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Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number: 60418-0

Title of Case: State Of Washington, Respondent V. Po Vongdala, Appellant

File Date: 09/29/2008

SOURCE OF APPEAL

Appeal from King County Superior Court

Docket No: 07-1-00395-5

Judgment or order under review

Date filed: 07/16/2007

Judge signing: Honorable Helen L Halpert

JUDGES

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Concurring: C. Kenneth Grosse

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,)	NO. 60418-0-I
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
PO VONGDALA,)	
)	
Appellant.)	FILED: September 29, 2008

PER CURIAM. Appellant Po Vongdala contends the court exceeded its sentencing authority by requiring him, as a condition of his misdemeanor sentence, to surrender firearms or swear that he did not have any. The State concedes that the statute cited below did not provide authority to require a surrender of firearms by Vongdala, but contends the court did have authority to impose the requirement under other statutes. Because the condition can be upheld as an exercise of the trial court's broad authority to impose conditions that will prevent the commission of future crimes, and since Vongdala's crime of No. 60418-0-I/2 domestic violence rendered him ineligible to possess a firearm in any event, we affirm.

Vongdala was subject to a no-contact order that prohibited him from having any contact with his wife. One day, Vongdala violated the order and

entered the wife's apartment. According to the wife, Vongdala pointed a gun at her forehead and threatened to shoot her. She was able to leave the apartment, go to work, and report the incident.

The State charged Vongdala with felony violation of a court order. The State amended the charge to two misdemeanor counts of domestic violence and Vongdala pleaded guilty to the amended charges. The sentencing court suspended Vongdala's sentence on the condition that he serve 24 months of probation and comply with a number of conditions. Among the conditions of probation imposed was the requirement that Vongdala "possess no weapons of any kind."

Vongdala does not challenge the order prohibiting him from possessing weapons. His appeal is directed at a further condition imposed by the trial court that required him to turn in any firearms that he possessed or owned. When Vongdala indicated at the sentencing hearing that he did not have any firearms to turn in, the court ordered him to sign an affidavit swearing under penalty of perjury that he did not own any firearms or have any in his possession, control, or custody. Vongdala objected, but he did sign the affidavit. He now appeals,

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asking this court to strike the condition of sentence relating to the surrender of firearms and to strike the affidavit he signed. He contends the court exceeded its statutory authority by imposing the condition.

The State moved to dismiss the appeal as moot. Vongdala filed a response. By order of the court commissioner entered on April 4, 2008, the State's motion to dismiss was passed to the merits for consideration by this court at the same time as the underlying appeal.

The State contends that Vongdala's appeal should be dismissed as moot because the relief he requests would not be effective. A case is moot if a court can no longer provide effective relief. *State v. Ross*, 152 Wn.2d 220, 228, 95 P.3d 1225 (2004). In this case, whether or not the relief Vongdala requests would be effective is intertwined with the merits of the issue he raises. We therefore elect to decide the case on the merits.

At the sentencing hearing, the State identified RCW 9.41.800(1) as

relevant authority. RCW 9.41.800(1) states:

(1) Any court ... shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon.

The State now concedes that RCW 9.41.800(1) does not authorize the

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sentencing condition at issue because Vongdala was not convicted of a crime of felony, and he had not previously committed an offense that made him ineligible to possess a firearm. However, this court may affirm for any basis apparent in the record. See, e.g., *State v. Sondergaard*, 86 Wn. App. 656, 657-68, 938 P.2d 351 (1997). The State contends that the condition can be affirmed under other statutory provisions. We agree.

When imposing a sentence for a misdemeanor, the superior court may suspend the sentence. RCW 9.92.060. When suspending a sentence, the court has broad authority to impose conditions which bear a reasonable relation to the defendant's duty to make reparation, or tend to prevent the future commission of crimes. *State v. Summers*, 60 Wn.2d 702, 707, 375 P.2d 143 (1962); *State v. Williams*, 97 Wn. App. 257, 263, 983 P.2d 687 (1999), rev. denied, 140 Wn.2d 1006, 999 P.2d 1261 (2000).

The record of the sentencing hearing suggests that Vongdala feared that by signing the affidavit, he was admitting that he owned or possessed a firearm. This is not the case. The sentencing court was reasonably exercising its discretion to impose probation conditions. While Vongdala pleaded guilty to misdemeanor charges, he stipulated that the sentencing court could review and consider the certification for determination of probable cause. That document indicated that Vongdala possessed a firearm and used it in committing the offense. The trial court ordered him not to possess any weapons, a condition he

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does not object to. Further, as a result of his conviction, Vongdala was statutorily ineligible to possess any firearm in the future. RCW 9.41.040(2)(a)(i).

He was notified of his ineligibility at sentencing, as required by RCW 9.41.047. Requiring Vongdala to turn in any firearm he had or swear that he did not have any was a reasonable means of preventing the future commission of crimes.

Affirmed.

FOR THE COURT:

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