SUPREME COURT NO. 98017-9

NO. 79950-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SCOTT LAMPMAN,

Petitioner.

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

The Honorable Theresa Doyle, Judge
The Honorable Veronica Galvan, Judge

PETITION FOR REVIEW

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RULES, STATUTES, AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Scott Lampman asks this Court to grant review of the court of appeals' unpublished decision in State v. Lampman, No. 79950-9-I, filed October 21, 2019 (Appendix A). The court of appeals denied Lampman's motion for reconsideration on December 5, 2019 (Appendix B).

B. ISSUE PRESENTED FOR REVIEW

Should this Court grant review under RAP 13.4(b)(1), (2), and (4), where the court of appeals created an entirely new basis to amend a judgment and sentence, outside of CrR 7.8(a) and (b), which exposes criminal defendants to ongoing government interference in their lives and undermines the finality of judgments?

C. STATEMENT OF THE CASE

Lampman pleaded guilty to misdemeanor harassment – domestic violence. CP 9-29; RP 9. At sentencing on January 26, 2018, the court ordered 364 days suspended jail time, 30 days in CCAP, and, as far as probation, "I am going to order him to be supervised for 12 months. And then he will be unsupervised for another 12 months." RP 25. The judgment and sentence was entered the same day, specifying the 364 days suspended jail time, but failing to specify any period of supervised or unsupervised probation. CP 30-31. Boilerplate language stated, "DOC will not supervise any other nonfelony probation." CP 31.

The effect of the missing language was Lampman served his probation unsupervised. RP 32-33. On March 12, 2019, more than a year after entry of the judgment and sentence, the State moved to correct the so-called scrivener's error, so that Lampman would be required to serve 12 months of supervised probation, now, after completing his unsupervised probation. CP 63-64; RP 32-33.

The trial court held a hearing on April 24, 2019, at which defense counsel objected to amending the judgment and sentence. RP 32-33. Counsel asserted the amendment did not correct a simple scrivener's error, but rather "makes a substantive change to the J&S because essentially what the State is asking to do is, say, oh, he completed his 12 months of unsupervised but now we are doing the 12 months of supervised." RP 32-33. Because the State's request "changes the ordering of those," counsel asserted, "the State is time barred from asserting that change given the length of time it has been since the entry of this judgment and sentence." RP 32-33.

The trial court overruled the defense objection and adopted the amended order proposed by the State, finding "the Scrivener's error was indeed that, a Scrivener's error." RP 35. The court ordered Lampman to serve 12 months of supervised probation, following his completed unsupervised probation. RP 35-36; CP 42-47. The court reasoned the law does not require that a defendant serve supervised probation first. RP 34-35.

The court explained, "12 months of supervised and 12 months of unsupervised does not, by operation of law, indicate this Court's opinion, any particular order." RP 34. The court believed it was necessary to listen to the sentencing recording, but ultimately did not do so. RP 33-34.

The court entered a written order the same day, specifying "the judgment and sentence shall be corrected to include 12 months of supervised probation and 12 months of unsupervised probation." CP 42. The court ordered the supervised probation to "commence immediately." CP 42.

Lampman appealed, arguing the error was judicial rather than clerical, and so could not be corrected under CrR 7.8(a). Br. of Appellant, 6-8. Lampman emphasized the judgment and sentence as amended did not embody the trial court's original intent, which was for Lampman to serve 12 months of supervised probation first "[a]nd then" to serve 12 months of unsupervised probation. RP 25; Br. of Appellant, 6-8.

Lampman further contended CrR 7.8(b) did not provide authority for the trial court to amend the judgment and sentence as it did. Br. of Appellant, 8-10. CrR 7.8(b)(1), which allows for correction of mistakes or inadvertence, has a one-year time limit. Br. of Appellant, 8-9. CrR 7.8(b)(5) applies only in extraordinary circumstances not existing at the time the judgment as entered. Br. of Appellant, 9-10. Accordingly, Lampman

argued, the trial court exceeded its exclusive authority under CrR 7.8(a) and (b) in amending the judgment and sentence.

The court of appeals agreed with Lampman "that the record clearly shows the court intended that Lampman serve the term of supervised probation first." Opinion, 6-7. The court further agreed "that supervised probation, when ordered by the sentencing court, is customarily served before unsupervised probation." Opinion, 7.

The court of appeals nevertheless held the trial court did not abuse its discretion by amending the judgment and sentence. Opinion, 7. Without citing any court rules, case law, or other legal authority, the court of appeals reasoned, "[s]olely due to the passage of time, it is impossible now for any corrective amendment to accomplish precisely what the court intended, because by the time the court amended the judgment, Lampman had completed essentially all of the 12-month term of unsupervised probation." Opinion, 7. "The language of the court's amendment," the court of appeals concluded, "comes as close as possible to imposing the sentence that the court intended," and affirmed the amendment. Opinion, 7.

Lampman moved to reconsider, again emphasizing trial courts do not have authority to amend a judgment and sentence outside of one year in a way that does not reflect the court's original intent. Motion, 2-3. Otherwise criminal defendants face ongoing government intrusion into their private

lives, based on the government's own mistakes. Motion, 2-3. The court of appeals denied Lampman's motion for reconsideration, without calling for an answer from the State. Appendix B.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

THIS COURT'S REVIEW IS WARRANTED WHERE THE COURT OF APPEALS CREATED A NEW BASIS TO AMEND A JUDGMENT AND SENTENCE, OUTSIDE OF CrR 7.8, ALTERING WELL-SETTLED LAW ON THE FINALITY OF JUDGMENTS.

A trial court has no inherent authority to revise a sentence beyond that provided by law. State v. Florencio, 88 Wn. App. 254, 257, 945 P.2d 228 (1997). CrR 7.8 provides the exclusive mechanism by which a trial court may grant relief from an order or judgment. Id.

CrR 7.8(a) allows trial courts to correct clerical errors in a judgment and sentence "at any time."[1] However, "[e]rrors that are not clerical are characterized as judicial errors, and trial courts may not amend a judgment under CrR 7.8 for judicial errors." State v. Morales, 196 Wn. App. 106, 118, 383 P.3d 539 (2016).

"In deciding whether an error is 'judicial' or 'clerical,' a reviewing court must ask itself whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial." Presidential Estates

[1] CrR 7.8(a) provides: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders."

Apartment Assoc. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996). If the answer is yes, the error is clerical because "the amended judgment merely corrects language that did not correctly convey the intention of the court, or supplies language that was inadvertently omitted from the original judgment." Id. at 326. If the answer is no, the error is judicial "and the court cannot amend the judgment and sentence." State v. Rooth, 129 Wn. App. 761, 770, 121 P.3d 755 (2005).

Here, Lampman argued, and the court of appeals agreed, that the amendment to the judgment and sentence did not embody the trial court's original intent, expressed on the record at sentencing. On the contrary, the trial court clearly ordered Lampman to serve 12 months of supervised probation "[a]nd then" to serve 12 months of unsupervised probation, in that order. RP 25. The court of appeals agreed "the record clearly shows the court intended Lampman to serve the term of supervised probation first." Opinion, 6-7. By the court of appeals' own reasoning, the error was not a clerical one and, therefore, could not be corrected at any time under CrR 7.8(a). Indeed, the court of appeals did not cite or rely on CrR 7.8(a) in holding the trial court did not err in amending the judgment.

Nor did CrR 7.8(b) provide authority for the trial court to amend the judgment and sentence as it did. And, again, the court of appeals did not cite or rely on any CrR 7.8(b) provision in affirming the trial court's amended

sentence. The only theoretical grounds for relief here are CrR 7.8(b)(1) and (5), neither of which apply.

CrR 7.8(b)(1) allows relief from a final judgment for "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." The omission of supervised probation from Lampman's judgment and sentence can be characterized as mistake or inadvertence. However, a motion for relief under CrR 7.8(b)(1) must be made "not more than 1 year after the judgment, order, or proceeding was entered or taken." Lampman's judgment and sentence was entered on January 26, 2018. CP 30. The State did not move to correct the judgment and sentence until March 12, 2019, over a year later. CP 63. Any relief under CrR 7.8(b)(1) was therefore time-barred. State v. Zavala-Reynoso, 127 Wn. App. 119, 123, 110 P.3d 827 (2005).

CrR 7.8(b)(5) is the "catchall" provision, which allows relief for "[a]ny other reason justifying relief from the operation of the judgment." State v. Lamb, 175 Wn.2d 121, 128, 285 P.3d 27 (2012). However, this provision applies only in extraordinary circumstances "not covered by subsections (1) through (4)," and "'where the interests of justice most urgently require.'" Id. (quoting State v. Shove, 113 Wn.2d 83, 88, 776 P.2d 132 (1989)). "The provision does not apply when the circumstances

allegedly justifying the relief existed at the time the judgment was entered." Florencio, 88 Wn. App. at 259.

Subsection (5) is likewise not applicable here. First, the error is covered but subsection (1) as mistake or inadvertence but is outside the one-year time limit for relief. Second, no extraordinary circumstances are present. The trial court simply failed to specify in the judgment and sentence that it ordered 12 months of supervised probation. This error existed at the time of entry. The interests of justice do not require Lampman to now serve 12 months of supervised probation due to the trial court's mistake.

The import of these rules is plain: if the trial court makes a judicial error at the time of sentencing, there is a time limit to correct it. Otherwise criminal defendants face ongoing government intrusion into their private lives. Could the State have moved to correct the judgment and sentence five years later? Ten years later, well after Lampman has completed all other conditions of his sentence? According to the court of appeals' opinion, the answer is yes, because otherwise it would be impossible "for any corrective amendment to accomplish precisely what the court intended." Opinion, 7. But it is the government, not the defendant, that must bear the burden of its own mistakes. The court of appeals erroneously placed that burden on Lampman, contrary to CrR 7.8(a) and (b)—the only authority the trial court possessed to amend the judgment and sentence.

The court of appeals effectively created out of whole cloth a new basis to amend a judgment and sentence, in circumstances where it is "impossible" for "any corrective amendment to accomplish precisely what the court intended." Opinion, 7. But, under CrR 7.8, trial courts possess no legal authority for such an amendment, where it does not reflect the court's original intent and is done more than a year after entry of the judgment. This Court's review is therefore warranted under RAP 13.4(b)(1) and (2), because the court of appeals' opinion conflicts with established case law. Review is also warranted under RAP 13.4(b)(4), given the far-reaching implications of the court of appeals' decision, particularly regarding the finality of judgments. See State v. Hardesty, 129 Wn.2d 303, 319, 915 P.2d 1080 (1996) (holding criminal defendants do not have an expectation of finality in a sentence fraudulently obtained, thereby indicating defendants do have an expectation of finality in a lawful sentence and, regardless, the State "must meet the requirements of CrR 7.8").

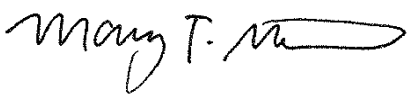
E. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse the court of appeals.

DATED this 19th day of December, 2019.

Respectfully submitted,

NIELSEN KOCH, PLLC



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Appendix A

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

STATE OF WASHINGTON,	)	
	)	No. 79950-9-I
Respondent,	)	
	)	UNPUBLISHED OPINION
v.	)	
	)	
SCOTT ROBERT LAMPMAN,	)	
	)	
Appellant.	)	FILED: October 21, 2019
	)	

PER CURIAM — Scott Lampman appeals an order amending his judgment and sentence under CrR 7.8(a) and adding terms of supervised and unsupervised probation that were inadvertently omitted from the original judgment and sentence. Lampman contends the court's mistake was judicial, rather than clerical, and the court therefore lacked authority to amend the judgment and sentence. We conclude that the court did not abuse its discretion in amending the judgment and sentence. We affirm.

FACTS

Scott Lampman was charged with one count of felony harassment under RCW 9A.46.020 (1) and 2(b), a felony, after he threatened his sister that he would kill her ex-husband. Lampman and the State reached a plea agreement, and on January 22, 2018, Lampman entered a guilty plea to one count of domestic violence harassment pursuant to RCW 9A.46.020 (1), a gross

misdemeanor. The parties agreed to recommend a sentence including, in part, 364 days in custody, suspended, with credit for time served; 12 months of supervised probation and 12 months of unsupervised probation; no contact with the victims; and a mental health evaluation. The State additionally recommended 30 days of mental health treatment in the enhanced Community Center for Alternative Programs (hereafter "CCAP").

At sentencing on January 26, 2018, the court imposed 364 days in custody, with credit for time served and the remainder suspended, and 30 days attendance in the enhanced CCAP. The court also ordered Lampman to complete a mental health evaluation within 30 days of sentencing, and to engage in mental health treatment and comply with treatment recommendations, including taking medications as prescribed. In its oral ruling, the court said it was imposing 24 months of probation:

> I am going to order him to be supervised for 12 months. And then he will be unsupervised for another 12 months, which is basically where the Court will just review – or if it [sic] has concerns, have hearings to see how he is doing.

Further, the court imposed a victim penalty assessment and ordered Lampman to have no contact with the two victims.

The court then reviewed the written judgment and sentence form prepared by the prosecutor, noting the document "does comport with the Court's oral ruling," and signed it. The judgment reflects the court's oral ruling in all aspects other than probation. The judgment and sentence form has checkboxes beside the paragraphs related to supervised and unsupervised probation, but neither of these two boxes are checked. The form also provides blank lines for the court to

fill in with the number of months the defendant is to serve on supervised or unsupervised probation, or both. These spaces are also blank on the judgment and sentence. Because of these omissions, the judgment and sentence does not impose any probation.

The judgment and sentence was filed the same day. Lampman reported as directed to CCAP on January 29, 2018 for his intake appointment. He then failed to report to CCAP on February 20, 21, and 22, 2018, which led the Department of Adult and Juvenile Detention to issue a notice of violation on February 22, 2018. According to the notice, Lampman had completed 13 of the 30 days of enhanced CCAP required by his sentence.

More than a year later, on March 12, 2019 the State noted a hearing to correct the error in the judgment and sentence. The notice indicates that "the state will present to the court the judgment and sentence and the recording of the sentencing hearing."

At the hearing on April 24, 2019 counsel for Lampman did not object to correcting the judgment and sentence to include the probation the court had intended to order, but she did object to the proposed language specifying that the 12-month term of supervised probation was to "commence immediately." Defense counsel argued that aspect of the proposed order made a substantive change to the judgment and sentence by requiring Lampman to serve the term of supervised probation after he had already served the term of unsupervised probation, which was not what the court said it intended to do at sentencing.[1]

[1] It is not clear how Lampman could have been serving a term of unsupervised probation when the judgment and sentence did not order any probation at all. The State, however, agrees that

Counsel explained that the court's oral ruling had imposed "12 months of supervised probation and then 12 months of unsupervised probation." (Emphasis added). The court asked whether it had said the words "and then," or had it simply said "and" between the supervised and unsupervised components. Counsel said it would be necessary to refer to the recording of the sentencing hearing to be certain. The court responded "I think we have to, because I think that we have to be clear."

The court did not, however, have the recording played back, although defense counsel offered to replay the tape or to listen to the tape and determine if the court's oral ruling was consistent with defense counsel's memory and with the customary practice. Instead, the court concluded that there was no legal obligation to order that supervised probation be served before any unsupervised probation. In addition, the court found there was no prejudice to Lampman, because the court was not requiring him to serve any additional time on supervised probation or to be held in the court's jurisdiction for any longer than the court intended originally.

The court's order, entered April 24, 2019, provides:

> Although the court followed the agreed recommendation and imposed 12 months of supervised probation followed by 12 months of unsupervised probation in the above entitled cause, that portion of the judgment and sentence was left blank . . .
> [Therefore,] the judgment and sentence shall be corrected to include 12 months of supervised probation and 12 months of unsupervised probation. The supervised term of probation shall commence immediately and the defendant shall report to the

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Lampman had served nearly 12 months of unsupervised probation before the State discovered the error in the judgment and sentence, and the court found that Lampman had "completed essentially his unsupervised time."

> department of corrections to begin supervision within 24 hours of release.

(Emphasis added).

In a separate order, the court addressed the violation report which had been filed in February 2018. The court ordered that Lampman receive credit for the time he served in jail leading up to the April 24 hearing date toward his 30-day enhanced CCAP obligation. The court held that this credit, along with the 13 days in enhanced CCAP that Lampman completed in February, 2018, were sufficient to satisfy the 30 days Lampman was required to serve in enhanced CCAP.

Lampman appeals.

ANALYSIS

This court reviews the ruling on the State's motion to correct the judgment and sentence for abuse of discretion. State v. Roerich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A trial court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. Id. (citation and quotation marks omitted). A decision is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take, and arrives at a decision outside the range of acceptable choices. Id. (Citations and quotation marks omitted).

Rule 7.8(a) provides that

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Under this rule, a trial court is permitted to correct a clerical error in the judgment and sentence, State v. Priest, 100 Wn. App. 451, 455-56, 997 P.2d 452 (2000), but not a judicial error. State v. Davis, 160 Wn. App. 471, 478, 248 P.3d 121 (2011). To determine whether a clerical error exists under CrR 7.8(a), the court applies the same test used to make that determination under CR 60(a), the civil rule governing amendment of judgments. State v. Snapp, 119 Wn. App. 614, 626, 82 P.3d 252, review denied, 152 Wn.2d 1028, 101 P.3d 110 (2004). Whether an error is judicial or clerical depends on "whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial." Presidential Estates Apartment Assoc. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996). If the amended judgment correctly conveys the intention of the court based on other evidence, the error is clerical. Priest, 100 Wn. App. at 456. A court may not enter an amended judgment that does not find support in the trial record. Presidential Estates, 129 Wn.2d at 326.

Lampman contends the court abused its discretion in amending the judgment to impose a term of supervised probation beginning in March, 2019, because the amended judgment does not reflect what the court orally ruled at sentencing. We agree with Lampman that the record clearly shows the court intended that Lampman serve the term of

supervised probation first. We also agree with Lampman that supervised probation, when ordered by the sentencing court, is customarily served before unsupervised probation. This is apparent from the judgment and sentence form itself, which provides, in the paragraph related to supervised provision, that "[p]robation shall commence immediately," while the paragraph related to unsupervised probation excludes this language. Thus, an offender sentenced to terms of both supervised and unsupervised probation will serve the supervised term first, unless the court overrides the form language.

We disagree with Lampman, however, that the court abused its discretion by correcting the judgment and sentence to reflect the court's intent to impose the two terms of probation. The record shows the court intended for Lampman to serve a 12-month term of supervised probation. Solely due to the passage of time, it is impossible now for any corrective amendment to accomplish precisely what the court intended, because by the time the court amended the judgment, Lampman had completed essentially all of the 12-month term of unsupervised probation. The language of the court's amendment, however, comes as close as possible to imposing the sentence that the court intended without either increasing the intended term of supervised probation or extending the date when the intended sentence will end. Considering the purposes of supervised probation and the court's clearly expressed intent as

demonstrated in the record, we conclude the court did not abuse its discretion in ordering the amendment to the judgment and sentence.

Affirmed.

FOR THE COURT:

Appendix B

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

STATE OF WASHINGTON,

Respondent,

v.

SCOTT ROBERT LAMPMAN,

Appellant.

No. 79950-9-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Scott Lampman, has filed a motion for reconsideration. The State has not filed a response. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied

Judge

NIELSEN, BROMAN & KOCH P.L.L.C.

December 19, 2019 - 3:14 PM

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