

FILED  
COURT OF APPEALS  
DIVISION II

2018 MAR -5 PM 1:04

NO. 50329-8-II

STATE OF WASHINGTON

BY DM  
DEPUTY

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

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STATE OF WASHINGTON,

Respondent,

v.

TODD ROGERS,

Appellant,

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

The Honorable Stephanie Arends, Judge

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APPELLANT STATEMENT OF ADDITIONAL GROUNDS

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Additional Ground One

The Trial Court Erred When it Reduced The Sentence Representing The Community Custody to Zero And It Compounded its Error by Reducing The Sentence Representing the Enhancement By 5 Months

1. On April 20, 2007, Mr. Roger's plead guilty to Manslaughter in the Second Degree a class B felony. He agreed to a 67-89 month standard range sentence. In addition to a 36 month firearm enhancement and 18-36 months of Community Custody.

2. That same date, Mr. Roger's was sentenced to 89 months, an additional 36 months for the firearm enhancement, and 18-36 months of Community Custody.

CP 108-09.

3. Ten years later, On February 24, 2017, Mr. Roger's filed a pro se motion for relief from judgment pursuant to CrR 7.8(5) arguing that his sentence attached to his second degree manslaughter conviction is unlawful because it exceeded the statutory maximum penalty for a class B felony. CP 8. The State conceded the error and recommended the following sentence to cure the defect. 89-month sentence for the second degree manslaughter conviction, reduce the firearm enhancement from 36 to 31 months, and eliminate all associated community custody. RP 4.

4. The trial court followed the State's recommendation and imposed the sentence. RP 5-6.

In his Statement of Additional grounds for Review Mr. Roger's claims that the trial court has compounded it's original error made in 2007. Although the sentence know imposed does not exceed the statutory maximum penalty for a class B felony, the sentence imposed is still unlawful and contrary to the SRA.

#### FIREARM ENHANCEMENTS

Pursuant to RCW 9.94A.533, all firearm enhancements under this section are mandatory. RCW 9.94A.533(e). If the addition of a firearm enhancement increases the the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. RCW 9.94A.533(g). See also State v. Desantiago, 149 Wn.2d 402, 68 P.3d 1005 (2003).

#### COMMUNITY CUSTODY

Pursuant to RCW 9.94A.701, a sentencing court must impose Community Custody for violent offenses as defined by RCW 9.94A.030(55) and for crimes against persons as defined by RCW 9.94A.411(2). The term for violent offenses is 18 months and crimes against person person warrant a term of 12 months. However, RCW 9.94A.701(9) directs that a term of Community Custody

shall be reduced by the Court whenever the offender standard range term of confinement in combination with the term of Community Custody exceed the statutory maximum for the crime. Our Supreme Court in State v. Boyd, supra has held it is therefore the trial courts responsibility to reduce the defendants term of community custody to avoid such a result.

From the reading of the statutes, the trial court was not authorized to reduce the sentence representing the enhanced penalty and nor was it authorized to reduce the community custody to zero. While the trial court had the responsibility to reduce the community custody so that combined with Mr. Rogers sentence it would not exceed the statutory maximum penalty it was not authorized to not impose community custody toward Mr. Rogers violent offense. The trial Court should have reduced the community custody for 18 - 36 months to 18 months. This would have conformed with legislative intent that a term of community custody be imposed for all violent offenses, even if it is also a crime against person. State v. Hood, 196 Wn.App 127 (2016) (citing State v. Oakley, 117 Wn.App. 734, 72 P.3d 114 (2003) review denied, 151 Wn.2d 1007 (2004)). A trial court may impose only a sentence that statutes authorized. State v. Campos, 2017 Wash.App LEXIS 1480 (citing State v. Albright, 144 Wn.App 566, 183 P.3d 1094)).

As set forth above, reducing the sentence representing the firearm enhancement by 5 months and reducing the community custody on a violent offense to zero is not authorized by statutes and therefore is contrary to legislative intent.

CONCLUSION

For the reasons stated above, Mr. Roger's sentence is still unlawful. His firearm enhanced sentence should be 36 months, the term of community custody should be reduced from 18-36 months to 18 months, and his sentence on the second degree manslaughter conviction should be 66 months. This sentence does not exceed the statutory maximum penalty and is authorized by statute.

Dated this 26th day of February, 2018.

T. Rogers

TODD ROGERS  
COYOTE RIDGE CORRECTION CENTER  
P.O BOX 769  
CONNELL, WA. 99326

CERTIFICATE OF SERVICE

The undersigned certifies that on the date below I caused to be placed in the institutional legal mail system a true and correct copy of the document to which this certificate is attached addressed to the respondents attorney of record.

2-28-18  
DATE

T. Rogers  
SIGNATURE

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DECLARATION OF MAILING COURT OF APPEALS DIVISION II

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I, TODD ROGERS on the below date, placed in the U.S. Mail, postage prepaid, 2 envelope(s) addressed to the below listed individual(s):

Clerk Washington State  
Court of Appeals Div II  
950 Broadway, Suite  
300, Tacoma, WA 98402-  
4454

BY \_\_\_\_\_  
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Michelle Hyer  
Pierce County Prosecutor  
930 Tacoma Ave S, Rm 946  
Tacoma, WA 98402-2102

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

- 1. Statement of Additional Grounds
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this March day of 1<sup>st</sup>, 2018, at Connell WA.

Signature T. Rogers