

**FILED**  
**Court of Appeals**  
**Division II**  
**State of Washington**  
**4/23/2018 10:10 AM**  
**NO. 50729-3-II**

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**COURT OF APPEALS, DIVISION II**  
**STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CURTIS RICHARD FAMBRO, RESPONDENT

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Appeal from the Superior Court of Pierce County  
The Honorable Grant Blinn

No. 16-1-03975-0

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**Brief of Respondent**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Must this Court remand to the sentencing court when defendant was sentenced to a statutorily incorrect amount of time on community custody?
2. Should this Court decide to award defendant appellate costs where the State is not seeking costs?

B. STATEMENT OF THE CASE.

1. PROCEDURE

Curtis Richard Fambro, hereinafter “defendant,” was charged by amended information with one count of identity theft in the second degree (count I), two counts of theft in the second degree (counts II and V), three counts of forgery (counts III, VI, and IX), two counts of identity theft in the first degree (counts IV and VII), and one count of theft in the first degree (count VIII). CP 18-22. Following a jury trial defendant was convicted of all counts other than count III, for which he was acquitted. CP 108-116; 4RP 341-342.<sup>1</sup> Defendant was sentenced to various terms of confinement for each count to run concurrently to each other with a total time of confinement of 73.5 months. CP 120-136; 8-11-17RP 7-8. He was

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<sup>1</sup> The verbatim reports of proceedings are contained in five volumes. Volumes 1-4 have consecutive pagination and are referenced as “#RP.” Volume 5 is from sentencing, has separate pagination, and is referenced by date.

also sentenced to a period of community custody of 36 months on all the identity theft counts. CP 120-136. An Order Correcting Judgment and Sentence was subsequently entered to correct the amount of time defendant was sentenced to on count VIII. CP 153-154. All other conditions remained in effect. *Id.*

Defendant timely filed a notice of appeal. CP 144.

## 2. FACTS

On July 7, July 12, and July 13, 2016, defendant went to the Fife branch of Columbia Bank. 2RP 150. On those dates he cashed a payroll check from Firstline Systems, Inc. in the amount of \$1,500, \$1,800, and \$7,000 respectively. 2RP 126-128. When the checks were discovered as being forged on July 21, 2016, a police officer reported to the bank to begin an investigation. 2RP 97-98. The police officer recovered the checks which listed defendant as the payee. RP 116. Detective Jeff Nolta with the Fife Police Department was eventually able to determine that still images and video evidence from the bank showed that defendant did indeed cash the checks on those three dates. 3RP 272-273.

Once the fraud was discovered the bank contacted Firstline Systems regarding potentially forged checks being cashed in defendant's name. 2RP 124-125. At no time did the company have an employee, independent contractor, or supplier with defendant's name. 2RP 125.

In October 2016 defendant was arrested and interviewed regarding these checks. 3RP 264. In an interview with Detective Nolta, defendant claimed that he did not recall ever cashing any checks at Colombia Bank. 3RP 273. The detective specifically asked about the \$7,000 check and how defendant could not remember cashing a check for that large of an amount. *Id.* Defendant continued to state that he could not remember cashing the check. *Id.* When told that charges were going to be forwarded, defendant responded, "Fair enough." 3RP 274.

C. ARGUMENT.

1. THE STATE CONCEDES THAT THE DEFENDANT WAS SENTENCED TO AN INCORRECT OF TIME OF COMMUNITY CUSTODY AND THIS COURT SHOULD REMAND FOR IMPOSITION OF THE CORRECT PERIOD OF COMMUNITY CUSTODY.

A person who commits a crime against a person as defined by RCW 9.94A.411(2) shall be sentenced to one year of community custody whenever a person is also sentenced to the custody of the Department of Corrections. RCW 9.94A.701(3)(a). RCW 9.94A.411(2) explicitly enumerates identity theft in the first degree and identity theft in the second degree as crimes against a person. RCW 9.94A.411(2).

Defendant was convicted of identity theft in the first degree and second degree among his many other convictions. CP 108, 111, 114; 4RP

341-342. He was sentenced to 73.5 months in prison under the supervision of the Department of Corrections. CP 120-136. He was also incorrectly sentenced to a total of 36 months of community custody. *Id.* He should have been sentenced to a total of 12 months of community custody. RCW 9.94A.411(2). The proper remedy for an incorrect community custody period is remand for the sentencing court for entry of a community custody period of one year consistent with RCW 9.94A.701(3)(a). *State v. Wilcox*, 196 Wn. App. 206, 213, 383 P.3d 549 (2016).

2. THE STATE WILL NOT SEEK APPELLATE COSTS.

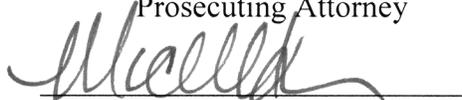
Due to recent changes in RAP 14.2 and because the defendant was found to be indigent for purposes of appeal (*See* CP 151-152), the State will not ask for appellate costs in this matter.

D. CONCLUSION.

For the aforementioned reasons, this Court should remand to the sentencing court for correct imposition for the period of defendant's community custody.

DATED: April 23, 2018

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Nathaniel Block  
Rule 9 Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by <sup>eFile</sup> ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/23/18   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**April 23, 2018 - 10:10 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50729-3  
**Appellate Court Case Title:** State of Washington, Respondent v Curtis Richard Fambro, Appellant  
**Superior Court Case Number:** 16-1-03975-0

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