Los Angeles County Drug Court programs: Initial results. *Journal of Substance Abuse Treatment, 23,* 217-224.

Finigan, M., Carey, S. M., & Cox, A. (2007). *The impact of a mature Drug Court over 10 years of operation: Recidivism and costs.* Portland, OR: NPC Research. Available at www.npcresearch.com

Goldkamp, J. S., White, M. D., & Robinson, J. B. (2002). An honest chance: Perspectives on Drug Courts. *Federal Sentencing Reporter, 6,* 369-372.

Gottfredson, D. C., Kearley, B. W., Najaka, S. S., & Rocha, C. M. (2005). The Baltimore City Drug Treatment Court: 3-year outcome study. *Evaluation Review, 29,* 42-64.

Gottfredson, D. C., Najaka, S. S., Kearley, B. W., & Rocha, C. M. (2006). Long-term effects of participation in the Baltimore City drug treatment court: Results from an experimental study. *Journal of Experimental Criminology, 2,* 67-98.

Harrell, A., Cavanagh, S., & Roman, J. (1999). *Final report: Findings From the Evaluation of the D.C. Superior Court Drug Intervention Program.* Washington, DC: The Urban Institute.

Harrell, A., & Roman, J. (2001). Reducing drug use and crime among offenders: The impact of graduated sanctions. *Journal of Drug Issues, 31,* 207-232.

Hawken, A., & Kleiman, M. (2009). Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE [NCJRS no. 229023]. Washington DC: National Institute of Justice. Available at http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf.

Heck, C. (2008). MRT: Critical component of a local Drug Court program. *Cognitive Behavioral Treatment Review, 17(1),* 1-2.

Henggeler, S. W., Halliday-Boykins, C. A., Cunningham, P. B., Randall, J., Shapiro, S. B., & Chapman, J. E. (2006). Juvenile Drug Court: Enhancing outcomes by integrating evidence-based treatments. *Journal of Consulting & Clinical Psychology, 74,* 42-54.

Kirchner, R. A., & Goodman, E. (2007). Effectiveness and impact of Thurston County, Washington Drug Court program. *Cognitive Behavioral Treatment Review, 16(2),* 1-4.

Latimer, J., Morton-Bourgon, K., & Chretien, J. (2006). *A meta-analytic examination of drug treatment courts: Do they reduce recidivism?* Canada Dept. of Justice, Research & Statistics Division.

Lindquist, C. H., Krebs, C. P., & Lattimore, P. K. (2006). Sanctions and rewards in Drug Court programs: Implementation, perceived efficacy, and decision making. *Journal of Drug Issues, 36,* 119-146.

Lindquist, C. H., Krebs, C. P., Warner, T. D., & Lattimore, P. K. (2009). An exploration of treatment and supervision intensity among Drug Court and non-Drug Court participants. *Journal of Offender Rehabilitation, 48,* 167-193.

Lipsey, M. W., & Wilson, D. B. (2001). *Practical meta-analysis.* Thousand Oaks, CA: Sage.

Logan, T. K., Hoyt, W., McCollister, K. E., French, M. T., Leukefeld, C., & Minton, L. (2004). Economic evaluation of Drug Court: Methodology, results, and policy implications. *Evaluation & Program Planning, 27,* 381-396.

Loman, L. A. (2004). *A cost-benefit analysis of the St. Louis City Adult Felony Drug Court.* St. Louis, MO: Institute of Applied Research.

Lowenkamp, C. T., Holsinger, A. M., & Latessa, E. J. (2005). Are Drug Courts effective? A meta-analytic review. *Journal of Community Corrections, Fall,* 5-28.

Marinelli-Casey, P., Gonzales, R., Hillhouse, M., et al. (2008). Drug Court treatment for methamphetamine dependence: Treatment response and post-treatment outcomes. *Journal of Substance Abuse Treatment, 34,* 242-248.

Marlowe, D. B., DeMatteo, D. S., & Festinger, D. S. (2003). A sober assessment of Drug Courts. *Federal Sentencing Reporter, 16,* 153-157.

Marlowe, D. B., Festinger, D. S., Dugosh, K. L., Arabia, P. L., & Kirby, K. C. (2008). An effectiveness trial of contingency management in a felony pre-adjudication Drug Court. *Journal of Applied Behavior Analysis, 41,* 565-577.

Marlowe, D. B., Festinger, D. S., Dugosh, K. L., Lee, P. A., & Benasutti, K. M. (2007). Adapting judicial supervision to the risk level of drug offenders: Discharge and six-month outcomes from a prospective matching study. *Drug & Alcohol Dependence, 88S,* 4-13.

Marlowe, D. B., Festinger, D. S., & Lee, P. A. (2004a). The judge is a key component of Drug Court. *Drug Court Review, 4 (2),* 1-34.

Marlowe, D. B., Festinger, D. S., & Lee, P. A. (2004b). The role of judicial status hearings in Drug Court. In K. Knight & D. Farabee (Eds.), *Treating addicted offenders: A continuum of effective practices (chap. 11).* Kingston, NJ: Civic Research Institute.

Marlowe, D. B., Festinger, D. S., Lee, P. A., Dugosh, K. L., & Benasutti, K. M. (2006). Matching judicial supervision to clients' risk status in Drug Court. *Crime & Delinquency, 52,* 52-76.

National Association of Drug Court Professionals. (1997). *Defining Drug Courts: The key components.* Washington, DC: Office of Justice Programs, U.S. Dept. of Justice.

Rempel, M., & Green, M. (2009, November). *Do Drug Courts reduce crime and produce psychosocial benefits?* Presentation at the 2009 Annual Conference of the American Society of Criminology, Philadelphia, PA.

Rossman, S. B., Green, M., & Rempel, M. (2009, November). *Substance abuse findings from the Multi-Site Adult Drug Court Evaluation (MADCE).* Presentation at the 2009 Annual Conference of the American Society of Criminology, Philadelphia, PA.

Shaffer, D. K. (2006). *Reconsidering Drug Court effectiveness: A meta-analytic review* [Doctoral Dissertation]. Las Vegas: Dept. of Criminal Justice, University of Nevada.

Simpson, D. D., Joe, G. W., &Brown, B. S. (1997). Treatment retention and follow-up outcomes in the drug abuse treatment outcome study (DATOS). *Psychology of Addictive Behaviors, 11,* 294-307.

Taxman, F. S., & Marlowe, D. B. (Eds.) (2006). Risk, needs, responsivity: In action or inaction? [Special Issue]. *Crime & Delinquency, 52* (1).

Turner, S., Greenwood, P. Fain, T., & Deschenes, E. (1999). Perceptions of Drug Court: How offenders view ease of program completion, strengths and weaknesses, and the impact on their lives. *National Drug Court Institute Review, 2,* 61-85.

U.S. Government Accountability Office. (2005). Adult Drug Courts: *Evidence indicates recidivism reductions and mixed results for other outcomes* [No. GAO-05-219]. Washington, DC: Author.

Vito, G. F., & Tewksbury, R. A. (1998). The impact of treatment: The Jefferson County (Kentucky) Drug Court program. *Federal Probation, 62,* 46-51.

Wilson, D. B., Mitchell, O., & MacKenzie, D. L. (2006). A systematic review of Drug Court effects on recidivism. *Journal of Experimental Criminology, 2,* 459-487.

NADCP

National Association of Drug Court Professionals

It takes innovation, teamwork and strong judicial leadership to achieve success when addressing drug-using offenders in a community. That's why since 1994 the National Association of Drug Court Professionals (NADCP) has worked tirelessly at the national, state and local level to create and enhance Drug Courts, which use a combination of accountability and treatment to compel and support drug-using offenders to change their lives.

Now an international movement, Drug Courts are the shining example of what works in the justice system. Today, there are over 2,500 Drug Courts operating in the U.S., and another thirteen countries have implemented the model. Drug Courts are widely applied to adult criminal cases, juvenile delinquency and truancy cases, and family court cases involving parents at risk of losing custody of their children due to substance abuse.

Drug Court improves communities by successfully getting offenders clean and sober and stopping drug-related crime, reuniting broken families, intervening with juveniles before they embark on a debilitating life of addiction and crime, and reducing impaired driving.

In the 20 years since the first Drug Court was founded in Miami/Dade County, Florida, more research has been published on the effects of Drug Courts than on virtually all other criminal justice programs combined. The scientific community has put Drug Courts under a microscope and concluded that Drug Courts significantly reduce drug abuse and crime and do so at far less expense than any other justice strategy.

Such success has empowered NADCP to champion new generations of the Drug Court model. These include Veterans Treatment Courts, Reentry Courts, and Mental Health Courts, among others. Veterans Treatment Courts, for example, link critical services and provide the structure needed for veterans who are involved in the justice system due to substance abuse or mental illness to resume life after combat. Reentry Courts assist individuals leaving our nation's jails and prisons to succeed on probation or parole and avoid a recurrence of drug abuse and crime. And Mental Health Courts monitor those with mental illness who find their way into the justice system, many times only because of their illness.

Today, the award-winning NADCP is the premier national membership, training, and advocacy organization for the Drug Court model, representing over 27,000 multi-disciplinary justice professionals and community leaders. NADCP hosts the largest annual training conference on drugs and crime in the nation and provides 130 training and technical assistance events each year through its professional service branches, the **National Drug Court Institute,** the **National Center for DWI Courts** and **Justice for Vets: The National Veterans Treatment Court Clearinghouse.** NADCP publishes numerous scholastic and practitioner publications critical to the growth and fidelity of the Drug Court model and works tirelessly in the media, on Capitol Hill, and in state legislatures to improve the response of the American justice system to substance-abusing and mentally ill offenders through policy, legislation, and appropriations.

For more information please visit us on the web:

www.AllRise.org

NDCI
NATIONAL DRUG COURT INSTITUTE

NCDC
NATIONAL CENTER FOR DWI COURTS

JUSTICE FOR VETS

DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Motion of WSADCP for Leave to File Brief of Amicus Curiae, Motion for Leave to File Over-length Brief of Amicus Curiae WSDACP, and Brief of Amicus Curiae WSADCP in the Supreme Court Cause No. 87946-0 to the following parties:

Eric Nielsen
Casey Grannis
Nielsen, Broman & Koch, PLLC
1908 East Madison
Seattle, WA 98122

Daniel T. Satterberg
James M. Whishman
King County Prosecuting Attorney
W554 King County Court House
516 3rd Avenue
Seattle, WA 98104

Original sent by ABC Legal Messenger for filing with:

Washington Supreme Court
Clerk's Office
415 12th Street West
Olympia, WA 98504

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

Dated: April 11, 2014, at Tukwila, Washington.

Irelis Colon, Paralegal
Talmadge/Fitzpatrick

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,
Plaintiff/Petitioner

vs

No. 87946-0

ADONIJAH SYKES,

DECLARATION OF EMAILED DOCUMENT (DCLR)

Defendant/Respondent

I declare as follows:

1. I am the party who received the foregoing email transmission for filing.
2. My address is: 3400 Capitol Blvd. SE #103, Tumwater WA 98501
3. My phone number is (360) 754-6595.
4. I have examined the foregoing document, determined that it consists of 105 pages, including this Declaration page, and that it is complete and legible.

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

Dated: April 11, 2014 at Tumwater, Washington.

Signature: _____

Print Name: Jacob Josephsen