

No. 67454-4-I

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

STATE OF WASHINGTON, Respondent,

v.

MAXIMO ARROYO-MIRANDA, Appellant.

BRIEF OF RESPONDENT

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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A. ISSUES PRESENTED

1. Whether the community custody provision requiring defendant to conduct himself as a “decent, upright and law-abiding citizen” should be stricken because it was previously vacated by the Court of Appeals and at the time defendant committed the offense the Sentencing Reform Act didn’t provide for such a condition?

B. STATEMENT OF FACTS

On December 22, 1992 Appellant Maximo Arroyo-Miranda pleaded guilty to one count of Murder in the First Degree and three counts of Assault in the Second Degree. Supp. CP __, Sub. Nom 64; 12/22/92 RP 20-21. On April 9th, 1993, he was sentenced to “416 MONTHS FOR COUNTS I, II, III, AND IV. TO RUN CONCURRENTLY” and was required to conduct himself as a “decent, upright and law-abiding citizen.” Supp. CP __, Sub. Nom. 70.

In August 2001, Arroyo-Miranda moved to vacate and correct his sentence, and the trial court denied his motion. CP 55, 64-66. He appealed the denial, but only challenged the community placement condition in the judgment and sentence that he conduct himself as a “decent, upright and law-abiding citizen.” App. A., Court of Appeals Opinion, No. 49752-9-I at 1. The Court of Appeals vacated that condition. Id. at 1-2.

Arroyo-Miranda filed a Motion for Relief From Judgment, under CrR 4.2(f) and CrR 7.8, on May 31, 2011. CP 27-51. He requested the court to vacate his three assault two convictions based in part on the sentences on those counts exceeding the standard range and that DOC had interpreted the judgment as

imposing 416 months on each of those counts, sentences which exceeded the statutory maximum for those counts. *Id.* The trial court denied Arroyo-Miranda's motion and instead entered an amended judgment and sentence imposing a standard range sentence of 33 months for each of the second degree assault convictions. CP 13-19, 24-26; 6/30/11 RP 4-5. That was the only substantive change¹ the trial court made to the *original* judgment and sentence. 6/30/11 RP 5-6.

C. ARGUMENT

Arroyo-Miranda asserts on appeal that the judge erred in including the "law-abiding citizen" condition of community placement in the amended judgment and sentence. He is correct in asserting that the condition was previously vacated by the Court of Appeals and that the condition should be stricken from the amended judgment and sentence. The State concedes the condition was erroneously included in the amended judgment and sentence.

Sentences under the SRA are to be imposed generally in accord with the substantive statutory provisions in effect at the time the offender committed his/her crime. RCW 9.94A.345; State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004). Under the applicable sentencing statute at the time of Arroyo-Miranda's crimes, the Sentencing Reform Act ("SRA") did not authorize a court to impose an "obey all laws" provision as a condition of community placement for non-first

¹ A different form was used. CP 13-19.

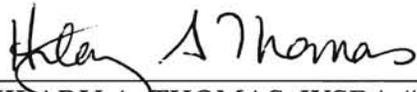
time offenders. State v. Raines, 83 Wn. App. 312, 316, 922 P.2d 100 (1996); *see also*, State v. Jones, 118 Wn. App. 199, 76 P.3d 258 (2003) (prior to 1999 the SRA did not authorize the trial court to require a non-first time offender to “obey all laws” as a condition of their community placement).

Arroyo-Miranda previously appealed the imposition of the condition that he conduct himself as a “decent, upright, law-abiding citizen” and the Court of Appeals vacated that condition in 2001. When the judgment and sentence was amended in 2011, it appears that this condition was inadvertently included in the judgment and sentence again. As it was not authorized as a condition of community placement at the time Arroyo-Miranda committed his crimes and as it was previously vacated, the amended judgment and sentence should be corrected to strike that condition.

D. CONCLUSION

For the reasons set forth above, the State respectfully requests that this Court remand this matter for correction of the judgment and sentence in order to vacate the challenged condition of community placement.

Respectfully submitted this 6th day of June, 2012.


HILARY A. THOMAS, WSBA #22007
Appellate Deputy Prosecutor
Attorney for Respondent

CERTIFICATE

I certify that on this date I deposited in the United States mails, postage prepaid, a properly stamped and addressed envelope, or otherwise caused to be delivered, a copy of the document to which this certificate is attached, directed to this court and Appellant's attorney, Dana M. Nelson, addressed as follows:

Nielsen, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA 98122



Legal Assistant



Date

APPENDIX A

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED

Mary Kay Becker

FILE
IN CLERK'S OFFICE
COURT OF APPEALS
STATE OF WASHINGTON-DIVISION I
DATE **JUN 16 2003**
Mary Kay Becker
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 49752-9-1
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
MAXIMO ARROYO-MIRANDA,)	
)	
Appellant.)	FILED: JUN 16 2003

Per Curiam. Maximo Arroyo-Miranda pleaded guilty to one count of first degree murder and three counts of second degree assault. He eventually moved to vacate and correct his sentence. The trial court denied the motion, and Arroyo-Miranda appeals, contending that the sentencing court lacked authority to order him, as a condition of community placement, to "conduct himself as a decent, upright and law-abiding citizen." The State responds that it "does not object" to Arroyo-Miranda's request to remove the challenged condition from his judgment and sentence.

We treat the State's response as a concession of error. Because the concession is well taken, we vacate the challenged condition. See *State v. Raines*, 83 Wn. App. 312, 922 P.2d 100 (1996) (sentencing court lacked

authority to order defendant to "obey all laws" as a condition of community placement).

The condition that Arroyo-Miranda "conduct himself as a decent, upright and law-abiding citizen" is vacated.

For the court:

Arroyo, J.
Garcia, J.
Columbo, J.