

COA No. 70507-5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DEGALVEZ WILLIAMSON,

Appellant.

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

The Honorable Catherine Shaffer

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The re-sentencing court erred in imposing a sentence in excess of its sentencing authority where Mr. Williamson had served the statutory maximum for the offense, and no further imprisonment or community custody could lawfully be imposed.

2. The trial court erred in imposing a term of community custody that violated RCW 9.94A.701(9).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A defendant may not be ordered to serve a sentence except as authorized by the Sentencing Reform Act. Mr. Williamson served 60 months pursuant to his original 2009 sentencing. At re-sentencing following reversal of that sentence for error, did the trial court exceed its authority by imposing any sentence of incarceration and community custody whatsoever, where Mr. Williamson had previously served a sentence that itself exceeded the permissible sentence that could be imposed upon re-sentencing?

2. Further, given that recently-enacted RCW 9.94A.701(9) requires that where the combined term of community custody and confinement exceeds the statutory maximum for an offense, the court must reduce the term of community custody to a specified proper term,

did the court also err when it imposed a term of community custody described as “up to the statutory maximum” and up to the “balance” of the statutory maximum?

C. STATEMENT OF THE CASE

Mr. Williamson was convicted on September 10, 2009 of indecent exposure pursuant to RCW 9A.88.010, along with a finding of sexual motivation, the base offense carrying a maximum term of 60 months (5 years). CP 5. At his original sentencing on October 27, 2009, he was assigned an offender score of 7, and, along with a 12 month enhancement for the special finding, was assigned a standard range of 55 to 69 months. CP 6. The trial court imposed a term of 60 months incarceration. CP 8.

The sentencing court also checked the box next to “exceptional sentence,” and hand-noted that if Mr. Williamson’s base standard range was only 12 to 20 months, there were substantial and compelling reasons to impose an exceptional sentence of 60 months. CP 6.

On appeal, this Court of Appeals reversed Mr. Williamson’s sentence, ruling that the trial court had incorrectly treated the offense of indecent exposure as a ranked felony for purposes of offender score calculation. State v. Williamson, 162 Wn. App. 1012 (2011 WL

2184870) (Wash.App. Div. 1, 2012); State's Petition for Review granted and case remanded in light of State v. Guzman Nunez, 174 Wn.2d 707, 285 P.3d 21 (2012) by 175 Wn.2d 1021 (2012), on remand State v. Williamson, 172 Wn. App. 1026 (2012 WL 6571717) (Wash.App. Div. 1, 2012).

At re-sentencing on March 29, 2013, the trial court noted a maximum term of 5 years, employed a base standard range of 0-12 months, and imposed 12 months plus an additional 12 month enhancement for the sexual motivation finding, for a total of 24 months incarceration. CP 24-26. In addition, the court stated that community custody was imposed “up to the statutory maximum of 60 months.” CP 26. The trial court denied Mr. Williamson’s CrR 7.8 motion for relief from judgment arguing that he could not be ordered to serve any further period of punishment, but also stated in its order that community custody was reduced to “14 months as it is the balance of time remaining on the statutory maximum.” CP 36-40 (Motion for Relief from Judgment and letter from Society of Counsel Representing Accused Persons regarding Department of Corrections statement of DOC credit period); CP 45 (ruling).

D. ARGUMENT

THE COURT EXCEEDED ITS AUTHORITY IN IMPOSING A SENTENCE ABOVE THE STATUTORY MAXIMUM .

1. **Sentence served.** During the pendency of his original direct appeal, Mr. Williamson served the 60 month (5 year) term which was imposed by the trial court on October 27, 2009. CP 8. On September 13, 2012, the Department of Corrections issued a Notice of Closure of Supervision, attesting that Mr. Williamson had reached his Sentence End Date, having served all required terms resulting from his sentence of 60 months. CP 16-20. The Notice of Closure and the DOC calculation of time reflected straight time and good time. “Straight-time” credit refers to credit a prisoner receives for time actually served before receiving his sentence. CP 16-20, CP 4; see State v. Phelan, 100 Wn.2d 508, 510, 671 P.2d 1212 (1983). “Good-time” credit refers to credit a prisoner receives for good behavior or good performance while incarcerated. Phelan, at 510. “Good-time” credit is the familiar name for what the legislature refers to as “ ‘earned early release time,’ ” which results in the inmate’s completion of the sentence. In re Pers. Restraint of Williams, 121 Wn.2d 655, 658, 853 P.2d 444 (1993); RCW 9.94A.728(1); RCW 9.94A.729.

2. **Sentence in excess of that permitted.** A court may not order a sentence beyond that authorized by law. In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980); see also In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866–67, 50 P.3d 618 (2002).

RCW 9A.20.021 provides in part:

RCW 9A.20.021. Maximum sentences for crimes committed July 1, 1984, and after

(1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

RCW 9A.20.021. Further, under RCW 9.94A.505(1)(b),

[i]f a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

RCW 9.94A.505(1)(b); see State v. Hicks, 77 Wn. App. 1, 3, 888 P.2d 1235 (1995) (standard sentencing range for an offense is 0 to 12

months where the crime is not classified under RCW 9.94A.320 (now recodified as RCW 9.94A.515)). RCW 9.94A.515 addresses the offense of indecent exposure to a person under age 14 as a ranked felony, but Mr. Williamson's offense is not classified under the statute.

Finally, under 9A.88.010(1)(c), indecent exposure is a class C felony if the person has previously been convicted under Chapter 88, section 010, or of a sex offense as defined in RCW 9.94A.030.

Mr. Williamson qualifies under this previous conviction criteria. However, no sentencing court may impose a term of punishment greater than that provided for in the SRA for the offense. Mr. Williamson has served his maximum sentence. The applicable unranked offense range may not be exceeded except for "substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.120(7), recodified as § 9.94A.505 by Laws 2001, ch. 10, § 6.

In this case, the present sentencing court specifically did not impose an exceptional sentence. CP 24.

3. Vacation is required. When a judgment and sentence is in excess of the court's statutory authority, it must be vacated. Goodwin, 146 Wn.2d at 877, 50 P.3d 618; In re Pers. Restraint of West, 154 Wn.2d 204, 215, 110 P.3d 1122 (2005).

4. Improper Community Custody Notation. Furthermore, the court's community custody notation is violative of specific SRA provisions. Where any term of community custody that could be imposed is imposed in addition to a period of incarceration, that combined term cannot exceed the statutory maximum incarceration permitted by the SRA. RCW 9.94A.701(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.

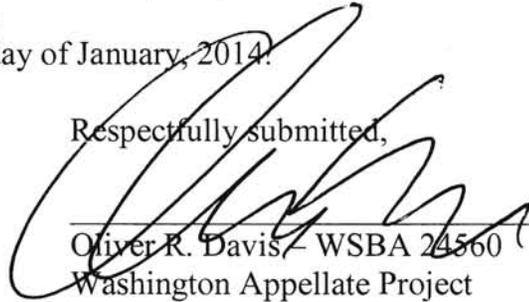
RCW 9.94A.701(9). A sentencing court must reduce the term of community custody to a specific term. Although the sentence imposed at Mr. Williamson's re-sentencing is in violation of the SRA in its entirety, the notations regarding community custody are also in error. State v. Boyd, 174 Wn.2d 470, 473, 275 P.3d 321 (2012); State v. Winborne, 167 Wn. App. 320, 329, 273 P.3d 454, review denied, 174 Wn.2d 1019 (2012).

E. CONCLUSION

Mr. Williamson's sentence imposed March 29, 2013 was legally erroneous and he asks that it be vacated. In re Pers. Restraint of Call, 144 Wn.2d 315, 332, 28 P.3d 709 (2001).

Dated this 28 day of January, 2014.

Respectfully submitted,



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DIVISION ONE**

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)	
Respondent,)	
)	NO. 70507-5-I
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MICHAEL WILLIAMSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF JANUARY, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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