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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
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DIVISION III #365689

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STATE OF WASHINGTON,

Respondent

v.

WILLIAM J. WRIGHT

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON  
COUNTY OF PEND OREILLE  
The Honorable Judge Patrick Monasmith

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RESPONDENT'S OPENING BRIEF

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## I. INTRODUCTION

Appellant William J. Wright petitioned the trial court to amend his sentence for possession with intent to deliver a controlled substance-methamphetamine. Wright asserted that his sentence of 120 months followed by 12 months of community custody for the class B felony violated Revised Code of Washington (RCW) 9.94A.505(5) and RCW 9.94A.701(9). These two statutes prohibit the combined terms of confinement and community custody from exceeding the statutory maximum for a crime. Wright asked the trial court to “resentence” him to a term that is “allowed by law” and cited Superior Court Criminal Rule (CrR) 7.8 as authority for the court to take the requested action.

The State in response argued that Wright did not need to be resentenced because Wright’s sentence did not exceed the statutory maximum because Wright had previous drug convictions which triggered the doubling provision of RCW 69.50.408. This statute doubles the statutory maximum term of confinement and fines for certain drug offenses when a defendant has prior drug convictions. The State pointed out that the Information filed by the State advised Wright that the maximum term of confinement could be doubled if he had convictions for drug offenses. The State requested that the court simply correct the maximum penalty terms that were incorrectly listed in the judgment and sentence.

The trial court found that Wright had prior drug convictions contemplated by RCW 69.50.408. The trial court signed an order correcting Wright's sentence to reflect that the maximum term of confinement for Wright's conviction for possession with intent to deliver a controlled substance-methamphetamine is twenty (20) years and/or a \$40,000.00 fine. This rendered moot Wright's argument that his sentence was improper. Wright appeals.

## II. ISSUE

**Whether a trial court can correct the maximum term of confinement for a criminal sentence listed in a judgment and sentence under CrR7.8.**

## III. STATEMENT OF THE CASE

On January 22, 2015, a jury found Appellant William J. Wright guilty on one count of possession with intent to deliver a controlled substance-methamphetamine and four counts of possession of a stolen vehicle. CP 206-215. On February 22, 2015, the trial court sentenced Wright to serve 120 months imprisonment and 12 months of community custody for his conviction of possession with intent to deliver a controlled substance-methamphetamine. CP 206-215. The Information filed for the drug charge stated that the maximum sentence for this offense could be up to twenty (20) years imprisonment and/or a fine of not less than \$40,000 if Wright had a prior conviction for a drug offense "relating to narcotic drugs,

marijuana, depressant, stimulant or hallucinogenic drugs.” Report of Proceedings (hereinafter RP) 8; see RCW 69.50.408. Wright had prior convictions for several felony drug charges including possession of a controlled substance-methamphetamine, possession of a controlled substance-psilocybin, and possession of marijuana, more than forty (40) grams prior to his conviction of possession with intent to deliver a controlled substance. CP 217-237.

Wright appealed alleging prosecutorial misconduct and other violations of his constitutional rights. CP 87-122. This Court affirmed the conviction and filed the mandate on October 11, 2017. CP 145-173.

On May 15, 2018, Wright filed with the trial court “Defendant’s Cr.R. 7.8 Motion for Relief” requesting that the court “resentence him to an amount allowed by law.” CP 177-196. Although it is not clear from the record, it is presumed that Wright moved for relief pursuant to CrR 7.8(b). Wright alleged that his sentence of 120 months followed by 12 months of community custody exceeded the statutory maximum of 120 months for the class B felony. CP 177-196.

The trial court heard arguments on Wright’s motion on December 27, 2018. RP 3-12. The court observed that CrR7.8 allows a trial court to correct clerical mistakes in judgments at any time on the court’s own initiative or on the motion of any party. RP 10. The court further observed

that according to the judgment and sentence and the State's filings that Mr. Wright had at least three prior convictions that would trigger the provisions of RCW 69.50.408. RP 11. On December 27, 2018, the trial court signed an order correcting the maximum term of Wright's sentence to twenty (20) years confinement and/or a \$40,000.00 fine. CP 245.

This appeal follows.

#### IV. ARGUMENT

##### **A. The trial court did not err when it corrected a clerical error in the judgment and sentence under CrR7.8.**

A defendant's sentence cannot exceed the statutory maximum term for the class of crime for which the offender was convicted. See RCW 9A.20.021(1); 9.94A.505(5); and 9.94A.701(9). Possession of methamphetamine with intent to deliver is a class B felony which generally carries a statutory maximum term of 10 years, or 120 months. RCW 69.50.401(1); (2)(b). When a person is convicted of a felony offense under chapter 69.50 RCW, as Wright was here, the trial court must also sentence that person to 12 months' community custody. RCW 9.94A.701(3)(c). The terms of confinement and community custody are both included in the calculation of the statutory maximum term, and the combination of the two cannot exceed the statutory maximum. RCW 9.94A.505(5); *State v. Boyd*, 174 Wn.2d 470, 473, 275 P.3d 321 (2012)(A trial court errs when it imposes

a term of confinement plus a term of community custody exceeding the statutory maximum).

Notwithstanding the discussion above, the maximum term of confinement for some drug offenses can be doubled when a defendant has a prior drug conviction, thereby creating a new statutory maximum. RCW 69.50.408 provides that “[a]ny person convicted of a second or subsequent offense under [chapter 69.50 RCW] may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.” RCW 69.50.408(1). An offense is a second or subsequent offense if, “prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.” RCW 69.50.408(2).

In the present case, Wright has prior convictions for felony drug offenses that trigger the doubling provision of RCW 69.50.408. CP 185, 192, 217-237. Wright has two convictions for possession of methamphetamine which is identified as a controlled substance stimulant under RCW 69.50.206(d)(2). CP 217-237. Wright has a conviction for possession of psilocybin, identified as a hallucinogenic controlled substance under RCW 69.50.204(c)(28). CP 217-227. Wright also has a conviction

for felony possession of marijuana. CP 228-237. Each of these convictions would trigger the doubling provision of RCW 69.50.408 on their own. Because Wright has qualifying prior drug convictions, the correct maximum sentence for possession with intent to deliver a controlled substance is 20 years confinement and a fine of \$40,000. RCW 69.50.408(1) and (2). Thus, the trial court's decision to correct the maximum term of confinement pursuant to Wright's motion was proper even though it was not the relief Wright sought or requested.

This Court addressed a similar situation in *State v. Roy*, 147 Wn. App. 309, 195 P.3d 967 (2008). In that case, Roy argued that the trial court erred when it corrected the maximum sentence for his conviction for possessing methamphetamine with intent to deliver to 20 years and/or a \$40,000 fine under the doubling provisions of RCW 69.50.408(1) after the matter was remanded back to the trial court by this Court. *State v. Roy*, 147 Wn. App. 309, 312 (2008). Roy also had prior drug convictions that triggered the application of RCW 69.50.408 and similarly alleged that his sentence of 112 months plus 9 to 12 months of community custody exceeded the 10-year maximum sentence that could be imposed for a class B felony. *Roy*, 147 Wn. App. at 313. Just as Wright has done here, Roy also sought review of his sentence pursuant to a CrR 7.8 motion. *Id.* The Court remanded the matter back to the trial court for amendment of the

maximum term of confinement to 20 years because of Roy's "many prior drug convictions." *Roy*, 147 Wn. App. at 314.

This issue is also addressed in *State v. Cyr*, 8 Wn. App. 2d 834, 441 P.3d 1238 (2019). There, the State appealed Cyr's 60-month sentence for convictions of three counts of the sale of a controlled substance for profit, a violation of RCW 69.50.410(1) and a class C felony. *State v. Cyr*, 8 Wn. App. 2d 834, 835, 441 P.3d 1238 (2019). In its appeal, the State argued the trial court should have doubled Cyr's maximum sentence to ten (10) years and \$20,000 because Cyr had previous convictions under chapter 69.50 RCW. *Cyr*, 8 Wn. App. 2d at 835; see RCW 9.94A.517(1). Cyr countered that the trial court had discretion on whether to double his sentence pursuant to RCW 69.50.408 because of the use of the word "may" in the statute. *State v. Cyr*, 8 Wn. App. 2d at 835. Cyr argued further that his sentence could not be doubled and was capped at five (5) years because RCW 69.50.410(2)(a) required that a person convicted of violating RCW 69.50.410(1) "shall receive a sentence of not more than five years." *State v. Cyr*, 8 Wn. App. 2d at 836.

Division II observed that the plain language of RCW 69.50.408 commands that the doubling of the statutory maximum sentence is automatic and not discretionary. *Cyr*, 8 Wn. App. at 840. The *Cyr* Court further explained that the term "may" used in RCW 69.50.408 means that

the trial court has discretion to impose a sentence equal to the new maximum sentence even though it was obviously not required to do so. *Id.* This was so even though RCW 69.50.410(2)(a) expressly limited the penalty for a violation of RCW 69.50.410(1) to five years. *Cyr*, 8 Wn. App. at 843. The Court also noted that its ruling followed a decision from Division One that held that RCW 69.50.408(1) automatically doubles the maximum sentence and is not discretionary. *Id.* (citing *In re Personal Restraint of Hopkins*, 89 Wn. App. 198, 201, 201-03, 948 P.2d 394 (1997), *rev'd on other grounds*, 137 Wn.2d 897, 976 P.2d 616 (1999)). The Court remanded *Cyr*'s matter back to the trial court with instructions for it to impose a sentence "within the standard range in light of the doubled statutory maximum..." *Cyr*, 8 Wn. App. at 844.

The above-cited cases show that the doubling provision of RCW 69.50.408 automatically applies when a person has the requisite prior drug conviction. Because RCW 69.50.408 applies automatically it is within the trial court's discretion to correct the improperly noted maximum sentence inadvertently entered in the judgment pursuant to CrR7.8. Accordingly, this Court should hold that the trial court properly corrected Wright's sentence to reflect the correct statutory maximum after Wright moved for relief pursuant to CrR 7.8.

**B. There is no double jeopardy violation in this case and the trial court had jurisdiction to correct the judgment pursuant to CrR7.8.**

Wright claims that his 5<sup>th</sup> Amendment right against double jeopardy was violated because he was resentenced by the trial court. This argument fails because the trial court did not resentence Wright. The trial court only corrected the maximum term of punishment the court could impose which the court can do pursuant to CrR7.8. CrR7.8 gives trial courts the discretion to amend judgments to correct language that did not correctly convey the court's intention. *State v. Morales*, 196 Wn. App. 106, 117, 383 P.3d 539 (2016) (citing *Presidential Estates Apt. Assocs. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)). The rule also allows the trial court to supply “language that was inadvertently omitted from the original judgment.” *Id.*

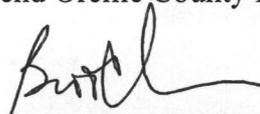
Wright also asserts that the trial court erred when it assumed jurisdiction of this matter. It is important to recall that Wright is the party that moved the trial court for a correction or amendment of his sentence. Wright cited CrR7.8 as the court’s authority for making a correction or amendment to its judgment. Again, CrR7.8 expressly authorizes the trial court to undertake this type of ministerial action. Wright only alleges error by the trial court because he did not get the result from the trial court that he wanted.

## CONCLUSION

Based on the foregoing, the State respectfully requests this Court affirm the ruling of the trial court. The State further requests, pursuant to RCW 10.73.160(1) and Title 14 of the Rules of Appellate Procedure (RAP), that this Court impose appellate costs against Mr. Wright if this Court determines the State substantially prevails in this its review of this matter. The State requests that statutory attorney fees and expenses be ordered as allowed under the statute and rules cited above.

Respectfully submitted the 7<sup>th</sup> day of October, 2019.

DOLLY HUNT  
Pend Oreille County Prosecutor



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