

70507-5

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COA No. 70507-5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DEGALVEZ WILLIAMSON,

Appellant.

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUL 11 PM 1:30

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

The Honorable Catherine Shaffer

APPELLANT'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

A. SUPPLEMENTAL ASSIGNMENTS OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT 2

THE COURT EXCEEDED ITS SENTENCING
AUTHORITY 2

1. Pursuant to *State v. Soto*, a sexual motivation enhancement may
not be imposed on an unranked felony. 2

2. For an unranked felony, only 12 months community custody may
be imposed, not 14 months. 3

E. CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON CASES

In re Pers. Restraint of Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980) 3,4

State v. Soto, 177 Wn. App. 706, 309 P.3d 596 (2013) 1, 3

STATUTES AND COURT RULES

RCW 9.94A.533 2,3

RCW 9.94A.505. 3,4

A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. The re-sentencing court erred in imposing a 12-month sentence enhancement where the offense was an unranked felony.

2. The re-sentencing court imposed a 14-month term of community custody where such custody was not to exceed 12 months.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the re-sentencing court violate RCW 9.94A.533 which, as interpreted by State v. Soto, 177 Wn. App. 706, 309 P.3d 596 (2013), allows imposition of a 12-month sentence enhancement (here, for sexual motivation) only for *ranked* felonies?

2. The re-sentencing court imposed 14 months community custody. Did this exceed RCW 9.94A.505(2)(b), which provides for community custody not to exceed 12 months for unranked felonies?

C. STATEMENT OF THE CASE

Mr. Williamson was convicted on September 10, 2009 of indecent exposure pursuant to RCW 9A.88.010, along with a jury finding of sexual motivation, and was given an exceptional term of 60 months. CP 5. He served 46 months, and was then released pursuant to “good time,” during the appeal process. Then, at re-sentencing following appeal on March 29, 2013, the trial court imposed a *standard*

range term of 12 months plus an additional 12 month enhancement for the jury’s sexual motivation finding (this prison term was deemed already served), and further stated that community custody was imposed “up to the statutory maximum of 60 months.” CP 26. The trial court later modified its judgment to order that community custody was reduced to “14 months as it is the balance of time remaining on the statutory maximum [of 60].” CP 36-40; CP 45. Mr. Williamson, during the pendency of the previous appellate process, had completed an exceptional sentence of 60 months incarceration by serving an actual 46 months imprisonment, thus satisfying the original 60 month *exceptional* sentence considering DOC’s “good time” calculation.¹

D. ARGUMENT

THE COURT EXCEEDED ITS SENTENCING AUTHORITY.

1. Pursuant to *State v. Soto*, a sexual motivation

enhancement may not be imposed on an unranked felony. Under RCW 9.94A.533, certain offenses may be enhanced by “adjustments” to the sentence, including firearm and deadly weapon enhancements

¹ Mr. Williamson’s argument in his Appellant’s Opening Brief is that his service of 48 months imprisonment (60 months discounted by “good time”) fully satisfied his obligation to serve the original 60 months exceptional sentence imposed (that being the statutory maximum) , and thus, in this case, no further penalty of community custody *of any duration* could be imposed at re-sentencing.

(subsections (3) and (4)), and “sexual motivation” enhancements (subsection (8)(a)(iii)). However, indecent exposure is an unranked felony. See RCW 9.94A.515. Although the provisions of RCW 9.94A.533 indicate the enhancements at issue (firearm, deadly weapon, or sexual motivation, etc.) apply to all felonies, Division Three of the Court of Appeals has held that the entire statute applies only to ranked felonies. State v. Soto, 177 Wn. App. 706, 710, 309 P.3d 596 (2013) (statute applies only to ranked felonies, pursuant to subsection (1) which states that the section applies to “the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517”). As a consequence, Mr. Williamson’s unranked felony, which is not addressed by the standard range determinations of either of those statutes, may not be enhanced. Soto, 177 Wn. App. at 710-11, 714-15. The trial court’s order that the appropriate incarceration term should be stated as including a 12-month enhancement period was a sentence beyond that authorized by law and must be remanded for correction. In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

2. For an unranked felony, only 12 months community custody may be imposed, not 14 months. Under RCW 9.94A.505(2)(b),

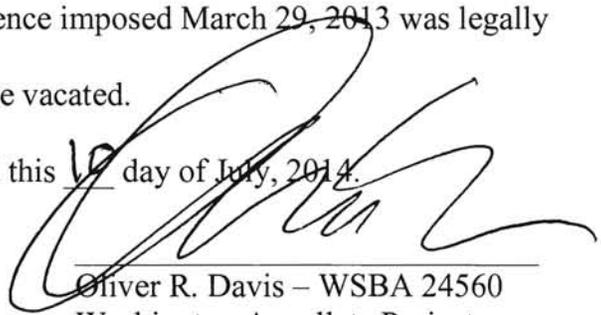
[i]f a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

RCW 9.94A.505(2)(b). Because Mr. Williamson's conviction of indecent exposure was an unranked felony, the above language indicates that the court may impose a "term of community custody under RCW 9.94A.702 not to exceed one year." As a consequence, the trial court's imposition of a 14-month term of community custody exceeded the court's sentencing authority and the sentence must be reversed. In re Pers. Restraint of Carle, 93 Wn.2d at 33.

E. CONCLUSION

Mr. Williamson's sentence imposed March 29, 2013 was legally erroneous and he asks that it be vacated.

Respectfully submitted this 10 day of July, 2014.



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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 70507-5-I
v.)	
)	
MICHAEL WILLIAMSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10TH DAY OF JULY, 2014, I CAUSED THE ORIGINAL **SUPPLEMENTAL 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:

[X] GRACE WIENER, DPA		(X) U.S. MAIL
KING COUNTY PROSECUTING ATTORNEY	()	HAND DELIVERY
APPELLATE UNIT	()	
KING COUNTY COURTHOUSE	()	_____
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 10TH DAY OF JULY, 2014.

X _____ 

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