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No.61660-9-I

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

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IN RE THE PERSONAL RESTRAINT OF:

JOSEPH ALLEN BENNETT,

Petitioner.

2009 JUN -8 PM 4:52

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON

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SUPPLEMENTAL REPLY BRIEF OF PETITIONER

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A. ARGUMENT

1. BOTH DOC AND THE STATE ARE TIME-BARRED FROM CHALLENGING THE JUDGMENT AND SENTENCE

In his supplemental brief, Mr. Bennett contended the State and the Department of Corrections (DOC) are time-barred from challenging the judgment and sentence in his case. Neither the State nor DOC responded to Mr. Bennett's argument.<sup>1</sup>

As argued, DOC lacks authority to change the terms of a judgment and sentence even if the judgment and sentence is incorrect. *See State v. Broadaway*, 133 Wn.2d 118, 135, 942 P.2d 363 (1997) (DOC is not authorized to change the terms of an erroneous judgment and sentence); *In re the Personal Restraint of Davis*, 67 Wn.App. 1, 8-10, 834 P.2d 92 (1992) (DOC is bound by terms of erroneous judgment and sentence unless and until judgment and sentence amended by court).

DOC's remedies for seeking correction of the judgment and sentence were through the procedures stated in RCW 9.94A.585 and RAP 16.18. Both the court rule and the statute required action

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<sup>1</sup> The State adopted DOC's argument regarding the pretrial credit and seeks remand to correct the sentence without responding to Mr. Bennett's time bar argument. State's Response at 2-5. DOC contends Mr. Bennett is not entitled to credit and, since he will have completed his sentence shortly, the issue is moot, again without responding to the time bar argument. DOC Response at 6-12.

within 90 days after DOC received knowledge of the error. That time has long since passed and both the State and DOC are time-barred from challenging the judgment and sentence.

2. ASSUMING THE CHALLENGE IS NOT TIME-BARRED, THE JUDGMENT AND SENTENCE CONTROLS THE CALCULATION OF MR. BENNETT'S PRETRIAL CREDIT

In the supplemental brief, Mr. Bennett contended that the plain language of paragraph 4.5(b) of the judgment and sentence controlled the calculation of his pretrial credit.<sup>2</sup> In its response, DOC contends this paragraph did not state the actual days of credit, thus it was left to DOC to calculate, thus under the authority cited in its brief, Mr. Bennett is not entitled to the credit for which he seeks. DOC Response at 6-8. DOC's argument should be rejected because it continues to ignore the specific terms of the judgment and sentence.

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<sup>2</sup> Paragraph 4.5(b) states:

The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: *Credit for time served since booking.*

Exhibit 1 to DOC Response Brief at 6 (emphasis added).

DOC's argument is premised on the statutory scheme which authorizes DOC to calculate the amount of pretrial sentencing credit for time served based upon the *jail certification*. DOC Response at 10. But, as argued in the supplemental brief, Mr. Bennett's issue arises not under the jail certification, but under the specific terms of the judgment and sentence. While the judgment did not state the specific days of credit, it was specific about what those days were: "*Credit for time served since booking.*"

DOC also notes that the sentencing court may not authorize credit for more time than authorized by law. DOC Response at 9. While this statement of the law is technically correct, as argued *supra*, DOC fails to cite any authority which authorizes it to challenge a judgment and sentence where it lacks the statutory authority to do so. Mr. Bennett is entitled to the amount of credit stated in the judgment and sentence.

3. THE TRIAL COURT LACKS THE AUTHORITY  
TO *SUA SPONTE* ALTER OR "CORRECT"  
THE JUDGMENT AND SENTENCE

Mr. Bennett contended, in light of the fact DOC and the State were time barred from challenging the judgment and sentence, that the trial court lacked the authority to now "correct" the Judgment and sentence *sua sponte*, citing *January v. Porter*, 75 Wn.2d 768,

773, 453 P.2d 876 (1969). The State claims *January* and *State v. Shove*, 113 Wn.2d 83, 776 P.2d 132 (1989), also cited by Mr. Bennett, do not stand for the proposition that the trial court is divested of authority to modify the judgment and sentence after sentencing. State's Response at 4-5. In fact, a recent case from this Court makes clear Mr. Bennett's reading of those cases is correct and that the trial court is barred from modifying the judgment and sentence following sentencing except in a very limited number of circumstances not present here. *State v. Harkness*, 145 Wn.App. 678, 685-86, 186 P.3d 1182 (2008).

In *Harkness*, the defendant pleaded guilty and received a standard range sentence. Before he began serving the sentence, the defendant moved to withdraw his guilty plea, but argued he did not want to withdraw the *plea* but wanted was a Drug Offender Sentencing Alternative (DOSA) instead of the standard range sentence. *Harkness*, 145 Wn.App. at 681-82. Over the State's objection, the trial court amended the judgment and sentence and imposed a DOSA. *Id.* The State appealed, arguing among other things, the trial court lacked authority to modify or amend the judgment and sentence after sentencing. *Id.* at 684-85. This Court agreed, *citing* the decisions in *January* and *Shove*, for the

proposition that the trial court is divested of any inherent authority to change the judgment and sentence after sentencing. *Harkness*, 145 Wn.App. at 686.

Since the judgment and sentence here is final, the trial court lacks inherent authority to *sua sponte* “correct” the judgment and sentence.

4. SHOULD THIS COURT FIND THE PETITION TECHNICALLY MOOT, MR. BENNETT’S PETITION NEVERTHELESS INVOLVES MATTERS OF CONTINUING AND SUBSTANTIAL PUBLIC INTEREST

Should this Court nonetheless find Mr. Bennett’s’ petition technically moot, this Court should still reach the merits of the petition because the petition involves matters of continuing and substantial public interest. *Dunner v. McLaughlin*, 100 Wn.2d 832, 838, 676 P.2d 444 (1984). In determining whether the petition presents matters of continuing and substantial public interest, this Court considers “(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur.” *Dunner*, 100 Wn.2d at 838. Further, This Court should reach the merits of the appeal regardless of whether Mr. Bennett may have completed his

sentence as it presents a public issue which evades effective review. *Hart v. Department of Social and Health Services*, 111 Wn.2d 445, 759 P.2d 1206 (1988).

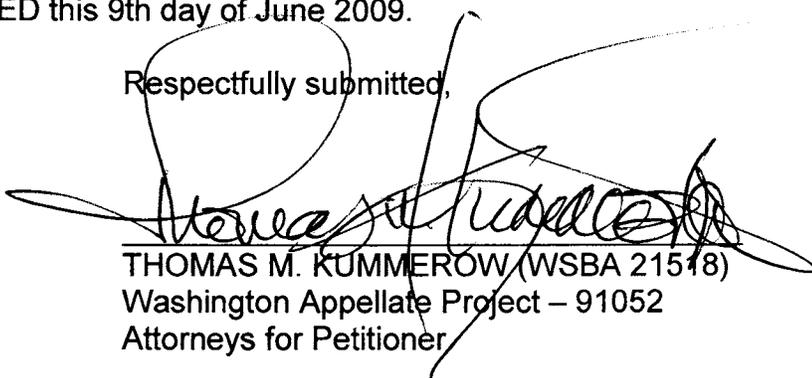
Mr. Bennett's petition raises continuing issues related to the calculation of presentencing credit as well as issues concerning the State's and DOC's authority to move the trial court to correct a judgment and sentence after the time authorized under RCW 9.94A.585 and RAP 16.18.

B. CONCLUSION

For the reasons stated, Mr. Bennett submits this Court must grant his petition and order DOC to credit him for all time served in the Snohomish County Jail from his booking date until sentencing.

DATED this 9th day of June 2009.

Respectfully submitted,



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