

NO. 67123-5-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SHANE WATSON,

Appellant.

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

APPELLANT'S OPENING BRIEF

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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUN 21 PM 4:46

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A. SUMMARY OF ARGUMENT.

Shane Watson was sentenced to the statutory maximum term of confinement for two separate cases and he served those sentences. Watson is indigent, in ill-health, and has not been able to pay legal financial obligations associated with those cases. The trial court ordered Watson arrested and jailed due to his failure to pay legal financial obligations even though his failure to pay was not willful. Because Watson had served the statutory maximum sentences, the court did not have authority to impose further jail sanctions as part of his sentence.

B. ASSIGNMENT OF ERROR.

The court lacked authority to detain Watson in jail for violation of a condition of community supervision when he had already served the statutory maximum term of confinement.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

A person who has served the statutory maximum may not be further confined in jail. Watson was detained in jail and sanctioned for failing to pay legal financial obligations even though his failure to pay was not willful and he had served the statutory maximum sentence. Did the court lack authority to order Watson arrested and

jailed based on allegations that he failed to comply with terms of community supervision?

D. STATEMENT OF THE CASE.

Shane Watson was sentenced to 60 months in prison as punishment for his conviction of felony violation of a no contact order, stemming from cause no. 03-1-02328-5. CP 46. He served the entirety of that sentence in prison. 4/25/11RP 5.

Because the court was imposing the statutory maximum sentence of imprisonment, it did not order that Watson also serve a term of community custody upon his release. CP 47. However, the court ordered that Watson pay mandatory and non-mandatory fees as a condition of his sentence. CP 44. The court ordered Watson to pay \$410 in court costs and \$790 for a court-appointed attorney, in addition to \$600 of mandatory fees, for a total of \$1500. CP 44.

In a separate case, Watson pled guilty to a misdemeanor assault and was sentenced to the statutory maximum term of 365 days in jail. CP77 (Snohomish Co. no. 08-1-02548-3). The court ordered Watson to pay fees in that case as well. CP 78.

Due to his on-going indigence, exacerbated by chronic health problems rendering him disabled, Watson was unable to pay the legal financial obligations. 4/25/11RP 5. The court ordered that

Watson appear in court, or be arrested for failing to appear, due to his failure to pay the legal financial obligations in these two cases.

Watson was arrested and held in jail for 17 days before the court hearing. 4/25/11RP 2. At the hearing, the prosecutor conceded that it had not properly notified Watson of the hearing on his legal financial obligations. 4/25/11RP 4, 6. The court heard Watson's explanation of his poverty, chronic disability, health problems, and lack of financial resources. 4/25/11RP 5-6. The court did not find Watson willfully failed to pay his legal financial obligations. CP 6, 69. Nonetheless, the court imposed a one day jail sentence as penalty for Watson's failure to pay the costs in the 2008 assault case and modified the payment schedule for the 2003 case. CP 7, 70.

E. ARGUMENT.

**The court lacked authority of law to imprison
Watson for violating supervision conditions after
Watson served his statutory maximum sentence**

1. A court's punitive sentencing authority expires once a person has served the statutory maximum.

A trial court lacks authority to impose punishment that exceeds the statutory maximum. Instead, the court's sentencing authority "is limited to that expressly found in the statutes. If the

statutory provisions are not followed, the action of the court is void.” State v. Phelps, 113 Wn.App. 347, 354-55, 57 P.3d 624 (2002) (quoting State v. Theroff, 33 Wn.App. 741, 744, 657 P.2d 800, rev. denied, 99 Wn.2d 1015 (1983)). Not even a defendant himself can “grant the sentencing court authority to punish him more severely than the sentencing statutes allow.” Id. at 357.

The statutory maximum for a class C felony is five years, or 60 months. RCW 9A.20.021(1)(c) states that “no person convicted of a classified felony shall be punished” for a class C felony that exceeds “confinement in a state correctional institution for five years.”

The instant appeal stems from Watson’s conviction for a class C felony for a 2003 offense, for which he was sentenced to 60 months in prison, the statutory maximum. RCW 9A.20.021(1)(c). CP 42, 46. Not only was Watson sentenced to the statutory maximum, he actually served the entire maximum term in prison. 4/25/11RP 3. After he was initially released based on earned release credits, he was returned to prison for the rest of the 60 months due to a community custody violation. Id. Watson similarly was sentenced to the statutory maximum for misdemeanor assault in the 2008 case that is consolidated herein. CP 77.

Because Watson was confined for the maximum permissible term, the court lacked authority to impose conditions of community custody upon his release from prison or impose punishment for his failure to complete conditions of community custody. See State v. Franklin, 172 Wn.2d 831, 842-43, 263 P.3d 585 (2011) (statutory maximum controls length of community custody); see also State v. Brooks, 166 Wn.2d 665, 669, 211 P.3d 1023 (2009) (community custody “may not exceed the statutory maximum”). In both Franklin and Brooks, the Supreme Court explained that neither the court nor the department of corrections may enforce terms of community custody upon an offender who has served the statutory maximum sentence.

The statutory maximum cannot be waived. State v. Reanier, 157 Wn.App. 194, 201, 214, 237 P.3d 299 (2010). When the governing statute “does not authorize confinement any longer,” the State may not use the authority of a criminal prosecution to hold that person. Id. at 204. Having served the maximum term of confinement in both cases, the court lacked authority to hold Watson in jail for allegations he violated a condition of community custody.

2. The court lacked authority to use community custody supervision as a mechanism to enforce outstanding legal financial obligations.

The court accused Watson of violating “community supervision.” CP 12. He was arrested based on the allegation that he had not complied with conditions of community supervision by not paying his legal financial obligations. 4/25/11RP 2; Supp. CP __, sub. no. 431. The court set bail and ordered “[t]he defendant shall be detained in the Snohomish County Jail until such bail is posted.” Supp. CP __, sub. no. 434.¹

A court retains the authority to “enforce” legal financial obligations after community custody expires until the obligation is satisfied. RCW 9.94A.760(4), (10). But it cannot use the enforcement mechanism of community custody after active supervision expired. The department of corrections “may only supervise the offender’s compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community” or the offender remains in prison. RCW 9.94A.760(4).

¹ The court used the identical allegation of a community supervision violation and ordered Watson held in jail in lieu of \$1300 bail for the 2008 misdemeanor case. Supp. CP __, sub. nos. 47, 51.

By statute, penalties for noncompliance with legal financial obligations are “provided in RCW 9.94A.040, 9.94A.737, or 9.94A.740.” RCW 9.94A.760(10). These statutes authorize a court to punish an offender who willfully violates the obligation that he pay financial obligations. But they do not authorize the court to impose additional punishment beyond the statutory maximum.

The statutes also do not give the court authority to arrest a person, impose bail, and threaten jail sanctions when the court lacks authority to punish a person who has served the statutory maximum. The court used its community supervision authority to obtain Watson’s presence in court when it did not have supervision authority. It held Watson in jail and threatened further sanctions for violating supervision when it did not have authority to punish Watson by putting him in jail for violating supervision. It imposed a jail sanction for the 2008 offense even though Watson had been sentenced to serve the statutory maximum in that case.

If the court wants to impose a sanction upon a person who has purposefully failed to pay legal financial obligations, it retains its contempt power. In order for the court to exercise its authority to hold a person in contempt, it must “provide appropriate due process protections.” In re Silva, 166 Wn.2d 133, 141, 206 P.3d

1240 (2009). “When a court imposes a punitive contempt sanction, it must afford a contemnor full criminal due process.” *Id.* (citing RCW 7.21.040). The required due process protections include filing a formal information and proving the allegation at a trial. The court did not proceed under its contempt authority against Watson.

3. The trial court correctly concluded that Watson did not willfully fail to pay his legal financial obligations but still imposed punishment.

The court agreed that Watson had not willfully failed to pay his legal financial obligations for both cause numbers. CP 6, 69. The court imposed a jail sanction on the 2008 case for failing to pay legal financial obligations even though Watson had been sentenced to the statutory maximum and even though it did not find the failure to pay was willful. CP 69. The court lacked authority to issue an arrest warrant, order bail, and impose or threaten jail sanctions under the guise of community supervision. Moreover, given the uncontested non-willful nature of Watson’s failure to pay, which is based on his poverty, the imposition of jail sanctions may not be condoned.

Because the court “closed” the 2008 case after sanctioning Watson for a non-willful failure to pay legal financial obligations, and it did not sanction Watson for failing to pay legal financial

obligations for the 2003 offense, the instant case does not present a clear remedy to grant Watson relief. CP 7, 70. However, the possibility of potential future consequences, such as the effect an issue may have on a future sentencing judge, renders an appeal not moot. Monohan v. Burdman, 84 Wn.2d 922, 925, 530 P.2d 334 (1975).

The petitioner in Monohan challenged the prison's early release calculation but he had been paroled by the time the court reviewed his case. The court found the issue was not moot because the initial decision regarding eligibility for early release could impact future release hearings or even subsequent sentencing determinations in the event he was arrested for another crime. Id. Similarly, the court's decision to modify Watson's sentence but still demand payment for legal financial obligations under the auspices of community supervision is likely to impact future decisions about Watson's failure to pay the court costs he owes.

This Court may review an issue "that is likely to recur, and also is likely to evade review because of the relatively short-lived duration of each case." In re Pers. Restraint of Liptrap, 127 Wn.App. 463, 470, 111 P.3d 1227 (2005). The court agreed that

Watson was unable to pay the financial fees from his court case but still ordered that he pay \$10 per month toward them, even though Watson explained he was disabled, ill, and poor.

Additionally, a court may decide a technically moot case if it involves matters of continuing and substantial public interest.

Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). The court's misuse of its authority over community custody violations, by treating it as a mechanism to arrest, detain, and impose jail sanctions as a punishment for a person who has served the statutory maximum, raises an issue of substantial public importance.

F. CONCLUSION.

For the foregoing reasons, Mr. Watson respectfully requests this Court reverse the order modifying Watson's sentence.

DATED this 31st day of January 2012.

Respectfully submitted,



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Washington Appellate Project (91052)
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67123-5-I
)	
SHANE WATSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF JANUARY, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
|-----|--|-------------------|-------------------------------------|
| [X] | SETH FINE, DPA
SNOHOMISH COUNTY PROSECUTOR'S OFFICE
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EVERETT, WA 98201 | (X)
()
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HAND DELIVERY
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| [X] | SHANE WATSON
BOOKING NO. 2010024116
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EVERETT, WA 98201 | (X)
()
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HAND DELIVERY
_____ |

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STATE OF WASHINGTON
2012 JAN 31 PM 4:46**

SIGNED IN SEATTLE, WASHINGTON, THIS 31ST DAY OF JANUARY, 2012.

X _____ 

WAP

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

DIVISION I
One Union Square
600 University Street
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NOTICE TO APPELLANT RE:
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

Re: Case No. 67123-5
State v. Shane Watson

Dear Appellant:

Your attorney has filed a proof of service indicating that you were mailed a copy of the opening brief in your appeal. If, after reviewing that brief, you believe there are additional grounds for review that were not included in your lawyer's brief, you may list those grounds in a Statement of Additional Grounds for Review. RAP 10.10.

Because the Statement of Additional Grounds for Review is not a brief, there is no required format and you may prepare it by hand. No citations to the record or legal authority are required, but you should sufficiently identify any alleged error so that the appellate court may consider your argument. A copy of the rule is enclosed for your reference.

Your Statement of Additional Grounds for Review must be sent to the Court within 30 days. It will be reviewed by the Court when your appeal is considered on the merits.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

DATE: 2.1.12

Form 7. Statement of Additional Grounds for Review
[Rule 10.10(a)]

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION I**

_____)	
)	
Respondent,)	Court of Appeals Cause No.
)	
v.)	STATEMENT OF ADDITIONAL
)	GROUND FOR REVIEW
_____)	
)	
Appellant.)	

I _____, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground I

Additional Ground II

If there are additional grounds, a brief summary is attached to this statement.

Date: _____

Signature: _____

RULE OF APPELLATE PROCEDURE 10.10
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3(a)(2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.

[December 24, 2002]
