Observations of a Drug Court Judge

Recently I was asked to offer my observations on the worth of drug courts. I am a State Court Judge in Lucas County, Ohio, one of ten Judges handling all felonies and a full civil docket. In addition I serve as a Drug Court Docket Judge. While I clearly have a personal opinion on the validity of the drug court model, I have not conducted any specific controlled experiments to determine its validity. I did not search out scholars for this article; I can simply tell you from my vantage point as a drug court Judge what I witness. I have been in the local courtrooms nearly every day of my professional career since 1988. Initially, I began clerking for a Municipal Court Judge and then maintained a solo practice that focused primarily on criminal defense. I logged a lot of courtroom observation time prior to ever taking the bench. What was always obvious to me was the disconnection in the courtroom, between the bench and the defendant. The Judges would impose their sentences and conditions of probation, but they rarely looked at the defendant enough to know what they were taking in. What I routinely saw was a defendant checking out. Once the list of requirements was stated to them, they realized they were unlikely to succeed with the conditions. Instead of accepting the challenge, they often never even attempted to fulfill the conditions.

Some say that drug courts don’t work and that they don’t reduce recidivism or relapse. I disagree. If the program is developed using the proper established drug court model—including a high-risk recidivism target population, a multi-disciplinary team approach, an ongoing schedule of judicial status hearings, weekly testing no less than two times per week on a random basis, sanctions and incentives, and a standardized regimen of substance abuse treatment—there would be fewer arrests for new offenses and fewer technical violations from the participants. We find that the drug court participants engage in the treatment regimen and the routine. As they get healthier and clear-headed, they start to report that they have improved their family relationships, and as they move into less restrictive phases, they begin to obtain consistent employment.

Contrary to some arguments, drug courts do not send more drug-addicted people to prison. The drug court model is designed to allow the Judge and the treatment team to learn more about the person, and if this model is utilized, it allows the Judge of the drug court and the treatment team to put services in place that will assist that person in recovery and help them to stabilize for a more productive life. This does not mean that a person in the drug court population is never sent to prison. We usually reserve the imposition of the prison sentence for a new felony conviction or a long-term escapee from a facility. Some have argued that the unintended consequences of drug court existence means more arrests for drug possession; I see no correlation between arrests and drug court. Nothing in the protocol would require mass arrests in order to populate the docket. There are clearly enough people on our current caseloads that qualify as high-risk of recidivism offenders.

Using the drug court model approach, we are able to step them through their conditions. The focus is initially on the treatment and stabilization of the drug use and mental health issues that exist. Once proper detailed assessments have been made, the person is entrenched in the treatment component of the process. As the participants first enter into the program, they feel the overwhelming weight of the regimen. However, what becomes obvious to them is that the team aspect of what they are doing has simplified the process. By streamlining their treatment and assisting them with other needs—such as getting a birth certificate, social security card, obtaining a license and health insurance—we start to remove barriers that once existed. The participants become more and more engaged in their own health and enjoy the respect that they are beginning to receive. They start to learn to take care of the daily needs they put aside in the past, such as paying fines, costs, reinstatement fees, and restitution. For many paying rent and utilities is a first. Those people who are in compliance are rewarded mostly with verbal praise each week when they have taken positive steps to comply, but often get other rewards like bus passes or reduction in fines and costs.

As the participants recover, they get back on the grid. It also becomes obvious to all of us involved that a defendant who has been working hard has great disappointment when they have missed a step and are found non-compliant. When someone in the program is non-compliant, the biggest concern they have is that they disappointed their team. Depending on the breach, graduated sanctions are imposed, from a verbal warning and loss of a compliance week in the Phase, all the way up to some form of local incarceration. We do see, routinely, that the person quickly and willingly reengages with all aspects of their treatment and requirements, often asking, themselves, for additional safeguards.

I haven’t spent a considerable amount of time distinguishing between the topics of addiction being a brain disease or a behavioral issue when it comes to deciding if someone needs assistance. The primary goal is to have
a person who is recovering and not committing crimes in our community. Getting bogged down in guarantees in this job means we never do the work. We are dealing with the human variable; there is no one-size-fits-all component. That is why traditional sentencing doesn’t work in many of these situations. If we only decide to work with a person because we are guaranteed a good stat, we will never take the risk.

I believe we can certainly look to the cocaine/crack epidemic of the ’90s, which we left unattended and which still exists today, and the heroin/opiate epidemic that most of our states face now, to know that these are not little bumps in the road for people. They are addicted to these drugs, and they are now committing crimes for various reasons connected to their addiction. They are having children who are born addicted, they are losing all family structure, and they are continually increasing in numbers, as are the crimes they commit while in active addiction. There is no growing out of this condition.

Even if I accept the premise that addiction is not a per se brain disease and that will and self-control certainly play a role in the beginning of the use process, the best comparison is to a person with Type 2 diabetes. Their lifestyle choices and lack of “will” have been a significant contributing factor to their developing the disease. Since it was this lack of will and self-control that caused the disease, should we withhold treatment and services? I think not. I will accept that the people before us have made significant bad choices. Many have already served portions of incarceration prior to supervision. I do believe we have a dual duty as Judges. The first duty is to our community, to try to keep them safe from repeat criminal activity, and the second duty is the requirement to determine who we can try to salvage and assist in getting back to being a viable citizen in our community. The intense supervision of the drug court model along with the full engagement of the Judge and the available streamlined resources are the best tool to succeed at both duties.