

**NO. 46425-0**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

AZIAS ROSS, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Thomas Felangle, Judge

No. 12-1-03305-8

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**RESPONDENT'S ANSWER TO STATEMENT OF ADDITIONAL GROUNDS**

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**Table of Contents**

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

    1. Should this court remand for correction of the defendant's judgment and sentence as to counts I and XI?..... 1

B. STATEMENT OF THE CASE..... 1

    1. Procedure..... 1

    2. Facts..... 5

C. ARGUMENT..... 6

    1. THIS COURT SHOULD REMAND FOR CORRECTION OF THE DEFENDANT'S JUDGMENT AND SENTENCE AS TO COUNTS I AND XI, BUT THE CORRECTION WILL HAVE NO IMPACT ON THE DEFENDANT'S OVERALL TOTAL CONFINEMENT ..6

D. CONCLUSION..... 7

## **Table of Authorities**

### Rules and Regulations

CrR 7.8.....	4
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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this court remand for correction of the defendant's judgment and sentence as to counts I and XI?

B. STATEMENT OF THE CASE.

1. Procedure

On August 30, 2012, the State charged Soy Oeung, hereinafter referred to as "Defendant Oeung," by information filed in cause number 12-1-03300-7, with one count of conspiracy to commit first degree burglary (count XV), one count of first degree burglary (count XVI), one count of conspiracy to commit first degree robbery (count XVII), two counts of first degree robbery (counts XVIII and XIX), two counts of unlawful imprisonment (counts XX and XXI), and two counts of second degree assault (count XXII and XXIII). CP 1-5<sup>1</sup>. All counts included a firearm sentence enhancement. CP 1-5. Azias Demetrius Ross, Nolan Chamrouen Chouap, Alicia Vanny Ngo, and Azariah Chenas Ross were named as codefendants. CP 1-5.

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<sup>1</sup> The information did not include counts I through XIV; those numbers appear on the information filed in co-defendant Ross's case. *See* CP 1-5, 434-48.

The state charged Azias Demetrius Ross, hereinafter referred to as “Defendant Ross,” the same day by information filed in cause number 12-1-03305-8 with conspiracy to commit first degree burglary in counts I, VIII, and LXII, first degree burglary in counts II, IX, and LXIII, conspiracy to commit first degree robbery in counts III, X, and LXIV, first degree robbery in counts IV, XI, LXV, LXVI, LXVII, LXVIII, unlawful imprisonment in counts V, XII, LXXIII, LXXIV, LXXV, LXXVI, second degree assault in counts VI, LXIX, LXX, LXXI, and LXXII, first degree trafficking in stolen property in count VII, theft of a firearm in counts XIII and XIV, and conspiracy to commit first degree stolen property in count LXXVII. CP 434-48<sup>2</sup>. All counts included a firearm sentence enhancement. CP 434-48. Soy Oeung, Nolan Chamrouen Chouap, Alicia Vanny Ngo, and Azariah Chenas Ross were named as codefendants. CP 434-48.

On December 23, 2013, the State filed an amended information in both cause numbers. CP 75-79, 471-82. The amended information filed in cause number 12-1-0330-7 (pertaining to Defendant Oeung) added a count of conspiracy to commit first degree robbery and/or first degree burglary as count XIV, changed count XV to first degree burglary, changed count

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<sup>2</sup> The information does not include counts XV through LXI. *See* CP 434-448.

XVI to first degree robbery, changed count XVII to first degree robbery, changed count XVIII to second degree assault, changed count XIX to second degree assault, changed count XXII to theft of a firearm, and changed count XXIII to trafficking in stolen property in the first degree. CP 75-79. All counts of the amended information, except the theft of a firearm count, included firearm sentence enhancements. CP 75-79.

The amended information filed in cause number 12-1-03305-8 (pertaining to Defendant Ross) charged conspiracy to commit first degree robbery and/or first degree burglary in counts I, VII, and LIX, first degree burglary in counts II, VIII, and LX, first degree robbery in counts III, IX, LXI, and LXII, second degree assault in counts IV, X, LXIII, LXIV, LXV, and LXVI, unlawful imprisonment in counts V, XI, LXVII, LXVIII, LXIX, and LXX, first degree trafficking in stolen property in counts VI, XIII, and LXXI, and theft of a firearm in count XII. CP 471-82. All counts, except the theft of a firearm count, included firearm or deadly weapon sentence enhancements. CP 471-82.

After submitting questions, RP 2393-2407, 2409-11, CP 132-33, 226-27, 665-71, the jury returned verdicts. RP 2411-22, 2423-41; CP 305-26 (Oeung); CP 672-707 (Ross). The jury found Defendant Ross guilty as charged, except of conspiracy to commit first degree robbery as charged in counts VII and LIX and of conspiracy to commit first degree burglary as

charged in count LIX. RP 2412-18; CP 672-707. It found Defendant Oeung guilty as charged. RP 2418-2422; CP 305-26.

Prior to sentencing on June 23, 2014, the defendants moved to vacate the judgment for insufficient evidence under CrR 7.8, 06/23/14 RP 2-21, and the court denied these motions. 06/23/14 RP 21-22.

The parties also made arguments regarding merger. 06/23/14 RP 23-37. With respect to Defendant Ross, the parties agreed that the conspiracy counts merge into one count with one firearm enhancement, and that the two assault merges with the robbery with one enhancement. 06/23/14 RP 23 -24. *See* CP 739-56. The defendants argued that the robbery and unlawful imprisonment counts merge, and the State contended they did not. 06/23/14 RP 24-37. The court held that, with respect to Ross, only the January robbery and unlawful imprisonment counts merged. 06/23/14 RP 37-38. *See* CP 739-56.

Finally, defendants argued that the burglary, robbery and kidnapping counts were the same criminal conduct, 06/23/14 RP 38-43, but the court found them to be separate conduct. 06/23/14 RP 43. However, the court did find that theft of a firearm and first degree burglary were the same criminal conduct. 06/23/14 RP 43.

The State recommended the low end of the standard ranges plus the firearm sentence enhancements for a total of 507 months in total

confinement. 06/23/14 RP 70-72. The court adopted this recommendation. 06/23/14 RP 75-77; CP 739-56.

With respect to counts I and XI, the two counts at issue in the defendant's statement of additional grounds, the defendant received standard range sentences. CP 739-756. The defendant was also sentenced to firearm sentencing enhancements and community custody on each charge as follows:

Count:	Charge:	Statutory Max:	Confinement:	Firearm Enhancement:	Community Custody:
Count I	Conspiracy to commit burglary in the first degree and robbery in the first degree	Class B felony 10 years (120 months)	96.75 months	36 months	18 months
Count XI	Unlawful imprisonment	Class C felony 5 years (60 months)	43 months	18 months	18 months

CP 739-756.

In total, for count I the defendant was sentenced to 132.75 months plus community custody. For count XI, the defendant received a total sentence of 61 months plus community custody. Both parties submitted briefing to this court. This court then requested that the State respond to issue #3 of the defendant's statement of additional grounds.

## 2. Facts

The statement of facts is contained in the State's response brief and is hereby incorporated by reference.

C. ARGUMENT.

1. THIS COURT SHOULD REMAND FOR CORRECTION OF THE DEFENDANT'S JUDGMENT AND SENTENCE AS TO COUNTS I AND XI, BUT THE CORRECTION WILL HAVE NO IMPACT ON THE DEFENDANT'S OVERALL TOTAL CONFINEMENT.

The defendant is correct that his sentences for counts I and XI should not exceed the statutory maximum sentence for each offense. This court should remand for correction of his judgment and sentence for the trial court to impose 84 months as the period of confinement on count I, with a 36 month firearm sentencing enhancement and no community custody on that count. Imposing an 84 month sentence with a 36 month enhancement would bring him to the statutory maximum of 10 years for that offense.

With respect to count XI, this court should remand for the trial court to impose a 42 month period of confinement with an 18 month firearm sentencing enhancement and no community custody, which would bring that sentence to the statutory maximum of five years for that offense.

It is worth noting, however, that the defendant was also convicted of two counts of robbery in the first degree (counts III and IX), on which the statutory maximum sentence is life. The defendant received sentences of 129 months on each of those counts, plus separate firearm

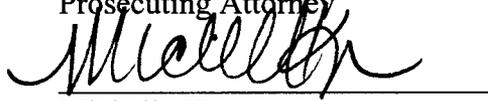
enhancements. All of the defendant's base sentences will run concurrent to the 129 months. Therefore, any adjustments to counts I and XI will not impact the defendant's overall total confinement of 507 months. In the interest of clarity, however, this court should remand for correction of the defendant's judgment and sentence.

D. CONCLUSION.

For the reasons stated in the State's response brief, this court should affirm the defendant's convictions. This court should, however, remand for correction of the defendant's judgment and sentence regarding counts I and XI.

DATED: May 19, 2016.

MARK LINDQUIST  
Pierce County  
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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant ~~and appellant~~ c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5.19.16 Therent Kar  
Date Signature

**PIERCE COUNTY PROSECUTOR**

**May 19, 2016 - 1:22 PM**

**Transmittal Letter**

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**Comments:**

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