

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER CORTLANDT NATHAN,

Appellant.

No. 40237-8-II

UNPUBLISHED OPINION

Johanson, J. — Christopher Nathan challenges two community custody conditions of his sentence. He contends that there is no statutory authority to allow their imposition. We affirm the condition requiring Nathan to report any prescribed medications to his community corrections officer within 24 hours, but we strike the words “from a licensed physician” and remand for correction of the judgment and sentence.

FACTS

Nathan’s convictions were based on a threatening phone call, an attack in which he choked and beat his girlfriend, and during which he prevented her from leaving the house where they lived together. On January 8, 2010, the trial court sentenced him to 3 months of confinement and 12 months of community custody. The portion of the sentence at issue here provides:

It is further ordered that the defendant, as a condition of his/her community supervision, . . . shall:

4) Not purchase, possess, or use any controlled substances without a prescription *from a licensed physician*. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of

receipt. Submit to urinalysis as directed by the Community Corrections Officer.
Clerk's Papers (CP) at 131 (emphasis added).

ANALYSIS

Nathan challenges the requirement that any prescription for a controlled substance must be provided by a licensed physician. He also challenges the requirement that he provide a copy of any prescription for controlled substances to his community corrections officer within 24 hours after receiving it.

We note that Nathan did not object to these conditions during his sentencing hearing. However, that does not preclude his challenge here. *See State v. Jones*, 118 Wn. App. 199, 204, 76 P.3d 258 (2003) (sentence imposed without statutory authority can be raised for the first time on appeal). We also reject the State's argument that Nathan is not aggrieved because he has not shown that he has been harmed by the conditions. A criminal defendant always has standing to challenge his or her sentence on grounds of illegality. *State v. Sanchez-Valencia*, 169 Wn.2d 782, 787, 239 P.3d 1059 (2010). Insofar as the State's argument is a ripeness challenge it also fails. A claim is ripe for appeal if, as here, the issues raised are primarily legal; they do not require further factual development; the challenged action is final; and the defendant is burdened by the condition without further action by the State. *Sanchez-Valencia*, 169 Wn.2d at 786, 790-91. Accordingly, we consider the merits of Nathan's claim.

Generally, we review sentencing conditions for abuse of discretion. *State v. C.D.C.*, 145 Wn. App. 621, 625, 186 P.3d 1166 (2008). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or untenable reasons. *C.D.C.*, 145

No. 40237-8-II

Wn. App. at 625. It also abuses its discretion when it exceeds its sentencing authority. *C.D.C.*, 145 Wn. App. at 625.

First, a proper community custody condition must be authorized by the legislature because it is solely the legislature's province to fix legal punishments. *State v. Kolesnik*, 146 Wn. App. 790, 806, 192 P.3d 937 (2008), *review denied*, 165 Wn.2d 1050 (2009). RCW 9.94A.703(2)(c) establishes a waivable condition that prohibits the consumption or possession of controlled substances except pursuant to lawfully issued prescriptions. Such prescriptions can be lawfully issued by registered nurses, advanced registered nurse practitioners, osteopathic physician assistants, and physician assistants. RCW 69.41.030. There is no statutory authority to limit medications to those prescribed by licensed physicians only, as the sentencing court imposed here. We remand to strike "from a licensed physician" from this otherwise valid community custody condition. CP at 131.

Second, Nathan challenges the condition requiring prescriptions to be reported within 24 hours. This condition imposes affirmative conduct by Nathan. Requirements of affirmative conduct may be imposed if "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)(d); *Kolesnik*, 146 Wn. App. at 807. As Nathan asserts, there is no evidence that drug abuse played a role in these crimes. However, the trial court may also require affirmative acts necessary to monitor compliance with other conditions or orders. *See State v. Acevedo*, 159 Wn. App. 221, 248 P.3d 526 (2010) (confirming a court's authority to impose polygraph and urinalysis conditions to ensure compliance with other conditions, including a non-crime-related prohibition against

No. 40237-8-II

alcohol consumption); *see also* RCW 9.94A.030(10). Because the court is authorized to prohibit non-prescription drug use, the reporting requirement is a proper monitoring condition. *See Motter*, 139 Wn. App. 797, 805, 162 P.3d 1190 (2007).

We affirm the condition requiring Nathan to report any prescribed medications to his community corrections officer within 24 hours, but we strike the words “from a licensed physician” and remand for correction of the judgment and sentence.

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

Johanson, J.

We concur:

Hunt, P.J.

Van Deren, J.