

FILED
Jul 23, 2012
Court of Appeals
Division III
State of Washington

No. 303772

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JEROME CURRY, Appellant

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

REPLY BRIEF

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I. ARGUMENT

A. The Resentencing Court Exceeded Its Statutory Authority When It Entered A “Brooks Notation” In The Resentencing.

With the passage of RCW 9.94A.701(9), if an offender is sentenced or resentenced after August 1, 2009, the term of community custody specified shall be reduced by the court whenever an offender’s standard range of confinement in combination with the term of community custody exceeds the maximum for the crime. RCW 9.94A.701(9).

In its response brief, the State appears to acknowledge that despite following this Court’s remand, the resentencing court exceeded its authority in its resentencing of Mr. Curry. (Br. of Resp. at 2). At the time of remand, this Court did not have the benefit of the *Boyd* ruling issued May 3, 2012. *State v. Boyd*, 174 Wn.2d 470 471-73, 275 P.3d 321 (2012). Instructed by *Boyd*, that a *Brooks* notations was no longer viable as it was superseded by statute, this Court should remand to the trial court to either amend the custody term or to resentence Mr. Curry consistent with RCW 9.94A.701(9).

II. CONCLUSION

Based on the foregoing facts and authorities, as well as all facts, authorities and argument in appellant's opening brief, Mr. Curry respectfully requests this Court to remand to the trial court to either amend the custody term or resentence Mr. Curry consistent with RCW 9.94A.701(9). Mr. Curry further requests that he be given the assistance of counsel for that hearing.

Dated this 23rd day of July, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marie Trombley, attorney for Appellant JEROME CURRY, Court of Appeals No. 303772, do hereby certify under penalty of perjury under the laws of the United States and the state of Washington, that a true and correct copy of the Appellant's Reply Brief was mailed first class, postage prepaid to: Jerome Curry, DOC # 323160 at Washington State Penitentiary, 1313 N. 13th Ave, Walla Walla, WA 99362. A copy of this reply brief has been sent by email per agreement between the parties to: Andrew Metts, Spokane County Prosecutor, at kowens@spokanecounty.org.

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