

December 5, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Matter of the
Personal Restraint Petition of

ANTHONY FLOYD JOHNSON

No. 50461-8-II

UNPUBLISHED OPINION

SUTTON, J. — Anthony Johnson seeks relief from personal restraint resulting from his 2013 plea of guilty to second degree assault (count I), second degree burglary (count II), unlawful possession of methamphetamine with intent to deliver (count III), and first degree unlawful possession of a firearm (count IV). The trial court imposed the following concurrent terms of confinement: 84 months on count I, 68 months on count II, 116 months on count III, and 116 months on count IV. It also imposed the following terms of community custody: 18 months on count I and 12 months on count III. He now argues that the combination of his 18-month term of community custody and his 116-month term of confinement exceeds the statutory maximum punishment for his crimes, which is 120 months, such that his judgment and sentence violates RCW 9.94A.505(5). The State responds that because the 18-month term of community custody was imposed as to count I, where the trial court imposed only an 84-month term of confinement, the combination of the term of community custody and the term of confinement does not exceed

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the statutory maximum punishment for that count. But because of the concurrent nature of Johnson's sentences, he would not begin serving his 18-month term of community custody until released from his 116-month term of confinement and so might serve a punishment greater than the 120-month statutory maximum punishment. And as to count III, the combination of his 12-month term of community custody and his 116-month term of confinement exceeds the 120-month statutory maximum punishment for that count.

Johnson's judgment and sentence is facially invalid, exempting it from RCW 10.73.090(1)'s one-year time bar on petitions. We remand Johnson's judgment and sentence to the trial court for correction by reducing his terms of community custody to four months under RCW 9.94A.701(9).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


SUTTON, J.

We concur:


JOHANSON, J.


MAXA, A.C.J.