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36350-3-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

DEMI R. KVETON, Appellant.

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DIRECT APPEAL  
FROM THE SUPERIOR COURT  
OF WALLA WALLA COUNTY

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RESPONDENT'S BRIEF

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Respectfully submitted:



by: Teresa Chen, WSBA 31762  
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## **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

## **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the revocation of the Appellant's DOSA.

## **III. ISSUES**

1. Where the Defendant appealed from a 2018 revocation hearing, does the court have jurisdiction to review a different decision, i.e. a final 2016 sentencing matter not timely appealed from and voluntarily waived?
2. Does HB 1783 apply retroactively to a judgment entered in 2016 and never appealed from for the reason that a revocation hearing took place which left those challenged provisions untouched?

## **IV. STATEMENT OF THE CASE**

Nine months after the case was commenced, the Defendant Demi Kveton pled guilty to delivering methamphetamine with a school

zone enhancement. CP 15-17, 80-89.

She was sentenced ten days later on October 14, 2016. CP 96-109. At her sentencing hearing, the court imposed the prison-based DOSA which includes 20 months of confinement. CP 102. The court struck a number of fines and fees from her judgment, imposing only \$800 (\$200 criminal filing fee, \$500 victim assessment, \$100 DNA collection fee). CP 99.

Ms. Kveton was advised of her right to appeal. CP 112-13. She did not appeal.

After she was released from incarceration, she tested positive for methamphetamine repeatedly, began to dilute her urine samples to avoid detection, and stopped reporting to the Department of Corrections. CP 117-20, 130-33, 143-46. She asked to go to treatment, and the Department scheduled a bed date for her. CP 132. When interventions failed, the court revoked her DOSA and returned Ms. Kveton to prison on August 30, 2018 – almost two years after her sentencing hearing. CP 147-50.

The Order Revoking Prison DOSA, indicates that Ms. Kveton stipulated to the violations. CP 147. By function of RCW 9.94A.660(7)(c), the court revoked the sentencing alternative and

imposed 44 months. CP 148.

Ms. Kveton filed a notice of appeal. CP 154. The form had a blank for her to fill in her name and the date of the order which she was appealing. *Id.* She indicated that she was seeking review of the order “entered on 8-31-18.” *Id.* An order of indigency was entered. CP 160-61.

## **V. ARGUMENT**

### **A. THE APPEAL MUST BE DISMISSED WHERE THE ISSUES RAISED ARE UNRELATED TO THE ORDER APPEALED FROM.**

The Court of Appeals only has jurisdiction over a claim insofar as the appellant has complied with the filing requirements. *Mackey v. Champlin*, 68 Wn.2d 398, 399, 413 P.2d 340, 341 (1966). An appellant is required to name the decision to be reviewed in a notice of appeal that must be filed within 30 days of the entry of that decision. RAP 5.2(a)(1); RAP 5.3(a)(3).

The Defendant’s notice of appeal requests review of an order which was entered on August 31, 2018. CP 154. There was no order entered on that day. But the Order Revoking Prison DOSA was entered on August 30, 2018. CP 147-50. It is reasonable to understand the Defendant intended to appeal from this order. This is

the correct timing. RAP 5.2(a)(1) (notice of appeal must be filed within 30 days of the order). And this is the order which recently sent her to prison for the balance 44 months.

The Appellant's Opening Brief (AOB), however, makes no argument challenging any act which occurred on August 30, 2018. The brief challenges \$300 in LFO's which were entered over two years ago in an unchallenged judgment and sentence. That document is not properly before this Court. The appeal must be dismissed. *State v. Carter*, 138 Wn. App. 350, 368, 157 P.3d 420, 428 (2007) (holding, by failing to file a notice of appeal designating a ruling for review, the defendant had not properly invoked the court's jurisdiction to review a claim).

The overwhelming weight of authority is to the effect that jurisdiction is conferred upon the appellate court only in the manner provided by statute or court rule, and where there is a failure to comply with the rule providing for perfecting of an appeal, no jurisdiction is conferred.

*In re Yand's Estate*, 23 Wn.2d 831, 835, 162 P.2d 434, 436 (1945).

It is not reasonable to interpret that the Defendant intended to appeal from her judgment and sentence of October 14, 2016. Such an appeal would be 22 months too late. RAP 5.2(a)(1). Ms. Kveton was advised of her right to appeal within 30 days and did not appeal

within 30 days. CP 112-13. She has waived her right to appeal the judgment and sentence. *State v. Devin*, 158 Wn.2d 157, 166, 142 P.3d 599 (2006) (voluntary waiver is demonstrated by the advisement of appeal rights under CrR 7.2).

To entertain the claims in violation of procedural rules is to encourage a practice which weakens the court's own rules.

**B. HB 1783 DOES NOT APPLY RETROACTIVELY TO THE DEFENDANT'S LONG FINAL JUDGMENT.**

Criminal defendants are pushing for courts of appeal to review their judgments following Laws of 2018, ch. 269 (HB 1783). This law has an effective date of June 7, 2018. It applies prospectively only. It applies to cases that are not yet final. *State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714, 723 (2018) (holding defendant was entitled to benefit from the statutory change because his case was not yet final while on appeal as a matter of right). Because Ms. Kveton did not appeal from her judgment and sentence, her date of finality was the date of that judgment in 2016. RCW 10.73.090(3)(a). This law does not apply retroactively to her judgment.

The Defendant argues that her sentence was not just revoked, she was resentenced. AOB at 3, 6. This is not the order and not the

law. The actual order is a mere revocation. The court left the judgment and sentence intact as to all other aspects. CP 148 (“shall remain in effect”).

A DOSA is a like suspended sentence. The court waives imposition of the standard range. RCW 9.94A.660(3). When the DOSA is revoked, that standard range, previously suspended, is then executed.

The court may order the offender to serve a term of total confinement within the standard range of the offender’s current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

RCW 9.94A.660(7)(c). Other terms are not revisited. A sentencing hearing is a criminal proceeding; a revocation hearing is not. *State v. Hand*, 173 Wn. App. 903, 907, 295 P.3d 828, 830 (2013), *aff’d*, 177 Wn.2d 1015, 308 P.3d 588 (2013) (an offender facing revocation has only minimal due process rights). *See also State v. Canfield*, 154 Wn.2d 698, 705, 116 P.3d 391 (2005) (court is not required to solicit allocution at a revocation hearing, because sentencing hearings and revocation hearings “serve different purposes”). The court does reconsider the terms of the judgment or otherwise exercise discretion

other than to impose the standard incarceration term.

To review LFOs in violation of established court rules, laws, and *State v. Ramirez* would be highly costly to the public and confusing to offenders.

There is a procedure available to Ms. Kveton under RCW 10.01.160(4) which is much more cost effective. The courts should push offenders to this procedure rather than encourage the abuse of court rules and court time.

The proper way to challenge the criminal filing fee is by way of a petition to the superior court to remit costs. This procedure is available to any offender at any time “after release from total confinement.” RCW 10.01.160(4). See *also* RCW 10.82.090(2) (an offender may also make a motion to waive any interest “following the offender’s release from total incarceration”). With a simple visit to the clerk’s office, an offender may obtain relief *on several cases at once* without requiring the public expense of attorney hours, judge hours, and courtroom staff. After reviewing the offender’s financial declaration and supporting documentation, the clerk can send the approved motion and order to the prosecutor and judge for perfunctory signature.

**VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court deny the appeal and affirm the revocation.

DATED: April 19, 2019.

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A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED April 19, 2019, Pasco, WA



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