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SUPREME COURT
STATE OF WASHINGTON
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98964-8

Court of Appeals Case No. 36568-9-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington, Respondent

v.

William J. Wright, Appellant

Appeal from Division III of the Court of Appeals

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

COMES NOW, Mr. William J. Wright, Petitioner, respectfully brings this Petition for Review pursuant to RAP 13.4 and respectfully requests this court accept review of the Court of Appeals decision designated in Part II of this petition.

II. COURT OF APPEALS DECISION

The Petitioner seeks review of the Court of Appeals Decision issued on July 2, 2020, and Order Denying Motion for Reconsideration issued on July 28, 2020. The decision of the lower court is contrary to the Washington Supreme Court's decision in *State v. Hardesty*, 129 Wn. 2d 303, 915 P. 2d 1080 (1996). Additionally, the decision of the Court of Appeals violates the U.S. Constitution and the Washington State Constitution.

III. ISSUES PRESENTED FOR REVIEW

- A. Pursuant to RAP 13.4(b)(4), the Supreme Court should accept review because the Court of Appeals has ruled contrary to the Washington State Supreme Court holding in *State v. Hardesty*, 129 Wn. 2d 303, 915 P. 2d 1080 (1996).
- B. Pursuant to RAP 13.4(b)(3), the Supreme Court should accept review because the Court of Appeals has ruled on a question of law involving the Constitution of the State of Washington and the U.S. Supreme Court.

IV. STATEMENT OF THE CASE

On January 30, 2015, Mr. Wright stood trial in front of a jury for possession of controlled substance, methamphetamine with intent to deliver and

was found guilty. He was sentenced on February 5, 2015, to a sentence of 60-120 months. He was maxed out at 120 months and given an additional 12 months of community custody creating a de facto sentence of 132 months, which was above the maximum sentence reflected in the judgment and sentence. (Exhibit A)

On March 15, 2018, Mr. Wright filed a motion pursuant to CrR 7.8 (hereinafter referred to as “CrR 7.8” for brevity), pursuant to CrR 7.8, to enjoin the Department of Corrections from imposing more than the maximum standard range of 120 months. (Exhibit A) This was not a direct appeal of the sentence by the defendant, who had filed an appeal in the allotted time frame without a cross appeal from the state. See, *State v. Wright*, 33217-9-III.

At the time of the CrR 7.8 hearing the state argued that it should be free to amend the judgement and sentence because they allege that due to a prior conviction the sentencing range actually doubles to 240 months rather than 60-120 months imposed by the court. The sentencing court imposed 120 months plus 12 months community custody, which was beyond the sentencing range imposed by the court. The state cited case law in which a sentencing court amends a judgement and sentence on remand from the Court of Appeals as justification for the court to amend Mr. Wright’s judgement and sentence. The court in ruling on Mr. Wright’s CrR 7.8 motion agreed with the state’s analysis of the case law from the Court of Appeals and proceeded to amend the judgment and sentence to reflect a higher maximum term of confinement up to 240 months. The Superior

Court applied a multiplier not previously used by the sentencing court. Effectively, the court changed the sentence imposing a doubling provision not imposed previously by the trial court.

V. ARGUMENT

A. Pursuant to RAP 13.4(b)(4) the Supreme Court should accept review because the Court of Appeals has ruled contrary to the Washington State Supreme Court holding in *State v. Hardesty*, 129 Wn. 2d 303, 915 P. 2d 1080 (1996)

The decision of the Court of Appeals allowed the trial court to double a defendant's sentence years after the defendant had been sentenced and was serving his sentence. The decision is contrary to the decision of the Washington Supreme Court in *State v. Hardesty*, 129 Wn. 2d 303, 915 P. 2d 1080 (1996), which ruled that a defendant has an expectation of finality which protects him from multiple sentences for the same offense.

The *Hardesty* case held that "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 303, 915 P. 2d 1080 (1996) The Court of Appeals in the *Wright* case found that "according to the state, the 10 year maximum listed in the judgment and sentence was a clerical error..." *State v. Wright*, 36568-9-III, p.3, unpublished slip opinion filed July 2, 2020 (Exhibit B) The Court of

Appeals in making its ruling relied in part on *State v. Cyr*, No. 97323-7, slip opinion at 15-17 (Wash. Apr. 16, 2020) The *Cyr* case does not address the question of finality of judgments addressed by *State v. Hardesty*, 129 Wn. 2d 303, 915 P. 2d 1080 (1996). The defendant argued on appeal that Mr. Wright was entitled to finality of the judgment and sentence because the state failed to appeal on direct appeal, the defendant was nearly finished with his 10-year sentence and was seeking to enforce the judgment on its face. Most importantly, the government filed no supporting affidavits to support its position to resentence. The Court of Appeals never addressed the defense argument of finality of the judgment under *State v. Hardesty*, *Supra.* relying on *State v. Cyr*, No 97323-7, slip opinion at 15-17 (Wash. April 16, 2020)

The defendant maintains that where his sentence was not appealed by the state on direct review, the state fails to file a 7.8 motion to correct the sentence, and the defendant acts in reliance on the court's judgment and sentence to enforce the sentence beyond the 120 months maximum. Mr. Wright is entitled to rely on the finality of the judgment and sentence imposed by the trial court particularly where he has served years of that sentence. As in *Hardesty*, *supra.*, "Absent any evidence and specific findings on the element 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 303, 319,915 P. 2d 1080 (1996)

B. Pursuant to RAP 13.4(b)(3), the Supreme Court should accept review because the Court of Appeals has ruled on a question of law involving the Constitution of the State of Washington and the U.S. Supreme Court.

Mr. William Wright maintains that to impose a doubling of the sentence violates the double jeopardy clause of the Fifth Amendment to the U.S. Constitution protection against a second prosecution for the same offense, after acquittal, conviction, or a reversal for lack of sufficient evidence. *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 2076, 23 L. Ed. 2d 656 (1969) A second attempt by the state to establish a defendant's guilt is unequivocally prohibited. *State v. Pascal*, 108 Wash. 2d 125, 132, 736 P. 2d 1065 (1987) The State, with all its resources, should not be allowed to repeatedly subject a person to the ordeal of trial, or by this method enhance the possibility it will obtain the conviction of an innocent person. *Green v. United States*, 108 Wash. 2d at 132, 736 P. 2d 1065

In *United States v. DiFrancesco*, 449 U.S. 117, 101 S. Ct. 426, 66 L. Ed 2d 328 (1980), the court considered protections of defendants at common law. Citing *United States v. Wilson*, 420 U.S. 458, 340-342 (1973); *Green v. United States*, 355 U.S. 184, 200-291 (1957) At that time, the sentencing judge could call for resentencing as long as the defendant had not begun to serve the sentence. *United States v. DiLorenzo*, 429 F. 2d 216, 221 (CA2 1970) cert denied, 380 U.S. 988 (1965)

In *State v. Hardesty*, 129 Wn. 2d 303, 319, 915 P. 2d 1080 (1996), the court recognizes “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 a pending appeal or the defendant’s own fraud in obtaining the erroneous sentence.” The Hardesty court *supra* noted, “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 deceived the sentencing authority or thwarted the sentencing process.” See *United States v. Daddino*, 5 F. 3d 262, 265 (7th Cir. 1993) (legitimate expectation of finality in completed sentence); *United States v. Early*, 816 F. 2d 1428, 1433 (10th Cir. 1987) (Court could not correct sentence five months after rendering it.)

The Washington Supreme Court in *Hardesty*, *supra*, 129 Wn. 2d 315, held “What matters for purpose of double jeopardy is not the legality or illegality of the sentence under the statute, but the defendant’s expectation of finality.” Mr. Wright believed his sentence was final; he was years into serving the sentence and he relied on the finality of the sentence by requesting the court to enforce the maximum sentence of 120 months as reflected in the judgment and sentence reflected in page 3 of 10 of Mr. Wright’s judgement and sentence. (Exhibit A)

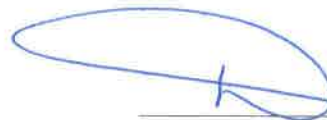
the maximum sentence of 120 months as reflected in the judgment and sentence reflected in page 3 of 10 of Mr. Wright's judgement and sentence. (Exhibit A)

Double jeopardy protection and due process protection are violated when the government can, years after a sentence is imposed, double the maximum term above that held by the sentencing court. The state has violated the defendant's double jeopardy rights by doubling the sentence where the defendant had the expectation that the judgment and sentence was final.

VI. CONCLUSION

The appellate court has made a finding which is contrary to the Supreme Court's ruling in *State v. Hardesty*, 129 Wn. 2d 303, 319, 915 P. 2d 1080 (1996). Further, the state violated double jeopardy by seeking a doubling of a sentence years after the defendant began to serve his sentence where fraud was not a factor in the incorrect sentence.

Respectfully submitted this 27th day of August, 2020.



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EXHIBIT A

State v. Wright, Pend Oreille County Judgment and Sentenced - 13-1-00105-8

2015
FEB 19 2015

SUPERIOR COURT
PEND OREILLE COUNTY, WA

**Superior Court of Washington
County of Pend Oreille**

State of Washington, Plaintiff,

vs.

WILLIAM JOHN WRIGHT

Defendant. DOB
PCN: 11-22-1952
SID: WA17083085

No. 13-1-00105-8

**Felony Judgment and Sentence --
Prison
(FJS)**

- Clerk's Action Required, para 2.1, 4.1, 4.3, 4.8
5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline Mandatory Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
 guilty plea (date) _____ jury-verdict (date) 01-22-2015 bench trial (date) _____

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I -	Possession with Intent to Deliver a Controlled Substance - Methamphetamine	69.50.401(1)(2)(b)	B	10-19-2013
III -	Possession of a Stolen Vehicle	9A.56.068(2)	B	10-19-2013
IV -	Possession of a Stolen Vehicle	9A.56.068(2)	B	10-19-2013
V -	Possession of a Stolen Vehicle	9A.56.068(2)	B	10-19-2013
VI -	Possession of a Stolen Vehicle	9A.56.068(2)	B	10-19-2013

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV For the crime(s) charged in Count _____, domestic violence was pled and proved.
RCW 10.99.020.

The defendant used a **firearm** in the commission of the offense in Count _____, RCW 9.94A.825,
9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____
_____. RCW 9.94A.825, 9.94A.533.

- Count _____, is aggravated murder in the first degree committed while the defendant was under 16 years of age 16 or 17 years of age when the offense was committed.
- Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A. _____.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang-related felony offense** in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count _____ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count **III - VI** is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>	<i>DV* Yes</i>
1.				
2.				

* DV: Domestic Violence was pled and proved.

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1	Possession of a Controlled Substance – Methamphetamine	12-03-10	09-22-11	Pend Oreille County Washington	A	FC	
2	Possession of More Than 40 Grams of Marijuana	12-03-10	09-22-11	Pend Oreille County Washington	A	FC	
3	Possession of a Controlled Substance – Methamphetamine	01-25-09	06-21-10	Pend Oreille County Washington	A	FC	
4	Possession of a Controlled Substance – Psilocybin	01-25-09	06-21-10	Pend Oreille County Washington	A	FC	
5							

* DV: Domestic Violence was pled and proved.

Additional criminal history is attached in Appendix 2.2.

The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
I	8	11	60 to 120 months	N/A	60 to 120 months	10 years \$20,000
III	9+	11	43 to 57 months	N/A	43 to 57 months	10 years \$20,000
IV	9+	11	43 to 57 months	N/A	43 to 57 months	10 years \$20,000
V	9+	11	43 to 57 months	N/A	43 to 57 months	10 years \$20,000
VI	9+	11	43 to 57 months	N/A	43 to 57 months	10 years \$20,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are attached as follows: _____

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) _____.
 - above the standard range for Count(s) _____.
 - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 - Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.
 - within the standard range for Count(s) _____, but served consecutively to Count(s) _____.
- Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.
- (Name of agency) _____ 's costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

2.6 Felony Firearm Offender Registration. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

- The court considered the following factors:
 - the defendant's criminal history.
 - whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
 - evidence of the defendant's propensity for violence that would likely endanger persons.
 - other: _____
- The court decided the defendant should should not register as a felony firearm offender.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The court **dismisses** Counts II in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

<u>120</u> months on Count <u>I</u>	<u>57</u> months on Count <u>V</u>
<u>57</u> months on Count <u>III</u>	<u>57</u> months on Count <u>VI</u>
<u>57</u> months on Count <u>IV</u>	_____ months on Count _____

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon VUCSA in a protected zone manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 120 months

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.
- (c) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701, RCW 10.95.030(3))

(A) The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses
Count(s) _____ 18 months for Violent Offenses
Count(s) I 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.
 have no contact with: _____
 remain within outside of a specified geographical boundary, to wit: _____
 not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.
 participate in the following crime-related treatment or counseling services: _____

- undergo an evaluation for treatment for domestic violence substance abuse
 mental health anger management, and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

No criminal law violation
No possession or consume non-prescribed controlled substances

Other conditions:

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(C) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not committed any crimes after he or she turned 18 or committed a major violation in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant may be subject to community custody under the supervision of the DOC for a period of time determined by the Board. The defendant will be required to comply with any conditions imposed by the Board.

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

<i>PCV</i>	\$ <u>500</u>	Victim assessment	RCW 7.68.035
<i>PDV</i>	\$ _____	Domestic Violence assessment	RCW 10.99.080
<i>CRC</i>	\$ <u>250</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200</u> FRC	
		Witness costs \$ _____ WFR	
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF	
		Jury demand fee \$ _____ JFR	
		Extradition costs \$ _____ EXT	
		Other \$ <u>50</u>	
<i>PUB</i>	\$ _____	Fees for court appointed attorney	RCW 9.94A.760
<i>WFR</i>	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
<i>FCM/MTH</i>	\$ <u>2,000</u>	Fine RCW 9A.20.021; <input checked="" type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
<i>CDF/LDI/FCD NTF/SAD/SDI</i>	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
	\$ _____	DUI fines, fees and assessments	
<i>CLF</i>	\$ <u>100</u>	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ <u>100</u>	DNA collection fee	RCW 43.43.7541
<i>FPV</i>	\$ _____	Specialized forest products	RCW 76.48.140

DEF \$ _____ Other fines or costs for: _____
\$ _____ Emergency response costs (\$1000 maximum, \$2,500 max. effective Aug. 1, 2012.) RCW 38.52.430
Agency: _____

RTN/RJN \$ _____ Restitution to: _____
\$ _____ Restitution to: _____
\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)
RCW 9.94A.760

\$ 21950 Total

- The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 - shall be set by the prosecutor.
 - is scheduled for _____ (date).
- The defendant waives any right to be present at any restitution hearing (sign initials): _____
- Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

<u>Name of other defendant</u>	<u>Cause Number</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
_____	_____	_____	_____
_____	_____	_____	_____

- The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____
RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

- The defendant shall not have contact with _____ (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until _____ (which does not exceed the maximum statutory sentence).
- The defendant is excluded or prohibited from coming within _____ (distance) of:
 - _____ (name of protected person(s))'s home/ residence work place school (other location(s)) _____, or
 - other location: _____, until _____ (which does not exceed the maximum statutory sentence).
- A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Stalking No-Contact Order is filed concurrent with this Judgment and Sentence.

4.6 Other: _____

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 Exoneration: The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5a Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.5b **Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved

5.7 **Department of Licensing Notice:** The court finds that Count III - VI is a felony in the commission of which a motor vehicle was used. **Clerk's Action**-The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of ____.
- No BAC test result.
- BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- Drug Related. The defendant was under the influence of or affected by any drug.
- THC level was ____ within two hours after driving.
- Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: Commercial Veh. 16 Passenger Veh. Hazmat Veh.

5.8 Other: _____

Done in Open Court and in the presence of the defendant this date: February 19, 2015

Judge/Print Name: _____

Deputy Prosecuting Attorney
WSBA No. 40863
JEREMY T. SCHMIDT

Attorney for Defendant
WSBA No. 22620
Print Name: Doug Phelps

Defendant
WILLIAM JOHN WRIGHT

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

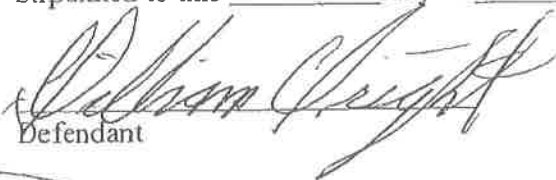
Defendant's signature: _____

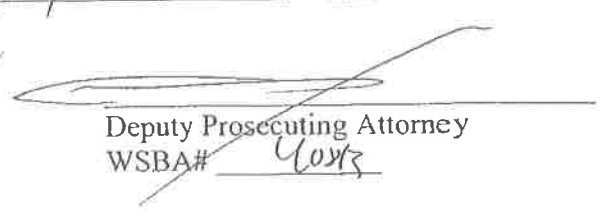
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The defendant further stipulates:

1. That if any additional criminal history is discovered within the maximum period of the greatest charge sentenced, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
2. That if the defendant pled guilty to an amended information, which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington may refile any charge(s) dismissed by amendment.

Stipulated to this 5 day of February, 2015.


Defendant


Deputy Prosecuting Attorney
WSBA# 60873


Attorney for Defendant
WSBA# 22620

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter _____

Print Name _____

VI. Identification of the Defendant

SID No. WA17083085

Date of Birth 11-22-1952

(If no SID complete a separate Applicant card
(form FD-258) for State Patrol)

FBI No. _____

Local ID No. _____

PCN No. _____

Other _____

Alias name, DOB: _____

Race:

Asian/Pacific Islander

Black/African-American

Caucasian

Native American

Other: _____

Ethnicity:

Hispanic

Non-Hispanic

Sex:

Male

Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, _____

Dated: 2/19/15

The defendant's signature: _____

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously

EXHIBIT B

Washington State Court of Appeal, Division III - Slip Opinion for Case No. 36568-9-III
(dated 7/2/2020)

FILED
JULY 2, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 36568-9-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
WILLIAM JOHN WRIGHT,)	
)	
Appellant.)	

PENNELL, C.J. — William John Wright appeals a trial court order issued under CrR 7.8, correcting the maximum term of incarceration identified on his judgment and sentence. We affirm.

FACTS

In 2015, a jury convicted Mr. Wright of possession with intent to deliver a controlled substance (methamphetamine), in violation of RCW 69.50.401(1), (2)(b).¹ This offense is generally characterized as a class B felony with a maximum term of imprisonment of 10 years. RCW 69.50.401(2)(b). However, the maximum penalty is doubled if the defendant has a prior controlled substances conviction. RCW 69.50.408.

¹ Mr. Wright was also convicted of four counts of possession of a stolen motor vehicle.

Mr. Wright's methamphetamine conviction resulted in a sentence of 120 months' imprisonment, followed by 12 months' community custody. The judgment and sentence noted Mr. Wright had several prior felony convictions under Washington's Uniform Controlled Substances Act, chapter 69.50 RCW.² Nevertheless, the judgment and sentence stated the statutory maximum penalty for Mr. Wright's methamphetamine conviction was 10 years, not 20.

Approximately 3 years after sentencing, Mr. Wright filed a CrR 7.8 motion to amend his sentence. He argued his sentence was unlawful because the combined term of imprisonment and community custody exceeded the 10-year statutory maximum sentence. The State disagreed with Mr. Wright's position. Because Mr. Wright had several prior felony drug convictions, the State argued Mr. Wright's maximum term was 20 years, not 10. According to the State, the 10-year maximum listed in the judgment and sentence was a clerical error meriting correction under CrR 7.8, but it did not warrant an adjustment of the sentence.

The trial court agreed with the State. It amended the judgment and sentence to accurately reflect the true maximum penalty for Mr. Wright's offense, noting this was a technical correction under CrR 7.8(a).

² Mr. Wright stipulated to the accuracy of his prior record.

Mr. Wright appeals.

ANALYSIS

RCW 69.50.408 is a recidivism provision that doubles the statutory maximum term of imprisonment for controlled substance violations for defendants with one or more prior controlled substance convictions.³ The impact of RCW 69.50.408 is automatic; it does not require any discretionary actions by the sentencing judge. *State v. Cyr*, No. 97323-7, slip op. at 15-17 (Wash. Apr. 16, 2020), <https://www.courts.wa.gov/opinions/pdf/973237.pdf>. Thus, if a judgment and sentence erroneously fails to note RCW 69.50.408's impact on a defendant's maximum term of incarceration, a trial court has authority to later correct the judgment and sentence under CrR 7.8(a) ("Clerical mistakes in judgments . . . may be corrected by the court at any time of its own initiative or on the motion of any party."). See *State v. Roy*, 147 Wn. App. 309, 315, 195 P.3d 967 (2008) ("Because [the defendant] has many prior drug convictions, our commissioner properly remanded for amendment of the maximum term to 20 years.").

The trial court here appropriately exercised its authority to correct the maximum term of imprisonment listed on Mr. Wright's judgment and sentence. Because this

³ The statute doubles a defendant's statutory maximum sentence, not the standard range penalty under the Sentencing Reform Act of 1981, chapter 9.94A RCW. *In re Pers. Restraint of Cruz*, 157 Wn.2d 83, 90, 134 P.3d 1166 (2006).


No. 36568-9-III
State v. Wright

correction was a ministerial act, it did not amount to resentencing and therefore did not raise any concerns regarding double jeopardy⁴ or finality. *See State v. Ramos*, 171 Wn.2d 46, 49, 246 P.3d 811 (2011). Mr. Wright retains the same sentence that was originally imposed in 2015.

CONCLUSION

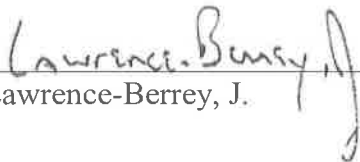
The order on appeal is affirmed. The State's request for costs is denied.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Pennell, C.J.

WE CONCUR:



Lawrence-Berrey, J.



Andrus, J.⁵

⁴ U.S. CONST. amend. V; WASH. CONST. art. I, § 9.

⁵ The Honorable Beth Andrus is a Court of Appeals, Division One, judge sitting in Division Three under CAR 21(a).

EXHIBIT C

Court of Appeals, Division III, Case No. 36568-9-III –
Order Denying Motion for Reconsideration (dated 7/28/2020)

FILED
JULY 28, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 36568-9-III
Respondent,)	
)	ORDER DENYING MOTION
v.)	FOR RECONSIDERATION
)	
WILLIAM JOHN WRIGHT,)	
)	
Appellant.)	

THE COURT has considered appellant William John Wright's motion for reconsideration of our July 2, 2020, opinion; and the record and file herein.

IT IS ORDERED that the appellant's motion for reconsideration is denied.

PANEL: Judges Pennell, Andrus, and Lawrence-Berrey

FOR THE COURT:



REBECCA L. PENNELL
Chief Judge

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

WILLIAM WRIGHT,

Defendant/Appellant.

Cause No. 36568-9-III
Trial Court: 13-1-00105-8

**DECLARATION
OF SERVICE**

I, Douglas D. Phelps, declare as follows: That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as attorney of record for the Defendant/Appellant, served in the manner indicated below, an original of the Petition for Review, on August 27, 2020 to the following in the manner indicated:

PEND OREILLE COUNTY PROSECUTOR __ Appellate Portal

I further declare that I served in the manner indicated below, a copy of the Brief of Appellant, on August 27, 2020, to the following:

WILLIAM J. WRIGHT, DOC #807340 __ U.S. Regular Mail
Airway Heights Corrections Center, Unit K, A2
PO Box 2049
Airway Heights, WA 99001

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

Signed at Spokane, Washington, this 27th day of August, 2020

DOUGLAS D. PHELPS

PHELPS & ASSOCIATES, P.S.

August 27, 2020 - 4:31 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: State of Washington v. William John Wright (365689)

The following documents have been uploaded:

- PRV_Petition_for_Review_Plus_20200827161753SC208373_8930.pdf
This File Contains:
Affidavit/Declaration - Other
Petition for Review
The Original File Name was 20200827154250.pdf

A copy of the uploaded files will be sent to:

- bclemmons@pendoreille.org
- dhunt@pendoreille.org

Comments:

Declaration of Service attached.

Sender Name: Peggy Phelps - Email: phelps@phelpslaw1.com

Filing on Behalf of: Douglas Dwight Phelps - Email: peg@phelpslaw1.com (Alternate Email:)

Address:
2903 N. Stout Rd
Spokane, WA, 99206
Phone: (509) 892-0467

Note: The Filing Id is 20200827161753SC208373