

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,  
Respondent,

v.

MARK CHARLES SANDRETH,  
Appellant

No. 42143-7-II  
Consolidated with No. 42146-1-II

UNPUBLISHED OPINION

Van Deren, J. — Mark Sandreth appeals from two community conditions the trial court imposed when he pleaded guilty to two counts of unlawful possession of methamphetamine.<sup>1</sup> Sandreth argues that the condition requiring him to “remain out of places where alcohol is the chief item of sale” must be stricken because it is not a crime-related condition.<sup>2,3</sup> Clerk’s Papers (CP) 10-1-00054-1 at 11; RCW 9.94A.030(10); RCW 9.94A.703(3)(f); *State v. Jones*, 118 Wn. App. 199, 207-08, 76 P.3d 258 (2003). He also argues that the condition requiring him to

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<sup>1</sup> A commissioner of this court initially considered Sandreth’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

<sup>2</sup> Sandreth pleaded guilty under two separate cause numbers. The clerk’s papers in each case consist of separate, non-sequentially bound volumes. For clarity, we cite to the clerk’s papers for each case by their cause numbers, e.g., “CP 10-1-00054-1.”

<sup>3</sup> Sandreth also argues that the condition violates his constitutional right to freedom of association. But, given the State’s concessions, we decline to address this argument.

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“submit to physical and/or psychological testing whenever required by Community Corrections Officer” is insufficiently tailored to his crime, thus “giv[ing] [his] community corrections officer unfettered power to chose any physical or psychological testing that could be used to monitor [his] compliance” with the terms of his community custody, including penile plethysmograph testing. CP 10-1-00054-1 at 11; CP 10-1-00180-7 at 11; Brief of Appellant at 14. Accepting the State’s concessions, we remand to the trial court with instructions to strike the first condition and to clarify the second condition.

#### FACTS

In separate cases, Sandreth pleaded guilty to two counts of unlawful possession of methamphetamine. In the judgment and sentence under Clallam County Superior Court cause number 10-1-00054-1, the trial court imposed the following community custody condition:

8. You shall abstain from the use of alcohol and remain out of places where alcohol is the chief item of sale.

CP 10-1-00054-1 at 11. Under both Clallam County Superior Court cause numbers 10-1-00054-1 and 10-1-00180-7, the trial court imposed the following community custody condition:

10. During term of community supervision, you shall submit to physical and/or psychological testing whenever required by Community Corrections Officer, at your own expense, to assure compliance with Judgment and Sentence or Department of Corrections requirements.

CP 10-1-00054-1 at 11; CP 10-1-00180-7 at 11. He appeals.

#### ANALYSIS

##### I. Community Custody Conditions

The State concedes that the first condition must be stricken because it is not a crime-related condition. And while it doubts that any community corrections officer would order penile

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plethysmograph testing for community custody imposed after convictions for unlawful possession of methamphetamines, it agrees that we should remand for clarification of the second condition.

We accept the State's concessions and remand Sandreth's judgment and sentence to (1) strike the condition requiring him to "remain out of places where alcohol is the chief item of sale" and (2) clarify the condition requiring him to "submit to physical and/or psychological testing whenever required by Community Corrections Officer" to make clear appropriate tests to monitor his compliance with lawful community custody conditions imposed under RCW 9.94A.703 and .704. CP 10-1-00054-1 at 11; CP 10-1-00180-7 at 11.

## II. Statement of Additional Grounds for Review

Sandreth further contends in his RAP 10.10 statement of additional grounds for review (SAG) that (1) his two convictions should have merged, (2) he was denied a hearing on his request for return of property taken by the Port Angeles Police Department, and (3) he was subjected to prosecutorial vindictiveness because he asked for the return of his property.

Regarding Sandreth's SAG claims, his convictions were for unlawful possession on different dates and, thus, the crimes do not merge. *State v. Butler*, 165 Wn. App. 820, 832-33, 269 P.3d 315 (2012). Sandreth also presents no evidence of a request for return of his property or of prosecutorial vindictiveness for making such a request; thus, we reject his claims regarding his property and prosecutorial vindictiveness.

We remand to the trial court to strike the first community custody provision and to clarify

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the second condition.

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 in accordance with RCW 2.06.040, it is so ordered.

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Van Deren, J.

We concur:

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Penoyar, C.J.

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Johanson, J.