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Court of Appeals
Division III
State of Washington
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No. 35830-5-III,
35831-3-III

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

STATE OF WASHINGTON,
Respondent,

v.

JON PAUL SAUNDERS,
Appellant.

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

The Honorable M. Scott Wolfram

APPELLANT'S REPLY BRIEF

LAURA M. CHUANG, Of Counsel
KRISTINA M. NICHOLS
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203
Phone: (509) 242-3910
admin@ewalaw.com

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A. INTRODUCTION

Appellant Jon Paul Saunders accepts this opportunity to reply to the State's brief. Mr. Saunders requests the Court refer to his opening brief for issues not addressed in this reply.

B. COUNTERSTATEMENT OF THE CASE

Mr. Saunders offers the following counterstatement of the case, in response to the State's Statement of the Case. *See* Respondent's Brief pgs. 1-4.

The State asserts Mr. Saunders has not appealed from a CrR 7.8 motion requesting his community custody from Walla Walla County Cause No. 14-1-00049-6 (hereinafter "49-6") run concurrent to the Walla Walla County Cause Nos. 14-1-00168-9 (hereinafter "68-9") and 14-1-00183-2 (hereinafter "83-2"). *See* Respondent's Brief pg. 4. Yet the record reflects Mr. Saunders is appealing from the revocation of his prison-based drug offender sentencing alternative (hereinafter "DOSA"). CP 143, 149, 296, 300; *see* Amended Notices of Appeal, filed 2/13/18, COA Nos. 35830-5-III and 35831-3-III

Second, the State cites to its prior CrR 7.8 motion response, wherein the State represented Mr. Saunders "had already served his time in the [49-6] case," as definitive proof Mr. Saunders in fact served all of community custody time imposed. CP 130-131; *see* Respondent's Brief

pg. 4. The State fails to note its CrR 7.8 response never represented whether Mr. Saunders had completed the entirety of the community custody time. *See* Respondent's Brief pg. 4; CP 131.

Moreover, the Offender Movement History from the Felony Offender Reporting System, attached to the State's CrR 7.8 response, demonstrates dates of community custody supervision Mr. Saunders has served. CP 136. After adding up the total dates of supervision following the March 24, 2014, date of sentencing for case 49-6, it appears Mr. Saunders was supervised an approximate total of 155 days. CP 136. Yet he was sentenced on March 24, 2014, to serve one year of community custody. Additional Evidence per Commissioner Ruling 10/9/2018; trial court judgment and sentence Walla Walla Superior Court No. 14-1-00049-6.

The dates on the Offender Movement History correspond with the DOC notices of violation. CP 65-66, 136, 216, 218-219, 237-239. Mr. Saunders was released from confinement of his prison-based drug offender sentencing alternative (hereinafter "DOSAs") on September 4, 2015. CP 237. Soon after, on October 22, 2015, Mr. Saunders was arrested for a community custody violation. CP 216. Mr. Saunders was released with credit for time served on November 2, 2015. CP 218, 237-238. On December 7, 2015, Mr. Saunders failed to appear for counseling,

and on December 30, 2015, he failed to report for urinalysis. CP 238. It appeared to the Department of Corrections (hereinafter “DOC”) that Mr. Saunders absconded to Texas sometime between December 15, 2015 and February 2, 2016. CP 238. Mr. Saunders was sentenced to serve time in Texas for various crimes he committed in state. CP 239. Upon being returned to Washington State, Mr. Saunders admitted to absconding for approximately 1 1/2 to 2 years. RP 30, 35, vol. I; RP 11-13, vol. II¹.

In sum, Mr. Saunders still has community custody left to serve under case 49-6. CP 136; Additional Evidence per Commissioner Ruling 10/9/2018; trial court judgment and sentence Walla Walla Superior Court No. 14-1-00049-6.

C. ARGUMENT IN REPLY

1. The State argues the record is insufficient; yet the record contains sufficient evidence upon which this Court can address the DOSA revocation and community custody supervision, and the State has not made any efforts to supplement the record to demonstrate otherwise.

The State asserts there is insufficient evidence in the record to demonstrate when the community custody under case 49-6 concluded, and when the community custody period began under cases 68-9 and 83-2.

¹ Two volumes were transcribed in this case by transcriptionist Tina Driver. “Vol. I” refers to the volume containing four hearings (10/20/14, 10/19/17, 10/24/17, and 10/30/17). “Vol. II” refers to the volume containing four additional hearings (9/20/17, 10/2/17, 10/16/17, 10/18/17).

See Respondent's Brief pg. 5. Yet the record contains sufficient evidence for this Court to address the DOSA revocation and community custody supervision. And the State has not sought to supplement the record to demonstrate otherwise.

The State claims the sentencing court cannot have abused its discretion as it did not have the opportunity to address the community custody supervision in case 49-6 and whether it was consecutive or concurrent with the prison-based DOSA. *See* Respondent's Brief pgs. 4-5, 11. But the issue of consecutive community custody was mentioned on the record, giving the sentencing court the opportunity to inquire further. RP 39-40, vol. I. Furthermore, erroneous or illegal sentences may be challenged for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

The State also argues a community custody violation on October 22, 2015, was alleged but never acted upon. *See* Respondent's Brief pgs. 6-7. However, the very pages the State refers to are the same ones which indicate Mr. Saunders was sentenced for time served and released on November 2, 2015, for the violation of consuming methamphetamine on October 22, 2015. CP 65, 86-87, 92-93, 218, 231-232, 237-238. The violation on October 22, 2015, was acted upon. *Id.*

The State alleges that because case 49-6 was omitted from the caption of the most recent DOC notices of violation, the “violation during [case 49-6’s] supervision period was not relevant to the request for DOSA revocation.” *See* Respondent’s Brief pg. 7. This conclusion does not have any support in the record.

Finally, the State argues that the judgment and sentence for case 49-6 cannot demonstrate credit for time served, earned early release, tolling, or other post-conviction rulings. *See* Respondent’s Brief pg. 8-9. The State also argues the whole picture of the facts is not presented because the Commissioner allowed Mr. Saunders to supplement the record with the judgment and sentence from case 49-6. *Id.* at 9. Yet the State does not offer to supplement the record to prove any other necessary facts are missing.

The State overcomplicates the issue in this case. Mr. Saunders was still obligated to serve community custody for case 49-6 when his DOSA was revoked and the record demonstrates he could not have completed that community custody supervision by the time he was released from confinement for his prison-based DOSA. *See* Appellant’s Brief pgs. 1-10; CP 136.

2. The State argues Mr. Saunders is precluded from raising the issue of legal financial obligations but cannot cite authority in support.

The State asserts Mr. Saunders’s challenge of the costs of extradition and sheriff’s fees is untimely. *See* Respondent’s Brief pgs. 11-12. However, the State only cites to authority which supports the untimeliness of challenging legal financial obligations in collateral attacks, including personal restraint petitions—and not upon direct appeal. *Id.* RCW 10.73.090(1) provides no collateral attack may be filed “more than one year after the judgment becomes final,” and RCW 10.73.090(2) states a “collateral attack” does not include a direct appeal. RCW 10.73.090(1) & (2).

This case is a direct appeal from a DOSA revocation, and thus the State’s claim of untimeliness on the basis of RCW 10.73.090 is without support. RCW 10.73.090.

C. CONCLUSION

The State seeks to overcomplicate a simple issue. The trial court erred by revoking Mr. Saunders’ prison-based DOSA while he was serving community custody under a prior judgment and sentence. The prison-based DOSA should not have been revoked.

Mr. Saunders also requests this Court remand the case to strike the discretionary costs of extradition and sheriff's fees.

Respectfully submitted this 9th day of January, 2019.

/s/ Laura M. Chuang
Laura M. Chuang, WSBA #36707

/s/ Kristina M. Nichols
Kristina M. Nichols, WSBA #35918
Eastern Washington Appellate Law
Attorneys for Appellant

COURT OF APPEALS
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STATE OF WASHINGTON)
Plaintiff/Respondent) COA Nos. 35830-5-III,
vs.) 35831-3 III
)
JON PAUL SAUNDERS,) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on January 9, 2019, I deposited for first-class mailing with the U.S. Postal Service, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Jon Paul Saunders DOC #373197
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla WA 99362

Having obtained prior permission from the Respondent, I also served the same at tchen@co.franklin.wa.us using Division III's e-service feature.

Dated this 9th day of January, 2019.

/s/ Kristina M. Nichols
Kristina M. Nichols, WSBA #35918
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203
Phone: (509) 242-3910
admin@ewalaw.com

OF COUNSEL NICHOLS LAW FIRM PLLC

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Address:
PO BOX 8302
SPOKANE, WA, 99203-0302
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