FILED
Oct 24, 2012
Court of Appeals
Division III
State of Washington

NO. 30719-1-III

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

---

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL PARKER-LEE,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF
KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 09-1-00197-1

---

# BRIEF OF RESPONDENT

---

LORI LYNN HOCTOR
Prosecuting Attorney

JESSICA M. FOLTZ
Deputy Prosecuting Attorney

Klickitat County Prosecuting Attorney
205 S. Columbus Avenue, MS-CH-18
Goldendale, Washington 98620
(509) 773 – 5838

## TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ..... ii

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR ..... 1

B. STATEMENT OF THE CASE ..... 1

C. ARGUMENT ..... 1

1. THE TERM OF COMMUNITY CUSTODY ORDERED SHOULD HAVE BEEN LIMITED TO TWELVE MONTHS ..... 1

D. CONCLUSION ..... 2

TABLE OF AUTHORITIES

**Cases**

*In re Pers. Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980)..... 1

**Statutes**

RCW 9.94A ..... 1
RCW 9.94A.411(2)..... 2
RCW 9.94A.701 ..... 1, 2

## A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the court err in imposing an eighteen month term of community custody?

## B. STATEMENT OF THE CASE

The facts and procedural history recited in The Brief of Appellant are sufficient for the Court to determine whether Mr. Parker-Lee's community custody sentence was appropriate.

## C. ARGUMENT

### 1. THE TERM OF COMMUNITY CUSTODY ORDERED SHOULD HAVE BEEN LIMITED TO TWELVE MONTHS.

The State concedes that imposition of eighteen months of community custody is not authorized for Mr. Parker-Lee's offense under the Sentencing Reform Act (SRA). Because Vehicular Homicide with Disregard for the Safety of Others is classified as a "crime against persons," and not as a "violent offense" under the SRA, Mr. Parker-Lee's community custody term should have been limited to twelve months pursuant to RCW 9.94A.701(3)(a). Remand is required to impose the correct term of community custody.

A trial court may only impose a sentence that is authorized by statute. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980). The Sentencing Reform Act of 1981 (SRA), RCW 9.94A, defines the

crime of vehicular homicide by disregard for the safety of others as a "crime against persons." RCW 9.94A.411(2).

The statute authorizing the superior court to impose a sentence of community custody is RCW 9.94A.701, which provides in pertinent part:

> (3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:
>
> (a) Any crime against persons under RCW 9.94A.411(2);

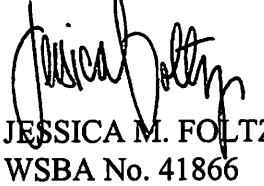
RCW 9.94A.701(3)(a). Because the statutorily authorized term of community custody is one year, Mr. Parker-Lee's community custody sentence should have been limited to twelve months.

## D. CONCLUSION

For the foregoing reasons, the State respectfully requests that Mr. Parker-Lee's case be remanded for resentencing within the proper provisions of RCW 9.94A.701.

Respectfully submitted this 24th day of October, 2012.

LORI LYNN HOCTOR
Prosecuting Attorney



JESSICA M. FOLTZ
WSBA No. 41866
Deputy Prosecuting Attorney

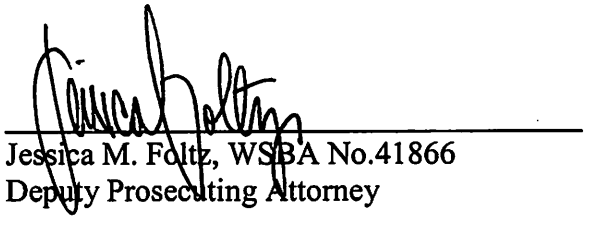
COURT OF APPEALS OF WASHINGTON
DIVISION III

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>MICHAEL PARKER-LEE,<br><br>Appellant. | COURT OF APPEALS NO. 30719-1-III<br><br>DECLARATION OF MAILING |

I, Jessica M. Foltz, state that on October 24, 2012, I sent a copy of the Brief of Respondent in this case to: Janet G. Gemberling at admin@gemberlaw.com. Email service was per agreement.

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

DATED this 24 day of October, 2012.



Jessica M. Foltz, WSBA No.41866
Deputy Prosecuting Attorney



Klickitat County Prosecutor
205 S. Columbus Avenue, MS-CH-18
Goldendale, WA 98620
(509) 773-5838
Fax: (509) 773-6696

COURT OF APPEALS OF WASHINGTON
DIVISION III

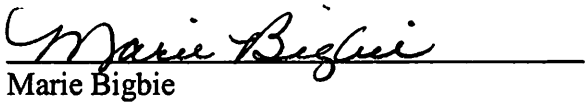
| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>v.<br><br>MICHAEL PARKER-LEE,<br><br>Defendant. | COURT OF APPEALS NO. 30719-1-III<br><br>DECLARATION OF MAILING |

I, Marie Bigbie, state that on October 24, 2012, I deposited in the United States mails by first class mail, proper postage affixed a copy of the Brief of Respondent to:

MICHAEL PARKER-LEE
P.O. BOX 12
TROUT LAKE, WA 98650

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

DATED this 24th day of October, 2012.



Marie Bigbie
Administrative Assistant
Klickitat County Prosecuting Attorney's Office



Klickitat County Prosecutor
205 S. Columbus Avenue, MS-CH-18
Goldendale, WA 98620
(509) 773-5838
Fax: (509) 773-6696