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FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2010 MAR 17 PM 2:46

NO. 64762-8-I

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

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM QUINN,

Appellant.

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR

The sentencing court erred in imposing a 24 month term probation on count 1 of the judgment and sentence because it imposed the maximum sentence permitted by law.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the sentencing court could impose a term of probation for a gross misdemeanor conviction when the court imposed the maximum sentence permitted by law at sentencing?

C. STATEMENT OF THE CASE

1. Facts

William Quinn pled guilty to two counts of Communicating with a Minor for Immoral Purposes before the Honorable Hollis Hill on November 16, 2009. RP 14-28. The parties agreed to recommend consecutive 12 months suspended sentences on each count on the condition that Mr. Quinn serve 48 months on probation, nine months of jail on count 1 and no jail time on count 2, monetary conditions, restitution, no further law violations, no contact with the victim, no unsupervised minor contact, and completion of a sexual deviancy evaluation. RP 14. Judge Hill RP 1-13; CP 5-22. Judge Hill declined to follow the joint recommendation and instead imposed 12 months on count 1 and no jail time on count 2, to run consecutively, and imposed 48 months of probation. RP 23; CP 31-36 (judgment and sentence attached to the Notice of Appeal). Counsel objected to the imposition of the

consecutive term of probation on the basis that it would constitute an exceptional sentence. RP 24-25. Mr. Quinn timely appealed. CP 31-36.

D. ARGUMENT.

BECAUSE MR. QUINN WAS SENTENCED TO THE FULL TERM OF 12 MONTHS ON COUNT 1, THE SENTENCING COURT HAD NO AUTHORITY TO IMPOSE PROBATION ON THAT COUNT.

RCW 9.95.210 grants superior courts the authority to suspend or defer a sentence. Subsection (1) of that statute provides:

In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

State v. Gailus resolves this issue. There, Defendant Thomas Gailus entered a plea of guilty to two counts of Communicating with a Minor for Immoral Purposes. 136 Wn. App. 191, 147 P.3d 1300 (2006). The court imposed 12 months' confinement on each count, to run consecutively, and 48 months of probation. 136 Wn. App. at 195.

The appellate court found that the imposition of probation was improper. As the court stated, “[b]ecause this sentence did not actually suspend any jail time, the requirement that Gailus complete 48 months of probation was not the result of a suspended sentence and must be vacated.” Id. at 201. The court reiterated further in the opinion, “[t]he

imposition of probation is not authorized when the maximum jail sentence is imposed on an offender.” Id.

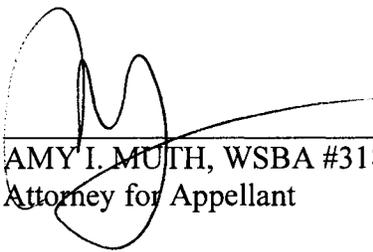
Here, Mr. Quinn received the maximum sentence on count 1.¹ Therefore, there was no remaining time to suspend on that count. The court had no authority to impose probation for that count, meaning that Mr. Quinn’s probationary period can only be 24, as opposed to 48, months. Mr. Quinn requests this court remand this case for resentencing and direct the trial court to vacate the requirement that Mr. Quinn complete a term of probation on count 1.

E. CONCLUSION

Based on the foregoing, Mr. Quinn requests this court remand this case for resentencing and direct the trial court to vacate the requirement that Mr. Quinn complete a term of probation on count 1.

DATED this 15th day of March, 2010.

Respectfully submitted by:



AMY I. MUTH, WSBA #31862
Attorney for Appellant

¹ Communicating with a Minor for Immoral Purposes is a gross misdemeanor and punishable by up to a year in jail. RCW 9.68A.090; RCW 9.92.020.