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NO. 70507-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DEGALVEZ WILLIAMSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

BRIEF OF RESPONDENT

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A. ISSUE

The Sentencing Reform Act requires sex offenders to spend their period of earned early release on community custody. At resentencing, Williamson received a standard range sentence of 24 months in custody and 36 months of community custody. Later, upon learning that Williamson had previously spent 46 months in custody on his original 60 month sentence, the court reduced his term of community custody to 14 months. Did the court properly sentence Williamson within the statutory maximum of 60 months?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

On February 27, 2009, the State charged Michael Degalvez Williamson with indecent exposure. CP 1; RCW 9A.88.010. The crime was elevated to a felony because Williamson had a conviction for second-degree rape and multiple convictions for indecent exposure. CP 1, 4. The State also alleged that he committed the crime with sexual motivation. CP 1; RCW 9.94A.835.

Trial occurred in September of 2009. A jury convicted Williamson as charged. 5RP 35.¹ At Williamson's original sentencing on October 27, 2009, the court calculated his standard range as 43 to 57 months based upon a seriousness level for the offense of IV and an offender score of 7. CP 6; 6RP 5. In addition, Williamson was subject to an additional 12 months due to the sexual motivation finding, increasing the range he faced to 55 to 69 months. Id. The statutory maximum for the crime was 60 months. CP 6; 6RP 5; RCW 9A.88.010(2)(c); RCW 9A.20.021. The trial judge imposed 60 months confinement. CP 6, 8-9; 6RP 18.

On appeal, the State conceded that Williamson's conviction was an unranked felony because it did not involve a victim under the age of 14, and that his sentence range should have been calculated as zero to 12 months of confinement, 12 to 24 months with the sexual motivation finding. CP 22; RCW 9.94A.505(2)(b); RCW 9.94A.515. DOC closed supervision interest in Williamson's case on September 13, 2012, while Williamson's appeal was pending. CP 16-20.

¹ The Verbatim Report of Proceedings consists of 7 volumes designated as follows: 1RP: September 2, 2009; 2RP: September 3, 2009; 3RP: September 8, 2009; 4RP: September 9, 2009; 5RP: September 10, 2009; 6RP: October 23, 2009; 7RP: March 29, 2013.

At resentencing on March 29, 2013, the trial court imposed 12 months plus an additional 12 month enhancement for the sexual motivation finding, for a total of 24 months incarceration. CP 26-27; 7RP 8. The court also imposed 36 months of community custody, gave Williamson credit for the time he had served, and ordered that he finish the treatment that he was enrolled in.² CP 26, 32; 7RP 5-7, 12. The judgment and sentence reflected that Williamson was to complete 36 months of community custody “up to the statutory maximum of 60 months (DOC term previously served on this cause).” CP 26.

Williamson questioned whether he had fulfilled his sentence by having spent three and a half years with the Department of Corrections (DOC) and having received good time. 7RP 12. The trial court responded, “He probably has, but I want the Department [of Corrections] to figure it out. Have Mr. Williamson go report to the Department. Let them take a look at it.” 7RP 12-13.

On May 6, 2013, a paralegal informed Williamson’s attorney that, according to DOC records, Williamson had served 1,369 days (approximately 46 months) of DOC custody and certified jail time.

² At the time of the resentencing, Williamson was on community custody on a different case. 7RP 5.

CP 40. On May 14, 2013, Williamson moved for relief under CrR 7.8, arguing that the trial court could not order him to serve any community custody because he “had already served the maximum sentence of 60 months.” CP 36-39.

The trial court denied Williamson’s motion for relief because, “[h]aving been convicted of a sex offense, community custody was statutorily mandated for a period of 36 months (RCW 9.94A.701(1)).” CP 45. However, on June 3, 2013, the trial court amended the judgment and sentence with the following notation:

[B]ecause the crime of Indecent Exposure carries a maximum term of five years and the defendant has served in excess of 24 months (1,369 days served), as reflected in the Judgment and Sentence of March 29, 2013 and pursuant to RCW 9.94A.701(9), the term of community custody is reduced to 14 months as it is the balance of time remaining on the statutory maximum.

CP 45. Williamson timely appealed again. CP 46.

2. SUBSTANTIVE FACTS.

On the afternoon of January 28, 2009, Laurie Rowell boarded a nearly empty bus in downtown Seattle and sat in the back. 4RP 29-31. Sometime later, Williamson boarded the bus and sat near her. 4RP 31, 35-36. Rowell noticed that he had

newspaper on his lap and that it was moving up and down. 4RP 31-34. She suspected that Williamson was masturbating. 4RP 33. Rowell looked at his face and realized that he had been staring at her. Id. Williamson then uncovered his lap and displayed an erect penis. Id. He continued to look at Rowell and masturbate. Id. Rowell said "stop it," and Williamson moved to the front of the bus. Id. Rowell was "freaked out" and stayed on the bus until she was the last passenger left. 4RP 34-35.

After Rowell went home and told her roommate, he encouraged her to report the incident to the police. 4RP 36-37, 55-57. Rowell then saw Williamson's face online and contacted the police. 4RP 37. A detective showed Rowell a photo montage of suspects, and Rowell positively identified Williamson as the man on the bus. 4RP 14-16, 37-38. A detective also obtained the surveillance video from the bus, which showed Williamson getting on the bus and sitting across from Rowell. 4RP 12-13, 38-41. Williamson was charged and convicted of one count of indecent exposure with sexual motivation. CP 1; 5RP 35.

C. ARGUMENT

**THE TRIAL COURT PROPERLY RESENTENCED
WILLIAMSON UPON REMAND.**

Williamson asserts that the trial court exceeded its authority by resentencing him to a sentence in excess of the statutory maximum. His argument assumes that his earned early release time must be credited as confinement time. This argument should be rejected. Upon remand following his first appeal, the trial court complied with the legislature's mandate that sex offenders receive community custody in lieu of earned early release. RCW 9.94A.501(4)(a); RCW 9.94A.701(1)(a); RCW 9.94A.729(5)(a).

Where several statutes govern a particular action by a court, the statutes must be read together to achieve a harmonious total statutory scheme maintaining the integrity of the respective statutes. State v. O'Neill, 103 Wn.2d 853, 862, 700 P.2d 711 (1985). The interpretation of a statute is a question of law and is therefore reviewed de novo. State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

Several statutes governed Williamson's resentencing upon remand. Under RCW 9.94A.030(46)(c), indecent exposure with a sexual motivation enhancement qualifies as a sex offense.

RCW 9.94A.701 requires the imposition of 36 months of community custody for such offenses. The statute provides, in relevant part:

- (1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:
 - a. A sex offense not sentenced under RCW 9.94A.507; or
 - b. A serious violent offense.

RCW 9.94A.701(1). Additionally, RCW 9.94A.729(5)(a) requires sex offenders to be transferred to community custody in lieu of earned release time. See also State v. Winkle, 159 Wn. App. 323, 330, 245 P.3d 249 (2011).

At Williamson's resentencing, the trial court properly imposed a sentence totaling 24 months of time in DOC custody. CP 26-27; 7RP 8; State v. Williamson, 172 Wn. App. 1026 (2012 WL 6571717) (Wn. App. Div. 1, 2012). The trial court also followed the legislature's mandate to impose a 36 month term of community custody for this sex offense. CP 26; 7RP 5-7; RCW 9.94A.701(1). On the judgment and sentence, the court accurately noted that the amount of time spent by Williamson in custody combined with the amount of time he spent on community custody could not exceed the crime's 60 month statutory maximum. CP 26;

RCW 9A.20.021(c); RCW 9A.88.010(c).³ Later, after learning that Williamson had previously spent approximately 46 months in custody, the court entered an order reducing his community custody to 14 months. CP 45; RCW 9.94A.701(9). Therefore, the sentence does not exceed the statutory maximum.

Williamson asserts that he “served the 60 month (5 year) term which was imposed by the trial court on October 27, 2009” and that “no sentencing court may impose a term of punishment greater than that provided for in the SRA for the offense.” Appellant’s Brief at 4, 6. Specifically, he argues that, when adding earned early release time credit, or “good time,” he has served 60 months, and the imposition of any community custody term upon remand was improper.⁴ Williamson’s argument fails because the legislature clearly intended sex offenders to serve their period of earned early release on community custody. RCW 9.94A.729(5)(a). Williamson cites to no authority to the contrary.

³ Indecent exposure is a class C felony if the person has previously been convicted of indecent exposure or of a sex offense as defined in RCW 9.94A.030. RCW 9A.88.010(c).

⁴ A person serving a sentence and committed to the custody of DOC may be released prior to the expiration of their sentence if they have earned early release time as authorized by RCW 9.94A.729. RCW 9.94A.728.

Williamson also argues that the court was required to “reduce the term of community custody to a specific term” under State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012). App. Br. at 7. He fails to mention that the court did just that in its order of June 3, 2013. CP 45.

Under RCW 9.94A.505(5), a court “may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.” The length of the term of community custody in a case such as this one is governed by RCW 9.94A.701(9), which provides:

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

This provision of the statute was effective beginning on July 26, 2009. LAWS OF 2009, ch. 375, § 5; State v. Franklin, 172 Wn.2d 831, 837, 263 P.3d 585 (2011).

In Boyd, the Washington Supreme Court held that, in cases where the defendant was sentenced *after* the effective date of the

RCW 9.94A.701(9), the trial court – not the Department of Corrections – is required to reduce the term of community custody to avoid a sentence that exceeds the statutory maximum. Boyd, 174 Wn.2d at 473.

As noted above, indecent exposure as charged in the present case is a class C felony, so it has a statutory maximum of five years (or 60 months). RCW 9A.88.010; RCW 9A.20.021(1)(c). Because the trial court did not know the amount of time Williamson had been imprisoned at the time of his re-sentencing on March 29, 2013, the trial court properly imposed 24 months of confinement and 36 months of community custody. CP 26-28. Those terms were valid, as the combined term of confinement and community custody did not exceed the 60 month statutory maximum. Id.

Subsequently, when the trial court was informed that Williamson had been imprisoned for 46 months (1,369 days), the trial court amended its previous sentence and reduced the term of community custody to 14 months. CP 40, 45. As noted by the trial court in its June 3, 2013 order amending the judgment and sentence, “pursuant to RCW 9.94A.701(9), the term of community custody is reduced to 14 months as it is the balance of time remaining on the statutory maximum.” CP 45.

Like the defendant in Boyd, Williamson was sentenced after RCW 9.94A.701(9) became effective on July 26, 2009. See LAWS OF 2009, ch. 375, § 5. As a result, the trial court, not the Department of Corrections, was responsible for ensuring that Williamson's sentence was not in excess of the statutory maximum. Boyd, 174 Wn.2d at 473. Based on the new information received by the trial court, its reduction of community custody time from 36 months to 14 months was proper and consistent with RCW 9.94A.701(9) and RCW 9.95.062(3). Id. The trial court properly imposed sentence on Williamson upon remand, and his conviction and sentence should be affirmed.

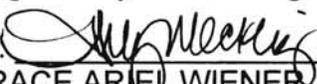
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Williamson's conviction and sentence.

DATED this 10th day of April, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver R. Davis, the attorney for the appellant, at Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the Brief of Respondent in STATE V. MICHAEL D. WILLIAMSON, Cause No. 70507-5-I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 18 day of April, 2014



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Done in Seattle, Washington