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NO. 69706-4-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

2014 JAN 10 PM 1:30
COURT OF APPEALS
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARY E. MAZALIC,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

Did the sentencing court err by imposing the monitoring tool of urinalysis and breathalyzer examinations for purposes of monitoring compliance with the unchallenged conditions of supervision.

II. STATEMENT OF THE CASE

The defendant was charged by information with count 1: first degree assault of a child; count 2: first degree criminal mistreatment; and, count 3: tampering with a witness, with the following three enhancements to counts one and two: manifesting deliberate cruelty to the victim; that the victim was a particularly vulnerable victim; and, that the defendant abused of a position of trust. CP 121-122.

On September 27, 2012, a jury convicted the defendant of all three counts and found all the enhancements alleged had been proven. CP 43-49 RP vol IX at 1365-1367. A pre-sentence report was prepared for the court. CP 26-37. On November 29, 2012, the court sentenced the defendant. CP 1-21. The trial judge indicated he had reviewed the pre-sentence report. RP Vol. X at 1401. At sentencing, the defendant through her attorney represented to the court that a mental health evaluation and treatment were

necessary. RP, vol. X at 1394. The defendant was sentenced to 360 months incarceration and 36 months of community custody on count 1; 120 months incarceration on count 2; and, 12 months incarceration on count 3. CP 4, RP vol X at 1408-1411, 1417-1418. The sentencing judge indicated he was not ordering chemical dependency evaluation or treatment as a condition of community custody since there was no evidence drugs or alcohol contributed to this offense. RP vol. X at 1415. The sentencing judge did impose the condition that the defendant participate in a mental health evaluation and abide by any recommended course of treatment, to include a regimen of prescribed medication as directed by the supervising community corrections officer. RP, vol X at 1414, CP 11.

The sentencing judge stated that although he had not prohibited the consumption of alcohol or controlled substances as a condition of the defendant's community custody, he was authorizing urinalysis, Breathalyzer, and polygraph examinations to monitor compliance with the other conditions of community custody, specifically the condition that the defendant obey all state, local, municipal and tribal laws. RP vol X at 1415, CP 11-12.

III. ARGUMENT

As part of her sentence, the defendant was ordered to serve 36 months of community custody on count 1 under RCW 9.94A.701. CP 5. Among the conditions imposed, the sentencing court required the defendant obey all state, local, municipal and tribal laws. CP 11. The sentencing court also ordered the defendant to participate in a mental health evaluation and abide by any recommended course of treatment, including a regimen of prescribed medications. CP 11.

The defendant objects to the sentencing court ordering urinalysis and Breathalyzer examinations as monitoring tools. Brief of Defendant pg 4.

1. The Sentencing Court Did Not Err By Imposing The Monitoring Tool Of Urinalysis Examinations For Purposes Of Monitoring Compliance With The Unchallenged Conditions Of Supervision.

“Generally, imposing conditions of community custody is within the discretion of the sentencing court and will be reversed if manifestly unreasonable.” State v. Valencia, 169 Wn.2d 782, 791-92, 239 P.3d 1059, 1063 (2010)(internal citations omitted). In the case at bar, the defendant acknowledged she has a mental condition that requires a regimen of prescription medications. In the pre-sentence report, the defendant admitted illegally using

alcohol at the age of 13 and using illegal drugs off and on from her early 20's. The defendant's use of illegal drugs continued up to the time of the incident where it was noted she was attempting to illegally obtain prescription pain medications over the internet. CP 34-35.

The court ordered a mental health evaluation and adherence with any recommended treatment, including the regimen of prescription medications. The court ordered the defendant obey all state, local, municipal and tribal laws. It was not manifestly unreasonable for the sentencing court to provide the supervising community corrections officer with the tools of urinalysis and Breathalyzer examinations to ensure compliance with these conditions of supervision. In State v. Vant, 145 Wn. App. 592, 186 P.3d 1149 (2008), the trial court imposed the condition of not possessing or consuming controlled substances without a valid prescription and random urinalysis/PBT/BAC testing. Although the sentencing court here did not order chemical dependency screening or that the defendant not possess or consume controlled substances without a valid prescription, he did order the defendant comply with all local, state, municipal and tribal laws. The sentencing court pointed out, this was the same as prohibiting the

possession or consumption of controlled substances without a valid prescription, as long as that remained against the law. Therefore, as in Vant, these enforcement tools should be upheld. “the trial court has the ability to enforce these conditions. As such, the trial court's imposition of random urinalysis/PBT/BAC tests to ensure compliance with its conditions does not constitute an abuse of discretion, and the condition should remain.” Vant, at 604.

The defendant also relies on State v. Parramore, 53 Wn. App. 527, 768 P.2d 530 (1989) to support his argument the tools are not appropriately authorized. However, in Parramore, the defendant was convicted of selling marijuana and was not ordered to obtain chemical dependency evaluation or treatment, but the court held “It is undisputed that the State had a right to restrict Parramore's consumption of illegal drugs.” Parramore, at 532. Furthermore, the court in Parramore reviewed the definition of the term ‘crime-related prohibitions’ as used in former RCW 9.94A.030. RCW 9.94A.505(8) allows affirmative conditions as well as the previously allowed crime-related prohibitions.

2. The State Concedes That The Imposition Of Breathalyzer Examinations Was Not Reasonably Related To The Conditions Of Sentence And Therefore Should Be Stricken.

As the court did not require the defendant to abstain from consumption of alcoholic beverages as a condition of her supervision, and it is not against the law for someone of the defendant's age to consume alcohol, there does not appear to be a reasonable connection between Breathalyzer examinations and compliance with the conditions of supervision set forth by the court.

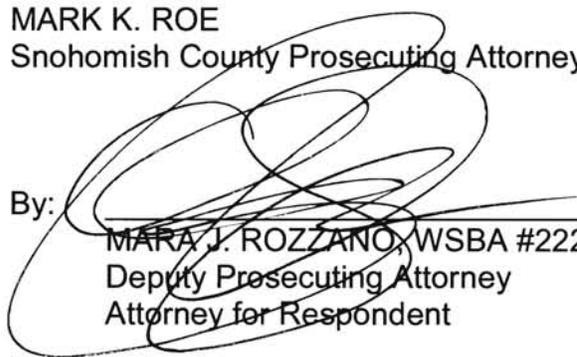
IV. CONCLUSION

Based on the reasons set forth above, the defendant's appeal with regard to the condition of urinalysis examinations should be denied. The matter should be remanded to the sentencing court to strike the Breathalyzer examinations from the conditions of supervision.

Respectfully submitted on January 6, 2014.

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