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Division III
State of Washington
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No. 36568-9

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

State of Washington,

Respondent

v.

William J. Wright,

Appellant

Appeal from the Superior Court of Pend Oreille County

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	PAGE NO.
Table of Authorities	iii
I. Introduction	1
II. Assignments of Error	2
III. Statement of the Case	2
IV. Argument	4
1. Did the Court err when it heard the argument of the state in favor of amending the judgement and sentence of a case not on direct appeal?	4
2. Did the Court violate the Defendant's double jeopardy protections?	7
3. Did the Court err when it when it assumed jurisdiction in the matter to impose a new sentence without regard to the considerable time that had passed since the sentence was originally imposed?	9
V. Conclusion	11

TABLE OF AUTHORITIES

WASHINGTON CASES	PAGE NO.
<u>State v. Calle</u> , 125 Wn.2d 769, 888 P.2d 155 (1995)	10
<u>State v. Cyr</u> , 8 Wash. App. 2d 834, 441 P.3d 1238 (2019)	8, 9
<u>State v. Ellis</u> , 76 Wash.App. 391, 884 P.2d 1360 (1994)	5
<u>State v. Florencio</u> , 945 P.2d 228, 88 Wn.App. 254 (1997)	5
<u>State v. Hardesty</u> , 129 Wash.2d 303, 915 P.2d 1080 (1996)	5, 8, 10
<u>State v. Harrison</u> , 148 Wn.2d 550, 61 P.3d 1104 (2003)	5
<u>State v. Rowland</u> , 249 P.3d 635, 160 Wn.App. 316 (2011)	6
<u>State v. Roy</u> , 147 Wn.App. 309, 195 P.3d 967, (Div. 3 2008)	6, 7
<u>State v. Sampson</u> , 82 Wash.2d 663, 513 P.2d 60 (1973)	5
<u>State v. Shove</u> , 113 Wn.2d 83, 87-88, 776 P.2d 132 (1989)	10
<u>State v. Toney</u> , 149 Wn.App. 787, 792, 205 P.3d 944 (2009)	8
<u>State v. Wright</u> , No. 94579-9, Court of Appeals No. 33217-9-III	1
<u>State v. Wright</u> , 33217-9-III	1, 3, 7
FEDERAL CASES	PAGE NO.
<u>United States v. Jones</u> , 722 F.2d 632, 638 (11th Cir.1983)	8
OTHER AUTHORITIES CASES	PAGE NO.
CrR 7.8	3, 4, 5, 6, 7, 8, 9
CrR 7.8(b)	5
RCW 69.50	6, 7

I. INTRODUCTION

The State of Washington charged William J. Wright on October 21, 2013 by information with one count of Possession with Intent to Manufacture or Deliver a Controlled Substance – Methamphetamine, one count of Possession with Intent to Manufacture or Deliver a Controlled Substance – Hydrocodone, and four counts of Possession of a Stolen Vehicle. The matter proceeded to trial on January 20, 2015 in Pend Oreille County Superior Court in front of The Honorable Allen Nielson.

Ultimately, the jury returned a verdict of guilty on Counts I, III, IV, V, and VI. Count II was dismissed pursuant to defense motion at the close of the State's case. RP 698-699, 712. Mr. Wright was sentenced on February 19, 2015 to 120 months of incarceration on all counts, to be served concurrently along with legal financial obligations totaling \$2,950.00, and twelve months of community custody. A timely notice of appeal was filed in Pend Oreille County Superior Court. That appeal was final on October 11, 2017, by Mandate of the Washington Court of Appeals, Division III, due to the Washington Supreme Court denying review on October 4, 2017. State v. Wright, No. 94579-9, Court of Appeals No. 33217-9-III.

Subsequently, Mr. Wright through counsel sought to enforce the judgment and sentence regarding the maximum sentence imposed of 120 months. It was the defendant's request to reduce the community custody term to bring it within the

maximum sentence of 120 months. CP 137. The state, without having filed its own motion for relief and asserting its request solely through opposition to Mr. Wright's PRP, then sought to have the court increase the maximum sentence to 240 months by applying a multiplier not previously applied by the trial court. CP 87-122. The court then, over defense objection, increased the defendant's maximum term to 240 months. Mr. Wright through counsel timely filed this appeal in Pend Oreille Superior Court on January 25, 2019.

II. ASSIGNMENTS OF ERROR and ISSUE STATEMENTS

- 4. Did the Court err when it heard the argument of the state in favor of amending the judgement and sentence of a case not on direct appeal?**
- 5. Did the Court violate the Defendant's double jeopardy protections?**
- 6. Did the Court err when it when it assumed jurisdiction in the matter to impose a new sentence without regard to the considerable time that had passed since the sentence was originally imposed?**

III. STATEMENT OF THE CASE

On January 30, 2015, Mr. Wright stood trial in front of a jury of his peers for possession of controlled substance, methamphetamine with intent to deliver and was found guilty. He was then sentenced on February 5, 2015, to a crime which had a standard range of 60-120 months. He was maxed out at 120 months and given an additional 12 months of community custody creating a de facto

sentence of 132 months, which is above the maximum sentence reflected in the judgment and sentence. (CP 87-122)

On March 15, 2018, Mr. Wright filed a Personal Restraint Petition (hereinafter referred to as “PRP” for brevity), pursuant to CrR 7.8, to enjoin the Department of Corrections from imposing more than the maximum standard range of 120 months. (CP 87-122) This was not a direct appeal of the sentence by the prosecution, who failed to file an appeal in the allotted timeframe. It was not a direct appeal of the sentence by the defendant, who had filed such an appeal in the allotted time frame. See, State v. Wright, 33217-9-III. At the time of the PRP hearing the state argued that it should be free to amend the judgement and sentence because they allege that due to a prior conviction the sentencing range actually doubles in Mr. Wright’s case to 240 months rather than 60-120 months imposed in this case. The sentencing court imposed 120 months plus 12 months community custody, which was within the new standard range. The state cited case law in which a sentencing court amends a judgement and sentence on remand from the Court of Appeals as justification for the court to amend Mr. Wright’s judgement and sentence. The court in ruling on Mr. Wright’s PRP agreed with the state’s analysis of the case law from the Court of Appeals and proceeded to amend the judgment and sentence to reflect a maximum term of allowable standard confinement to 240 months, applying a multiplier not previously used by the sentencing court. Effectively, the court changed the

sentence to impose a doubling provision not imposed previously by the trial court and absent a proper request from the state or the defense to do so.

IV. ARGUMENT

1. The Court erred when it heard the argument of the state in favor of amending the judgement and sentence of a case not on direct appeal.

The sentence imposed upon Mr. Wright of 120 months was a lawful standard range sentence which is not reviewable as a matter of right or subject to discretionary review. Further, neither the State nor Mr. Wright appealed the issue of the length of his sentence and therefore the trial court has no authority to modify it and increase of the maximum term using a doubling provision.

The only issue in front of the court in response to the Personal Restraint Petition filed by the defendant's attorneys on behalf of the defendant pursuant to a CrR 7.8 motion was whether or not to restrain the Department of Corrections from enforcing the sentence beyond that imposed by the trial court, a sentence that was greater than the maximum sentence imposed by the trial court at the time of sentencing. There was proper notice and filing on this matter and it was properly before the court. The matter of amending the judgement to apply a doubling provision to increase the maximum term of confinement was not properly before the court and the court should not have heard it or resented the defendant to a sentence greater than 120 months imposed by the trial court.

A court hearing a 7.8 motion does not have “inherent authority” to resentence a defendant beyond that authority provided by law. State v. Florencio, 945 P.2d 228, 230, 88 Wn.App. 254 (1997)(citing State v. Sampson, 82 Wash.2d 663, 665-67, 513 P.2d 60 (1973)). The authority provided to the courts to revise a sentence flow from CrR 7.8; however, there was not a CrR 7.8 motion before the court that requested relief in the form of increasing Mr. Wright’s maximum sentence. Rather, the Court created that relief *sua sponte*. The standard of review on a CrR 7.8(b) motion is abuse of discretion. See State v. Hardesty, 129 Wash.2d 303, 317, 915 P.2d 1080 (1996); State v. Ellis, 76 Wash.App. 391, 884 P.2d 1360 (1994). Here, the court abused its discretion when it revised Mr. Wright’s sentence without a proper motion before it requesting that specific relief.

Further, the trial court violated the law of the case doctrine by resentencing on convictions previously upheld by an appellate court. The “law of the case doctrine refers to the binding effect that an appellate court's decision has on a trial court's proceedings on remand.” State v. Harrison, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003). Mr. Wright had previously sought review for issues related to the convictions which he was sentenced for, and the appellate court upheld the convictions and did not remand the case for resentencing or with a new judgment. As such, the sentence originally of 120 months imposed by the court should remain unless there existed a legal mechanism for revision. Because only Mr. Wright, not the State, filed a CrR 7.8 motion requesting relief, and the resentence

imposed by the court was not his requested relief, the court violated the law of the case doctrine.

“[O]n remand, a trial court has the choice to review and resentence a defendant under a new judgment and sentence or to simply correct and amend the original judgment and sentence, that choice itself is not an exercise of independent judgment by the trial court.” State v. Rowland, 249 P.3d 635, 640, 160 Wn.App. 316 (2011)(internal citations omitted). Here, Mr. Wright’s case was not before the court on remand from an appellate court. The State provided case law to support the amendment of the judgement and sentence to correct what it saw as an error in the court record, despite not bringing a challenge to the sentence through any of the available appellate mechanisms available to the state prior to Mr. Wright filing his CrR 7.8 motion.

The court, in adopting the State’s arguments, relied upon the holding set forth in State v. Roy, 147 Wn.App. 309, 195 P.3d 967, (Div. 3 2008). There, Roy was sentenced to 112 months confinement and 9-12 months of community custody for violating RCW 69.50. He later filed a CrR 7.8 motion to vacate his judgment and sentence which was unsuccessful. He requested discretionary review and an appellate commissioner allowed the appeal as a matter of right, remanding the case to the sentencing court with a direction to amend the judgment and sentence to reflect a correct maximum sentence of 20 years. The state then asked the sentencing court to amend the judgment and sentence to

reflect the statutory maximum of 20 years, objected to by Roy, with the sentencing court granting the requested relief. Roy appealed.

The main difference between Mr. Wright's case and Mr. Roy's appeal is that in Roy, the appellate court remanded the case back with instructions to modify the sentence, giving authority and jurisdiction to the sentencing court to revise the original proceeding's result. Here, no such remand has occurred and no such authority was given to the sentencing court. Instead, and unlike in Roy, Mr. Wright's appeal on his convictions resulted in a denial of his requested relief but no remand or instructions on his sentence. In fact, the State made no arguments against the original sentence in the appeal and Division III made no mention of it, either. See generally, State v. Wright, 33217-9-III.

2. The Court violated the Defendant's double jeopardy protections.

Mr. Wright sought to remove the 12-month community custody provision of his sentence believing that the addition of the term of community custody exceeded the 120-month statutory maximum sentence for the crimes upon which he was convicted and ultimately sentenced. At the original sentencing, neither the state nor the court raised the issue of the potential for Mr. Wright's maximum sentence to be doubled based upon his previous criminal history pursuant to RCW 69.50, although the state at the CrR 7.8 hearing readily admits that it knew and had placed Mr. Wright on notice of the potential for a doubling of his sentence. CrR 7.8 Hearing, Page 8, Lines 11-15. The sentence was imposed pursuant to the

court's Judgment and Sentence entered on February 19, 2015. (CP 87-122) Mr. Wright was remanded into the custody of the Washington Department of Corrections and has been incarcerated on this sentence since that date.

In State v. Hardesty, 129 Wn.2d 303, 915 P.2d 1080 (1996), our Supreme Court affirmed the holding from United States v. Jones, 722 F.2d 632, 638 (11th Cir.1983), which found that a defendant has an expectation of finality in the sentence once she or he begins to serve it...". (internal citations omitted). Hardesty indicates a potential due process violation as found in other cases when courts have attempted to increase a served sentence unless the defendant was involved in wrongdoing in obtaining the sentence. Hardesty, 129 Wn.2d at 313. Additionally, when a defendant has an expectation of finality in his sentence and the defendant is then resentenced, the double jeopardy clause of the United States Constitution is violated. Id. A resentencing is a new proceeding resulting in an entirely new sentence. State v. Toney, 149 Wn.App. 787, 792, 205 P.3d 944 (2009).

In the time between sentencing and his CrR 7.8 motion, Mr. Wright appealed various issues to Division III of the Washington Court of Appeals, who ultimately rejected his appellate arguments in an unpublished opinion entered on May 2, 2017.

What must be emphasized in this case is that here, unlike the law in State v. Cyr, 8 Wash. App. 2d 834, 441 P.3d 1238 (2019), we have a situation where

there was no direct appeal of the sentence filed by the state. In Cyr, the court was allowed to change the judgement and sentence because the state had itself directly appealed the incorrect sentence immediately following the imposition of the sentence.

Here, the state did not appeal or cross-appeal the sentence within the allotted time, and the defense did not place the issue on direct appeal but rather in a personal restraint petition, pursuant to CrR 7.8. This means that without a direct appeal on the issue, the court was not allowed to amend the judgement and sentence so long after the imposition of the sentence. The state, had it caught the error in the original sentence, could have appealed directly to Division III in a cross-appeal. It was not hidden from them in any way. It was the responsibility of the state to file a direct appeal of the sentence if they felt it was not in conformity with the state of the law, as they now allege.

3. The Court erred when it when it assumed jurisdiction in the matter to impose a new sentence without regard to the considerable time that had passed since the sentence was originally imposed.

The reviewing court at a CrR 7.8 hearing lacked jurisdiction necessary to amend the judgement and sentence in the above captioned matter by doubling the original sentence. The jurisdiction of the court ended at sentencing and can only be renewed by proper procedure. In this case that procedure would have been a direct appeal of the sentence. However, in the absence of a direct appeal by either party, there was no jurisdiction for the court to have acted to increase the original

sentence to 240 months. The court may order DOC where they have exceeded the authority of the Judgment to act in accordance with the sentence imposed.

Trial courts lack authority to resentence a defendant absent a basis for reopening a judgment and a request for resentencing from a party is an insufficient reason to set aside the original judgment. State v. Shove, 113 Wn.2d 83, 87-88, 776 P.2d 132 (1989).

“The double jeopardy clauses of the Fifth Amendment and [article 1, section 9 of the Washington Constitution] protect a defendant against multiple punishments for the same offense.” State v. Calle, 125 Wn.2d 769, 772, 888 P.2d 155 (1995).

The Washington Supreme Court has held that the “analytical touchstone for double jeopardy is the defendant’s legitimate expectation of finality in the sentence, which may be influenced by many factors such as the completion of the sentence, the passage of time, the pendency of an appeal or review of the sentencing determination, or the defendant’s misconduct in obtaining the sentence. State v. Hardesty, 129 Wn.2d 303, 915 P.2d 1080 (1996).

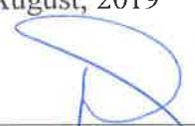
Here, significant time has passed between the entry of the original judgment and sentence and the court’s new order amending it. During the intervening period and with the passage of a significant amount of time, Mr. Wright had a legitimate expectation and a reasonable belief that the sentence was final, indeed, he requested the court to enforce the trial court judgment that 120

months was the maximum sentence. Any amendment of that sentence violates his double jeopardy protections and his expectation.

V. CONCLUSION

The case should properly be remanded with an instruction for the court to strike it's order amending the judgment and sentence and for the original sentence to be re-imposed and the Department of Corrections instructed to enforce the maximum sentence as originally imposed at sentencing of 120 months, by enforcing and imposing either 108 months incarceration and 12 months community custody or 120 months with no community custody to conform with the law as originally sentenced under because the court lacked proper jurisdiction to amend the judgement and sentence to increase the maximum possible term of confinement outside of a direct appeal on the issue. .

Respectfully submitted this 9 day of August, 2019



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

STATE OF WASHINGTON,)
Respondent) Cause No. 365689-III
) Cause No. 13-1-00105-8
v.)
)
WILLIAM WRIGHT,) DECLARATION OF SERVICE
Appellant)
_____)

I, Patricia Snyder, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as a paralegal in the office of Phelps & Associates, PS, served in the manner indicated below, the original of the Appellant's Brief on August 9, 2019.

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Appellate Portal

I further declare that I served in the manner indicated below a true and correct copy of the Appellant's Brief on August 9, 2019.

PEND OREILLE COUNTY PROSECUTOR
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Signed at Spokane, WA on this 9 day of August, 2019.


PATRICIA SNYDER

PHELPS & ASSOCIATES, P.S.

August 09, 2019 - 3:45 PM

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