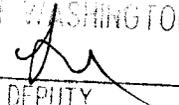


FILED
COURT OF APPEALS
DIVISION III

10 SEP 16 PM 3:26

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON STATE OF WASHINGTON

DIVISION TWO

BY  DEPUTY

In re the Personal
Restraint of:

MICHAEL DAVID CRAWFORD

Petitioner, pro se

NO. 40729-9-II

REPLY IN
PERSONAL RESTRAINT
PETITION

COMES NOW, Michael David Crawford, the Petitioner in pro se and files his reply in the above entitled personal restraint petition pursuant to RAP 16.9

I. REPLY TO CONTESTED ISSUE:

The Petitioner was not on community placement at the time that he committed the crime of perjury, therefore his sentence is based on an incorrect offender score, and cannot be corrected as a scrivener's error.

The Petitioner concedes that he was released from prison and put on community placement in September of 2008, however on December 15th 2008, he was taken back into custody for an attempt to elude and a drug possession charge.(Thurston County Cause No. 08-1-2248-3) At that time, his community placement was tolled and his status no longer met the

legal definition of being on community placement in that he was not " in the community " as defined in RCW 9.94A.030(5) and (7), but was in fact held in total confinement. The Petitioner remained in total confinement from December 15th, 2008 until the present and was in total confinement on February 25th, 2009 the day that he committed the crime of perjury at his trial. (See APPENDIX A for the Declaration of Michael Crawford in Support of Motion to Change or Modify Judgement and Sentence filed in Thurston County Superior Court, NO. 09-1-00568-4)

RCW 9.94A.525(18) states the following:

"If the present conviction is for an offense committed while the offender was under community placement. add one point."

For sentencing purposes. Community Custody and Community Placement are essentially the same. The definitions of Community Custody and Community Placement are given in RCW 9.94A.030(5) and (7):

"(5) "Community Custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.543 served in the community, subject to the control placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000 the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety."

"(7) "Community Placement" means that period during which the offender is subject to the conditions of Community Custody and/or postrelease supervision, which begins upon completion of the term of confinement (post release supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community Placement may consist entirely of post release supervision, or a combination of the two.

RCW 9.94A.625(3) reads:

"Any period of Community Custody, Community Placement or Community Supervision shall be tolled during any period of time the offender is in confinement for any reason."

Not only did the Petitioner's status not meet the legal definition of being under community custody at the time that he committed his crime, but also he was not receiving any credit toward his Community Placement time either, due to the fact that it had been tolled since December 15th, 2008.

There is nothing in the law that supports adding a community placement point to a defendant's offender score for crimes committed while incarcerated, Therefore even if the sentencing court intended to add a point for community placement, it acted without statutory authority, and therefore requires correction.

The State's reliance on State v. Healy is incorrect in that the Petitioner's case involves a sentence that is based on false information in addition to a scrivener's error. In fact since there

is no legal basis to check the community placement box on the Judgement and Sentence in the first place, there is no scrivener's error. There is simply a Judgement and Sentence based on a miscalculated offender score that needs to be corrected.

"Failure to object does not waive legal error's leading to an excessive sentence." **State v. Mendoza**, 139 Wn.app 693, 701-2, 162 P.2d 439 (2007). "A sentence in excess of statutory authority is subject to collateral attack, (2) a sentence is excessive if based upon a miscalculated offender score and (3) a defendant cannot agree to punishment in excess of that which the legislature has established." **In re Per. Restraint of Goodwin**, 146 Wn.2d 861, 873-74 50 P3d 618. "A sentencing court acts without statutory authority when it imposes a sentence based on a miscalculated offender score. **In re Per. Restraint of Johnson**, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997). "Moreover a sentence that is based on an incorrect score is a miscarriage of justice, 131 Wn.2d at 569. This is true even where the sentence imposed is actually within the correct standard range." 146 Wn,2d at 867-68. "Fundamental principles of due process prohibit a criminal defendant from being sentenced on the basis of information which is false, lacks minimum indicia of reliability, or is unsupported by the record." **State v. Ford**, 137 Wn.2d at 481 (citing **Torres v. United States**, 140 F.392 404 (2nd Cir. 1998)). Thus to satisfy due process requirements, the facts relied upon by the trial court must have some basis in the trial record.

During sentencing, the State presented no evidence other than mere allegation that the Petitioner was on community placement at the time that he committed his crime. The evidence the State presents in its response to the Petitioner's Personal Restraint Petition is misleading and operates under the false assumption that community placement continues to run during periods of incarceration. The statutes imposed by the legislature suggest otherwise. The Petitioner is asking this Court to clarify this issue.

II. REQUEST FOR RELIEF:

For the foregoing reasons the Petitioner requests this Court to remand this case back to the trial court for resentencing, with 7 points, his correct offender score.

RESPECTFULLY SUBMITTED this 14th day of SEPTEMBER, 2010.



MICHAEL DAVID CRAWFORD

Petitioner, pro se

APPENDIX A

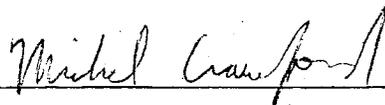
1 2009.

2 On July 23,2009 I was found guilty of First Degree Perjury
3 and sentenced to the low end of the standard range to run
4 concurrent with co.#08-1-02248-3.

5 I was sentenced with 8 points. I was given a point for
6 being on Community Custody at the time of my crime, however I was
7 not in the community at the time of my perjury and my community
8 custody status had tolled due to my incarceration.

9 I declare under penalty of perjury under the laws of the
10 State of Washington that the foregoing is true and correct.

11 DATED this 1st day of March 2010 in
12 the County of Grays Harbor, in the State of Washington.

13
14
15
16
17 

18 MICHAEL DAVID CRAWFORD#771542

19 c/o STAFFORD CREEK CORRECTIONS CNT.
20 191 CONSTANTINE WAY
21 ABERDEEN, WA. 98520-9504

DECLARATION OF SERVICE BY MAIL

GR 3.1

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DIVISION II

10 SEP 16 PM 3:26

I, Michael Crawford, declare and say:

STATE OF WASHINGTON

That on the 14th day of September, 20 10, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 40729-9-II :

- 1. Reply In Personal Restraint Petition ;
- 2. Motion For Consolidation of Cases ;
- 3. Declaration of Service by Mail ;

addressed to the following:

John C. Skinder, Deputy Prosecuting
Attorney for Thurston County
2000 Lakeridge Drive SW #2
Olympia, WA. 98502

David C. Ponzoha
Court Clerk
COURT of Appeals, Division II
950 Broadway
Tacoma, WA. 98402-4454

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 14th day of September, 20 10, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Michael Crawford
Michael Crawford

DOC 771542 . Unit G
 Stafford Creek Corrections Center
 191 Constantine Way
 Aberdeen. WA 98520-9504