

66129-9

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NO. 66129-9-1

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

STATE OF WASHINGTON,

Respondent,

v.

JASON BUTCHER,

Appellant.

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

The Honorable Gerald L. Knight, Judge

BRIEF OF APPELLANT

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Attorney for Appellant

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A. ASSIGNMENT OF ERROR

The sentencing court erred by identifying the “date of crime” in the judgment and sentence as “77-102 months.” CP 3.

Issue Related to Assignment of Error

Should this Court remand for correction of the offense date where the sentencing court identified the “date of crime” as “77-102 months”? CP 3.

B. STATEMENT OF THE CASE

On August 18, 2010, the Snohomish County prosecutor charged appellant Jason Butcher with first degree incest. The charge alleged the offense occurred “on or about the 15th day of September, 2009 through the 16th day of September, 2009.” CP 61.

That same day Butcher entered an Alford plea to the amended charge. CP 44-60. The plea allowed the court to review the affidavit of probable cause to establish a factual basis for the plea. CP 50. That affidavit asserted the offense occurred on or about September 15-16, 2009. CP 77.

The trial court entered the judgment and sentence on October 8, 2010. The judgment erroneously identifies the “date of crime” as “77-102 months.” CP 3. This appeal timely follows.

C. ARGUMENT

THE COURT MISIDENTIFIED THE DATE OF OFFENSE.

The offense occurred on or about September 15-16, 2009. CP 50, 77. When imposing a sentence under Washington's Sentencing Reform Act (SRA), the court's authority is limited to that granted by statutes in effect at the time the offense was committed. RCW 9.94A.345; In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Smith, 144 Wn.2d 665, 673-75, 30 P.3d 1245, 39 P.3d 294 (2001). Because this is a question of law, a reviewing court owes no deference to the trial court's decision. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Although the SRA does not expressly instruct a trial court to correctly identify the offense date, this is an implicit prerequisite to every lawful sentence. A court must impose sentence as provided in the SRA. RCW 9.94A.505(1). The offense date determines the applicable sentencing provisions. RCW 9.94A.345.¹ The offense date also allows the calculation of criminal history by including only "prior" offenses and determining which offenses "wash out." RCW

¹ This matters because the Legislature often amends the SRA. See, e.g., In re Restraint of LaChapelle, 153 Wn.2d 1, 7 n.4, 100 P. 3d 805 (2004) (noting 181 amendments to the SRA through the 2004 legislative session).

9.94A.525. Accurately identifying the offense date prevents violations of the state and federal ex post facto clauses. U.S. Const. art. I § 10; Wash. Const. art. I, § 23; see e.g., State v. Madsen, 153 Wn. App. 471, 228 P.3d 24 (2009) (application of statute enacted after the date of offense was prohibited by ex post facto clauses where statute increased punishment to offender's disadvantage), rev. denied, 168 Wn.2d 1034 (2010).

For these reasons, this Court should remand to direct the trial court to correct the erroneous offense date in the judgment and sentence.² See, e.g., State v. Moten, 95 Wn. App. 927, 929, 935, 976 P.2d 1286 (1999) (remand to correct scrivener's error referring to wrong statute on judgment and sentence form); State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997) (court has the authority to correct an erroneous sentence).

² Butcher's counsel is familiar with Division Three's suggestion that some errors in a judgment and sentence might be more efficiently corrected by motion in the trial court. State v. Rowland, 97 Wn. App. 301, 305-06, 983 P.2d 696 (1999). However, counsel is also familiar with Anders v. California, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967) and State v. Hairston, 133 Wn.2d 534, 946 P.2d 397 (1997). Counsel was appointed to represent the appellant in this Court, not the trial court, and is obliged to raise all potentially meritorious issues on appeal.

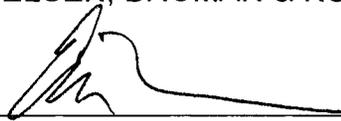
D. CONCLUSION

This court should remand with directions to correctly identify the offense date as September 15-16, 2009.

DATED this 23rd day of March, 2011.

Respectfully Submitted,

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Attorneys for Appellant

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DIVISION ONE**

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v.)	COA NO. 66129-9-1
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JASON BUTCHER,)	
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Appellant.)	

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 23RD DAY OF MARCH 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE
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EVERETT, WA 98201

- [X] JASON BUTCHER
DOC NO. 747067
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 23RD DAY OF MARCH 2011.

x *Patrick Mayovsky*