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NO. 70463-0-1

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

STATE OF WASHINGTON,

Respondent,

v.

CHAZ SCHMITZ,

Appellant.

REC'D  
FEB 03 2014  
King County Prosecutor  
Appellate Unit

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Beth M. Andrus, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in ordering appellant to participate in Moral Reconciliation Therapy (MRT) as a condition of community custody. CP 50.<sup>1</sup>

Issue Pertaining to Assignment of Error

Appellant was convicted of two counts of second degree assault. The sentencing court imposed a community custody condition requiring appellant to enter and complete MRT or a cognitive therapy alternative within 30 days of release. CP 50. Where there is no evidence MRT is reasonably related to the circumstances of the assaults, the appellant's risk of reoffense, or community safety, did the trial court err in imposing this condition?

B. STATEMENT OF THE CASE

The King County prosecutor charged appellant Chaz Schmitz with two counts of second degree assault. CP 1-7. Schmitz was convicted by a jury as charged. CP 23-24. The jury also returned special verdicts finding Schmitz and the complaining witness were members of the same family or household at the time the alleged incidents occurred. CP 25.

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<sup>1</sup> The Judgment and Sentence "Appendix H Community Custody" is attached to this brief as an appendix.

The trial court imposed concurrent standard range sentences of 13 months on each assault count. CP 43-50. The trial court also imposed 18 months of community custody. Id. Schmitz timely appeals. CP 53.

C. ARGUMENT

THE TRIAL COURT ERRED BY ORDERING SCHMITZ TO PARTICIPATE IN MRT AS A CONDITION OF COMMUNITY CUSTODY BECAUSE IT WAS NOT REASONABLY RELATED TO THE CIRCUMSTANCES OF THE OFFENSE, SCHMITZ'S RISK OF REOFFENSE, OR COMMUNITY SAFETY.

A trial court may impose only a sentence authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). An unauthorized sentence is void. State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). Whether a trial court exceeded its statutory authority is an issue of law reviewed de novo. State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003). Erroneous sentences may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

RCW 9.94A.703 (3) permits a sentencing court to impose any or all of the following conditions of community custody:

- (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

- (c) The offender shall participate in crime-related treatment or counseling services;
- (d) The offender shall participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;
- (e) The offender shall refrain from consuming alcohol; or
- (f) The offender shall comply with any crime-related prohibitions.

The State argued MRT treatment was appropriate as a condition of community custody because of “the character of the offense,” including the injury to the complaining witness, and the presence of children in the house. 5RP<sup>2</sup> 17. The State reasoned MRT treatment was “normally classif[ied] as domestic violence treatment.” 5RP 17. The trial court ordered Schmitz to enter and complete MRT or a cognitive therapy alternative within 30 days of his release from prison, concluding such therapy was appropriate for “incidents of domestic violence.” 5RP 24.

Contrary to the State's and trial court's reasoning, MRT treatment and domestic violence treatment are not the same. Domestic violence perpetrator's treatment focuses “primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior.” RCW 26.50.150(4). Treatment is based on “nonvictim-

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<sup>2</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – April 11, 2013; 2RP – April 15, 2013; 3RP – April 16, 2013; 4RP – April 17, 2013; 5RP – May 17, 2013.

blaming strategies and philosophies” and includes education about the individual, family, and cultural dynamics of domestic violence such as the impact of domestic violence on children. RCW 26.50.150(4).

In contrast, MRT is a cognitive behavioral therapy designed to teach inmates how to make better decisions in certain situations. See State v. Vasquez, 95 Wn. App. 12, 16, 972 P.2d 109 (1998) (MRT designed to improve the ability to make good decisions); <http://www.doc.wa.gov/facilities/cjc/tacomacjc/docs/TCJCTherapy.pdf> (MRT is a “systematic, cognitive-behavioral, step-by-step treatment strategy designed to enhance self-image, promote growth of a positive productive identity, and facilitate the development of higher stages of moral reasoning.”) (last accessed January 28, 2014).

In short, MRT is a cognitive-behavioral rehabilitative program, not one designed to end domestic violence. The trial court therefore lacked authority to require Schmitz to participate in the cognitive behavior program unless it was reasonably related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community. RCW 9.94A.703 (3)(d). Because there is no nexus between the therapy and the specific circumstances of Schmitz’s crimes, the trial court lacked authority to impose MRT.

Vasquez is instructive in this regard. 95 Wn. App. at 13-18. Vasquez entered an Alford<sup>3</sup> plea to second degree assault for an incident involving his roommate. Vasquez, 95 Wn. App. at 14. A pre-sentence investigation report recommended MRT treatment as a condition of community placement given Vasquez's "long history of assaultive behavior," lack of amenability to treatment, and to assist him in making better decisions in the future. Vasquez, 95 Wn. App. at 14-16.

Vasquez argued there was not a sufficient nexus between his crime and MRT. The State did not respond. The trial court ordered Vasquez to complete MRT treatment. Vasquez, 95 Wn. App. at 15-16.

On appeal, Vasquez argued MRT was not crime-related treatment. The Court of Appeals agreed and struck the MRT treatment condition. Vasquez, 95 Wn. App. at 15-16. Citing former RCW 9.94A.120(9)(c)(iii),<sup>4</sup> the Court noted the trial court was permitted to impose only crime-related treatment. The Court concluded there was insufficient evidence to determine whether the MRT was crime-related

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<sup>3</sup> North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

<sup>4</sup> The statute provided in relevant part: "As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions: ... (iii) The offender shall participate in crime-related treatment or counseling services[.]"

based on the facts and evidence presented. Vasquez, 95 Wn. App. at 16-17.

Here, like Vasquez, there is no evidence of any connection between MRT treatment and Schmitz's convictions. The State recommended MRT, but did not explain how the therapy program related to Schmitz's crime, to his risk of reoffense, or to community safety. Rather, the prosecutor merely equated MRT with domestic violence treatment and said it was appropriate given "the character of the offense." 5RP 17. Significantly, no pre-sentence investigation report suggested the therapy was appropriate for Schmitz.

The trial court imposed the condition as appropriate for "incidents of domestic violence," without connecting it to Schmitz's offense, to the risk of reoffense, or to community safety. 5RP 24; CP 50. Unlike Vasquez, here there is no evidence Schmitz had a history of assaultive behavior or was not amenable to other types of treatment.

Because there is nothing in the record showing any relationship between MRT and Schmitz's offenses, the risk of reoffense, or community safety, the trial court erred in imposing this condition. The condition requiring such treatment should be stricken from the judgment and sentence.

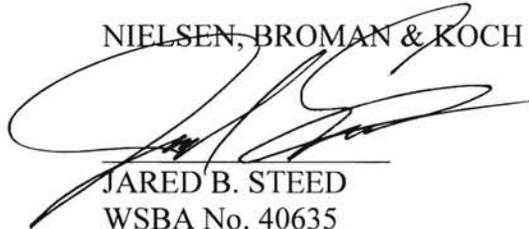
D. CONCLUSION

For the reasons set forth, Schmitz requests that this Court strike the challenged condition of community custody.

DATED this 3<sup>rd</sup> day of February, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A large, stylized handwritten signature in black ink, appearing to read 'Jared B. Steed', is written over a horizontal line.

JARED B. STEED  
WSBA No. 40635  
Office ID No. 91051  
Attorneys for Appellant

## **APPENDIX**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	No. 13-1-01005-1 SEA
Plaintiff,	)	
	)	
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
CHAZ ISAAC SCHMITZ	)	COMMUNITY CUSTODY
	)	
Defendant,	)	

The Defendant shall comply with the following conditions of community custody, effective as of the date of sentencing unless otherwise ordered by the court.

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community restitution;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location; and
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.706)
- 7) Notify community corrections officer of any change in address or employment;
- 8) Upon request of the Department of Corrections, notify the Department of court-ordered treatment;
- 9) Remain within geographic boundaries, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

The defendant shall not consume any alcohol.  
 Defendant shall have no contact with: Andrea McCarthy

Defendant shall remain  within  outside of a specified geographical boundary, to wit:

The court finds that the defendant has a chemical dependency ( alcohol  other substance) that has contributed to his or her offense. Treatment is reasonably related to the circumstances of this crime and reasonably necessary or beneficial to the defendant and the community. (RCW 9.94A.607) Therefore, the defendant shall participate in the following treatment:  
~~that~~ The defendant shall within 30 days of release from confinement  
and obtain a substance abuse evaluation and follow all recommended treatment.

The defendant shall comply with the following crime-related prohibitions:

Defendant shall enter and complete moral recognition therapy or cognitive behavior  
Other conditions may be imposed by the court or Department during community custody. therapy alternative

Community Custody shall begin upon completion of the term(s) of confinement imposed herein, or at the time of within 30 days sentencing if no term of confinement is ordered. The defendant shall remain under the supervision of the of release. Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions and may issue warrants and/or detain defendants who violate a condition.

Date: May 17, 2013

Beth M Andrus  
JUDGE

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 70463-0-1
	)	
CHAZ SCHMITZ,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 3<sup>RD</sup> DAY OF FEBRUARY 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

[X] CHAZ SCHMITZ  
DOC NO. 366953  
WASHINGTON CORRECTIONS CENTER  
P.O. BOX 900  
SHELTON, WA 98584

SIGNED IN SEATTLE WASHINGTON, THIS 3<sup>RD</sup> DAY OF FEBRUARY 2014.

x *Patrick Mayovsky*

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