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04307-3

NO. 64367-3-1

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

STATE OF WASHINGTON,

Respondent,

v.

ROY WINKLE,

Appellant.

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

BRIEF OF APPELLANT

LILA J. SILVERSTEIN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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DIVISION ONE
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STATE OF WASHINGTON

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A. ASSIGNMENT OF ERROR

The sentencing court erred in imposing a term of community custody on Mr. Winkle.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Under RCW 9.94A.701(8), "The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provide in RCW 9A.20.02." Former RCW 9.94A.715, which allowed for imposition of community custody equal to earned early release time, has been repealed. These amendments are retroactive. Mr. Winkle's standard range and statutory maximum are both 60 months. Did the sentencing court err in imposing a 60-month sentence plus a term of community custody equal to Mr. Winkle's earned early release time?

C. STATEMENT OF THE CASE

Roy Winkle was convicted of two counts of third degree rape of a child and supplying liquor to a minor. The statutory maximum for the felonies is 60 months, which is equivalent to Mr. Winkle's standard range. Mr. Winkle was originally sentenced to 60 months of confinement and 36-48 months of community custody. On

appeal, this Court reversed the sentence, holding “the total term of confinement plus community custody may not exceed the maximum term for the offense.” CP 28.

On remand, the sentencing court scrawled a handwritten note clarifying the judgment and sentence. CP 25. The note stated, “Total amount of jail time and community custody/supervision time combined and imposed shall not exceed statutory maximum of 60 months on cts 1 & 2.” CP 25, 28.

Mr. Winkle appealed again, arguing the sentence was an improper indeterminate sentence. This Court agreed, holding “when the combination of confinement and community custody exceeds the maximum sentence, the sentence is indeterminate and must be remanded for imposition of a determinate sentence not exceeding the statutory maximum.” CP 28-29 (citing State v. Linerud, 147 Wn. App. 944, 197 P.3d 1224 (2008)). This Court remanded for resentencing. CP 29.

At the resentencing hearing, the State requested a sentence of 60 months’ confinement plus a term of community custody equal to Mr. Winkle’s earned early release time. RP 3. Mr. Winkle objected to having to spend his earned early release time on community custody. RP 5. The court imposed the sentence

proposed by the State, ruling that it was proper to impose community custody on top of the 60-month sentence under former RCW 9.94A.715.

Mr. Winkle appeals. CP 42-52.

D. ARGUMENT

THE SENTENCING COURT ERRED IN IMPOSING
COMMUNITY CUSTODY ON TOP OF THE 60-MONTH
TERM OF CONFINEMENT.

The sentencing court imposed a 60-month sentence (equal to the maximum and to the standard range), and also imposed a term of community custody equal to Mr. Winkle's earned early release time. However, the statutory authority for such a sentence has been repealed, and the amendment is retroactive.

Engrossed Substitute Senate Bill 5288 amended RCW 9.94A.701 to add:

The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provide in RCW 9A.20.021.

Laws of 2009, ch. 375, § 5; RCW 9.94A.701(8). Section 7 of the same bill deleted the portion of RCW 9.94A.707 that had stated community custody could begin "at such time as the offender is

transferred to community custody in lieu of earned release.” Laws of 2009, ch. 375, § 7. These amendments took effect August 1, 2009, and are retroactive to all cases in which a community custody term was imposed and has not yet been completed. Laws of 2009 ch. 375, § 20. Furthermore, RCW 9.94A.715, on which the sentencing court relied, has been repealed. See In re the Personal Restraint Petition of Brooks, 166 Wn.2d 664, 672 n.4, 211 P.3d 1023 (2009).

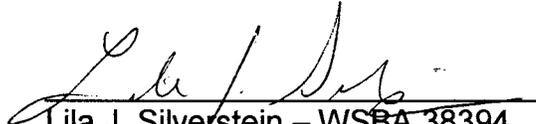
In sum, the current statutory scheme limits the sentencing court’s authority in this case to a single sentence: 60 months of confinement with no community custody. Mr. Winkle respectfully asks this Court to remand for imposition of this sentence.

E. CONCLUSION

For the reasons above this Court should vacate Mr. Winkle's sentence and remand for imposition of a 60-month term of confinement with no community custody.

DATED this 2nd day of April, 2010.

Respectfully submitted,


Lila J. Silverstein – WSBA 38394
Washington Appellate Project
Attorneys for Appellant

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STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 64367-3-I
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ROY WINKLE, SR.,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2ND DAY OF APRIL, 2010, I CAUSED THE ORIGINAL **OPENING 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 _____ *[Signature]*

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710