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Court of Appeals
Division III
State of Washington
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35959-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ROBERT L. YATES, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. Did the trial court err by following this Court's directive?

2. Did the correction of a technical flaw in the sentence violate Mr. Yates' right to be present and to allocute?

II. STATEMENT OF THE CASE

Mr. Yates pleaded guilty to 13 counts of first degree murder, and one count of attempted first degree murder in exchange for an agreed 408-year prison sentence. *In re Yates*, 180 Wn.2d 33, 35, 321 P.3d 1195 (2014), *as amended on denial of reconsideration* (July 16, 2014). The first two counts of murder occurred before enactment of the SRA. The remaining counts occurred after. CP 1-3. Mr. Yates received two 20-year determinative sentences on these first two counts, a lesser sentence than permitted by law.[1] Mr. Yates requested the judgment reflect the correct bargained-for sentence - "indeterminate life sentences (as opposed to determinate 20-year terms as [] currently stated)." *State v. Yates*, 2017 WL 2984033, at *1, 199 Wn. App. 1051 (2017), *review denied*,

[1] A Supplemental Designation of Clerk's Papers is being filed contemporaneously herewith. The Statement of Defendant on Guilty Plea is calculated to be CP 7-13; the Judgment and Sentence as CP 15-27, and the Warrant of Commitment as CP 28.

189 Wn.2d 1037, 407 P.3d 1140 (2018).[2] This Court obliged Mr. Yates' request in part and the matter was "remanded to the superior court with instructions to correct counts I and II of Mr. Yates's judgment and sentence, along with the recitation of the total term of incarceration, consistent with the terms of this opinion. Mr. Yates's presence is not required during the proceedings on remand." *Yates*, 2017 WL 2984033 at *2. Complying with this Court's order, the sentence was corrected by the superior court. The superior court reiterated this Court's direction:

> After reviewing the case record to date, and the basis for the motion, the court finds that: the Court of Appeals remanded this case with instructions to correct counts I and II to reflect indeterminate life sentences as opposed to the determinate 20-year terms as currently stated. Pursuant to the Opinion, the *correction is a ministerial act and does not require defendant's physical presence during the proceedings on remand*. *See State v. Yates*, 199 Wn. App. 1051 (2017) (unpublished), *review denied*, 189 Wn.2d 1037 (2018).

CP 2 (emphasis added).

The trial court then ordered:

> [P]aragraph 4.5(a) of the Judgment and Sentence entered on October 26, 2000, is hereby corrected to reflect the term of 240 months to life on both Counts 1 and 2, and the actual number of months of total confinement shall reflect an indeterminate sentence of 4,900 months to life.

CP 2.

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[2] In his guilty plea statement, Mr. Yates acknowledged the standard range and actual confinement sentence for counts 1 and 2 is "20 yr to life." CP 8.

Mr. Yates was not present at the hearing. RP 4-6.

III. ARGUMENT

A. THE CORRECTED JUDGMENT DOES NOT IMPOSE AN INDETERMINATE SENTENCE ON EACH COUNT, BUT ONLY AS TO THE FIRST TWO COUNTS. THE *TOTAL* SENTENCE CONSISTS OF *THE TOTAL OF* THE DETERMINATE SENTENCES AND THE INDETERMINATE SENTENCES.

The sentence was "hereby corrected to reflect the term of 240 months to life on both Counts 1 and 2." CP 2. That was the correction ordered by this Court. Thereafter, the total sentence expresses the total determinate sentence along with the indeterminate sentence – 4900 months to life. *See* CP 22-23 (section 4.5); and *see* CP 28. There is no error in the sentencing correction.

B. THE TRIAL COURT PROPERLY TREATED THIS MATTER AS A MINISTERIAL ACT WHERE THIS COURT ORDERED A TECHNICAL CORRECTION OF THE SENTENCE, AND NOT A FULL RESENTENCING HEARING.

This Court ordered the sentence to be corrected. It ordered the sentence to be corrected without the presence of the defendant, stating "Mr. Yates has merely established a technical flaw in his judgment and sentence. It is well settled, as the law of the case, that Mr. Yates has suffered no realistic prejudice." This Court's finding of no prejudice is supported by

our State Supreme Court's rejection of defendant's request for collateral relief in *In re Yates*, 180 Wn.2d 33:

> To avoid the death penalty for 13 murders, Yates agreed to plead guilty and spend the rest of his life in prison by way of a 408-year sentence. He was fully informed of the consequence of that plea: there was no possibility that he would ever be released from prison, regardless of how long he lived. We see no reason to invalidate his plea. His petition is dismissed.

Id. at 41-42; s*ee also State v. Buckman*, 190 Wn.2d 51, 409 P.3d 193 (2018).[3]

If, as Mr. Yates has claimed,[4] the indeterminate sentence was not discretionary with the sentencing court, then the ministerial correction of that sentence did not require his presence. "[W]hen a hearing on remand involves only a ministerial correction and no exercise of discretion, the defendant has no constitutional right to be present." *State v. Ramos*, 171 Wn.2d 46, 48, 246 P.3d 811 (2011). Additionally, a defendant "does not have a right to be present when his ... 'presence would be useless, or the benefit but a shadow.'" *State v. Irby*, 170 Wn.2d 874, 881, 246 P.3d 796

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[3] In her dissent in *Buckman*, 190 Wn.2d at 83, Justice McCloud distinguished what she considered to be a valid claim of prejudice made by Mr. Buckman from that of Mr. Yates, declaring that Mr. Yates' claim of prejudice was "*unrealistic*."

[4] "Specifically, Yates faults the trial court for imposing 20-year determinate sentences for counts one and two." *In re Yates*, 180 Wn.2d at 38.

(2011) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 106-07, 54 S.Ct. 330, 78 L.Ed. 674 (1934)).

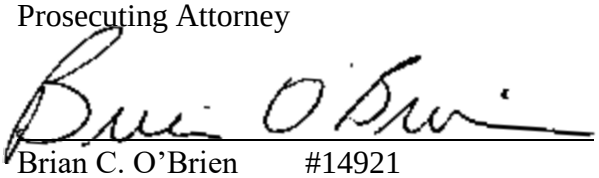
Because the correction involved no exercise of discretion by the trial court, Mr. Yates' presence was not required, and he had no right to be present and allocute.

IV. CONCLUSION

The trial court did not err by following this Court's directive.

Dated this 5 day of October, 2018.

LAWRENCE H. HASKELL
Prosecuting Attorney



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

STATE OF WASHINGTON, Respondent, v. ROBERT L. YATES, Appellant.	NO. 35959-0-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on October 5, 2018, I e-mailed a copy of the name of document in this matter, pursuant to the parties' agreement, to:

Jeffrey Ellis
Jeffreyerwinellis@gmail.com

10/5/2018	Spokane, WA	
(Date)	**(Place)**	**(Signature)**

SPOKANE COUNTY PROSECUTOR

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