

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 65874-3-I
Respondent,)	DIVISION ONE
v.)	UNPUBLISHED OPINION
HAROLD EDWARD JACKSON,)	FILED: January 30, 2012
Appellant.)	
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_____)	

Appelwick, J. — Jackson was convicted of custodial assault. He was not taking medications prescribed for his acknowledged mental illness at the time of the offense. The trial court ordered him to take all prescribed medications as a condition of community custody. The trial court did not, as required by statute, make findings that Jackson is mentally ill and that his mental health status contributed to his offense. Because the record appears to provide the evidence necessary to support such findings and those facts were not contested below, we remand to the trial court to either enter the necessary findings or strike the condition.

FACTS

On September 29, 2009, Harold Jackson turned himself in to serve a 30 day sentence in the Snohomish County Jail for driving on a suspended license. When he arrived, he submitted documentation indicating that he needed to take medication for his bipolar disorder. Nevertheless, he did not receive his medication between September 29 and October 4.

On October 4, Jackson came to believe he needed medical attention for scabies. He became disruptive, and Custody Officer Randall Williams told Jackson he would receive a minor violation for his behavior. When Williams went to Jackson's cell to have Jackson sign the violation paperwork, Jackson asked him if he knew what piss was, and if he had ever had any thrown on him. Jackson grabbed a styrofoam cup and threw its contents at Williams' head and shoulders. Williams ordered a lockdown, took his shirt off, and began washing his eyes at a nearby eyewash station. While Williams was washing his face, Jackson continued to yell and began swinging his crutches at the cell door.

Jackson was charged with and convicted of custodial assault. At trial, the fact that Jackson did not take his medication for five days prior to the incident was discussed at length. In closing, defense counsel asked the jury to remember that Jackson has mental health issues and had been sitting in jail for five days without his medications. At sentencing, defense counsel reiterated that Jackson's criminal conduct was related to not taking his medication, and expressed concern that Jackson may have trouble getting his medication if he was sentenced to further jail time. Jackson attached a letter from his treatment provider, Barbara Scott, to his sentencing memorandum. Scott stated that Jackson maintains a fairly stable mood so long as he

takes his prescribed medication. She recommended that the trial court make whatever modifications possible to minimize the risk of harm to Jackson and others. The trial court agreed that it would be unproductive to place Jackson back in the environment in which his problems arose. It decided to instead sentence Jackson to four months electronic home monitoring and nine months community custody. As a community custody condition, the trial court ordered Jackson to take all his prescribed medications.

Jackson appeals. He argues that the trial court did not have authority to order him to take his prescribed medications.

DISCUSSION

We review a crime-related community custody condition for an abuse of discretion. State v. Brooks, 142 Wn. App. 842, 850, 176 P.3d 549 (2008). A trial court abuses its discretion when its decision is based on untenable grounds, including those that are contrary to law. Id.

The trial court may require, as conditions of community custody, that an offender:

- (c) Participate in crime-related treatment or counseling services;
- (d) 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.

RCW 9.94A.703(3).

But, the trial court may only order an offender to undergo mental health treatment as a condition of community custody if it complies with statutory procedures.

RCW 9.94B.080; Brooks, 142 Wn. App. at 851. The court must find that reasonable

grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that the mental health condition likely influenced the offense. RCW 9.94B.080; Brooks, 142 Wn. App. at 851. An order requiring mental health treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offenders competency or eligibility for a defense of insanity. RCW 9.94B.080; Brooks, 142 Wn. App. at 851. These requirements are mandatory. See Brooks, 142 Wn. App. at 851; State v. Jones, 118 Wn. App. 199, 210, 76 P.3d 258 (2003).

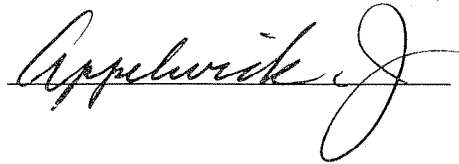
Jackson argued below that his failure to take medication for his bipolar disorder contributed to his offense. He submitted a letter from his treatment provider indicating that he has a mental illness that is controllable with medication. The State did not contest this assertion. Nevertheless, Jackson now argues that there is no evidence that the offense was related to his failure to take his prescribed medications, and that the trial court did not make required findings. He argues that this court should strike the condition.

Jackson is correct that the trial court did not make the required findings. The evidence overwhelmingly indicates, however, that Jackson does have a mental illness for which he was prescribed medication and that his failure to take that medication contributed to his crime. Jackson himself argued so below. Further, his assertion that Jones and State v. Lopez, 142 Wn. App. 341, 354, 174 P.3d 1216 (2007), require that we strike the condition is incorrect.

In Jones, the record appeared to contain enough evidence to support a finding that the defendant was mentally ill and that the illness contributed to the crime. 118

Wn. App. at 202, 209. The court remanded for the trial court to strike the condition, “unless it determines that it can presently and lawfully comply with RCW [9.94B.080].” Id. By contrast, in Lopez, we struck a condition ordering the defendant to undergo psychiatric evaluation and treatment. 142 Wn. App. at 353-54. But, Lopez does not mention any evidence that suggests the defendant was mentally ill.

The trial court erred by conditioning Jackson’s community custody on taking all prescribed medications without making findings that he was mentally ill and that his illness, absent the prescribed medication, contributed to his crime. We remand for entry of the necessary findings or for striking the condition if such findings are not supported by the record.



WE CONCUR:

