Original

NO. 35158-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MARQUIS A. RAMIREZ,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
07 JAN -8 AM 9:53
STATE OF WASHINGTON
BY DEPUTY

BRIEF OF APPELLANT

John A. Hays, No. 16654
Attorney for Appellant

1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084

pm 1/4/07

ORIGINAL

TABLE OF CONTENTS

Page

A. TABLE OF AUTHORITIES iii

B. ASSIGNMENT OF ERROR

1. Assignment of Error 1

2. Issue Pertaining to Assignment of Error 1

C. STATEMENT OF THE CASE

D. ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GIVE GREAT WEIGHT TO THE OPINION OF THE VICTIMS CONCERNING THE DEFENDANT'S SENTENCE AND WHEN IT REVOKED THE SOSSA SENTENCE 8

II. THE TRIAL COURT VIOLATED WASHINGTON CONSTITUTION, ARTICLES 4, § 6 WHEN IT DENIED THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE UNDER RCW 13.04.030 THE SUPERIOR COURT THAT ACCEPTED THE PLEA DID NOT HAVE SUBJECT MATTER JURISDICTION 12

E. CONCLUSION 19

F. APPENDIX

1. Washington Constitution, Article 4, § 6 20

2. RCW 13.34.030 21

TABLE OF AUTHORITIES

Page

State Cases

In re Perkins, 143 Wn.2d 261, 19 P.3d 1027 (2001) 16, 17

In re Stewart, 115 Wn.App. 319, 75 P.3d 521 (2003) 14

Inland Foundry Co., Inc. v. Spokane County Air Pollution Control Auth., 98 Wn.App. 121, 989 P.2d 102 (1999) 18

State v. Brennan, 76 Wn.App. 347, 884 P.2d 1343 (1994) 18

State v. Daniels, 73 Wn.App. 734, 871 P.2d 634 (1994) 8

State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (2005) 8, 9

State v. Khanteechit, 101 Wn.App. 137, 5 P.3d 727 (2000) 8

State v. Neal, 144 Wn.2d 600, 30 P.3d 1255 (2001) 8

State v. Onefrey, 119 Wn.2d 572, 835 P.2d 213 (1992) 8

State v. Salavea, 151 Wn.2d 133, 86 P.3d 125 (2004) 12

Constitutional Provisions

Washington Constitution, Article 4, § 6 12

Statutes and Court Rules

CrR 7.8(b) 14, 15

RCW 10.73.100 15-17

RCW 13.04.030 12

RCW 9.94A.670 9-11

Other Authorities

Senate Bill Report, HB 2064,
59th Legis., Reg. Sess., at 1 (Wash. 2005) 13

ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court abused its discretion when it failed to give great weight to the opinion of the victims concerning the defendant's sentence and when it revoked the SOSSA sentence.

2. The trial court violated Washington Constitution, Articles 4, § 6 when it denied the defendant's motion to withdraw his guilty plea because under RCW 13.04.030 the superior court that accepted the plea did not have subject matter jurisdiction.

Issues Pertaining to Assignment of Error

1. Does a trial court abuse its discretion if it fails to give great weight to the opinion of the victims concerning the granting or revoking of a SOSSA sentence?

2. Does a trial court violate Washington Constitution, Article 4, § 6 if it refuses to vacate a guilty plea and sentence originally entered in excess of the court's subject matter jurisdiction?

STATEMENT OF THE CASE

By information filed October 17, 2002, the Clark County Prosecutor charged Defendant Marquis Antez Ramirez with four courts of first degree rape of a child. CP 1-3. On the filing date the defendant was 16 years and 28 days old. CP 3. The information alleged that he had committed the offenses before turning 16-years-old (sometime between his 12th and 16th birthday). CP 1-3. At the time both the prosecutor and defense attorney believed that under RCW 13.04.030 the adult court had original subject matter jurisdiction in the case if the defendant was at least 16-years-old at the time of filing even if the defendant was younger at the time of the alleged commission of the crime. CP 132-142. On December 4, 2002, the defendant entered a plea to one count of first degree rape of a child on a standard range of 93 to 123 months. CP 13-32. On March 11, 2003, the court sentenced the defendant to 160 months in prison suspended for 36 months under the sex offender special sentencing option (SOSSA). CP 61-78. The court also imposed 180 days in jail with credit for 146 days served. CP 65. How and why the court sentenced the defendant to 180 months on a range of 93 to 123 months is unclear, particularly since the court did not purport to impose an exceptional sentence and did not enter findings in support of an exceptional sentence. CP 62; RP 51. Under Paragraph 4.6 of the judgment and sentence the court entered numerous conditions, including

the following:

> ☒ Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.

CP 70.

On August 5, 2005, the court issued a warrant for the defendant's arrest on a claim by the Department of Corrections (DOC) that the defendant had violated the conditions of his SOSSA sentence by : (1) missing a meeting with his DOC officer, (2) failing to maintain employment, (3) having an unexcused absence from a group therapy session, and (4) using illegal drugs. CP 81-83. The court later found that each violation had been proved and sentenced the defendant to a sanction of 120 days in jail. CP 80-92. The court did not change the conditions of the defendant's probation. *Id.*

On February 3, 2006, the state filed a motion seeking to revoke the defendant's suspended sentence based upon the following ten alleged violations:

> 1. Failure to report as directed to Chemical Dependency Screening appointment at 9:00 a.m. on Friday, 12/16/05.
>
> 2. Failure to participate in Chemical Dependency Treatment as directed by being terminated from the Chemical Dependency Screening list.
>
> 3. Failure to report for Day Reporting Check in Appointment at

5:00 p.m. on Friday, 12/16/05 as directed.

4. Failure to comply with sex offender treatment conditions by failing to attend scheduled treatment group on 11/2/05.

5. Failure to comply with sex offender treatment condictions by failing to attend scheduled treatment group on 12/13/05.

6. Use of Controlled substances (Codeine and THC on/about 12/14/05.

7. Entering a mall on several occasions since release from custody on 10/29/05.

8. Failure to abide by sex offender treatment conditions by attending a strip show sometime between 10/29/05 and 12/19/05.

9. Failure to abide by treatment conditions by possession of pornography on/about 12/19/05.

10. Failure to pay at least $20.00 per month toward Legal Financial Obligations as directed since 11/9/04.

CP 121-122.

After the state filed the petition to revoke the defendant's SOSSA sentence, the defendant moved under CrR 7.8(b) to withdraw his guilty plea on the basis that at the time he entered his plea that adult court did not have subject matter jurisdiction over his case. CP 132-142, 155-165. The gravamen of the defendant's claim was that in 2005 the legislature amended RCW 13.04.030 to clarify that the juvenile court retained subject matter jurisdiction for 16 and 17-year-old defendant's charged with first degree rape of a child if the crime occurred before the defendant's birthday. *Id.* The trial

court denied this motion. RP 82-84.

The case later came on for a hearing on these allegations with the state calling five witnesses and the defense calling five witnesses. RP 100-186, 190-268. The state's witnesses included the defendant's probation officer, who testified that after the prior drug violation he had ordered the defendant to get a substance abuse evaluation and participate in the treatment recommended, although the defendant repeatedly failed to show up to the evaluation appointments the officer made for him. RP 101-108. He also testified that (1) the defendant had failed to check in for day reporting on 12/16/05, (2) that the defendant had failed to attend group treatment sessions on 12/2/05 and 12/13/05, (3) that the defendant had admitted entering a mall following his recent release from jail, (4) that the defendant had failed to pay toward his legal financial obligations since 11/9/02, and (5) that he had heard that the defendant had gone to see a stripper. RP 109-123.

A number of other probation officers testified that they had seized a cell phone from the defendant and it had pictures of adult women's breasts on it. RP 135-145, 145-148, 179-186. These officers also testified to obtaining a urine sample from the defendant for testing. *Id.* At the time they reported that the defendant denied taking any prescription medications. RP 182. The director of Sterling Laboratories later testified that he had tested the urine sample and determined it to contain codeine and a cannabinoid

metabolite. RP 156-168. According to this witness, the cannabinoid metabolite indicated that the defendant had used marijuana within the last two to six weeks, and the codeine indicated that the defendant had used a prescription cough syrup containing codeine. RP 166-171.

After the state finished its evidence the defendant's mother took the stand to dispute the claim that the defendant had willfully failed to pay his legal-financial obligations. RP 194-201. According to her, the defendant had consistently given her his paychecks out of which she was supposed to make his monthly payments, and she had failed to make those payments without telling the defendant. RP 211. The defendant also called two of his treatment providers. RP 226, 246. They confirmed that the defendant had missed two group sessions. RP 226-244, 246-251. However, they both testified that the defendant had consistently performed well in treatment, that he was in little danger to reoffend, and that in their opinion his SOSSA sentence should not be revoked. *Id.* The defense also presented the evidence of the mother of the two victims, who testified that she did not want the defendant's SOSSA sentence revoked. RP 220-226.

At the end of the hearing the court stated that it was revoking the defendant's suspended sentence. RP 285-286. However, the court did not simply implement the prior judgment and sentence. CP 192. Rather, the court entered a new judgment and sentence, this time imposing 123 months

in prison with 36 months community custody and credit for 505 days served. RP 192-206. The court later entered a short written order finding that the state had proven all of the findings except 8 (attending a strip show) and 9 (possession of pornography). CP 207-208, 212-213. In both the court's oral ruling as well as the short written order the court failed to state that it even considered the desires of the victims in the case. RP 192-206; CP 207-208, 212-213.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GIVE GREAT WEIGHT TO THE OPINION OF THE VICTIMS CONCERNING THE DEFENDANT'S SENTENCE AND WHEN IT REVOKED THE SOSSA SENTENCE.

The decision to grant or deny the imposition of a SSOSA sentence lies within the sound discretion of the trial court. *State v. Onefrey*, 119 Wn.2d 572, 835 P.2d 213 (1992). Similarly, the decision whether or not to revoke a SSOSA sentence or impose a lesser sanction upon proof of a violation also lies within the trial court's discretion. *State v. Daniels*, 73 Wn.App. 734, 737, 871 P.2d 634 (1994). An abuse of discretion occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001). Thus, a court abuses its discretion if it categorically refuses to impose a particular sentence or if it denies a sentencing request on an impermissible basis. *State v. Khanteechit*, 101 Wn.App. 137, 5 P.3d 727 (2000).

For example in *State v. Grayson*, 154 Wn.2d 333, 111 P.3d 1183 (2005), the defendant appealed the trial court's refusal to give a DOSA sentence, arguing that the court had abused its discretion. In this case the court had stated that it believed the legislature had failed to adequately fund DOC's supervision of defendants on DOSA sentences. Thus the court would

not consider a sentence under this provision. The Washington Supreme Court agreed and reversed, holding as follows:

> Next, we consider whether, as Grayson contends, the trial judge abused his discretion by categorically refusing to consider a DOSA sentence. Again, while trial judges have considerable discretion under the SRA, they are still required to act within its strictures and principles of due process of law. While no defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered. A trial court abuses discretion when "it refuses categorically to impose an exceptional sentence below the standard range under any circumstances." The failure to consider an exceptional sentence is reversible error. Similarly, where a defendant has requested a sentencing alternative authorized by statute, the categorical refusal to consider the sentence, or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and is subject to reversal.

State v. Grayson, 154 Wn.2d at 341-342 (citations omitted).

In the case at bar the trial court committed a similar abuse of discretion when it failed to even consider the wishes of the victim in this case, let alone give "great weight" to this opinion. The following sets out this argument.

Subsection 2 of RCW 9.94A.670 sets the original eligibility requirements for offenders seeking a sentence under the SOSSA option. It states:

> (2) An offender is eligible for the special sex offender sentencing alternative if:
>
> (a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious

violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

RCW 9.94A.670.

If an offender meets these requirements, he or she must then submit to a psycho-sexual evaluation to determine amenability to treatment. Once this report is completed it is submitted to the court along with DOC's pre-sentence investigation report. The court then exercises its discretion within the framework of RCW 9.94A.670(4) in determining whether or not to impose a SOSSA sentence. This subsection states:

(4) After receipt of the reports, the court shall consider whether

> the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. ***The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section.*** If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range.

RCW 9.94A.670(4) (emphasis added).

As the plain language of this subsection states, in exercising its discretion the court must give great weight to the wishes of the victim or victims in the case. It would be anomalous indeed if this requirement did not extend to the court's decision whether or not to revoke a SOSSA sentence once imposed. Thus, in failing to even consider the wishes of the victims in a case, let alone give great weight to their opinions, a court abuses its discretion in deciding whether or not to give or revoke a SOSSA sentence. This is precisely what the court did in the case at bar. The court did not even consider the victims' desires concerning revocation. Thus, the trial court abused its discretion when it ordered revocation.

II. THE TRIAL COURT VIOLATED WASHINGTON CONSTITUTION, ARTICLE 4, § 6 WHEN IT DENIED THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE UNDER RCW 13.04.030 THE SUPERIOR COURT THAT ACCEPTED THE PLEA DID NOT HAVE SUBJECT MATTER JURISDICTION.

Washington Constitution, Article 4, § 6, vests original jurisdiction in the Superior Courts. The relevant portion of that provision states:

> The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.

Washington Constitution, Article 4, § 6.

Under a recent (2005) amendment to RCW 13.04.030(1)(e) the legislature has vested original subject matter jurisdiction over all charges of first degree rape of a child committed before the offender is sixteen years old. This statute provides:

> (v) The juvenile is sixteen or seventeen years old <u>on the date the alleged offense is committed</u> and the alleged offense is:
>
> . . .
>
> (C) . . . rape of a child in the first degree . . . committed on or after July 1, 1997;

RCW 13.04.030(1)(e) (interlineation shows 2005 amendment).

The 2005 amendment as shown above was a reaction of the legislature to the Washington Supreme Court's decision in *State v. Salavea*, 151 Wn.2d 133, 86 P.3d 125 (2004). In this case the court held that the

juvenile court only retained subject matter jurisdiction if the state charged the crime before the defendant reached sixteen years of age. As the legislative history to this amendment reveal, the purpose of the amendment was not to change the original intent of the statute. Rather, it was to clarify the legislatures original intent. The background to the Senate Bill Report gives the following history on the amendment:

> **Background:** Generally, the juvenile court has exclusive original jurisdiction over juveniles under age 18 who are charged with a criminal offense, traffic infraction, or violation. However, if a juvenile is 16 or 17 years old and accused of committing certain violent offenses, the adult criminal court has exclusive original jurisdiction.
>
> The Supreme Court of Washington has interpreted the statute placing jurisdiction in the adult criminal court to refer to the age of the offender at the time of the proceedings, rather than at the time of the offense.

Senate Bill Report, HB 2064, 59th Legislature, Reg. Sess., at 1 (Wash. 2005) (emphasis in original).

The Senate Bill Report then goes on to state in unambiguous terms that it was always the legislature's intent to keep juvenile court jurisdiction if the defendant was under sixteen at the time of the offense. The report further states:

> **Testimony For**: The bill reflects the original intent of the legislature and corrects the courts' misinterpretation of the law.

Id.

In this case the defense argued that the 2005 amendment should be applied retroactively. A legislative amendment generally applies prospectively unless it is shown that "(1) the legislature intended the amendment to apply retroactively, (2) the amendment is curative, or (3) the amendment is remedial." *In re Pers. Restraint of Stewart*, 115 Wn.App. 319, 332, 75 P.3d 521 (2003). In this case the legislative history demonstrates that the amendment was "curative" in nature and that its purpose was to reverse the court's misinterpretation of the legislature's original intent. Thus, it should be applied retroactively to invalidate the defendant's prior plea.

In this case the state has also argued that even if the amendment should be retroactively applied, the defendant's motion was untimely under CrR 7.8(b) because it was not brought within one year. As the following explains, this analysis is incorrect.

Under CrR 7.8(b), first adopted on September 1, 1986, the Washington State Supreme Court has set out five bases upon which a defendant can obtain relief from a final judgment. This rule states:

> **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

> (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.6;
>
> (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) The judgment is void; or
>
> (5) Any other reason justifying relief from the operation of the judgment.
>
> The motion shall be made within a reasonable time and for reasons (1) and (2) not more that 1 year after the judgment, order, or proceeding was entered or taken and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment and suspend its operation.

CrR 7.8(b).

Under the terms of CrR 7.8(b), any motion brought under its provisions is specifically "subject to RCW 10.73.090, .100, .130, and .140." RCW 10.73.100 sets out specific exceptions to the one year time limit. This section, also incorporated into CrR 7.8(b), states as follows:

> The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:
>
> (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
>
> (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
>
> (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

> (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
>
> (5) The sentence imposed was in excess of the court's jurisdiction; or
>
> (6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100.

Under subsection (5), as part of CrR 7.8(b), a post-conviction relief petition that challenges a "sentence imposed in excess of the court's jurisdiction," is not subject to the one year time limitation. The decision in *In re Perkins*, 143 Wn.2d 261, 19 P.3d 1027 (2001), touches on what constitutes a "sentence imposed in excess of the court's jurisdiction." The following examines this case.

In *In re Perkins*, the defendant first filed a personal restraint petition wherein he successfully argued that the trial court had erred when it imposed community custody. A little over one year after the original sentence was imposed, the defendant later filed a second personal restraint petition, arguing that the trial court had sentenced him in excess of its jurisdiction when it imposed 88 months on a Class C felony.

On appeal, the state argued that RCW 10.73.140 divested the Court of Appeals of jurisdiction to hear a successive personal restraint petition. In response, the Court of Appeals transferred the case to the Washington Supreme Court. The Supreme Court then held that while the Court of Appeals authority was limited by RCW 10.73.140, its authority was not. The court then granted the relief requested. In addressing these issues, the court stated the following concerning the exact nature of the defendant's claim, and specifically why it was not subject to the one year time limitation of RCW 10.73.090. The court stated: "The state concedes the second PRP was not time-barred by RCW 10.73.090 because it fell under the excessive sentence exception in RCW 10.73.100(5) . . ." *In re Perkins*, 143 Wn.2d at 263.

In *Perkins*, the defendant's argument was that the trial court exceeded its statutory authority by imposing a sentence in excess of five years on a Class C felony. Both the state and the court agreed that for the purposes of RCW 10.73.100(5), the trial court had imposed a sentence "in excess of the court's jurisdiction." Thus, the one year time limit for bringing a post-conviction relief action did not apply. Similarly, in the case at bar, the defendant argues that the trial court exceeded its statutory authority by imposing a sentence in excess of its subject matter jurisdiction. Thus, in the case at bar, as in *Perkins*, for the purposes of RCW 10.73.100(5), the trial court has imposed a sentence "in excess of the court's jurisdiction." As a

result, the one year time limit for bringing a post-conviction relief action does not apply.

Finally it should be noted that a party may challenge subject matter jurisdiction at any time, and a judgment entered by a court lacking subject matter jurisdiction is void. *Inland Foundry Co., Inc. v. Spokane County Air Pollution Control Auth.*, 98 Wn.App. 121, 989 P.2d 102 (1999). As the court notes in *State v. Brennan*, 76 Wn.App. 347, 884 P.2d 1343 (1994):

> It is well established that a party may challenge a court's subject matter jurisdiction at any time. Moreover, a judgment rendered by a court lacking jurisdiction is void ab initio and is legally no judgment at all. Thus, Brennan's challenge to the District Court's jurisdiction is properly before us.

State v. Brennan, 76 Wn.App. at 349 (citations omitted).

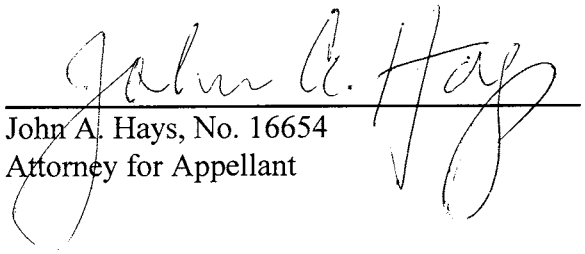
Thus, in the case at bar, the defendant had the right at any point to challenge the subject matter jurisdiction of the court that took his plea in 2002. Since that court did not have subject matter jurisdiction, the acceptance of the plea and the original sentence was void. As a result, the trial court erred when it denied the defendant's motion to withdraw that plea.

CONCLUSION

The trial court abused its discretion when it denied the defendant's motion to withdraw his guilty plea and when it revoked his SOSSA sentence.

DATED this 4th day of January, 2007.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 4, § 6

The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

RCW 13.04.030
JUVENILE COURT--EXCLUSIVE ORIGINAL JURISDICTION

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through *13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age: PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an

alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20 .060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

In such a case the adult criminal court shall have exclusive original jurisdiction.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the

state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

FILED
COURT OF APPEALS
DIVISION II
07 JAN -8 AM 9:52
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON, **Respondent,** **vs.** **MARQUIS A. RAMIREZ,** **Appellant,**	**CLARK CO. NO: 02-1-02076-3** **APPEAL NO: 35158-7-II** **AFFIDAVIT OF MAILING**

STATE OF WASHINGTON)
) **vs.**
COUNTY OF CLARK)

CATHY RUSSELL, being duly sworn on oath, states that on the **4TH day of JANUARY, 2007**, affiant deposited into the mails of the United States of America, a properly stamped envelope directed to:

ARTHUR CURTIS CLARK COUNTY PROSECUTING ATTORNEY 1200 FRANKLIN ST. VANCOUVER, WA 98668	MARQUIS A. RAMIREZ #849366 WA STATE CORRECTIONS CTR P.O. BOX 900 SHELTON, WA 98584

and that said envelope contained the following:
1. BRIEF OF APPELLANT
2. AFFIDAVIT OF MAILING

DATED this 4TH day of JANUARY, 2007.

Cathy Russell
CATHY RUSSELL

SUBSCRIBED AND SWORN to before me this 4th day of JANUARY, 2007.

DONNA BAKER
COMMISSION EXPIRES
NOTARY
PUBLIC
OCT. 24, 2009
STATE OF WASHINGTON

NOTARY PUBLIC in and for the
State of Washington,
Residing at: Kelso, Washington
Commission expires: 10-24-09

John A. Hays
Attorney at Law
1402 Broadway
Longview, WA 98632
(360) 423-3084

RECEIVED
JAN -8 2007
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON, Respondent,	**CLARK CO. NO: 02-1-02076-3**
vs.	**APPEAL NO: 35158-7-II**
MARQUIS A. RAMIREZ, Appellant,	**AFFIDAVIT OF MAILING**

STATE OF WASHINGTON)
) **vs.**
COUNTY OF CLARK)

CATHY RUSSELL, being duly sworn on oath, states that on the **4TH day of JANUARY, 2007**, affiant deposited into the mails of the United States of America, a properly stamped envelope directed to:

ARTHUR CURTIS
CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN ST.
VANCOUVER, WA 98668

MARQUIS A. RAMIREZ #849366
WA STATE CORRECTIONS CTR
P.O. BOX 900
SHELTON, WA 98584

and that said envelope contained the following:
1. BRIEF OF APPELLANT
2. AFFIDAVIT OF MAILING

DATED this 4TH day of JANUARY, 2007.

Cathy Russell
CATHY RUSSELL

SUBSCRIBED AND SWORN to before me this 4th day of JANUARY, 2007.

DONNA BAKER
COMMISSION EXPIRES
NOTARY
PUBLIC
OCT. 24, 2009
STATE OF WASHINGTON

NOTARY PUBLIC in and for the
State of Washington,
Residing at: Kelso, Washington
Commission expires: 10-24-09

John A. Hays
Attorney at Law
1402 Broadway
Longview, WA 98632
(360) 423-3084