

No. 47394-1

(consolidated with 45654-1)

COURT OF APPEALS DIVISION II
IN THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

TIMOTHY J. ROHN, Appellant

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY
THE HONORABLE JUDGE JERRY COSTELLO

BRIEF OF APPELLANT

Marie J. Trombley,
WSBA 41410
PO Box 829
Graham, WA
509.939.3038
Attorney for Timothy Rohn

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR..... 1

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

III. STATEMENT OF FACTS 1

IV. ARGUMENT

The sentencing court did not have the statutory
authority to impose a variable term of community
custody contingent on the amount of earned
early release under RCW 9.94A.701 2

V. CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON CASES

In re Pers. Restraint of Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980) 2
State v. Franklin, 172 Wn.2d 831, 263 P.3d 585 (2011)-----3
State v. Jacobs, 154 Wn.2d 596, 115 P.3d 281 (2005)-----2
State v. Winborne, 167 Wn.App. 320, 273 P.3d 454 (2012)-----3

STATUTES

RCW 9.94A.701(1) (2)-----2

I. ASSIGNMENT OF ERROR

The trial court erred by imposing a variable term of community custody.

II. ISSUE RELATING TO ASSIGNMENT OF ERROR

Did the sentencing court exceed its statutory authority under RCW 9.94A.701 by imposing a variable term of community custody contingent on the amount of earned early release time?

III. STATEMENT OF FACTS

Mr. Rohn was charged and convicted of arson in the first degree, two counts of first-degree malicious mischief, one count of felony harassment, and one count of intimidating a public servant. (CP 197-210). The court imposed the following sentence of community custody:

The defendant shall be on community custody for the longer of:

- (1) The period of early release RCW 9.94A.728(1)92) or
- (2) the period imposed by the court, as follows:
Count I – 12 months for violent offenses.
(CP 204-205).

On August 1, 2014, the court filed an order correcting the judgment and sentence, substituting 18 months for the 12-month

custody term. (CP 259-260). All other terms remained the same.

This appeal followed. (CP 261).

IV. ARGUMENT

The Resentencing Court Exceeded Its Statutory Authority When It Imposed A Variable Term Of Community Custody Contingent On The Amount Of Early Release.

Without conceding any legal arguments presented in the appellant's consolidated case, (Court of Appeals No. 45654-1) Mr. Rohn raises the following argument regarding the corrected sentence.

Whether a sentence is legally erroneous is reviewed *de novo*. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

A trial court only possesses the power to impose sentences provided by law. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). The statute, which authorizes the superior court to impose community custody terms, is RCW 9.94A.701(1)

(2). It provides in part:

A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

Under the SRA, a court may not sentence an offender to a variable term of community custody contingent on the amount of earned release. Rather, it must determine the precise length of community custody at the time of sentencing. *State v. Winborne*, 167 Wn.App. 320, 329-30, 273 P.3d 454 (2012); *State v. Franklin*, 172 Wn.2d 831, 263 P.3d 585 (2011).

Here, the trial court imposed the following sentence of community custody:

- (A) The defendant shall be on community custody for the longer of:
 - (1) the period of early release RCW 9.94A.728(1)(2),
 - or
 - (2) the period imposed by the court as follows:
Count 1 – 18 months for violent offenses. (CP 259-60).

The trial did not have the statutory authority to sentence Mr. Rohn to a variable term of community custody contingent on the amount of early release time. It could only sentence him to a finite period of 18 months. RCW 9.94A.701. Thus, the variable term of community custody imposed by the trial court was improper. The remedy is remand for imposition of a finite term of community custody.

V. CONCLUSION

Based on the foregoing facts and authorities, Mr. Rohn respectfully asks this Court to remand for a corrected sentence.

Respectfully submitted December 29, 2014.

s/Marie Trombley
WSBA 41410
PO Box 829
Graham, WA 98338
509-939-3038
marietrombley@comcast.net

CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on DECEMBER 29, 2014, I served by USPS, first class, postage prepaid a true and correct copy of the Brief of Appellant to:

Timothy Rohn 884653
Washington State Penitentiary
1313 N. 13th Ave
Walla Walla, WA 99362

And by email, per prior agreement between the parties to:

EMAIL: PCPatcecf@co.pierce.wa.us
Kathleen Proctor
Pierce County Prosecutor's Office
930 Tacoma Ave S
Tacoma, WA

Marie Trombley
WSBA 41410
PO Box 829
Graham, WA 98338
509-939-3038
marietrombley@comcast.net

TROMBLEY LAW OFFICE

December 29, 2014 - 9:53 AM

Transmittal Letter

Document Uploaded: 1-473941-Appellant's Brief.pdf

Case Name: State v. Timothy Rohn

Court of Appeals Case Number: 47394-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Marie J Trombley - Email: marietrombley@comcast.net

A copy of this document has been emailed to the following addresses:

PCPatcecf@co.pierce.wa.us