

64508-1

64508-1

COA NO. 64508-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

WILLEM A. VAN HEUVEN,

Appellant.

REC'D
OCT 13 2010
King County Prosecutor
Appellate Unit

2010 OCT 13 PM 4:03
FILED

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

The Honorable Catherine Shaffer, Judge

REPLY BRIEF OF APPELLANT

CASEY GRANNIS
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
1. THE SENTENCING PROVISION UPON WHICH THE TRIAL COURT RELIED DID NOT GIVE THE COURT AUTHORITY TO IMPOSE TWO YEARS OF PROBATION.....	1
B. <u>CONCLUSION</u>	2

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Monday
85 Wn.2d 906, 540 P.2d 416 (1975),
overruled on other grounds,
In re Phelan, 97 Wn.2d 590, 647 P.2d 1026 (1982). 2

State v. Paulson,
131 Wn. App. 579, 128 P.3d 133 (2006) 1

RULES, STATUTES AND OTHER AUTHORITIES

RCW 9.92.060 1, 2

RCW 9.92.064 1, 2

RCW 9.95.210(1)..... 1

A. ARGUMENT IN REPLY

1. THE SENTENCING PROVISION UPON WHICH THE TRIAL COURT RELIED DID NOT GIVE THE COURT AUTHORITY TO IMPOSE TWO YEARS OF PROBATION.

The court suspended Van Heuven's misdemeanor sentence under the authority of RCW 9.92.060 and placed him on a probationary term of two years. CP 19. Under RCW 9.92.060, however, it could place Van Heuven on probation for a maximum of one year. RCW 9.92.064.

The State nonetheless claims the sentence is lawful because RCW 9.95.210(1) authorizes a two year term of probation. Br. at 17-19. The State's claim fails because the court did not sentence Van Heuven under the authority of RCW 9.95.210(1). Instead, the court expressly sentenced Van Heuven under the authority of RCW 9.92.060.

The State cites no law for the proposition that the trial court's erroneous reliance on a specific grant of statutory authority may be exonerated on appeal by pointing to different authority that the trial court never relied upon. Existing authority supports Van Heuven's argument. See State v. Paulson, 131 Wn. App. 579, 589-91, 128 P.3d 133 (2006) (where sentencing court relied on certain statutory provisions in imposing sentence rather another provision that limited community custody to one year, court did not exceed its authority when it imposed a term of

confinement, then converted the maximum allowable amount of that time to community service and ordered the completion of an animal cruelty prevention program within two years).

The State's claim that Monday relied on an outdated version of RCW 9.95.210 is irrelevant. Br. at 18; State v. Monday, 85 Wn.2d 906, 908, 540 P.2d 416 (1975), overruled on other grounds, In re Phelan, 97 Wn.2d 590, 647 P.2d 1026 (1982). Monday is still good law in relation to RCW 9.92.060, upon which the trial court relied. More to the point, RCW 9.92.060, as limited by RCW 9.92.064, is current. The sentence exceeds the statutory authority relied on by the trial court.

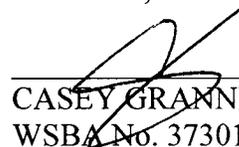
B. CONCLUSION

For the reasons stated in the opening brief, this Court should reverse the convictions. In the event this Court declines to reverse the convictions, then the erroneous portion of the misdemeanor sentence should be reversed for the reasons stated in the opening and reply briefs.

DATED this 13th day of October, 2010.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



CASEY GRANNIS
WSBA No. 37301
Office ID No. 91051
Attorney for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 64508-1-I
)	
WILLEM A. VAN HEUVEN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 13TH DAY OF OCTOBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] WILLEM A. VAN HEUVEN
C/O MORGAN
PMB 5391A
P.O. BOX 257
OLYMPIA, WA 98507-0257

SIGNED IN SEATTLE WASHINGTON, THIS 13TH DAY OF OCTOBER, 2010.

x *Patrick Mayovsky*