

No. 70293-9-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

RAFAEL CONTRERAS GONZALES, Appellant.

BRIEF OF RESPONDENT

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By Kimberly A. Thulin
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A. ASSIGNMENTS OF ERROR

None.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Whether this case should be remanded to amend the judgment and sentence to reflect Contreras Gonzales be ordered to obtain an alcohol evaluation and treatment instead of a substance abuse evaluation.

C. SUMMARY

Appellant Contreras Gonzales asserts this case should be remanded to amend the judgment and sentence to Order an alcohol evaluation and treatment instead of the substance abuse evaluation currently ordered in the judgment and sentence. The State concedes remand is appropriate in the interests of judicial economy because the record reflects the trial court and the parties discussed the need for an alcohol evaluation, not a substance abuse evaluation and, the facts reflect alcohol was involved in these offenses.

D. FACTS

Appellant Gonzales Contreras was charged and convicted, following a jury trial, of felony elude and driving under the influence of alcohol. CP 8-9, 33. At sentencing, Gonzales Contreras was given sixty months' probation, termed "community custody" in his judgment and sentence, for his driving

while under the influence misdemeanor conviction. CP 36. At sentencing, the court stated it was ordering an alcohol evaluation and any treatment recommended thereafter. RP 235. The judgment and sentence however, Orders Contreras Gonzales obtain a substance abuse evaluation and treatment as a crime related condition pursuant to his driving under the influence misdemeanor conviction. CP 36. The facts, as reflected by the record, demonstrate alcohol impairment was a factor in Contreras Gonzales' crimes. In light of these facts and the trial court's statements, Contreras Gonzales request to remand to amend his judgment and sentence to order an alcohol evaluation and treatment is reasonable and appropriate. The state asserts this court need not reach whether the sentencing court exceeded its jurisdiction or whether the substance evaluation term renders the defendant's judgment ambiguous, given the state's agreement that remand is appropriate.

E. ARGUMENT

- 1. The state agrees this case should be remanded to the trial court to amend the sentence to order and alcohol evaluation and treatment instead of a substance abuse evaluation and treatment as a crime related condition of Contreras-Gonzales convictions.**

Contreras-Gonzales contends the trial court exceeded its authority or alternatively, created an ambiguity by ordering him to obtain a

“substance evaluation and treatment” as a crime related condition of his sentence where the court’s oral remarks mentioned an alcohol evaluation and the crimes for which Contreras-Gonzales were convicted involved alcohol. Br. of App. at 5.

Contreras was sentenced in superior court for a felony pursuant to the Sentencing Reform Act and a misdemeanor driving under the influence conviction pursuant to RCW 41.61.5055. His judgment, as Contreras Gonzales points out in his opening brief, erroneously references community custody for the driving under the influence conviction instead of probation pursuant to RCW 9.95.210 and 41.61.5055. If the substance evaluation and treatment were ordered pursuant to a SRA sentence as a crime related condition, the state concedes a substance abuse evaluation on Contreras-Gonzales eluding conviction may not be appropriate. While not reflected in the judgment and sentence, Contreras Gonzales was sentenced to the substance abuse evaluation as a condition of probation pursuant to RCW 9.59.210, not under the SRA. The trial court has the statutory authority and discretion to order a substance abuse evaluation pursuant to broader authority granted by the legislature in RCW 9.95.210 so long as the condition can be connected to the objective of rehabilitation. See, State v. Hall, 35 Wn.App. 302, 307-08, 666 P.2d 930 (1983). A substance

abuse evaluation on its face is logically connected to the objective of rehabilitation for a driving under the influence conviction. Thus, a substance evaluation should not be considered beyond the discretion and authority of the sentencing court in setting a probation condition for a driving while under the influence conviction in superior court. Regardless however, the state agrees that is appropriate under the facts of this case to remand this matter to amend the judgment and sentence to reflect the intent of the court and the parties to order and alcohol evaluation and treatment.

And to correct the judgment and sentence to reflect the statutory authority for Contreras-Gonzales probation and conditions pertaining to count II, the driving while under the influence conviction.

F. CONCLUSION

For the reasons set forth above, the State concedes that this matter should be remanded to amend the judgment and sentence to order an alcohol evaluation and treatment and to strike the provision referencing community custody as to count II and the substance abuse evaluation.

Respectfully submitted this 5 day of December, 2013.

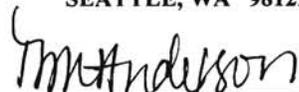


Kimberly A. Thulin, #21210
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CERTIFICATE OF SERVICE

I certify that on this date I placed in the United States mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the document to which this certificate is attached, to this Court, and appellant's counsel, David Koch, addressed as follows:

Nielsen, Broman & Koch
1908 E. Madison Street.
SEATTLE, WA 98122



Legal Assistant

12/5/13

Date