

NO. 72044-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

BRADLEY A. BARTLETT,

Appellant.

BRIEF OF RESPONDENT

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RCW 9.94A.7012

I. ISSUES

The State concedes the trial court erroneously imposed 12 months community custody when defendant was sentenced to the statutory maximum of 120 months imprisonment. The proper remedy is remand for resentencing consistent with statutory authority.

II. STATEMENT OF THE CASE

On March 19, 2014, Bradley Aaron Bartlett, defendant, was found guilty by plea of Possession of Controlled Substance with Intent to Manufacture or Deliver, with a Major Drug Offense aggravating factor. CP 28-43, 53-54; RP (3/19/14) 2-9.

Defendant was sentenced on May 13, 2014. Defendant's offender score was 11 with a standard range of 60 to 120 months. The State's recommendation was for 120 months confinement. Defendant's recommendation was for either a Drug Offender Sentencing Alternative or 90 months confinement. CP 17, 18, 38, 41, 43; RP (5/13/14) 5-7, 11-12, 16-17, 19.

The court sentenced defendant to 120 months confinement followed by 12 months community custody. CP 20-21; RP (5/13/14) 31-33.

III. ARGUMENT

The State concedes the trial court erroneously imposed 12 months of community custody. The case should be remand for resentencing consistent with State v. Boyd, 174 Wn.2d 470, 473, 275 P.3d 321 (2012).

A trial court may only impose a sentence which is authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). “When a sentence has been imposed for which there is no authority in law, the trial court has the Power and the duty to correct the erroneous sentence, when the error is discovered.” In re Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Under RCW 9.94A.701, the sentencing court must reduce the term of community custody to remain within the statutory maximum. The imposition of an unauthorized sentence does not require vacation of the entire judgment or granting of a new trial. In re Carle, 93 Wn.2d at 34. The proper remedy is to remand the cases for the trial court to correct the erroneous term of community custody. Boyd, 174 Wn.2d at 473.

IV. CONCLUSION

For the reasons stated above, the case should be remanded for resentencing.

Respectfully submitted on February 5, 2015,

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