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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

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM BRYAN,

Appellant.

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

APPELLANT'S REPLY BRIEF

KATHLEEN A. SHEA
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

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A. ARGUMENT IN REPLY

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

The trial court mistakenly sentenced William Bryan to two 24-month bus stop enhancements to run consecutive to both the base sentence and to each other. RP 25; *State v. Conover*, 183 Wn.2d 706, 718, 355 P.3d 1093 (2015) (holding RCW 9.94A.533(6) required multiple bus stop enhancements to run consecutively to the base sentence but not to each other).

Following the supreme court's decision in *Conover*, Mr. Bryan asked the trial court to make a discrete correction to his judgment and sentence. CP 39; RP 33, 40. However, the trial court disregarded Mr. Bryan's request, wrongly found Mr. Bryan requested a full resentencing hearing, and increased Mr. Bryan's standard range sentence. RP 57; CP 50. Because the trial court exceeded its authority, this Court should reverse. *See* Op. Br. at 5-9.

The State argues resentencing was required because Mr. Bryan's judgment and sentence was facially invalid, but the cases upon which it relies do not support its claim. *See* Resp. Br.

at 3-4. For example, in *In re Personal Restraint of Snively*, the Court found Mr. Snively's judgment and sentence was facially invalid but determined his "sole remedy" was "correction of the sentence," not a full resentencing. 180 Wn.2d 28, 32, 320 P.3d 1107 (2014). Similarly, in *In re Personal Restraint of Smalls*, this Court found a petitioner who shows his judgment and sentence is facially invalid is only entitled "to correct the invalidity." 182 Wn. App. 381, 355 P.3d 949 (2014).

The State's reliance on *Brooks v. Rhay* is also misguided. 92 Wn.2d 876, 602 P.2d 356 (1979). Although the State cites this case for the broad proposition that an erroneous sentence requires resentencing, in *Brooks* the court simply rejected the parole board's unilateral correction of an illegal sentence without returning the defendant to the trial court. 92 Wn.2d at 876-77; Resp. Br. at 3-4.

While relying on cases that are inapposite, the State ignores the multiple unpublished decisions in which this Court remanded under *Conover* to correct only the imposition of the consecutive school bus enhancements. *See Op. Br.* at 8. This is what Mr. Bryan requested here. CP 39; RP 33, 40.

Finally, the State offers no response to the trial court's erroneous determination that Mr. Bryan requested a full resentencing. *See* Op. Br. at 9-10. In recasting Mr. Bryan's motion as a request for a full resentencing hearing when Mr. Bryan unequivocally requested only a correction to his judgment and sentence, the trial court recognized it was bound by the motion before it. *See Pamelin Industries, Inc. v. Sheen-U.S.A., Inc.*, 95 Wn. App. 398, 402, 622 P.2d 1270 (1981); Op. Br. at 9-12.

When the trial court mischaracterized Mr. Bryan's motion as a request for a full resentencing, and relied upon that mischaracterization to increase Mr. Bryan's standard range sentence, it erred. This Court should reverse.

B. CONCLUSION

For the reasons stated above and in his opening brief, 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 11th day of June, 2018.

Respectfully submitted,



KATHLEEN A. SHEA (WSBA 42634)
Washington Appellate Project (91052)
Attorneys for Appellant

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

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

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Washington Appellate Project
1511 Third Avenue
Suite 610
Seattle, Washington 98101
Phone (206) 587-2711

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