

FILED

SEP 19 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

29711-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

TISHAWN M. WINBORNE, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

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I.

APPELLANT'S ASSIGNMENT OF ERROR

- A. The trial court exceeded its statutory authority in imposing its sentence for Mr. Winborne's guilty plea.

II.

ISSUE PRESENTED

- A. Did the trial court err in sentencing the defendant?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's Statement of the Case.

IV.

ARGUMENT

The defendant raises the issue of a court sentencing a defendant to the maximum incarceration possible for the particular class of felony and then adding community custody. This issue has been settled by *In re Brooks*, 166 Wn.2d 664, 211 P.3d 1023 (2009).

The defendant would have the courts simply throw out any combination sentence over the statutory maximum. The logic from the

defendant's perspective is easy to see. If, for example, the sentence in this case were set as the defendant desires, the defendant would end up with an unknown quantity lower sentence. If the sentencing court sentenced the defendant to five years incarceration and no community custody, the defendant would be out of jail at five years less any earned early release time. That would be the extent of any punishment. The trial court's desire to impose the maximum possible punishment would be thwarted.

On the other hand, if the sentence is for maximum incarceration and any earned early release time covered by community custody, up to the statutory maximum, means that the trial court has imposed the maximum possible (non-exceptional) sentence.

In this particular case, *Brooks* is controlling. On page 6 of the Judgment and Sentence the language reads: "The DOC is directed that the total terms of confinement and community custody must not exceed the statutory maximum of 60 months." CP 40. This language puts this case squarely within the ambit of *Brooks* and there was no error made in sentencing.

V.

CONCLUSION

For the reasons stated, the sentences of the defendant should be affirmed.

Dated this 16th day of September, 2011.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", is written over a horizontal line.

Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent