

**FILED**

MARCH 30, 2015

Court of Appeals  
Division III  
State of Washington

NO. 32664-1-III (consolidated with 32674-8-III)

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**CHRISTOPHER DOUGLAS REMINGTON,**

Defendant/Appellant.

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**APPELLANT'S BRIEF**

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## TABLE OF AUTHORITIES

### CASES

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### STATUTES

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## **ASSIGNMENT OF ERROR**

1. The trial court is not authorized to impose separate legal financial obligations (LFOs) when two (2) cases are sentenced at the same time.

### **ISSUE RELATING TO ASSIGNMENT OF ERROR**

1. Did the trial court err by imposing LFOs on each case when they were sentenced on the same date?

## **STATEMENT OF CASE**

Christopher Remington was charged with two (2) counts of residential burglary and one (1) count of attempted residential burglary under Spokane County Cause Number 13 1 02920 1 pursuant to an Information filed on August 19, 2013. (CP 7)

Mr. Remington was also charged with five (5) counts of residential burglary under Spokane County Cause No. 13 1 02991 1 as set forth in an Information filed on August 21, 2013. (CP 23)

On November 27, 2013 Mr. Remington signed a waiver in order to receive an evaluation for drug court. The waiver applied to both cases. (CP 40; CP 42)

Mr. Remington entered into a Drug Court Agreement as to each of the cases on December 12, 2013. (CP 45; CP 49)

Over a period of approximately six (6) months Mr. Remington struggled with the compliance requirements for drug court. He continually tested positive for marijuana use. He missed a number of support groups and did not fully complete his community service work. There were discipline issues when he did attend group meetings. (RP 3, ll. 11-13; ll. 15-17; ll. 20-25; RP 4, l. 1; ll. 10-11; ll. 15-17; ll. 22-23; RP 5, ll. 6-12; ll. 24-25)

A sanction order was entered in each case on March 27, 2014. Mr. Remington was required to serve two (2) days in jail. (CP 53; CP 54)

Mr. Remington was again ordered to jail pending an inpatient evaluation on April 24, 2014. Mr. Remington was nineteen (19) group meetings behind; had lost his housing; exhibited anger at the treatment provider; and was engaging in regular use of controlled substances. (CP 55; CP 56; RP 7, ll. 2-3; ll. 12-19; ll. 23-24)

Following the inpatient evaluation an order was entered directing Mr. Remington to enroll at ABHS. He was discharged on May 14, 2014 due to noncompliance with rules and regulations. (CP 57; CP 58; RP 8, ll. 8-20)

A bench warrant was issued. When Mr. Remington reappeared an additional sanction order was entered requiring him to serve four (4) days in jail. (CP 59; CP 61; CP 62; CP 64; CP 65; CP 68)

Mr. Remington then enrolled in Cascade Heights, another treatment facility. He was discharged for noncompliance on June 17, 2014. (RP 10, ll. 5-8; ll. 17-22; RP 11, ll. 16-20)

Mr. Remington's involvement in drug court was terminated by orders effective June 25, 2014. Judgment and Sentence was entered the same day based upon affidavits previously filed in the respective cases. (CP 75; CP 79; CP 83; CP 97; RP 22, ll. 1-3; RP 23, ll. 1-8; RP 23, l. 20 to RP 24, l. 1)

Mr. Remington was sentenced to a prison based DOSA. He subsequently filed Notices of Appeal on August 1, 2014 and again on August 4, 2014. (CP 111; CP 113; CP 115; CP 131)

On November 18, 2014 a Commissioner's Ruling was entered allowing Mr. Remington to pursue his appeal even though it had not been timely filed. (Appendix "A")

## SUMMARY OF ARGUMENT

The sentencing court, when it terminated Mr. Remington's involvement in the drug court program, consolidated his two (2) cases for purposes of sentencing. As a result of the consolidation only one (1) set of LFOs should have been entered.

## ARGUMENT

Mr. Remington's two (2) cases were consolidated for sentencing purposes. The consolidation of the cases created a single prosecution. When the sentencing court imposed separate LFOs on each of the cause numbers, it violated RCW 9.94A.589(1)(a) which requires concurrent sentencing.

Mr. Remington finds support for his position in *State v. Bates*, 51 Wn. App. 251, 253, 752 P.2d 1360 (1988). The *Bates* Court relied upon *State v. Huntley*, 45 Wn. App. 658, 662, 726 P.2d 1254 (1986) ... [which] held [in part] that:

*... concurrent sentences are required  
when the convictions are obtained in  
a single or consolidated proceeding.*

(Italics ours.)

Similarly, in *State v. Stark*, 48 Wn. App. 245, 254-55, 738 P.2d 684, *review denied*, 109 Wn.2d 1003 (1987), the court explicitly approved the imposition of concurrent sentences under former RCW 9.94A.400(1)(a) for two bail jumping convictions obtained by a guilty plea in a single proceeding.

## CONCLUSION

Mr. Remington contends that his case needs to be remanded to the trial court for correction of the LFOs that he owes.

DATED this 30th day of March, 2015.

Respectfully submitted,

s/ Dennis W. Morgan

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## **APPENDIX “A”**

The Court of Appeals  
of the  
State of Washington  
Division II

NOV 18 2014

CLERK OF COURT  
COURT OF APPEALS  
DIVISION II  
1000 4TH AVENUE  
SEASIDE, WA 98148

STATE OF WASHINGTON,  
Respondent,  
v.  
CHRISTOPHER REMINGTON,  
Appellant.

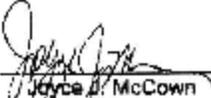
COMMISSIONER'S RULING  
NO. 32664-1-III  
CONSOLIDATED WITH  
NO. 32674-8-III

Having considered this Court's motion to dismiss for untimely filing of the Notice of Appeal, Mr. Remington's memorandum, the record and file, and being of the opinion that this matter should not be dismissed in light of the holding of *State v. Kells*, 134 Wn.2d 309, 313, 949 P.2d 818 (1998) (a criminal appeal may not be dismissed as untimely unless the State shows that the defendant voluntarily, knowingly and intelligently abandoned his appeal), and here the State failed to file any memoranda and thus did not establish that Mr. Remington voluntarily, knowingly and intelligently abandoned his appeal; now, therefore,

No. 32884-1-III

IT IS ORDERED, the motion to dismiss for untimely filing of the Notice of Appeal is denied.

November 18, 2014.

  
\_\_\_\_\_  
Joyce B. McCown  
COMMISSIONER



**NO. 32664-1-III (consolidated with 32674-8-III)**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON, )  
 ) SPOKANE COUNTY  
 Plaintiff, ) NO. 13 1 02991 1 & 13 1 02920 1  
 Respondent, )  
 )  
 v. ) **CERTIFICATE OF SERVICE**  
 )  
 CHRISTOPHER DOUGLAS REMINGTON, )  
 )  
 Defendant, )  
 Appellant. )  
 )

---

I certify under penalty of perjury under the laws of the State of Washington that on this 30th day of March, 2015, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

COURT OF APPEALS, DIVISION III  
Attn: Renee Townsley, Clerk  
500 N Cedar St  
Yakima, WA 99201

E-FILE

CERTIFICATE OF SERVICE

SPOKANE COUNTY PROSECUTOR'S OFFICE

Attn: Brian O'Brien

[SCPAppeals@spokanecounty.org](mailto:SCPAppeals@spokanecounty.org)

E-FILE (per-agreed)

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U.S. MAIL

s/ Dennis W. Morgan

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