

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA REED,

Appellant.

No. 80758-7-I

DIVISION ONE

UNPUBLISHED OPINION

COBURN, J. — Joshua Graham Reed appeals the trial court's November 12, 2019 order amending his judgment and sentence. Reed argues the trial court exceeded its authority under CrR 7.8 by correcting a juridical error rather than a clerical error in his judgment and sentence. Finding no error, we affirm.

FACTS

In 2016, Reed raped then five-year-old P.T. The State charged Reed with rape of a child in the first degree, child molestation in the first degree, and tampering with a witness. Reed waived his right to a trial by jury, and the matter proceeded to a bench trial. The trial court found Reed guilty as charged.

In October 2017, during the sentencing hearing, the State recommended and the trial court imposed, a sentence of 171 months to life for rape of a child in the first degree, 96 months to life for child molestation in the first degree, and

Citations and pin cites are based on the Westlaw online version of the cited material.

12 months for tampering with a witness. The State also recommended, and the trial court imposed, 36-month terms of community custody for the convictions of rape of a child in the first degree and child molestation in the first degree.

Two years later, in November 2019, the State moved to amend the judgment and sentence under CrR 7.8. The State recognized that it mistakenly recommended the terms of community custody be 36 months. It argued that, under RCW 9.94A.507(5), the trial court should have imposed “a term of community custody ‘for any period of time the person is released from total confinement before the expiration of the maximum sentence.’ ” In the alternative, the State argued the sentence was erroneous and the trial court had a duty to correct the erroneous sentence upon its discovery.

Reed opposed the State’s motion. Reed argued that because the error was judicial rather than clerical, the trial court could not amend the judgment and sentence under CrR 7.8. Reed also argued the State’s proper remedy was to file an appeal, which it did not do.

Following a hearing on the matter, the trial court determined,

I don’t think that I could legitimately argue that this was a clerical error. Clearly, in the colloquy I had with Mr. Reed when I sentenced him, it was clear I said 36 months, and was going based on the paperwork that was filed by the state. But I do think that based on what the statute requires, it would be similar to the Court entering a suspended sentence or something that is prohibited by the law. Thirty-six months is under what Mr. Reed was convicted of. It’s an unlawful sentence, . . . so the Court is going to amend in accordance with what’s required by the statute.

The trial court amended the judgment and sentence to require Reed serve community custody for life for rape of a child in the first degree and for child molestation in the first degree.

Reed appeals the order amending the judgment and sentence.

DISCUSSION

Reed argues that because the trial court's error was a judicial error, the trial court could not correct the error by amending the judgment and sentence under CrR 7.8. We disagree.

We review a trial court's ruling on a CrR 7.8 motion for abuse of discretion. State v. Crawford, 164 Wn. App. 617, 621, 367 P.3d 365 (2011). A trial court abuses its discretion when it erroneously applies the law or bases its decision on untenable grounds or reasons. Id. at 621; State v. Zavala-Reynoso, 127 Wn. App. 119, 122, 110 P.3d 827 (2005). Determining whether a trial court exceeded its statutory authority is a question of law that we review de novo. Crawford, 164 Wn. App. at 622.

Trial courts may only impose a sentence authorized by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Smissaert, 103 Wn.2d 636, 639, 694 P.2d 654 (1985) (recognizing, "sentencing provisions outside the authority of the trial court are 'illegal' or 'invalid.' "). Here, the trial court acknowledged it made a judicial error when it imposed a facially invalid sentence of 36 months of community custody instead of sentencing Reed to a lifetime of community custody.

RCW 9.94A.507(1)(a)(i) governs convictions of rape of a child in the first degree and child molestation in the first degree. RCW 9.94A.507(5) provides,

When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

Because Reed's sentence for rape of a child in the first degree is 171 months to life and his sentence for child molestation in the first degree is 96 months to life, his maximum sentence is life. The trial court was correct when it determined it imposed a facially invalid sentence that was not in accordance with RCW 9.94A.507(5).

CrR 7.8(b)(4) provides, if a party files a motion for relief from judgment, the trial court may grant relief if "[t]he judgment is void." In other words, "[a] court has jurisdiction to amend a judgment to correct an erroneous sentence, where justice requires, under CrR 7.8." State v. Hardesty, 129 Wn.2d 303, 315, 915 P.2d 1080 (1996). Here, the judgment was void. After the State alerted the trial court to the mistake, the trial court held a hearing on the matter. The trial court did not abuse its discretion in amending the judgment and sentence to correct that error.

Reed argues the trial court's error was a judicial error rather than a clerical error,¹ so it could not be corrected under CrR 7.8(a) and was time-barred under CrR 7.8(b)(1). CrR 7.8(a) provides,

¹ "Clerical errors are those that do not embody the trial court's intention as expressed in the trial record. These errors allow for amended judgments to

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

As we previously discussed, the trial court admitted it made a judicial error rather than a clerical error. So, CrR 7.8(a) does not apply. Likewise, CrR 7.8(b)(1) does not apply. CrR 7.8(b)(1) allows the trial court to provide relief from a final judgment or order for “[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order” as long as the motion for relief is filed no more than one year after the judgment. Because the trial court’s original imposition of community custody was void, the trial court properly amended the judgment and sentence under CrR 7.8(b)(4), which is not subject to CrR 7.8(b)(1)’s one-year time bar.

Reed cites State v. Morales for the proposition that, “Errors that are not clerical are characterized as judicial errors, and trial courts may not amend a judgment under CrR 7.8 for judicial errors.” (citing State v. Morales, 196 Wn. App. 106, 118, 383 P.3d 539 (2016) (citing State v. Davis, 160 Wn. App. 471, 478, 248 P.3d 121 (2011))). Reed’s reliance on Morales is misplaced. In Morales, the jury mistakenly convicted the defendant of child molestation in the second degree rather than in the first degree, and the trial court sentenced the

correct language that did not correctly convey the court’s intention or ‘supply language that was inadvertently omitted from the original judgment.’ ” Morales, 196 Wn. App. at 117 (quoting Presidential Estates Apt. Assocs. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)).

defendant on the more serious crime rather than the one of which the jury had convicted him. 196 Wn. App. at 114-15. This court determined CrR 7.8 did not provide the trial court with authority to make material alterations to the jury verdict. Id. at 116, 121. Instead, this court determined CrR 7.8 permits the trial court to only amend or correct clerical errors in the verdict, and the trial court exceeded its authority by amending the verdict and sentencing the defendant to a more serious crime. Id. at 115-17. There, the judicial error violated the defendant's right to a jury trial. Id. at 117. Here, no jury verdict was altered and Reed was not sentenced to a more serious crime. Instead, the trial court amended the imposition of community custody to correct a facially invalid judgment and sentence by bringing it into conformity with the statutory requirement.

The State analogizes this case to Smissaert. In Smissaert, the trial court mistakenly sentenced the defendant to a maximum term of 20 years in prison for the crime of murder in the first degree, but the trial court was statutorily required to impose a life sentence. 103 Wn.2d at 638. Two years after imposing the sentence, the Board of Prison Terms and Parole notified the trial court of its mistake. Id. The trial court corrected the mistake by amending the judgment and sentence to impose life imprisonment nunc pro tunc.² Id. Our Supreme Court determined an increased sentence should be imposed on a defendant to correct a judicial error. Id. at 640. It recognized that to correct the error, the trial court


² A nunc pro tunc order has a retroactive effect. See Nunc Pro Tunc, BLACK'S LAW DICTIONARY (11th ed. 2019).

must amend the judgment and sentence, although it should not be amended nunc pro tunc. Id. at 640, 644. Reed argues Smissaert is inapplicable because it did not involve a CrR 7.8 motion. While this case does not involve a nunc pro tunc amendment, Smissaert is informative. Here, when the State filed its motion to amend the judgment and sentence, it alerted the trial court to its error. After a hearing on the matter, the trial court amended the judgment and sentence in conformity with the statutory requirement.

In Zavala-Reynoso, Division Three of this court determined the defendant's claim that the trial court miscalculated their offender score based on alleged mistakes was time-barred under CrR 7.8(b)(1). 127 Wn. App. at 123-24. However, it determined the defendant's claim that their community custody sentence exceeded the maximum term was not time-barred under CrR 7.8(b)(4) because the sentence was facially invalid and void for exceeding the statutory maximum under RCW 9.94A.505(5). Id. at 123-24. Thus, the defendant's CrR 7.8 motion was not time-barred. Id. at 124. Like in Zavala-Reynoso, here, the State's motion was not time-barred because it sought to correct a facially invalid sentence for community custody.

Because the original imposition of community custody was facially invalid, the trial court did not abuse its discretion in granting the State's motion to amend

the judgment and sentence and in imposing community custody for life. We affirm.



WE CONCUR:

