

FILED
Court of Appeals
Division II
State of Washington
5/8/2020 4:34 PM
NO. 53551-3-II

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

STATE OF WASHINGTON,
Respondent,

v.

MATTHEW BENJAMIN LABOUNTY,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE STEPHEN E. BROWN, JUDGE

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

1. **The community custody ordered on this case does not exceed the statutory maximum on another case.**
2. **Prison sentences are presumed to be concurrent, the Defendant's claims of potential confusion are speculative at best, and no law requires judgment & sentences entered on the same day to reference one another.**

RESPONDENT'S COUNTER STATEMENT OF THE CASE

The State is satisfied with the Defendant's recitation of the facts, with the exception of the passages cited to in the argument.

ARGUMENT

1. **The sentencing court did not err by imposing 12 months of community custody because it does not exceed the statutory maximum here.**

The Defendant claims that imposition of 12 months of community custody in this case exceeds the statutory maximum in another case.

However, the community custody imposed in this case will be tolled while the Defendant serves the remainder of his sentence on the other case.

Standard of Review.

In interpreting statutes, the appellate court's objective is to determine the legislative intent. *State v. Jones*, 172 Wn.2d 236, 242, 257 P.3d 616, 619 (2011). When multiple statutes are at issue, they should be

read together, assuming a harmonious statutory scheme. *Id.* at 243. If the meaning of a statute is plain on its face, the plain meaning is given that effect. *Id.* at 242.

Argument.

The Defendant was sentenced here for unlawfully possessing a controlled substance, a violation of RCW 69.50.4013. CP at 22. That crime is a class C felony. *Id.* Therefore, the maximum possible period of confinement is 5 years. RCW 9A.20.021(1)(c).

If a defendant is sentenced to a term of confinement that, combined with a term of community custody, would exceed the statutory maximum term of confinement provided by RCW 9A.20.021, the term of community custody is reduced to conform with that maximum term. RCW 9.94A.701(9).

In this case the Defendant was sentenced to a term of 24 months in prison, followed by 12 months of community custody. CP at 25. Therefore, his total sentence is 36 months, two years shy of the statutory maximum.

But the Defendant claims that, because he may end up serving more than 10 years for all of the cases he was sentenced for that day, the

imposition of community custody in *this* case exceeds the statutory maximum in *a different case* he was sentenced for on the same day.¹

The Defendant's community custody in this case will toll while he finishes serving his sentence in the other cases, pursuant to RCW 9.94A.171(3)(a). It must toll, as community custody must be served in the community, not in prison. *Jones* at 243-44. Incarceration *cannot* satisfy a sentence of community custody. *Id.* at 246. And the community custody in this case was mandatory. *See* RCW 9.94A.701(3)(c).

***Nord* is distinguishable and incorrect.**

The Defendant relies on *State v. Nord*, 7 Wn.App.2d 1021, 2019 WL 296071 (Div. I, 2019), an unpublished case,² to support his argument. However, *Nord*, is distinguishable. In *Nord*, the Defendant was sentenced in only one case. Here, the Defendant was sentenced in four separate criminal cases simultaneously.

Even if this Court accepts *Nord's* reasoning, the Defendant here fails to explain how the statutory maximum in an unrelated case can influence the sentence in *this* case.

In essence, the Defendant is claiming he has a right to have his sentence executed continuously, so that the community custody must

¹ The case in question is on appeal in this Court under cause number 53495-9-II.

² As an unpublished opinion, *Nord* is not binding on any court. GR 14.1(a).

either begin upon the completion of his period of total confinement, or it is void. He points to no law that stands for this proposition. Instead, there is a law that specifically provides for the tolling of a period of community custody “during any period of time the offender is in confinement *for any reason.....*” RCW 9.94A.171(3)(a) (emphasis added.) The Defendant’s sentence in the other case is “any reason,” so his period of community custody tolls.

This Court should decline to follow *Nord*. *Nord* fails to read the SRA, with the tolling provision of RCW 9.94A.171(3)(c) together, with a plain meaning. Instead, it results in the absurd result that criminal offenders have an unwritten right to serve their sentences contiguously, which overrides what is plain from the text of the statutes. Additionally, *Nord* is distinguishable because in that case the defendant was serving a sentence imposed in one case, whereas here the sentences simply happened to be imposed on the same day.

The Defendant will probably not serve more than ten years on all four of his cases, so this Court should defer taking action unless the Defendant can establish actual prejudice.

The Defendant claims that he will end up serving a total of eleven years. However, that is unlikely. Offenders sentenced to prison are eligible to be released early, pursuant to RCW 9.94A.729. In fact, the

Defendant may be released after serving only two-thirds of his sentence in the other case in which he received a ten year sentence. *See* RCW 9.94A.729(3)(e). If that happens, he will be released after 80 months, and start serving the 12 months of community custody in this case, for a total of 92 months. If this Court agrees with the Defendant and *Nord* dictates that the maximum sentence in an unrelated case governs this case, it should defer on any action until the Defendant can demonstrate that he is actually being confined in excess of ten years.

2. The Defendant's allegation of prejudice is unlikely and highly speculative.

Finally, the Defendant complains that his judgment & sentence documents do not reference one another, and alleges this creates ambiguity. However, the Defendant's prejudice is not only highly speculative, but unlikely.

Standard of Review.

A standard range sentence is generally not subject to appellate review. *State v. Williams*, 149 Wn.2d 143, 146, 65 P.3d 143 (2003).

Argument.

As the Defendant correctly points out, under the sentencing provisions of the Sentencing Reform Act, all sentences for current

offenses are presumed to be concurrent, unless an exception applies. *See* RCW 9.94A.589(1)(a). No party here alleges that any exception might apply.

The Defendant simply alleges that “[t]here is no guarantee the Department [of Corrections] will understand the mandatory concurrent nature” of the Defendant’s sentence. Brief of Appellant at 17. The Defendant offers no further explanation as to why he suspects this. There is no indication in the record to suggest this misunderstanding will occur.

It seems exceedingly unlikely that the department responsible for the execution of criminal sentences would make such a mistake. This is especially true given that running the Defendant’s sentences consecutively would increase the cost to the Department dramatically.

And at this point, if such a mistake were to be made, the Defendant would know. The Defendant was sentenced over a year ago. His prospective release date must have been calculated by now. Yet he does not allege that his sentences are running consecutively or that he is not receiving credit towards all of his sentences. Instead, he invites this Court to imagine that an ambiguity exists, and then imagine that he might be prejudiced.

Further, he cites to no provision of the SRA which requires the reference that he claims is missing. Rather, the SRA appears to preclude requiring such a reference by operation of its presumption of concurrent sentences.

Because the Defendant's alleged prejudice is only speculative, this Court should take no action and affirm his sentence.

CONCLUSION

In this case the Defendant was sentenced to 24 months in prison, plus twelve months on community custody. That is two years under the statutory maximum. The fact that he received a sentence to the statutory maximum in an unrelated case on the same day is of no moment. The Sentencing Reform Act contemplates such an eventuality, and provides for tolling of the term of community custody in this case until the Defendant has finished serving his sentence in the other case.

Additionally, the Defendant fails to establish any prejudice from the fact that his documents do not reference one another.

This Court should affirm the sentences in this case.

DATED this 8th day of May, 2020.

Respectfully Submitted,

BY: 

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JFW /

GRAYS HARBOR COUNTY PROSECUTING ATTORNEY'S OFFICE

May 08, 2020 - 4:34 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
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Appellate Court Case Title: State of Washington, Respondent v. Matthew Benjamin LaBounty, Appellant
Superior Court Case Number: 19-1-00157-0

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