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Division III
State of Washington
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No. 37011-9-III

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

STATE OF WASHINGTON,

Respondent,

v.

MONTY RAY BOCKMAN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

The Honorable Judge Cameron Mitchell

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT.....1

B. ASSIGNMENTS OF ERROR.....1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....2

D. STATEMENT OF THE CASE.....2

E. ARGUMENT.....4

Issue 1: Whether the trial court erred in imposing a condition
of community custody requiring Mr. Bockman to pay supervision
fees as determined by DOC.....4

Issue 2: Whether the Judgment and Sentence contains an error that
should be corrected: the correct offense date should be January 12,
2019.....6

F. CONCLUSION.....7

TABLE OF AUTHORITIES

Washington Supreme Court

In re Postsentence Review of Leach, 161 Wn.2d 180, 163 P.3d 782
(2007)..... 4

State v. Armendariz, 160 Wn.2d 106, 156 P.3d 201 (2007). 4

State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008)..... 4

State v. Ford, 137 Wn.2d 472,
973 P.2d 452 (1999)..... 4

Washington Court of Appeals

State v. Abarca, No. 51673-0-II, 2019 WL 5709517, (Wash. Ct.
App. Nov. 5, 2019) 6

State v. Branch, No. 78379-3-I, 2020 WL 790830 (Wash. Ct. App.
Feb. 18, 2020) 5

State v. Healy, 157 Wn. App. 502, 237 P.3d 360 (2010).....7

State v. Lundstrom, 6 Wn. App. 2d 388, 429 P.3d 1116 (2018)..... 5

State v. Naillieux, 158 Wn. App. 630, 241 P.2d 1280 (2010).....6

State v. O’Cain, 144 Wn. App. 772, 184 P.3d 1262 (2008). 5

State v. Reamer, Nos. 78447-1-I, 78506-1-I, 2019 WL 3416868,
(Wash. Ct. App. July 29, 2019) 6

State v. Taylor, Nos. 51291-2-II, 51301-3-II, 2019 WL 2599184,
(Wash. Ct. App. June 25, 2019)..... 5

Washington Statutes

RCW 9.94A.703(2)(d) 5

RCW 10.01.160(3);..... 5

RCW 10.101.010(3)(a)-(c)..... 5

Washington Court Rules

CrR 7.8(a).....6

A. SUMMARY OF ARGUMENT

Monty Ray Bockman was charged with one count of Possession of a Controlled Substance - methamphetamine, after law enforcement found two glass pipes containing a white substance in his jacket pocket during a search incident to arrest for trespassing.

Mr. Bockman proceeded to trial represented by counsel, and the jury found him guilty as charged. At sentencing, the trial court found Mr. Bockman indigent and waived a criminal filing fee, fine, crime laboratory fee, and DNA fee. The trial court, however, ordered Mr. Bockman to serve 12 months of community custody and to pay supervision fees as directed by Department of Corrections. (“DOC”)

Mr. Bockman now appeals, arguing that the court erred in requiring him to pay supervision fees as determined by DOC as a condition of community custody when he was otherwise found indigent. Mr. Bockman also challenges a scrivener’s error in the Judgment and Sentence.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in imposing a condition of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC.
2. The Judgment and Sentence contains an error that should be corrected: the correct offense date should be January 12, 2019.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether the trial court erred in imposing a condition of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC.

Issue 2: Whether the Judgment and Sentence contains an error that should be corrected: the correct offense date should be January 12, 2019.

D. STATEMENT OF THE CASE

On January 12, 2019, Kennewick Police Officer Craig Hanson observed a truck driven by Monty Ray Bockman exiting a fenced property with an open gate. (RP 67-68).¹ Officer Hanson recognized the truck and knew Mr. Bockman had repeatedly been arrested for trespassing at the location. (RP 68, CP 3).

Mr. Bockman was arrested and searched incident to arrest. (RP 68). Officer Hanson located a zipped bag containing two pipes with white residue in Mr. Bockman's coat pocket. (RP 69). Officer Hanson later sent one of the pipes to the Washington State Patrol ("WSP") Crime Laboratory for testing. (RP 77).

The State charged Mr. Bockman with unlawful Possession of a Controlled Substance as follows:

¹ The Report of Proceedings consists of five volumes: one volume, reported by Renee Munoz, containing a motion hearing heard on April 18, 2019; one volume, reported by Katie Devoir, containing motion hearings from March 14, 2019, May 16, 2019, and August 1, 2019; one volume, reported by Joseph King, containing a motion hearing from April 11, 2019, jury trial from April 22, 2019, and a post-trial hearing from July 3, 2019; one volume, reported by Michelle Giangualano, containing motion hearings from March 28, 2019 and May 2, 2019, and sentencing hearing from August 14, 2019; one volume, reported by Cheryl Pelletier, containing pretrial hearings from February 21, 2019 and June 13, 2019. References to the "RP" herein are to the volume reported by Mr. King. References to "RP2" are to the volume reported by Ms. Giangualano. The remaining volumes are not referenced.

Count I: That the said Monty Ray Bockman in the County of Benton, State of Washington, on or about the 12th day of January, 2019, in violation of RCW 69.50.4013(1), did unlawfully possess a controlled substance, to wit: methamphetamine, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

(CP 1).

The case proceeded to a jury trial and Officer Hanson testified consistent with the above facts. (RP 67-70). Forensic scientist Sonja Jensen testified to testing the substance in the pipe, resulting in a positive result for methamphetamine. (RP 87).

The jury found Mr. Bockman guilty of Possession of a Controlled Substance. (RP 122, CP 178).

After several delays, the case proceeded to sentencing on August 14, 2019. (RP2 5, CP 227-235). The date of offense is listed on the Judgment and Sentence as January 5, 2019. (CP 227). The Court imposed a term of six months confinement and found Mr. Bockman indigent, waiving a criminal filing fee (\$200), a fine (\$2000), a crime lab fee (\$100), and a DNA collection fee (\$100). (RP2 7-8, CP 230-31).

The trial court also imposed a term of 12 months community custody with conditions, including requiring Mr. Bockman to pay supervision fees as determined by DOC. (RP 2 8, CP 230).

Mr. Bockman appealed. (CP 238). An order of indigency was entered for purposes of appeal. (CP 239).

E. ARGUMENT

Issue 1: Whether the trial court erred in imposing a condition of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC.

The trial court erred in imposing a condition of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC, because this fee is a discretionary legal financial obligation (LFO), and the trial court found Mr. Bockman indigent. This condition should be stricken from his judgment and sentence.

Mr. Bockman challenges these community custody conditions for the first time on appeal. (RP2 8, CP 230). Sentencing errors may be raised for the first time on appeal. *See State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (stating that “[i]n the context of sentencing, established case law holds that illegal or erroneous sentences may be challenged for the first time on appeal.”) (*quoting Ford*, 137 Wn.2d at 477).

A trial court may impose a sentence only if it is authorized by statute. *In re Postsentence Review of Leach*, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). Whether the trial court has statutory authority to impose a community custody condition is reviewed de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Where the trial court lacked authority to impose a community custody condition, the appropriate remedy is to remand to strike the condition. *See, e.g., State v. O’Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

The trial court erred in imposing a condition of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC. The community custody supervision fee is a discretionary LFO, because it can be waived by the sentencing court. *State v. Lundstrom*, 6 Wn. App. 2d 388, 396 n.3, 429 P.3d 1116 (2018); *see also* RCW 9.94A.703(2)(d) (allowing the sentencing court to impose, or to waive, a condition of community custody requiring an offender to “[p]ay supervision fees as determined by the department[.]”).

Discretionary LFOs cannot be imposed on a defendant who is indigent at the time of sentencing. *See* RCW 10.01.160(3); *see also* RCW 10.101.010(3)(a)-(c) (defining indigent). Mr. Bockman was found indigent at sentencing. (RP2 7-8, CP 230-31).

Therefore, the condition of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC should be stricken. *See State v. Branch*, No. 78379-3-I, 2020 WL 790830, *13(Wash. Ct. App. Feb. 18, 2020)(holding that because defendant was indigent at time of sentencing and community supervision cost is discretionary, community supervision cost must be stricken);² *see also State v. Taylor*, Nos. 51291-2-II, 51301-3-II, 2019 WL

² GR 14.1(a) authorizes citation to unpublished opinions of the Court of Appeals as nonbinding authority.

2599184, *4 (Wash. Ct. App. June 25, 2019) (holding that because the defendant was found indigent at sentencing, the community custody supervision fee must be stricken under RCW 10.01.160(3)); *see also State v. Reamer*, Nos. 78447-1-I, 78506-1-I, 2019 WL 3416868, *5 (Wash. Ct. App. July 29, 2019) (directing the trial court to strike this condition on remand); *but see State v. Abarca*, No. 51673-0-II, 2019 WL 5709517, *10-11 (Wash. Ct. App. Nov. 5, 2019) (concluding that a community custody supervision assessment is discretionary, but it is not a cost requiring an inquiry into the defendant's ability to pay; nonetheless encouraging the trial court to reconsider the imposition of this assessment on remand).³

Issue 2: Whether the Judgment and Sentence contains an error that should be corrected: the correct offense date should be January 12, 2019.

The Judgment and Sentence reflects the offense date of Mr. Bockman's conviction as January 5, 2019. (CP 227). However, the Information charges the offense date as January 12, 2019, and trial testimony reflect that is the correct date. (CP 1; RP 67). Therefore, this court should remand this case for correction of the judgment and sentence to correct the offense date. *See* CrR 7.8(a) (scrivener's errors in judgments may be corrected at any time); *State v. Naillieux*, 158 Wn. App. 630, 646, 241 P.2d 1280 (2010) (remand appropriate to correct scrivener's error in judgment and sentence, erroneously stating the defendant

³ GR 14.1(a) authorizes citation to unpublished opinions of the Court of Appeals as nonbinding authority.

stipulated to an exceptional sentence); *State v. Healy*, 157 Wn. App. 502, 516, 237 P.3d 360 (2010) (remand appropriate to correct scrivener's error in judgment and sentence, incorrectly stating the terms of confinement imposed).

F. CONCLUSION

The trial court erred by imposing conditions of community custody requiring Mr. Bockman to pay supervision fees as determined by DOC. This condition should be stricken. The Court should also remand to correct the erroneous offense date contained in the Judgment and Sentence.

Respectfully submitted this 2nd day of March, 2020.

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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON) COA No. 37011-9-III
Plaintiff/Respondent)
vs.) Benton Co. No. 19-1-00068-03
)
MONTY RAY BOCKMAN) PROOF OF SERVICE
)
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on March 2, 2020, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

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Having obtained prior permission, I also served a copy on the Respondent at prosecuting@co.benton.wa.us using the Washington State Appellate Courts' Portal.

Dated this 2nd day of March, 2020.



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