

No. 43009-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

In re the Post Sentence Review of:

DOMINIC L. COMBS

Defendant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

By:


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These exhibits should not be considered because the
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B. The State nevertheless concedes the Department’s
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I. CONCESSION BY THE STATE

The State concedes that the law the Department cites is correct. Furthermore, the State has no basis to challenge the OMNI spreadsheet attached to the Department's Petition. Nevertheless, the State urges the Court of Appeals to not remand the matter for resentencing for the following reasons:

II. REASONS WHY THE COURT SHOULD NOT REMAND THE CASE FOR RESENTENCING.

- A. Appellant's Exhibits 3, 4, 5, 6, and 7 are not in the record. These exhibits should not be considered because the calculation of credit for time served is a factual issue, not a legal issue.

RCW 9.94A.585(7) states in relevant part, "The review shall be limited to errors of law."

The State does not challenge any of the law cited by the Department of Corrections (Department). The Department does not assert that the Court used incorrect law. Rather, the Department asserts the trial court used an incorrect calculation for credit for time served. A calculation is a factual question, not a legal question.

Exhibit 5 to the Departments' Brief is a spreadsheet created by the Department's Offender Management Network Information software (OMNI). It is very impressive. But it was never given to

the State, Defense or Trial Court when Mr. Combs was resentenced. All the State received was a Notice of Violation.¹

The Department is petitioning the Appeals Court to remand for re-sentencing because the Department asserts the credit for time served figure is incorrect. The Appeals Court should deny the petition by the Department because the petition is not based on a question of law. The Department will simply have to live with the trial court's decision. Perhaps next time there is a request by the Department for a revocation of a DOSA sentence, the Department will include a credit for time served (OMNI spreadsheet) with the Notice of Violation the Department sends to the State.

B. The State nevertheless concedes the Department's calculation of credit for time served, but urges the Court to not remand for resentencing due to the State's agreement with the Defendant.

Having urged the Appeals Court to not consider the OMNI spreadsheet because the spreadsheet is not in the record, and because there is no issue of law before the Appeals Court, the State nevertheless agrees the credit for time served calculation submitted by the Department is correct. The State simply has no basis to challenge the Department's records. This

¹ The Notice of Violation is attached as Exhibit A to this Brief. This Document is Sub. Number 23 in the Superior Court file.

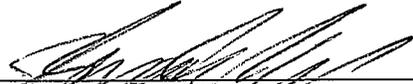
concession is given in order to comply with RPC 3.3, which creates a duty of candor on all lawyers. This concession, however, creates an ethical dilemma for the State.

Mr. Combs was induced to stipulate to the revocation of his DOSA sentence due to the State and Defense agreeing to the 160 day figure for credit for time served.² The State cannot go back on this agreement, nor can the State obliquely urge the Court of Appeals to overturn Mr. Combs' sentence. The State therefore urges the Appeals Court to issue its opinion for the benefit of future DOSA revocations, and deny the Department's post sentence petition in this case.

RESPECTFULLY SUBMITTED this 7 day of May, 2012.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

BY:



J. BRADLEY MEAGHER, WSBA 18685
Chief Criminal Deputy Prosecuting Attorney

² Minute Entry for DOSA revocation hearing. Attached as Exhibit B to this Brief. This document is Sub. Number 31 in the Superior Court file.

Received & Filed
LEWIS COUNTY, WASH
Superior Court

AUG 12 2011

By Kathy A. Brock, Clerk
Deputy

SCANNED



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

COURT-NOTICE OF VIOLATION

REPORT TO: The Honorable Richard Brosey
Lewis County Superior Court
OFFENDER NAME: Dominic Combs
AKA:
CRIME: VUCSA - Meth
SENTENCE: DOSA
Present Address: Unknown
MAILING ADDRESS:

DATE: 8/11/11
DOC NUMBER: 893098
DOB: 6/18/87
COUNTY CAUSE #: Lewis 11-1-329-3
DATE OF SENTENCE: 7/13/11
TERMINATION DATE: TBD
STATUS: Active
CLASSIFICATION: HV

PREVIOUS ACTION:

None

VIOLATION(S) SPECIFIED: The above-named offender has violated conditions of supervision by:

Violation 1: Failing to comply with substance abuse treatment as ordered by the court on 7/13/11.

SUPPORTING EVIDENCE:

Violation 1: on 7/13/11 Combs was sentenced in Lewis County Superior Court to a DOSA sentence. Section 4.1 of the Judgement and Sentence subsection (b) directs that Combs serve 24

EXHIBIT A

months in custody but was granted a DOSA in which he was to serve 3-6 months in a residential treatment facility. Comb's was released from custody on 7/14/11 and admitted into residential treatment. On 7/23/11 Comb's refused to submit to a urinalysis test and absconded from the program. Please see attached discharge report.

ADJUSTMENT:

Comb's adjtment to supervision has been a complete disaster. He has been on supervision for years and continues to use drugs and commit new felony's. Combs has been placed in inpatient treatment prior to this DOSA sentence and had also absconded from the program. It is obvious that Combs should not be allowed the benefit of treatment as he continuously fails to follow through.

RECOMMENDATION:

It would be recommended that a warrant be issued and that the DOSA sentence be revoked and Comb's sent to prison and serve the remainder of his sentence.

I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

Submitted By:

Approved By:

Errol Shirer

8-11-11

DATE

Scott Albert

8-11-11

DATE

Errol Shirer
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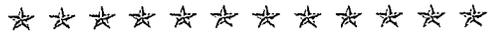
TYPIST/CCO/

Distribution: **ORIGINAL** - Court

COPY - Prosecuting Attorney, Defense Attorney, File

AMERICAN

BEHAVIORAL HEALTH SYSTEMS



Date: 7/25/11

To: _Errol Shirer CCO; Superior Court Lewis County_

Re: _Combs, Dominic_ DOC# 893098_

The above noted client failed to complete his/her Chemical Dependency Treatment plan under the Residential Drug Offender Sentence Alternative as required. The conditions were not met for one of the following reason(s).

- The client withdrew from treatment against program advice.
- The client aborted treatment.
- The client was discharged due to excessive rule violations.
- The client was discharged early by the treatment facility because of medical or personal reasons. The client will be accepted back once these conditions have been addressed in the community.

Additional comments/concerns: Dominic withdrew from treatment on 7/23/11 against program advice. Dominic was asked via Care Team to submit a UA due to prior faulty attempt. Dominic was asked to stay at Care Team desk until he could provide sample and client refused. Within ten minutes of this time client had backed belongings and aborted treatment.

CD Professional Name (Print)

Roberta Coult
CD Professional Signature

7/25/11_
Date

360-748-4776
Contact Number

SCANNED

Date: 11/19/11

Time: 11:04
Pros Atty: O'Rourke

JUDGE RICHARD BROSEY
Clerk: Sherry Tyler
Court Reporter: Jane Westlund

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Def Atty: David Arcuri
Atty Prelim Appear: _____
Interpreter: _____

Cause No. 11-1-329.3

STATE OF WASHINGTON
VS Dominic Combs
In Custody: yes no
present not present _____

MATTER ON FOR: DOSA Revocation

Preliminary appearance Orig Chg _____ PV Petition/disposition _____ FFJ _____ Other _____
Name true Deft advised of charges & penalties _____; right to court appointed counsel _____
To retain counsel _____ waived counsel _____ Deft found indigent; Yes _____ No _____ Appt counsel _____

Name of Attorney Appt: _____

Deft failed to appear: State's motion for warrant Denied _____ Granted _____ Bail \$ _____

Arraignment: Defendant pled Not Guilty to counts: 1 _____ 2 _____ 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____

Probation violations: admitted _____ denied _____ order entered _____ Review disposition _____

Change of Plea: Counts/case dismissed _____ Amended Info _____
Pre-sentence Investigation _____ Alford Plea _____ Plea entered _____ Accepted by Court & found guilty _____
Statement on Plea of Guilty Entered _____ waiver of speedy sentencing entered _____

Sentencing: Recommend by State _____ by Defense _____ DNA Oral Swab _____
Written J&S entered _____ Fingerprints taken _____ Firearms notification _____ voting rights notification _____

Condition Release: Appearance bond \$ _____ Bail \$ _____ PR _____

Fugitive from Justice: Certificate of Waiver _____ Waiver of Extradition _____ RWV Status _____

Continue to: _____ A&TS/PV _____ set _____ review _____ Admin.Bkg _____

Mr. Combs stipulated to Revocation.

18 mo. DOC
w/ Credit for 160 days

EXHIBIT B

CERTIFICATE OF SERVICE

I certify that on the date indicated below I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

Dominic L. Combs
DOC# 893098
Washington State Penitentiary
1313 N 13th Ave
Walla Walla WA 99362
*via US Mail postage prepaid

Ronda D. Larson
Assistant Attorney General
Attorney for Petition
Corrections Division
PO Box 40116
Olympia WA 98504-0116
*via email thru the COA electronic filing

Executed this 7th day of May, 2012.



Casey L. Cutler

LEWIS COUNTY PROSECUTOR

May 07, 2012 - 10:12 AM

Transmittal Letter

Document Uploaded: prp2-430096-Respondent's Brief.pdf

Case Name: Dominic L. Combs

Court of Appeals Case Number: 43009-6

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: Respondent'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: Casey L Cutler - Email: **casey.cutler@lewiscountywa.gov**

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

ronda.larson@atg.wa.gov