

NO. 67058-1-1

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

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STATE OF WASHINGTON

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OCT 21 2011  
King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

ELIJA DOSS,

Appellant.

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

The Honorable Ronald Kessler, Judge  
The Honorable Gregory P. Canova, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred when it sentenced appellant beyond the statutory maximum term.

Issue Pertaining to Assignment of Error

Did the trial court err when it sentenced appellant in excess of the statutory maximum term where the term confinement combined with the term of community custody exceeded the 60 month statutory maximum term?

B. STATEMENT OF THE CASE

On April 8, 2010, the King County prosecutor charged Elija Doss by amended information with three counts of felony violation of a court order. RCW 26.50.110(5); CP 13-14; RP 3-4. That same day Doss entered guilty pleas to all three counts. RP 5-10; CP 15-37. The court found Doss's pleas were knowing, voluntary and intelligent. RP 11-12.

On April 23, 2010 a sentencing hearing was held. The state argued for a 60 month standard range sentence based on Doss's offender score of ten. RP 13. Doss requested a prison based Drug Offender Sentencing Alternative (DOSA) or in the alternative a sentence below the standard range. RP 22, 41.<sup>1</sup>

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<sup>1</sup> After sentencing Doss filed a motion to withdraw his guilty pleas, which was transferred to this Court for consideration as a personal restraint petition in Cause No. 65660-1-1. This Court dismissed the petition. See, State v. Perkins, 32 Wn.2d 810, 872.

The court denied Doss's requests for a DOSA or a sentence below the standard range. RP 45. Instead, based on Doss' offender score, the court imposed a sentence of 60 months, the maximum term authorized on each count, and ordered the sentences to run concurrently. RP 46; CP 30-47. The court also sentenced Doss to 12 months of community custody. CP 43.

C. ARGUMENT

THE TRIAL COURT ERRED WHEN IT SENTENCED DOSS BEYOND THE STATUTORY MAXIMUM TERM.

Under RCW 9.94A.701(9), the trial court is required to reduce the term of community custody whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime. Doss's sentence was illegal because the term of confinement combined with the term of community custody exceeds the statutory maximum term. His sentence should be reversed.

"[I]llegal or erroneous sentences may be challenged for the first time on appeal." State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452, 454 (1999). This rule applies to a challenge to the sentencing court's authority to impose a sentence. State v. Hunter, 102 Wn. App. 630, 633-34, 9 P.3d 872 (2000), review denied, 142 Wn.2d 1026 (2001). A sentencing court

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204 P.2d 207 (1949) (Courts can take judicial notice of their own records); see also ER 201. On April 19, 2011 Doss filed the Notice of Appeal. CP 55.

derives its authority strictly from the Legislature. State v. Gronnert, 122 Wn. App. 214, 226, 93 P.3d 200 (2004).

The Legislature has classified Doss's crimes as Class C felonies. RCW 26.50.110(5). A Class C felony is punishable by a maximum of five years imprisonment. RCW 9A.20.021(1)(c). Because Doss's offenses were crimes against persons, the court was also required to impose a 12 month term of community custody. RCW 9.94A.701(3)(a). However, RCW 9.94A.701(9) provides:

The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20 .021.

Laws of 2009, ch. 375, § 5.

This provision, RCW 9.94A.701(9), took effect July 26, 2009. State v. Franklin, \_\_\_ P.3d \_\_\_, \_\_\_ Wn.2d \_\_\_ 2011 WL 4837266. at 4 (October 13, 2011). The provision also applies retroactively to offenders sentenced prior to July 26, 2009. Id.

In Franklin, the issue was whether RCW 9.94A.701(9) required "a trial court to reopen sentencing proceedings and retroactively reduce a previously imposed term of community custody whenever the combination of the standard range term and the community custody term

exceeds the statutory maximum for the crime.” Franklin, 2011 WL 4837266 at 4. The Court ruled it did not. It held “[w]hen read in the context of the entire section, it is clear that this directive applies only to the court’s calculation of the community custody term when it first imposes the sentence.” Id. (emphasis added). The Court further held, that for those sentenced to community custody prior to the effective date, the Department of Corrections had the obligation to reset the termination date of community custody consistent with the statute and that RCW 9.94A.701(9) “...only operates when a sentencing court is imposing a sentence pursuant to RCW 9.94A.701 in the first instance.” Id. at 5.

When interpreting a statute the standard of review is de novo. State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003). This court looks first to the plain language of the statute. Id. at 450. The statute is to be enforced in accordance with its plain meaning. Id.

Doss was sentenced pursuant to RCW 9.94A.701 “in the first instance.” Doss was sentenced on April 23, 2010, nine months after the date RCW 9.94A.701(9) took effect. Doss was sentenced to the statutory maximum term of 60 months for each offense in addition to 12 months of community custody pursuant to RCW 9.94A.701(3)(a).<sup>2</sup> CP 43. Under

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<sup>2</sup> That provision reads: “A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the

the plain language in RCW 9.94A.701(9) and the holding in Franklin, the court was required to reduce the term of community custody because Doss's standard range term of confinement (60 months) in combination with the term of community custody (12 months) exceeds the 60 month statutory maximum for the crimes.

"When a trial court exceeds its sentencing authority under the SRA, it commits reversible error." State v. Hale, 94 Wn. App. 46, 53, 971 P.2d 88 (1999). The remedy for erroneous sentencing is remand to the trial court for resentencing. State v. Ross, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004). Thus, this Court should reverse Doss's sentence and remand for resentencing.

D. CONCLUSION

For the above reasons, Doss's sentence should be reversed.

DATED this 20 day of October, 2011.

Respectfully submitted,

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person to the custody of the department for: (a) Any crime against persons under RCW 9.94A.411(2)." RCW 9.94A.701(3)(a).

