

**FILED**

SEPTEMBER 13, 2011

Court of Appeals  
Division III  
State of Washington

29441-2-III

**COURT OF APPEALS**

**DIVISION III**

**OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON, RESPONDENT**

v.

**STEVEN J. SNEDDEN, APPELLANT**

---

**APPEAL FROM THE SUPERIOR COURT**

**OF SPOKANE COUNTY**

---

**BRIEF OF RESPONDENT**

---

**STEVEN J. TUCKER**  
Prosecuting Attorney

Andrew J. Metts  
Deputy Prosecuting Attorney  
Attorneys for Respondent

County-City Public Safety Building  
West 1100 Mallon  
Spokane, Washington 99260  
(509) 477-3662

**INDEX**

APPELLANT'S ASSIGNMENT OF ERROR.....1  
ISSUE PRESENTED.....1  
STATEMENT OF THE CASE.....1  
ARGUMENT.....1  
CONCLUSION.....4

**TABLE OF AUTHORITIES**

**STATUTES**

RCW 9.94A.030..... 2, 3  
RCW 9.94A.030(46)..... 3  
RCW 9.94A.507(1)..... 3  
RCW 9.94A.533(8)(a) ..... 2  
RCW 9.94A.533(8)(a)(iii) ..... 3  
RCW 9.94A.701..... 3

I.

APPELLANT'S ASSIGNMENT OF ERROR

- A. The court erred by imposing a sentence in violation of former RCW 9.94A.505(2)(b) when it imposed 36 months community custody on Steven J. Snedden's guilty plea to one count of indecent exposure with sexual motivation, an unranked offense.

II.

ISSUE PRESENTED

- A. Did the sentencing court err by following the provisions of the Sentencing Reform Act?

III.

STATEMENT OF THE CASE

For the purposes of this appeal only, the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

The defendant pled guilty to one count of indecent exposure and agreed to a sexual motivation finding. CP 129-137. On appeal the

defendant does not contest his incarceration of 24 months. CP 168-181. In any event, the defendant's incarceration time is within the statutory provisions.

A second indecent exposure conviction elevates the normal status of indecent exposure from a misdemeanor to an unranked class "C" felony. The defendant's criminal history shows two prior indecent exposure convictions. CP 138-139. That is the defendant's primary status, however, the defendant agreed to a finding of "sexual motivation" which is a statutory mandatory sentence enhancement of 12 months. Thus, the defendant was sentenced to 12 months on the basic unranked felony which has a standard range of 0-12 months. However, the sexual motivation finding adds 12 months on top of the standard range. CP 165-166; 168-181.

RCW 9.94A.533(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030.

RCW 9.94A.533(8)(a)(iii) provides the following enhancement: "One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;" *Id.*

Since the defendant agreed to plead to this second indecent exposure with prior indecent exposure convictions and agreed to a finding of “sexual motivation,” the sentencing court was correct in sentencing the defendant to 24 months. CP 129-137; 168-181; 165-166.

The defendant disputes the sentencing court’s ability to sentence him to three years of community supervision. RCW 9.94A.701 reads in part:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to *community custody for three years*:

(a) A sex offense not sentenced under RCW 9.94A.507 ...

-----  
RCW 9.94A.507(1) (emphasis added).

RCW 9.94A.030 defines “sex offense” as “A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135.” RCW 9.94A.030(46).

The “gloss” on this sentencing is that the crime occurred in 2008 and the sentencing occurred in 2010. CP 1-2; 168-181. On the surface, it would appear that the laws covering community custody in effect in 2008 would be applicable. However, the legislature made the obvious not so obvious by the language of 2008 c 231 §§ 6-58. “(2) Sections 6 through

58 of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, *for crimes committed prior to August 1, 2009*, to the extent that such application is constitutionally permissible.” *Id.* (emphasis added).

The trial court followed the statutes in this sentencing. There was no error.

V.

#### CONCLUSION

For the reasons stated, the sentencing of the defendant should be affirmed.

Dated this 12<sup>th</sup> day of September, 2011.

STEVEN J. TUCKER  
Prosecuting Attorney



Andrew J. Metts #19578  
Deputy Prosecuting Attorney  
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,            )  
  )  
                                  Respondent,    )       NO. 29441-2-III  
                                  v.                )  
  )  
STEVEN J. SNEDDEN,            )  
  )  
                                  Appellant,    )  
\_\_\_\_\_

I certify under penalty of perjury under the laws of the State of Washington, that on September 13, 2011, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

Kenneth H. Kato  
khkato@comcast.net

and mailed a copy to:

Steven J. Snedden  
Pod 301 Cell 12/B  
7122 W. Okanogan Pl. Bldg B  
Kennewick, W 99336

9/13/2011  
(Date)

Spokane, WA  
(Place)

*Patricia H. Owens*  
(Signature)