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Washington State
Supreme Court

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IN THE SUPREME COURT OF WASHINGTON

In re Personal Restraint of:

EARL IRA BOWMAN,
Petitioner

STATE OF WASHINGTON,
Respondent,

v.

EARL IRA BOWMAN,
Appellant.

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

The Honorable Jeffrey M. Ramsdell, Judge
The Honorable Hollis R. Hill, Judge

PETITION FOR REVIEW

Earl Ira Bowman
Appellant
STAFFORD CREEK CORR. CTR.,
191 CONSTANTINE WAY
ABERDEEN, WA., 98520

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A. IDENTITY OF PETITIONER

Petitioner Earl Ira Bowman, the appellant below, asks this Court to review the following court of appeals decision.

B. COURT OF APPEALS DECISION

Mr. Bowman seeks review of division one's decision under In re Pers. Restraint of Bowman, No. 76255-9-I, attached hereto as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. INEFFECTIVE ASSISTANCE, AS VIOLATIVE OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

Bowman's newly appointed counsel informed the trial court of a potential miscalculation of Bowman's offender score, but failed to make the calculation. The question is whether Bowman was deprived of effective assistance of counsel.

2. Whether a miscalculation of an offender score may be challenged for the first time on appeal.

3. DEPRIVATION OF THE RIGHT TO SPEEDY SENTENCING AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

Both state and federal and state constitutions guarantee the right to speedy sentencing. The question is whether its violation requires dismissal of the charges with prejudice

D. STATEMENT OF THE CASE

On October 6, 2015, the State charged Appellant with second degree robbery, and second degree assault. Both of these charges included the allegation that the offense was a crime of domestic violence under RCW 10.99.020. CP 1-7.

Mr. Bowman was arraigned on October 20, 2015, and numerous orders were entered thereafter. On May 20, 2016, the trial court granted the State's motion to amend information charging second degree robbery and second degree assault. That same day Bowman pleaded guilty to second degree assault. CP 24; RP 3-14.

The State submitted that Bowman's offender score was 9 points with a standard range of 51-68 months, with 60 months as the statutory maximum. The State recommended the maximum sentence. CP 16, 31, 35, 38-39. Defense counsel recommended a prison-based Drug-Offender Sentencing Alternative (DOSA). id.

Ultimately, questions concerning Bowman's offender score had been raised. RP 16-19, 24-27. Specifically, the records show that after Bowman's DOSA was revoked, he received 1-year community custody on January 31, 2012. During this time frame, he was arrested on multiple occasions that amounted to 184-days. Bowman was arrested and charged with a new offense on October 1, 2015, clearly beyond the 1-year of community custody.

Counsel failed to make this calculation when it asserted Bowman's correct offender score. ESSB 5891 mandates that Bowman's 184-day confinement for violating sentencing conditions did not toll the 1-year term of community custody. Despite this clear error, the parties proceeded to stipulate that Bowman's offender score was 7 points, based on 6 prior felonies, with one point added for the allegation that the current offense was committed while Bowman was still on community custody. CP 85, 88.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. BOWMAN'S JUDGMENT AND SENTENCE IS INVALID ON ITS FACE DUE TO AN ERRONEOUS CALCULATION OF HIS OFFENDER SCORE

A court's authority to impose a felony sentence is limited to the authority granted by the Sentencing Reform Act (SRA). RCW Chapter 9.94A; In-re Pers. Restraint of Goodwin, 146 Wash.2d 861, 873-74, 50 P.3d 618 (2002); State v. Wilson, 170 Wash.2d 682, 689, 244 P.3d 950 (2010). An erroneously calculated offender score results in an unlawful sentence, which may be challenged for the first time on appeal despite the existence of a negotiated plea-agreement. Goodwin, Id. at 873-74; Wilson, Id. at 689. The Legislature enacted RCW 9.94A.525, which states that "[i]f the present conviction is for an offense committed while the offender was on community custody,-

add one point..." RCW 9.94A.525(19).

Here, Bowman submits that he was not on community custody at the time he committed the current offenses. In this regard, the proper remedy is to remand for resentencing with an offender score of six points. Goodwin, Id. at 877-78; Wilson, at 691.

2. BOWMAN RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR COUNSEL'S FAILURE TO ARGUE THE CORRECT OFFENDER SCORE

The State and Federal Constitutions guarantee accused persons effective assistance of counsel at all critical stages of trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 1052, 80 L.Ed.2d 674 (1984); State v. Thomas, 109 WASH.2d 222, 226, 743 P.2d 816 (1987).

Here, Mr. Bowman submits that he has established that his counsel's performance was deficient, and that this deficiency prejudiced him. Strickland, 466 U.S., at 687. There could be no legitimate tactical reason not to challenge the community custody point in Bowman's offender score.

3. DEPRIVATION OF THE SPEEDY SENTENCING RIGHT WARRANTS DISMISSAL OF THE CHARGE

By statute and court rule, an accused person has a right to be sentenced within 40-days following conviction. RCW 9.94A.500(1) ("The sentencing hearing shall be held within forty court days following conviction"); CrR 7.1(a)(2) (court must set a -

sentencing hearing in compliance with RCW 9.94A.500).

The State and Federal Constitutions also guarantee the right to speedy sentencing. See State v. Ellis, 76 Wash.App. 391, 394, 884 P.2d 1360 (1994).

In the instant case, Bowman was convicted by plea on May 20, 2016. CP 12-40; RP 1-14. He was not sentenced until December 21, 2016. CP 93; RP 29. "Speedy sentencing" was cited by counsel as a potential assignment of error. CP 104.


In this regard, Bowman argues that the delay was intentional and oppressive, and that he was prejudiced thereby. Ellis, id. The proper remedy is dismissal of the charge against him with prejudice.

F. CONCLUSION

Based on the foregoing reasons, Mr. Bowman respectfully request that pursuant to RAP 13.4(b)(2), (3), this Court should accept review.

DATED this 9th. day of October, 2017.

Respectfully submitted,


Earl Ira Bowman, Pro se

Appendix A

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

STATE OF WASHINGTON,)	No. 76255-9-1
)	
Respondent,)	
)	
v.)	
)	
EARL IRA BOWMAN,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: August 28, 2017

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2017 AUG 28 AM 11:07

PER CURIAM. Earl Bowman challenges the judgment and sentence imposed following his guilty plea to third degree assault. His court-appointed attorney has filed a motion to withdraw on the ground that there is no basis for a good faith argument on review. Pursuant to State v. Theobald, 78 Wn.2d 184, 470 P.2d 188 (1970), and Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), the motion to withdraw must:

- (1) be accompanied by a brief referring to anything in the record that might arguably support the appeal.
- (2) A copy of counsel's brief should be furnished the indigent and
- (3) time allowed him to raise any points that he chooses;
- (4) the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.

Theobald, 78 Wn.2d at 185 (quoting Anders, 386 U.S. at 744).

This procedure has been followed. Bowman's counsel on appeal filed a brief with the motion to withdraw. Bowman was served with a copy of the brief and informed of his right to file a statement of additional grounds for review. Bowman filed a supplemental brief which, though late, was considered by this court.

No. 76255-9-1/2

The material facts are accurately set forth in counsel's brief in support of the motion to withdraw. The court has reviewed the briefs filed in this court and has independently reviewed the entire record. The court specifically considered the following potential issues raised by counsel:

Was Bowman's offender score incorrectly calculated?

Was Bowman denied his right to effective assistance of counsel?

Was Bowman denied his right to speedy sentencing?

The court also raised and considered the following potential issues:

Did the trial court err in imposing a no-contact order?

The potential issues are wholly frivolous. The motion to withdraw is granted and the appeal is dismissed.

FOR THE COURT:

Cox, J.
Trickey, J.
Verling

DECLARATION OF SERVICE BY MAIL

GR 3.1

I, Earl Ira Bowman, declare and say:

That on the 9 day of October, 2017, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. PENDING:

PETITION FOR REVIEW;
APPENDIX-A;

addressed to the following:

WASH. SUPREME CT.
P.O. BOX 40929
OLYMPIA, WA.
98504-0929

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

DATED THIS 9 day of OCTOBER, 2017, in the City of Aberdeen, County of Grays Harbor, State of Washington.


Signature

EARL IRA BOWMAN
Print Name

DOC 914175 UNIT H2094
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520