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NO. 65969-3-I

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

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STATE OF WASHINGTON,

Respondent,

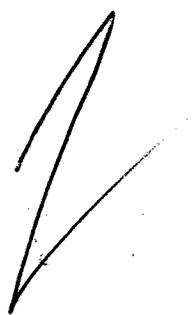
v.

CHRISTOPHER MAZDRA,

Appellant.

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

The Honorable Vickie I. Churchill, Judge

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SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. The court erred when it denied appellant credit for time served on community custody prior to revocation of his suspended sentence.

2. The court erred in revoking appellant's suspended sentence based on violations that were alleged after his combined confinement and community custody had already exceeded the statutory maximum for his offense.

3. The court erred in imposing additional confinement upon revocation of appellant's suspended sentence when his combined community custody and confinement already exceeded the statutory maximum.

Issue Pertaining to Assignments of Error

Did the trial court err when it denied appellant credit for the time he spent on community custody prior to revocation of his Special Sex Offender Sentencing Alternative (SSOSA) where appellant spent nine months in custody leading up to trial, nine months in custody as a condition of his suspended sentence, and then nearly five years on community custody when the statutory maximum for his offense is five years?

B. STATEMENT OF THE CASE

Appellant Christopher Mazdra was arrested for third degree rape of a child on August 3, 2005. From that date forward he was at all times either in

custody or on community custody. 2RP 36; CP 89. On August 19, 2010, the court revoked his suspended sentence, awarding him credit for time served only in confinement before his original sentencing. CP 8. He was not credited for the nearly five years he spent on community custody. Id.

C. ARGUMENT

THE COURT'S FAILURE TO AWARD CREDIT FOR TIME SERVED RESULTS IN AN UNAUTHORIZED SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM.

Under the SSOSA statute, a trial court may suspend execution of the sentence and impose instead a term of community custody and require the offender to comply with conditions. Former RCW 9.94A.670 (2005).<sup>1</sup> That

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<sup>1</sup> Former RCW 9.94A.670 (2005), in effect when Mazdra's offense was committed, applies to this case. It provides in relevant part:

(4) If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall order the offender to serve a term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. . . .

(b) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(c) The court shall order treatment for any period up to five years in duration.

. . .

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence,

is what the court did in Mazdra's case. On May 18, 2006, his 53-month standard range sentence was suspended on condition that he serve 9 months actual confinement, abide by conditions of community custody and engage in treatment. CP 80, 89, 95, 98. As of that date, Mazdra had already been incarcerated since his arrest nine months before, so he was released to begin serving 60 months of community custody. Id.; 2RP 36. The statutory maximum sentence for Mazdra's offense, a class C felony, is five years. RCW 9A.20.021; RCW 9A.44.079. Thus, the maximum time he could serve, with community custody and confinement combined cannot exceed five years. State v. Zavala-Reynoso, 127 Wn. App. 119, 124, 110 P.3d 827 (2005); State v. Sloan, 121 Wn. App. 220, 223-24, 87 P.3d 1214 (2004). Mazdra has been either in confinement or on community custody since August 3, 2005. 2RP 36; CP 89. Therefore, he had already served the statutory maximum for his offense by August 3, 2010.

This being the case, the court had no authority to revoke his suspended sentence based partly on community custody violations that were not alleged until August 12, 2010. See CP 7-8 (order revoking SSOSA

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or (b) the court finds that the offender is failing to make satisfactory progress in treatment.

Former RCW 9.94A.670 (2005). The current statute is substantially the same. See RCW 9.94A.670.

based on sexual relationship without prior approval); CP 10-11 (notice of violation regarding sexual relationship dated August 12, 2010).

But even if these violations were validly considered, the court had no authority to impose additional confinement time when Mazdra already served the statutory maximum for his offense. A trial court may impose a sentence only as authorized by statute. See, e.g., In re Pers. Restraint of Tobin, 165 Wn.2d 172, 175, 196 P.3d 670 (2008). And the court cannot impose a term of community custody and confinement that, when combined, exceeds the statutory maximum. RCW 9.94A.505(5); RCW 9.94A.701(9).<sup>2</sup>

Nothing in the Sentencing Reform Act of 1981 (SRA) directs a court not to award credit for time served on community custody when a SSOSA is revoked.<sup>3</sup> And the SRA specifically forbids a term of community custody and confinement that exceeds the statutory maximum for the offense. RCW 9.94A.505(5); RCW 9.94A.701(9). The trial court here exceeded its authority when it revoked Mazdra's SSOSA based on violations alleged after

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<sup>2</sup> RCW 9.94A.505(5) provides, "Except as provided under RCW 9.94A.750(4) and 9.94A.753 (4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW." RCW 9.94A.701(9) provides, "(9) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021."

<sup>3</sup> The SSOSA statute provides, "All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked." RCW 9.94A.670(11).

he had already served the statutory maximum for his offense and when it imposed additional confinement time. If Mazdra does not receive credit for the time he spent on community custody, his total sentence of combined community custody and confinement will far exceed (and indeed already has exceeded) the five year statutory maximum.

D. CONCLUSION

Mazdra has already spent five years and eight months either confined or on community custody. The statutory maximum for his offense is five years. The trial court has no authority to order him community custody or confinement beyond that time. Mazdra requests this Court reverse the order revoking his suspended sentence and remand this case with direction that he be released based on credit for time served.

DATED this 8<sup>th</sup> day of April, 2011.

Respectfully submitted,

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STATE OF WASHINGTON	)	
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Respondent,	)	
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vs.	)	COA NO. 65969-3-1
	)	
CHRISTOPHER MAZDRA,	)	
	)	
Appellant.	)	

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**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 8<sup>TH</sup> DAY OF APRIL, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] ISLAND COUNTY PROSECUTING ATTORNEY  
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- [X] CHRISTOPHER MAZDRA  
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MONROE CORRECTIONAL COMPLEX  
P.O. BOX 777  
MONROE, WA 98272

**SIGNED** IN SEATTLE WASHINGTON, THIS 8<sup>TH</sup> DAY OF APRIL, 2011.

x Patrick Mayovsky