

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 29418-8-III
)	
Respondent,)	
)	
v.)	Division Three
)	
ELIZABETH JANE HILLING,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, A.C.J. — Elizabeth Hilling challenges the trial court’s imposition of a mandatory condition of community custody. Discerning no error, we affirm.

FACTS

As part of a plea agreement, Ms. Hilling pleaded guilty to a reduced charge of possession of marijuana in excess of 40 grams. The offense is a class C felony. One of the conditions of the sentence is:

3. That defendant maintain full-time employment or education or a combination thereof throughout the duration of his [sic] probation.

Clerk’s Papers (CP) at 23.

Ms. Hilling did not object to the condition. Despite her plea agreement, she then timely appealed to this court.

ANALYSIS

The sole issue presented in this appeal concerns whether the trial court erred in imposing the employment condition. For several reasons, this challenge fails.

RCW 9.94A.703(2) provides:

Waivable conditions. Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

.....

(b) Work at department-approved education, employment, or community restitution, or any combination thereof.

Because it is the Legislature's province to establish punishment, a sentence condition must be authorized by law. *State v. Kolesnik*, 146 Wn. App. 790, 806, 192 P.3d 937 (2008), *review denied*, 165 Wn.2d 1050 (2009). Review of an authorized community custody condition is under the abuse of discretion standard. *State v. Autrey*, 136 Wn. App. 460, 466, 150 P.3d 580 (2006). 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).

With these standards in mind, we summarily reject the challenges to this

condition. First, the trial court did not abuse its discretion by imposing the condition. Since the condition was required by statute, there was a tenable basis for imposing it. Second, there was no request to waive the condition. A trial court cannot abuse discretion it was never asked to exercise. Third, it is doubtful that Ms. Hilling can even present this challenge initially on appeal. The normal rule is that an issue that was not presented to the trial court will not be considered by an appellate court. RAP 2.5(a). The appellate court has discretionary authority to consider an issue of “manifest error affecting a constitutional right.” RAP 2.5(a)(3). However, Ms. Hilling has not attempted to argue that a constitutional right was violated by imposing this required condition.

Ms. Hilling does argue that in these difficult economic times, it is hard to find employment and she should not be sanctioned for failing to find work. Her argument is correct as far as it goes. These are difficult economic times and employment can be hard to find. Nonetheless, we doubt any judge would punish an offender who was making a good faith effort to find employment. More to the point, the issue is not yet ripe for review. *State v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008). Ms. Hilling’s challenge does not involve a claim of vagueness and we see no reason to entertain a speculative challenge to a condition that might not be in issue in the future. *Id.*

For all of these reasons, we conclude this appeal is without merit. Ms. Hilling has

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not established an abuse of discretion and she has waived her challenge by failing to present it to the trial court.

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.

Korsmo, A. C. J.

WE CONCUR:

Sweeney, J.

Brown, J.