

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT L. JACKSON,

Appellant.

No. 39456-1-II

UNPUBLISHED OPINION

Hunt, J. — Robert Jackson appeals his sentence for second degree rape with forcible compulsion.¹ Challenging two community custody conditions, he argues that the trial court exceeded its authority when it ordered him to obtain an evaluation and treatment with a certified mental health provider and a maintenance schedule for prescribed psychotropic medications. The State concedes error, opines that re-sentencing is not necessary, and asks us instead to order correction of the Jackson’s sentence. Agreeing that the conditions are improper, we remand to strike these two conditions from the sentence.

¹ A commissioner of our court considered this matter under RAP 18.14 and referred it to a panel of judges.

FACTS

The trial court found Robert Jackson guilty of raping a woman he had met at a mental health facility where he received treatment for depression and she received treatment for schizophrenia. It imposed a minimum term of incarceration of 100 months with a maximum sentence of life and a life term of community custody, during which he would be subject to the mental health and medication conditions. Jackson appeals those conditions.

ANALYSIS

Jackson challenges only his mental health conditions of community custody, which required him to obtain an evaluation and treatment with a certified mental health provider and a maintenance schedule for prescribed psychotropic medications. He argues that the trial court exceeded its authority when it imposed those conditions.² The State concedes this error. We agree.

A trial court lacks authority to order a mental health evaluation and treatment as a condition of community custody unless it finds that (1) reasonable grounds exist to believe that a person is mentally ill, and (2) this condition most likely influenced the offense. *State v. Brooks*, 142 Wn. App. 842, 851-52, 176 P.3d 549 (2008); *State v. Jones*, 118 Wn. App. 199, 209-10, 76 P.3d 258 (2003); RCW 9.94A.505(9). The trial court made no such findings, and the record here would not support them.³ Accepting the State's concession of error, we hold that the trial court

² Although Jackson did not object to these conditions below, he may challenge them for the first time appeal. *State v. Julian*, 102 Wn. App. 296, 304, 9 P.3d 851 (2000), *review denied*, 143 Wn.2d 1003 (2001).

³ Jackson said he suffered from depression, but the presentence report noted that his mental health status was unconfirmed; see also the report. In any case, Jackson testified that he was taking his depression medication at the time of the crime.

acted without authority, based on the record before us, to impose the challenged mental health conditions of Jackson's community custody portion of his sentence.

Accordingly, we remand this case to the trial court, which shall strike from Jackson's sentence the conditions pertaining to the mental health evaluation, treatment, and medication schedule.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, ACJ.

Quinn-Brintnall, J.

Furthermore, the record shows that Jackson and the victim initially engaged in an apparently consensual intimate relationship. The rape occurred after she returned to her husband and withdrew her consent; nevertheless, Jackson claimed that this charged incident was also consensual. Therefore, in the absence of a confirmed continuing mental health basis for Jackson's crime, the record also supports a non-mental-health-related basis.