

68062-5

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NO. 68062-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ERIC CARMICHAEL,

Appellant.

2012 SEP 24 PM 5:56
COURT OF APPEALS OF THE STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE HOLLIS HILL

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. SUPPLEMENTAL ISSUE PRESENTED

Eric Carmichael was convicted of possessing methamphetamine, a class C felony with a maximum sentence of 60 months. The sentencing court imposed a standard range sentence of 24 months of confinement. The court also imposed the mandatory term of 12 months of community custody for violations of the controlled substances act. Did the sentencing court exceed the statutory maximum sentence for the drug offense?

B. STATEMENT OF THE CASE

Following a jury trial, Carmichael was convicted of first degree unlawful possession of a firearm, first degree possessing stolen property and violation of the uniform controlled substances act, possession of methamphetamine. CP 330-32, 457. The court sentenced Carmichael to a standard range sentence of 24 months on count IV, the methamphetamine charge. CP 457, 460. The court also imposed a mandatory period of 12 months community custody for violations of RCW 69.50 (the Uniform Controlled Substances Act). CP 461.

C. **ARGUMENT**

THE SENTENCE IMPOSED DOES NOT EXCEED THE STATUTORY MAXIMUM.

Carmichael argues that the trial court was required to reduce his term of community custody to ensure that the statutory maximum sentence would not be exceeded. His argument fails because it is based on the erroneous assumption that the court imposed community custody on count I, unlawful possession of a firearm. But the court imposed community custody on the only eligible offense--count IV, possession of methamphetamine. The sentence is proper.

Whenever the standard range term of confinement, in combination with the term of community custody exceeds the statutory maximum for the crime, RCW 9.94A.701(9) requires the sentencing court to reduce the community custody term accordingly. State v. Boyd, 174 Wn.2d 470, 472, 275 P.3d 321 (2012).

Carmichael was convicted of violating RCW 69.50.4013 for his possession of methamphetamine, a controlled substance. CP 330, 457. His standard range for that offense was 12+ months to 24 months incarceration. CP 458. The statutory maximum

sentence for the crime is 60 months. CP 458; RCW 69.50.4013(2); RCW 9A.20.021(1)(c).

Carmichael's assumption that the court imposed a community custody term on the unlawful possession of a firearm charge is not supported by the law or record. Neither first degree unlawful possession of a firearm or first degree possessing stolen property are considered crimes against persons. See RCW 9.94A.411. Nor are they violations of RCW 69.50 or RCW 69.52. See RCW 9.41.040(1) and RCW 9A.56.150. Therefore, it is clear from the judgment and sentence that the sentencing court imposed 12 months of community custody on count IV, the possession of methamphetamine charge. CP 457, 461.

The maximum term that Carmichael can serve on count IV pursuant to the sentence of the court is 36 months. Because that term does not exceed the statutory maximum of 60 months, his sentence is proper as entered.

D. CONCLUSION

Because the sentence imposed did not exceed the statutory maximum, this Court should affirm the court's sentence of 12 months community custody on count IV.

DATED this 24 day of September, 2012.

Respectfully submitted,

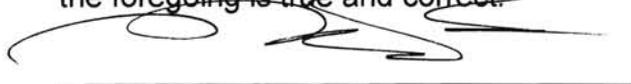
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer J. Sweigert, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Supplemental Brief of Respondent, in STATE V. ERIC CARMICHAEL, Cause No. 68062-5-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington



Date