Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-097

NOVEMBER TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
v.	}	Criminal Division
	}	
	}	
Laurie McKee	}	DOCKET NO. 769-3-16 Cncr
		Trial Judge: Michael S. Kupersmith

In the above-entitled cause, the Clerk will enter:

Defendant appeals a probation condition requiring her to attend "the CRASH program," a program for impaired drivers. On appeal defendant argues that the condition is not related to her offense of grossly negligent operation or to her rehabilitation and is overly harsh. We affirm.

The basic facts are as follows.[1] In November 2015, one afternoon at around 3 p.m., defendant was driving on West Lakeshore Drive in Colchester. While driving, she swayed within her lane, barely staying within the lines of traffic, and she did not brake or attempt to correct her driving. Defendant's vehicle then crossed the center line into the oncoming traffic. The operator of an oncoming vehicle slammed her brakes and came to stop. Defendant made no attempt to apply the brakes or to take evasive action. She slammed into the other car, severely injuring the other driver. Defendant was charged with grossly negligent operation of a motor vehicle with serious bodily injury resulting. The responding officer recounted that at the scene defendant did not remember the moments before the accident and asked the officer several times what had happened. She reported that she had taken prescribed medication the night before for depression, bipolar disorder, and to help her sleep. She stated she had not consumed alcohol and the responding officer did not observe signs of impairment. She also stated that she had been in a state of constant fatigue for the previous year since her husband's death, but did not think she had fallen asleep. She denied using her telephone at the time of the accident.

Defendant reached an agreement with the State and pleaded guilty to misdemeanor grossly negligent operation with a six- to twenty-four-month sentence, all suspended except a portion to serve. The plea agreement left the court to decide the length of the unsuspended portion of the sentence and the conditions of probation. At the change-of-plea and sentencing hearing, the court inquired about the cause of the accident. The State explained that there was not a cause

[1] Defendant moved to dismiss the charge for lack of a prima facie case and the court held a hearing on that motion at which several witnesses testified. Some of these facts are recounted in the court's order denying the motion to dismiss.

determined. Defense counsel explained that defendant had been in treatment for depression and may have had a lapse of attention, fallen asleep, or lost consciousness.

The court stated that it suspected defendant's depression played a role in the accident. The court imposed fifteen days to serve. The court imposed several probation conditions. One condition was to complete the CRASH program. Defendant's attorney objected to this condition on the ground that there was no evidence of substance abuse. The court commented that the investigation was an example of "poor police work" and that a blood test should have been taken and the telephone records checked to better determine the cause of the accident. Nonetheless, the court explained that the facts supported a reasonable inference that medication impairment contributed to the cause of the accident. The court noted that although there was no evidence of alcohol use, the evidence showed that defendant had taken medication and her behavior could reasonably be explained by impairment from this medication. Defendant appealed.

A sentencing court may set probation conditions "that are reasonably related to the crime committed and have been deemed necessary to 'ensure that the offender will lead a law-abiding life.' " State v. Cornell, 2016 VT 47, ¶ 6, 202 Vt. 19 (quoting 28 V.S.A. § 252(a)). The court has discretion in determining the appropriate conditions and our review is for an abuse of discretion. Id.

On appeal, defendant argues that the court abused its discretion in imposing the condition requiring attendance at the CRASH program. Defendant asserts that this condition is not related to her crime or to her rehabilitation. Defendant claims that there was no evidence that she was under the influence of alcohol or drugs at the time of the accident. Defendant points to the following: the cause of the accident was unknown, the responding officers did not believe defendant was impaired, and there was no evidence that defendant abused drugs or alcohol.

We conclude that there was no error. The court has wide discretion in imposing conditions of probation and conditions "will generally be upheld if the probation condition is reasonably related to the crime for which the defendant was convicted." State v. Nelson, 170 Vt. 125, 128, (1999). We review the imposition of probation conditions for an abuse of discretion, "ensuring the sentencing court used 'sound discretion,' not discretion exercised arbitrarily, but with due regard for that which is right and equitable under the circumstances, and directed by reason and conscience to a just result." State v. Albarelli, 2016 VT 119, ¶ 48 (quoting State v. Putnam, 2015 VT 113, ¶ 43, 200 Vt. 257).

There were several facts upon which the court could reasonably conclude that medication impairment was related to defendant's crime of grossly negligent operation and that a driver impairment program would help defendant lead a law-abiding life. This evidence included the following facts: defendant was driving erratically prior to the accident and made no attempt to correct the erratic behavior; defendant admitted to taking several kinds of medication within fifteen hours of the accident, one of them to help her sleep; defendant did not have an explanation for the accident; defendant stated she did not remember the moments before the accident; and defendant took no evasive action to avoid the accident. All of these facts could support a reasonable inference that defendant was impaired at the time of the accident and this impairment contributed to her grossly negligent operation. Certainly, other facts could support an inference that impairment did not contribute to the crime, but the court had the discretion to draw the inference it did from the facts. State v. Olds, 141 Vt. 21, 26 (1981) (holding that facts may be proved by reasonable inferences). Moreover, although defendant emphasizes the fact that the officer at the scene did not

discern signs of impairment, this did not preclude the court from making a reasonable inference that defendant was impaired from her medication. Thus, the facts provided enough evidence to support the court's determination that an impaired driver program was reasonably related to defendant's crime and would serve to protect the public in the future. See State v. Peck, 149 Vt. 617, 623 (1988) (upholding probation condition requiring completion of counseling in sex offender's group as reasonably related to crime of simple assault when assault was of sexual nature).

There is no merit to defendant's assertion that this condition is overly harsh because of the length of time required to complete the program and the several hundred dollars in tuition and other costs. As long as conditions are related to the crime or rehabilitation, the court has the discretion to impose the condition. The sole limit is that probation conditions "should not be unduly restrictive of the probationer's liberty or autonomy." State v. Campbell, 2015 VT 50, ¶ 9, 199 Vt. 78 (quotation omitted). Here, the condition does not place undue limits on defendant's liberty or autonomy. That it requires payment and a time commitment is not enough to demonstrate a loss of liberty or autonomy.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Karen R. Carroll, Associate Justice