

**NO. 46557-4-II**

**IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON,**

**DIVISION II**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**KEVIN SHAWN ROBINSON,**

**Appellant.**

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**RESPONDENT'S SUPPLEMENTAL BRIEF**

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## **I. ISSUES**

1. Does the superior court have the authority to consider Department of Corrections (“DOC”) community custody sanctions?
2. Is the State the proper respondent to address the Appellant’s claims against DOC’s administrative proceedings?

## **II. SHORT ANSWERS**

1. No, the superior court does not have the authority to consider DOC community custody sanctions.
2. No, the State is not the proper respondent. The Appellant’s claims can be properly addressed by DOC, the actual party who handled his administrative hearings.

## **III. FACTS**

The Appellant, Kevin Robinson, pled guilty in Cowlitz County Superior Court to Delivery of Methamphetamine and Unlawful Possession of a Firearm in the First Degree on May 8, 2008. CP 1-10. He was sentenced to 90 months in DOC custody and 9 to 12 months of community custody. CP 17. The judgment and sentence was entered on that same date. CP 11-24.

On June 13, 2014, the Appellant filed in the Cowlitz County Superior Court a “Motion for Relief from Judgment, Order or Proceeding Pursuant to CrR 7.8(b), and Declaratory and Injunctive Relief Pursuant to RCW 7.24.010 and RCW 7.24.080.” CP 25-108. The Appellant was motion named the State and DOC as the Respondent. CP 25. In his motion,

the Appellant was requesting relief from the superior court, claiming that DOC illegally imposed community custody sanctions. CP 25-26.

On July 7, 2014, the Cowlitz County Superior Court addressed the Appellant's motion. RP 1-2. The superior court denied the Appellant's motion. RP 1. The Appellant appealed the superior court's decision. Pursuant to that appeal, the State conceded that the superior court should have transferred the Appellant's motion to the Court of Appeals as a personal restraint petition. The State also requested that DOC be substituted as the proper respondent to address the Appellant's claims of an illegal community custody sanction. On August 5, 2015, the Court of Appeals directed the State to address these additional issues.

#### **IV. ARGUMENTS**

##### **A. THE SUPERIOR COURT DOES NOT HAVE THE AUTHORITY TO CONSIDER DOC COMMUNITY CUSTODY SANCTIONS.**

###### **1. There is no statutory authority that would allow superior courts to review DOC community custody sanctions.**

DOC is statutorily charged with implementing and administering criminal sentences. However, DOC is not a party to a criminal prosecution and sentencing. Thus, when a convicted offender files a motion under the criminal cause attempting to challenge the DOC's administration of a sentence, the offender is asking the sentencing court to review an action of

a nonparty—an entity over which it lacks personal jurisdiction. CrR 7.8(b) does not grant the sentencing court personal jurisdiction over the DOC, nor does any statute authorize the sentencing court to assert personal jurisdiction over the DOC when a CrR 7.8(b) motion is filed in a criminal prosecution.

DOC is not a party to the Appellant’s criminal action. A court is “without authority to order an entity that is not a party to the litigation to do anything.” *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 909 P.2d 1294 (1996) (recognizing the general rule that a judgment can be binding only upon the parties to a case); *see also Martin v. Wilks*, 490 U.S. 755, 109 S. Ct. 2180, 2184, 104 L. Ed. 2d 835 (1989) (agreeing that “one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process”) (quoting *Hansberry v. Lee*, 311 U.S. 32, 61 S. Ct. 115, 117, 85 L. Ed. 22 (1940)).<sup>1</sup>

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<sup>1</sup> *Fontanilla* and *Martin* both recognize that a court may have personal jurisdiction over a nonparty in limited circumstances, such as where the nonparty is a member of a class involved in a class-action lawsuit, or where the nonparty controls the litigation on behalf of one of the parties in the litigation. *Fontanilla*, 128 Wn.2d at 503 (citing *Martin*, 490 U.S. at 762, n.2, 109 S. Ct. at 2184, n.2). Such circumstances are not present here. DOC is not represented by the Cowlitz County prosecutor handling the criminal case. In fact, DOC is a separate entity created by statute. RCW 72.09.030. DOC has its own counsel within the Attorney General’s Office. The criminal rules and statutes do not confer on this Court general supervisory authority over the DOC any more than it would have general supervisory authority over the Cowlitz County Jail or the Department of Social and Health Services, and defendants in criminal cases should not be allowed to turn criminal proceedings into a general forum to resolve any disputes that they may have with DOC.

In a case analogous to the instant proceeding, the Court of Appeals found that a juvenile court hearing a juvenile offender proceeding had no personal jurisdiction over the Department of Social and Health Services (DSHS) that would enable it to order DSHS to place a juvenile offender in foster care. In *State v. G.A.H.*, 133 Wn. App. 567, 137 P.3d 66 (2006), after G.A.H. pled guilty to the charges, the court ordered G.A.H. to be released to DSHS for assessment and placement, even though DSHS was not a party to the juvenile proceeding. The Court of Appeals ruled that because DSHS was “not a party to G.A.H.’s juvenile offender proceeding. . . the court did not have personal jurisdiction over DSHS. . . .” and that “[t]he court[’s] order requiring DSHS to place G.A.H. in foster care is . . . void and must be reversed.” *Id.* at 576. (Internal citation omitted).

When a superior court lacks *in personam* jurisdiction over a party, any judgment entered by the court against that party is void. *Scott v. Goldman*, 82 Wn. App. 1, 917 P.2d 131 (1996). Therefore, the superior court would be unable to review DOC’s community custody sanction because it lacks personal jurisdiction over DOC. By filing a motion with the superior court instead of a personal restraint petition, the Appellant attempted to short-circuit the established procedure for challenging the DOC’s administration of sentences—and to do so in a proceeding in which DOC is not even a party.

RAP 16.3 through 16.15 provides the Appellant with a straightforward avenue to seek review of the issues that he presented in his motion. For example, RAP 16.6 specifically requires the agency responsible for the petitioner's restraint to respond to the petition, which would resolve the jurisdictional problems here because DOC would have been required to answer the Appellant's petition if he properly filed it in the Court of Appeals. *See also, e.g.,* RAP 16.4(c)(6) and (7) (allowing a challenge to the conditions or manner of restraint or the legality of the restraint); RAP 16.6 (allowing the DOC to be named as a respondent to a PRP); RAP 16.12 through 16.14 (allowing transfer from the appellate court to the superior court if a factual hearing is required). *See also In re Chatman*, 59 Wn. App. 258, 796 P.2d 755 (1990) (proper forum for appealing the findings from a community custody hearing is the court of appeals, as provided by court rule and statute).

Finally, the superior court does not have statutory authority to overrule DOC's community custody sanction. A DOC hearing officer is not a court of limited jurisdiction. Therefore, Rule 1.1 of the Rules for Appeal of Decisions of Courts of Limited Jurisdiction is inapplicable. RALJ 1.1. The proper method to appeal the hearing officer's decision is a personal restraint petition in the Court of Appeals.

**2. The State has already conceded that the superior court should have transferred the Appellant's motion to the Court of Appeals as a personal restraint petition.**

The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

CrR 7.8(c)(2). The Appellant previously appealed the superior court's denial of his motion. The State conceded that the superior court should have transferred the matter to the Court of Appeals as a personal restraint petition.

The record does show that the court actually reviewed the Appellant's motion and found that it was without merit. "The motion is denied. I think it was basically really a reconsideration almost with additional information is what I got out of it. So, I think the motion has actually been previously been denied." RP at 1. In denying the motion, the court determined that no factual hearing was needed. Thus, as stated above, the matter should have been transferred to the Court of Appeals as a personal restraint petition.

**3. The Appellant did not properly file his habeas corpus motion in the county of incarceration.**

The Cowlitz County Superior Court did not have jurisdiction to address the Appellant's habeas corpus action. Superior courts and their judges "shall have power to issue...writs of habeas corpus, on petition by

or on behalf of any person in actual custody in their respective counties. Wash. Const. art. IV, § 6. When the Appellant filed his motion, he was in custody at the Washington Corrections Center in Shelton, WA. Therefore, his habeas corpus action should have been filed in Thurston County.

**B. THE STATE IS NOT THE CORRECT RESPONDENT TO ADDRESS THE APPELLANT'S CLAIMED ERROR AGAINST DOC'S ADMINISTRATIVE PROCEEDINGS; THEREFORE, DOC SHOULD BE SUBSTITUTED AS THE RESPONDENT.**

In regards to the Appellant's Statement of Additional Grounds, the State has addressed the first two claimed errors in its above argument. The Appellant's third claimed error addresses the administrative process DOC utilized when imposing the Appellant's community custody violation sanction. The State is not in any position to address DOC policies in regards to administrative hearings or sanctions.

In his motion/action, the Appellant named DOC as the Respondent. The Appellant is currently under DOC's restraint. The Appellant's incarceration and restraint was a direct result of a DOC administrative action and interpretation of DOC policy. The State previously filed a RAP 16.6(c) motion to have DOC replace the State as the proper respondent to the Appellant's claims. As for the third claimed error, the State renews its RAP 16.6(c) motion and request that DOC should be substituted as the proper respondent.

V. CONCLUSION

The superior court has no authority to review or overrule DOC community custody sanctions. The superior court should have transferred the Appellant's motion to the Court of Appeals as a personal restraint petition. The State is not the proper respondent to address the Appellant's claims that DOC acted improperly. Thus, DOC should be substituted as the Respondent to address the Appellant's personal restraint petition.

Respectfully submitted this 10 day of September, 2015.

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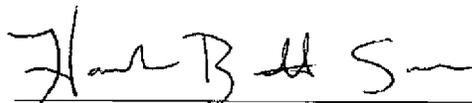
**CERTIFICATE OF SERVICE**

Hannah Bennett-Swanson, certifies that opposing counsel was served electronically via the Division II portal:

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

Signed at Kelso, Washington on September 10<sup>th</sup>, 2015.



Hannah Bennett-Swanson

**COWLITZ COUNTY PROSECUTOR**

**September 10, 2015 - 2:26 PM**

**Transmittal Letter**

Document Uploaded: 6-465574-Supplemental Respondent's Brief.pdf

Case Name: State of Washington v. Kevin Robinson

Court of Appeals Case Number: 46557-4

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Supplemental Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

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Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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