

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 67309-2-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
KNUTE GREGOR FENSTAD, JR.,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: June 4, 2012

PER CURIAM. Knute Fenstad appeals the sentence imposed following his conviction for first degree robbery. He contends the court erred in ordering substance abuse and mental health evaluations and treatment as conditions of his community custody. We remand for further proceedings.

The State concedes the court erred in ordering a mental health evaluation and treatment because the court did not have a presentence report before it and did not make a finding that Fenstad’s mental illness contributed to his crimes. See RCW 9.94B.080; State v. Jones, 118 Wn. App. 199, 202, 76 P.3d 258 (2003) (court may order mental health evaluation and recommended treatment condition only if it “finds, based on a presentence report and any applicable mental status evaluations, that the offender suffers from a mental illness which influenced the crime.”). We accept the concession. But given the mental health concerns expressed by defense counsel below, we remand with directions to strike the mental health evaluation and treatment condition unless the court can

presently and lawfully comply with the prerequisites for the condition. See Jones, 118 Wn. App. at 212 n.33 (remanding with same directions but noting that it is unclear “whether such compliance is legally possible at this late date” and observing “that RCW 9.94A.505(9) allows a court to order ‘additional evaluations at a later date if deemed appropriate.’”).

The court also ordered “Substance & alcohol abuse eval[uation] & treatment [.]” Fenstad concedes that *alcohol* evaluation and treatment were properly imposed but contends the court erred in imposing *substance abuse* evaluation and treatment without a finding of chemical dependency as required by RCW 9.94A.607(1).¹ The State does not dispute that RCW 9.94A.607(1) applies here but states, without citation to authority, that “[t]reatment conditions are appropriate in the absence of an express finding under RCW 9.94A.607 if the record otherwise supports the treatment condition.” To the contrary, failure to make the statutorily required finding is reversible error, even where substantial evidence would otherwise have supported such a finding. See Jones, 118 Wn. App. at 209-10. Accordingly, we remand with directions to strike the *substance abuse* evaluation and treatment condition unless the court determines that it can

¹ Under the Sentencing Reform Act of 1981, chapter 9.94A RCW, a trial court can impose a substance abuse evaluation and treatment condition only when controlled substances, as opposed to alcohol alone, contribute to the defendant's crime. Jones, 118 Wn. App. at 207-08.

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presently and lawfully comply with the statutory requirement for a finding that Fenstad has a chemical dependency that contributed to his offense.

Remanded for proceedings consistent with this opinion.

For the court:

Becker, J.

Schiveller, J.

Spencer, A.C.