

FILED  
Oct 29, 2014  
Court of Appeals  
Division I  
State of Washington

NO. 70955-1-1

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

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STATE OF WASHINGTON,

Respondent,

v.

JOHN P. BLACKMON,

Appellant.

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STATE'S RESPONSE TO APPELLANT'S  
STATEMENT OF ADDITIONAL GROUNDS

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MARK K. ROE  
Prosecuting Attorney

JOHN J. JUHL  
Deputy Prosecuting Attorney  
Attorney for Respondent

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

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## **I. ISSUES**

The court directed Respondent to file a response limited to the sentencing issue raised in appellant's statement of additional grounds. The issue can be paraphrased as follows:

1. The trial court erred in sentencing the defendant to 36 months of community custody. When combined with the incarceration portion of sentence the result exceeded the statutory maximum. Should defendant be re-sentenced to periods of community custody that when combined with his the incarceration portion of sentence do not exceed the statutory maximum?

2. Should defendant be supervised on community custody for the period of all earned early release time, not exceeding the statutory maximum?

## **II. STATEMENT OF THE CASE**

Defendant, John Patrick Blackmon, was convicted of two counts of second degree child molestation, one count third degree rape of a child, and two counts third degree child molestation.

Sentence was imposed on September 9, 2013. The court determined that: the standard range for each count of second degree child molestation was 87-116 months with a maximum sentence of 10 years imprisonment; the standard range for third

degree rape of a child was 60 months with a maximum sentence of 5 years imprisonment; and the standard range for each count of third degree child molestation was 60 months with a maximum sentence of 5 years imprisonment. CP 20, 22; RCW 9A.44.079(2), RCW 9A.44.086(2), RCW 9A.44.089(2), RCW 9A.20.021(1)(b) and (c). The court sentenced defendant to 116 months on each count of second degree child molestation, 60 months on the count of third degree rape of a child, and 60 months on each count of third degree child molestation. Counts 1-4 were run concurrently to each other and consecutive to count 5. CP 23-24. The court ordered 36 months community custody on each of the five counts, noting that, "The combined term of community custody and confinement shall not exceed the statutory maximum." CP 24.

### **III. ARGUMENT**

#### **A. STATUTORY PROVISIONS.**

This case requires the court to address the interactions among several related statutory provisions.

##### **1. RCW 9.94A.501.**

RCW 9.94A.501(4)(a) provides for the supervision of all felony sex offenders, regardless of risk classification, who are

sentenced to a term of community custody pursuant to RCW 9.94A.701.

**2. RCW 9.94A.701.**

RCW 9.94A.071(1)(a) provides a three-year-term of community custody for sex offenses. The statute contains a provision for sentences where community custody exceeds the statutory maximum:

The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

RCW 9.9A.701(9).

**3. RCW 9.94A.729.**

A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 ..., shall be transferred to community custody in lieu of earned release time[.]

RCW 9.94A.729(5)(a). Defendant is eligible for up to one-third reduction on his sentence—a reduction of up to 38 $\frac{2}{3}$  months on counts 1 and 2, and a reduction of up to 20 months on counts 3, 4 and 5. RCW 9.94A.729(3)(e). Any reduction must be transferred to community custody in lieu of any earned early release.

**B. UNDER THESE STATUTES, DEFENDANTS SERVE A COMMUNITY CUSTODY TERM EQUAL TO THE REDUCED STATUTORY PERIOD OR THE PERIOD OF EARNED EARLY RELEASE, WHICHEVER IS GREATER.**

The ultimate issue to be decided by this court is what sentence should be imposed in light of these statutory provisions.<sup>1</sup> Community custody supervision is required for sex offenders. RCW 9.94A.501(4)(a). Under RCW 9.94A.701, the sentencing court must reduce the term of community custody to remain within the statutory maximum. The State concedes that the sentencing court erred in the present case by not reducing the 36 month term of community custody. State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012). Defendant's sentence should be corrected to four months of community custody on counts 1 and 2, and to zero months of community custody on counts 3, 4 and 5.

However, any award of good time must be transferred to community custody. RCW 9.94A.729. Defendant may thus serve a term of community that exceeds the term ordered by the sentencing court, if he receives a greater award of good time. The conversion of earned early release to community custody is carried out by the Department of Corrections. RCW 9.94A.729(1)(a). The period of

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<sup>1</sup> The interplay between these statutory provisions is currently before the Supreme Court in State v. Bruch, No. 90021-3.


transfer counts against the period of community custody ordered by the court. If the court-ordered period is longer, the defendant will serve that period, with credit for the period in lieu of earned early release. If the period in lieu of earned early release is longer, the defendant will serve that period, which will then also satisfy the court-ordered period. In effect, the defendant will serve the longer of (a) the community custody period specified by statute (reduced if necessary to stay within the statutory maximum) or (b) the period of earned early release.

#### IV. CONCLUSION

The case should be remanded for correction of the community custody period. The correct period for counts 1 and 2 should be four months. The correct period for counts 3, 4 and 5 should be zero months. Defendant shall be supervised on community custody for the above or the period of earned early release, whichever is greater.

Respectfully submitted on October 29, 2014.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
JOHN J. JUHL, WSBA #18951  
Deputy Prosecuting Attorney  
Attorney for Respondent

*Sent via e-mail*

On this day I mailed a properly stamped envelope addressed to the attorney for the defendant that contained a copy of this document.

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office

this 29th day of Oct, 2014  
