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COURT OF APPEALS
DIVISION II

11 MAR 21 AM 10:17

STATE OF WASHINGTON
BY _____

DEPUTY

No. 40892-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Mathew Meacham,

Appellant.

Grays Harbor County Superior Court Cause No. 08-1-00115-9

The Honorable Judge Gordon Godfrey

Appellant's Supplemental Brief

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TABLE OF AUTHORITIES

WASHINGTON STATE CASES

State v. Steen, 155 Wash.App. 243, 228 P.3d 1285 (2010).....4

WASHINGTON STATUTES

RCW 9.94A.0304

RCW 9.94A.5073, 4

RCW 9.94A.7123, 4

SUPPLEMENTAL ASSIGNMENT OF ERROR

The trial court erred by sentencing Mr. Meacham to an indeterminate sentence under RCW 9.94A.507.

SUPPLEMENTAL ISSUE

A person convicted of Residential Burglary with a sexual motivation finding is not subject to sentencing under RCW 9.94A.507 unless s/he has a prior sex offense conviction. Mr. Meacham was sentenced to an indeterminate sentence under RCW 9.94A.507, even though he does not have a prior sex offense conviction. Was Mr. Meacham's sentence in excess of that authorized by law?

SUPPLEMENTAL STATEMENT OF FACTS

Mathew Meacham was convicted of two counts of Residential Burglary, each with a sexual motivation finding. He was not found to have any prior criminal history. CP 13-24. The trial court sentenced him on each count to 17 months in prison with an 18-month enhancement, for a total of 53 months confinement.¹ CP 15. The Judgment and Sentence referenced RCW 9.94A.712, and purported to impose a maximum term of 120 months on each count, with a minimum of 35 months. CP 15.

¹ Each 17-month term was concurrent; the 18-month enhancements were consecutive to each other and to the underlying term. CP 15. In the Opening Brief, Appellate Counsel erroneously stated Mr. Meacham's total period of confinement as 70 months. *See* Appellant's Opening Brief, p. 3.

ARGUMENT

THE TRIAL JUDGE IMPOSED A SENTENCE IN EXCESS OF THAT AUTHORIZED BY STATUTE.

A trial court exceeds its authority when it imposes a sentence beyond what the legislature expressly confers. *State v. Steen*, 155 Wash.App. 243, 247, 228 P.3d 1285 (2010). A party may challenge an illegal or erroneous sentence for the first time on appeal. *Id.*

In this case, the sentencing court sentenced Mr. Meacham to a minimum term and a maximum term on each count, citing RCW 9.94A.712. CP 15. That statute was recodified as RCW 9.94A.507, which reads (in relevant part): “An offender who is not a persistent offender shall be sentenced under this section if the offender... [h]as a prior conviction for an offense listed in RCW 9.94A.030[45], and is convicted of any sex offense other than failure to register.”

Mr. Meacham does not have a qualifying prior conviction. CP 14. Accordingly, he should not have been sentenced under RCW 9.94A.507. His sentence must be vacated and the case remanded for resentencing. *Steen, supra.*

Respectfully submitted on March 18, 2011.

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CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Supplemental Brief to:

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and to:

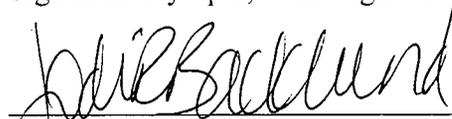
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And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on March 18, 2011.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 18, 2011.



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