

No. 93987-0

No. 73905-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON BIGSBY,

Appellant.

FILED  
Jul 26, 2016  
Court of Appeals  
Division I  
State of Washington

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR SNOHOMISH COUNTY

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT

**The Department of Corrections alone and not the trial court had the authority to sanction Mr. Bigsby for any violation of his sentence.**

Relying on the plain language of RCW 9.94A.6332, Mr. Bigsby argued below, and again in his initial brief, that the trial court did not have authority to sanction him. The relevant portion of that RCW 9.94A.6332(7) provides: “. . . if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.”

The State responds that despite the plain language of the statute the trial court always has authority to impose sanctions. The State makes no effort to explain what the plain words of RCW 9.94A.6332(7) actually mean if they do not mean only the department can sanction a person on supervision. The State’s argument is based entirely on RCW 9.94B.030.

Critically, however, Ch. 9.94B RCW, applies only to crimes committed prior to July 1, 2000. RCW 9.94B.010, entitled “Application of Chapter,” provides

(1) This chapter codifies sentencing provisions that may be applicable to sentences for **crimes committed prior to July 1, 2000.**

(2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter.

Here. Mr. Bigsby committed his offense in 2014. Thus, RCW 9.94B.030 cannot apply to him.

The State also points to two cases *State v. Gamble*, 146 Wn. App. 813, 192 P.3d 399 (2008) and *State v. Ashenberner*, 171 Wn. App. 237, 249, 286 P.3d 984 (2012). Neither case addressed RCW 9.94.6332(7) as neither case involved crimes to which that statute applies. Even the most cursory review of these cases reveals they offer no support for the State's position.

At the time of the offense at issue in *Gamble* RCW 9.94B.030 did not exist and instead former RCW 9.94A.634(1) expressly authorized the trial court to sanction an offender who violated the conditions of sentence. In 2008, former RCW 9.94A.634(1) was recodified as RCW 9.94B.030. Importantly, prior to its recodification former RCW 9.94A.634(1) contained no limitation on the timeframe of the offense(s) to which that statute applies. That is plainly not the case for RCW 9.94B.030.

In *Ashenberner* the defendant's crimes were committed prior to July 1, 2000. 171 Wn. App. at 239. Thus, RCW 9.94B.030 applied to those offenses. RCW 9.94B.010.

Neither case holds that RCW 9.94B.030 can apply to Mr. Bigsby's case. Unlike *Gamble* RCW 9.94A.634(1) no longer authorizes the court to impose sanctions whenever a violation occurs. Unlike *Ashenberner*, Mr. Bigsby's offense was committed long after 2001. Instead, RCW 9.94A.6332 specifically allocates the authority to sanction in a variety of scenarios between the court and DOC.

Indeed, it defies common sense to contend that a statute entitled "**Sanctions—Which entity imposes,**" and which does so carefully dole out authority, nonetheless permits either authority to act in every case. Yet that is the State's argument here. RCW 9.94A.6332 would be entirely unnecessary under the State's argument as the court would always have authority to sanction any individual. In the end, the State does not point to any statute which actually applies to Mr. Bigsby and which that permitted the court to impose sanctions.

Perhaps the absence of such a statute is why the trial court rested its actions on its belief that the court had inherent authority to sanction Mr. Bigsby. To its credit, the State does not attempt to defend the trial court's belief of its inherent authority as a trial court does not possess inherent sentencing authority, but rather its authority "derives strictly from statute." *State v. Ammons*, 105 Wn.2d 175, 180-81, 713

P.2d 719 (1986); *In re the Personal Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

The trial court lacked authority to impose sanctions on Mr. Bigsby.

B. CONCLUSION

For the reasons set forth above, and in Mr. Bigsby's initial brief, this Court should conclude the trial court lacked authority to sanction Mr. Bigsby. If the Court disagrees with Mr. Bigsby and affirms the imposition of sanctions, the Court should exercise its discretion and deny any claim for costs. *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612, *review denied*, \_\_ Wn.2d \_\_ (2016).

Respectfully submitted this 25<sup>th</sup> day of July, 2016.

s/ Gregory C. Link  
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Attorneys for Appellant

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26<sup>TH</sup> DAY OF JULY, 2016, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] SETH FINE, DPA<br>[sfine@snoco.org]<br>SNOHOMISH COUNTY PROSECUTOR'S OFFICE<br>3000 ROCKEFELLER<br>EVERETT, WA 98201 | ( )<br>( )<br>(X)<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>AGREED E-SERVICE<br>VIA COA PORTAL |
| [X] BRANDON BIGSBY<br>1917 6 <sup>TH</sup> AVE NE<br>MARYSVILLE, WA 98223  | (X)<br>( )<br>( )        | U.S. MAIL<br>HAND DELIVERY<br>_____                              |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 26<sup>TH</sup> DAY OF JULY, 2016.



X \_\_\_\_\_

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