

FILED
JUNE 11, 2013
Court of Appeals
Division III
State of Washington

No. 30736-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

v.

MARIO NOYOLA,

APPELLANT.

BRIEF OF RESPONDENT

D. ANGUS LEE
PROSECUTING ATTORNEY

Patrick Schaff, WSBA #41294
Attorney for Respondent

PO BOX 37
EPHRATA WA 98823
(509)754-2011

TABLE OF CONTENTS

I. ISSUES1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT1

V. CONCLUSION.....2

TABLE OF AUTHORITIES

Cases

State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012)..... 2

I. ISSUES

Issues Raised in Appellant's Appeal

1. Should Appellant's Assault in the Third Degree conviction be dismissed per double jeopardy?
2. Did the sentencing court err in imposing 18 months of community custody rather than 12?
3. Were the sentences imposed on the class C felony convictions invalid because the terms of confinement and community custody totaled more than 60 months?

II. STATEMENT OF THE CASE

The State agrees that Appellant's Statement of the Case is sufficient for the purposes of this appeal.

III. ARGUMENT AND RELIEF REQUESTED

A. The State concedes the issues raised by Appellant

The State concedes the issues raised in this appeal. The State respectfully requests that this Court remand the above-entitled cause to Grant County Superior Court, State of Washington, for the purpose of dismissing the Assault in the Third Degree charge and amending the

Community Custody on the remaining charges pursuant to *State v. Boyd*,
174 Wn.2d 470, 275 P.3d 321 (2012).

IV. CONCLUSION

Remand is necessary to correct the bases for Appellant's asserted
assignments of error.

DATED this 11th day of June, 2013

Respectfully submitted:

D. ANGUS LEE
Grant County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Patrick Schaff", written over a horizontal line.

Patrick Schaff, WSBA #41294
Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 30736-1-III
)	
vs.)	
)	
MARIO NOYOLA JR.,)	DECLARATION OF SERVICE
)	
Appellant.)	
<hr/>		

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

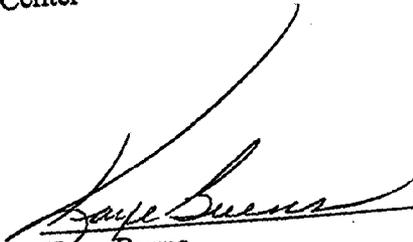
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

David N. Gasch
Gasch Law Office
gaschlaw@msn.com

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

Mario Noyola Jr.- #767684
Airway Heights Correction Center
PO Box 2049
Airway Heights WA 99001

Dated: June 11, 2013.


Kaye Burns