IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29000-0-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
RONALD STEVEN LAW,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Ronald Law was convicted of possession of methamphetamine found after an arrest following a traffic stop. He challenges various rulings made during his extended sojourn in the trial court. We affirm.

FACTS

Mr. Law told the trooper who stopped him that he did not have his driver's license or vehicle paperwork, but his name was "Timothy R. Law." Correctly sensing that the verbal identification was inaccurate, the trooper asked the driver of a nearby parked car what Mr. Law's name was. The driver answered, "Ron."

The trooper had Mr. Law step out of the car. The trooper placed him in handcuffs and told him he was being detained until the trooper ascertained his actual identity. Mr. Law then stated his true name and told the trooper that his license was suspended. When the Department of Licensing confirmed the licensing status, the trooper arrested Mr. Law for driving while license suspended.

When the trooper began to search him, Mr. Law "spun away . . . and started digging in his pockets." The trooper saw and heard a metal container hit the ground. The trooper retrieved the item and discovered that it contained a white powder that eventually was identified as methamphetamine.

Charges were filed in the Benton County Superior Court on October 7, 2008. The Department of Corrections (DOC) then held a hearing concerning whether this incident also violated the terms of Mr. Law's previous conviction. A negotiated sanction of 27 days in jail was imposed for violation of the "obey all laws" condition of the previous sentence.

Although counsel was appointed for Mr. Law, he filed several *pro se* motions. The trial court considered some of the motions and permitted Mr. Law to personally argue one of them. On the first day of the scheduled jury trial, May 18, 2009, Mr. Law filed a *pro se* objection to the trial date and also moved for new counsel. Despite concern

over the sincerity of the request, the court agreed to a continuance in order for Mr. Law to retain private counsel. New counsel filed a notice of substitution a month later. Despite the new representation, Mr. Law continued to file *pro se* motions.

Counsel filed a motion to suppress that was heard in conjunction with a CrR 3.5 hearing on January 29, 2010. The court concluded that while Mr. Law's statement of true identity and licensing status was made after he had been taken into custody, it was not the product of interrogation. The court also concluded that there had been a lawful arrest and proper search incident to the arrest. The court also declined to consider any of the recent *pro se* motions now that Mr. Law was represented by new counsel.

A trial on stipulated facts was conducted the following week. Mr. Law was found guilty of possession of a controlled substance and sentenced to 24 months in prison. He then timely appealed to this court.

ANALYSIS

Counsel presents three grounds for appeal, and Mr. Law has filed his own Statement of Additional Grounds (SAG). We will consider each in turn.

Double Jeopardy. Counsel first argues that the criminal prosecution constituted double jeopardy because DOC had already punished Mr. Law for the same conduct. Well settled law holds otherwise.

Appellate courts review claims of double jeopardy *de novo*. *State v. Jackman*, 156 Wn.2d 736, 746, 132 P.3d 136 (2006). One of the protections ensured by the double jeopardy clause is that a person will not be punished twice for the same offense. *State v. Gocken*, 127 Wn.2d 95, 100, 896 P.2d 1267 (1995). However, under all of the recent felony sentencing laws, Washington recognizes that confinement imposed for violating the terms of a prior sentence is a continuing consequence of the existing conviction. *State v. Dupard*, 93 Wn.2d 268, 276, 609 P.2d 961 (1980) (parole revocation under indeterminate sentencing scheme); *State v. Prado*, 86 Wn. App. 573, 578, 937 P.2d 636 (sentence modification under Sentencing Reform Act (SRA)), *review denied*, 133 Wn.2d 1018 (1997); *State v. Grant*, 83 Wn. App. 98, 111, 920 P.2d 609 (1996) (confinement for violation of SRA sentencing condition). Thus, double jeopardy does not prohibit subsequent prosecution for the same act that also violated the original sentence. *Grant*, 83 Wn. App. at 111. Rather, each punishment for the "same act" is imposed for separate offenses—the current prosecution and the earlier one.[1]

The adjudicated punishment with DOC did not preclude the criminal prosecution in this case. While arguably the same act,[2] the punishment was not imposed for the same

[1] This is consistent with the seminal United States Supreme Court double jeopardy case, *Blockburger v. United States*, 284 U.S. 299, 76 L. Ed. 306, 52 S. Ct. 180 (1932). There the court concluded that a single act of delivery of a controlled substance could be prosecuted for violating two different provisions of the Narcotics Act.

[2] We do note the prosecution's argument that the DOC sanction was for *use* of a

offense here. One punishment was for the prior offense, and one punishment was for the current offense. There was no double jeopardy violation.

Suppression Ruling. Counsel next argues that the trial court erred in finding that Mr. Law's admission to his true identity should have been suppressed along with the evidence obtained as a result of his arrest. The trial court correctly assessed the circumstances and denied the motion.

Prior to conducting a custodial interrogation, police must first advise a suspect of his or her rights, including the right to remain silent and the right to consult with an attorney prior to answering any questions. *Miranda v. Arizona*, 384 U.S. 436, 444, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966). A defendant is in custody for purposes of *Miranda* when his or her freedom of action is curtailed to the degree associated with a formal arrest. *Berkemer v. McCarty,* 468 U.S. 420, 440, 82 L. Ed. 2d 317, 104 S. Ct. 3138 (1984). The undisputed facts establish that Mr. Law was in custody when the officer handcuffed him and announced his detention.[3]

The other aspect of *Miranda* is interrogation. Interrogation is "express questioning or its functional equivalent" by police. *Rhode Island v. Innis*, 446 U.S. 291, 300-301, 64

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controlled substance while the criminal case was for *possession* of a controlled substance.

[3] The brief roadside communications prior to the handcuffing did not constitute interrogation. *Berkemer*, 468 U.S. at 440 (routine roadside traffic stop and questioning does not amount to custodial interrogation).

L. Ed. 2d 297, 100 S. Ct. 1682 (1980). The "functional equivalent" of questioning involves behavior that police should know is "reasonably likely to elicit an incriminating response." *Id*. at 302. It is the interrogation aspect of *Miranda* that is in question in Mr. Law's case.

The trooper was not questioning Mr. Law when he announced the detention. It is simple courtesy, at least, to explain the reason for an arrest or detention. Law enforcement officers should be encouraged to explain what they are doing when they take a person into custody; courts should not encourage unexplained detentions. We do not believe that the trooper was interrogating Mr. Law when he explained why he was handcuffing him.

Because there was no custodial interrogation, there was no basis for suppressing Mr. Law's statement. Evidence derived from the arrest following that statement likewise was not subject to suppression. The trial court correctly denied the motion to suppress.

Pro Se Arguments. Lastly, counsel argues that the trial court abused its discretion in declining to hear the *pro se* motions Mr. Law filed after he retained counsel. Because the trial court did not need to hear the arguments at all, it could not abuse its discretion by declining to do so.

The Sixth Amendment guarantees the right to counsel in criminal cases. *Gideon v.*

Wainwright, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963). Washington's state constitution likewise guarantees the right to counsel in all criminal cases. *City of Pasco v. Mace*, 98 Wn.2d 87, 653 P.2d 618 (1982). Both constitutions recognize that the right to counsel may be waived and that a defendant can engage in self-representation. *Faretta v. California*, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975); *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010) (citing Const. art. I, § 22).

However, there is no right to a hybrid self-representation and representation by counsel. *State v. DeWeese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991); *State v. Bebb*, 108 Wn.2d 515, 524, 740 P.2d 829 (1987); *State v. Romero*, 95 Wn. App. 323, 326, 975 P.2d 564, *review denied*, 138 Wn.2d 1020 (1999); *State v. Hightower*, 36 Wn. App. 536, 541, 676 P.2d 1016, *review denied*, 101 Wn.2d 1013 (1984). A court, however, has the discretionary authority to permit hybrid representation. *Hightower*, 36 Wn. App. at 541. Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Mr. Law argues that because the trial court had permitted earlier *pro se* pleadings and argument, it was an abuse of discretion to deny consideration of his later filings. We disagree. A trial court's decision to permit hybrid representation is reviewed for abuse of discretion. The decision not to permit such representation, however, is unchallengeable.

To review that decision at all suggests an entitlement to hybrid representation, a proposition that has universally been rejected. Rather, it is most appropriate to consider hybrid representation a matter of judicial grace. There is no entitlement to it and there could be no error in withholding it. Even if there were a right to consideration of hybrid representation, the trial court certainly had tenable reasons for declining to further indulge in hybrid representation here. The trial already had been significantly delayed and further motions practice could only create additional delay. Also, Mr. Law had retained counsel and presumably had no further need to assist in his representation.

For all those reasons, there was no error in refusing to consider the additional *pro se* filings.

Statement of Additional Grounds. Mr. Law filed a SAG raising eight grounds, only one of which we will address. His first ground is a repeat of his counsel's double jeopardy argument. We will not reconsider an issue already raised by counsel. *State v. Meneses*, 149 Wn. App. 707, 715-716, 205 P.3d 916 (2009), *aff'd in part by* 169 Wn.2d 586, 238 P.3d 495 (2010). Grounds two through four have insufficient citation to the record or to authority for us to consider. RAP 10.10(c). Grounds six through eight involve matters outside the appellate record. We likewise are not in a position to consider them. *State v. McFarland*, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995).

Ground five challenges the sufficiency of the evidence. This argument is one that we can consider on this record. Review of such challenges is controlled by well settled law; the question is whether there was evidence from which the trier of fact could find each element of the offense was proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980).

It is unlawful to possess a controlled substance. RCW 69.50.4013(1). Possession can be actual or constructive. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Constructive possession means, "the goods are not in actual, physical possession, but . . . the person charged with possession has dominion and control over the goods." *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Dominion and control is determined by looking at the totality of the circumstances. *State v. Collins*, 76 Wn. App. 496, 886 P.2d 243, *review denied*, 126 Wn.2d 1016 (1995). A person may be found in constructive possession of a controlled substance if there is some evidence beyond mere proximity tying him to the controlled substance. *State v. Mathews*, 4 Wn. App. 653, 656-658, 484 P.2d 942 (1971).

The only contested issue here is whether Mr. Law "possessed" the methamphetamine found by his feet. Here, there was more than mere proximity. In

addition to being found at his feet, the record reflects that defendant spun away from the trooper during the search, apparently in an unsuccessful effort to hide the contraband. At the same time, the trooper heard the container hit the ground. On this record, the trier of fact was permitted to conclude that Mr. Law was in constructive possession of the methamphetamine found at his feet.

The conviction is affirmed.

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

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.