

COURT OF APPEALS
DIVISION II

NO. 40470-2-II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL A. HOLCOMB,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF GRAYS HARBOR COUNTY

Before the Honorable David Edwards, Judge

OPENING BRIEF OF APPELLANT

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pb 12-21-10

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A. ASSIGNMENTS OF ERROR

1. The court violated RCW 7.21.050 by imposing contempt sanctions on Michael Holcomb without following the statutory procedure.

2. The court erred by imposing contempt sanctions without giving Mr. Holcomb an opportunity to speak in mitigation.

3. The court erred in entering Finding of Fact Number 5 insofar as Mr. Holcomb disputes that his apologies to the court constitute an opportunity to speak in mitigation as required by statute.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

1. Before imposing a contempt sanction under RCW 7.21.050, a trial judge must allow the contemnor to speak in mitigation. The trial judge imposed a contempt sanction without allowing Mr. Holcomb to speak in mitigation. Did the trial judge violate RCW 7.21.050? Assignments of Error 1, 2, and 3.

C. STATEMENT OF THE CASE

On November 12, 2009, Michael Holcomb was charged by the Grays Harbor County Prosecutor's Office with possession of heroin, contrary to RCW 69.50.4013(1). Clerk's Papers [CP] 1-2. On November 23, 2009, Mr. Holcomb entered a guilty plea to the information. 1Report of Proceedings

[RP] at 3-11.¹ In exchange for the plea, the State agreed to dismiss a second case—Grays Harbor County cause no. 09-1-403-2. The State also agreed to recommend a sentence of 16 months. CP 3-11, 12-16.

Grays Harbor County Superior Court Judge F. Mark McCauley, in the colloquy of accepting the plea, informed Mr. Holcomb that he faced a standard range sentence of a maximum of 24 months and that the State would recommend a sentence of 16 months, and asked whether he understood all of the other terms and conditions of the plea agreement. 1RP at 4. The court asked Mr. Holcomb if he had read the plea agreement and whether his criminal history was accurately stated. Mr. Holcomb responded in the affirmative. 1RP at 4. The court also asked if he understood that the court did not have to follow the State's recommendation and could sentence him to a maximum of 24 months. 1RP at 4. The court also asked whether he had reviewed the change of plea form with his attorney and he responded that he had discussed it with his attorney and that he understood it. 1RP at 4-5. The court asked whether he would qualify for the Drug Offender Sentencing Alternative (DOSA), and defense counsel stated that he would have "to do

¹ The record of proceedings is designated as follows: 1RP – Change of Plea hearing, November 23, 2009, April 5, 2010 hearing, April 12, 2010, motion to withdraw guilty plea; May 10, 2010, hearing regarding entry of Judgment and Sentence; 2RP—hearing, January 25, 2010, March 1, March 8, 2010; March 9, 2010; 3RP—May 13, 2010, hearing; 4RP—Sentencing hearing May 24, 2010.

some research on that.” 1RP at 6. After a recess, the State informed the court:

he’s got an ’04 arson in the second degree. Arson in the second degree is a violent offense so that would preclude the DOSA. So I don’t know how that affects how he wants to proceed.

Defense counsel stated:

He understands that, Your Honor, and I told him more than likely the judge will rule as far as the statement on plea of guilty that he’s not qualified for that. Part of the request for the sentencing hearing is based upon for me just to take a look and verify his past convictions, which—excuse me, for—I had to run up the stairs. The—he’s acknowledged that it is his past criminal history, for the record, and he acknowledges that the Court is basically—said he’s not qualified for a DOSA.

1RP at 8.

Mr. Holcomb acknowledged that he understood that he did not qualify and that the court would not have the option of ordering DOSA. 1RP at 8-9.

Mr. Holcomb waived speedy sentencing and the matter was set for sentencing on January 25, 2010. 1RP at 10. On that date, sentencing was continued to March 1, 2010. 2RP at 1. The parties appeared before Judge David Edwards on March 1. Defense counsel asked for a continuance of sentencing to April 2 in order to file “a report” with the court. 2RP at 2. Defense counsel stated that Mr. Holcomb had just gotten married and he wanted to interview his wife and to “put some good stuff in there with regard

to Mr. Holcomb.” 2RP at 3. The court asked why sentencing had been continued, and counsel responded that he was waiting for release of property to Mr. Holcomb that had been seized when he was arrested. 2RP at 3. The court inquired why bail had not been increased following his guilty plea, then continued the sentencing and increased Mr. Holcomb’s bail to \$25,000 pending sentencing, and then ordered that Mr. Holcomb be taken into custody. 2RP at 4.

The case came on for sentencing on March 8, 2010. 2RP 5-10. Defense counsel noted that Mr. Holcomb had gotten married and that he had stayed off drugs while he was released on bail. 2RP at 6. The State recommended 16 months. 2RP at 5. The court not follow did the State’s recommendation and instead imposed a sentence of 24 months. 2RP at 7.

After the court imposed sentence, the following exchange took place:

Mr. Holcomb: How come the prosecutor made me a deal for 16 months, and then you revoke my bail?

The Court: That’s enough.

Mr. Holcomb: Then they revoke my bail, and I come to court every fucking time.

The Court: You are now in contempt of court. That—

Mr. Holcomb: Suck my dick.

The Court: That will be another 30 days. He will do those extra 30 days.

Defense Counsel: We request a hearing on that.

The Court: Mr. Farra?

Mr. Holcomb: This is a fucking joke.

The Court: There is another 30 days. Please remove him from the courtroom. Now, he is doing 60 days before he leaves for the department of corrections.

2RP at 7-8.

Mr. Holcomb appeared before Judge Edwards later that afternoon and apologized to the court. 2RP at 9. The court noted that there would be a hearing on the contempt of court issue the following day. 2RP at 9-10.

On March 9 Mr. Holcomb's counsel explained that Mr. Holcomb had only anticipated 16 months in prison and asked that any sanction be served concurrently with his sentence. 2RP at 12, 13. Mr. Holcomb apologized again to the court. 2RP at 13. The court ruled that the contempt sanction would not be concurrent. The court stated:

Well, these sanctions I am going to impose upon Mr. Holcomb are not going to be concurrent. That would serve no deterrent purpose at all. Um, there was a courtroom full of people yesterday when Mr. Holcomb engaged in behavior that was clearly disruptive to the proceedings. It was disrespectful to the Court, and it was contemptuous and it occurred twice.

2RP at 14.

Judge Edwards made the following findings of fact on March 9, 2010:

1. On March 8, 2010, the defendant, Michal Holcomb, appeared before the court for sentencing in this matter during the criminal motion docket. There were at least 70 cases scheduled for hearing on the docket and the courtroom was crowded.
2. After the court announced its decision regarding the sentence to be imposed, the defendant expressed his disagreement with the decision of the court, at which time the court admonished the defendant to refrain from further comments.

3. The defendant then directed an obscene remark to the court. The court immediately advised the defendant that he was in contempt of court and directed him to return to his seat in the courtroom.
4. The defendant was taken to his seat in the courtroom by a corrections officer. Immediately after being seated, the defendant shouted an obscenity at the court and disrupted the proceedings of the court. The defendant was immediately advised that he was again being held in contempt.
5. During the afternoon criminal docket on March 8, 2010, the defendant returned to the courtroom and apologized for his earlier behavior. The defendant again offered an apology for his behavior on March 9, 2010.
6. The behavior described in findings of fact 2, 3, and 4 above occurred in the courtroom and was seen and heard by the undersigned judge.

Based on the above findings of fact, the court imposes a sanction of thirty days of confinement in the Grays Harbor County Jail for each of the two acts of contempt, for a total of sixty days in jail. The defendant is ordered to serve this time before entry of the judgment and sentence in this case. It is further ordered that the defendant shall not receive credit for the sixty days of confinement against the 24 months sentenced imposed in this case.

CP 25-26.²

Mr. Holcomb appealed from the court's contempt order and undersigned counsel was assigned in Court of Appeals Cause No. 40470-2-II.

On April 5, 2010, Mr. Holcomb appeared again before Judge Edwards, and defense counsel stated that Mr. Holcomb wanted to withdraw

²Findings were also designated as Clerks Paper 16-17 in the consolidated cause number 40470-2-II.

his guilty plea. 1RP at 12. Mr. Holcomb's attorney filed a motion and declaration to withdraw his plea on April 12, 2010, pursuant Criminal to Rule 4.2(f). CP 30. The declaration of counsel stated in part:

Judge Edwards was prejudice [sic] against him, without a motion or request from the State the judge raised the bail after it was set by Judge Godfrey placing him in jail and based on the Judge's prejudice he did not listen to the prosecutor recommendation [sic] of 16 months giving him the maximum of 24 months, the procedure was not in the interest of justice [.]

CP 30.

The motion came before Judge Godfrey on April 12, 2010. 1RP at 14-20. Judge Godfrey did not rule on the motion, stating that the matter was now pending before the Court of Appeals. The court noted:

Now the Catch 22—if you don't know what Catch 22 is, I can explain that to you also. But there is a real issue in here, maybe I ought to notify Mr. Tiller about, and that is at the moment there is no judgment and sentence that's been signed. He's being held at this point and doing time for the contempt apparently. And so, therefore, obviously if the Court of Appeals returns this, whatever they decide to do, because he's being held on the contempt matter, I think there's a legal question. Let's assume they're correct and the judge erred on a contempt because he is being held on the contempt, which under statute would be another matter, then I'm not sure he can get credit for any time served if the judge erred. Or the alternative, he can begin doing his judgment that insomnia matter to the Court of Appeals resolved this matter. So I can do nothing. The record will reflect this Court at this point, pursuant to the rules on appeal, does not have the authority to entertain any motions of any nature pursuant to RAP 7.2 and

RAP 6.1. My hands are bound.

1RP at 18, 19.

On the same day—April 12, 2010—undersigned appellate counsel moved for emergency stay of the contempt order, and a Ruling Denying Stay was entered April 16, 2010. CP 31-33.

On May 10, 2010, Mr. Holcomb finished his 60 day contempt sanction and the case came on before Judge Edwards for entry of the Judgment and Sentence. 1RP at 21. The court did not enter the Judgment and Sentence, stating that there was as a pending motion to withdraw his plea. 1RP at 24. The court inquired about its authority to enter a Judgment and Sentence due to the pending appeal on the contempt matter and also asked about the pending CrR 4.2 motion. The court requested briefing from both parties on its authority to hear the motion and enter the Judgment and Sentence while an appeal is pending. 1RP at 24.

Both counsel filed briefs regarding the issue of whether the court can proceed with the motion to withdraw the guilty plea and sentencing, and the court proceeded with entry of the Judgment and Sentence on May 24, 2010. CP 34-40; 4RP at 2-3. Regarding the motion to withdraw Mr. Holcomb's guilty plea, defense counsel argued

So I've set forth that specifically in my motion/declaration, indicating that he feels that I guess there's

somehow been a violation of the procedural process because, in his opinion, as indicated he thought everything was fine as far as him being in court. And I guess he's basically complaining he feels the Court acted arbitrarily in revoking or raising his bail and putting him in custody, and this was, I guess, a breach of the plea bargain that was entered into by the State.

But I recognized as an officer of the court that Mr. Leraas was not involved, basically the Court did that, and we did complain about that. I did not find any case law that indicates the definition of manifest error in regard to the plea bargain and the plea agreement, but my client specifically indicated that he felt basically he was, I guess, prejudicially handled in regard to process.

4RP at 4.

The court denied the motion to withdraw the plea without making findings and the Judgment and Sentence was entered. CP 42-50; 4RP at 4. An Order Denying Motion to Allow Defendant to Withdraw Plea of Guilty was entered August 23, 2010. CP 55.

Mr. Holcomb filed notice of appeal of the ruling denying his motion to withdraw his plea on May 24, 2010, and the appeal was consolidated with the appeal of the order on contempt on June 22, 2010. CP 51. This appeal follows.³

D. ARGUMENT

1. THE TRIAL COURT'S ORDER ON CONTEMPT VIOLATED RCW 7.21.050.

³Appellant counsel has not assigned error to the Order Denying Motion to Allow Defendant to Withdraw Plea of Guilty.

Judges have both inherent and statutory contempt powers. *In re Dependency of A.K.*, 162 Wn.2d 632, 645, 174 P.3d 11 (2007); RCW 7.21.010 *et seq.* Contempt may be direct—occurring in the court’s presence—or indirect, occurring outside of court. *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 n.2, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994).

In Washington, contempt is codified at chap 7.21 RCW. Under RCW 7.21.010(1), contempt of court is intentional:

- (a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;
- (b) Disobedience of any lawful judgment, decree, order, or process of the court;
- (c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or
- (d) Refusal, without lawful authority, to produce a record, document, or other object.

RCW 7.21.010(1).

Because contempt of court is disruptive of court proceedings and/or undermines the court’s authority, courts are vested with an “inherent contempt authority, as a power ‘necessary to the exercise of all others.’” *Bagwell*, 512 U.S. at 831 (quoting *United States v. Hudson*, 11 U.S. (7

Cranch) 32, 34, 3 L.Ed. 259 (1812))(citations omitted).

There are two basic categories of contempt orders: punitive (criminal) and coercive (civil). *State v. Boatman*, 104 Wn.2d, 44, 700 P.2d 1152 (1985). Due process requirements vary depending on whether the contempt is direct or indirect, and whether the sanctions imposed are remedial or punitive in nature. *Bagwell*, 512 U.S. at 831. The statute defines a punitive sanction as “a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” A remedial sanction, on the other hand, is “a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.” RCW 7.21.010(2); (3). Implied contempt authority is also vested in a court to the degree necessary to perform its functions as a court under its inherent powers.

As noted above, a court’s inherent contempt power may not be used unless the statutory remedies are inadequate in a particular case. *Boatman*, 104 Wn. at 48. Where the use of the court’s inherent powers of contempt are used to impose a determinative sentence without any opportunity to purge, the proceedings become criminal in nature and due process protections are required. *State v. Browet, Inc.*, 103 Wn.2d at 220. The *Boatman* Court held:

First, before the inherent power of the court can be used, the

The *Boatman* Court held:

First, before the inherent power of the court can be used, the court must determine that reliance on the statutory basis [for contempt] would be inadequate. . . . Due process also prohibits the inherent power basis to justify the trial court's actions. A punitive contempt order is a criminal proceeding. As such, due process protections are required. *Id.* at 48.

A judge may not exercise the inherent contempt power without specifically finding the statutory procedures and remedies inadequate. *A.K.*, at 647. In this case, the trial judge did not make a specific finding of inadequacy, and thus was limited to imposition of contempt sanctions under the statutory framework. *A.K.*, *supra*.

The trial court's order on contempt was entered in violation of RCW 7.21.050. The contempt statute permits a trial judge to impose a contempt sanction for contempt occurring in the judge's presence. RCW 7.21.010(1). The statute requires that the judge must "certif[y] that he or she saw or heard the contempt." Second, the judge must impose the sanctions immediately after the contempt, or at the end of the proceeding. Third, the judge may impose contempt "only for the purpose of preserving order in the court and protecting the authority and dignity of the court." RCW 7.21.050(1). Fourth, the contemnor must be "given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise." RCW 7.21.050(1). Fifth, "the order of contempt shall recite the

facts, state the sanctions imposed, and be signed by the judge and entered on the record.” RCW 7.21.050(1). Failure to comply with the statute requires reversal of any contempt sanction imposed. *State v. Jordan*, 146 Wn. App. 395, 398, 190 P.3d 516 (2008).

In this case, the trial judge did not comply with RCW 7.21.050. The record shows that Mr. Holcomb was brought back before the court on the afternoon of March 8 and that he apologized for his outburst. 2RP at 9. On the next day, Mr. Holcomb’s counsel ascertained that he was being held in criminal contempt, and then made a statement to the court asking that his client be allowed “to apologize.” 2RP at 12. Mr. Holcomb then apologized to the court a second time. 2RP at 12. Although he may have apologized, the findings do not indicate that Mr. Holcomb was given an opportunity to speak in mitigation of the contempt, rather than merely apologizing to the court. The opportunity to speak in mitigation of the contempt must be given after the court makes the finding of contempt but prior to the imposition of sanctions. *Jordan*, at 403 n. 6.

In addition, the findings of fact do not show that the sanctions were imposed immediately after the contempt, or at the end of the sentencing proceeding on March 8. Instead, the sanctions of thirty days of confinement

for each alleged offense was imposed the following day.

Because the judge failed to follow the statutory procedure, the Order on Contempt must be vacated, and Mr. Holcomb should not be deprived of any credit for time served. *Jordan, supra*.

2. **ALTHOUGH MR. HOLCOMB HAS SERVED THE CONTEMPT SANCTION IMPOSED, THIS COURT SHOULD NONETHELESS REACH THE MERITS OF HIS CASE**

Upon the second finding Mr. Holcomb in contempt, the court imposed a 60 day term of confinement. CP 25-26. The court did not enter the Judgment and Sentence until Mr. Holcomb had served that time. This case involves a matter of continuing and substantial public interest which requires this Court's determination. See *Hart v. D.S.H.S.*, 111 Wn.2d 445, 759 P.2d 1206 (1988). In determining whether a matter is of continuing and substantial public interest, this Court looks to three factors: (1) whether the issue is of public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. *Hart*, 111 Wn.2d at 448. This case satisfies these criteria. The power of a trial court generally, and more specifically its contempt power, is fundamentally a public issue. It is not an issue that merely calls upon this Court to determine a specific claim between private litigants, but reaches litigants in any number of cases.

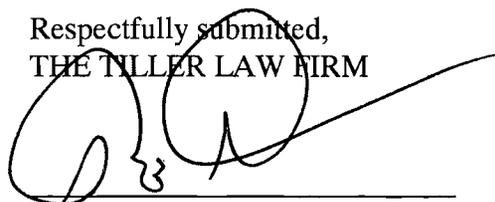
In addition, the Supreme Court has recognized “the contempt power is uniquely liable to abuse. . .and powers summons forth ... the prospect of the most tyrannical licentiousness.” (Internal quotes and citations omitted.) *United Mineworkers v. Bagwell*, 512 U.S. 821, 831-32, 114 S.Ct. 2552, 129 L. Ed. 2nd 642 (1994) . Yet, the fleeting nature of contempt sanctions is such that normal appellate review will likely never be available during the pendency of the sanction. In addition, Mr. Holcomb remains incarcerated pursuant to his plea and therefore this Court has the ability to credit him with time served on the contempt sanction against his remaining time, which was ordered to be served consecutively. Therefore, even if the Court deems this issue moot, it should reach the merits of Mr. Holcomb’s claim.

F. CONCLUSION

For the foregoing reasons, Mr. Holcomb respectfully requests this Court vacate the Order on Contempt, and requests that he be given credit for time served.

DATED: December 21, 2010.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. B. Tiller', is written over a horizontal line. The signature is stylized and somewhat cursive.

PETER B. TILLER-WSBA 20835
Of Attorneys for Michael Holcomb

APPENDIX

STATUTES

RCW 7.21.010

Definitions.

The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.

RCW 7.21.050

Sanctions — Summary imposition — Procedure.

(1) The judge presiding in an action or proceeding may summarily impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

(2) A court, after a finding of contempt of court in a proceeding under subsection (1) of this section may impose for each separate contempt of court a punitive sanction of a fine of not more than five hundred dollars or imprisonment for not more than thirty days, or both, or a remedial sanction set forth in RCW 7.21.030(2). A forfeiture imposed as a remedial sanction under this subsection may not exceed more than five hundred dollars for each day the contempt continues.

RCW 9.94A.660

Drug offender sentencing alternative — Prison-based or residential alternative.

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the

influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and RCW 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section

back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

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IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

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| STATE OF WASHINGTON, Respondent, vs. MICHAEL A. HOLCOMB, Appellant. | COURT OF APPEALS NO. 40470-2-II SUPERIOR COURT NO. 09-1-00487-3 CERTIFICATE OF MAILING |
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The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Opening Brief of Appellant were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to Appellant Michael Holcomb and William Leraas, Deputy Prosecutor, by first class mail, postage pre-paid on December 21, 2010, at the Centralia, Washington post office addressed as follows:

Mr. William Leraas
Deputy Prosecutor
Grays Harbor County Prosecutor's Office
102 W. Broadway Ave., Rm. 102
Montesano, WA 98563

Mr. David Ponzoha
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

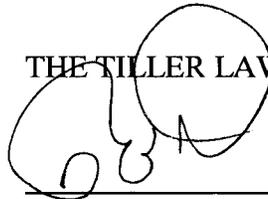
CERTIFICATE
OF MAILING

THE TILLER LAW FIRM
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Mr. Michael A. Holcomb
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P.O. Box 900
Shelton, WA 98584

Dated: December 21, 2010.

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. B. Tiller', is written over the printed name 'THE TILLER LAW FIRM'.

PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

CERTIFICATE
OF MAILING

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