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NO. 66048-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,  
Respondent,  
v.  
PHILLIP PARKHURST,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE TIMOTHY BRADSHAW

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**BRIEF OF RESPONDENT**

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A. ISSUE

1. Whether the judgment and sentence correctly reflects the sentence imposed by the trial court, such that remand for clarification is unnecessary.

B. STATEMENT OF THE CASE

Defendant Phillip Parkhurst was charged by amended information with Burglary in the Second Degree and Theft in the Second Degree.<sup>1</sup> CP 1-10. A jury found him not guilty of burglary or theft, but guilty of the lesser included crime of Criminal Trespass in the First Degree. CP 69-72.

At sentencing, the State asked the court to impose a sentence of 12 months, with all but 30 days suspended, and a 24-month term of probation. RP<sup>2</sup> 1013-14, 1025-26. The trial court imposed a suspended sentence, but departed from the State's recommendation on the issue of probation: "As far as the length of

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<sup>1</sup> Count II, Theft in the First Degree, was added by amendment, and subsequently amended to Theft in the Second Degree. CP 1, 5, 9.

<sup>2</sup> The verbatim report of proceedings consists of six consecutively-paginated volumes, and will be referred to in this brief simply as "RP."

probation, I think 12 months is sufficient rather than the request for the 24." RP 1027, 1028.

The judgment and sentence reflects a sentence of 12 months, with that term suspended on condition that Parkhurst serve two days of confinement. CP 73. The paragraph imposing probation, with a blank space to fill in the number of months of probation imposed, is crossed out. CP 74.

C. ARGUMENT

1. THE JUDGMENT AND SENTENCE CORRECTLY REFLECTS THE SENTENCE IMPOSED BY THE TRIAL COURT.

Parkhurst contends that the judgment and sentence is unclear as to the term of probation. He urges this Court to remand the case for the trial court to "clarify" that the term of probation is 12 months, and not 24. Parkhurst's concern is unfounded. The judgment and sentence limits the trial court's jurisdiction to 12 months, and expressly excludes any term of supervised probation.

The judgment and sentence at issue introduces the sentencing portion of the document with the following: "IT IS ORDERED pursuant to RCW 9.95.200 and 9.95.210 that: . . ."

CP 73. This is followed by the options of deferring or suspending the sentence. Id. The sentence is deferred or suspended "upon the following terms and conditions: . . ." Id. Paragraph (1) sets out the term of confinement. Id. Paragraph (2) sets out the length of probation. CP 74. Paragraph (2) is completely crossed out, with nothing written in the blank for the number of months of probation imposed. Id.

Parkhurst nevertheless argues that the judgment and sentence is "insufficiently specific" as to the period of probation, and must be clarified. He relies on the references to RCW 9.95.200 and 9.95.210 in the first line of the sentencing portion of the judgment and sentence.

The two statutes at issue relate to probation. RCW 9.95.200 provides that, upon conviction, the court "may summarily grant or deny probation." RCW 9.95.210 provides that, "[i]n granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer."

The imposition of probation is thus discretionary with the court. RCW 9.95.200. On Parkhurst's judgment and sentence, the paragraph imposing probation is completely crossed out. This leaves the court with only 12 months of jurisdiction over Parkhurst, under the suspended sentence. There is no possibility that he can receive 24 months of probation based on this judgment and sentence.

Parkhurst is correct that, if the judgment and sentence were insufficiently specific as to the term of probation, this Court would have a duty to see that the term was made specific. See State v. Nelson, 100 Wn. App. 226, 228 n.3, 996 P.2d 651 (2000) (appellate court has duty to rectify insufficiently specific period of community placement whenever the deficiency is discovered). But there is no deficiency here. No probation was imposed. The judgment and sentence gives the trial court a maximum of 12 months of jurisdiction in this case. See State v. Robinson, 142 Wn. App. 649, 652, 175 P.3d 1136 (2008) (termination date for suspended sentence must be no later than the date the original sentence would have lapsed).

D. CONCLUSION

The judgment and sentence contains no term of probation, and there is no possibility that the trial court could exercise jurisdiction over this case for more than 12 months. There is no need for clarification, and this Court should reject Parkhurst's request to remand his case to the trial court.

DATED this 27<sup>th</sup> day of May, 2011.

Respectfully submitted,

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