

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY *L.S.*
DEPUTY

No. 37790-0-II

IN THE COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JOHN BOOTH, JR.

Appellant.

RESPONDENT'S BRIEF

L. MICHAEL GOLDEN
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by:

Lori Smith
Lori Smith, Deputy Prosecutor

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STATEMENT OF THE CASE

Appellant's recitation of the facts is adequate for purposes of responding to this appeal.

ARGUMENT

A. BOOTH'S JUDGMENT AND SENTENCE WAS PROPERLY AMENDED TO PROVIDE THAT THE COMBINED SENTENCE OF INCARCERATION AND COMMUNITY CUSTODY COULD NOT EXCEED THE STATUTORY MAXIMUM OF 120 MONTHS.

Booth claims that his sentence is "unlawful because his terms of confinement and community custody exceed the statutory maximum" for the crime. Booth is wrong.

Booth pled guilty to two counts of Assault in the Second Degree. CP 22-29. One of these counts included a deadly weapon sentence enhancement. CP 14. The standard range for these counts was 63-84 months. CP 15. The court sentenced Booth to 84 months, plus 12 months confinement for the enhancement, for a total of 96 months. CP 18. Also included was 18 to 36 months community custody, which would total 132 months. The statutory maximum for these crimes is 120 months. CP 6-13. Because Booth's sentence exceeded the statutory maximum, Booth moved to correct his sentence. CP 6-13. The trial court then entered an Order Amending Judgment and Sentence, which reads in pertinent

part, "The statutory maximum sentence is 120 months. The total time imposed for both incarceration and community custody shall not exceed 120 months." CP 4. Thus, the trial court properly amended the Judgment and Sentence to provide that the total sentence imposed could not exceed the statutory maximum for the crime. Former RCW 9.94A.505(5). Case law supports the method used by the trial court in specifying that the combined term of incarceration plus community custody time cannot exceed the crime's statutory maximum. State v. Sloan, 121 Wn.App. 220, 221, 87 P.3d 1214 (2004); State v. Vant, 145 Wn.App. 592, 605-607, 186 P.3d 1149 (2008)(adopting the Sloan analysis). As explained by the Vant court, "[w]here a defendant is sentenced to the statutory maximum, and also sentenced to community custody, the judgment and sentence should set forth the statutory maximum and clarify that the term of community custody cannot exceed that maximum." State v. Vant, 145 Wn.App. at 605-606. Because the trial court here properly specified in the Judgment and Sentence that the combined incarceration and community custody sentence could not exceed the 120 month statutory maximum, the trial court did not err. And, despite Booth's argument to the contrary, there is no reason for this court to abandon the reasoning of Sloan and

Vant. Accordingly, Booth's convictions and sentence should be affirmed.

CONCLUSION

The trial court properly amended the Judgment and Sentence in this case to provide that the total combined sentence of incarceration plus community custody could not exceed the statutory maximum of 120 months. Thus, the trial court did not err. The sentence is proper under the statutes and the decisions in Sloan and Vant, supra. Accordingly, Booth's sentence should be affirmed.

RESPECTFULLY SUBMITTED this 12th day of December, 2008.

L. MICHAEL GOLDEN
LEWIS COUNTY PROSECUTING ATTORNEY

by:


LORI SMITH, WSBA 27961
Deputy Prosecutor

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

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STATE OF WASHINGTON
BY Lori Smith
DEPUTY

STATE OF WASHINGTON,)
Respondent,)
vs.)
JOHN BOOTH, JR.)
Appellant.)
_____)

NO. 37790-0-II

DECLARATION OF
MAILING

LORI SMITH, Deputy Prosecutor for Lewis County, Washington,
declare under penalty of perjury of the laws of the State of Washington that
the following is true and correct: On 12/12/08, I served
appellant with a copy of the **Respondent's Brief** by depositing same in the
United States Mail, postage pre-paid, to attorney for Appellant at the name
and address indicated below:

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DATED this 12th day of December, 2008, at Chehalis, Washington.

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