

71046-0

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No. 71046-0-I  
(71047-8-I)

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

RONALD BAKER,

Appellant.

2014 JUN 17 PM 1:14  
COURT OF APPEALS  
DIVISION ONE  
CLERK OF COURT

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

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred when it imposed an incorrect term of community custody.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A sentencing court may only impose a sentence as authorized by the Legislature. RCW 9.94A.701 permits an 18 month term of community custody only for convictions for violent offenses which are not serious violent offenses. Mr. Baker's conviction for third degree assault is not a conviction for a violent offense. Did the trial court err in imposing an 18 month term of community custody?

C. STATEMENT OF THE CASE

Mr. Baker pleaded guilty to a number of charges in two consolidated matters. CP 25-35, 78-87. Among the charges was a charge of third degree assault. CP 78, 88-90. The statement on plea of guilty incorrectly indicated the term of community custody for that charge was 18 months. CP 79. At sentencing the State asked for and the Court imposed an 18 month term. CP 60; 8/19/13 RP 11, 16.

D. ARGUMENT

**The trial court erred in imposing an 18 month term of community custody.**

“A trial court only possesses the power to impose sentences provided by law.” *In re the Personal Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). “The same rule [applies] in cases involving negotiated plea agreements, and [the Supreme Court] has consistently rejected arguments that a defendant must be held to the consequences of a plea agreement to an excessive sentence.” *In re the Personal Restraint of Goodwin*, 146 Wn.2d 861, 869, 50 P.3d 618 (2002).

RCW 9.94A.701(2) provides for an 18 month term of community custody only for a violent offense which is not a serious violent offense. Third degree assault is not a violent offense. RCW 9.94A.030(54). Instead, third degree assault is a crime against person, and thus subject to only a 12 month term of community custody. RCW 9.94A.411(2); RCW 9.94A.701(3)(a). Thus, the court could not impose an 18 month term of community custody. The term of community custody is erroneous.

This Court has previously held a trial court may impose an exceptional term of community custody as a part of an exceptional sentence. *In re Smith*, 139 Wn. App. 600, 605, 161 P.3d 483, 486

(2007). Assuming *Smith* remains good law despite intervening changes in the statutes pertaining to community custody, the challenged term of community custody imposed in this case was not imposed as an exceptional sentence. Mr. Baker's plea does not contemplate or include any aggravating factors. The plea specifically states the trial court must impose a standard range sentence unless there is a "finding of substantial and compelling reasons not to do so." CP 81. No such finding was made.

RCW 9.94A.535(2)(a) permits an exceptional sentence where:

The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

Again, the parties did not enter such a stipulation here nor did the court make the required findings. Instead, it appears simply to be a mistake as the plea form listed "18 months" of community custody as part of the standard range sentence. CP 79. There is no indication the parties or court intended to impose an exceptional sentence.

At sentencing the State represented that the 18 month term of community, as with the remainder of the State's sentencing recommendation, was an agreed recommendation of both parties.

8/19/13 RP 11. It is clear the parties appear to have been mistaken as to the correct term. But in any event:

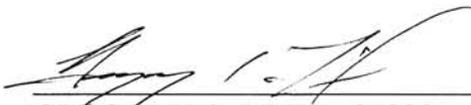
[A] plea bargain cannot exceed statutory authority of the courts: “[i]n other words, the actual sentence imposed pursuant to a plea bargain must be statutorily authorized; a defendant cannot agree to be punished more than the Legislature has allowed for.”

*Goodwin*, 146 Wn.2d at 870-71 (quoting *In re Personal Restraint of Moore*, 116 Wash.2d 30, 38, 803 P.2d 300 (1991)). Whether the 18 month term of community custody was an agreed recommendation or not it was legally erroneous and must be stricken.

E. CONCLUSION

For the reasons set forth above, this Court should reverse Mr. Baker’s sentence.

Respectfully submitted this 16<sup>th</sup> day of July, 2014.

  
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STATE OF WASHINGTON,	)	
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	)	
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Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16<sup>TH</sup> DAY OF JULY, 2014, 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] DAVID CARMAN ISLAND COUNTY PROSECUTOR'S OFFICE P.O. BOX 5000 COUPEVILLE, WA 98239	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] RONALD BAKER RAP HOUSE WORK RELEASE 3704 S YAKIMA TACOMA, WA 98408	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 16<sup>TH</sup> DAY OF JULY, 2014.

X \_\_\_\_\_ 

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