

FILED
Court of Appeals
Division II
State of Washington
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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 WAYNE AARHUS,

Appellant.

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

The Honorable John C. Skinder, Judge
Cause No. 19-1-00666-34; 19-1-01085-34

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether remand to correct a scrivener's error is appropriate.

B. STATEMENT OF THE CASE.

The Appellant, Jo Wayne Aarhus entered the Thurston County Drug Court on charges of possession of a stolen motor vehicle and criminal impersonation in the first degree in Thurston County cause number 19-1-00666-34 and felony harassment, malicious mischief in the second degree and assault in the fourth degree in Thurston County cause number 19-1-01085-34. CP 1, 4, 46, 49. Aarhus was terminated from the Drug Court program following a finding of noncompliance. CP 6, 51, 1 RP 11-12.¹

Following termination, the cases proceeded to a bench trial based on the record. 2 RP 4. During the bench trial, the parties and trial court discussed whether the factual basis for malicious mischief in the second degree was adequate. 2 RP 5-7. The prosecutor then stated:

I believe the Court has sufficient evidence of every other charge. With the malicious mischief in the second degree, the State will ask the Court to find Mr. Aarhus guilty of malicious mischief in the third degree

¹ For purposes of this brief 1 RP refers to the verbatim report of proceedings that occurred on January 15, 2020, and 2 RP refers to the verbatim report of proceedings that occurred on January 27, 2020.

as a lesser included, which will not change any sentencing ranges or anything in terms of the operating count.

2 RP 7-8. Defense counsel indicated that the defense agreed to go forward with the prosecutor's proposal. 2 RP 8.

In cause number 19-1-00666-34, the trial court found Aarhus guilty of possession of a stolen motor vehicle and criminal impersonation in the first degree. 2 RP 19-20; CP 15-26. In the 19-1-01085-34 cause number, the trial court found Aarhus guilty of felony harassment, malicious mischief in the third degree, and assault in the fourth degree. 2 RP 20; CP 60-70. The trial court adopted the prosecutor's recommendation for midrange sentences. 2 RP 21, 34-35. This appeal follows.

C. ARGUMENT.

1. The State does not oppose an order correcting Scrivener's Error.

In the judgment and sentence for 19-1-00666-34, under "other current offenses", the second charge listed reads "mal mischief 2nd." CP 28. The State agrees that the charge should have read "malicious mischief in the third degree." The error does not affect the sentence in anyway. The proper remedy to correct a scrivener's error is to remand to the trial court for correction of the scrivener

error in the judgment and sentence. In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701, 117 P.3d 353 (2005). The State does not oppose remanding the matter for entry of an order correcting the error.

D. CONCLUSION.

The State does not oppose remand for the sole purpose of correcting the identified scrivener's error. The Brief of Appellant alleges no other error.

Respectfully submitted this 5th day of August, 2020.

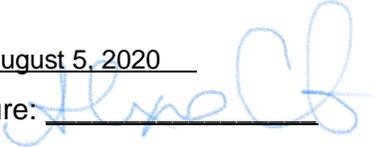


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DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: August 5, 2020
Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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