

63717-7

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No. 63717-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY CHARLES REANIER,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

After the State charged Timothy Reanier with two counts of third degree assault, the trial court found him not guilty by reason of insanity. The court ordered him civilly committed for 10 years, which was equivalent to two consecutive statutory maximum penal sentences for the two offenses charged.

But a court lacks statutory authority to impose consecutive terms of commitment when a person is found not guilty by reason of insanity. Therefore, the court improperly ordered Reanier held in custody for a term beyond that permitted by statute.

B. ASSIGNMENT OF ERROR

The court exceeded its statutory authority in imposing consecutive terms of commitment or treatment.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

When a person is acquitted by reason of insanity in a criminal case, the court's authority to impose a term of commitment or treatment is limited by statute to the statutory maximum penal sentence of the charged offense. When a person is charged with multiple offenses, the court may not impose a term of commitment or treatment that is based upon consecutive sentences for the

multiple charges. Did the court exceed its authority in imposing a term of commitment based upon consecutive sentences?

D. STATEMENT OF THE CASE

On July 7, 2004, Timothy Reanier was charged with one count of second degree assault with a deadly weapon. CP 1. Four days earlier, two King County sheriff deputies responded to a call of a man wielding a knife at an intersection in Burien. CP 2. When the deputies arrived, they found Reanier sitting on the median of the street, suffering from a severe drug-induced psychosis. CP 2. Reanier would not comply with the deputies' commands and began to scream at the deputies to "shoot him." CP 2. At one point, Reanier reached behind his back and thrust out his right hand toward the deputies, holding an eight-inch-long kitchen knife. CP 2. He screamed and rushed toward the deputies with the knife. CP 2. One of the deputies deployed his taser, striking Reanier, who was brought under control and placed into custody. CP 2.

Reanier was transported to Western State Hospital for a psychiatric examination. CP 4-6. Relying on the forensic mental health report, the court found that Reanier was competent to stand trial and to enter a plea to the charges. CP 7-19.

On May 31, 2005, Reanier filed a motion for acquittal on the grounds of insanity, pursuant to RCW 10.77.080. CP 25-29. On the same date, the parties entered an agreement, in which the State agreed to amend the information to charge two counts of third degree assault. CP 23-24, 33-34. Because Reanier had two prior convictions for "strike" offenses, he faced a mandatory sentence of life imprisonment without the possibility of parole if convicted of second degree assault as originally charged. CP 33-34. In exchange for the State's agreement to reduce the charges, Reanier agreed to join the State's recommendation to the court that an "exceptional" term of commitment or treatment be imposed. Id. Specifically, the parties agreed to recommend that the court impose a ten-year term, by running the two five-year terms for counts I and II consecutively. Id.

The court entered a judgment acquitting Reanier by reason of insanity of the charged crimes. CP 30-32. The court also accepted the parties' agreed recommendation about the length of the commitment or treatment term. CP 20-22. The court therefore ordered that "Counts I and II shall run consecutively for a maximum term of commitment or treatment of 10 years." CP 22.

The court ordered Reanier committed to the custody of the Secretary of the Department of Social and Health Services (the Department) for hospitalization at Western State Hospital. CP 32.

On October 24, 2006, the Department submitted a report to the court recommending Reanier be released from Western State Hospital on conditions to a long-term inpatient substance abuse rehabilitation facility. CP 65-69. The court agreed and, on April 16, 2007, entered an order releasing Reanier from hospitalization to the community on conditions. CP 65-69. The court ordered that Reanier be placed in an inpatient chemical dependency program and, once that was completed, enter an outpatient chemical dependency program. CP 67. The conditions imposed included that Reanier not use controlled substances. CP 67.

On February 18, 2009, Reanier was taken into custody for violating conditions of his release. CP 71, 86. Specifically, Reanier had failed to report to his community corrections officer and had used cocaine. *Id.* The State sought Reanier's return to Western State Hospital for further treatment. CP 71.

In response, Reanier challenged the court's authority to supervise him any longer. CP 89-95; 5/29/09RP 5. Reanier argued that, notwithstanding the parties' agreement, the court had

acted without statutory authority when it imposed consecutive terms of commitment or treatment. CP 89-95; 5/29/09RP 5. Reanier argued the court could supervise him for only five years, the maximum penal sentence that could be imposed for the charged crime, third degree assault. 5/29/09RP 14-15.

The court rejected Reanier's argument, in light of the parties' agreement to consecutive five-year terms. 5/29/09RP 16; CP 96-97. The court ordered that he be placed in an inpatient chemical dependency rehabilitation facility within 45 days, or released to his parents' home under further conditions. 5/29/09RP 30; CP 96-97.

E. ARGUMENT

THE COURT EXCEEDED ITS STATUTORY AUTHORITY IN IMPOSING A TERM OF COMMITMENT OR TREATMENT BASED UPON CONSECUTIVE PENAL SENTENCES FOR THE CHARGED OFFENSES

1. When a person is acquitted by reason of insanity, the term of commitment or treatment is limited by the maximum possible penal sentence for the charged offense. A criminal defendant acquitted by reason of insanity may be subject to ongoing supervision by the court. If the court finds the defendant presents a substantial danger to other persons, the court will order his or her hospitalization or any appropriate less restrictive

alternative treatment. RCW 10.77.110(1). If the court finds the defendant presents no such danger but is in need of control by the court or other institutions, the court will order his or her conditional release. RCW 10.77.110(3). A person on conditional release must comply with conditions set by the court. RCW 10.77.190.

The court's ongoing authority to order commitment, treatment or conditions of release is limited, however. The court's supervisory authority may not exceed the maximum possible sentence for the crime charged:

Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was . . . acquitted by reason of insanity.

RCW 10.77.025(1). The "maximum possible penal sentence" refers to the statutory maximum sentence of the charged offense, not the top end of the standard range. State v. Sunich, 76 Wn. App. 202, 206, 884 P.2d 1 (1994).

Once the maximum term of imprisonment has expired, the criminally insane person is entitled to automatic release from confinement or conditions of release, unless the State seeks

continued civil commitment and meets the criteria set forth in RCW 71.05. In re Pers. Restraint of Kolocotronis, 99 Wn.2d 147, 150 & 151 n.2, 660 P.2d 731 (1983).

The Legislature's primary purpose in limiting confinement to the maximum penal term is to give effect to constitutional restrictions governing involuntary confinement. The Legislature passed the statute in response to several United States Supreme Court decisions issued in the late Sixties and early Seventies, most notably Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972). Id. at 152-53 (also citing Baxstrom v. Herold, 383 U.S. 107, 86 S.Ct. 760, 15 L.Ed.2d 620 (1966) (denying a criminally insane person the right to a jury review of his commitment at the expiration of the underlying penal term, while providing that procedure to those civilly committed, violates equal protection); Humphrey v. Cady, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972) (procedures for continued confinement pursuant to Wisconsin's Sex Crime Act not justified by State's allegation that commitment under this act was triggered by a criminal conviction)).

In Jackson, the Supreme Court held that a criminal defendant found incompetent to stand trial cannot be committed

indefinitely absent a finding of dangerousness. 406 U.S. 715. Prior to Jackson and the Court's related decisions, historically, persons acquitted by reason of insanity were subject to indeterminate commitment. Kolocotronis, 99 Wn.2d at 152.

In 1973, in response to these Supreme Court decisions, the Washington Legislature enacted former RCW 10.77.020(3) (now RCW 10.77.025(1)), which ties confinement to the maximum penal term. Kolocotronis, 99 Wn.2d at 152-53; Laws of 1973, 1st Ex. Sess., ch. 177, § 2. The Legislature did so in order to give effect to constitutional limits on a court's ability to confine persons who have committed crimes but are mentally ill.

In sum, pursuant to the statute, the court's authority to order commitment or conditions of release for persons acquitted by reason of insanity terminates, and the person is entitled to final discharge, once the statutory maximum sentence of the charged offense has expired.

2. The court may not impose a term of commitment or treatment that is based upon consecutive penal sentences for the charged offenses. Again, the statute provides, whenever a court orders commitment or treatment for a person acquitted by reason of insanity, "such commitment or treatment cannot exceed the

maximum possible penal sentence for any offense charged for which the person was . . . acquitted by reason of insanity." RCW 10.77.025(1).

In State v. Harris, 39 Wn. App. 460, 693 P.2d 750, rev. denied, 103 Wn.2d 1030 (1985), as in this case, an individual was charged with two separate offenses and acquitted by reason of insanity. As here, the question on appeal was whether the statute permitted commitment for a period equal to that which the person would have served had he been convicted and received consecutive sentences, or 10 years. Id. at 463. This Court concluded the language of the statute failed to resolve the issue. Id. In addition, the legislative history materials suggested the Legislature never even considered the situation in which two or more offenses were charged. Id. Further, "if the Legislature intended to allow a maximum period of commitment based upon consecutive sentences, it could have so provided in the statute." Id. at 465 n.2. The corresponding California statute, for example, "expressly states that the maximum term of commitment is the largest sentence that could have been imposed upon conviction, including any additional terms for enhancements and consecutive

sentences." Id. (citing People v. Smith, 160 Cal.App.3d 1100, 207 Cal.Rptr. 134, 135 (1984)).

Thus, Harris concluded, because the statutory language is ambiguous and the legislative history provides no guidance, the rule of lenity must be applied. Id. at 464-65. Construing the statute strictly in favor of Harris, the Court held the trial court did not have authority to impose a term of commitment based upon consecutive sentences. Id. at 465. Instead, the court's authority was limited to five years, the statutory maximum penal sentence for each of the charged crimes, and Harris was therefore entitled to final discharge. Id.

Harris interpreted former RCW 10.77.020(3) (1974)¹, but the relevant statutory language has remained unchanged since then. In 1998, the Legislature deleted subsection (3) from former RCW 10.77.020 and inserted the language into a newly enacted statute, RCW 10.77.025, without making any changes relevant to the issue in this case. Laws 1998, ch. 297, § 30. Harris's interpretation of the statute is therefore binding on this Court.

¹ Former RCW 10.77.020(3) (1974) provided:

Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his or her acquittal of a crime charged by reason of insanity, such commitment or treatment cannot exceed

"The doctrine of stare decisis 'requires a clear showing that an established rule is incorrect and harmful before it is abandoned.'" Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). Further, "[t]he Legislature is presumed to be aware of judicial interpretation of its enactments,' and where statutory language remains unchanged after a court decision the court will not overrule clear precedent interpreting the same statutory language.'" Riehl, 152 Wn.2d at 147 (quoting Friends of Snoqualmie Valley v. King County Boundary Review Bd., 118 Wn.2d 488, 496-97, 825 P.2d 300 (1992)).

Here, the statutory language is unchanged since Harris was decided nearly 25 years ago, although the statute has since been amended. The Legislature is presumed to be familiar with judicial interpretations of statutes, and absent an indication it intended to overrule a particular interpretation, amendments are presumed to be consistent with previous judicial decisions. State v. Bobic, 140 Wn.2d 250, 264, 996 P.2d 610 (2000). The Legislature's decision

the maximum possible penal sentence for any offense charged for which the person was acquitted by reason of insanity. . . .

not to change the statutory language indicates its approval of the Harris Court's interpretation of it.

Consistent with Harris, therefore, this Court must conclude the trial court exceeded its statutory authority when it imposed a ten-year term of commitment for Reanier, which was based upon consecutive five-year penal terms for the charged offenses. Because Reanier's five-year term has now expired, he is entitled to final discharge. Harris, 39 Wn. App. at 465.

3. The erroneous portion of Reanier's sentence must be stricken and he must be released from further commitment or conditions. Reanier was charged with two counts of third degree assault. CP 23-24; RCW 9A.36.031(1)(g). Third degree assault is a class C felony with a five-year statutory maximum sentence. RCW 9A.36.031(2); RCW 9A.20.021(1)(c). As discussed, when Reanier was acquitted by reason of insanity, the court was authorized to impose a term of commitment or treatment of only five years, the statutory maximum sentence for the charged crime, third degree assault. The court therefore exceeded its statutory authority when it imposed a ten-year term of commitment based upon consecutive five-year sentences. CP 22.

The Washington Supreme Court has consistently reaffirmed the principle that a sentence in excess of statutory authority is subject to challenge, and the person is entitled to be resentenced. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 869, 50 P.3d 618 (2002) (and cases cited therein). When a sentence has been imposed for which there is no authority of law, the trial court has the power and duty to correct the erroneous sentence, whenever the error is discovered. Id. But correction of the erroneous portion of the sentence does not affect the finality of that portion of the judgment and sentence that was correct and valid when the sentence was imposed. Id. In other words, the imposition of an unauthorized sentence does not require vacation of the entire judgment and is grounds for reversing only the erroneous portion of the sentence. In re Pers. Restraint of West, 154 Wn.2d 204, 215, 110 P.3d 1122 (2005).

These rules apply not only in cases where a court has imposed an erroneous sentence following a guilty verdict or plea, but also where the court imposes an erroneous term of commitment following an acquittal by reason of insanity. A not guilty by reason of insanity proceeding "cannot be characterized as anything other than a criminal case." In re Pers. Restraint of Well, 133 Wn.2d 433,

439, 946 P.2d 750 (1997). Further, the order of commitment is a judgment passed upon the criminal offender and therefore meets the definition of "sentence." Id. at 441. Under the authorities cited above, therefore, the erroneous portion of Reanier's sentence must be corrected.

Moreover, Reanier did not waive his right to challenge the erroneous portion of his sentence by entering an agreement with the State. The Washington Supreme Court has consistently rejected the argument that a defendant must be held to the consequences of an agreement to an excessive sentence. Goodwin, 146 Wn.2d at 869-71 (and cases cited therein). A plea bargaining agreement cannot exceed the statutory authority given to the courts. Id. at 870. "[I]n other words, the actual sentence imposed pursuant to a plea bargain must be statutorily authorized; a defendant cannot agree to be punished more than the Legislature has allowed for." Id. at 871 (quoting In re Pers. Restraint of Moore, 116 Wn.2d 30, 38, 803 P.2d 300 (1991)).

Again, where a court exceeds its authority in imposing a sentence following a plea agreement, the remedy is to correct the erroneous portion of the sentence; the finality of that portion of the

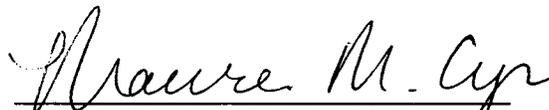
judgment and sentence that was correct and valid when imposed is not affected. Goodwin, 146 Wn.2d at 877.

In sum, the court was authorized to impose only a five-year term of commitment and therefore exceeded its statutory authority when it imposed a ten-year term. The erroneous portion of the sentence must be reversed and vacated.

F. CONCLUSION

Reanier's ten-year term of commitment must be reversed and remanded for resentencing to a five-year term.

Respectfully submitted this 28th day of September 2009.



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DIVISION ONE**

STATE OF WASHINGTON,)	
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TIMOTHY REANIER,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF SEPTEMBER, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF SEPTEMBER, 2009.

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