

NO. 42701-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

RAVEN VICTORIA PIERCE,

Appellant.

*[Signature]*  
DEPUTY

STATE OF WASHINGTON

2012 SEP 26 PM 1:13

FILED  
COURT OF APPEALS  
DIVISION II

*PM 9/24/12*

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Beverly G. Grant

REPLY BRIEF OF APPELLANT

VALERIE MARUSHIGE  
Attorney for Appellant

23619 55<sup>th</sup> Place South  
Kent, Washington 98032  
(253) 520-2637

**TABLE OF CONTENTS**

|  | Page |
|--|------|
| A. <u>ARGUMENT IN REPLY</u> .....  | 1    |
| 1. REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT’S 3.5 FINDINGS OF FACT AND CONCLUSIONS OF LAW ENTERED AFTER APPELLANT FILED HER OPENING BRIEF FAILS TO COMPLY WITH CrR 3.5(c) AND CONSEQUENTLY PRECLUDES APPELLATE REVIEW..... | 1    |
| 2. A REMAND IS REQUIRED BECAUSE THE TRIAL COURT ERRED IN IMPOSING A SENTENCE THAT EXCEEDS THE STATUTORY MAXIMUM IN VIOLATION OF RCW 9.94A.701(9).....  | 3    |
| B. <u>CONCLUSION</u> .....   | 3    |

**TABLE OF AUTHORITIES**

|   | Page |
|---|------|
| <br><u>WASHINGTON CASES</u>   |      |
| <u>State v. Boyd</u> ,<br>174 Wn.2d 470, 275 P.3d 321 (2012) .....      | 3    |
| <u>State v. Broadway</u> ,<br>133 Wn.2d 118, 942 P.2d 363 (1997) .....  | 1    |
| <u>State v. Thompson</u> ,<br>73 Wn. App. 122, 867 P.2d 691(1994) ..... | 2    |
| <br><u>STATUTES, RULES, OTHER</u>                                       |      |
| CrR 3.5(c) .....  | 1    |
| RCW 9.94A.701(9) .....  | 3    |

A. ARGUMENT IN REPLY

1. REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT'S 3.5 FINDINGS OF FACT AND CONCLUSIONS OF LAW ENTERED AFTER APPELLANT FILED HER OPENING BRIEF FAILS TO COMPLY WITH CrR 3.5(c) AND CONSEQUENTLY PRECLUDES APPELLATE REVIEW.

The State's argument that Pierce was not prejudiced by the delayed entry of written findings and conclusions that affirm the trial court's oral finding and conclusions misses the point and should be rejected. Brief of Respondent at 8-17.

Appellate courts review the trial court's decision after a CrR 3.5 hearing by determining whether substantial evidence supports the trial court's findings of fact and whether those findings support the conclusions of law. State v. Broadway, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). After a 3.5 hearing, the trial court must set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor. CrR 3.5(c).

The trial court held a 3.5 hearing on June 6, 2011. 2RP 13-41. After Pierce filed her opening brief, the court entered findings of fact and conclusions of law on August 15, 2012. CP 100-01. In the disputed facts, the court made findings pertaining to Pierce's testimony:

The defendant testified at the 3.5 hearing that Deputy Hacker told her that if she wasn't cooperative – he was going to come back and arrest her boyfriend as an accomplice. The defendant also testified that Hacker told her that if she would tell the truth he would only book her into jail on identify theft and not the other charges. The defendant said that she did not say anything to the deputy in response to these statements.

CP 100-01.

Importantly, the court did not make any findings pertaining to Deputy Hacker's disputed testimony. The record reflects that Hacker testified at the 3.5 hearing that Pierce made several incriminating statements, which Pierce denied. 2RP 18-21, 30-36.

Without the court's findings as to Hacker's disputed testimony, this Court cannot determine whether substantial evidence supports the trial court's findings as to the disputed statements and whether the findings support the trial court's conclusion that the statements were admissible. Contrary to the State's argument, Pierce is prejudiced because the trial court's belated findings and conclusions fail to comply with CrR 3.5(c).

Reversal is required because the court's findings and conclusions entered more than a year after the 3.5 hearing is deficient and consequently precludes appellate review. State v. Thompson, 73 Wn. App. 122, 130, 867 P.2d 691(1994).

2. A REMAND IS REQUIRED BECAUSE THE TRIAL COURT ERRED IN IMPOSING A SENTENCE THAT EXCEEDS THE STATUTORY MAXIMUM IN VIOLATION OF RCW 9.94A.701(9).

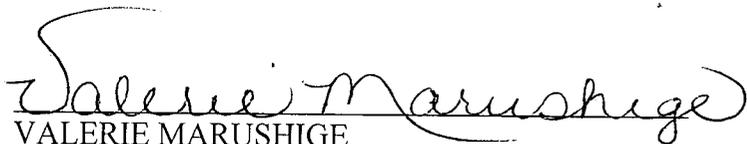
As the State acknowledges, a remand is required under State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012) because Pierce's sentence of 57 months in confinement and 12 months of community custody exceeds the statutory maximum of five years (60 months). Brief of Respondent at 17-20. The trial court must either amend the community custody term or resentence Pierce in accordance with RCW 9.94A.701(9).

B. CONCLUSION

For the reasons stated here and in appellant's opening brief, this Court should reverse Ms. Pierce's convictions. If this Court affirms the convictions, a remand is required for the trial court to correct Pierce's sentence for identity theft in the second degree.

DATED this 24<sup>th</sup> day of September, 2012.

Respectfully submitted,

  
VALERIE MARUSHIGE

WSBA No. 25851

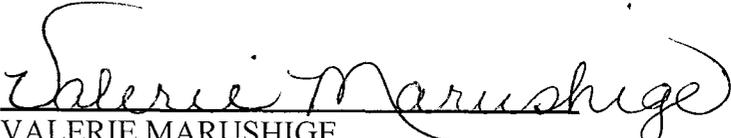
Attorney for Appellant, Raven Victoria Pierce

**DECLARATION OF SERVICE**

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Thomas Roberts, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

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

DATED this 24<sup>th</sup> day of September, 2012 in Kent, Washington.

  
VALERIE MARUSHIGE  
Attorney at Law  
WSBA No. 25851

FILED  
COURT OF APPEALS  
DIVISION II  
2012 SEP 26 PM 1:13  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY