

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

STATE OF WASHINGTON,

Respondent,

v.

CURTIS RICHARD FAMBRO,

Appellant.

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

The Honorable Grant Blinn

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

A REMAND FOR RESENTENCING IS REQUIRED BECAUSE THE COURT ERRED IN IMPOSING A STATUTORILY INCORRECT AMOUNT OF TIME ON COMMUNITY CUSTODY AND THIS COURT SHOULD NOT AWARD APPELLATE COSTS.

The State properly concedes that the trial court incorrectly sentenced appellant, Curtis Richard Fambro, to 36 months of community custody where he should have been sentenced to 12 months of community custody. Brief of Respondent at 3-4, citing RCW 9.94A.170(3)(a), RCW 9.94A.411(2). This Court should accept the State's concession.

The State has also informed this Court that it will not seek appellate costs. Brief of Respondent at 4, citing RAP 14.2. Accordingly, in any event, this Court should not award costs.

B. CONCLUSION

The remedy for the imposition of an unauthorized sentence is a remand for resentencing. *In re Postsentence of Leach*, 161 Wn.2d 180, 188, 163 P.3d 782 (2013). For the reasons stated here and in appellant's opening brief, this Court should remand for resentencing and not award appellate costs.

DATED this 8th day of May, 2018.

Respectfully submitted,

/s/ Valerie Marushige

VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant Curtis Richard Fambro

DECLARATION OF SERVICE

On this day, the undersigned sent by email a copy of the document to which this declaration is attached to the Pierce County Prosecutor's Office.

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

DATED this 8th day of May, 2018.

/s/ Valerie Marushige
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