

No. 34742-3-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Mitchell Partee,**

Appellant.

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STATE OF WASHINGTON  
BY   
Jodi R. Backlund  
Attorney for Appellant  
OCT 12 11 03 AM  
COURT OF APPEALS, DIVISION II

Lewis County Superior Court

Cause No. 03-1-00166-4

The Honorable Judge Stephen Warning

**Appellant's Reply Brief**

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## ARGUMENT

### **THE TRIAL COURT HAD DISCRETION TO IMPOSE CONFINEMENT INSTEAD OF REVOKING MR. PARTEE'S SSOSA SENTENCE.**

Respondent argues that if the court imposed a portion of Mr. Partee's suspended sentence, it would be effectively charging additional violations that were not filed by the state. Brief of Respondent, p. 3. This is incorrect. The state alleged and brought forward evidence of eight unapproved/unreported contacts with minors, and a deceptive polygraph. CP 24; RP (3/17/06) 7-34. After the hearing, the court found the violations committed. CP 21-22. Determining the appropriate sanction for these violations was properly a court function.

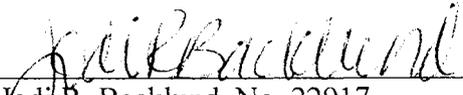
The state also attempts to distinguish this case from *State v. Badger* by arguing that Mr. Partee could not be given enough time under a probation violation to send him to prison. *State v. Badger*, 64 Wn. App. 904, 827 P.2d 318 (1992). Apparently, this argument relates to testimony that Mr. Partee could benefit from a prison sentence (as opposed to a local one). RP (3/17/06) 27. This argument is unpersuasive; under *Badger*, the court can treat each violation of SSOSA as a probation violation and sanction accordingly.

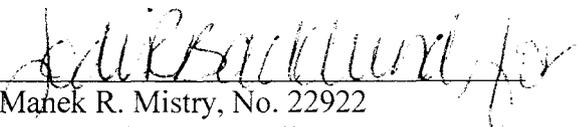
The court did not rule out a probation violation sanction. Instead, the judge erroneously believed he was barred from imposing one. This

failure to exercise discretion was an abuse of discretion. The case must be remanded for the trial court to consider this option.

Respectfully submitted on March 8, 2007.

**BACKLUND AND MISTRY**

  
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CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Reply Brief to:

Mitchell Partee  
P.O. Box 1205  
Chehalis, WA 98532

and to:

Lewis County Prosecuting Attorney  
360 NE North Street  
Ms: pro01  
Chehalis, WA 98532-1925

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on March 8, 2007.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 8, 2007.

  
\_\_\_\_\_  
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STATE OF WASHINGTON  
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BY \_\_\_\_\_