

FILED

FEB 14, 2012

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 29579-6-III
)	
Respondent,)	
)	
v.)	Division Three
)	
JACIHEL * CONTRERAS,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, A.C.J. — Jacihel Contreras challenges various conditions of his judgment and sentence. We agree in part and remand for the trial court to correct the judgment and sentence.

Mr. Contreras pleaded guilty to two counts of first degree assault and received a standard range sentence. Among the conditions of that sentence were that Mr. Contreras not possess alcohol and that he participate in drug/alcohol treatment or counseling at the direction of his community corrections officer. The court also imposed a community custody term of “up to life.”

Mr. Contreras appealed to this court. He challenges the two noted sentence

conditions and the term of community custody. The prosecutor agrees that the term of community custody and the prohibition on alcohol consumption are improper. We also agree. We disagree with the argument that the treatment or counseling provision is improper.

Community Custody Term. The trial court imposed a community custody term of “up to life” which mirrors the statutory maximum sentence for first degree assault, a class A felony. RCW 9A.20.021(1)(a); 9A.36.011(2). However, the parties correctly note that RCW 9.94A.701 sets a term of three years of community custody for serious violent offenses. First degree assault is a serious violent offense. RCW 9.94A.030(44)(a)(v).

A trial court cannot impose a sentence in excess of that authorized by the legislature. *In re McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P.2d 848 (1955), *cert. denied*, 350 U.S. 1002 (1956), *overruled in part on other grounds by State v. Samson*, 82 Wn.2d 663, 513 P.2d 60 (1973). The trial court was required to impose the three year term. We remand for the judgment and sentence to be corrected to reflect the proper term.

Alcohol Possession. Mr. Contreras, again supported by the prosecutor, also challenges the court’s prohibition on alcohol possession, noting that RCW 9.94A.703(3)(e) only prohibits an offender from *consuming* alcohol, not *possessing*

alcohol. Once again, we agree with the parties. Although we appreciate that it would be easier to supervise offenders if mere possession of alcohol were prohibited, the legislature has not seen fit to extend the prohibition that far.

As with the term of community custody, this sentence condition exceeds the trial court's authority. We remand for correction of the judgment and sentence.

Delegation of Treatment Requirement. Last, Mr. Contreras argues that the judgment and sentence wrongly delegates to the Department of Corrections (DOC) the authority to impose alcohol/drug treatment or counseling at the discretion of the community corrections officer. This condition is proper.

Mr. Contreras argues that the trial court improperly delegated its authority to DOC, relying on language from *State v. Williams*, 97 Wn. App. 257, 983 P.2d 687 (1999), *review denied*, 140 Wn.2d 1006 (2000). There the court had rejected an argument that the judgment and sentence improperly delegated authority to DOC to set the terms of probation, noting that the trial court retained the right to ratify the conditions and that the defendant had the right to a hearing over any terms of probation. *Id.* at 264-265. Because he has no similar right to ratification and review, Mr. Contreras argues that this condition runs afoul of the *Williams* reasoning.

There is a statutory problem with his argument. Subsequent to *Williams*, and prior

to the commission of these crimes, the legislature enacted RCW 9.94A.704, which expressly empowers DOC to impose conditions of supervision on offenders. As relevant here, subsection (4) states:

The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

Consistent with this provision, the judgment and sentence compels Mr. Contreras to obey all laws and to take part in any treatment or counseling required by DOC. The statute, in turn, empowers DOC to require rehabilitative efforts when necessary. Thus, the legislature has expressly authorized this sentence condition.

The trial court did not err by requiring compliance with any DOC-imposed treatment programs.

Affirmed in part, reversed in part, and remanded.

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:

Brown, J.

No. 29579-6-III
State v. Contreras

Siddoway, J.