

NO. 42807-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

TEDDY JAY PYLE,

Appellant.

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

The Honorable Scott Collier, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

CATHERINE E. GLINSKI
Attorney at Law
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

A. ASSIGNMENT OF ERROR 1

 Issue pertaining to assignment of error 1

B. STATEMENT OF THE CASE 1

 1. Procedural History 1

 2. Substantive Facts 2

C. ARGUMENT 6

 THE COURT HAD NO AUTHORITY TO IMPOSE
 PROBATIONARY CONDITIONS ON PYLE’S MISDEMEANOR
 SENTENCES. 6

D. CONCLUSION 8

TABLE OF AUTHORITIES

Washington Cases

<u>State ex rel. Schock v. Barnett</u> , 42 Wn.2d 929, 259 P.2d 404 (1953).....	6
<u>State v. Barnett</u> , 139 Wn.2d 462, 987 P.2d 626 (1999)	6
<u>State v. Ford</u> , 137 Wn.2d 472, 973 P.2d 452 (1999).....	6
<u>State v. Gailus</u> , 136 Wn. App. 191, 147 P.3d 1300 (2006).....	7
<u>State v. Loux</u> , 69 Wn.2d 855, 420 P.2d 693 (1966).....	6
<u>State v. Moen</u> , 129 Wn.2d 535, 919 P.2d 69 (1996).....	6
<u>State v. Murray</u> , 118 Wn. App. 518, 77 P.3d 1188 (2003)	7
<u>State v. Sutherby</u> , 165 Wn.2d 870, 204 P.3d 916 (2009).....	7

Statutes

RCW 46.20.342(1)(c).....	1
RCW 46.61.024(1).....	1
RCW 9.92.020.....	7
RCW 9A.46.020.....	1
RCW 9A.46.020(2)(a).....	7
RCW 9A.76.020(1).....	1
RCW 9A.76.020(3).....	7

A. ASSIGNMENT OF ERROR

The trial court erroneously imposed probationary conditions in addition to the maximum term of confinement on appellant's misdemeanor convictions.

Issue pertaining to assignment of error

Appellant was convicted of a felony and two gross misdemeanors. The trial court imposed the maximum term of confinement of 364 days on the misdemeanor offenses. Without suspending any of the confinement, the court imposed probationary conditions for a period of 24 months. Where the court had no authority to impose probationary conditions in addition to the maximum jail sentence, must those conditions be stricken from appellant's sentence?

B. STATEMENT OF THE CASE

1. Procedural History

On September 9, 2011, the Clark County Prosecuting Attorney charged appellant Teddy Jay Pyle with attempting to elude, obstructing a law enforcement officer, harassment, and driving with a suspended license. CP 1-2; RCW 46.61.024(1); RCW 9A.76.020(1); RCW 9A.46.020(1)(a)(i) and (1)(b); RCW 46.20.342(1)(c). The DWLS charge was dismissed prior to trial. CP 82. The case proceeded to jury trial

before the Honorable Scott Collier, and the jury returned guilty verdicts. CP 63-65. The court imposed maximum terms of confinement as well as probationary conditions. CP 73, 82, 86-89. Pyle filed this timely appeal. CP 91.

2. Substantive Facts

At 10:25 on the evening of September 3, 2011, Vancouver Police Officer Brian Ruder was on duty, driving on NE 40th Street, when he saw a van turn left onto 40th Street ahead of him. 1RP¹ 80-81, 83. The van did not stop at the stop sign but proceeded through the intersection at a high rate of speed, and Ruder had to hit his brakes to avoid a collision. 1RP 83-84. When the van approached NE 59th Avenue, it signaled left, then abruptly turned right. 1RP 86. At that point, Ruder followed and activated his emergency lights. 1RP 87.

The van sped up and began swerving from side to side, repeatedly signaling left, then right. The van slowed then accelerated about three times. 1RP 90. Ruder issued several long chirps from his siren, and after about three and a half blocks, the van pulled into a driveway, fishtailing as it turned. 1RP 92, 98. It proceeded down the long driveway at about 25 miles per hour, stopping when it reached a fence. 1RP 98.

¹ The Verbatim Report of Proceedings is contained in three volumes, designated as follows: 1RP—11/9/11; 2RP—11/10/11; 3RP—11/16/11.

Ruder activated his spotlight and stepped out of his patrol car. 1RP 101. Teddy Pyle stepped out of the driver's side of the van, and Ruder immediately drew his gun. 1RP 103, 111. Ruder saw additional movement in the van, and he requested back up to look for another suspect while he contacted Pyle. 1RP 102, 122.

Pyle took a couple of steps toward a shed, and Ruder ordered him to stop. 1RP 108-09. Pyle turned and started moving toward Ruder, shouting obscenities. Ruder repeatedly told Pyle to stop. When Pyle got very close, Ruder ordered him to get on his knees. Pyle did not comply, so Ruder struck him in the leg with his baton. Pyle fell to the ground, and Ruder handcuffed him. 1RP 109-112. Ruder struck Pyle again when he resisted being put in the patrol car. 1RP 114. While Pyle was seated in the back of the patrol car, he told Ruder he would remember him, find him, and "kick his ass" when he got out of jail. 1RP 116.

A second officer arrived at the scene and spoke to Pyle. 1RP 134. Pyle told him that his friend, Miguel, had been driving. Miguel was afraid he would be deported, so when he pulled the van over, he moved to the passenger side and jumped out. Pyle then got into the driver's seat to stop the van and got out the driver's door. 1RP 136. Pyle admitted that he did not immediately comply when Ruder yelled at him to get down, and Ruder then hit him in the leg with his baton. 1RP 136.

Pyle was charged with attempting to elude, obstructing a law enforcement officer, and harassment. CP 1-2. A count of driving with a suspended license was dismissed. CP 82; 1RP 12.

Prior to trial, the defense moved to dismiss the remaining charges for lack of jurisdiction, arguing that since the van was stopped outside the Vancouver city limits, the Vancouver police officer had no authority to arrest Pyle. CP 32-38; 1RP 8. The State responded by presenting an interlocal mutual law enforcement assistance agreement, to which the Clark County Sheriff's Department and the Vancouver Police Department were parties. 1RP 9-10. After reviewing the agreement, the court concluded that the agreement authorized Officer Ruder to operate outside the Vancouver city limits when investigating a crime. It denied the motion to dismiss. 1RP 73-75.

At trial, Ruder described the incident leading to Pyle's arrest. Although it was night and the van had tinted windows, Ruder testified he had visual contact with the driver throughout the entire incident, and he claimed it was Pyle. 1RP 84, 121. Ruder also testified that he believed the van could have pulled over safely along 59th Avenue after he activated his emergency lights. 1RP 97. The State presented photographs of the area along 59th Avenue to demonstrate that there were places to pull over, but those photographs were taken during the daylight, rather than showing

the road as it appeared at the time of the incident. 1RP 96-97; 2RP 176-77, 203.

Robert Philpott testified for the defense that he was a friend of Pyle's, and the van was stopped in his driveway. 1RP 140. He explained that 59th Avenue is a narrow road with ditches along the side. 1RP 141.

Pyle testified that his friend Hector Miguel was driving the van when Ruder pulled up behind them. 1RP 148. At first they thought they just needed to get out of the way, and the actions Ruder described were Miguel's attempt to find a safe place to pull over. 1RP 150. Because it was dark and Miguel was unfamiliar with the road, Pyle told him to pull into Philpott's driveway. 1RP 150-51. As Pyle had said at the scene, Miguel was afraid he would be deported, so he jumped out of the van while it was still moving. Pyle then moved to the driver's seat and put the van in park. 1RP 152.

The jury returned guilty verdicts on all three charges. CP 63-65. At sentencing, the State recommended high end sentences of 60 days on the felony and 364 days on the misdemeanors. 3RP 4. The court followed the State's recommendation. 1RP 14; CP 73, 82. Although the court did not suspend any portion of Pyle's misdemeanor jail sentences, it also followed the State's recommendation and imposed probationary conditions, including anger management evaluation and treatment. 3RP

14; CP 82, 86-89. The Judgment and Sentence indicates that “0 days of the [misdemeanor] sentence shall be ...suspended ... for 24 months.” CP 82. Appendix “A” is attached to the Judgment and Sentence, detailing the conditions of probation. CP 86-89.

C. ARGUMENT

THE COURT HAD NO AUTHORITY TO IMPOSE PROBATIONARY CONDITIONS ON PYLE’S MISDEMEANOR SENTENCES.

As an initial matter it should be noted that a criminal defendant may challenge an illegal or erroneous sentence for the first time on appeal. State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). Moreover, appellate courts have a duty to correct a sentencing error upon discovery. State v. Loux, 69 Wn.2d 855, 858, 420 P.2d 693 (1966), overruled in part on other grounds by State v. Moen, 129 Wn.2d 535, 919 P.2d 69 (1996). Thus, the fact that Pyle did not object to the probation conditions below does not preclude review of the issue by this Court.

A court may only impose a sentence that is authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). A trial court must act within the limits of the sentencing statutes when setting probationary conditions. State ex rel. Schock v. Barnett, 42 Wn.2d 929, 931, 259 P.2d 404 (1953). The imposition of a sentence, including probation, is void if the court does not follow the statutory provisions. Id.

Whether the sentencing court has exceeded its statutory authority is an issue of law reviewed de novo. State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003).

In this case, in addition to his felony conviction, Pyle was sentenced on counts of obstructing a law enforcement officer and harassment. These offenses are both gross misdemeanors. RCW 9A.76.020(3); RCW 9A.46.020(2)(a). The maximum sentence the court could impose for these gross misdemeanors is 364 days. RCW 9.92.020. Pursuant to this statute, the court imposed 364 days of confinement. CP 82. It also noted that “0 days” of the sentence were suspended and that Pyle would be subject to enumerated probationary conditions for period of 24 months. CP 82, 86-89.

The trial court has no authority to impose probationary conditions as part of a misdemeanor sentence when the maximum jail sentence is imposed. State v. Gailus, 136 Wn. App. 191, 201, 147 P.3d 1300 (2006) (“The imposition of probation is not authorized when the maximum jail sentence is imposed on an offender.”), overruled on other grounds by State v. Sutherby, 165 Wn.2d 870, 204 P.3d 916 (2009). Because no time was suspended on the gross misdemeanor sentences, the sentencing court had no authority to impose probation. The 24 months of probation and all the attendant conditions must be stricken.

D. CONCLUSION

Because the trial court imposed the maximum jail sentence on Pyle's misdemeanor offenses, it had no authority to impose probationary conditions. The conditions must be stricken from the Judgment and Sentence.

DATED this 27th day of March, 2012.

Respectfully submitted,



CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service by Mail

Today I delivered a copy of the Brief of Appellant in *State v.*

Teddy Jay Pyle, Cause No. 42807-5-II as follows:

Via U.S. Mail to:
Teddy Jay Pyle, CFN 78771
P.O. Box 1147
Vancouver, WA 98666-1147

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
March 27, 2012

NO. 42807-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

TEDDY JAY PYLE,

Appellant.

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

The Honorable Scott Collier, Judge

BRIEF OF APPELLANT

CATHERINE E. GLINSKI
Attorney for Appellant

CATHERINE E. GLINSKI
Attorney at Law
P.O. Box 761
Manchester, WA 98353
(360) 876-2736

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

A. ASSIGNMENT OF ERROR 1

 Issue pertaining to assignment of error 1

B. STATEMENT OF THE CASE 1

 1. Procedural History 1

 2. Substantive Facts 2

C. ARGUMENT 6

 THE COURT HAD NO AUTHORITY TO IMPOSE
 PROBATIONARY CONDITIONS ON PYLE’S MISDEMEANOR
 SENTENCES. 6

D. CONCLUSION 8

TABLE OF AUTHORITIES

Washington Cases

<u>State ex rel. Schock v. Barnett</u> , 42 Wn.2d 929, 259 P.2d 404 (1953).....	6
<u>State v. Barnett</u> , 139 Wn.2d 462, 987 P.2d 626 (1999)	6
<u>State v. Ford</u> , 137 Wn.2d 472, 973 P.2d 452 (1999).....	6
<u>State v. Gailus</u> , 136 Wn. App. 191, 147 P.3d 1300 (2006).....	7
<u>State v. Loux</u> , 69 Wn.2d 855, 420 P.2d 693 (1966).....	6
<u>State v. Moen</u> , 129 Wn.2d 535, 919 P.2d 69 (1996).....	6
<u>State v. Murray</u> , 118 Wn. App. 518, 77 P.3d 1188 (2003)	7
<u>State v. Sutherby</u> , 165 Wn.2d 870, 204 P.3d 916 (2009).....	7

Statutes

RCW 46.20.342(1)(c).....	1
RCW 46.61.024(1).....	1
RCW 9.92.020.....	7
RCW 9A.46.020.....	1
RCW 9A.46.020(2)(a).....	7
RCW 9A.76.020(1).....	1
RCW 9A.76.020(3).....	7

A. ASSIGNMENT OF ERROR

The trial court erroneously imposed probationary conditions in addition to the maximum term of confinement on appellant's misdemeanor convictions.

Issue pertaining to assignment of error

Appellant was convicted of a felony and two gross misdemeanors. The trial court imposed the maximum term of confinement of 364 days on the misdemeanor offenses. Without suspending any of the confinement, the court imposed probationary conditions for a period of 24 months. Where the court had no authority to impose probationary conditions in addition to the maximum jail sentence, must those conditions be stricken from appellant's sentence?

B. STATEMENT OF THE CASE

1. Procedural History

On September 9, 2011, the Clark County Prosecuting Attorney charged appellant Teddy Jay Pyle with attempting to elude, obstructing a law enforcement officer, harassment, and driving with a suspended license. CP 1-2; RCW 46.61.024(1); RCW 9A.76.020(1); RCW 9A.46.020(1)(a)(i) and (1)(b); RCW 46.20.342(1)(c). The DWLS charge was dismissed prior to trial. CP 82. The case proceeded to jury trial

before the Honorable Scott Collier, and the jury returned guilty verdicts. CP 63-65. The court imposed maximum terms of confinement as well as probationary conditions. CP 73, 82, 86-89. Pyle filed this timely appeal. CP 91.

2. Substantive Facts

At 10:25 on the evening of September 3, 2011, Vancouver Police Officer Brian Ruder was on duty, driving on NE 40th Street, when he saw a van turn left onto 40th Street ahead of him. 1RP¹ 80-81, 83. The van did not stop at the stop sign but proceeded through the intersection at a high rate of speed, and Ruder had to hit his brakes to avoid a collision. 1RP 83-84. When the van approached NE 59th Avenue, it signaled left, then abruptly turned right. 1RP 86. At that point, Ruder followed and activated his emergency lights. 1RP 87.

The van sped up and began swerving from side to side, repeatedly signaling left, then right. The van slowed then accelerated about three times. 1RP 90. Ruder issued several long chirps from his siren, and after about three and a half blocks, the van pulled into a driveway, fishtailing as it turned. 1RP 92, 98. It proceeded down the long driveway at about 25 miles per hour, stopping when it reached a fence. 1RP 98.

¹ The Verbatim Report of Proceedings is contained in three volumes, designated as follows: 1RP—11/9/11; 2RP—11/10/11; 3RP—11/16/11.

Ruder activated his spotlight and stepped out of his patrol car. 1RP 101. Teddy Pyle stepped out of the driver's side of the van, and Ruder immediately drew his gun. 1RP 103, 111. Ruder saw additional movement in the van, and he requested back up to look for another suspect while he contacted Pyle. 1RP 102, 122.

Pyle took a couple of steps toward a shed, and Ruder ordered him to stop. 1RP 108-09. Pyle turned and started moving toward Ruder, shouting obscenities. Ruder repeatedly told Pyle to stop. When Pyle got very close, Ruder ordered him to get on his knees. Pyle did not comply, so Ruder struck him in the leg with his baton. Pyle fell to the ground, and Ruder handcuffed him. 1RP 109-112. Ruder struck Pyle again when he resisted being put in the patrol car. 1RP 114. While Pyle was seated in the back of the patrol car, he told Ruder he would remember him, find him, and "kick his ass" when he got out of jail. 1RP 116.

A second officer arrived at the scene and spoke to Pyle. 1RP 134. Pyle told him that his friend, Miguel, had been driving. Miguel was afraid he would be deported, so when he pulled the van over, he moved to the passenger side and jumped out. Pyle then got into the driver's seat to stop the van and got out the driver's door. 1RP 136. Pyle admitted that he did not immediately comply when Ruder yelled at him to get down, and Ruder then hit him in the leg with his baton. 1RP 136.

Pyle was charged with attempting to elude, obstructing a law enforcement officer, and harassment. CP 1-2. A count of driving with a suspended license was dismissed. CP 82; 1RP 12.

Prior to trial, the defense moved to dismiss the remaining charges for lack of jurisdiction, arguing that since the van was stopped outside the Vancouver city limits, the Vancouver police officer had no authority to arrest Pyle. CP 32-38; 1RP 8. The State responded by presenting an interlocal mutual law enforcement assistance agreement, to which the Clark County Sheriff's Department and the Vancouver Police Department were parties. 1RP 9-10. After reviewing the agreement, the court concluded that the agreement authorized Officer Ruder to operate outside the Vancouver city limits when investigating a crime. It denied the motion to dismiss. 1RP 73-75.

At trial, Ruder described the incident leading to Pyle's arrest. Although it was night and the van had tinted windows, Ruder testified he had visual contact with the driver throughout the entire incident, and he claimed it was Pyle. 1RP 84, 121. Ruder also testified that he believed the van could have pulled over safely along 59th Avenue after he activated his emergency lights. 1RP 97. The State presented photographs of the area along 59th Avenue to demonstrate that there were places to pull over, but those photographs were taken during the daylight, rather than showing

the road as it appeared at the time of the incident. 1RP 96-97; 2RP 176-77, 203.

Robert Philpott testified for the defense that he was a friend of Pyle's, and the van was stopped in his driveway. 1RP 140. He explained that 59th Avenue is a narrow road with ditches along the side. 1RP 141.

Pyle testified that his friend Hector Miguel was driving the van when Ruder pulled up behind them. 1RP 148. At first they thought they just needed to get out of the way, and the actions Ruder described were Miguel's attempt to find a safe place to pull over. 1RP 150. Because it was dark and Miguel was unfamiliar with the road, Pyle told him to pull into Philpott's driveway. 1RP 150-51. As Pyle had said at the scene, Miguel was afraid he would be deported, so he jumped out of the van while it was still moving. Pyle then moved to the driver's seat and put the van in park. 1RP 152.

The jury returned guilty verdicts on all three charges. CP 63-65. At sentencing, the State recommended high end sentences of 60 days on the felony and 364 days on the misdemeanors. 3RP 4. The court followed the State's recommendation. 1RP 14; CP 73, 82. Although the court did not suspend any portion of Pyle's misdemeanor jail sentences, it also followed the State's recommendation and imposed probationary conditions, including anger management evaluation and treatment. 3RP

14; CP 82, 86-89. The Judgment and Sentence indicates that “0 days of the [misdemeanor] sentence shall be ...suspended ... for 24 months.” CP 82. Appendix “A” is attached to the Judgment and Sentence, detailing the conditions of probation. CP 86-89.

C. ARGUMENT

THE COURT HAD NO AUTHORITY TO IMPOSE PROBATIONARY CONDITIONS ON PYLE’S MISDEMEANOR SENTENCES.

As an initial matter it should be noted that a criminal defendant may challenge an illegal or erroneous sentence for the first time on appeal. State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). Moreover, appellate courts have a duty to correct a sentencing error upon discovery. State v. Loux, 69 Wn.2d 855, 858, 420 P.2d 693 (1966), overruled in part on other grounds by State v. Moen, 129 Wn.2d 535, 919 P.2d 69 (1996). Thus, the fact that Pyle did not object to the probation conditions below does not preclude review of the issue by this Court.

A court may only impose a sentence that is authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). A trial court must act within the limits of the sentencing statutes when setting probationary conditions. State ex rel. Schock v. Barnett, 42 Wn.2d 929, 931, 259 P.2d 404 (1953). The imposition of a sentence, including probation, is void if the court does not follow the statutory provisions. Id.

Whether the sentencing court has exceeded its statutory authority is an issue of law reviewed de novo. State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003).

In this case, in addition to his felony conviction, Pyle was sentenced on counts of obstructing a law enforcement officer and harassment. These offenses are both gross misdemeanors. RCW 9A.76.020(3); RCW 9A.46.020(2)(a). The maximum sentence the court could impose for these gross misdemeanors is 364 days. RCW 9.92.020. Pursuant to this statute, the court imposed 364 days of confinement. CP 82. It also noted that “0 days” of the sentence were suspended and that Pyle would be subject to enumerated probationary conditions for period of 24 months. CP 82, 86-89.

The trial court has no authority to impose probationary conditions as part of a misdemeanor sentence when the maximum jail sentence is imposed. State v. Gailus, 136 Wn. App. 191, 201, 147 P.3d 1300 (2006) (“The imposition of probation is not authorized when the maximum jail sentence is imposed on an offender.”), overruled on other grounds by State v. Sutherby, 165 Wn.2d 870, 204 P.3d 916 (2009). Because no time was suspended on the gross misdemeanor sentences, the sentencing court had no authority to impose probation. The 24 months of probation and all the attendant conditions must be stricken.

D. CONCLUSION

Because the trial court imposed the maximum jail sentence on Pyle's misdemeanor offenses, it had no authority to impose probationary conditions. The conditions must be stricken from the Judgment and Sentence.

DATED this 27th day of March, 2012.

Respectfully submitted,



CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service by Mail

Today I delivered a copy of the Brief of Appellant in *State v.*

Teddy Jay Pyle, Cause No. 42807-5-II as follows:

Via U.S. Mail to:
Teddy Jay Pyle, CFN 78771
P.O. Box 1147
Vancouver, WA 98666-1147

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
March 27, 2012

GLINSKI LAW OFFICE

March 27, 2012 - 1:00 PM

Transmittal Letter

Document Uploaded: 428075-Appellant's Brief.pdf

Case Name:

Court of Appeals Case Number: 42807-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Catherine E Glinski - Email: cathyglinski@wavecable.com

A copy of this document has been emailed to the following addresses:

prosecutor@clark.wa.gov