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NO. 70499-1-I

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

REC'D  
FEB 25 2014  
King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

COUNT CORHAN,

Appellant.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 FEB 25 PM 4:08

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

The Honorable Timothy Bradshaw, Judge  
The Honorable Catherine Shaffer, Judge

BRIEF OF APPELLANT

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Attorney for Appellant

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**TABLE OF CONTENTS**

|  | Page |
|--|------|
| A. <u>ASSIGNMENT OF ERROR</u> .....  | 1    |
| <u>Issue Pertaining to Assignment of Error</u> .....   | 1    |
| B. <u>STATEMENT OF THE CASE</u> .....  | 1    |
| C. <u>ARGUMENT</u> .....   | 3    |
| THE COURT EXCEEDED ITS AUTHORITY BY<br>IMPOSING PROBATION BEYOND THE MAXIMUM TERM<br>OF SENTENCE ..... | 3    |
| D. <u>CONCLUSION</u> .....   | 5    |

**TABLE OF AUTHORITIES**

Page

WASHINGTON CASES

In re Postsentence Review of Leach  
161 Wn.2d 180, 163 P.3d 782 (2007)..... 3

State v. Bahl  
164 Wn.2d 739, 193 P.3d 678 (2008)..... 3

State v. Butterfield  
12 Wn. App. 745, 529 P.2d 901 (1974)  
rev. denied, 85 Wn.2d 1008 (1975) ..... 3

State v. Clark  
91 Wn. App. 581, 958 P.2d 1028 (1998)..... 3

State v. Parent  
164 Wn. App. 210, 267 P.3d 358 (2011)..... 3, 4, 5

RULES, STATUTES AND OTHER AUTHORITIES

RCW 9.95.210 ..... 1, 3

A. ASSIGNMENT OF ERROR

The court exceeded its statutory sentencing authority by imposing probation beyond the maximum term of sentence.

Issue Pertaining to Assignment of Error

Appellant pled guilty to three counts of harassment – domestic violence. He was sentenced to three consecutive 364-day jail terms. The court imposed 8 months of confinement and suspended the balance of the sentence for a period of 24 months on each count, to run consecutively to each other, for a total period of 72 months probation. Under RCW 9.95.210, a sentencing court may suspend a sentence for a term not to exceed the maximum term of sentence or two years, whichever is longer. Did the trial court exceed its authority in imposing probation beyond the maximum term of the suspended sentence?

B. STATEMENT OF THE CASE

Appellant Count Corhan was charged with one count each of felon harassment – domestic violence and intimidating a witness – domestic violence. CP 1-6. Corhan pleaded guilty to amended charges of three counts of misdemeanor harassment – domestic violence. 1RP<sup>1</sup> 5-6, 13-14, 18-21, 30-31, 33-34; CP 38-55.

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<sup>1</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – April 3, 2013; 2RP – April 26, 2013.

During the plea colloquy, Corhan acknowledged he understood he could be placed on probation for “up to two years[.]” 1RP 10-11, 13-14, 29-31; 2RP 5; CP 43 (paragraph 6(e)). The court found Corhan’s plea was made freely, knowingly, intelligently, and voluntarily, and found there was a factual basis for the plea. The court accepted Corhan’s plea and found him guilty. 1RP 18-21, 33-34.

The agreed sentence recommendation included suspended consecutive sentences of 364 days on each count, 24 months of probation, and required Corhan to participate in mental health counseling and follow all treatment recommendations. 1RP 9-11, 29; CP 41-55.

The court followed the agreed sentencing recommendation in part. The court imposed three consecutive 364-day suspended sentences, but credited Corhan for time already served as to the first count, for a total of 240 days confinement. 2RP 21-22, 27, 33-34; CP 56-58. Additionally, the court imposed 24 months of probation on each count to be served consecutively for a total of six years. 2RP 21-22; CP 56-58. The court also required Corhan to participate in mental health counseling and follow all treatment recommendations. 2RP 23, 30, 34-35; CP 56-58. Corhan timely appeals. CP 72.

C. ARGUMENT

THE COURT EXCEEDED ITS AUTHORITY BY IMPOSING PROBATION BEYOND THE MAXIMUM TERM OF SENTENCE.

The court's authority to impose and suspend sentences is controlled by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Butterfield, 12 Wn. App. 745, 747, 529 P.2d 901 (1974), rev. denied, 85 Wn.2d 1008 (1975). "The terms of the statutes granting courts these powers are mandatory; when a court fails to follow the statutory provisions, its actions are void." State v. Clark, 91 Wn. App. 581, 585, 958 P.2d 1028 (1998). Erroneous sentences may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008).

The trial court relied on RCW 9.95.210 to impose the six year term of probation at issue here. CP 56; 2RP 21-22. RCW 9.95.210(1)(a) permits a court to suspend a misdemeanor sentence, "for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer." Any statutory ambiguity must be construed in Corhan's favor. State v. Parent, 164 Wn. App. 210, 267 P.3d 358 (2011).

In this case, the suspended sentence imposed is two 364 day sentences, for a total of 2 years. CP 56-58. The maximum duration of the

suspended sentence is therefore two years. The trial court exceeded this statutory limit when it imposed 72 months of probation. Even if the statute is ambiguous as to the maximum term, that ambiguity must be construed in Corhan's favor.

Parent is analogous to this case in all material respects. Parent pleaded guilty to two counts of fourth degree assault. He was sentenced to two consecutive 12-month jail terms. The court imposed 8 months of confinement and suspended the balance of Parent's sentence for 24 months on each count, to run consecutively to each other, for a total of 48 months probation. Parent argued the four years of probation exceeded the 24-month maximum term of sentence. Parent, 164 Wn. App. at 211.

On appeal, Parent maintained the sentence encompassed a total of 24 months, representing the two consecutive 12-month terms of imprisonment. Parent argued the trial court lacked authority to impose probation for more than 24 months, noting both his maximum term of sentence and the statutory maximum two years were the same. The state argued the maximum term applied individually to each count, rather than cumulatively. Parent, 164 Wn. App. at 212-13.

This Court recognized the statute is silent as to whether "sentence" refers to the cumulative sentence imposed in one judgment and sentence, or to the individual sentence imposed on each count. Parent, 164 Wn.

App. at 212. Finding the statute ambiguous, this Court construed the language in Parent's favor, and reversed the consecutive terms of probation. Parent, 164 Wn. App. at 213-14.

Like Parent, any ambiguity in the statute must be construed in Corhan's favor. The maximum duration of the suspended sentence imposed in Corhan's case is two years. Corhan's 72-month term of probation must be reversed.

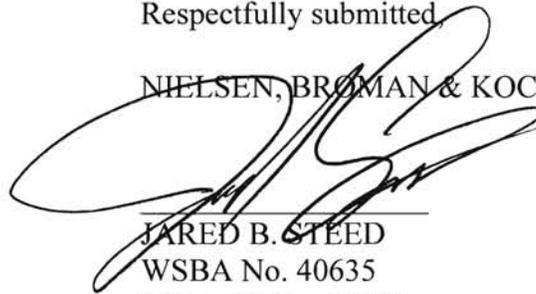
D. CONCLUSION

For the foregoing reasons, this Court should reverse Corhan's sentence and remand for resentencing within the statutory limits.

DATED this 25<sup>th</sup> day of February, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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

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| STATE OF WASHINGTON | ) |                   |
|                     | ) |                   |
| Respondent,         | ) |                   |
|                     | ) |                   |
| v.                  | ) | COA NO. 70499-1-I |
|                     | ) |                   |
| COUNT CORHAN,       | ) |                   |
|                     | ) |                   |
| 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 25<sup>TH</sup> DAY OF FEBRUARY 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] COUNT CORHAN  
417 13<sup>TH</sup> AVENUE E. #409  
SEATTLE, WA 98102

**SIGNED** IN SEATTLE WASHINGTON, THIS 25<sup>TH</sup> DAY OF FEBRUARY 2014.

x *Patrick Mayovsky*