

FILED
Court of Appeals
Division II
State of Washington
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No. 50354-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

JD BARTON
Appellant.

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

The Honorable Mary Sue Wilson
Cause No. 08-1-00727-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether this Court should considered Barton's claims which are outside of the trial court record where Barton assigns no error to the trial court's actions.

B. STATEMENT OF THE CASE.

The appellant, JD Jones Barton was re-sentenced after a mandate was entered remanding the matter to the superior court. 2 RP 8.¹ At the resentencing hearing, the State agreed to take the community custody portion off of Barton's sentence and agreed to add language regarding how any accrued good time should be calculated due to the fact that he had been allowed to withdraw his plea previously. 3 RP 5-6.

The trial court adopted the agreed recommendations of the parties. 3 RP 8-9. This appeal follows.

C. ARGUMENT.

1. The relief that Barton is requesting is outside of the record, and would be more properly addressed in a Personal Restraint Petition, which would properly be sent to the State Attorney General's Office as that office represents the Department of Corrections.

Barton's appeal fails to assign any error to the trial court's

1 The report of proceedings for this appeal is separated into three volumes. For purposes of this brief, volume 1, February 16, 2017, will be referred to as 1 RP, volume 2, February 23, 2017, will be referred to as 2 RP, and volume 3, May 3, 2017, will be referred to as 3 RP.

actions. The facts that he relies upon for his claim, come from a declaration filed in support of the notice of appeal. CP 82-105. That is not a part of the record of the trial court proceeding.

Evidence beyond the record will not be considered on direct appeal and must be filed under the personal restraint procedures set forth in RAP 16. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). The only relief that is requested in this appeal is to “remand with express instructions that DOC grant Barton all of his credit for time served including good time.” Appellant’s Opening Brief, at 6.

The amount of earned release time allowed to each offender is to be determined in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. RCW 9.94A.729(1)(a). Here, the trial court simply noted

“For purposes of credit for time served calculations, all time served at the Thurston County jail shall be treated as presentencing time for purposes of calculation of good time. Further the defendant shall receive credit for time served for the time between 4-21-2008 through 10-31-08.”

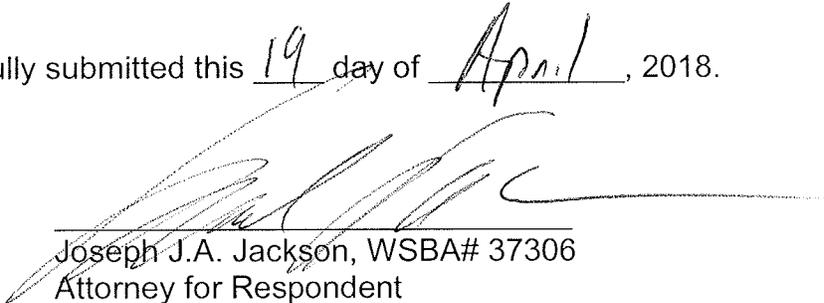
CP 75. Again, Barton assigns no error to the trial court's ruling, but rather takes issue with the Department of Corrections' calculation of his good time and earned release.

A direct appeal cannot grant the relief that Barton is requesting.

D. CONCLUSION.

As Barton's appeal raises only issues outside of the record, which cannot be addressed in a direct appeal, and assigns no error to the trial court's actions, this Court should affirm the judgement and sentence entered by the trial court. Alternatively, the State moves to dismiss this appeal pursuant to RAP 17.4(d) as a motion in Brief. Simply put, this appeal has no merit in the context of a direct appeal. If Barton wishes to pursue such a claim, it should be filed as a personal restraint petition with the Attorney General's Office responding on behalf of the Department of Corrections, the agency responsible for calculating Barton's credit for time served.

Respectfully submitted this 19 day of April, 2018.


Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of Brief of Respondent on the date below as follows:

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

Dated this 19th day of April, 2018, at Olympia, Washington.



JENA GREEN, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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