NO. 45306-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

WILLIAM CAIETTI, III,

Appellant.

BRIEF OF APPELLANT

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Assignment of Error

The trial court's order amending the defendant's sentence after he fully served it violated the defendant's right to be free from double jeopardy under Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment.

Issues Pertaining to Assignment of Error

Does a trial court's order amending a sentence after the defendant fully serves it violate that defendant's right to be free from double jeopardy under Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment when the state neither alleges nor proves that the defendant procured the sentence through fraud?

STATEMENT OF THE CASE

By information filed July 6, 1998, the Clallam County Prosecutor charged the defendant William Caietti, III, with second degree assault against a prison guard under RCW 9A.36.021. CP 104. At the time of the alleged offense the defendant was a prisoner at the Clallam Bay Correctional Facility serving a lengthy sentence out of Spokane County. CP 70-79, 80. The case later went to trial and on November 12, 1998, a jury found the defendant guilty as charged. CP 103. On December 23, 1998, Clallam County Superior Court Judge Terry McCluskey sentenced the defendant to 74 months in prison which was about the midpoint of the standard rage of 63 to 84 months with no credit noted for any time served. CP 94-102. Paragraph 4.6(a) of the judgement and sentence includes the following language which is standard and printed on the form. CP 98. Neither the trial court nor the prosecutor added the number of the defendant's Spokane cause number:

> The sentence herein shall run consecutively with the sentence in cause numbers(s) _____
>
> _____
>
> but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400.

CP 98.

The Warrant of Commitment the court signed along with the judgment and sentence did not mention the existence of the Spokane conviction and did not note any credit for time served. CP 106. Neither the

defendant, nor the Clallam County Prosecutor, nor the Department of Corrections appealed from any portion of this judgment and sentence. CP 7-104. Given the language in the Judgment and Sentence that the 72 months run "concurrently to any other felony cause not referred to in this Judgment," the latest the defendant completed his sentence on February 23 , 2005, which was exactly 72 months after the court signed the judgment and sentence. *Id.* In fact, if the December 23, 1998, sentencing date is taken as the first day the defendant commenced his sentence, the 10 year statutory maximum for the defendant's class B felony conviction ran out on December 23, 2008. *Id.*

On June 6, 2012, over 13 years after the court sentenced the defendant on the second degree assault charge and over seven and one-half years after the defendant completed his sentence, Washington State Department of Corrections (DOC) Records Supervisor Patty Jordan sent the defendant a letter stating that DOC was unilaterally changing his Clallam County sentence to run it consecutive to his Spokane County sentence. CP 48. The first two paragraphs of this letter stated:

> This letter is to inform you of a change in your release date. A recent audit of your sentence structure has uncovered that your sentence for the Assault 2nd had not been entered correctly. Cause 98-1-00191-6 should have been ran consecutive to all other causes per RCW 9.94A.589 which states under section (2)(a); Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentence to another term of confinement, the latter term shall not begin until expiration of all prior terms. I am enclosing a copy of the RCW for

your review.

> You were sentenced to 74 months on your Clallam cause 98-1-00191-6. This time has now been entered to run consecutive to the longest count on your Spokane 95-1-00365-7 cause. Your earned Release date (ERD) changed due to this update, from January 11, 2023, to September 22, 2028.

CP 48.

Apparently DOC later became aware of the decision in *State v. Dress*, 168 Wn.App. 319, 279 P.3d 875 (2012), which prohibits DOC from unilaterally modifying a defendant's judgment and sentence. CP 81. As a result, on October 26, 2012, Ms Jordan sent an e-mail to the Clallam County Prosecutor noting that (1) the Clallam County Superior Court had erroneously ordered that the defendant's sentence run concurrent to his Spokane County Sentence, (2) that the *Dress* decision prohibited DOC from unilaterally changing the sentence to run it consecutively, and (3) that the Clallam County Prosecutor should bring an action seeking to modify the defendant's sentence because "[a]t this time the Clallam cause is being run concurrent to his other cause." CP 81. The exact language of this e-mail is as follows:

> Caietti was received at the Clallam Bay Corrections Center on 12-11-1998 from Clallam County on CSE#98-1-00191-6. Per RCW 9.94A.589(2)(a), this cause should run consecutively with the prior sentences, the longest running one being Spokane CSE#95-1-00365-7. This Judgment and Sentence contains boilerplate language that has been determined by the Court to run the sentences concurrently per the recent Dress Decision 66262-7 filed on 05-14-12. Please review and if you agree provide this office with a certified order amending the original Judgment and Sentence stating this cause is to be served

> consecutively to the DOC sanction and/or DOSA revocation. If you do not agree, we would appreciate a written response for our files.
>
> This was an added cause in which the offender was convicted of assaulting a staff member in prison. Since he was serving another felony cause (Spokane 95-1-00365-7) when he committed this offense, in appears per RCW 9.94A.589(3)(a) that the Clallam cause should be consecutive to his prior offenses, however J&S states "this sentence shall run consecutively with the sentence in cause number(s) *blank* but **concurrently to any other felony cause not referred to in this Judgment".** Please let me know if you need anything further form me. Appreciate any clarification you can provide
>
> At this time the Clallam cause is being run concurrent to his other cause.

CP 81 (bold, underlining and italics in original).

About two months after receiving this e-mail, the Clallam County Prosecutor filed a Motion to Correct Judgment and Sentence in this case, arguing that (1) the trial court had intended to run the defendant's Clallam County sentence consecutive to his Spokane sentence, (2) that the failure to add the Spokane County cause number to paragraph 4.6(a) of the judgment and sentence was a "clerical error" under CrR 7.8(a) and (3) that under CrR 7.8(a), the court had authority at any time to remedy that error by modifying the judgment and sentence to conform with the trial court's intent. CP 49-57, 67-91. In support of this motion the state presented the minute sheet from the sentencing hearing along with the affirmation of the sentencing judge. CP 82. The former states in relevant part: "Court sentenced def. to 74 mo. in prison. Consecutive to charge he is now serving." CP 82. In the latter

affidavit former Judge McCluskey included the following claim:

> I recall and I am positive that it was my intent, at the time of sentencing, to sentence Mr. Caiette [sic] to a prison term which would be served consecutively to the term he was already serving from Spokane.

CP 32.

The defense responded to the state's motion by arguing that (1) the trial court had not intended to run the defendant's sentence consecutively, (2) that any error if it existed was a judicial error that could only be remedied under CrR 7.8(b), (3) that the state's motion under CrR 7.8(b) was untimely, and (4) given the fact that the defendant had completed his sentence prior to the state filing its motion, any application of a remedy under CrR 7.8(a) would violate the defendant's right under Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment to be free from double jeopardy. CP 42-48. In support of his factual argument the defendant gave an affirmation stating that the judge had ordered that his Clallam County sentence run concurrently with his Spokane County sentence. Exhibit 4. In addition, the defense attempted to get a transcription of the original sentencing hearing but eventually determined that the court reporter had destroyed her notes. CP 58, 61; RP 10-12, 13-20.[1]

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[1]The record on appeal includes one volume of continuously numbered verbatim reports of the hearings held 1/11/13, 1/31/13, 2/21/13, 3/21/13, 5/16/13, 5/24/13 and 8/7/13. They are referred to herein as "RP [page #]."

Following a number of hearings on the matter the court granted the state's motion, amended the judgment and sentence to run it consecutive to the defendant's Spokane cause number and later entered the following findings of fact and conclusions of law in support of its ruling:

> THIS MATTER came before the court on May 16, 2013, for the State's motion to correct the judgment and sentence, the plaintiff appearing by and through Clallam County Deputy Prosecuting Attorney, Jesse Espinoza, the Defendant appearing in person by and through his attorney, Harry D. Gasnick, the Court having reviewed the briefings and having heard the testimony and arguments by the parties, and deeming itself fully apprised in the premises, and having filed a Memorandum Opinion (incorporated herein along with all exhibits admitted), the court makes the following "Background, Issues, Findings of Fact, Conclusions of Law and Order."
>
> **I. BACKGROUND**
>
> On Dec. 10, 2012, the Clallam County Prosecutor, through her deputy, Jesse Espinoza, (hereinafter "State") filed a motion to correct the Judgment and Sentence entered on Dec. 23, 1998 under Clallam County cause no. 98-1-00191-6 (hereinafter "1998 Clallam cause"). The State sought to add language to make the prison term ordered under the 1998 Clallam cause run "consecutive" to the sentence entered on Sept. 5, 1995 under Spokane County cause no. 95-1-00365-7 (hereinafter "1995 Spokane cause").
>
> On Sept. 5, 1995, the defendant was sentenced to 236 months under the 1995 Spokane cause. On July 6, 1998, while serving his sentence under the 1995 Spokane cause, the defendant was charged under the 1998 Clallam cause with Assault in the Second Degree for assaulting a correctional officer at the Clallam Bay Corrections Center on Aug. 7, 1997. On Nov. 12, 1998 a jury found the defendant guilty of Assault in the Second Degree as charged. On Dec. 23, 1998, the defendant was sentenced to 74 months.
>
> Paragraph 4.6 of the judgment and sentence under the 1998 Clallam cause state the following:

The sentence herein shall run consecutively with the sentence in cause number(s) _____ but concurrently to any other felony cause not referred to in this judgment. RCW 9.94A.400.

It is the State's position that the court should have ordered the 74 months to be served consecutively to the 1995 Spokane cause and that "Spokane County cause no. 95-1-00365-7" was inadvertently omitted from paragraph 4.6 in the 1998 Clallam judgment and sentence. The defendant argues that there was no mistake and that the Court intended the sentence to run concurrently with the 1995 Spokane cause.

The State offered the affidavit of the sentencing to the Judge, Terry McClusky, dated June 7, 2013, which states as follows:

> This is my declaration regarding the matter of the sentencing of William Caietti under Clallam County Superior court Cause no. 98-1-00191-6. I was the sentencing Judge on this matter and remember it very well. I also remember the details of his case from Spokane County. It is my recollection that Mr. Caietti was in prison in Clallam Bay due to his Spokane county charges, one of which was for Kidnaping. Mr. Caietti was serving a sentence of approximately 31 years when he committed the crime for Assault in the Second Degree. I recall and I am positive that it was my intent, at the time of sentencing, to sentence Mr. Caietti to a prison term which would be served consecutively to the term he was already serving from Spokane. The alternative would be a sentence with no punishment.

Tammy Wooldridge was the courtroom clerk during the sentencing hearing on Dec. 23, 1998. The court reporter notes from the sentencing hearing for the 1998 Clallam cause could not be located but the minutes for the hearing were available. At the hearing, Ms. Wooldridge testified that she had served in the capacity of a courtroom clerk for 28 years, beginning in 1978. Ms Wooldridge identified Sate's Exhibit no. 1 as the minutes she prepared at the sentencing hearing for the 1998 Clallam cause on Dec. 23, 1998.

Ms. Wooldridge's minutes read in part as follows:

> Sentencing. Counsel gave recommendations. Court

sentences defendant to 74 months in prison. Consecutive to charge he is now serving.

Ms. Wooldridge testified that her duties as a courtroom clerk entail the recording of the judge's ruling by putting into the minutes "what I hear." Ms Wooldridge further stated that there were no corrections made to State's Exhibit No. 1, although she also admitted that she is human and can make mistakes.

The defendant's certified declaration states as follows:

> My memory of these proceedings is that the judge said my sentence was to be served concurrently with my sentence from Spokane."

II. ISSUES

1. Whether the omission of a term from the 1998 Clallam judgment and sentence in paragraph 4.6 requiring the defendant's sentence to be served consecutively with the sentence under the 1995 Spokane cause, was a mistake, oversight or omission or whether it was an error of law?

2. Whether CrR 7.8 or RCW 9.94A.585(7) applies to the facts of this case?

3. Whether the defendant would suffer prejudice from the correction of the sentence under the 1998 Clallam cause by requiring that it be served consecutively to the sentence under the 1995 Spokane cause?

II. FINDINGS OF FACTS

1. The sentence under the 1998 Clallam cause was mandated by law to run consecutively to the sentence under the 1995 Spokane cause pursuant to RCW 9.94A.400(2) which was in effect in 1998.

2. In order for the 1998 Clallam cause to run concurrently with the 1995 Spokane cause, the sentencing Court in the 1998 Clallam cause would have had to impose an exceptional sentence, which was not done.

3. For this Court to find that the sentencing Judge, under the 1998 Clallam cause, intended the sentences to run concurrently, several assumptions would have to be made:

a. That Judge McClusky's memory is inaccurate and that both he and the prosecuting attorney were either ignorant of the law or chose to outright ignore the law; and at the same time,

b. That a courtroom clerk, with 20 years experience, misheard the judge and wrote "consecutive" rather than "concurrent". This is not language that would appear routinely in the clerk's minutes unless there was some discussion on the record.

4. It is the Court's finding that the likelihood of both the above assumptions occurring at the same time is highly problematic and it is extremely unlikely that the judge, prosecutor, and courtroom clerk would all have a lapse in judgment at the same moment.

5. There is evidence that the Dept. Of Corrections (DOC) was aware of the omission of the 1995 Spokane cause No. in paragraph 4.6 of the 1998 Clallam County judgment and sentence and failed to act within a 90 day window as set forth in RCW 9.94A.585(7).

6. The defendant was present at his own sentencing under the 1998 Clallam cause and was aware of the consecutive nature of his sentence.

7. The defendant asserted that DOC made prior representations that his 1998 Clallam County sentence had concluded in 2005. The defendant would have been aware that such representations by DOC were erroneous.

II. CONCLUSIONS OF LAW

1. The failure to specify, in paragraph 4.6 of the judgment and sentence under the 1998 Clallam cause, that the sentence shall be served consecutively to the sentence under the 1995 Spokane cause was a mistake, oversight or omission pursuant to CrR 7.8(a) rather than an error of law.

2. RCW 9.94A.585(7) applies to petitions filed by DOC directly

to the Court of appeals, not by the county prosecutor and is limited to "errors of law" and therefore, it does not apply to the facts and issues in dispute in the present case.

3. RCW 9.94A.585(7) and CrR 7.8(a) cover two different scenarios and are therefore not in conflict.

4. The decision in *Dress v. Washington State Dept. Of Corrections,* 168 Wn. App. 319, 279 P.3d 875 (Ct. App. 2012), does not control in the present case. The *Dress* Court found that the sentencing court intentionally made the sentence concurrent rather than consecutive and therefore *Dress* was not a case dealing with a "mistake, oversight or omission."

5. Since the defendant was present at sentencing and was aware of the consecutive nature of the sentence, the defendant is not prejudiced by the correction of the sentence under the 1998 Clallam cause which makes the 74 month term of confinement consecutive to the sentence under the 1995 Spokane cause.

IV. ORDER

Based upon the Findings of Fact and Conclusions of Law, it is hereby ordered that paragraph 4.6 of the defendant's judgment and sentence under Clallam County cause no. 98-1-00191-6 shall be corrected by specifying that the 74 month prison sentence shall be served consecutive to the sentence under Spokane County cause no. 95-1-00365-7.

CP10-15.

Following entry of this order the defendant filed timely notice of appeal. CP 7.

ARGUMENT

THE TRIAL COURT'S ORDER AMENDING THE DEFENDANT'S SENTENCE AFTER HE FULLY SERVED IT VIOLATED THE DEFENDANT'S RIGHT TO BE FREE FROM DOUBLE JEOPARDY UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 9, AND UNITED STATES CONSTITUTION, FIFTH AMENDMENT.

The double jeopardy prohibitions found in both Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment, protect against three distinct abuses: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 23 L.Ed.2d 656, 89 S.Ct. 2072 (1969); *United States v. Halper*, 490 U.S. 435, 104 L.Ed.2d 487, 109 S.Ct. 1892 (1989); *Dept. of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 128 L.Ed.2d 767, 114 S.Ct. 1937 (1994). For the purposes of double jeopardy analysis, our Supreme Court interprets Washington Constitution, Article 1, § 9, "in the same manner as the federal provisions." *State v. Cole*, 128 Wn.2d 262, 274 n. 7, 906 P.2d 925 (1995).

There are three instances in which the constitutional double jeopardy provision prohibits a court from increasing a previously imposed sentence. First, the double jeopardy clause prevents the state from attempting to increase a correct sentence after it is imposed. *United States v. DiFrancesco*,

449 U.S. 117, 138-139, 101 S.Ct. 426, 438-439, 66 L.Ed.2d 328 (1980). Second, the double jeopardy clause prevents resentencing if the original sentencing proceeding was more like a trial than an ordinary sentencing proceeding. *DiFrancesco*, 449 U.S. at 136-37, 101 S.Ct. at 437. Third, the double jeopardy clause prevents the state from seeking to modify an erroneous sentence after a defendant has obtained "a legitimate expectation of finality in the sentence." *State v. Hardesty*, 129 Wn.2d 303, 311, 915 P.2d 1080 (1996).

Whether or not a defendant has obtained "a legitimate expectation of finality" in an erroneous sentence depends upon a number of factors "such as the completion of the sentence, the passage of time, the pendency of an appeal or review of the sentencing determination, or the defendant's misconduct in obtaining the sentence." *State v. Hardesty*, 129 Wn.2d at 311. Although the recitation of this laundry list of pertinent factors in this analysis appears to leave the ultimate decision up to the unfettered discretion of the trial court, the fact is that there are some factors which automatically require the application of the double jeopardy prohibition while others automatically preclude its application. *Id.* In *Hardesty* the Washington Supreme Court noted the following on this issue:

> The case law following *DiFrancesco* indicates the defendant acquires a legitimate expectation of finality in a sentence, substantially or fully served, unless the defendant was on notice the

> sentence might be modified, due to either a pending appeal or the defendant's own fraud in obtaining the erroneous sentence. In *United States v. Jones*, 722 F.2d 632, 638 (11th Cir.1983), the court stated a defendant has an expectation of finality in the sentence once she or he begins to serve it, unless a review process is employed or the defendant "intentionally deceive[d] the sentencing authority or thwart [ed] the sentencing process." . . . A defendant who creates the error through fraud should not be heard to claim an expectation of finality in the sentence the defendant knows is erroneous.

State v. Hardesty, 129 Wn.2d at 312-313 (most citations omitted).

For example, in *Hardesty*, the court sentenced the defendant to 14 months in prison on the erroneous belief that his standard range was 12 to 16 months on an offender score of four points. Actually the defendant's correct standard range was 22 to 29 months on an offender score of six points. The state discovered this fact about four months after the defendant finished his erroneous sentence and was released. The state then filed a motion to modify the defendant's sentence. The defendant opposed the modification, arguing that any increase in his sentence would violate his constitutional right to be free from double jeopardy because (1) he had not obtained the erroneous sentence by fraud and (2) he had finished serving the in custody portion of the sentence prior to the state filing the motion to modify.

The trial court eventually granted the state's motion and imposed a new sentence of 22 months with credit for time served. The court specifically found that the defendant had obtained the original sentence fraudulently by misstating his criminal history. The defendant then appealed, arguing that (1)

the trial court's finding that he had fraudulently obtained the sentence was not supported by substantial evidence, and (2) even if obtained by fraud, double jeopardy prevented any modification of sentence once it was completed. The Court of Appeals agreed with this second argument and reversed, holding that the double jeopardy clause does not allow a "facially valid judgment to be vacated after an accused has fully served a facially valid sentence" even if the sentence were obtained by fraud or perjury." *State v. Hardesty*, 129 Wn.2d at 309.

At this point the state sought and obtained review, arguing that (1) a defendant could never obtain an expectation of finality in an erroneous sentence even after having fully served it, whether or not the defendant obtained that sentence through fraud, and (2) that even if a defendant could obtain an expectation of finality in an erroneous sentence that was not obtained by fraud, a defendant could not obtain an expectation of finality in an erroneous sentence that was obtained by fraud. The Washington Supreme Court rejected the state's first argument but agreed with the second, stating as follows:

> While the State now contends Hardesty did not have a reasonable expectation of finality for purposes of double jeopardy if his sentence was merely erroneous, rather than fraudulent, and he fully served it, this was not the basis for the trial court's decision. Here the State did not appeal the sentence, Hardesty fully served it, and a period of months elapsed after the completion of the sentence. Under these facts, if Hardesty's more favorable sentence was merely the product

> of an error, and not his fraud upon the trial court, Hardesty would have a reasonable expectation of finality in the sentence for purposes of double jeopardy.

State v. Hardesty, 129 Wn.2d at 314.

Having set the correct standard for determining the application of the double jeopardy clause in the defendant's case, the court then addressed the issue whether on not substantial evidence supported the trial court's finding that he had fraudulently misrepresented his offender score. Finding insufficient evidence to support this finding, the court found that double jeopardy did prohibit resentencing the defendant in spite of the sentencing error. The court held as follows on these issues:

> The State did not produce affidavits, exhibits, or other evidence at the hearing as required by CrR 7.8, and there is no indication the trial court considered the nine elements of fraud. The findings and conclusions as to fraud here are inadequate. The trial court's findings state Hardesty disclosed two prior felonies when he actually had four, and, therefore, he defrauded the trial court. This amounts to finding Hardesty's representation was in error. There are no findings as to Hardesty's knowledge of falsity and intent the State should act upon his statement. There are no findings as to the State's ignorance of the falsity of the statement, or its reliance and right to rely upon Hardesty's statement. Absent any evidence and specific findings on the elements of fraud, the trial court abused its discretion in modifying the original judgment and sentence, and imposing an increased sentence.

State v. Hardesty, 129 Wn.2d at 318-319.

The salient facts from *Hardesty* are the same as those in the case at bar. In *Hardesty* the trial court imposed an erroneous sentence when it

miscalculated the defendant's offender score and thereby gave him less time that it had intended. In the case at bar the trial court imposed an erroneous sentence when it ordered that the defendant's sentence run concurrent with all other sentences instead of consecutive as it had intended thereby giving him less time than it had intended. In *Hardesty* the state failed to prove that the defendant obtained the erroneous sentence through fraud. In the case at bar the state did not even allege much less prove that the defendant had obtained the erroneous sentence through fraud. In *Hardesty* the defendant completed the in-custody portion of his sentence some four months prior to the state's motion to amend. In the case at bar the defendant completed the in-custody portion of his sentence some seven and one-half years prior to the state' s motion to amend.

In *Hardesty* the court held that since (1) the defendant had completed his erroneous sentence prior to the state's motion to amend and (2) the defendant had not obtained that sentence by fraud, then for double jeopardy purposes the defendant had a legitimate expectation of finality in his sentence. Similarly in the case at bar, for double jeopardy purposes the defendant also had a legitimate expectation of finality in his sentence because (1) he also had completed his erroneous sentence prior to the state's motion to amend, and (2) he also had not obtained that sentence by fraud. Thus in the same manner that the trial court in *Hardesty* violated the defendant's

constitutional right to be free from double jeopardy when it granted the state's motion to amend, so the trial court in the case at bar violated the defendant's constitutional rights to be free from double jeopardy when it granted the state's motion to amend. As a result, this court should vacate the trial court's order modifying the defendant's original sentence.

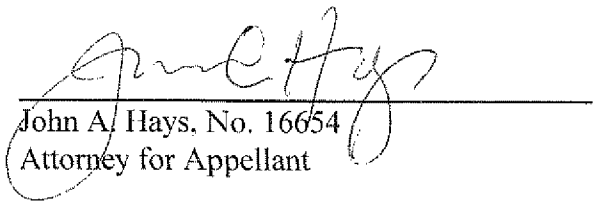
In this case the state may attempt to distinguish *Hardesty* by pointing out that the erroneous sentence in *Hardesty* arose from an error in calculating the defendant's offender score while the erroneous sentence in the case at bar arose from the state's own error in preparing and presenting a proposed judgment and sentence that did not accurately reflect the intent of the court. While this does constitute a factual difference it is a distinction without a difference. As the court in *Hardesty* clarifies, there are only two controlling facts governing the application of the double jeopardy clause: (1) did the defendant complete the erroneous sentence prior to the state filing the motion to amend, and (2) did the defendant obtain the erroneous sentence through fraud. If the second question is answered in the negative then how the erroneous sentence came into being is irrelevant. Once the erroneous sentence is completed the defendant obtains a legitimate expectation of finality in it and Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment, prohibit any modification.

CONCLUSION

The trial court violated the defendant's right to be free from double jeopardy under Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment, when it modified the defendant's erroneous sentence after he completed it because the defendant did not obtain it by fraud. As a result this court should vacate the amended sentence.

DATED this 29th day of January, 2014.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 9

No person shall be compelled in any criminal, case to give evidence against himself, or be twice put in jeopardy for the same offense.

UNITED STATES CONSTITUTION,
FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

State of Washington, Respondent, vs. William Caietti III, Appellant.	No. 45306-1-II AFFIRMATION OF OF SERVICE

Donna Baker states the following under penalty of perjury under the laws of Washington State. On January 30, 2014, I personally e-filed and/or placed in the United States Mail the following document with postage paid to the indicated parties:

1. Brief of Appellant
2. Affirmation of Service

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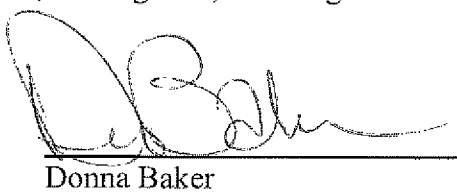
Dated this 30th day of January, 2014, at Longview, Washington.



Donna Baker
Legal Assistant

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