

**FILED**  
**APRIL 10, 2012**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>STATE OF WASHINGTON,</b>	)	<b>No. 29748-9-III</b>
	)	
<b>Respondent,</b>	)	
	)	<b>Division Three</b>
<b>v.</b>	)	
	)	
<b>JUSTIN LEE ROBERT FRAME,</b>	)	<b>UNPUBLISHED OPINION</b>
	)	
<b>Appellant.</b>	)	
	)	

Kulik, J. — The trial court revoked Justin Lee Robert Frame’s drug offender sentencing alternative (DOSA) and imposed jail time. Mr. Frame appeals, contending that the trial court erred by not modifying the term of his community custody or the conditions of his sentence after it revoked the DOSA. We remand for resentencing of community custody within the terms of the judgment and sentence. We affirm the crime-related condition prohibiting the use or delivery of alcohol.

**FACTS**

Mr. Frame pleaded guilty to four counts of delivery of marijuana under RCW 69.50.401(1), (2)(c), a class C felony. He received a sentence for a residential

DOSA that included 24 months of community custody. The trial court also imposed a condition that Mr. Frame not possess or sell alcohol.

Approximately four months later, the trial court revoked the DOSA and sentenced Mr. Frame to serve “the remaining one-half of the midpoint (12 months) of the standard range.” Clerk’s Papers (CP) at 68. The trial court did not modify the judgment and sentence after revoking the DOSA. Mr. Frame appeals, contending that the trial court erred by not modifying the term of community custody and the condition on his sentence.

#### ANALYSIS

Community Custody. “Statutory construction is a question of law and is reviewed de novo.” *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001).

When the trial court determines that a drug offender is eligible for a DOSA, the court waives imposition of a sentence within the standard range, and imposes an alternative sentence. RCW 9.94A.660.

At any point during the DOSA sentence, the trial court may evaluate the offender’s progress or determine if any violations of the conditions of the sentence have occurred. RCW 9.94A.660(7)(a). “The court may order the offender to serve a term of total confinement within the standard range of the offender’s current offense at any time during the period of community custody if the offender violates the conditions or

requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.” RCW 9.94A.660(7)(c).

When a drug offender is sentenced to a residential chemical treatment-based DOSA, RCW 9.94A.664(4)(a) states that “[a]t a progress hearing or treatment termination hearing, the court may: . . . (c) 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 under RCW 9.94A.701.” RCW 9.94A.701(3)(c) calls for a one-year term of community custody for the crime of possession of a controlled substance.

Of equal importance, section 4.6 of Mr. Frame’s judgment and sentence states that upon a violation of the DOSA, a violation hearing shall be held and the trial court may impose confinement of up to one-half of the midpoint of the standard range for the charged drug offense. In addition, “a term of community custody range of 9 to 12 months shall be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.” CP at 37.

“When a sentence is imposed that does not conform to the statutory mandate regarding a required period of community placement, remand for amendment of the judgment and sentence is the proper course.” *State v. Hibdon*, 140 Wn. App. 534, 538, 166 P.3d 826 (2007).

Here, the DOSA statute specifically addresses the imposition of community custody after an offender is terminated from a residential chemical treatment center. Because the trial court sentenced Mr. Frame under the DOSA statute, RCW 9.94A.660, we will look first to the statute for guidance. Accordingly, after the treatment center terminated Mr. Frame from the program, the trial court needed to set Mr. Frame's community custody in accordance with RCW 9.94A.701. RCW 9.94A.701(3)(c) authorizes one year of community custody.

Additionally, Mr. Frame's judgment and sentence stated that upon termination of the DOSA, a term of community custody of 9 to 12 months shall be imposed. "'A correct judgment and sentence entered in a criminal cause is final and may not be reviewed or revised.'" *State v. Canaday*, 9 Wn. App. 393, 398, 512 P.2d 738 (1973) (quoting *State v. Wells*, 7 Wn. App. 553, 556, 500 P.2d 1012 (1972)). The trial court must abide by the terms of Mr. Frame's judgment and sentence and impose 9 to 12 months of community custody upon termination of his DOSA.

Therefore, based on Mr. Frame's judgment and sentence and the provisions of RCW 9.94A.701, Mr. Frame's term of community custody is between 9 to 12 months. Remand is appropriate to correct the term of community custody within the provisions of the judgment and sentence.

*Crime-related Conditions.* This court reviews crime-related prohibitions or conditions imposed by the trial court for an abuse of discretion. To be reversed, the sentence must be manifestly unreasonable so that no reasonable person would adopt the trial court's view. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993) (quoting *State v. Blight*, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977)).

As a part of any term of community custody, the trial court has the discretion to order an offender to “[c]omply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). A “crime-related prohibition” is defined, in relevant part, as “[a]n order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” *State v. Letourneau*, 100 Wn. App. 424, 431, 997 P.2d 436 (2000) (quoting former RCW 9.94A.030(12) (1999)). “Although the conduct prohibited during community custody must be directly related to the crime, it need not be causally related to the crime.” *Id.* at 432.

The trial court expressed concern for Mr. Frame's future and his family. Based on this concern and on Mr. Frame's past history, the trial court imposed the community custody condition that Mr. Frame not possess or sell alcohol. Mr. Frame admitted to problems with marijuana, an addictive substance. Mr. Frame's guilty plea for delivery of marijuana demonstrated that he had a problem with the distribution of an addictive

No. 29748-9-III  
*State v. Frame*

substance to other individuals. Alcohol is also an addictive substance and is often abused along with other drugs. Therefore, based on Mr. Frame's addiction and his conviction, the trial court did not abuse its discretion by prohibiting Mr. Frame from possessing or delivering alcohol, another addictive substance, as a crime-related condition.

We remand for resentencing of community custody within the terms of the judgment and sentence. We affirm the crime-related condition.

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

---

Kulik, J.

WE CONCUR:

---

Korsmo, C.J.

---

Siddoway, J.