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NO. 66048-9-I

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

REC'D
MAR 31 2011
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

PHILLIP PARKHURST,

Appellant.

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

The Honorable Timothy Bradshaw, Judge

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	2
THE JUDGMENT MUST BE CLARIFIED TO REFLECT THAT PARKHURST'S PROBATION ENDS AFTER ONE YEAR.....	2
D. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Broadaway

133 Wn.2d 118, 942 P.2d 363 (1997)..... 2

State v. Nelson

100 Wn. App. 226, 996 P.2d 651 (2000)..... 2

RULES, STATUTES AND OTHER AUTHORITIES

RCW 9A.52.070 1

RCW 9.95.200..... 2, 3

RCW 9.95.210..... 2, 3

A. ASSIGNMENT OF ERROR

The judgment must be modified to indicate that appellant was placed on probation for 12 months rather than 24 months.

Issue Pertaining to Assignment of Error

At sentencing, the court denied the State's request to place appellant on probation for 24 months and, instead, imposed a 12-month term. The judgment, however, does not expressly indicate the term and cites to the statutory provision authorizing 24 months. Should the judgment be modified?

B. STATEMENT OF THE CASE

The King County Prosecutor's Office charged Phillip Parkhurst with (count 1) Burglary in the Second Degree and (count 2) Theft in the First Degree. CP 5-6. After a lengthy trial, a jury acquitted Parkhurst on both felony charges, but found him guilty on count 1 of the lesser-included crime of Criminal Trespass in the First Degree, a gross misdemeanor. CP 69-72; RCW 9A.52.070.

At sentencing, the Honorable Timothy Bradshaw imposed 12 months, suspended on condition that Parkhurst serve 2 days in jail (which he already had served), paid \$500.00, completed 56 hours community service, and had no contact with certain individuals and premises. CP 73-75.

Notably, the State requested a 24-month probationary term. Judge Bradshaw denied that request and indicated he intended to impose a 12-month term. RP 1014-1015, 1028. Unfortunately, the judgment does not indicate the term of probation. Instead, it cites to RCW 9.95.210, which authorizes a 24-month term. CP 73.

C. ARGUMENT

THE JUDGMENT MUST BE CLARIFIED TO REFLECT THAT PARKHURST'S PROBATION ENDS AFTER ONE YEAR.

This Court has a duty to rectify a sentencing error whenever it is discovered, including an insufficiently specific probation period. See State v. Nelson, 100 Wn. App. 226, 228 n.3., 996 P.2d 651 (2000) (citing State v. Broadaway, 133 Wn.2d 118, 136, 942 P.2d 363 (1997)).

Judge Bradshaw suspended Parkhurst's sentence under RCW 9.95.200. CP 73. That statute provides:

After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the

circumstances surrounding the crime and concerning the defendant, his prior record, and his family surroundings and environment.

RCW 9.95.200.

RCW 9.95.210 controls the length of probation under RCW

9.95.200 and provides:

In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

RCW 9.95.210(1) (emphasis added).

Unfortunately, because the judgment in Parkhurst's case merely cites to RCW 9.95.210 – and does not indicate a 12-month term – it can be interpreted as imposing the maximum two-year term of probation.

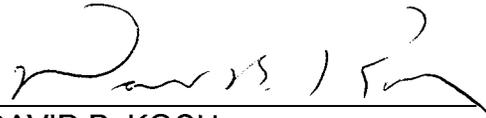
D. CONCLUSION

This Court should remand so the judgment can be clarified to ensure Parkhurst's probation ends after one year.

DATED this 31st day of March, 2011.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "David B. Koch", written over a horizontal line.

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