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Court of Appeals  
Division II  
State of Washington  
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No. 50500-2-II

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

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STATE OF WASHINGTON,

Respondent,

v.

WILLIAM BRYAN,

Appellant.

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

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**AMENDED BRIEF OF APPELLANT**

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A. INTRODUCTION

William Bryan asked the trial court to make a discrete correction to his judgment and sentence. The trial court disregarded Mr. Bryan's request, found Mr. Bryan actually requested a full resentencing hearing, and increased Mr. Bryan's standard range sentence. This Court should reverse because the trial court did not have the authority to increase Mr. Bryan's standard range sentence.

B. ASSIGNMENTS OF ERROR

1. The trial court erred when it increased Mr. Bryan's standard range sentence.

2. The trial court erred when it found Mr. Bryan requested a full resentencing hearing.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A court's authority is limited by the scope of the motion before it. Where Mr. Bryan requested the Court correct his judgment and sentence in light of *Conover*,<sup>1</sup> did the trial court

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<sup>1</sup> *State v. Conover*, 183 Wn.2d 706, 718, 355 P.3d 1093 (2015) (holding that multiple bus stop enhancements must run consecutive to the base sentence but not consecutive to each other).

exceed its authority when it conducted a full resentencing hearing instead?

D. STATEMENT OF THE CASE

Cowlitz county officers conducted three controlled buys from William Bryan. CP 2. Two of the controlled buys occurred at Mr. Bryan's home, which happened to be within 1000 feet of a school bus stop. CP 2; CP 8-9. Mr. Bryan pled guilty to three charges of delivery of a controlled substance and one charge of possession with intent to deliver a controlled substance. CP 13. Because of the location of Mr. Bryan's residence, a school bus route stop enhancement was attached to two of the delivery charges. CP 46.

At sentencing, Mr. Bryan requested a drug offender sentencing alternative (DOSA). CP 15. Defense counsel explained Mr. Bryan was suffering from addiction and desperately wanted to participate in treatment so he could get his life back on track and be the father his 10-year-old son needed. RP 15-16.

Two other individuals testified on Mr. Bryan's behalf. Mr. Bryan's mother asked the court to give Mr. Bryan the

opportunity to get clean and turn his life around. RP 18. The outpatient clinical supervisor at the Drug Abuse Prevention Center explained Mr. Bryan was a “second-generation drug addict” who had gotten stuck in a vicious cycle but had the capability and motivation to change. RP 19. The supervisor noted Mr. Bryan had helped other addicts connect with the agency and change their lives, demonstrating Mr. Bryan was someone who could affect positive change in the community. RP 19. He asked the court to give Mr. Bryan the same opportunity other addicts had received. RP 20

When Mr. Bryan addressed the court directly he expressed his despair at failing his son and explained how much he wanted to get the treatment he needed to stay clean. RP 20-21. After listening to argument, the trial court continued the sentencing and requested a presentence investigation be completed in the interim. CP 22.

When the sentencing hearing resumed, the trial court adopted the State’s recommendation and imposed a 72-month sentence and two consecutive terms of 24 months for each school

bus route stop enhancement, for a total sentence of 10 years. RP 25.

When imposing this sentence, the trial court mistakenly believed it was required to impose the school bus route stop enhancements consecutive to both the base sentence and each other. RP 13, 26. A few months later, the supreme court corrected this misapprehension of the law.<sup>2</sup>

Approximately two years later, Mr. Bryan filed a “Motion to Clarify and/or Correct Judgment & Sentence,” asking the court to correct the error and run the bus stop route enhancements concurrently. CP 39; RP 33, 40. Although Mr. Bryan unequivocally requested the court only correct the judgment and sentence and not conduct a full resentencing, the trial court recast Mr. Bryan’s motion as a request for a full resentencing hearing. RP 40-41, 45; CP 39.

The trial court agreed to review the prior sentencing hearing in lieu of the parties making their oral presentations again. RP 45. However, when the parties returned to court for the subsequent hearing the judge stated he had reviewed the

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<sup>2</sup> See *State v. Conover*, 183 Wn.2d 706, 355 P.3d 1093 (2015).

documents submitted but not the sentencing hearing itself. RP 50.

Defense counsel explained Mr. Bryan had struggled with substance abuse his whole life and was being denied treatment services at the prison because budget constraints required those services be given only to DOSA recipients. RP 51-54. Mr. Bryan addressed the court and explained he was asking for the opportunity to become a productive member of society. RP 56. Neither Mr. Bryan's mother nor the clinical supervisor for the treatment agency addressed the court at this hearing.

The court ran the two 24-month school bus route stop enhancements concurrently. RP 57; CP 50. However, it then chose to increase Mr. Bryan's standard range sentence from 72 months to 96 months. RP 57; CP 50.

#### E. ARGUMENT

**The trial court exceeded its authority when it increased Mr. Bryan's standard range sentence.**

- a. Mr. Bryan's motion to correct his judgment and sentence did not permit the trial court to increase the previously imposed standard range sentence.

When the trial court originally sentenced Mr. Bryan, it mistakenly believed the legislature required the two 24-month

bus stop enhancements to run consecutive to both the base sentence and to each other. *See State v. Conover*, 183 Wn.2d 706, 719, 355 P.3d 1093 (2015). However, a few months after Mr. Bryan's sentencing, our supreme court held RCW 9.94A.533(6) required multiple bus stop enhancements to run consecutively to the base sentence but not to each other. *Id.* at 718. Because the court misapprehended the law when imposing his sentence, Mr. Bryan filed a motion to correct his judgment and sentence in light of the supreme court's decision in *Conover*. CP 39.

Mr. Bryan's motion was titled:

**MOTION TO CLARIFY AND/OR  
CORRECT JUDGMENT &  
SENTENCE**

CP 39. Mr. Bryan stated his request for relief as:

**II. Statement of Relief Sought**

Defendant moves the Court to Clarify and/or Correct the Judgment & Sentence, to consider a concurrent sentence on the 2-two School Bus Route Enhancement sentence's.

CP 39. At the hearing on Mr. Bryan's motion, defense counsel reiterated Mr. Bryan was requesting only a ministerial correction of the judgment and sentence. RP 44.

A court's authority is limited by the request made in the motion before it. *See Pamelin Industries, Inc. v. Sheen-U.S.A., Inc.*, 95 Wn.2d 398, 402, 622 P.2d 1270 (1981). Motions filed in criminal cases are largely governed by civil rule 7(b).<sup>3</sup> CrR 8.2. The purpose of CR 7(b)(1), which requires the motion "state with particularity the grounds therefor," is to provide notice of the relief sought. *Pamelin Industries, Inc.*, 95 Wn.2d at 402. Thus, the action taken by the court may not exceed the scope of the motion before it. *Id.*; *see also Chemical Bank v. Washington Public Power Supply System*, 102 Wn.2d 874, 890, 691 P.2d 524 (1984) (affirming in part because trial court's order did not exceed the scope of the pleadings).

Mr. Bryan's motion to correct his judgment and sentence was proper under *Conover* and did not grant the trial court the authority to increase his standard range sentence. Indeed, Mr. Bryan's request to the trial court was no different than those repeatedly granted by this Court under *Conover*. 183 Wn.2d at 719.

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<sup>3</sup> The exception is CrR 3.5 and CrR 3.6, which are not at issue in this case. *See* CrR 8.2.

In multiple unpublished<sup>4</sup> opinions, this Court has remanded under *Conover* with instructions to the trial court to correct only the imposition of the consecutive school bus enhancements. *See State v. Roark*, 190 Wn. App. 1001, 2015 WL 5314182, at \*6 (Sept. 9, 2015) (remanding “for resentencing with instructions to the trial court to impose Roark's multiple school zone sentence enhancements consecutive to the base sentences for the drug and bail jumping convictions, but concurrent to each other”); *Matter of Pers. Restraint of Dunn*, 1 Wn. App. 2d 1015, 2017 WL 5152767, at \*2 (Nov. 7, 2017) (remanding “to the trial court for resentencing as to the school bus route stop enhancements”); *State v. Haller*, 194 Wn. App. 1043, 2016 WL 3583683, at \*6 (June 27, 2016) (where trial court erroneously ran school bus stop enhancements consecutively, “we reverse the trial court's sentence and remand for resentencing to correct this error”).

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<sup>4</sup> “Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.” GR 14.1.

Because the trial court's authority to resentence on remand is limited by the scope of this Court's mandate, the trial court is not at liberty to depart from these instructions. *State v. Kilgore*, 167 Wn.2d 28, 42, 216 P.3d 393 (2009).

At the hearing on Mr. Bryan's motion, there was no dispute the trial court had erroneously sentenced Mr. Bryan under *Conover*. RP 40. Given this error, the trial court was obligated to correct the judgment and sentence just as this Court has repeatedly instructed the trial court to do under the same circumstances in other cases. Nothing gave the trial court the authority to also raise the standard range sentence previously imposed.

b. This Court should reverse.

The trial court recognized its authority was limited by Mr. Bryan's motion, which only addressed the school bus stop enhancements. RP 45. However, it recast Mr. Bryan's motion as a request for a full resentencing, stating:

All right. Well, I guess when I look at this, your client has written a fairly good brief or a good motion. I'm not going to presume that he doesn't know the terms of art he used throughout this document fairly adeptly, more so than many

professional persons I've seen, so. I think he – that's what his request is for a resentencing and it's what we'll do, so based on his motion, so.

RP 45.

While Mr. Bryan used the term “resentencing” in his motion, he unequivocally requested only that the trial court correct the judgment and sentence. CP 39. This request was explicitly stated in his “Statement of Relief Sought” and throughout his motion. CP 39-43. For example, Mr. Bryan stated his “sentence must be amended to change the School Bus Route Enhancement to concurrently [sic] with each other, reducing the overall length of confinement by 24-months.” CP 41. He also stated, “[w]hen a sentence has been imposed for which there is no authority in law, the trial Court has the power and the duty to correct the error when the error is discovered.” CP 41.

Indeed, the language Mr. Bryan used in his motion was not different than the language used in this Court's unpublished decisions, in which this Court directed the trial court to resentence the individual *only* as to the school bus enhancements. *See, e.g., Roark*, 2015 WL 5314182, at \*6.

In addition, any ambiguity in Mr. Bryan's request as a result of his use of the term "resentencing" in his motion was resolved by defense counsel's argument, in which he explained Mr. Bryan was requesting the court simply correct the "one error of law," and not perform a full resentencing. RP 41. The trial court's finding that Mr. Bryan had used legal terminology more "adeptly" than "many professional persons," and therefore was requesting a full resentencing hearing, is unsupported by the record. RP 45. Mr. Bryan was a pro se defendant who based his argument entirely on *Conover* and rightfully expected the court to correct only the error identified rather than recast Mr. Bryan's motion as a much broader request.

As the trial court recognized, it was bound by the scope of the motion before it. RP 45; *Pamelin Industries, Inc.*, 95 Wn.2d at 402. The trial court's finding that Mr. Bryan requested a full sentencing hearing is directly contrary to Mr. Bryan's unequivocal request for a ministerial correction to his judgment and sentence and defense counsel's argument in support of the motion. When the trial court recast Mr. Bryan's motion as a request for a full resentencing, and relied upon that

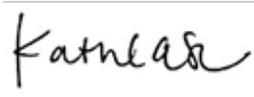
mischaracterization of the motion to increase Mr. Bryan's standard range sentence, it erred. This Court should reverse.

E. CONCLUSION

This Court should reverse because the trial court exceeded its authority when it ordered a full resentencing and increased Mr. Bryan's standard range sentence.

DATED this 3<sup>rd</sup> day of March, 2018.

Respectfully submitted,

A rectangular box containing a handwritten signature in cursive script that reads "Kathleen".

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

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
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v.	)	NO. 50500-2-II
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WILLIAM BRYAN,	)	
	)	
APPELLANT.	)	

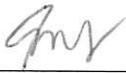
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# WASHINGTON APPELLATE PROJECT

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