

COA No. 29441-2-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

APPELLANT'S
BRIEF
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
MAY 11 2011

STATE OF WASHINGTON, Respondent,

v.

STEVEN J. SNEDDEN, Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

A. The court erred by imposing a sentence in violation of former RCW 9.94A.505(2)(b) when it imposed 36 months community custody on Steven J. Snedden's guilty plea to one count of indecent exposure with sexual motivation, an unranked offense.

Issue Pertaining to Assignment of Error

1. Did the court impose a sentence in violation of former RCW 9.94A.505(2)(b) by ordering 36 months community custody on Mr. Snedden's guilty plea to one count of indecent exposure with sexual motivation, an unranked offense? (Assignment of Error A).

II. STATEMENT OF THE CASE

Mr. Snedden was charged by information on December 16, 2008, with two counts of felony indecent exposure with sexual motivation. (CP 1). The predicate convictions for the felony charges were indecent exposure and second degree burglary with sexual motivation. (CP 1). The charged incidents alleged two separate acts of indecent exposure in 2008 that involved the same victim at the Eastern Washington University library. (CP 1; 7/14/10 RP 13-14).

On July 14, 2010, Mr. Snedden pleaded guilty to one count of indecent exposure with sexual motivation, an unranked offense. (7/14/10 RP 10, 13). The trial court went over the plea agreement:

The plea agreement calls for the State to, and apparently it is a joint recommendation of 12 months. Actually let me go back to the standard sentence range because I missed something here. The range is actually 0 to 12 months with a 12-month enhancement for a total of 12 to 24 months as the actual period of confinement.

The plea agreement calls for the State to recommend and the State to recommend and for you to agree that I should impose 12 months for the enhancement, 12 months for the underlying offense. No agreement as to the length of community custody. Standard costs and conditions and registration. (7/14/10 RP 9).

Mr. Snedden acknowledged that was his understanding of the plea agreement. (7/14/10 RP 9). No agreement was reached on community custody because the State believed it should be 36 months and Mr. Snedden maintained it was 12 months. (*Id.* at 11).

At sentencing, the State argued that since the court was imposing a sentence in excess of one year on a sex offense, the appropriate term of community custody was 36 months. (9/8/10 RP 8). Mr. Snedden claimed community custody could only be 12 months. (*Id.* at 9). The State acknowledged it did not seek an exceptional sentence based on sexual motivation, but rather used it is a one-year enhancement. (9/8/10 RP 11).

The court imposed sentence:

The plea negotiation that was entered into called for a stipulation to 12 months on the underlying offense and 12 months on the sexual enhancement, the sexual motivation enhancement, for a total of 24 months. And that's actually a – a joint recommendation in exchange for dropping one count, if I recall. And so that's – and that's what's recommended in the presentence report, so that's what I'm going to impose. Accordingly, the sentence is to the institution, and it is a sex offense. And so 36 months of community custody is appropriate, and that's what I will impose. All the conditions that are outlined in the Appendix H I will impose as well. \$800 in legal financial obligations. (9/8/10 RP 12).

The felony judgment and sentence reflects the guilty plea to count I, dismissal of count II, a finding of sexual motivation in committing the offense (RCW 9.94A.835), the offense's unranked status, confinement of 24 months on count I, and 36 months community custody for a sex offense. (CP 165-166, 168-181). The court neither imposed an exceptional sentence nor checked off the paragraph stating the confinement time on count I included 12 months as an enhancement for sexual motivation. (CP 171, 172).

Mr. Snedden appeals the 36 months community custody imposed by the court. (CP 182).

III. ARGUMENT

A. The court erred by imposing a sentence in violation of former RCW 9.94A.505(2)(b) by imposing 36 months community

custody on Mr. Snedden's guilty plea to one count of indecent exposure with sexual motivation, an unranked offense.

Felony indecent exposure is an unranked offense. See RCW 9.94A.515; *State v. Steen*, 155 Wn. App. 243, 248-49, 228 P.2d 1285 (2010). The incident to which Mr. Snedden pleaded guilty was alleged to have occurred between September 29 and October 3, 2008. (CP 1).

RCW 10.01.040, the savings clause, provides in relevant part:

. . . Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendment or repealing act . . .

Under the savings clause, amendments to criminal statutes do not apply retroactively to offenses committed before the effective date of these amendments. See, e.g., *State v. Ross*, 152 Wn.2d 220, 237-39, 95 P.3d 1225 (2004).

Former RCW 9.94A.505(2)(b) (2008), in effect at the time Mr. Snedden's offense was committed, provided:

If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of

confinement; community restitution work; a term of community custody not to exceed one year; and other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

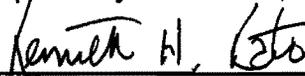
The statute is clear that the term of community custody cannot exceed one year for an unranked offense. When it ordered 36 months community custody, the court exceeded its authority by imposing a sentence beyond what the legislature expressly conferred. *Steen*, 155 Wn. App. at 247. The erroneous term of community custody must be reversed.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Snedden respectfully urges this Court to reverse the imposition of 36 months community custody.

DATED this 18th day of July, 2011.

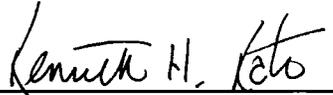
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Kenneth H. Kato, certify that on July 18, 2011, I served a copy of the Brief of Appellant by first class mail, postage prepaid, on Steven J. Snedden, 32 W. Pacific, Spokane, WA 99201, and by e-mail, as agreed by counsel, on Mark E. Lindsey, Spokane County Prosecutor's Office, at KOWens@spokane county.org.


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