IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ROBERT THOMAS YOUNG, Appellant.	No. 37383-1-II UNPUBLISHED OPINION

Penoyar, J. — Robert Thomas Young appeals his convictions of second degree theft,[1] forgery,[2] and bail jumping.[3] He claims that his forgery and theft counts were the same criminal conduct and that the sentencing court erred in imposing chemical dependency and mental health evaluations as part of his first-time offender sentencing option. We affirm.

Facts

In October 1999, after serving over nine years in the United States Army, Young received a medical discharge for injuries he suffered to his ankles and back. He worked as part of his vocational rehabilitation at the Veterans Affairs (the VA) Hospital in Lakewood, Washington.

In August 2002, he enrolled at Pierce College and took a work-study position in early 2003 at the VA warehouse. There, Donald Turpin was his supervisor. Turpin described Young as a good worker and said that he allowed Young to study at work between deliveries to the warehouse.

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[1] Violating RCW 9A.56.020(1)(b); RCW 9A.56.030(1)(b).

[2] Violating RCW 9A.60.020(1)(a) and (b).

[3] Violating RCW 9A.76.170(1) and (3)(c).

Because work-study students did not work full-time and their schedules varied depending on their school schedules, they filled out a time sheet each day they worked, which they and their supervisor initialed. Once a student had accumulated 50 hours of work time, he turned the time sheet into the human resources office, which in turn, sent it to the Seattle regional office, which would send a check directly to the worker. Turpin explained that only he had authority to initial Young's card and that if he was absent, another supervisor could initial the card with his own initials but not with Turpin's. Turpin said that Young did not work for him after June 16, 2003.

In March 2004, Virginia Weber, the VA work-study coordinator, received a facsimile from Young of his time sheet. She noted that the timesheet came from an off-facility location and that the supervisor's initials appeared differently than Turpin writes his initials. She verified this with her coworker, Rolland Parrish, who explained that the students are supposed to turn in their time sheets personally or using an on-site facsimile machine. Young's came from a Kinko's store and made Parrish suspicious.

Department of Veterans Affairs Special Agent James Eckrich interviewed Young twice about the time cards he had submitted between June 2003 and February 2004. In the first of these meetings, which took place on January 27, 2006, Young allegedly admitted that Turpin had not given him permission to sign the time sheets, that he had faxed them from a non-VA location, and that he had placed Turpin's initials on the time sheets. On January 31, 2006, Young admitted during a telephone call with Eckrich that he had initialed eight time sheets not three. Finally, during a second interview that took place on May 2, 2006, Young allegedly admitted that the initials on 90 to 95 percent of the timesheets he submitted were false and that 90 to 95 percent of the time he had submitted was for work he had not performed. Finally, Eckrich explained that

Young told him that he had done this for the money.

Mary Yates, the Chief of VA Regional Support Services, explained that the time sheets Young submitted for the time between June 16, 2003, and February 2004, were for 1,050 hours. For this many hours, the VA had paid Young $7,383.

The State, in a second amended information, charged Young with first degree theft, forgery, and bail jumping.[4] Young testified at his jury trial that any statements Eckrich attributed to him resulted from police coercion, were not true, and he had other superiors initial his time sheets because Turpin had refused to initial them after Young had complained about mistreatment.

The jury returned guilty verdicts on the forgery and bail jumping charges and on the lesser included offense of second degree theft. At sentencing, Young argued that (1) he did not commit forgery because his time sheets did not have legal efficacy, and (2) his theft and forgery convictions should have merged as same criminal conduct. Although the trial court disagreed with both arguments, it imposed a first offender sentencing alternative. The trial court entered a finding on the judgment and sentence that "a chemical dependency contributed to this offense." Clerk's Papers (CP) at 175. It also ordered the following sentencing condition: "Need mental health evaluation and follow all recommended treatment; and alcohol evaluation and follow all recommended treatment based upon the alcohol evaluation." CP at 182.

[4] The State charged Young with bail jumping after he failed to appear at an October 26, 2006 court hearing regarding his forgery and first degree theft charges.

analysis

I. Same Criminal Conduct

Young first argues that the sentencing court erred in not finding that his convictions of forgery and theft were the same criminal conduct. Citing *State v. Vike*, 125 Wn.2d 407, 411, 885 P.2d 824 (1994), he argues that one crime furthered the other and that he had the same objective intent all along; namely, to be paid for work he did not perform.

The State responds that these crimes are not same criminal conduct because they have differing elements and Young committed forgery before committing theft. The State also argues that a finding of same criminal conduct would have no affect on Young's range of punishment because his term under the first time offender sentencing is the same regardless.

If concurrent offenses involved the same criminal conduct, we treat them as one crime when calculating a defendant's offender score. *Vike*, 125 Wn.2d at 410. Offenses amount to the "same criminal conduct" if they "require the same criminal intent, are committed at the same time and place, and involve the same victim." RCW 9.94A.589(1)(a); *State v. Lessley*, 118 Wn.2d 773, 778, 827 P.2d 996 (1992) (all elements must exist).

In order to determine whether two crimes share the same criminal intent, courts look at whether the defendant's intent, viewed objectively, changed from one crime to the next and whether commission of one crime furthered the other. *State v. Freeman*, 118 Wn. App. 365, 377, 76 P.3d 732 (2003) (citing *Vike*, 125 Wn.2d at 411); s*ee also State v. Hernandez*, 95 Wn. App. 480, 484, 976 P.2d 165 (1999) (if the objective intents are the same, court looks to facts usable at sentencing to see if defendant's intent was the same).

The trial court here did not abuse its discretion. Forgery, as the court instructed, is

committed "when, with intent to injure or defraud, he or she falsely makes, complete[s], or alters a written instrument, and/or knowing the same to be forged, possesses, utters, offers, disposes of or puts off as true such written instrument." CP at 128. Theft, as the court instructed, "means to wrongfully obtain or exert unauthorized control over the property of another, or the value thereof, with intent to deprive the person of such property." CP at 119. Clearly the crimes do not require the same intent as forgery does not require a taking or an intent to deprive yet theft does.

Neither did the crimes occur at the same time and place. While committing forgery may have furthered Young's intent to steal money from the VA, he completed the forgery when he submitted the falsified time sheets; he completed the thefts when he retained the money the VA had sent him. It was within the trial court's discretion to treat these offenses separately; we find no abuse of that discretion.[5]

II. Sentencing Condition

Young next argues that the trial court erred in finding that a chemical dependency contributed to the offenses because there is no evidence in the record that he had a chemical dependency. Similarly, he argues, the trial court abused its discretion in requiring mental health and alcohol evaluations because the record does not support these conditions. He argues that RCW 9.94A.700(5)(c) authorizes such conditions only when they are crime-related. *State v. Jones*, 118 Wn. App. 199, 208, 76 P.3d 258 (2003).

[5] The State also argues that any error was harmless because under the first time offender sentencing option, RCW 9.94A.650(2), Young's range of punishment was 0-90 days regardless of whether the theft and forgery counted as one offense. We need not address this issue as we hold that the trial court did not abuse its discretion in treating these offenses separately.

The trial court, however, sentenced Young under RCW 9.94A.650, the first time offender sentencing alternative. Subsection (2) of that statute allows the trial court to impose outpatient treatment as a condition of that sentencing option. Such treatment does not have to be crime-related and may include provisions requiring rehabilitative programs. *State v. Johnson*, 97 Wn. App. 679, 682-83, 988 P.2d 460 (1999). We review such a decision for an abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993).

Here, the record supports the trial court's finding and conditions. First, the record shows that before obtaining his work-study position, Young worked at the VA as an IT. He explained that ITs are patients and are part of a work incentive program as part of their vocational rehabilitation. He explained: "It's a patient who I think the program is set up for people who are either coming out of from being incarcerated or people with disabilities or addictions." 4 Report of Proceedings (RP) at 476. Further, Young testified that he was seeing a mental health therapist.

Second, during the sentencing proceeding, Young's attorney told the trial court:

> The Court heard some possible issues in the course of the trial. Maybe there was a substance issue; we don't know. Maybe there are some mental health issues; we don't know. Maybe there was some physical issues in all the rest of that, but through community custody, which is the only way that you can order that, is first-time offender status. It will be onerous for him, but he's the kind of man who shows up and makes his appointments and takes care of his responsibilities. It's something that he can do.

RP (Jan. 25, 2008) at 15. Finally, in imposing the first-time offender option, the trial court explained:

> I do think that there's potentially, at least at trial, as Ms. Pierson pointed out, a number of issues that Mr. Young may be struggling with and we'll condition the first-time offender status, as I can do, on 24 months of community custody subject to mental health evaluation, drug and alcohol evaluation, payment of [legal financial obligations], law-abiding behavior, . . . 30 days and give him credit for time served.

RP (Jan. 25, 2008) at 18.

Looking at counsel's statements in urging a first-time offender option, her acquiescence when the trial court informed Young that it was imposing these conditions, the evidence in the record suggesting that Young had potential disabilities, and the prudence in ordering evaluations for these potential disabilities, we cannot find that the trial court abused its discretion; it acted seemingly in Young's best interests. *Riley,* 121 Wn.2d at 37.

We affirm.

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.

Penoyar, J.

We concur:

Van Deren, C.J.

Houghton, J.