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AUG 15 2014

King County Prosecutor
Appellate Unit

NO. 71722-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

CLARENCE JONES,

Appellant.

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

The Honorable Regina Cahan, Judge

BRIEF OF APPELLANT

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2014 AUG 15 PM 4:05
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PROSECUTOR

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A. ASSIGNMENT OF ERROR

The judgment and sentence contains a scrivener's error that should be corrected.¹

Issue Pertaining to Assignment of Error

The current judgment and sentence states appellant committed the assault on a date that is a year earlier than was stated in both the charging document and in the associated to-convict instruction. Is remand warranted to correct this scrivener's error?

B. STATEMENT OF THE CASE

The King County prosecutor charged appellant Clarence Jones with second degree assault and first degree unlawful possession of a fire arm. CP 1, 18-19. The State alleged Jones committed the assault "on or about September 12, 2013," by holding a handgun to the head of John Davis and then beating him with weighed "MMA-style fighting gloves." CP 1, 3-4, 18.

¹ 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 appellant in this Court, not the trial court, and is obliged to raise all potentially meritorious issues on appeal.

Following a trial before the Honorable Regina Cahan, a jury found Jones guilty as charged. CP 48-49; 1RP-2RP.² Following imposition of concurrent standard range sentenced, Jones appeals.

C. ARGUMENT

REMAND IS NECESSARY TO CORRECT A SCRIVENER'S ERROR IN THE JUDGMENT AND SENTENCE.

Jones' judgment and sentence states the date of the assault was "09/12/2012". CP 95. This is inconsistent with both the amended information and the to-convict instruction for the assault charge, both of which aver an offense date of "on or about September 12, 2013," as well as the evidence presented at trial. CP 18 (amended information); CP 33 (Instruction 9); see 2RP 106, 192-93.³

This Court should remand to correct the judgment and sentence so it reflects the proper offense date. See State v. Moten, 95 Wn. App. 927, 929, 935, 976 P.2d 1286 (1999) (remand appropriate to correct scrivener's error referring to wrong statute on judgment and sentence form); State v.

² There are four volumes of verbatim report of proceedings referenced as follows: 1RP - December 16 & 19, 2013, January 17, 2014 & March 28, 2014; and 2RP - consecutively paginated three-volume set for the dates of January 14, 15 & 16, 2014.

³ Davis testified he waited a day before seeking medical attention for his injuries. 2RP 192. The physician who initially treated Davis testified she saw Davis in the emergency room on September 13, 2013. 2RP 106.

Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (illegal or erroneous sentences may be challenged for the first time on appeal).

D. CONCLUSION

This Court should remand for correction of the scrivener's error in Jones' judgment and sentence.

Respectfully submitted this 15th day of August 2014.

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Chris Gibson", followed by the number "18487" and the initials "fw".

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 71722-7-1
)	
CLARENCE JONES,)	
)	
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 15TH DAY OF AUGUST, 2014, 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] CLARENCE JONES
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COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
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SIGNED IN SEATTLE WASHINGTON, THIS 15TH DAY OF AUGUST, 2014.

X *Patrick Mayovsky*