

71836-3

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NO. 71836-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

ANDREW COSBY,

Appellant.

REC'D
SEP 24 2014
King County Prosecutor
Appellate Unit

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

The Honorable Timothy Bradshaw, Judge

FILED
COURT OF APPEALS
DIVISION ONE
SEP 24 2014

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	2
<u>THE SEXUAL ASSAULT PROTECTION ORDERS EXCEED THE MAXIMUM ALLOWABLE TERM.</u>	2
D. <u>CONSLUSION</u>	5

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
<u>In re Postsentence Review of Leach</u> 161 Wn.2d 180, 163 P.3d 782 (2007).....	3
<u>In re Restraint of Schillereff</u> 159 Wn.2d 649, 152 P.3d 345 (2007).....	4
<u>State v. Anderson</u> 132 Wn.2d 203, 937 P.2d 581 (1997).....	4
<u>State v. Armendariz</u> 160 Wn.2d 106, 156 P.3d 201 (2007).....	3
<u>State v. Smith</u> 144 Wn.2d 665, 30 P.3d 1245, 39 P.3d 294 (2001)	3
<u>State v. Swiger</u> 159 Wn.2d 224, 149 P.3d 372 (2006).....	4
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
Laws 2006, ch. 138, § 16.....	3
RCW 7.90.150.....	3, 4, 5
RCW 9.94A.505.....	3
RCW 9A.20.021	4
Sentencing Reform Act.....	3
U.S. Const. amend. XIV	4
Const. art. 1, § 12.....	4

A. ASSIGNMENT OF ERROR

The trial court erred in setting expiration dates of February 21, 2029, for three post-conviction sexual assault protection orders. Supp. CP ___ (sub no. 51, Sexual Assault Protection Order, filed 2/21/14); Supp CP ___ (sub no. 52, Sexual Assault Protection Order, filed 2/21/14); Supp CP ___ (sub no. 53, Sexual Assault Protection Order, filed 2/21/14).

Issue Pertaining to Assignment of Error

The statute authorizing a sexual assault protection order (SAPO) permits the order to remain in effect for only two years following the expiration of the sentence. Did the trial court err by entering SAPOs that exceeded this term?

B. STATEMENT OF THE CASE

On January 27, 2014, appellant Andrew Cosby pleaded guilty in King County Superior Court to three sex offenses (two Class A felonies and one Class B felony), each committed against a different person. CP 13-48; 1RP¹ 3-13. At sentencing on February 21, 2014, the court rejected Cosby's request for a Sex Offender Special Sentencing Alternative and instead imposed concurrent standard range sentences of 120 months of incarceration plus 36 months of community custody for each of the two Class A felony

¹ There are two volumes of verbatim report of proceedings referenced as follows: 1RP - 1/27/14 (guilty plea); and 2RP - 2/21/14 (sentencing).

convictions, and a concurrent 75 months of incarceration plus 36 months of community custody for the Class B felony conviction. CP 52; 2RP 31-34.

The court noted Cosby appeared to have 280 days of credit for times served as of the date of sentencing, but deferred to the jail for an exact accounting. 2RP 34.

The court also entered three Sexual Assault Protection Orders (SAPOs). Supp CP __ (sub no. 51) *supra*; Supp CP __, (sub no. 52) *supra*; Supp CP __ (sub no. 53) *supra*; 2RP 34-35. All three orders list the same expiration date of "2/21/2029", 15 years past the date of sentencing *Id.*

Cosby appeals. CP 61-72.

C. ARGUMENT

THE SEXUAL ASSAULT PROTECTION ORDERS EXCEED
THE MAXIMUM ALLOWABLE TERM.

The trial court erred in setting expiration dates of February 21, 2029, for the SAPOs because that date exceeds the term allowed by statute for the Class A felony convictions by the amount of credit for time served Cosby had accrued by the date of sentencing, and for the Class B felony by the accrued credit for time served plus 3.75 years. This Court should vacate the orders and remand for entry of lawful SAPOs for all three offenses.

A trial court's authority to impose conditions of sentence is limited to the authority provided by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Smith, 144 Wn.2d 665, 673-75, 30 P.3d 1245, 39 P.3d 294 (2001). Because this is a question of law, the reviewing court owes no deference to the trial court's decision. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). The statute authorizing a SAPO provides:

A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

RCW 7.90.150(6)(c) (enacted by Laws 2006, ch. 138, § 16).²

In determining the expiration date of a SAPO, the court must consider not only the duration of the sentence imposed for the relevant offense, but also credit for time served on that offense. See RCW 9.94A.505(6) ("The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.");

² The Sentencing Reform Act independently authorizes no-contact orders, but those are limited in duration to the statutory maximum. Armendariz, 160 Wn.2d at 111-20 (citing RCW 9.94A.505(8)).

In re Restraint of Schillereff, 159 Wn.2d 649, 650, 152 P.3d 345 (2007).³

When applied here, these rules show that for several reasons the trial court erred in setting expiration dates of February 21, 2029, for all three SAPOs because the term set for each order is more than two years from the "expiration of any sentence of imprisonment and subsequent period of . . . conditional release" Cosby faces for the crime of conviction. RCW 7.90.150(6)(c). First, the statutory maximum sentence Cosby faces for his Class B felony conviction is ten years,⁴ and therefore the longest lawful term for a SAPO associated with that offense is twelve years, not the fifteen years that was ordered. Supp CP __ (sub no. 51, *supra*).

Second, Cosby is entitled to approximately 280 days of credit for time served. 2RP 34. At most, then, the statutory maximum for a SAPO associated with his Class B felony should be approximately eleven years and 85 days (twelve year maximum less the 280 days of credit for time served) from the date of sentencing, i.e., an expiration date of approximately May 17, 2025

³ Settled equal protection law also requires credit for time served. U.S. Const. amend. 14; Const. art. 1, § 12; State v. Swiger, 159 Wn.2d 224, 227-29, 149 P.3d 372 (2006); State v. Anderson, 132 Wn.2d 203, 212-13, 937 P.2d 581 (1997).

⁴ The statutory maximum sentence for a Class B felony is ten years. RCW 9A.20.021(1)(b).

Similarly, the statutory maximum term for the SAPOs associated with his Class A felony convictions should be approximately 280 days shorter than was imposed. Supp CP __ (sub no. 52, *supra*); Supp CP __ (sub no. 53, *supra*).

D. CONCLUSION

This Court should vacate all three SAPOs and remand for imposition of orders that comply with RCW 7.90.150(6)(c).

DATED this 24th day of September, 2014.

Respectfully Submitted,
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v.)	COA NO. 71836-3-I
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ANDREW COSBY,)	
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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 24TH DAY OF SEPTEMBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ANDREW COSBY
DOC NO. 372495
COYITE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 24TH DAY OF SEPTEMBER 2014.

X Patrick Mayovsky

2014 SEP 24 AM 11:13
STATE OF WASHINGTON
COURT OF APPEALS DIVISION ONE