73905-1

No. 73905-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRANDON BIGSBY,

Appellant.

FILED
Apr 07, 2016
Court of Appeals
Division I
State of Washington

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

BRIEF OF APPELLANT

GREGORY C. LINK
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT 3

1. The Department of Corrections alone and not the trial court had the authority to sanctions Mr. Bigsby for violation of his sentence 3

2. In light of the trial court's erroneous view that the court has inherent authority to sanction individuals under DOC supervision, this issue is likely to arise again and this Court should address the matter 5

E. CONCLUSION 7

TABLE OF AUTHORITIES

Washington Supreme Court

In re Personal Restraint of Mattson 5, 6
In re the Personal Restraint of Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980) 3
State v. Ammons, 105 Wn.2d 175, 713 P.2d 719 (1986) 3
State v. Hunley, 175 Wn.2d 901, 287 P.3d 584 (2012) 5
State v. Roggenkamp, 153 Wn.2d 614, 106 P.3d 196 (2005) 4
State v. Shove, 113 Wn.2d 83, 89, 776 P.2d 132 (1989) 5
Tommy P. v. Board of County. Commissioners, 97 Wn.2d 385, 645 P.2d 697 (1982) 4

Statutes

RCW 9.94A.6332 ..... passim

Other Authorities

S. Fine, *13B Wash. Prac.*, Criminal Law, (2016) 4

A. ASSIGNMENTS OF ERROR

The trial court lacked authority to sanction Brandon Bigsby for a violation of the conditions of his sentence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Trial court's derive their sentencing authority solely from statutes. RCW 9.94A.6332 authorizes the Department of Corrections and not the trial court to impose sanctions on individuals who violate the conditions of their sentence while under the department's supervision. Where Mr. Bigsby was under the department's supervision, did the trial court have authority to sanction him for violating a condition of his community custody?

C. STATEMENT OF THE CASE

Following Mr. Bixby's guilty plea to one count of possessing a controlled substance, the trial court imposed a sentence which included 12 months of community custody. CP 32. As a condition of community custody, the court required Mr. Bigsby obtain a drug evaluation and comply with the recommended treatment. *Id*. The court set a review hearing for August 5, 2015, at which time Mr. Bigsby was required to present the evaluation or other documentation of his involvement in treatment. CP 34.

On August 6, 2015, the Department of Corrections (DOC) found Mr. Bigsby had violated the conditions of his sentence, including among others failing to obtain a treatment evaluation. CP 5. DOC imposed a sanction of 18 days confinement, which apparently included credit for time served as Mr. Bigsby was due to be released on August 10, 2015. *Id*.

Despite the fact that at the time of the August review hearing, Mr. Bigsby was apparently serving a DOC sanction for failing to obtain an evaluation, the court issued an arrest warrant for Mr. Bigsby because he failed to appear in court on August 5, 2015. At a hearing following his arrest, Mr. Bigsby argued he was in custody at the time of the August hearing. 9/14/15 RP 2-4. In addition he contended RCW 9.94A.6332 vested DOC, and not the court, with the authority to sanction him for community custody violations. *Id*.

The trial court concluded it had inherent authority to sanction Mr. Bigsby, imposed 30 day term of incarceration, and invited Mr. Bigsby to appeal. *Id.* at 7-9

D. ARGUMENT

1. The Department of Corrections alone and not the trial court had the authority to sanctions Mr. Bigsby for violation of his sentence.

A trial court does not possess inherent sentencing authority, but rather its authority "derives strictly from statute." *State v. Ammons*, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986); *In re the Personal Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

RCW 9.94A.6332, titled "**Sanctions—Which entity imposes**", provides:

> The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:
> (1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.
> (2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.
> (3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.
> (4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.
> (5) If the offender was released pursuant to RCW 9.94A.730, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.
> (6) If the offender was sentenced pursuant to RCW 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

> (7) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.
>
> (8) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

(Emphasis added).[1]

If the language of a statute is unambiguous, it alone controls. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005); *Tommy P. v. Board of County. Commissioners*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982). RCW 9.94A.6332 carefully delineates when DOC or the court has authority to sanction a sentence violation. If the person is under DOC supervision DOC will impose sanctions for a violation. Only when the person is not under DOC supervision is the court authorized to impose sanctions. S. Fine, *13B Wash. Prac.*, Criminal Law, § 3607 (2016).

Indeed, the very reason Mr. Bigsby failed to appear in the trial court for the August hearings is because he was then serving time in jail

[1] RCW 9.92.060 pertains to suspended sentences. RCW 9.95.204 and RCW 9.95.210 pertain to indeterminate sentences. None of those provisions are applicable to Mr. Bigsby's sentence.

as a sanction imposed by DOC for his violation of this sentence. That is, the only reason Mr. Bigsby failed to appear in court was because DOC was acting pursuant to its authority under RCW 9.94A.6332.

The trial court did not have statutory to sanction Mr. Bigsby for this violation. Moreover, because a court's sentencing authority is only that provided by statute, the court did not have inherent authority to impose a sanction. *See e.g. State v. Shove*, 113 Wn.2d 83, 89, 776 P.2d 132 (1989) ("We hold that SRA sentences may be modified only if they meet the requirements of the SRA provisions relating directly to the modification of sentences.)

The trial court lacked authority to impose sanctions on Mr. Bigsby.

2. In light of the trial court's erroneous view that the court has inherent authority to sanction individuals under DOC supervision, this issue is likely to arise again and this Court should address the matter.

Typically courts will not address moot issues. *State v. Hunley*, 175 Wn.2d 901, 907-08, 287 P.3d 584 (2012). An issue is moot where the court can no longer provide effective relief. *In re Personal Restraint of Mattson*, 166 Wn.2d 730, 736, 214 P.3d 141 (2009). Mr. Bigsby has completed the term of confinement imposed as a sanction

by the trial court in violation of RCW 9.94A.6332, and thus the issue is technically moot.

The general rule, however, gives way where the issue is one of "continuing and substantial public interest." *Mattson*, 166 Wn.2d at 736. In determining whether such an issue is presented, a court considers (1) the public or private nature of the issues, (2) the desirability for an authoritative ruling to guide public officials, and (3) the likelihood that the issue will arise again. *Id.*

The authority of a trial court to sanction an individual is fundamentally a public issue. It is not an issue which merely calls upon this Court to determine a specific claim between private litigants, but reaches litigants in any number of cases. There is no published case which address this question, and thus a ruling from this Court is desirable. Moreover, in light of the history of the trial court's erroneously expansive view of its authority, it is clearly an issue which is likely to recur.

Finally, the fleeting nature of sanctions of this sort, only 30 days in this case, is such that normal appellate review will likely never be available during the pendency of the sanction. Therefore, even if the

Court deems this issue moot, it should reach the merits of Mr. Bigsby's claim.

E. CONCLUSION

For the reasons set forth above, this Court should conclude the trial court lacked authority to sanction Mr. Bigsby.

Respectfully submitted this 7th day of April, 2016.

s/ Gregory C. Link
GREGORY C. LINK – 25228
Washington Appellate Project – 91072
Attorneys for Appellant

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

STATE OF WASHINGTON, Respondent, BRANDON BIGSBY, Appellant.	)))))))))	NO. 73905-1-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7TH DAY OF APRIL, 2016, I CAUSED THE ORIGINAL **OPENING 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]	SETH FINE, DPA [sfine@snoco.org] SNOHOMISH COUNTY PROSECUTOR'S OFFICE 3000 ROCKEFELLER EVERETT, WA 98201	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL
[X]	BRANDON BIGSBY 1917 6TH AVE NE MARYSVILLE, WA 98223	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON, THIS 7TH DAY OF APRIL, 2016.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☏(206) 587-2711