NO. 44256-6-II

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

STATE OF WASHINGTON,

Respondent,

v.

JESSICA M. SWEARINGEN,

Appellant.

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

The Honorable John Wulle, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in finding Ms. Swearingen guilty of possession of over 40 grams of marijuana at a stipulated facts trial because no facts supported that she had over 40 grams of marijuana in her possession.

2. Defense counsel telling Ms. Swearingen that should could not speak at sentencing deprived Ms. Swearingen effective counsel and the right of allocution.

3. The sentencing court erred in imposing an unconstitutionally vague condition that Ms. Swearingen have no contact with "known felons."

4. The sentencing court erred by finding that Ms. Swearingen has the ability or likely future ability to pay legal financial obligations.

5. The sentencing court erred in adopting Judgment and Sentence Finding No. 2.5.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err in finding Ms. Swearingen guilty of possessing more than 40 grams of marijuana when, at a stipulated facts trial, the stipulated evidence proved only that Ms. Swearingen possessed some marijuana?

2. Is Ms. Swearingen entitled to remand for a new sentencing hearing because she was denied her right to allocution and effective assistance of counsel when she wanted to address the court but defense counsel told her she could not and the error was not harmless?

3. A condition of community custody is unconstitutionally vague when it is subject to uneven enforcement and fails to give the offender adequate notice of prohibited conduct. As a condition of her community custody, Ms. Swearingen was prohibited from contact with "known felons." Is this community custody condition unconstitutionally vague because it does not specify who must know if the person is a felon?

4. A court may not find that an offender has the ability or likely future ability to pay legal financial obligations absent some support in the record for the finding. Here, the sentencing court made such a find in the absence of any supporting evidence in the record. Was the sentencing court's finding clearly erroneous?

C. STATEMENT OF THE CASE

1. Charges, Suppression Motion, and Search Warrant

The following testimony was heard at a suppression motion.

Jessica Swearingen was driving over the speed limit and she did not have her headlights on at 8 a.m. on December 26, 2010. She caught the attention of Washington State Patrol Trooper Bettger. He pulled her

over. 1RP at 4-8. Ms. Swearingen handed the trooper her driver's license. 1RP 11. Trooper Bettger agreed he received her driver's license but denied having also received proof of insurance or the car's registration information. 1RP 67, 143.

Trooper Bettger noticed a small black bag with parts of plastic bags sticking out of it. He asked Ms. Swearingen about the bag. Ms. Swearingen thought the bag and its contents were none of the trooper's business. 1RP at 145-47. Trooper Bettger became concerned for his safety when Ms. Swearingen rummaged in the bag and concealed her rummaging from his view. 1RP at 12-13. Trooper Bettger told Ms. Swearingen to put her hands on the steering wheel. 1RP 15. She did so but she did not consistently keep her hands on the wheel. 1RP 15, 28. Trooper Bettger testified Ms. Swearingen grabbed a small bag of marijuana from the driver's door panel, threw it on the passenger seat, and told him, "here, you can have the marijuana then." 1RP at 25. Ms. Swearingen denied producing the marijuana. 1RP 152. Trooper Bettger decided to arrest Ms. Swearingen for unlawful possession of marijuana. 1RP 27.

After seeing the marijuana, Trooper Bettger requested Trooper Gardiner come to the traffic stop. Trooper Gardiner is a K-9 officer and has a drug sniffing dog. The dog, Corbin, alerted on the car. 1RP 27, 96, 98, 108.

During a search incident to arrest of Ms. Swearingen's person, Trooper Bettger found a small baggy of suspected methamphetamine in Ms. Swearingen's pants pocket. 1RP 91-92.

Ms. Swearingen refused to allow the troopers to search her car. 1RP 35.

The troopers decided to seal and impound her car in preparation for obtaining and serving a search warrant on the car. 1RP 110-11. Ms. Swearingen was taken to jail. A female corrections officer searched her again and found a suspected baggie of methamphetamine in Ms. Swearingen's jacket pocket. The corrections officer strip searched Ms. Swearingen and found two more baggies of suspected methamphetamine in Ms. Swearingen's bra. 1RP 46, 49-52.

Trooper Gardiner later obtained a warrant to search the car. 1RP 110-11.

The state charged Ms. Swearingen with Possession of Methamphetamine,[1] Possession of Cocaine,[2] Possession of Over 40 Grams of Marijuana,[3] Possession of a Controlled Substance by Prisoners or Jail

[1] RCW 69.50.4013(1)
[2] RCW 69.50.4013(1)
[3] RCW 69.50.4013(1)

Inmates,[4] and Obstructing a Law Enforcement Officer.[5] Supplemental Designation of Clerk's Papers, Information (sub. nom. 5.)

Ms. Swearingen challenged the stop traffic. She argued Trooper Bettger exceeded the scope of the stop. She also argued the search warrant affidavit was invalid on its face as it failed to provide probable cause for the search. Supplemental Designation of Clerk's Papers, Motion to Suppress and Motions to Dismiss (sub. nom. 13).

Ms. Swearingen testified at the suppression motion. 1RP 139-57. In ruling on the motions, the court found the troopers' testimony more credible than Ms. Swearingen's testimony and adopted the troopers' version of events as truthful. 1RP at 174-75. The court found Trooper Bettger had not exceeded the scope of the traffic stop. Rather, Ms. Swearingen's concealing the small black bag and its contents from Trooper Bettger created an officer safety concern. The court also found Ms. Swearingen voluntarily threw the baggy of marijuana into Trooper Bettger's plain view. Finally, the court found the search warrant affidavit valid on its face. 1RP 172-178. The court later entered written findings of fact and conclusions of law on the suppression motion. Supplemental Designation of Clerk's Papers, Findings of Fact and Conclusions of Law on Motion to Suppress and Dismiss (sub. nom. 63.)

[4] RCW 9.94.041
[5] RCW 9A.76.020

After the suppression motion was heard, Ms. Swearingen missed a scheduled court date. The prosecutor filed an Amended Information adding a charge of Bail Jumping on a Class B or C Felony.[6] CP 1-2.

2. Jury Waiver and Stipulated Facts Trial

After the state filed its amended information, Ms. Swearingen filed a written waiver of her right to a jury trial. CP 3-5; 2RP 181. To preserve her right to appeal any suppression issues, Ms. Swearingen agreed to a trial on stipulated facts as to Counts 1, 3, 5, and 6.[7] CP 6-10; 2 RP 215. The state crafted 26 Findings of Fact and 2 Conclusions of Law. CP 6-10. Attached to the Findings and Conclusions are 66 pages of police reports, photographs, lab reports, a probable cause statement, and K-9 Corbin's credentials. CP 7-73

In Findings of Fact 1 and 2, the state clarifies that the 66 pages of attachments create the basis for the 26 Findings of Fact:

> 1. The parties in this matter have stipulated to a set of facts containing in the pleading filed in this matter, entitled "Stipulation." That pleading and its accompanying attachments are herein incorporated by reference in their entirety as the basis of the Court's Findings of Facts following Stipulated Facts Trial.
>
> 2. Those facts are summarized below.

CP 6.

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[6] RCW 9A.76.170

[7] Counts 2 and 4 were dismissed on the state's motion. 2RP 199.

Only Findings of Fact 8, 10, 12 21, 24, and 24 include any information about marijuana:

> 9. Trooper Bettger would testify that: While waiting for the driver's check to come back on the radio the Defendant made another sudden move; she turned, blocking the Trooper's view, and reached with her right hand across her left side and downward. Tr. Bettger commanded her again to place her hands back on the steering wheel. As Defendant turned back towards Tr. Bettger, the Trooper observed a plastic bag now in her hand; Defendant tossed the bag/baggie into the front passenger seat and said to the Trooper, "Here, you can have the Marijuana then." Defendant would have testified that she did not throw bag of Marijuana or make admissions. (Refer to 3.5/3.6 hearing - Tr. Bettger & Defendant's testimony)
>
> 10. Tr. Bettger observed the contents of the baggie now in plain view and the contents did appear to be consistent with Marijuana and, based on the Trooper's training and experience, smelled like Marijuana – Tr. Bettger indicated at the suppression hearing that the smell had wafted through the open passenger side window.
> ...
>
> 12. Tr. Bettger advised Communications via radio that he would be placing Defendant under arrest for Possession of Marijuana and Tr. Bettger also requested a narcotics K-9 to respond to his location.
> ...
>
> 21. Some of the evidence found during the subsequent search of defendant's vehicle under authority of search warrant signed by Clark County District Court Judge Vernon L. Schreiber:
>
> a. Black pouch that had the following contents: Suspected Marijuana, glass pipe with suspected Methamphetamine residue.
>
> b. Next to pouch: more plastic baggies containing suspected Marijuana

> c. A black plastic bag with more suspected Marijuana and Methamphetamine.
> ...
> e. Between driver's seat and door: More plastic baggies containing suspected Marijuana: one plastic bag had a brown substance that field-tested positive for Hashish.
>
> f. Driver's door pocket: glass pipe with Marijuana residue....
>
> g. On front passenger seat: plastic baggie with suspected Marijuana inside, and
>
> h. Inside trunk of vehicle: plastic bag containing sandwich-sized bags of suspected Marijuana, silver grinder suspected of being used to grind Marijuana, and a small clear glass vial with crystalline residue.
> ...
> 23. Ms. Dunn also tested item BY8104, suspected Marijuana/Hashish. This item weighed 0.1 grams and contained THC, or "delta-9-tetrahydrocannabinol" which is a compound that occurs naturally in Marijuana.
>
> 24. Although much of the Marijuana was not tested, it was recognized as Marijuana by the Troopers based on their training and experience, and Defendant admitted to Tr. Bettger that the baggie she threw towards him during the stop was Marijuana."

CP 7, 9.

Even though the stipulated facts did not include the actual weight of the marijuana, the trial court entered the following Conclusion of Law:

> 1. The defendant is guilty beyond a reasonable doubt of the crimes of Possession of a Controlled Substance ... Marijuana (over 40 grams)....

CP 10.

3. Sentencing and Appeal

At sentencing, Ms. Swearingen was no longer represented by the defense counsel who represented her at the suppression motion and the stipulated facts trial.[8] In addition to sentencing Ms. Swearingen on the current charges, the court also took her plea on an unrelated bail jumping charge. 2RP 229-32. The prosecutor summarized Ms. Swearingen's criminal history and standard ranges. On the bail jumping charge her standard range was 12 months plus 1 day to 16 months. The prosecutor added, " Initially, we had – I think the Defendant had wanted to remain local and we were thinking of doing a downward departure, but she indicated she would rather do the DOC time." 2RP 234. As to the drug charges, Ms. Swearingen's standard range was 6-18 months. CP 76; 2RP 235. Defense counsel told the court the parties had reached an agreement in the offender score, 2RP 237, and had "an agreement for sentencing overall." 2RP 238.

The court asked Ms. Swearingen if she had anything to say and she responded:

> Yeah. Not sentencing to be set over, to come back another day for sentencing. You can sentence today, I just want time to move – get ready to go.

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[8] Defense counsel Jeff Sowder was replace by Jeff Barra and a Ms. Emrich after Ms. Swearingen was accused of a second bail jumping charge. Mr. Sowder told the court he would be a witness to the second bail jumping allegation. 2RP 220-21, 225.

2RP 240.

The court then asked the parties if there was anything else. The prosecutor requested that the court proceed with sentencing. 2RP 240-41 The following then occurred:

DEFENDANT: Um –

MS. EMRICH: It's okay.

JUDGE WULLE: I will accept the agreement of the parties.

DEFENDANT: (Whispered to Counsel.) Can I talk?

MS. EMRICH: No.

DEFENDANT: Can I –

2 RP 341.

In addition to a 366 day sentence, the court ordered Ms. Swearingen to serve 12 months of community custody with certain conditions. CP 77-78. One of the conditions was that Ms. Swearingen have no contact with known felons. CP 78. Ms. Swearingen did not object to the no-contact condition.

Also at sentencing, without any comment or argument from the parties, the court endorsed a finding in the Judgment and Sentence that: "The defendant has the ability to likely future ability to pay the legal financial obligations imposed herein." CP 76.

Ms. Swearingen appeals all portions of her judgment and sentence. CP 99.

D. ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT MS. SWEARINGEN WAS IN POSSESSION OF MORE THEN 40 GRAMS OF MARIJUANA.

Ms. Swearingen's conviction for possession of over 40 grams of marijuana must be reversed. The conviction was entered without a factual basis for doing so.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that a trier of fact can draw from that evidence. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

To prove that Ms. Swearingen possessed over 40 grams of marijuana, the state has to prove (1) that Ms. Swearingen possessed marijuana and (2) that she possessed over forty grams of marijuana. RCW 69.50.4013(1). The stipulated facts readily established the first element. Ms. Swearingen had marijuana on her person and in her car. CP 7, 9.

However, none of the stipulated facts specify how much marijuana Ms. Swearingen possessed. Yet, in Conclusion of Law 1, the court concludes Ms. Swearingen had over 40 grams of marijuana. CP 10. The trial court had factual basis for making this conclusion or entering a judgment against Ms. Swearingen for possessing a felony amount of marijuana and erred in doing so. This court should remand to the trial court to enter a judgment for possession of less than 40 grams of marijuana, a misdemeanor. RCW 69.50.4014.

2. DEFENSE COUNSEL TELLING MS. SWEARINGEN SHE COULD NOT SPEAK AT SENTENCING DENIED MS. SWEARINGEN BOTH EFFECTIVE ASSISTANCE OF COUNSEL AND HER RIGHT TO FULL ALLOCUTION.

Ms. Swearingen is entitled to a new sentencing hearing because she was denied effective assistance of counsel when her attorney prevented her from speaking at the sentencing hearing and fully exercising her right of allocution.

To establish ineffective assistance of counsel on resentencing, a defendant must show that (1) her counsel's performance was deficient and (2) the deficient performance prejudiced her. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334–35, 899 P.2d 1251 (1995). Prejudice occurs at sentencing if, but for counsel's deficient performance, there is a

reasonable probability that her sentence would have differed. *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

The right of allocution is deeply rooted in common law. As early as 1689, it was recognized that a court's failure to ask a defendant if he had anything to say before sentence was imposed required reversal. See Barrett, *Allocution*, 9 Missouri L.Rev. 115, 122 (1944). In *Green v. United States*, 365 U.S. 301, 304-05, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961), the United States Supreme Court held that under Federal Criminal Rule 32(a), which codified the common-law rule of allocution, a defendant must be personally afforded the opportunity to speak before imposition of sentence. The Court reasoned that "[t]he most persuasive counsel may not be able to speak for the defendant as the defendant might, with halting eloquence, speak for himself." *Id.* at 304.

In *State v. Happy*, 94 Wn.2d 791, 793, 620 P.2d 97 (1980), the State Supreme Court relied on *Green* in concluding that the defendant's right to speak must be clear. The Court emphasized that CrR 7.1(a)(1) required the trial court to "ask the defendant if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment." *Id.* The Court vacated Happy's sentence and remanded for resentencing because the trial court only asked Happy if he had "any legal cause why sentence should not be imposed." *Id.* at 792-94. The Court

held that the trial court failed to strictly comply with the rule and consequently denied Happy his right to allocution. *Id.* at 794.

Criminal Rule 7.1(a)(1) was repealed and superseded by statute with the advent of the Sentencing Reform Act of 1981. *State v. Crider*, 78 Wn. App. 849, 855-59, 899 P.2d 24 (1995). In *Crider*, Division Three of this Court observed that there we no evidence of legislative intent to diminish the right of allocution and concluded that allowing allocation means soliciting a statement from the defendant prior to imposition of sentence just as it has for the past 300 years. *Id.* at 859. Accordingly, the Court vacated Crider's sentence and remanded for resentencing because the trial court extended Crider an opportunity to speak for the first time only after sentence had been imposed. *Id.* at 861. The Court concluded that allowing allocution after imposition of sentence is "a totally empty gesture," even when the court stands ready and willing to alter the sentence because the defendant is arguing from a disadvantaged position. *Crider*, 78 Wn. App. at 861 (citing *State v. Chow*, 77 Hawaii 241, 883 P.2d 663, 668 (Ct App. 1994)). Furthermore, the Court held that "[h]armless error has no allure when the burden on a sentencing court in offering allocution is so minimal and the adverse effect on a defendant so potentially impactive." *Crider*, 78 Wn. App. at 861.

In *State v. Aguilar-Rivera*, 83 Wn. App. 199, 920 P.2d 623 (1996), after orally announcing Aguilar-Rivera's sentence, the trial court was reminded by defense counsel that Aguilar-Rivera had not yet been given his right of allocution. The court apologized and invited him to speak on his own behalf. *Id.* at 200. Division One of this Court concluded that "[a]lthough it is clear to us that the sentencing judge sincerely tried to listen to allocution with an open mind, the judge's oversight effectively left Aguilar-Rivera in the difficult position of asking the judge to reconsider an already-imposed sentence." *Id.* at 203. The Court held that the appearance of fairness requires that when the right of allocution is inadvertently omitted until after the court has orally announced the sentence it intends to impose, the remedy is to send the defendant before a different judge for a new sentencing hearing. *Id.*

In *State v. Roberson*, 118 Wn. App. 151, 74 P.3d 1208 (2003), this Court remanded for a new disposition hearing where although Roberson never requested an opportunity to address the court directly, "the trial court never asked Roberson if he wanted to speak." *Id.* at 160-62. This Court reasoned that it could not conclude that the trial court's failure to ask Roberson if he wished to speak was harmless error because he received a high manifest injustice disposition, unlike in *State v. Gonzales*, 90 Wn. App. 852, 854, 954 P.2d 360, *review denied*, 136 Wn. 2d 1024

(1998) (error harmless when Gonzales received the lowest possible standard range sentence) and *State v. Avila*, 102 Wn. App. 882, 898, 10 P.3d 486 (2000) (error harmless where sentence was well below the maximum prescribed under the statute). *Id.* at 161-62.

It is well settled that a criminal defendant in Washington has a statutory right of allocution. *In re Pers. Restaint of Echeverria*, 141 Wn.2d 323, 335, 6 P.3d 573 (2000). Under the current allocution statute, the trial court must allow argument from the defendant as to the sentence to be imposed. RCW 9.94A.500(1) (at sentencing, the court shall "allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.")

The record reflects that through defense counsel's actions, the trial court did not hear Mr. Swearingen's full allocution. At the beginning of the sentencing hearing, the prosecutor explained at one point the parties were giving consideration to an exceptional sentence downward so Ms. Swearingen would serve her time at the Clark County Jail. Apparently though, at some point Ms. Swearingen expressed an interest a sentence that would send her to DOC to serve her time. 2RP 234. Ms. Swearingen told the court she wanted to remain out of custody for a time until she

could get things settled before going into custody. 2RP 240. She wanted to say more to the court but her attorney told her she could not. 2RP 241. As in *Roberson*, 118 Wn. App. 151, this Court cannot conclude that the error in depriving Ms. Swearingen her right to a full allocution was harmless.

A remand is required because ineffective assistance denied Ms. Swearingen her right of allocution before imposition of sentence. *Roberson*, 118 Wn. App. at 162; *State v. Beer*, 93 Wn. App. 539, 546, 969 P.2d 506 (1999); *Aguillar-Rivera*, 83 Wn. App. at 203.

3. THE COMMUNITY CUSTODY CONDITION PROHIBITING MS. SWEARINGEN FROM CONTACT WITH KNOWN FELONS IS UNCONSTITUTIONALLY VAGUE.

Prohibiting Ms. Swearingen from contact with known felons is an unconstitutionally vague condition of probation. The condition criminalizes innocuous behavior and invites random and uneven enforcement by community corrections officers. It must be stricken.

The due process clauses of the federal and state constitutions require that citizens be provided with fair warning of what conduct is illegal. U.S. Const. Amend. XIV; Const. Art. I, Section 3; *State v. Valencia*, 169 Wn.2d 782, 791, 239 P.3d 1059 (2010); *State v. Bahl*, 164 Wn.2d 739, 752, 193 P.3d 678 (2008). As a result, a condition of

community custody must be sufficiently definite that ordinary people understand what conduct is illegal and the condition must provide ascertainable standards to protect against arbitrary enforcement. *Bahl,* at 752-52. A condition which leaves too much to the discretion of an individual community corrections officer is unconstitutionally vague. *Valencia,* at 795.

In *Valencia*, the state Supreme Court held that a use of drug paraphernalia condition was unconstitutionally vague. *Valencia*, 169 Wn.2d at 785, 794. Valencia was barred from using items that could be used to "ingestion or process controlled substances, or to facilitate the sale or transfer of controlled substances." *Valencia*, 169 Wn.2d at 785. The condition was so broad that it prohibited the possession of any "paraphernalia." *Id.* at 784. Pointing out that sandwich bags, paper, and other commonplace items could be viewed as drug paraphernalia by some community corrections officers but not others, the court held the condition was void for vagueness. *Id.* at 794-95.

The known felon condition is similarly void for vagueness. Who has to know a person is a felony? Ms. Swearingen? Her community custody officer? Law enforcement? The community at large? Without qualification on who has to know, some community corrections officers might interpret the condition as their knowing a person is a felon. Yet

other offices might interpret the condition as requiring proof that Ms. Swearingen know a person is a felon. The potential for uneven enforcement makes this unqualified condition unconstitutionally vague. It should be stricken.

Although Ms. Swearingen did not object to this condition, illegal or erroneous sentences may be challenged for the first time on appeal. *Bahl* 164 Wn.2d at 744; *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999).

4. THE SENTENCING COURT'S FINDING REGARDING MS. SWEARINGEN'S PRESENT OR FUTURE ABILITY TO PAY HER LEGAL FINANCIAL OBLIGATIONS IS NOT SUPPORTED BY THE RECORD.

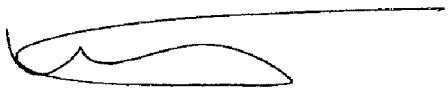
Absent adequate support in the record, a sentencing court may not enter a finding that an offender has the ability or likely ability to pay legal financial obligations. *State v. Bertrand*, 165 Wn. App. 393, 405, 267 P.3d 511 (2011), *review denied*, 175 Wn.2d 1014 (2012). In this case, the sentencing court entered such a finding without any support in the record. CP 76. Indeed, the record suggests Ms. Swearingen lacks any ability to pay the amount ordered, given her combined past and present total of 8 felony convictions and 17 misdemeanor convictions. CP 74, 86-87, 88. Such an extensive criminal record severely limits her employment prospects. Additionally she is the parent and caregiver not only for her

own three children, but also for her sister's three children who range in age from 4 to 17. 2RP 210. Providing for a family of seven is expensive. There is nothing in the record to suggest Ms. Swearingen has anything left over after housing, feeding, and clothing her family. Accordingly, Finding No. 2.5 of the Judgment and Sentence must be vacated. *Id.*

E. CONCLUSION

Ms. Swearingen's conviction for Possession of Over 40 Grams of Marijuana should be reversed and dismissed for insufficient evidence. Because defense counsel deprived Ms. Swearingen of her right to allocution, the sentencing court should provide Ms. Swearingen with a full sentencing hearing. At sentencing, the court should strike the vague "known felons" community custody condition and strike all non-mandatory legal financial obligations.

DATED this 12th day of July, 2013.



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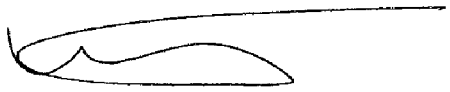
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled Appellant's Brief to: (1) Anne Mowry Cruser, Clark County Prosecutor's Office, at prosecutor@clark.wa.gov; (2) the Court of Appeals, Division II; and (3) I mailed it to Jessica M. Swearingen/DOC# 362443, Washington Corrections Centerfor Women, 9601 Bujacich Rd. NW, Gig Harbor, WA 98332-8300.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed July 12, 2013, in Longview, Washington.



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