



E-ISSN 2332-886X

Available online at

<https://scholasticahq.com/criminology-criminal-justice-law-society/>

In or Out: The Drug Court Dilemma

Andrew Fulkerson,^a Linda Keena,^b and Anthony Longman^c

^a *Southeast Missouri State University*

^b *University of Mississippi*

^c *United States Probation, Western District of Tennessee*

ABSTRACT AND ARTICLE INFORMATION

The drug court was developed as a response to the ineffectiveness of the traditional criminal justice response to addiction. Drug courts are limited in resources and placement opportunities for offenders. Accordingly, the issue of who is placed in the drug court program and why they are so placed is a critical factor in the effective utilization of drug court resources. This paper is a qualitative study of the perceptions of the drug court offenders related to their reasons for entering the program and whether this was the proper program for the needs of the offender and the community. Rehabilitation and avoiding prison are the primary reasons offered by participants for entering the drug court. The study suggests that drug court staff provide better information as to risks and rewards of drug court participation than do defense attorneys.

Article History:

Received 7 February 2016

Received in revised form 14 June 2016

Accepted 21 June 2016

Keywords:

drug court, restorative justice, qualitative research, treatment motivation, drug court and advice of counsel

© 2016 *Criminology, Criminal Justice, Law & Society* and The Western Society of Criminology
Hosting by Scholastica. All rights reserved.

Today's criminal justice system continues to search for more effective methods of addressing drug addiction. The drug treatment court was developed as an alternative to incarceration for drug offenders. This article addresses the process by which drug offenders enter the drug court system, including the motivations and goals of the offenders and the information considered in rendering their decision to choose the drug court option. The study explores the lure of the drug court along with accompanying rewards for success and risks of failure by those considering this path. The decision to enter a drug court program is fraught with pitfalls, including the risk that those who fail to succeed in drug court may serve more time in custody than those who chose a different sentencing option (Gottfredson, Najaka, & Kearley, 2003). This

qualitative study of drug court defendants will analyze the motivations and information available to those facing the choice of getting "in or out" of the drug court.

Drug Court Background

The so-called "War on Drugs" (WOD) was mounted with the stated goal of reducing drug use and abuse. Interdiction of drugs and incarceration of offenders was the common response during the 1970s and early 1980s. Jail and prison populations soared with the United States reaching the unenviable position as the world's leader in prison populations and incarceration rates. In spite of billions of dollars spent

and millions of persons incarcerated, drug availability and use was unchanged (Robinson & Scherlen, 2007). Others assert that the WOD is only an indirect contributor to rising prison populations. The rise in violent and property offenses between 1960 and the 1990s is a more direct factor in the increase in prison populations (Pfaff, 2013). Most drug offenses do not result in incarceration, but do add to an offender's criminal history. This criminal history may make a non-drug offender who would otherwise receive probation now more likely to be incarcerated. This increased criminal history similarly makes the non-drug offender bound for prison more likely to receive a longer sentence (Pfaff, 2013).

Regardless of whether drug offenses are a direct or indirect contributor to the soaring American prison population, policymakers have sought alternatives to prison for drug-related offenses. One such alternative was the creation and evolution of the drug court, or drug treatment court, whose objective is to treat the underlying problems of dependency among criminal offenders and reduce future drug use and crime (Cresswell & Deschenes, 2001). Drug courts use frequent drug testing, individual and group counseling, twelve-step programs, and work requirements, all supervised through regular court appearances (DeMatteo, Marlowe, & Festinger, 2006). The drug court model is a blend of treatment and the threat of incarceration that uses a series of graduated sanctions to promote compliance with the program requirements (Lindquist, Krebs, & Lattimore, 2006).

In most drug courts the successful drug court defendant will emerge with no criminal record through either dismissal of the charges or expungement of the conviction, depending upon whether the court follows a pre-adjudication diversion format or a post-adjudication format. In both formats, the defendant is subjected to a more rigorous supervision program than is the traditional probationary offender (Lurigio, 2008). The unsuccessful drug court defendant will face revocation of the drug court sentence and sentencing to a term of incarceration (Fulkerson, 2012).

Drug courts have demonstrated favorable outcomes for those who complete the rigorous program. A meta-analysis of drug court studies suggests that drug courts may reduce recidivism when compared with the traditional criminal justice approach to drug offenses (Gottfredson et al., 2003; Wilson, Mitchell, & MacKenzie, 2006). Mitchell, Wilson, Eggers, & MacKenzie (2012) stated that the existing literature does suggest that drug courts are effective, but they caution that efficacy is unclear as the more rigorous studies suggest less reduction in recidivism. They also point out that most drug court recidivism studies are limited to the time in which the

subjects are under drug court supervision and fail to address long-term effects. The Mitchell et al. (2012) study was a meta-analysis of experimental and quasi-experimental drug court studies that analyzed 154 eligible independent drug court evaluations. Drug court participants had lower recidivism rates than those of non-drug court participants. Additionally, the Mitchell et al. (2012) study found that this reduction in recidivism was consistent over time up to three years after beginning a drug court program. A meta-analysis conducted by Rossman, Roman, Zweig, Rempel, & Lindquist (2011) suggested more favorable outcomes for drug court participants on multiple levels. After 18 months, drug court participants reported less drug use, fewer positive drug tests, and less criminal behavior than comparison group subjects.

Due to the intermediate sanctions meted out to participants who violate program rules and ultimate revocation from the program and sentencing to prison terms, those who are not successful in the drug court may experience total punishment that is more serious than if they had simply taken their chances with another plea avenue or even a trial (Drug Policy Alliance, 2011; Seigny, Pollack, & Reuter, 2013). The intermediate sanctions may include public service work or short jail sentences and may be imposed with no hearing (Fulkerson, 2012; Taxman, 1999). Gottfredson et al. (2003) reported a slight reduction in time of incarceration for drug court participants compared with the control group but found that the drug court subjects served twice as much time in custody due to sanctions for program violations, which offset the reduction in incarceration time that was otherwise served by the drug court subjects.

It has been suggested that many drug court programs could improve methods of screening and assessment of potential clients (Knight, Flynn, & Simpson, 2008). Suggested improvements include the use of effective standardized screening and assessment instruments. Only those with serious drug use problems should be selected for drug court (Knight et al., 2008). Programs that admit persons with a history of violence have also not been as effective in reducing recidivism as more selective programs (Mitchell et al., 2012). Failure to properly identify potential drug court clients wastes scarce resources and sets up for failure those who are not properly suited for the program. As noted above, those who fail to complete the drug court program may face worse outcomes than they would have experienced through a more conventional sentence. This raises due process issues that may be very important in the event of a failure to complete the program. This includes procedures related to pleading into drug court with full knowledge of the risk of

incarceration for intermediate sanctions and likely sentences for drug court revocation.

As a result of this disparity in outcomes, it is worth considering the paths that are taken by drug offenders in their journey to and through the drug court, and why they choose one path over the others. Avoiding incarceration has been found to be a powerful incentive to enter a drug court program (Farole & Cissner, 2005). A desire to stop using drugs has also been cited as a reason to agree to a drug court sentence (Cosden et al., 2006).

Constitutional Issues

Legal scholars have recognized the importance of adequate protection of a defendant's constitutional rights in the process by which offenders enter the drug court (Oram & Glecker, 2006). Defendants waive a significant procedural protection when pleading into a drug court program. As with other forms of probationary sentences, the drug court offenders waive their rights to a speedy trial, confrontation of witnesses, and sentencing by a jury (Fulkerson, 2012).

As with other probationary sentences, the failure to comply with terms and conditions of the program may result in revocation of the probationary or deferred sentence. The United States Supreme Court, in *Gagnon v. Scarpelli* (1973), held that state court probationers must be afforded due process under the Fourteenth Amendment before their probation may be revoked and they are sentenced to prison. This level of due process for revocation proceedings is much less than the defendant enjoyed prior to the plea into the drug court program. The drug court participant facing termination and revocation is entitled to a preliminary hearing to determine probable cause, notice of the alleged program violations, a hearing on the merits of the allegations, the right to confront witnesses, a decision by an impartial judge, a written decision setting out the violations, and the disposition. The right to appointed counsel must be determined on a case-by case basis. The hearing will be a relatively brief hearing before a judge sitting without a jury. The burden of proof on the state is a preponderance of the evidence as opposed to proof beyond a reasonable doubt. The rules of evidence are limited in their application in the revocation hearing (Fulkerson, 2012; *Gagnon v. Scarpelli*, 1973).

While the relinquishment of important and valuable protections is comparable for drug court participants and other probationers, the risks of failure may be much higher for the offender who agrees to enter a drug court program. The drug court participant will usually face much more intensive and rigorous supervision than the "traditional" probationer (DeMatteo et al., 2006; Hora et al., 1999). The

requirement of more twelve-step meetings, drug screens, counseling sessions, probation visits, and court appearances is a two-edged sword. This rigorous program offers much more support and can be instrumental in helping an offender succeed in the program, but it also generates more risks and more opportunities to violate program terms and conditions. Thus, the strength of the program for those who succeed may also be the source of adverse consequences for those who fail. This makes the decision as to whether to accept the challenges of the drug court program all the more important.

Admission Process

Most drug court programs are voluntary. The reasons for entering the drug court may have an impact upon program retention and success. The processes by which a person is considered for participation may also be very important. Eligibility will be based upon criteria determined by the drug court. Some drug court programs restrict persons with a history of violence or drug distribution (Mitchell et al., 2012). The prosecutor and defense attorney may work together to assess individual eligibility (Hora et al., 1999). According to Podkopacz, Eckberg, and Zehm (2004), a Minnesota study suggested that the most important motivations of defendants for drug court participation were avoiding prison (69.2%) and the opportunity for dismissal of their criminal charges (62.2%). These incentives far exceeded the goal of securing treatment for their addiction (11.2%).

The due process protections in the taking of a plea into the program are great because the defendant has not yet been convicted. A guilty plea must be entered knowingly and voluntarily (*Boykin v. Alabama*, 1969). The advice and counsel provided to a prospective drug court participant must ensure that the defendant understands the possible risks and rewards of the plea, including program rigor and likely punishment in the event of a revocation (Fulkerson, 2012).

Methodology

Current Study

The study examines the reasons offered by drug court participants as to why they agreed to participate in the program, what they intended to gain from participation, and what information they considered in making their decisions. This will be reviewed in the context of ascertaining whether admissions processes are providing sufficient information to defendants who are facing the choice of being "in or out" of the drug court. While program eligibility is an important issue, this study is limited to the factors that prompt

offenders to consider the drug court as their chosen path to deal with drug abuse. The goals of potential drug court participants and information these offenders use to make decisions can assist drug courts in improving admission processes and promoting success for participants.

Study Site

This study concentrates on the Cape Girardeau Drug Treatment Court (CGDTC), which operates out of Missouri's 32nd Judicial Circuit. The Circuit is one of 45 in the state and is comprised of three contiguous counties in Missouri's southeastern region. Of the four associate circuit judges, one presides over the CGDTC. The circuit also employs a drug court administrator.

As of September 2013, there were 3,400 participants enrolled in Missouri's 135 treatment court programs. The courts have an overall graduation rate of 50% and a 60% retention rate. Treatment courts in Missouri marked their 20th anniversary in 2013; Missouri is a national leader, with more treatment courts per capita than any other state. Five of Missouri's 135 programs are veterans' treatment court programs that adopt the Drug Treatment Court method in order to help veterans struggling with addiction, serious mental illness, and co-occurring disorders (Treatment Court, 2013).

Ninety-nine participants were admitted to the CGDTC from July 2011 through June 2013. Fifty-eight percent of the participants were males. Participants' ages ranged from 17-60, with a mean age of 30. As of November 2013, there were 36 active participants (Missouri Judiciary Active, 2013). From July 2011 to June 2013, the CGDTC graduated 17, while 46 received dismissal and/or administrative discharges from the program.

The CGDTC is a rigorous, comprehensive program designed to rehabilitate felony drug and DWI offenders. This program provides offenders with the opportunity to live sober lives as contributing members of society, while improving public safety and providing the government and community with fiscal savings (32nd Judicial Circuit, 2013). The program consists of three primary levels and a fourth, post treatment, level totaling 18 months depending on the participant's performance. Throughout the program, emphasis is placed on group and individual therapy as well as group education and, in some cases, family participation. The curriculum also includes random drug tests, weekly drug court appearances, and writing assignments. Participants are required to maintain full-time employment or be a full-time student (32nd Judicial Circuit, 2013).

Violations of the program guidelines that are grounds for termination and court-imposed sanctions

include, but are not limited to, the following: (a) failure to attend Drug Court sessions, (b) not reporting to assigned officer and/or leaving the county without permission and not returning, (c) an additional conviction of DUI or felony charge, (d) a misdemeanor conviction in combination with other technical violations, (e) continued pattern of illegal drug or alcohol usage, and (f) behavior that demonstrated a refusal to cooperate with the treatment process (32nd Judicial Circuit, 2013).

Court-imposed sanctions for violations include counseling, additional alcohol/drug treatment sessions, increased Drug Court attendance sessions, and/or up to 60 days jail time. During time served in jail, the participants are required to pay jail board fees, which are currently \$22.50 per day. Other sanctions include extension of the probation/parole period, house arrest of up to 24 hours a day, and removal from the program (32nd Judicial Circuit, 2013).

Sample and Participant Characteristics

The participants were selected by non-random, convenience sampling. This sampling technique is often used in qualitative research because the researchers select participants who can "purposefully inform an understanding of the research problem and central phenomenon in the study" (Creswell, 2013, p. 156). Instead of taking a simple or systematic random sample of all 99 CGDTC participants who had been admitted since 2011, the researchers selected a convenience sample of only active drug court clients. Inactive clients were not invited to participate in the study because the researchers wanted to select potential participants who could reflect on and provide insight related to their recent motivation for entry and drug court admission process.

The sample of participants was selected by first contacting the drug court administrator in charge of monitoring the drug court and its active clients. Once the potential participants were identified, the researchers sent a recruitment letter to the clients to determine their willingness to participate in the study. Those who replied with affirmative responses were contacted in order to schedule a time to meet for an interview.

At the time of the study, there were 30 active clients under supervision of the 32nd Judicial Circuit's CGDTC. While all active clients were invited, the descriptive characteristics revealed that 15 (eight females and seven males) were willing to participate in the study. The five demographic questions from the interview schedule also indicated participants' ages ranged from 17 to 47 years. The majority of participants (73%) were convicted of drug-related offenses, while 27% were convicted of DWI. Most were employed (87%). Academically, the majority of

participants had a relatively high level of education that was consistent with the Circuit's general population (U.S. Census Bureau, 2013). Three (26%) participants had earned a Bachelor's degree. Ten (60%) of the participants completed high school, and two (13%) had finished the 10th grade.

Data Collection and Setting

Prior to each interview, an Informed Consent Form (ICF) was prepared and signed by all participants. The ICF outlined statements of confidentiality, voluntary participation and right to withdrawal, lack of risk, and other ethical issues or concerns. Data were collected through semi-structured, face-to-face interviews, and an interview guide was used so that each participant was asked a set of similar questions to make comparisons across interviews. The semi-structured interviews were flexible in that the sequence of questions was not always followed to avoid impeding the narrative flow (Bernard & Ryan, 2010). The questions asked were open ended, which allowed for participant-driven interviews. As opposed to responding to closed ended questions, interviewees were given the liberty to reconstruct their experiences and perceptions (Hennink, Hutter, & Bailey, 2011; Patton, 2001). Each participant was interviewed individually, at a time of his/her convenience, in a private interview room at the probation and parole office so that the interviewees could articulate their perceptions without restraint.

On average, the interviews lasted approximately 20 minutes and were transcribed verbatim. While the saturation point, or the stage when little new information was generated, was reached after nine interviews, researchers opted to continue interviews until all clients who were willing to participate in the study were interviewed.

Member checking, defined as "a quality control process by which a researcher seeks to improve the accuracy, credibility and validity of what has been recorded during a research interview" (Harper & Cole, 2012, p. 510), was conducted during the interview process. Throughout the interviews, the researcher restated or summarized information to determine accuracy. Those participating were provided the opportunity to agree or disagree and to clarify their views, opinions, or experiences if any inaccuracies existed. If they affirmed the recordings, then the interviews were deemed credible (Lincoln & Guba, 1985). Notwithstanding the researchers' strategies to enhance reliability and validation in qualitative research, it is cautioned that the efficacy of the study relies primarily on the participants' perspectives. Finally, the interviewers had no connection to the

CGDTC and had no prior relationship with participants prior to the interview.

Data Analysis

To ensure that there would not be any adverse consequences, researchers identified transcriptions by a randomly assigned number. Aside from the researchers, no drug court personnel or probation officer had access to participants' names, recordings, or transcriptions.

After the interviews were transcribed, a content analysis was conducted to better understand the participants' responses and to organize their replies into appropriate categories. Microsoft Word was used to perform a content analysis according to the constant comparative method (Strauss & Corbin, 1997). Data were analyzed by an unrestricted coding, or "open coding" (Strauss, 1990). Researchers read the document line-by-line and word-by-word to identify substantial patterns and themes. Then, the interpreted patterns and themes were examined by a phenomenological case study analysis to explore the perceptions of drug court clients (Creswell, 2013).

Findings

When interpreting the findings, the researchers were mindful of a common qualitative research characteristic, multiple realities. Denzin (2010) cautioned that multiple realities exist in any study: (a) the interviewers, (b) those being studied, and (c) those interpreting the findings. According to Denzin (2010), "objective reality will never be captured.... A commitment to dialogue is sought in any interpretive study" (p. 271). The following findings emerged from the intersection of the coding and interpretive processes. Findings were described through a narrative description and served to answer the research questions. The intent was not to condense the findings to statistical form but to reveal it as descriptively as possible. NameVoyager (2016) was used to assign age- and gender-appropriate pseudonyms.

Research Question 1. What Motivated the Participant to Enter Drug Court?

Three main reasons for entering drug court were provided by participants. When asked to prioritize the motives for entering the drug court program, nearly half of the participants ranked the "personal decision to get clean" as the most important factor. Five of the participants classified "legal pressure" (avoid conviction or avoid prison) and four rated "informal pressure from family, employer, or friends" as their most significant reason for entering drug court.

In respect to their personal motivation to obtain and/or maintain sobriety as their motivation to enter drug court, the following comment from Courtney exemplified many:

I was sick and tired of getting in trouble, you know. I mean every bad thing that's ever happened to me in life, or bad decision, whether it was legal or personal all happened as a result of or was revolving around alcohol.

Other participants made statements such as, "I wanted to be in drug court because I needed somebody or something to support me" and "I hoped drug court would help me cope with what I need to make myself better." Speaking in reference to her decision to pursue drug court, Elizabeth revealed her motivation:

It was my decision from the get go. [My attorney's] advice was to go do [120 days of shock probation in prison] which wouldn't have been bad but I wanted to not be able, not have to take sleeping pills. So I wanted to do it; so it was all my choice.

The second most reported reason for entering drug court was legal pressures. These pressures included the very real threat of a criminal conviction or imprisonment. Some of the participants had been placed on supervised probation and ordered to complete the drug court program following their pleas of guilty and the court's Suspended Imposition of Sentence (SIS) ruling. If the defendant received an SIS and violated probation, he or she would face revocation. After a revocation hearing, the judge may order any sentence within the full range of punishment for the crime convicted. Conversely, if the defendant successfully completes drug court and probation, no sentence is ever ordered. An SIS, therefore, is not considered a 'conviction' for anything other than law enforcement purposes. Many drug courts use a post-adjudication process in which the defendant pleads guilty to the offense and is transferred to the drug court program for supervision. If the defendant successfully completes the program, the conviction is expunged. In both the pre-adjudication and post-adjudication programs the successful participant will ultimately avoid criminal conviction.

A few participants commented on how the drug court program had enabled them to avoid a felony conviction. For example, Matthew stated,

I wanna just say that drug court is an opportunity for you to fix your life and if you don't see it like that, then you're gonna

hate it. You gonna be like, oh this is bullshit. I got to go to do this. I got to go do that. Like, that's just, if you don't want an opportunity to fix your life and not have a felony on your record.

The most popular explanation for why legal pressure motivated them to enter drug court was their desire to avoid incarceration. Joshua discernibly stated,

...my next step was prison, if I didn't complete drug court. So, I'm gonna do this because I wanna get done with drug court. It keeps me from going to jail, you know. I went in with an open mind because sittin' in jail before all of this took place I had made it up, in my mind, that I was ready to get off drugs. I was basically going back to prison every time, you know. It's just like this, this is not what my life consists of; I need to do something different.

The majority clearly viewed drug court as a more preferred option to incarceration. Statements such as "I mean, I guess it was either [drug court] or prison" and "I didn't want to go to prison..." are representative of the explanations provided by the drug court clients. Yet, two participants offered a very practical reason for how legal pressure prompted them to choose the drug court route - speed. They explained that the drug court program is much shorter in duration than the average probationary sentence. "You may get done with your probation in 2 to 3 years rather than 5 years," reported Victoria.

Furthermore, informal pressure from family, employer, or friends was cited as a significant reason for entering drug court. Participants reported that family members shaped their decision by making them realize that they were going to lose financial support, suffer complete disassociation/abandonment by family members, and/or lose custody of children. One client, explicitly, felt pressured to enter the program in order to have her children returned to her. In summary, families, employers, and friends helped the drug court clients comprehend that they were deeply affected and saddened by seeing their fall from being productive members of the community, work place, or family to those who demonstrated no self-control because of drugs and alcohol.

Research Question 2. Did Drug Court Participants Feel That They Were Adequately Informed About the Rigor of the Program and the Relative Risks and Rewards of the Program?

In addition to inquiring about their reasons for entering drug court, the participants were asked to share their perspective as to whether or not they were appropriately counseled relative to the drug court rules and expectations prior to entering the program. Specifically, participants were asked if they felt appropriately informed about the mandatory behavioral guidelines with which they would be required to comply in order to achieve the highest level of success. The drug court clients explained they had meetings with attorneys, probation officers, and the Drug Court Administrator who listed the requirements of the program. Moreover, each participant underwent a screening process to determine if they would be a "good fit" for the program. Kristen reported,

I would say the drug court administrator was probably the most effective in warning me. He told me that it's painful, like going through the battle of your addiction, and it's just, it's tough. He also recommended that...you have to put [the program] first, before your job, and anything else.

Another client, Daniel, explained,

[The Drug Court Administrator] told me that it was gonna be a hard program, lots of classes, lots of groups, lots of drug tests, and that if I still wanted to use [drugs] that it would be a program that wouldn't be for me. Because there's lots of consequences when you do stuff you're not supposed to do.

Although all participants conceded the Drug Court Administrator adequately cautioned them of the rigorous guidelines, only one-fourth of the participants believed they were sufficiently advised by their attorney. Melissa explained,

Me and my lawyer went up to the stand. [My lawyer] asked me, 'do you wanna do drug court?' And I kind of said, 'No.' And he was like, well I think you need to. And I, you know, I had just paid him \$2,000. I'm gonna trust what he says. So I took his advice and I did it, but I should have read up on it more.

Although they may not have perceived they were adequately advised of the drug court guidelines and the difficulty of the program, the majority of the drug court clients believed their defense attorneys had warned them about possible consequences of failing to complete the program. According to Jeffery,

My [attorney] told me I have to do drug court and the bad part is you mess up one time, you going to prison. And the good part is if you finish it you get off probation. And, you know, if you work it, if you do it right and don't fake it to make it, you can be a better person.

This attorney may have been trying to make a point with the client concerning the risks of failure as the advice was not entirely accurate. As noted previously, drug courts recognize the likelihood of relapse by addicts and incorporate a system of graduated sanctions for violations of program rules, including drug use. A drug court participant who "messes up one time" will not go to prison. The advice was correct that repeated violations will result in revocation and a prison sentence.

It appears that the most detailed advice related to program rigor came from the drug court coordinator and probation officer and not from the defense attorneys. The drug court staff has greater familiarity with the details of the program and expectations of participants. This puts them in a far better position to relate specific information in relation to frequency of 12-step program meetings, individual and group counseling sessions, drug testing, and drug court appearances.

Research Question 3. Are Procedures in Place to Permit Drug Court Participants to Opt-Out of the Program?

Although there was some variation among the participants, the overall consensus as to whether there were procedures in place to opt-out of the program once they had entered was no. This drug court program does not have a procedure where participants are given the opportunity to voluntarily leave the program and return to the plea bargaining table or to trial. Such an option would be useful for those who fail to grasp the rigorous nature of the program when making the decision to plead into drug court. Some persons may see very soon that they are not a "good fit" for drug court and are destined to failure. For these individuals, the "opt-out" procedure may be beneficial.

Inevitably, there will always be a desire for some clients to leave the program once they actually have to start complying with the demanding requirements. Many of the participants responded that they would not have voluntarily withdrawn from the program had they been given the opportunity, yet others responded they would have happily done so. When asked if he would withdraw if given the opportunity to do so, Brandon acknowledged, "If I was going to prison, no. If I can be free, yeah."

Nearly all of the participants stated that they would not opt out even if such a possibility existed. There were, however, two participants who stated that they would have opted out if given the chance. Heather stated,

Hell yes [laughter]. Yes, I would have. You know, I mean, like I said I could have got my child back with rehabilitation. I have kids that are mad at me because I'm always gone. I'm always having to do something day or night.

Another reported he would have left the program "[b]ecause it's so hard." Gabriel explained, "seeing a probation officer once every two weeks, class twice a week, and get a job... [Y]ou have to get a job anyway on probation, but it just seems a lot more harder [sic] than just being on felony probation."

For these few individuals, an "opt-out" procedure could be an effective tool. However, a court using such a program must be wary of those who just need more encouragement to remain in the program and succeed.

Discussion

What entices a drug offender to enter the drug court program? These participants all have at least two things in common. They all have serious legal problems. All have been charged with a serious criminal offense. Also, all have been identified as having significant substance abuse involvement. These are certainly related problems, but they are still different problems. Have these persons selected the drug court as their path from addiction to recovery, or do they perceive the drug court as the most expedient path out of their current legal difficulties? Slightly more of the drug court participants (46%) reported their personal recovery from addiction than those who viewed legal pressures (40%) as the primary reason for entering drug court. This ranking is the inverse of the studies by Farole and Cissner (2005) and Podkopacz et al. (2004) that reported avoidance of prison as the number one reason that defendants select drug court. Yet, the interviews in this study suggest an overlap between these factors. In fact, almost three fourths of the participants reported those two reasons as the most important or second most important reason for choosing the drug court option. For many of the subjects, their addiction was the root cause of their legal problems. So, "getting clean" was the way to avoid further problems with the law and the criminal justice system. Others had a less nuanced reason—they just did not want to go to prison. Drug court was viewed as the path away from incarceration. Or, some

were probably looking at probation regardless of whether they elected the drug court path or "regular" probation, but, the drug court path was shorter than ordinary probation. These persons were weighing two to three years in drug court supervision as opposed to five years of the traditional probationary sentence. They simply chose drug court as the faster route.

Drug courts are rigorous programs that have much to offer drug abusers. The rewards include the specific benefit of loosening the grip of addiction that can paralyze the life of an addict and the related benefits of restoration of family, employment, and community relationships. Development of simple life skills, such as adhering to a rigid schedule and meeting multiple responsibilities, is also part of a drug court program. These benefits are also present, at least in part, even for those who do not complete the program. One defendant recognized the support provided to participants by the drug court program. The statement that "I needed somebody or something to support me" is indicative that at least some defendants are aware of the systemic underpinning that a drug court program can provide to a person seeking to recover from addiction.

While the program has clear benefits for participants, it also carries very real risks for those who are not successful in traversing the drug court path. The system of graduated sanctions for program violations means that if a participant relapses, cheats on urinalysis procedures, or does not adhere to program rules, he or she can be sentenced to short stints in a local detention center. These short jail sentences could amount to several weeks. Participants can also be ordered to complete in-patient rehabilitation programs that can also combine for several more weeks of lost freedom. Treatment in some jurisdictions may include months in a lock-down treatment center. Finally, the participant who simply cannot comply with program requirements or is charged with new offenses may be terminated from the program and sentenced to prison on the original charges (Fulkerson, 2012; Taxman, 1999). Some commentators suggest that those who fail to complete drug court programs will serve more time in correctional facilities than those who do not take the drug court path (Drug Policy Alliance, 2011; O'Hear, 2009). Other studies suggest that reductions in incarceration time for drug court participants are offset by the additional time in custody resulting from sanctions for program violations (Gottfredson et al., 2003; Sevigny et al., 2013). All of these potential negative consequences will occur with reduced due process protections than the offender had before pleading into the drug court (Fulkerson, 2012).

The substantial risks faced by potential drug court clients coupled with the restricted due process

protections afforded to drug court participants demands that the path to the drug court be clearly marked and all pitfalls well lighted. This study demonstrates that potential drug court participants were warned of program rigor by drug court staff instead of the lawyers who should have been the most concerned with the risks for their clients.

The majority of the participants report that their lawyers provided adequate advice as to consequences of failure, but more detailed explanation of specific areas of possible failure came from the drug court staff. It is troubling that only one-fourth of the participants felt that they were sufficiently advised by their attorney as to the rigor of the drug court program. The attorneys who represent defendants on criminal offenses and render legal advice concerning whether a client should or should not take the path to drug court should be well versed on drug court practices and procedures. This should include knowledge of outcomes for drug court clients, including those who fail to comply with program requirements. One participant disclosed that the defense attorney recommended shock probation rather than drug court. This suggests that some members of the criminal defense bar are aware of the rigors and risks of the drug court program. The consequences of failure are so great that all defendants should report that their attorneys adequately advised them on these matters. The defense attorney should marshal the informational resources available to the defendant and then ensure that the defendant adequately considers this information in the critical decision of whether to accept a drug court plea.

Should drug courts have an opt-out provision for those who soon come to the realization that they have chosen their path poorly? Such a policy would be one in which the offender who within some reasonable time period learns that he is not a "good fit" for the program could withdraw and resume plea negotiations or go to trial on the charges. A withdrawal policy was a feature of a Washington drug court discussed in *State v. Drum* (2008). The Washington drug court plea process includes execution of an agreement by the defendant that set out program terms and conditions. The drug court contract included the following provision:

17. That if the defendant chooses to leave the Program within the first two weeks after signing the Drug Court Contract, withdrawal will be allowed, this contract will be declared null and void, and the defendant will assume prosecution under the pending charge(s) as if this contract had never been agreed to. The defendant agrees that this ability to withdraw from the terms

of this contract will cease after the period of two weeks following the effective date of this contract and thereafter the defendant shall remain in the Program until graduation unless his/her participation is terminated by the Court. The defendant further agrees that the ability to withdraw from the terms of this contract will cease within the first two weeks, if he/she has committed a willful violation of this contract for which, in the judgment of the Court, he/she may be terminated from the program. (*State v. Drum*, 2008, p. 611)

The aforementioned "opt out" clause was favorably considered by the court in its discussion of due process issues in the drug court plea process.

The drug court in this study had no such voluntary withdrawal provision. Most of the subjects reported that they would not have taken this step even if available. However, two of the subjects (13%) did state that they found the program so rigorous that they would have opted out given the chance to do so. One stated that the program requirements consume much more time than ordinary felony probation and that withdrawal would have been preferable, if available. This suggests that warnings of program requirements and rigor were not enough to actually describe the reality of these factors to the person. This is a practical problem in day-to-day functioning in a drug court program that could have serious legal consequences for the defendant if it results in program failure. An opt-out provision could be of benefit to such an individual. Drug court staff could also identify clients who, on further review, are not suited for the program.

If drug courts provide an "opt-out" policy, there are risks that some could be denied continued access to the program who could have ultimately succeeded if they had persevered. Any such policy must be utilized as an exception to the rule and not as a routine practice. Effective screening of potential participants by drug court staff and thorough legal advice from defense counsel should be the curb to keeping ill-suited persons from entering the drug court.

Is there any difference in program retention between those who express a desire to "get clean" over those who are seeking the path of least resistance from the legal pressures? While all but two of the subjects (87%) claimed one of these factors as the reason for choosing the drug court program, only a very slim majority (seven to six) of the subjects in this study reported "getting clean" as more important than responding to legal pressures as the moving force behind their decision. The relationship between reasons for entry into drug court and outcomes should be considered by future studies.

Conclusion

The drug court is not a panacea to the problems of drug addiction and criminal conduct. It is, however, an effective and restorative response to addiction for those who complete the program. The path from addiction to recovery is fraught with pitfalls and stumbling blocks. The utilization of limited drug court resources together with the risks for increased periods of incarceration for those who fail to successfully complete the program make the process whereby offenders are placed in drug court all the more important. This study suggests that the predominant reasons for entry identified by drug court clients are the desire to get clean and the legal pressures, especially avoidance of prison. It also appears that these two reasons overlap with nearly three in four participants reporting those two reasons as the first and second most important factors in the drug court decision. Just as the drug court program itself operates as a juxtaposition of treatment under the constant threat of prison for clients, so does the path to the drug court, paved with the personal desire to break the bonds of addiction and the self-serving desire of the person to avoid prison. This study considers the reasons that offenders choose the drug court as their path to overcoming addiction. It does not consider the screening process whereby drug courts sort defendants into the drug court or traditional sentencing options. This issue should be the focus of future research. Future research should also address whether there are differences in recidivism, drug usage, and criminal conduct demonstrated by those with different reasons for choosing drug court instead of a more traditional sentencing track.

Drug courts must provide full disclosure to potential clients as to the relative risks and rewards of the program. The fact that the rewards of getting clean and avoiding prison are such powerful motivators makes the need to provide clear warnings of the risks of failure all the more compelling. Too many defendants may only hear the "you are not going to prison" part of the explanation if there is insufficient attention to the part of the discussions devoted to the risks and consequences of failure.

The present study suggests that this information is provided to defendants in the screening process. However, it appears that the most meaningful information from the perspective of the offenders comes from drug court staff and not the defense counsel. This is not to suggest that defense counsel have a more important role in the process of advising defendants as to the nature of the drug court program than others involved in the screening process, but the nature of the attorney-client relationship makes this role pivotal. The criminal defense bar must ensure that

defendants charged with drug or drug-related offenses are provided with sufficient information to make the important decision as to whether the drug court is the right program for their individual needs. This includes ensuring that defendants can make an informed risk-benefit analysis of the drug court from both a legal as well as a practical perspective. The defense bar should increase their efforts to ensure that defendants facing this choice have a clear understanding of these issues.

References

- 32nd Judicial Circuit. (2013). *Adult criminal, family & DWI "drug court" program handbook* (No. 2013). Cape Girardeau, MO: 32nd Judicial Circuit, Division IV, Cape Girardeau County, Missouri.
- Bernard, H. R., & Ryan, G. W. (2010). *Analyzing qualitative data: Systematic approaches*. Thousand Oaks, CA: Sage.
- Boykin v. Alabama*, 395 U.S. 238 (1969).
- Cosden, M., Basch, J. E., Campos, E., Greenwell, A., Barazani, S., & Walker, S. (2006). Effects of motivation and problem severity on court-based drug treatment. *Crime & Delinquency*, 52(4), 599–618. doi: 10.1177/0011128705284287
- Creswell, J. W. (2013). *Qualitative inquiry & research design: Choosing among five approaches* (3rd ed.). Thousand Oaks, CA: Sage.
- Cresswell, L. S., & Deschenes, E. P. (2001). Minority and non-minority perceptions of drug court, program severity, and effectiveness. *Journal of Drug Issues*, 31(1), 259–292. doi: 10.1177/002204260103100113
- DeMatteo, D. S., Marlowe, D. B., & Festinger, D. S. (2006). Secondary prevention services for clients who are low risk in drug court: A conceptual model. *Crime & Delinquency*, 52(1), 114–134. doi: 10.1177/0011128705281751
- Denzin, N. K. (2010). On elephants and gold standards. *Qualitative Research*, 10(2), 269–272. doi: 10.1177/1468794109357367
- Drug Policy Alliance. (2011). *Drug courts are not the answer: Toward a health-centered approach to drug use*. Retrieved from <http://www.drugpolicy.org/sites/default/files/Drug%20Courts%20Are%20Not%20the%20Answer%20Final2.pdf>
- Farole, D. J., & Cissner, A. B. (2005). *Seeing eye to eye? Participant and staff perspectives on drug court*. New York, NY: Center for Court Innovation.

- Fulkerson, A. (2012). Due process in the drug court: How much process is due? *Criminal Law Bulletin*, 48(4), 655–691.
- Gagnon v. Scarpelli*, 411 U.S. 778 (1973).
- Gottfredson, D. C., Najaka, S. S., & Kearley, B. (2003). Effectiveness of drug treatment courts: Evidence from a randomized trial. *Criminology & Public Policy*, 2(2), 171–196. doi: 10.1111/j.1745-9133.2003.tb00117.x
- Harper, M., & Cole, P. (2012). Member checking: Can benefits be gained similar to group therapy? *The Qualitative Report*, 17(2), 510–517.
- Hennink, M., Hutter, I., & Bailey, A. (2011). *Qualitative research methods*. Los Angeles, CA: Sage.
- Hora, P., Schma, W., & Rosenthal, J. (1999). Therapeutic jurisprudence and the drug treatment court movement: Revolutionizing the criminal justice system's response to drug abuse and crime in America. *Notre Dame Law Review*, 74(2), 439–538.
- Knight, K., Flynn, P. M., & Simpson, D. D. (2008). Drug court screening. In C. Hardin & J. Kushner (Eds.), *Quality improvement for drug courts: Evidence based practices*. Retrieved from National Drug Court Institute website: <http://www.ndci.org/sites/default/files/ndci/Mon09.QualityImprovement.pdf>
- Lincoln, Y. S., & Guba, E. A. (1985). *Naturalistic inquiry*. Beverly Hills, CA: Sage.
- Lindquist, C., Krebs, C., & Lattimore, P. (2006). Sanctions and rewards in drug court programs: Implementation, perceived efficacy, and decision making. *Journal of Drug Issues*, 36(1), 119–146. doi: 10.1177/002204260603600106
- Lurigio, A. J. (2008). First 20 years of drug treatment courts: A brief description of their history and impact. *Federal Probation: Journal of Correctional Philosophy & Practice*, 72, 13–17.
- Missouri Judiciary Active (2013). *Treatment court active participant summary – count of cases*. Jefferson City, MO: Missouri Drug Courts Coordinating Commission.
- Mitchell, O., Wilson, D. B., Eggers, A., & MacKenzie, D. L. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts. *Journal of Criminal Justice* 40(1), 60–71. doi: 10.1016/j.jcrimjus.2011.11.009
- NameVoyager (2016). *NameVoyager wizard*. Retrieved from <https://blog.mozilla.org/ux/2012/05/picking-pseudonyms-for-your-research-participants/>
- O'Hear, M. M. (2009). Rethinking drug courts: Restorative justice as a response to racial injustice. *Stanford Law & Policy Review*, 20, 463–474.
- Oram, T., & Glecker, K. (2006). An analysis of the constitutional issues implicated in drug courts. *Idaho Law Review*, 42, 471–532.
- Patton M. Q. (2001). *Qualitative research and evaluation methods* (3rd ed.). Thousand Oaks, CA: Sage.
- Pfaff, J. F. (2013). Waylaid by a metaphor: A deeply problematic account of prison growth. *Michigan Law Review*, 111(6), 1087–1213.
- Podkopacz, M., Eckberg, D., & Zehm, K. (2004). *Drug court defendant experience and fairness study*. Fourth Judicial District Research Division, State of Minnesota. Retrieved from: [http://www.mncourts.gov/mncourtsgov/media/assets/documents/4/reports/Drug_Court_Fairness_Report\(2004\).pdf](http://www.mncourts.gov/mncourtsgov/media/assets/documents/4/reports/Drug_Court_Fairness_Report(2004).pdf)
- Robinson, M., & Scherlen, R. (2007). *Lies, damned lies and drug war statistics: A critical analysis of claims made by the Office of National Drug Control Policy*. New York: State University of New York Press.
- Rossman, S. B., Roman, J. K., Zweig, J. M., Rempel, M., & Lindquist, C. H. (2011). *The multi-site adult drug court evaluation: The impact of drug courts*. Washington, D.C.: Urban Institute, Justice Policy Center.
- Sevigny, E. L., Pollack, H. A., & Reuter, P. (2013). Can drug courts help to reduce prison and jail populations? *The ANNALS of the American Academy of Political and Social Science*, 647(1), 190–212. doi: 10.1177/0002716213476258.
- State v. Drum*, 143 Wash. App. 608, 181 P.3d 18 (2008).
- Strauss, A. L. (1990). *Qualitative analysis for social scientist*. New York, NY: Cambridge University Press.
- Strauss, A., & Corbin, J. M. (1997). *Grounded theory in practice*. Thousand Oaks, CA: Sage.
- Taxman, F. S. (1999). Graduated sanctions: Stepping into accountable systems and offenders. *Prison Journal*, 79(2), 182–205. doi: 10.1177/0032885599079002004

- Treatment Court (2013). *Treatment court facts*. Retrieved from: <https://www.courts.mo.gov/file.jsp?id=6148>
- Wilson, D. B., Mitchell, O., & MacKenzie, D. L. (2006). A systematic review of drug court effects on recidivism. *Journal of Experimental Criminology*, 2, 459–487. doi: 1007/s11292-006-9019-4.

About the Authors

Andrew Fulkerson is the former Judge of the Greene County, Arkansas District Court, and deputy prosecuting attorney for the Second Judicial Circuit of Arkansas. He has also served as Special Justice on the Supreme Court of Arkansas. Fulkerson holds a B.A. and M.A. from Arkansas State University, a J.D. from the University of Arkansas, and a Ph.D. from the University of Portsmouth, U.K. He is a former member of the Arkansas Judicial Discipline and Disability Commission and past president of the Arkansas District Judges Council. Fulkerson now serves as Professor of Criminal Justice and Online Graduate Program Coordinator for the Department of Criminal Justice and Sociology at Southeast Missouri State University. He is the past Chairman of the Arkansas Educational Television Network

Commission, a member of the Board of the Restorative Justice Section of the Academy of Criminal Justice Sciences. He has published scholarly research on a number of topics, including the death penalty, restorative justice issues, and drug treatment courts.

Linda Keena is an Associate Professor of Legal Studies and Graduate Program Coordinator at the University of Mississippi. She has a record of scholarly publications which reflects a variety of restorative justice, corrections, and servant leadership topics. She is a member of the American Corrections Association's Professional Education Council and Delegate Assembly, representing Institutions of Higher Learning and a life member of the Academy of Criminal Justice Sciences and National Association of Community and Restorative Justice. Dr. Keena also serves on the Board of the Restorative Justice Section of the Academy of Criminal Justice Sciences.

Anthony Longman is a United States Probation Officer for the Western District of Tennessee. He previously served as a Probation and Parole Officer for the Missouri Department of Corrections. He earned an M.S. in Criminal Justice at Southeast Missouri State University where he served as a Graduate Assistant in the Department of Criminal Justice & Sociology.