

COURT OF APPEALS
 DIVISION TWO
 OF THE STATE OF WASHINGTON

COURT OF APPEALS
 DIVISION II

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STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
MICHAEL JOHN SCALARA)
 (your name))
)
 Appellant.)

No. 37966-0-II BY Ch
 DEPUTY

STATEMENT OF ADDITIONAL
 GROUNDS FOR REVIEW

I, Michael Scalara, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The Trial Court permitted a tainted in court identifaction by one of the Prosecution's main witness'.At trial the Prosecution called,Duane Hay,who the prosecution claimed the defendant had given a check to purchase an automobile.As stated in the police report,only hours after the defendants arrest the police showed Hay's a photomontage with defendant Scalara's photo in it ,and Mr.Hay was unable to pick out Mr.Scalara.After almost one year passing he was able to in court with Mr.Scalara sitting at the defense table.

Additional Ground 2

The statutory maximum term for second degree Identity Theft (a class C felony)is five years.See RCW 9.35.020(3).Scalara states the judgement and sentence does not clearly set forth the statutory maximum sentence and does not clearly indicate that the total incarceration and community custody cannot exceed the maximum sentence.See State v.DeClue,No.36466-2-II(Wash.App.Div.2 03/10/2009) [35]:DeClue also contends that remand is warrented

(cont.)

If there are additional grounds, a brief summary is attached to this statement.

Date: 4/22/09

Signature: Michael John Scalara

(cont.)

in any event because his judgement and sentence fails to expressly set forth the maximum sentence and fails to state that the total of incarceration and community sustody cannot exceed that maximum. We agree.

[37]:The legislature sets the maximum punishment for every offense. State v. Vant, 145Wn.App. 592, 605, 186P.3d1149 (2008). The total punishment, includeing imprisonment, community custody, may not exceed the statutory maximum for a particular offense. Vant, 145Wn.App. at 605. Where a defendant is sentenced to the statutory maximum and also sentenced to community custody, the judgement and sentence should set forth the statutory maximum and clarify that the term of community custody cannot exceed that maximum. Vant, 145Wn.App. at 605-06.

Scalara contends that his sentence failed to clearly state that his term of incarceration and community custody cannot exceed the statutory maximum term for his conviction for Identity Theft In The Second Degree and Identity Theft In The Second Degree.