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Court of Appeals
Division II
State of Washington
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NO. 53551-3-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW LABOUNTY,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

1. The court imposed a sentence that results in Mr. LaBounty receiving punishment that exceeds the statutory maximum.

The maximum sentence a court may impose includes the combined term of incarceration as well as any term of community custody. *In re McWilliams*, 182 Wn.2d 213, 216, 340 P.3d 223 (2014). Trial courts must ensure that terms of community custody do not extend the total sentence beyond the statutory maximum. *State v. Boyd*, 174 Wn.2d 470, 473, 275 P.3d 321 (2012).

When the court imposes sentences for various offenses that run concurrently, and orders a total term of confinement that exceeds the statutory maximum for one offense, it may not also order community custody to be served after the person is released from serving this excessive sentence. *State v. Nord*, 7 Wn. App. 2d 1021, 2019 WL 296071, *4 (unpublished), *review denied*, 193 Wn.2d 1031 (2019).¹ While *Nord* is unpublished and only cited as available persuasive authority, the prosecution

¹ An unpublished Court of Appeals opinion may be accorded persuasive value under GR 14.1.

does not mention that the Supreme Court denied the State's petition for review. *Id.*

Similarly, in *In re Pers. Restraint of Johnson*, No. 50461-8-II, 2017 WL 6018077, *1 (2017) (unpublished), this Court likewise ruled a community custody term exceeded the statutory maximum in combination with other concurrently imposed sentences. “[B]ecause of the concurrent nature of Johnson’s sentences, he would not begin serving his 18-month term of community custody until released from his 116-month term of confinement and so might serve a punishment greater than the 120-month statutory maximum punishment.” *Id.*

Mr. LaBounty was simultaneously sentenced under four cause numbers and received a total sentence of 120 months in prison. RP 15-17. These sentences are concurrent by operation of law. RCW 9.94A.589(1)(a).

The court imposed 24 months for a class C felony in the case at bar and at the same time, imposed 120 months, the statutory maximum, for several class B felonies. RP 15-17; *see* RCW 9A.20.021(1)(b), (c); RCW 69.50.401(2)(b); RCW 69.50.4013(2). Thus, he received multiple 10 year prison

sentences, the statutory maximum, for convictions of possession of a controlled substance with intent to deliver, and two years of confinement for simple possession. RP 15, 17.

The court ordered he serve community custody for one year for the possession offense and any earned early release time for the delivery offenses. RP 19. He will serve 10 years in prison then an 11th year on community custody under these sentencing provisions.

Pursuant to RCW 9.94A.505(5), “a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW,” excluding some inapplicable exceptions. The legislature requires that the sentencing court must reduce a term of community custody “whenever an offender’s standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime.” RCW 9.94A.701(9); *Boyd*, 174 Wn.2d at 473.

Here, given the concurrent nature of the sentences, the trial court was required to reduce the one-year term of

community custody to zero because otherwise it results in a total sentence beyond the statutory maximum of 10 years on the delivery conviction.

The prosecution incorrectly proclaims RCW 9.94A.171(3)(a) is read in isolation and supersedes all other sentencing rules by requiring tolling of any community custody time while a person serves other portions of a sentence. But legislative intent is based on the statutory scheme as a whole. *State v. Conover*, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015). The purpose of reading related provisions together is “to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes.” *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). The prosecution fails to harmonize RCW 9.94A.701(9), RCW 9.94A.589(1)(a) (generally requiring concurrent sentences), and RCW 9.94A.505(5) (forbidding sentences beyond the statutory maximum).

Moreover, statutes should be interpreted to avoid unlikely, absurd, or strained results. *State v. McDougal*, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992). The court could not impose community custody as well as 120-month sentences for

the concurrent counts of possession with intent to deliver a controlled substance without violating the statutory maximum. The court may not circumvent this rule by, for example, imposing a lesser term of confinement on one count of possession with intent to deliver, such as 108 months, and adding 12 months of community custody, while also imposing 120 months of confinement on a second concurrent count of possession with intent to deliver.

In this hypothetical, the court may not void the statutory prohibition on exceeding the statutory maximum in RCW 9.94A.701(9) by using different concurrent counts to order community custody only on some charges. It is hard to imagine the State arguing this type of sentence would comply with the governing statutory scheme.

And yet the State insists this result is warranted here because Mr. LaBounty was sentenced to two years' confinement on the conviction for simple possession (a less serious crime than possession with intent to deliver). In other words, because he was convicted of a less serious crime and the sentencing court imposed a lesser term of confinement on that conviction, the

State argues Mr. LaBounty should receive a sentence of 11 years' punishment. This was not the intent of the Legislature in enacting RCW 9.94A.701(9).

This Court should strike the community custody imposed on a currently sentenced offense where Mr. LaBounty will serve far more than the statutory maximum for a class C felony.

2. The judgment and sentence should be modified to clearly convey the sentence ordered by the court.

The prosecution agrees, as it must, the judge imposed concurrent sentences on four different cause numbers but the judgment and sentence does not explain the concurrent nature of the sentences. Resp. Brief at 5-6. It brushes aside any concern that this may result in an erroneous interpretation of this sentence and complains that Mr. LaBounty has not proven his sentence is actually being improperly treated as concurrent by the Department of Corrections.

However, the reason this issue came to light was because DOC construed these sentences to be partially concurrent and

partially consecutive when Mr. LaBounty was sent to prison.²

While an individual records custodian in DOC may interpret the sentences differently as Mr. LaBounty serves his sentences, it is certainly not guaranteed that the court's intent to impose concurrent sentences will be understood by DOC.

The court alone has the authority to order sentences run concurrently or consecutively. RCW 9.94A.589. The court must impose a sentence authorized by statute and may not delegate the terms of a sentence to DOC. *See In re Pers. Restraint of Tobin*, 165 Wn.2d 172, 175, 196 P.3d 670 (2008). It may not leave its sentencing decisions ambiguous, or allow DOC to construe the terms of imprisonment.

The court should ensure the sentences it imposes are properly understood by clarifying the judgment and sentence to specify the concurrent nature of the sentences imposed under different cause numbers. *See, e.g., State v. Trujillo*, 112 Wn. App. 390, 412 n.15, 49 P.3d 935 (2002) (remanding to clarify terms of judgment and sentence).

² The undersigned counsel has confirmed that DOC has construed Mr. LaBounty's sentence to be consecutive in nature.

B. CONCLUSION.

As explained above and in Mr. LaBounty's opening brief, the term of community custody should be stricken and the concurrent nature of the sentences imposed should be clarified.

DATED this 24th day of July 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy P. Collins". The signature is fluid and cursive, with the first name being more prominent.

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

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 53551-3-II
)	
MATTHEW LABOUNTY,)	
)	
APPELLANT.)	

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WASHINGTON APPELLATE PROJECT

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