

72044-9

72044-9

No. 72044-9-1

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

STATE OF WASHINGTON,

Respondent,

v.

BRADLEY BARTLETT,

Appellant.

21 DEC -9 11:39

COURT OF APPEALS
STATE OF WASHINGTON
[Signature]

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

The Honorable Joseph P. Wilson

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The 120 month confinement plus 12 months community custody sentence imposed exceeded the statutory maximum and must be remanded for resentencing.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A trial court's authority to impose sentences is statutory. The maximum sentence for a class B felony is 120 months. A sentence for possession with intent to deliver heroin, a class B felony, cannot exceed 120 months including any enhancements and terms of community custody. Here, Mr. Bartlett's sentence for possession with intent to deliver heroin and the 12 month term of community custody exceeded 120 months. Is Mr. Bartlett entitled to remand for resentencing to a proper sentence?

C. STATEMENT OF THE CASE

Bradley Bartlett was charged with possession of heroin with the intent to deliver with an aggravating factor that the offense was a major drug offense.¹ CP 53. Mr. Bartlett subsequently pleaded guilty as charged. CP 28-43; 3/19/2014RP 5-9.

¹ A "major drug offense" as charged here under RCW 9.94A.535(3)(e) is defined as:

Mr. Bartlett possessed an offender score of 11, which led to a standard range of 60+ to 120 months incarceration. CP 18. At sentencing, Mr. Bartlett sought a Drug Offender Sentence Alternative (DOSA), which the trial court flatly rejected. 5/13/2014RP 11-12, 16-17, 22. Instead, the court accepted the State's recommendation and imposed the statutory maximum sentence of 120 months confinement. CP 22; 5/13/2014RP 31. In addition, the court imposed 12 months of community custody. CP 22; 5/13/2014RP 31.

D. ARGUMENT

The combined sentence imposed by the trial court for possession of heroin with the intent to deliver exceeded the statutory maximum

The Sentencing Reform Act (SRA) prescribes the trial court's authority to sentence in felony cases. *State v. Furman*, 122 Wn.2d 440, 456, 858 P.2d 1092 (1993); *State v. Skillman*, 60 Wn.App. 837, 839,

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

...

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

...

(v) The current offense involved . . . a broad geographic area of disbursement;

809 P.2d 756 (1991). Whenever a sentencing court exceeds its statutory authority, its action is void. *State v. Wilson*, ___ Wn.App. ___, 307 P.3d 823 (2013). Whether a court has exceeded its sentencing authority is a question of law reviewed *de novo*. *State v. Murray*, 118 Wn.App. 518, 521, 77 P.3d 1188 (2003).

A sentence imposed contrary to the law may be reviewed for the first time on appeal. *State v. Anderson*, 58 Wn.App. 107, 110, 791 P.2d 547 (1990). On appeal, a defendant may challenge a sentence imposed in excess of statutory authority because “a defendant cannot agree to punishment in excess of that which the Legislature has established.” *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002).

Here, the offense to which Mr. Bartlett pleaded guilty was a class B felony with a maximum penalty of ten years confinement and a fine of \$10,000. RCW 9A.20.021(1)(c); RCW 69.50.401(2)(a). A court may not impose a term of community custody that, combined with the term of confinement, exceeds the maximum term of confinement allowed by RCW 9A.20.021. RCW 9.94A.505(5), RCW 9.94A.701(9).

RCW 9.94A.701(9) provides that “[t]he term of community custody . . . 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 provided in RCW 9A.20.021. Here, the trial court imposed the statutory maximum sentence of 120 months of confinement and imposed a community custody term of 12 months. This combined sentence exceeded the statutory maximum for the offense.

Where the sentence imposed exceeds the statutory maximum, the trial court must reduce the term of community custody. RCW 9.94A.701(9); *State v. Boyd*, 174 Wn.2d 470, 472, 275 P.3d 321 (2012). The proper remedy is to “remand to the trial court to either amend the community custody term or resentence.” *Boyd*, 174 Wn.2d at 473.

The trial court’s imposition of the 120 month sentence and 12 months of community custody exceeded the statutory maximum of 120 months. The remedy is for this Court to remand to the trial court for resentencing.

E. CONCLUSION

For the reasons stated, Mr. Bartlett asks this Court to remand his sentence to the trial court for the elimination of his term of community custody or resentencing.

DATED this 5th day of December 2014.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 72044-9-I
)	
)	
BRADLEY BARTLETT,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8TH DAY OF DECEMBER, 2014, 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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SIGNED IN SEATTLE, WASHINGTON, THIS 8TH DAY OF DECEMBER, 2014.

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