

70703-5

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NO. 70703-5-1

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

STATE OF WASHINGTON,

Respondent,

v.

DANIEL ROADRUCK,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SAN JUAN COUNTY

The Honorable Donald E. Eaton, Judge

BRIEF OF APPELLANT

DAVID B. KOCH
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A. ASSIGNMENT OF ERROR

The judgment and sentence erroneously indicates appellant was convicted of the charges against him in counts 1 and 2.

Issues Pertaining to Assignment of Error

The charges against appellant in counts 1 and 2 were dismissed for insufficient evidence. Unfortunately, the judgment and sentence indicates appellant was convicted on these counts. Should the judgment and sentence form be amended?

B. STATEMENT OF THE CASE

The San Juan County Prosecutor's Office charged Daniel Roadruck with five criminal offenses: (count 1) Residential Burglary, (count 2) Burglary in the Second Degree, (count 3) Burglary in the Second Degree, (count 4) Burglary in the Second Degree, and (count 5) Criminal Trespass in the Second Degree. CP 13-15. The charges stemmed from a series of break-ins at several Lopez Island properties from February through July 2012. CP 4-11.

Prior to trial, the defense moved for dismissal of several of the charges – under State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986) – for lack of sufficient evidence. CP 17-19. Following a hearing on the matter, the Honorable Donald Eaton granted the

motion as to counts 1 and 2. RP (7/3/13) 28. Counts 3, 4, and 5 were tried to a jury and Roadruck was convicted. CP 61-63.

At sentencing, Judge Eaton imposed standard range sentences totaling 68 months. RP (7/26/13) 20, 23-25; CP 66; Supp. CP ____ (sub no. 115, Warrant of Commitment). Unfortunately, the first page of the judgment erroneously indicates Roadruck was convicted on counts 1, 2, and 3,¹ whereas it should indicate counts 1 and 2 were dismissed and the convictions were on counts 3, 4, and 5.² CP 64. Roadruck timely filed his Notice of Appeal. CP 74-88.

C. ARGUMENT

THE JUDGMENT AND SENTENCE IS INCORRECT.

The charges against Roadruck in counts 1 and 2 were dismissed with prejudice. He is entitled to have this outcome properly reflected in the judgment and sentence. Were Roadruck to come before a sentencing court in the future, the erroneous judgment and sentence in this case could cause confusion. This potential problem is easily eliminated, however.

¹ Page 1 does, however, properly identify the crimes associated with counts 3, 4, and 5. CP 64.

The error is simply a clerical mistake. The test to determine whether an error is clerical is the same as that under CR 60(a), the civil rule for amending judgments. State v. Snapp, 119 Wn. App. 614, 626, 82 P.3d 252, review denied, 152 Wn.2d 1028, 101 P.3d 110 (2004). The test is whether the suggested amendments to the judgment would embody the trial court's original intent. If they would, the errors are clerical. Snapp, 119 Wn. App. at 626-27 (citing Presidential Estates Apartment Assocs. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)).

Because the errors in Roadruck's judgment are clerical, CrR 7.8(a) applies and provides:

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

Under this rule, this Court has the authority to correct clerical mistakes in a judgment and sentence. See State v. Casarez, 64 Wn. App. 910, 915, 826 P.2d 1102 (1992)(correcting dates of

² In contrast, page 2 of the judgment properly indicates Roadruck was convicted on counts 3, 4, and 5. Compare CP 65.

offenses in judgment), aff'd, State v. Garza-Villarreal, 123 Wn.2d 42, 864 P.2d 1378 (1993).

Undersigned counsel recognizes that the mistake in Roadruck's judgment could be rectified – by agreement of the parties – without the need for this Court's review and intervention, thereby rendering the appeal moot. However, Mr. Roadruck may wish to exercise his right to file a Statement of Additional Grounds for Review, thereby requiring review of additional issues.

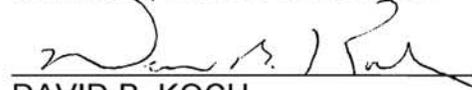
D. CONCLUSION

The judgment and sentence should be corrected.

DATED this 13th day of February, 2014.

Respectfully submitted,

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DIVISION ONE

STATE OF WASHINGTON)	
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Respondent,)	
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v.)	COA NO. 70703-5-1
)	
DANIEL ROADRUCK,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 13TH DAY OF FEBRUARY 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 13TH DAY OF FEBRUARY 2014.

X *Patrick Mayovsky*

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