No. 90527-4

COA No. 69802-8-I

THE SUPREME COURT

IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

V.

JOHN W. JACKSON,

Petitioner,

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Michael Hayden, Judge

PETITION FOR REVIEW

By: JOHN W. JACKSON, Appellant
DOC# 979212 - HA-01-4L
Coyote Ridge Correction Center
P.O. Box 769
Connell, WA. 99326-0769

T A B L E O F C O N T E N T

TABLE OF AUTHORITY

WASHINGTON APPELLANT COURT

WASHINGTON SUPREME COURT

OTHER STATUTORY AUTHORITY

A. IDENTITY OF PETITIONER

John Jackson, appellant, Pro Se, asks the court accept the review of the Court of Appeals decision, before remand.

B. DECISION FOR REVIEW

The Court of Appeals COA# 69802-8-I, filed June 16, 2014, finding appellant's other claims meritless, where trial court misapplied the statutes in the sentence imposed.

A copy of the decision is in Attachment-A, and appellant filed no 'motion for reconsideration' of the panel's ruling.

C. ISSUES PRESENTED

1. THE REVIEWING COURT FAILED TO CORRECT SENTENCE, WHERE TRIAL COURT EXCEEDED THE AUTHORITY IN STATUES UNDER THE SENTENCE IMPOSED.

D. STATEMENT OF FACTS

The appellant agreed to plea guilty on the third day of a trial to "Attempted First Degree Assault" and "Harassment", upon advise of his trial counsel. The appellant was sentenced, and filed the appeal COA#69802-8-I, which prevailed on only a single error, requiring remand for correction of sentence.

Appellant asked review by this court, where judicial economy would best be served by correction of all sentencing errors during a single remand, and the error is likely to occur upon a judgment entered anew on remand without further direction of the courts, as a second appeal would not be in the best interest of anyone, this review should be granted, and decision made on statutes.

D. ARGUMENTS PRESENTED

The reviewing court has directed the sentence corrected, as the State's attorney conceded error in sentencing appellant under a term in excess of the statutory maximum sentence allowed by the law.

However, the court ignored the fact the sentence was not a legal or correct sentence, apparently due to the insufficiently argued briefing of appellant, a mere laymen of lay. In interest of judicial economy the appellant is asking this court except a review of the sentence issue, where the trial court imposed the sentence without authority in the statutes, and this same type of error would occur at any re-sentencing hearing, where court erred in interpretation of RCW 9A.28.020 statute at sentencing.

"We review questions of statutory interpretations de novo." State V. JP, 149 Wn.2d 444, 69 P.3d 318 (2003). "When we inter--pret a statute, our goal is to carry out the legislative intent." Burns V. City of Seattle, 161 Wn.2d 129, 164 P.3d 475 (2007).

"The first step in interpreting a statute is to examine its plain language." State V. Armendariz, 160 Wn.2d 106, 156 P.3d 201 (2007). "The plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the stat--utory scheme as a whole." State V. Engel, 166 Wa. App. 572, 210 P.3d 1007 (2009). "A statute is ambiguous when it is subject to two or more reasonable interpretations." State V. Hahn, 83 Wa. App. 825, 924 P.2d 392 (1996).

"When the plain language is unambiguous, and legislative intent is apparent, we will not construe the statute any diff--erently." State V. Bunker, 169 Wn.2d 571, 238 P.3d 487 (2010).

"If the statute is suseptable to more than one reasonable interpretation, it is ambiguous, and the rule of lienity requi--res us to interpret it in favor of the defendant absent clear legislative intent to the contrary." State V. Mandanas, 168 Wn.2d 84, 228 P.3d 13 (2010). "The sentencing reform act limits the trial court's sentencing authority to that expressly found in the statutes." State V. Furman, 122 Wn.2d 440, 858 P.2d 1092 (1993). "If the trial court exceeded its sentencing authority its actions are void." State V. Soto, 177 Wa. App. 706, 309 P.3d 596 (2010)

"In judicial interpretation of statutes, the first rule is the court should assume the legislature means exactly what they say. Plain words do not need construction." State V. McCraw, 127 Wn.2d 281, 878 P.2d 838 (1995).

The sentencing reform act(SRA) has three (3) classes for felony crimes, Class-A is considered "Serious Violent" crimes; Class-B is considered "Violent" crimes, however to a lesser or reduced level of violence than Class-A felony crimes; and the Class-C is considered "Non-violent" crimes.

The crime of assault is also included in each class of the felony codes, where Class-A Assault is listed as "First Degree"; Class-B Assault is listed as "Second Degree"; and Class-C Assa--ult is listed as "Third Degree".

The appellant agreed to "Attempted Assault First Degree" in this case, which placed appellant under RCW 9A.28.020 standards for sentencing, as the legislature chose to treat attempted or not completed crimes differently that completed crimes.

RCW 9A.28.020 States:

> "(1) A person is guilty of an attempt to commit a crime if with intent to commit a specific crime, he or she does any act which is a substantial step towards the commission of that crime.
>
> (2) If the conduct in which the person engages otherwise constitutes an attempt to commit a crime, it is not a defense to prosecution of such attempt that the crime charged to have been attempted was under the attendant circumstances, factually or legally impos--sible of commission.
>
> (3) An attempt to commit a crime is a:
>
> (a) Class A felony when the crime attepted is murder in the First degree, Murder in the Second degree, Arson in the First degree, Child Molestation in the First degree, Indecent Liberties By Forceful Compulsion, Rape in the First degree, Rape in the Second degree, Rape of a child First degree, or Rape of a child Second degree;
>
> (b) Class B felony when the crime attepted is a class A felony other than an offense listed in (a) of this subsection;
>
> (c) Class C felony when the crime attempted is a class B felony;
>
> (d) Gross Misdemeanor when the crime attepted is a Class C felony;
>
> (e) Misdemeanor when the crime attepted is a gross misdeameanor or misdemeanor.

Since "Attempted Assault First Degree" is not listed under the subsection (a) of this statute, the legislature mandated a court's duty to treat the attempted assault as a Class-B felony assualt in sentencing, which was not done in the present case.

First step in sentencing "Attempted First Degree Assault", per legislative command in RCW 9A.28.020, as a "Class-B Assault" required the court locate the seriousness level for the class-B assault" in RCW 9.94A.515, which is IV for assault 2° a class-B felony.

Second step in sentencing "Attempted First Degree Assault", per legislative command in RCW 9A.28.020, as a "Class-B Assault" required the court locate the seriousness level IV in the table in RCW 9.94A.510 "Sentencing Grid", which shows the standard or allowed sentence ranges for "Class-B Assault".

The trial court failed to follow either of these steps in the present case, and instead mistakenly used the seriousness level of XII for "First Degree Assault" a "Class-A felony" offense, which violated legislative command in RCW 9A.28.020 for the attempted first degree assault.

The maximum sentence allowed under seriousness level IV is 63-84 months for the class-B felony, and under seriousness level XII the maximum sentence is 240-318 months, therefore the court's 120 month sentence issued exceeds the maximum 84 month sentence allowed under seriousness level IV for the class-B felony assault, per legislative intent established through RCW 9A.28.020; and RCW 9.94A.510 standards.

Therefore, clearly the trial court ignored, or misinterpreted the sentencing statutes in issueing the sentence, and had Jackson been properly informed the agreed sentence was exceeding what the legislature allowed for the class-B felony, a plea would not have

agreed to by the appellant, therefore since the sentence is not properly done by the court, and appellant lacked knowledge that the sentence should have been 84 months or less, per statutory command of the legislature, the sentence must either be fixed or the plea agreement withdrawn, due to lack of knowledge.

Third step in sentencing "Attempted First Degree Assault" as a class-B felony required the trial court determine the appellant's offender score, and criminal history under RCW 9.94A.525(8), where class-B assault is a "violent" offense, not "Serious Violent" like class-A assualt. RCW 9.94A.525(9) does not apply under 9A.28.020.

The appellant has the following criminal history:

1. 2.	VUSCA Section-D Bail Jumping	4/21/05 4/21/05	1 Point
3.	Possession Cocaine	12/28/99	1 Point
4.	Possession Cocaine	4/3/98	1 Point
5.	Possession Cocaine	3/18/97	1 Point
6. 7. 8.	Possession Cocaine Possession Cocaine Solicitation Cocaine	9/13/96 9/13/96 9/13/96	1 Point
9.	Unlawful Possession Firearm	2/17/95	1 Point
10. 11.	Assault 3 DV Felony Harassment	8/6/93 8/6/93	1 Point
12.	Other Current Crime		1 Point
		Current Totals:	8 Points

The trial court failed to follow RCW 9.94A.525(5)(a)(i) that reads in relevant parts:

> "The current sentencing court shall determine with respect to all other prior adult offenses for which sentences were served concurrently, or prior juvenile offenses for which

> sentences were served consecutivel, whether these offense shall be counted as one offense, or as separate offense using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used.

The trial court used an offender score of twelve (12) points in criminal history, combined with a seriousness level of XII to determine appellant's standard sentence range would be 240 thru 318 months, on the class-A Assault sentencing grid, for the attempted crime, in violation of RCW 9A.28.020 standards.

The 2005 crimes listed in criminal history were served under a single concurrent sentence, therefore would count together under a holding of "same criminal conduct", per RCW 9.94A.525(5)(a)(i).

The 1996 crimes listed in criminal history were served under a single concurrent sentence, therefore would count together under a holding of "same criminal conduct", per RCW 9.94A.525(5)(a)(i).

The 1993 crimes listed in criminal history were served under a single concurrent sentence, therefore would count together under a holding of "same criminal conduct", per RCW 9.94A.525(5)(a)(i).

The record shows that the trial court never made any findings regarding the criminal history, or "same criminal conduct" during the sentence process as required by statute, therefore the record established clearly that appellant was deprived of that required minimal due process of law during the sentence hearing in the case, and therefore the sentence process is void, where rights were just ignored during the sentence process.

Furthermore, had the appellant knowing or understood that the offender score was eight (8) points, appellant would not have been

willing to enter the plea agreement, where the wrong score was listed on the plea agreement, and addressed to appellant under advisement of defense counsel in this case, thereby the plea is clearly unknowing, involuntary, and based upon mutural mistakes of fact, an erroneous offender score and sentence range.

"Whether a defendant is being sentenced for the first time or the fifth time, he is being sentenced, and the sentencing court must compute his criminal history at that moment." State V. Amos, 147 Wa. App. 217, 195 P.3d 564 (2008). "Moreover, it is the proper roll of the sentencing court, not the prosecutor to calculate the offender score." State V. Amos, 147 Wa. App. 217, 195 P.3d 564 (2008). "Nor, is a defendant deemed to have ackn--owledged the prosecutor asserted criminal history based on his agreement with the ultimate sentencing recomendations." State V. Mendoza, 165 Wn.2d 913, 205 P.3d 113 (2009).

Forth step in sentencing "Attempted First Degree Assault", per legislative command in RCW 9A.28.020, as a "Class-B Assault" required the court reduce the standard sentence range by 25% in time, per legislative command in RCW 9.94A.595 which states:

> "For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under Chapter 9A.28 RCW, the presumptive sentence is determ--ined by locating the sentencing grid sentence range defined by the appropriate offender score and serious--ness level of the crime, and multiplying the range by 75 percent." RCW 9.94A.595

The trial court was therefore required to ensure that all of the steps were provided appellant before the sentence imposed in the case, and none of these steps were done under class-B felony assault as required by RCW 9A.28.020 for the "attempt" crime.

The appellant would present that RCW 9A.28.020 is plainly worded, and required the crime of "attempted assault first degree" treated as a class-B felony, where legislature recognized that a not completed crime should be punished less that a completed or finished act.

The maximum sentence allowed for class-B assault under the grid in RCW 9.94A.510 with seriousness level IV is 63-84 months, at nine points or more offender score, however appellant would only have eight points offender score, had the court conducted the required steps under RCW 9.94A.525(5)(a)(i) standards, and at eight points the standard sentence range in RCW 9.94A.510 with seriousness level IV is 53-70 months, thereby the 120 moth issued current sentence is not possible. Appellant's current sentence is more that 36 months greater that that allowed for the Class-B assault, even assuming appellant's offender score is nine (9) or more points somehow at re-sentencing.

The appellant should be re-sentenced within the proper and allowed procedures of the Sentencing Reform Act(SRA) statutes, as the legislature knew what it was doing enacting the lesser punishment of the "Attempted First Degree Assault", and a court must sentence in compliance with the provisions of the statutes, or the sentence is void.

F. CONCLUSIONS

For the reasons stated herein the reviewing court should now grant re-sentencing in compliance with legislative commands that were ignored during the prior sentencing, where appellant's right

to the process of law required the court take specific steps in sentencing, which were apparently ignored in this case, and the sentence imposed is therefore void.

RCW 9A.28.020 required the court treat "Attempted Assault in the First Degree" as a class-B felony for sentencing purposes, and RCW 9.94A.515 defined the seriousness level at IV for class-B Assault for sentencing purpose, then RCW 9.94A.510 established a standard maximum sentence range of 63-84 months, with an "offender score" of nine (9) or more points criminal history.

The appellant's actual criminal history should have actually been calculated at eight (8) points under RCW 9.94A.525(5)(a)(i), which the prosecution and defense counsel mistakenly calculated at twelve (12) points, in violation of statute. The trial court's current sentence was imposed under the erroneous 12 point scoring of the attorney(s) in this present case, and must be corrected.

Therefore the plea agreement was unknowing and involuntary, where appellant had no actual understanding of the proper sentence standards required to be applied at the time of the plea, and the maximum 84 month allowed sentence under RCW 9.94A.510 IV sentence grid is less that the agreed 120 months, based on the 9.94A.510 XII sentence grid used for the class-A felony Assault, in direct violation of RCW 9A.28.020 standard.

The judgment and sentence list the class-A sentencing type seriousness level, and sentence ranges in error and violation of legislative command in RCW 9A.28.020 wording.

This simply appear to be a mutual mistake of both attorneys in this case, who failed to inform the trial court of requirements

in law regarding the sentencing of an "attempted" offense, in place of a completed offense, and the parties should not now be held to the mutual mistake, which requires a reduce term of confinement entered in this present case to less than 84 months to comply with statutes.

Either, allow the plea agreement withdrawn to correct this improperly entered sentence term of 120 months, or remand for a proper sentence of less than 84 moths to be entered as 9A.28.020 required, per legislative command to treat the attempt as only a class-B felony assault.

DONE This 17 day of July, 2014.

Respectfully Submitted,

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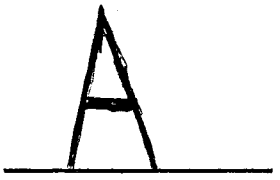
ATTACHMENT



APPELLANT DECISION

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JOHN WESLEY JACKSON, JR., Appellant.	No. 69802-8-I DIVISION ONE UNPUBLISHED OPINION FILED: June 16, 2014

LEACH, J. — John Jackson Jr. appeals the trial court's denial of his motion to withdraw his guilty plea. He claims that his trial counsel did not provide effective assistance during plea negotiations because the attorney failed to inform Jackson of the State's burden to disprove his self-defense claim. He also claims that his sentence for attempted assault in the first degree exceeds the statutory maximum. In a statement of additional grounds, he further claims that the court had no basis to impose an exceptional sentence, that the court sentenced him twice on one cause number and improperly imposed consecutive sentences, and that the court violated his right to a speedy trial. Because we accept the State's concession that the imposed period of community custody, when combined with Jackson's imposed term of incarceration, exceeds the statutory maximum sentence for attempted assault in the first degree, we remand to the trial court either to amend the community custody term or to resentence

Jackson on the attempted assault conviction consistent with RCW 9.94A.701(9). Because Jackson's remaining claims are meritless, we otherwise affirm.

Background

Jackson rented two rooms in a building that Anthony Narancic managed.[1] After Jackson moved out of the building in September 2011, Narancic retained his security deposit. Narancic received several threatening telephone calls from Jackson, demanding that Narancic return his security deposit.

On October 4, 2011, Jackson offered another tenant money to call him when Narancic appeared on the property. After this tenant called, Jackson rushed into Narancic's office and beat him over the head with a metal club or pipe. Vincent Pettie rushed into the office and held down Narancic while Jackson continued to beat Narancic and told Narancic that he would kill him. As Jackson and Pettie drove away, Jackson yelled, "I'm a gangster" and "I'll fucking kill you."

When police arrested Jackson, he stated that he and Narancic got into a "tussle" and that "[i]t was a fair fight." Jackson denied assaulting Narancic with a pipe.

The State charged Jackson with assault in the first degree. Before trial, Jackson told the court that he intended to raise a self-defense claim.

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[1] Jackson stipulated that the court could consider the facts contained in the certification for determination of probable cause and the prosecutor's summary for purposes of the sentencing hearing. After Jackson filed the motion to withdraw his guilty plea, the trial prosecutor submitted a declaration to the court detailing the State's anticipated evidence at trial.

The parties reached a plea agreement on the third day of trial. Jackson agreed to plead guilty to attempted assault in the first degree and felony harassment. The parties agreed that the prosecutor would recommend an exceptional sentence above the standard range of 120 months on the assault count, the statutory maximum, and 60 months on the harassment count, to run consecutively. The prosecutor would also recommend 36 months of community custody on the assault count.

Before sentencing, Jackson moved to withdraw his guilty plea, alleging ineffective assistance of counsel. The court continued the sentencing date and allowed Jackson's attorney, Daniel Felker, to withdraw based on a potential conflict of interest.

After the court appointed new counsel, Jackson moved to withdraw his guilty plea based upon ineffective assistance of counsel. He argued,

> Despite being placed on notice that Mr. Jackson would assert a self-defense claim at trial, neither the state nor the court inquired of Mr. Jackson during his plea colloquy whether he understood what rights he was giving up relative to the defense of self-defense. At no point was Mr. Jackson asked if he was aware of what he would need to prove for a successful self-defense claim, or that the state would have the burden of disproving his claim of self-defense beyond a reasonable doubt at trial.

Jackson claimed, "If [Felker] had told me about the laws of self-defense, and the state's burdens, I would have not pled guilty but would have continued the trial and testified."

Felker submitted two declarations about his representation. Felker stated that "in an initial meeting at the King County Jail, Mr. Jackson described his

participation in the incident, indicating that he acted in self defense." He also stated,

1. Over the course of my representation of Mr. Jackson and prior to the trial date and subsequent plea in this matter, I discussed the defense of self-defense with Mr. Jackson. We discussed his right to testify and I was aware of the likely substance of Mr. Jackson's testimony if he decided to testify at trial.
2. I reviewed the entire discovery, visited the scene of the crime and interviewed many of the State's witnesses. I had two different investigators assigned, who worked many hours on the case. I was familiar with the facts of the case and the evidence that the State would likely present. Approximately a month before trial, after I had interviewed the victim and the State's witnesses and conducted an independent investigation and evaluation of the case, Mr. Jackson asked me for my opinion on the strength of his possible defense. Based upon everything I knew, including what Mr. Jackson discussed with me, I told him that he had "a really tough case," as I did not think Mr. Jackson could avoid conviction by raising self-defense. I believed that the State could prove that Mr. Jackson had not acted in self-defense. I advised Mr. Jackson that if the prosecutor was willing to make a reasonable plea offer that he should consider it.
3. On the third day of trial, when Mr. Jackson announced to me and the State that he wanted to plead guilty to an offer of 180 months, which had been discussed with [the prosecutor] the previous day. The parties then engaged in formal plea negotiations for the first time. Based on my evaluation of the strength of the State's case, taking into consideration Mr. Jackson's proffered defense of self-defense and my knowledge of his intended testimony, I believe that Mr. Jackson's plea was in his best interests and would save him many years in prison.

After a hearing, the trial court denied Jackson's motion to withdraw his guilty plea. The court entered the following findings of fact:

2. The court finds the statements contained in the October 31, 2012 and December 7, 2012 declarations of trial counsel, Daniel Felker, credible.
3. The court does not find credible the statements of the defendant on October 5, 2012, in court and does not find credible the statements contained in the declaration of the defendant regarding his meetings and discussions with Mr. Felker.

4. The court finds that the State would have presented evidence showing that the defendant (and his co-defendant) showed up at the victim's work with a weapon in hand; that the defendant attacked and repeatedly assaulted the victim with the weapon; that the defendant had made prior threats against the victim; that the defendant had offered money to another tenant if that tenant would let the defendant know when the victim arrived at work; and that as the defendant was leaving, he threatened to kill the victim, yelling, "I'm a gangster, I'll kill you."
5. The defendant has never identified any evidence that he acted in self-defense. Attorney Felker credibly represented that the defendant could not have successfully claimed that he acted in self-defense.
6. There was substantial evidence that the defendant did not act in self-defense and was the first aggressor.
7. The court finds that Mr. Felker discussed self-defense with the defendant, discussed the defendant's potential testimony with the defendant, and conveyed to the defendant that while he could assert self-defense, the State would easily disprove that assertion. While Mr. Felker may not have used the exact verb[i]age of a "shifting burden of proof," Mr. Felker did convey to the defendant that he would not be successful in escaping conviction by claiming self-defense. The defendant has not established that this advice was unreasonable.

The court concluded that Felker's advice to Jackson to accept the plea offer was "objectively reasonable," that Felker's representation was not deficient, that Jackson demonstrated no prejudice from Felker's allegedly deficient performance, that Jackson's plea was "constitutionally valid," and that "a manifest injustice has not been committed."

The court imposed the agreed-upon exceptional sentence of 120 months of confinement on the assault count and 60 months of confinement on the harassment count, to run consecutively. The court also imposed 36 months of community custody on the assault count.

Jackson appeals.

Analysis

Jackson challenges the trial court's denial of his motion to withdraw his guilty pleas, claiming that his pleas "were involuntary and the product of ineffective assistance of counsel." He alleges that his attorney had a duty to inform him before he entered his guilty pleas that once he presented some evidence of self-defense, the burden of proof shifted to the State to disprove this defense beyond a reasonable doubt.

We review the denial of a motion to withdraw a guilty plea for abuse of discretion.[2] A trial court abuses its discretion when its decision is based upon untenable grounds or reasons.[3]

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent.[4] For a plea to be valid, "the accused must be apprised of the nature of the charge."[5]

The court must allow a defendant to withdraw a guilty plea when necessary to correct a manifest injustice.[6] Denial of effective counsel constitutes

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[2] State v. Pugh, 153 Wn. App. 569, 576, 222 P.3d 821 (2009) (citing State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001)).

[3] Pugh, 153 Wn. App. at 576 (citing State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997)).

[4] In re Pers. Restraint of Montoya, 109 Wn.2d 270, 277, 744 P.2d 340 (1987) (citing In re Pers. Restraint of Hews, 108 Wn.2d 579, 590, 741 P.2d 983 (1987); Henderson v. Morgan, 426 U.S. 637, 644-45, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976)).

[5] Montoya, 109 Wn.2d at 278 (citing Henderson, 426 U.S. at 645; Hews, 108 Wn.2d at 590; State v. Osborne, 102 Wn.2d 87, 92-93, 684 P.2d 683 (1984); In re Pers. Restraint of Keene, 95 Wn.2d 203, 207, 622 P.2d 360 (1980)).

[6] CrR 4.2(f).

a manifest injustice.[7] "In the context of plea bargains, effective assistance of counsel means that defense counsel actually and substantially assist his client in deciding whether to plead guilty."[8]

A defendant challenging a guilty plea on the basis of ineffective assistance of counsel must show with reasonable probability that but for counsel's deficient performance, he would not have pleaded guilty and would have proceeded to trial.[9] Where counsel's alleged error is a failure to advise the defendant of a potential affirmative defense to the crime charged, determining prejudice depends largely on whether the defense likely would have succeeded at trial.[10] A prediction about a trial's possible outcome "should be made objectively, without regard for the 'idiosyncrasies of the particular decisionmaker.'"[11] A bare allegation that a defendant would not have pleaded guilty but for his attorney's allegedly deficient performance does not establish prejudice.[12] A claim of ineffective assistance of counsel fails if the defendant does not establish both deficient performance and resulting prejudice.[13]

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[7] State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996) (quoting State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)).

[8] State v. Holley, 75 Wn. App. 191, 197, 876 P.2d 973 (1994) (citing State v. Malik, 37 Wn. App. 414, 416, 680 P.2d 770 (1984)).

[9] State v. Garcia, 57 Wn. App. 927, 932-33, 791 P.2d 244 (1990) (citing Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)).

[10] Hill, 474 U.S. at 59.

[11] Hill, 474 U.S. at 59-60 (quoting Strickland v. Washington, 466 U.S. 668, 695, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

[12] In re Pers. Restraint of Peters, 50 Wn. App. 702, 708, 750 P.2d 643 (1988).

[13] Strickland, 466 U.S. at 697.

A person is entitled to act in self-defense when he reasonably believes that he is about to be injured and uses no more force than necessary to prevent the offense.[14]

Jackson attempts to distinguish the two cases the State contends control the outcome of this case, In re Personal Restraint of Montoya[15] and State v. Haydel.[16] In Montoya, the defendant challenged the validity of his guilty plea on the basis that he was not adequately apprised of the charge because he was never informed about the burden of proof on the issue of self-defense.[17] The court explained that self-defense "becomes an issue only if the defendant raises the defense and presents some credible evidence to support it."[18] The defendant told police that even though he "could not remember exactly what happened," "he was defending himself."[19] The court stated, "Montoya's bare assertion that he was defending himself is unpersuasive given that he was unable to remember exactly what happened."[20] The court concluded that because no potential evidence would support a self-defense claim, "the trial court certainly had no obligation to inform Montoya of the burden of proof on a purely hypothetical claim."[21]

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[14] RCW 9A.16.020(3); State v. Kyllo, 166 Wn.2d 856, 863, 215 P.3d 177 (2009).
[15] 109 Wn.2d 270, 744 P.2d 340 (1987).
[16] 122 Wn. App. 365, 95 P.3d 760 (2004).
[17] Montoya, 109 Wn.2d at 279.
[18] Montoya, 109 Wn.2d at 279.
[19] Montoya, 109 Wn.2d at 279.
[20] Montoya, 109 Wn.2d at 280.
[21] Montoya, 109 Wn.2d at 280.

In Haydel, although the defendant indicated that he planned to claim self-defense if the case proceeded to trial, the court noted, "The statement in the omnibus order regarding the general nature of Haydel's defense is not evidence."[22] And the facts to which Haydel pleaded established no evidence of self-defense.[23] Accordingly, the court held, "Because Haydel presented no evidence of self-defense, the State had no obligation to inform Haydel of its burden of proof on his purely hypothetical claim at the time of the taking of the plea."[24]

Jackson contends that he presented evidence of "a plausible self defense claim" at the time of his plea:

> Jackson asserted self defense at the time of arrest. He told the officer "they got into a tussle," that "it was a fair fight," and no pipe was involved. Jackson indicated before trial in his trial memorandum he intended to testify he acted in keeping with this claim of self defense. Defense counsel reiterated during pretrial proceedings the defense was self defense.

These statements are similar to those rejected in Montoya and Haydel. Despite Jackson's argument, these bare assertions would not support a self-defense claim. Therefore, Jackson's attorney had no obligation to inform him of the burden of proof for self-defense. Because Jackson fails to establish that counsel's performance was deficient, we do not address if he suffered prejudice from counsel's allegedly deficient conduct.

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[22] Haydel, 122 Wn. App. at 371.
[23] Haydel, 122 Wn. App. at 371.
[24] Haydel, 122 Wn. App. at 371.

Jackson also claims that the trial court imposed a sentence that exceeded the statutory maximum for the assault count. Although he did not raise this challenge in the trial court, he may raise it for the first time on appeal.[25]

A court has the power to impose only sentences provided by law.[26] "'When a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered.'"[27]

RCW 9.94A.701(9) requires the trial court to reduce a term of community custody "whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021." In State v. Boyd,[28] our Supreme Court held that this statute prohibits a trial court from imposing a term of community custody that when combined with the term of incarceration, results in a sentence that exceeds the statutory maximum for the crime.

Jackson received the maximum sentence of 120 months of confinement for attempted assault in the first degree. The court also imposed 36 months of community custody on this count.[29] The State concedes that when combined with the imposed term of community custody, Jackson's sentence exceeds the

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[25] State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (quoting State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)).

[26] In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

[27] Carle, 93 Wn.2d at 33 (quoting McNutt v. Delmore, 47 Wn.2d 563, 565, 288 P.2d 848 (1955)).

[28] 174 Wn.2d 470, 473, 275 P.3d 321 (2012).

[29] See RCW 9.94A.701(1)(b).

statutory maximum. Because the sentencing court had no authority to impose this sentence on the assault count, we remand to the trial court either to amend the community custody term or to resentence Jackson on the attempted assault conviction consistent with RCW 9.94A.701(9).

In a statement of additional grounds, Jackson claims, "I was given an exceptional sentence, on what grounds? I feel that the exceptional sentence was not legally, or incorrectedly [sic] done." Because Jackson agreed to an exceptional sentence as part of his plea and he fails to show that this agreement was invalid, we reject his claim.

Jackson also alleges, "I was sentenced twice on one cause[ ] number and given consecutive sentences." Because Jackson provides no legal argument supporting this claim, we decline to address it.[30]

Finally, Jackson asserts, "I felt that my speedy trial rights were violated, due to the fact that I informed the judge that I was set to go to trial and he gave continuances without me agreeing or wa[i]ving my speedy trial rights." Although the record indicates that the court granted a series of continuances, it provides no evidence of the reasons that the court granted them. Because consideration of this issue involves facts not in the record, Jackson may not raise it.[31]

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[30] RAP 10.10(c); State v. Calvin, 176 Wn. App. 1, 26, 302 P.3d 509 (2013) (citing State v. Alvarado, 164 Wn.2d 556, 569, 192 P.3d 345 (2008)), petition for review filed, No. 89518-0 (Wash. Nov. 12, 2013).

[31] Calvin, 176 Wn. App. at 26 (citing Alvarado, 164 Wn.2d at 569).

Conclusion

Because the imposed period of community custody, when combined with Jackson's imposed term of incarceration, exceeds the statutory maximum sentence for attempted assault in the first degree and Jackson shows no other error, we affirm his convictions and remand to the trial court either to amend the community custody term or to resentence Jackson on the attempted assault conviction consistent with RCW 9.94A.701(9).

Leach, J.

WE CONCUR:

Trickey, J.

Cox, J.

DECLARATION OF SERVICE
GR-3.1

I, John W. Jackson, declare that on the 11 day of July, 2014, I deposited the following documents:

1. Petition For Review

2. Declaration of Service

or a true and correct copy thereof, in the intermail mail system of the Coyote Ridge Correction Center, and made arrangements for postage first class, to the following:

1. The Supreme Court
   Temple of Justice
   P.O. Box 40929
   Olympia, WA. 98504

2. King County Prosecutor
   W554 King County Courthouse
   516 Third Avenue
   Seattle, WA. 98104

3. Dana M. Nelson
   Nielsen, Broman, & Koch PLLC
   1908 E. Madison St.
   Seattle, WA. 98122-2842

I, John W. Jackson, declare under the penalty of perjury, under the laws of the State of Washington that the foregoing is true and correct.

DATED This 11 day of July, 2014.

Respectfully Submitted,

John W. Jackson, Appellant, Pro Se
DOC# 979212 - HA-01-4L