

NO. 34541-2-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON  
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**STATE OF WASHINGTON**, Respondent,

v.

**KENNETH RANDALE DOOR**, Appellant.

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APPELLANT'S SUPPLEMENTAL BRIEF

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## I. QUESTION PRESENTED

On May 24, 2007, the Court ordered supplemental briefs addressing the following question:

The parties are directed to address the effect of multiple enhancements on the statutory maximum for one offense. *See State v. Thomas*, 150 Wn.2d 666 (2003). They should also address the application of the enhancements to a base sentence, as provided in former RCW 9.94A.510(3) (first paragraph), *recodified* as RCW 9.94A.533(3).

## II. RELEVANT FACTS

On July 12, 2002, Kenneth Door was sentenced on six counts, as follows:

<u>Count</u>	<u>Standard Range</u>	<u>Plus Enhance.</u>	<u>Sentence</u>	<u>CC</u>	<u>Stat. Max</u>	<u>Total Sentence</u>
I	87-116 mo.	n/a	116 mo.	n/a	10 years	116 mo.
II	63-84 mo.	36 mo.	74 mo. + enhance = 110 mo.	18-36 mo.	10 years	128-146 mo.
III	63-84 mo.	36 mo.	74 mo. + enhance = 110 mo.	18-36 mo.	10 years	128-146 mo.
IV	63-84 mo.	36 mo.	74 mo. + enhance = 110 mo.	18-36 mo.	10 years	128-146 mo.
V	63-84 mo.	36 mo.	74 mo. + enhance = 110 mo.	18-36 mo.	10 years	128-146 mo.
VI	63-84 mo.	36 mo.	74 mo. + enhance = 110 mo.	18-36 mo.	10 years	128-146 mo.

CP 6, 10. The base sentences were to run concurrently, but the five firearm enhancements were to be consecutive. CP 10. The parties recognized that the sentence could not exceed the 120 month maximum on the sentence—this is reflected in the transcript of the sentencing hearing. RP 7/12/02 57-59. Therefore, following the recitation of the confinement ordered in section 4.5, the judgment and sentence states: “The actual number of months of total confinement ordered is 120 months. (Add mandatory firearm and deadly weapon enhancement time to run consecutively to other counts, see Section 2.3 above).” CP 10. Following that form language, the parties hand-wrote the following: “Statutory maximum sentence is 10 years – balance of sentence over ten years cannot be served.” CP 10.

In section 4.6, the judgment and sentence also includes community custody of 18-36 months on counts II-VI. CP 11. This section does not state the statutory maximum, or expressly limit the community custody time to the statutory maximum.

Door’s CrR 7.8 Motion to Modify and Correct Judgment and Sentence, as well as his Appellant’s Brief, ask that the Court correct his judgment and sentence so that his total sentence, including community custody, will not exceed the statutory maximum. CP 19-22.

## IV. DISCUSSION

### **ISSUE 1: WHAT IS THE EFFECT OF MULTIPLE ENHANCEMENTS ON THE STATUTORY MAXIMUM FOR ONE OFFENSE?**

In *State v. Thomas*, 150 Wn.2d 666, 80 P.3d 168 (2003), the Court held that former RCW 9.94A.310(3)(g) (1998) does not limit an offender's total period of confinement for multiple offenses to the statutory maximum for the most serious offense. The Court stated:

Former RCW 9.94A.310(3)(g) focuses steadfastly on limiting the sentence range for a single offense and cannot be read to place a limit on an offender's total period of confinement for multiple offenses. While the 10-year statutory maximum for second degree robbery provided a maximum sentence for each of Thomas's firearm-enhanced second degree robbery convictions, former RCW 9.94A.310(3)(g) did not cap at 10 years Thomas's total period of confinement.

150 Wn.2d at 674.

### **ISSUE 2: WHAT IS THE APPLICATION OF THE ENHANCEMENTS TO A BASE SENTENCE, AS PROVIDED IN FORMER RCW 9.94A.510(3)?**

Former RCW 9.94A.510(3) provides:

If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement.

Further, former RCW 9.94A.510(3)(e) states that:

... all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

Former RCW 9.94A.510(3)(g) places a limitation on the total sentence:

If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

## **V. ARGUMENT & CONCLUSION**

In this case, the trial court sentenced Door to 74 months on each assault conviction, plus 36 months each for firearm enhancements. Therefore, each assault conviction carried a total sentence of 110 months, which places it below the statutory 120 month maximum.<sup>1</sup> However, the court then ordered community custody time of 18 to 36 months, which caused the total sentence on each of these convictions to exceed the 120 month maximum. Therefore, Door still requests that the court set an explicit cap on his sentence, including community custody, at 120 months.

DATED: June 12, 2007

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CERTIFICATE OF SERVICE

I certify that on June 12, 2007, I caused a true and correct copy of this Appellant's

Supplemental Brief to be served on the following via prepaid first class mail:

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<sup>1</sup> All parties at the trial court assumed that the maximum sentence would be exceeded.