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Court of Appeals
Division II
State of Washington
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No. 51973-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SHANE I. VANDERVORT,

Appellant,

vs.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

Jefferson County Superior Court No. 17-1-00052-9

JAMES M. KENNEDY
Jefferson County Prosecuting Attorney
P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

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I. STATEMENT OF THE ISSUES

1. Whether the Appellant's appeal of his original judgment and sentence is proper when it is limited in scope to the order revoking his DOSA sentence and was entered well beyond the 30-day time period required by court rule?

II. STATEMENT OF THE CASE

On May 26, 2017, the Appellant was sentenced in Jefferson County Superior Court to a Residential Drug Offender Sentencing Alternative (hereafter DOSA) sentence for having committed the crimes of Possession of a Controlled Substance and Criminal Trespass in the First Degree. CP 19-26. Part of this sentence required the Appellant to be on Department of Corrections Community Supervision for 24 months. CP 22. As part of his sentence the Appellant was also required to pay \$800 in Legal Financial Obligations (hereafter LFOs), specifically \$500 toward a victims assessment, \$200 toward a criminal filing fee, and \$100 toward a DNA fee. CP 23. Following the imposition of this sentence, no notice of appeal was entered within 30 days.

On December 1, 2017, the Appellant's DOSA sentence was revoked, and he was ordered to serve a standard range sentence of 18 months. CP 30. On April 13, 2018, the Appellant's sentence was modified

to add 12 months of Community Custody. CP 65. On May 16, 2018¹, the Appellant filed his Notice of Appeal “seek[ing] review... of the Order Revoking DOSA entered on April 13, 2018”. CP 73.

On November 19, 2018, the Appellant filed his brief with Division II of the Court of Appeals. At issue are the imposition of court costs and DNA fee, both of which were imposed at the original sentence date of May 26, 2017, and were not addressed on the date the Amended Order Revoking DOSA was entered. Appellant’s brief at 1.

III. ARGUMENT

1. The Appellant’s direct appeal is untimely as it was filed 357 days after the sentence was imposed.

A notice of appeal “must be filed in the trial court” within 30 days of the entry of the decision that the appealing party would like reviewed. RAP 5.2(a). The Court of Appeals will only extend the time to file a notice of appeal under “extraordinary circumstances and to prevent a gross miscarriage of justice”. RAP 18.8(b). Furthermore, the Court of Appeals generally favors the finality of a final judgment over the privilege of a party to extend the time required to file their notice. *Id.* In a similar case, the Court of Appeals held that a defendant could not appeal his original DOSA

¹ The Notice of Appeal is dated May 16th, 2017. However, because this predates the original judgment and sentence, and because it was filed on May 18th, 2018 the Respondent believes the year dated, 2017, to be a typographical error.

sentence when it was revoked a year after it was imposed when the defendant waited beyond the 30-day period and had expressly waived his right to collaterally attack the sentence. *State v. Roy*, 126 Wn. App. 124, 130, 107 P.3d 750 (2005).

In the present case, the Appellant was sentenced to a DOSA on May 26, 2017. CP at 25. Yet, he did not file his Notice of Appeal until May 18, 2018, 357 days later. Additionally, the Appellant has not provided to the Court any grounds for determining that extraordinary circumstances exist in this case or that the imposition of \$300 worth of LFOs constitutes a gross miscarriage of justice. Because the Appellant filed his Notice of Appeal beyond the 30 day time limit and no exception applies the State respectfully requests the Court of Appeals to deny his appeal.

2. The issues on appeal are beyond the scope of the Notice of Appeal entered by the Appellant.

A notice of appeal must designate the decision, or the part of the decision, that the appealing party wants reviewed. RAP 5.3(a). The scope of the appeal is determined by the notice of appeal. *Clark County v. Western Washington Growth Management Hearings Review Board*, 177 Wn.2d 136, 145, 298 P.3d 704 (2013). Initially, the notice of appeal must properly designate the decision the party wants reviewed. *Id.* However, the scope of review can be expanded to any related order that “prejudicially affected the

designated decision”. *Id.* (citing *In Re Dependency of Brown*, 149 Wn.2d 836, 840 (2003)).

In the present case, the notice of appeal specifically designates “the Order Revoking DOSA entered on April 13, 2018, in Jefferson County Superior Court” as the decision for review. CP at 73. Yet, the issues raised on the appeal itself are the imposition of \$300 worth of LFOs that were imposed at the Appellant’s original sentencing hearing on May 26, 2017, not at the hearing where the Appellant’s DOSA was revoked. Furthermore, there are no allegations that the original DOSA sentence and imposition of LFOs prejudicially affected the Order Revoking DOSA, nor is it possible to logically construe how the two would be connected. Because the issues raised on appeal are outside the scope of the original notice of appeal, the Court should not consider the merits of the Appellant’s argument.

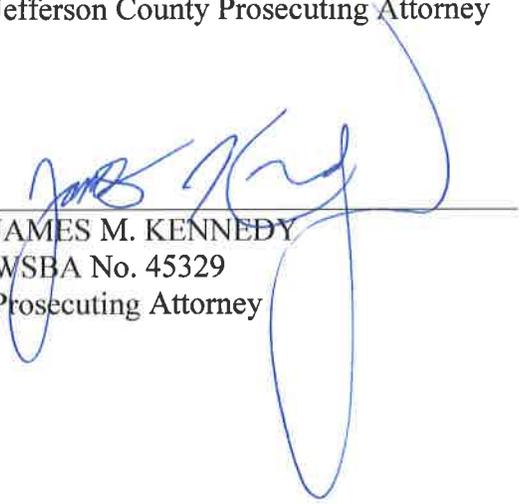
IV. CONCLUSION

For the aforementioned reasons the Respondent respectfully requests that the Court deny the Appellant’s appeal.

Dated this 18 day of January, 2019

Respectfully submitted,

JAMES M. KENNEDY
Jefferson County Prosecuting Attorney



JAMES M. KENNEDY
WSBA No. 45329
Prosecuting Attorney

JEFFERSON COUNTY PROSECUTING ATTORNEY'S OFFICE

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Address:
PO Box 1220
Port Townsend, WA, 98368
Phone: (360) 385-9180

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