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Sep 13, 2012
Court of Appeals
Division III
State of Washington

30719-1-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL PARKER-LEE, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY

APPELLANT'S BRIEF

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A. ASSIGNMENT OF ERROR

1. The court erred in imposing the 18-month term of community custody.

B. ISSUE

1. Does a court err in imposing a term of community custody for which there is no statutory authority?

C. STATEMENT OF THE CASE

Michael Parker-Lee was driving around with friends on the evening of October 5, 2009. (RP 87-89) As he drove along Sunnyside Road, near Trout Lake, his car struck a cow that was standing in the road. (RP 96) His friend Nathan Hall, who was sitting in the front passenger seat, died almost immediately. (RP 284, 304) Mr. Hall's friend Chad Strong, who was sitting in the back seat, received minor injuries in the collision. (RP 97)

Based on skid marks left on the roadway, a forensic expert from the Washington State Patrol opined that the car was traveling at 85 to 94 miles an hour when it struck the cow. (RP 239-240) The State charged Mr. Parker-Lee with vehicular homicide and reckless endangerment.

(CP 18-19) A jury found Mr. Parker-Lee was driving with disregard for the safety of others and returned guilty verdicts on both counts. (CP 122)

At sentencing, the deputy prosecuting attorney told the court that vehicular homicide is a violent offense requiring imposition of 18 months' community custody. (RP 537) The court imposed consecutive sentences of six months' confinement for the misdemeanor reckless endangerment conviction, 18 months' confinement for the vehicular homicide, and 18 months of community custody. (CP 127)

D. ARGUMENT

1. COMMUNITY CUSTODY IS NOT AUTHORIZED FOR MR. PARKER-LEE'S OFFENSE.

"A trial court may impose only a sentence which is authorized by statute." *State v. Barnett*, 139 Wn.2d 462, 464, 987 P.2d 626 (1999) (citing *In re Personal Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980)).

The legislature has set a term of 18 months' community custody for any person convicted of "a violent offense that is not considered a serious violent offense." RCW 9.94A.701(2). The vehicular homicide statute provides three alternative ways of committing the offense: driving under the influence of intoxicants, operating a vehicle in a reckless

manner, or driving with disregard for the safety of others. RCW 46.61.520(1); *State v. Stately*, 152 Wn. App. 604, 607, 216 P.3d 1102 (2009).

Mr. Parker-Lee was convicted of vehicular homicide by driving with disregard for the safety of others. The definition of a violent offense includes vehicular homicide when committed by either of the first two means, but not the third, driving with disregard for the safety of others. RCW 9.94A.030(53)(xiv). 152 Wn. App. at 607. Accordingly, the felony of which Mr. Parker-Lee was convicted was not a violent offense and the court erred in imposing the 18-month term of community custody.

E. CONCLUSION

The community custody term should be stricken.

Dated this 13th day of September, 2012.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 30719-1-III
)	
vs.)	CERTIFICATE
)	OF MAILING
MICHAEL PARKER-LEE,)	
)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on September 13, 2012, I served a copy of the Appellant's Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

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I certify under penalty of perjury under the laws of the State of Washington that on September 13, 2012, I mailed a copy of the Appellant's Brief in this matter to:

Michael Parker-Lee
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Signed at Spokane, Washington on September 13, 2012.


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