

68838-3

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NO. 68838-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

FALE PE'A,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. The State concedes the deadly weapon enhancement was imposed improperly and should be stricken.

The State agrees with Ms. Pe'a's constitutional challenge to the deadly weapon enhancement, which was imposed without being alleged in the second amended information. *Compare* Opening Brief at 6-12 *with* Resp. Br. at 6-7. Constitutional due process guarantees require that the charging document include all essential elements of a crime "to afford notice to an accused of the nature and cause of the accusation against him." *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); *accord* Const. art. I, § 22; U.S. const. amend. VI; CrR 2.1(b). On this basis, a deadly weapon sentencing enhancement must be included in the information. *State v. Recuenco*, 163 Wn.2d 428, 434, 180 P.3d 1276 (2008); *State v. Theroff*, 95 Wn.2d 385, 622 P.2d 1240 (1980); RCW 9.94A.825. Because the State dropped all mention of a deadly weapon sentence enhancement from the second amended information—upon which the trial was based—the sentencing court's subsequent imposition of a deadly weapon enhancement violates Ms. Pe'a's constitutional due process rights. CP 10-11. As the State concedes, this due process violation requires the sentencing enhancement be stricken. *Theroff*, 95 Wn.2d at 393; Resp. Br. at 7.

2. Ms. Pe'a's challenge to the erroneously imposed mental health community custody condition is not moot because this Court can provide effective relief.

An issue on appeal is not moot if this Court can provide effective relief. *In re Detention of M.K.*, 168 Wn. App. 621, 626, 279 P.3d 897 (2012). The mental health evaluation community custody condition imposes collateral consequences upon Ms. Pe'a that this Court can resolve by striking the condition. *Monohan v. Burdman*, 84 Wn.2d 922, 925, 530 P.2d 334 (1975) (possibility of potential future consequences, such as effect an issue may have on future sentencing judge, renders appeal not moot). As long as the condition is included in Ms. Pe'a's judgment and sentence, future courts, employers, and mental health providers will presume the sentencing court found all the prerequisites of RCW 9.94B.080, including that Ms. Pe'a is mentally ill as defined in RCW 71.24.025 and her mental illness influenced her offense. *See, e.g.*, RCW 71.05.012 (prior mental history, including law enforcement interventions, relevant in determining whether "person would receive, if released, such care as is essential for his or her health or safety"). These entities will be at liberty to presume that such conclusions were reached after reviewing a cogently presented report. RCW 9.94B.080. But, as set forth in Ms. Pe'a's opening brief, none of

these presumptions are appropriate here because the sentencing court did not comply with its limited authority in imposing the condition. *See* Opening Br. at 12-16. This Court should amend this injustice by remanding to the trial court to strike this condition.

Even if moot, this Court should address the issue because it involves a matter of continuing and substantial public interest. *In re Swanson*, 115 Wn.2d 21, 24, 793 P.2d 962 (1990); *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). The sentencing court's misuse of its authority to impose community custody conditions is an issue of substantial public importance that should be reviewed and corrected.

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B. CONCLUSION

This Court should accept the State's concession and strike the improperly imposed sentencing enhancement. Because the sentencing court did not follow the statutory prerequisites and because its presence on the judgment and sentence impairs Ms. Pe'a, the mental health community custody condition should also be stricken.

DATED this 22nd day of July, 2013.

Respectfully submitted,



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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF JULY, 2013, I CAUSED THE ORIGINAL **REPLY 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 22ND DAY OF JULY, 2013.

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