

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 67571-1-I
	)	
v.	)	DIVISION ONE
	)	
VANLA INTHIRATHVONGSY,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: September 24, 2012

PER CURIAM. Vanla Inthirathvongsy appeals the sentence imposed following his conviction for delivery of cocaine. He contends the court erred in ordering a substance abuse evaluation and any recommended treatment as conditions of his community custody. Citing RCW 9.94A.607(1)<sup>1</sup>, he correctly points out that a finding of chemical dependency is necessary before a court can impose this condition, and that no such finding was made by the court in this case. The State does not dispute that RCW 9.94A.607(1) applies here but contends “[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.” Br. Of Resp’t at 4. In support, the State cites Division Two’s decision in State v. Powell, 139 Wn. App. 808, 162 P.3d 1180

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<sup>1</sup> RCW 9.94A.607(1) provides:

Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.  
(emphasis added).

No. 67571-1-1/2

(2007), reversed on other grounds, 166 Wn.2d 73, 206 P.3d 321 (2009). But the relevant portion of Powell is dicta. Moreover, Powell's dicta conflicts with Division Two's decision in State v. Jones, 118 Wn. App. 199, 209-10, 76 P.3d 258 (2003) (failure to make statutorily required finding before ordering mental health treatment and counseling was reversible error even though record contained substantial evidence supporting such a finding).

Following Jones, we remand with directions to strike the substance abuse evaluation and treatment condition unless the court determines that it can presently and lawfully comply with the statutory requirement for a finding that Inthirathvongsy has a chemical dependency that contributed to his offense.

Remanded for proceedings consistent with this opinion.

For the court:

Cox, J.

Edenfor, J.

Appelwick, J.