

71046-0

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NO. 71046-0-I

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

STATE OF WASHINGTON,

Respondent,

v.

RONALD BAKER,

Appellant.

2017 SEP 16 11:11:21
 COURT OF APPEALS
 DIVISION ONE
 WASHINGTON

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

The Honorable Alan R. Hancock, Judge
Superior Court Cause No. 13-1-00118-8

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. STATEMENT OF THE ISSUES1

 A. Whether the sentencing court erred in imposing an 18-month term of community custody as part of the appellant’s sentence for assault in the third degree.....1

II. STATEMENT OF THE CASE1

 A. Statement of Procedural History1

III. ARGUMENT2

 A. The sentencing court erred in imposing an 18–month term of community custody as part of the appellant’s sentence for assault in the third degree.2

TABLE OF AUTHORITIES

RULES AND STATUTES

RCW 9.94A.030..... 3
RCW 9.94A.411..... 3
RCW 9.94A.585..... 2
RCW 9.94A.701..... 2, 3

I. STATEMENT OF THE ISSUES

- A. Whether the sentencing court erred in imposing an 18-month term of community custody as part of the appellant's sentence for assault in the third degree.

II. STATEMENT OF THE CASE

A. Statement of Procedural History

The appellant was originally charged in Island County Superior Court with assault in the second degree, three counts of possession of controlled substances, and resisting arrest. CP 49-53. Pursuant to a plea agreement, the State entered an Amended Information that reduced the assault charge to assault in the third degree and removed one controlled substance charge and the resisting arrest. CP 36-40. The appellant entered a plea of guilty to the amended charges and was sentenced, within his standard sentence range, to 22 months in custody on the charge of assault in the third degree, with concurrent time imposed on the other charges. CP 14-24. At sentencing, the trial court also imposed 18 months community custody on the charge of assault in the third degree and 12 months community custody on the other charges. CP 18. An amended judgment and sentence was entered September

30, 2013, but the terms of community custody were not changed.

CP 7.

III. ARGUMENT

A. The sentencing court erred in imposing an 18-month term of community custody as part of the appellant's sentence for assault in the third degree.

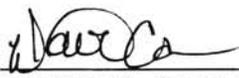
This court should reverse the term of community custody imposed as part of the appellant's conviction for assault in the third degree because that term exceeded the length allowed by statute. A sentence within the standard sentence range may not be appealed. RCW 9.94A.585(1). Based on his plea of guilty to assault in the third degree, the appellant was sentenced to 22 months in custody, within his standard range of 17 to 22 months. CP 5-6, 16-17. That part of the sentence was proper, has not been challenged by the appellant, and should be affirmed.

However, the sentencing court also imposed 18 months community custody on the charge of assault in the third degree. CP 7, 18. The appropriate term of community custody to be imposed at sentencing is defined by statute. RCW 9.94A.701. An offender sentenced to the custody of the department of corrections for a violent offence shall be sentenced to 18 months community custody, while an offender sentenced for a crime against a person

shall be sentenced to one year. RCW 9.94A.701(2), (3)(a). Assault in the third degree is a crime against a person, but it is not a violent offense. RCW 9.94A.411(2); RCW 9.94A.030(54). Therefore, the community custody ordered for the charge of assault in the third degree in this case is outside the standard range. This court should, therefore, reverse the appellant's sentence only as to the length of community custody on Count 1 and remand for resentencing.

Respectfully submitted this 12th day of September, 2014.

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