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Division II
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NO. 54517-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

JO AARHUS,

Appellant.

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

The Honorable John C. Skinder, Judge

BRIEF OF APPELLANT

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Washington Cases

In re the Personal Restraint of Mayer, 128 Wn. App. 694, 117 P.3d 353
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A. ASSIGNMENT OF ERROR

The judgment and sentence contains a scrivener's error which must be corrected.

Issue pertaining to assignment of error

Where the judgment and sentence contains a scrivener's error, is remand for correction of the error the appropriate remedy?

B. STATEMENT OF THE CASE

Appellant Jo Wayne Aarhus was charged with possession of a stolen motor vehicle and first degree criminal impersonation in Cause Number 19-1-00666-34, and felony harassment, second degree malicious mischief, and fourth degree assault in Cause Number 19-1-01085-34. CP 1, 46. He entered into drug court contracts in which he agreed that if terminated from the program the court would determine guilt based on the police reports and documentation submitted by the prosecution and stipulating that those facts were sufficient for a finding of guilt. CP 4, 49.

The court terminated Aarhus from drug court following a finding of noncompliance. CP 6, 51. After reviewing the record, the court determined that the facts were not sufficient to establish second degree malicious mischief and instead found Aarhus guilty of third degree

malicious mischief. CP 60-61. The court found Aarhus guilty on all other counts as charged. CP 15-26, 60-70.

The case proceeded to sentencing. The court noted that it had received a letter from Aarhus describing his difficulties with controlled substances and asking to withdraw his guilty plea, although he had not actually pled guilty. 2RP¹ 10. Defense counsel explained that Aarhus raised an issue about his mindset when entering the drug court contracts, and the court recessed to allow counsel to consult with Aarhus. 2RP 16. After the recess Aarhus confirmed that he wanted to proceed with sentencing rather than pursue the issues he raised in his letter. 2RP 17-18.

The defense requested a prison-based Drug Offender Sentencing Alternative, but the court denied the request, finding that a standard range sentence would be appropriate. 2RP 22, 34-35. It imposed mid-range sentences, with all counts running concurrently. CP 30-31, 75.

The judgment and sentence for the harassment, malicious mischief, and assault charges correctly indicates that the court found Aarhus guilty of third degree malicious mischief. CP 71. The judgment and sentence on the other cause number improperly lists second degree malicious mischief in the other current convictions section, however. CP 28.

¹ The Verbatim Report of Proceedings is contained in two volumes, designated as follows: 1RP—1/15/20 and 2RP—1/27/20.

C. ARGUMENT

THE SCRIVENER'S ERROR IN THE JUDGMENT AND SENTENCE MUST BE CORRECTED.

Although Aarhus was charged with second degree malicious mischief, the court below determined that the facts supported a conviction of third degree malicious mischief. It found Aarhus guilty of and sentenced him on the lesser offense. CP 60-61, 71-75.

The court sentenced Aarhus on a second cause number, 19-1-00666-34, at the same hearing. The judgment and sentence in that cause mistakenly lists second degree malicious mischief, rather than third degree malicious mischief, in the other current convictions section. CP 28. This error must be corrected. The proper remedy is remand to the trial court for correction of the scrivener's error. *In re the Personal Restraint of Mayer*, 128 Wn. App. 694, 701, 117 P.3d 353 (2005).

D. CONCLUSION

This Court should remand for correction of the scrivener's error in the judgment and sentence.

DATED July 20, 2020.

Respectfully submitted,

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Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in
State v. Jo Aarhus, Cause No. 54517-9-II as follows:

Jo Aarhus/DOC#323863
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

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



Catherine E. Glinski
Done in Manchester, WA
July 20, 2020

GLINSKI LAW FIRM PLLC

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