

No. 35533-7-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

VENUS R. MAHALA,

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II  
07 JUN 25 PM 1:15  
STATE OF WASHINGTON  
BY DEPUTY

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APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable, Judge Toni A. Sheldon  
Cause No. 05-1-00485-1

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AMENDED BRIEF OF RESPONDENT

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    A 72 DAY SENTENCE ON MAHALA BECAUSE THAT  
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A. ASSIGNMENT OF ERROR

The trial court erred in denying Mahala's motion to be released from custody on her sentence in this case.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Under RCW 9.94A.530(1) that states the trial court may impose any sentence within the range that it deems appropriate, did the trial court err when it gave Mahala 72 days in jail on a gross misdemeanor that ran consecutive to a separate sentence which she received on an unrelated, district court case?

C. EVIDENCE RELIED UPON

The official Report of Proceedings will be referred to as "RP."

D. STATEMENT OF THE CASE

1 & 2: Procedural History and Statement of Facts. Pursuant to RAP 10.3(b), the State accepts Mahala's recitation of the procedural history and facts.

3. Summary of Argument

The trial court did not err by imposing a sentence of seventy-two days in jail on Mahala for committing Malicious Mischief in the Third Degree because that sentence fell well within the standard range.

E. ARGUMENT

THE TRIAL COURT DID NOT ERR BY IMPOSING A 72 DAY SENTENCE ON MAHALA BECAUSE THAT SENTENCE WAS PROPERLY WITHIN THE STATUTORY GUIDELINES.

The trial court did not err by imposing a 72 day sentence on Mahala because that sentence was properly within the statutory guidelines.

To determine whether a sentence is clearly too excessive or too lenient, abuse of discretion is the standard of review. *State v. Law*, 154 Wash.2d 85, 93, 110 P.3d 717 (2005). The court may impose any sentence within the range that it deems appropriate. RCW 9.94A.530(1); see *State v. Brown*, 139 Wash.2d 20, 36, 983 P.2d 608 (1999). A person found guilty of malicious mischief in the third degree under RCW 9A.48.090(1)(a) may be sentenced to up to one year in jail. RCW 9A.48.090(1)(a).

The trial court informed Mahala on August 14, 2006, that by pleading guilty to malicious mischief in the third degree involving “the destruction of... a windshield,” that she was, “looking at up to one year in jail and a \$5,000.00 in fine[.]” RP 44: 11-16. Mahala stated that she was comfortable entering into this plea. RP 44: 3-6. The trial court imposed “a total of 72” out of a possible 365 days, and suspended the remaining 293 days. RP 50: 19-25. The trial court specifically told Mahala that these remaining 293 days would be, “just hanging up in space over [her] head,” and that they would “stay up there” during her two years of community probation. RP 51: 1-5.

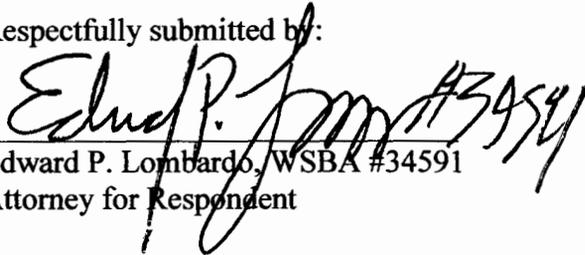
While Mahala may have felt that she would be released with credit for time served, she did not object to receiving 72 days in jail at sentencing. The trial court was well within its discretion to impose 72 days and suspend the remaining 293, and did not err.

F. CONCLUSION

The State respectfully requests that the judgment and sentence of the trial court be affirmed.

Dated this 23<sup>RD</sup> day of June, 2007

Respectfully submitted by:

  
Edward P. Lombardo, WSBA #34591  
Attorney for Respondent

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

STATE OF WASHINGTON, )  
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 Respondent, )  
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 VENUS R. MAHALA , )  
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DECLARATION OF  
FILING/MAILING  
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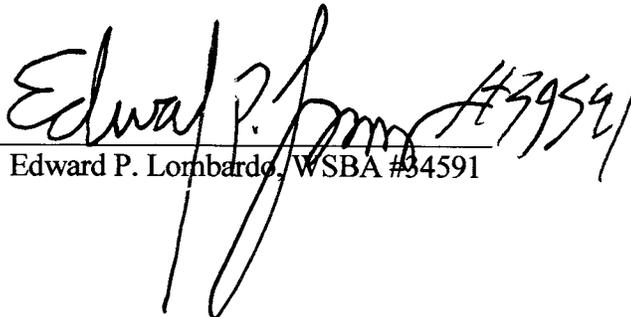
I, EDWARD P. LOMBARDO, declare and state as follows:

On SATURDAY, JUNE 23, 2007, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached (AMENDED BRIEF OF RESPONDENT), to:

Thomas Edward Doyle  
Attorney at Law  
P.O. Box 510  
Hansville, WA 98340-0510

I, EDWARD P. LOMBARDO, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 23<sup>RD</sup> day of JUNE, 2007, at Shelton, Washington.

  
Edward P. Lombardo, WSBA #34591