

FILED  
Court of Appeals  
Division III  
State of Washington  
4/18/2019 3:29 PM  
NO. 36190-0-III

#361900

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

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STATE OF WASHINGTON,

Respondent,

v.

JUAN ENRIQUEZ-MARTINEZ,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF KLICKITAT COUNTY, STATE OF WASHINGTON  
Superior Court No. 14-1-00084-9

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BRIEF OF RESPONDENT

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### **A. STATEMENT OF RELIEF SOUGHT**

The State of Washington agrees that this case presents no non-frivolous issues. The State accordingly asks this Court to grant Appellate Counsel's Motion to Withdraw and dismiss this appeal.

### **B. POSSIBLE ISSUES**

1. Whether the appeal is without merit and should be dismissed.
2. Whether the court erred in denying the defendant's motion to modify his judgment and sentence.

### **C. STATEMENT OF THE CASE**

For purposes of this response to the motion to withdraw, the state accepts the defendant's statement of the case.

### **D. ARGUMENT**

#### **1. THE APPEAL IS WITHOUT MERIT AND SHOULD BE DISMISSED.**

Counsel for appellant has properly noted there are no meritorious issues presented by this appeal. Accordingly, the motion to withdraw should be granted and the appeal dismissed by the court. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Because this is an Anders brief, no appellate costs should be awarded against the defendant. *State v. Stump*, 185 Wn.2d 454, 374 P.3d 89 (2016).

#### **2. THE COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION TO MODIFY HIS JUDGMENT AND SENTENCE.**

Counsel for appellant has correctly laid out the facts and addressed

the arguments as to whether the trial court erred in denying the defendant's motion to modify the judgment and sentence under CrR 7.8.

Specifically, a decision on a CrR 7.8 motion is reviewed for abuse of discretion. *In re. Pers. Restraint of Cadwallader*, 155 Wn.2d 867, 879-80, 123 P.3d 456 (2005). A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Lee*, 188 Wn.2d 473, 486, 396 P.3d 316 (2017).

RCW 9.94A.505(6) provides:

The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

Pursuant to the statute and caselaw, credit is not allowed for time served on other charges. *In re. Pers. Restraint of Phelan*, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982).

The defendant cannot point to anything in the record which suggests the sentencing court abused its discretion in denying his motion. Credit for time served on this matter was given to the defendant as required by law. Disagreement with a court's decision is not evidence of an abuse of discretion.

#### **E. CONCLUSION**

For the reasons stated, the conviction should be affirmed, the motion to withdraw granted, and the appeal dismissed.

DATED this 18th day of April, 2019.

KLICKITAT COUNTY  
PROSECUTING ATTORNEY, by

  
\_\_\_\_\_  
REBECCA N. SELLS, WSBA #48192  
Deputy Prosecuting Attorney

**KLICKITAT COUNTY PROSECUTOR'S OFFICE**

**April 18, 2019 - 3:29 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
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