

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

SOY OEUNG,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT  
OF PIERCE COUNTY

The Honorable Thomas J. Felnagle

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**SUPPLEMENTAL ASSIGNMENT OF ERROR AND BRIEF IN  
SUPPORT THEREOF**

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## **A. SUPPLEMENTAL ASSIGNMENT OF ERROR**

The trial court exceeded its sentencing authority in imposing sentence on count XIV.

## **B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR**

Did the trial court exceed its sentencing authority in imposing sentence on count XIV, where the combined base sentence of 96.75 months, the firearm enhancement term of 18 months, and the period of community custody of 18 months, totaled 150.75 months, 30.75 months above the 120 month statutory maximum?

## **C. STATEMENT OF THE CASE**

At issue in the present supplemental brief is the sentence imposed June 23, 2014, on one of the counts of conviction – count XIV (count fourteen). Following a joint trial with co-appellant Azias Ross at which the jury convicted Ms. Oeung of, *inter alia*, conspiracy to commit first degree burglary (count XIV), the trial court sentenced Ms. Oeung to a base sentence on that count of 96.75 months, the firearm enhancement term of 18 months, and the period of community custody of 18 months, totaling an incarceration period of 150.75 months. CP 305-26 (Judgment and sentence, at pp. 5-6).

Ms. Oeung timely appealed and raised various challenges to her convictions and sentences. This Court of Appeals, on May 17,

2016, requested that the State provide an answer to co-appellant Azias Ross's issue raised in his statement of additional grounds (SAG) challenging the sentences of incarceration on several counts, and on May 19, 2016, the Respondent State of Washington filed an answer agreeing that Mr. Ross's total terms of incarceration on counts I and XI exceeded the statutory maximums of 120 months and 60 months, respectively. See also Oeung Motion to File Supplemental Assignment of Error, May 19, 2016).

#### **D. ARGUMENT**

##### **MS. OEUNG'S TOTAL TERM OF INCARCERATION AND COMMUNITY CUSTODY ON COUNT XIV EXCEEDS THE 120 MONTH STATUTORY MAXIMUM.**

Because sentencing authority derives solely from statute, the Court of Appeals may correct an erroneous sentence challenged for the first time on appeal. In re Pers. Restraint of Call, 144 Wn.2d 315, 334, 28 P.3d 709 (2001).

Under RCW 9.94A.599, the addition of a firearm enhancement cannot extend a defendant's sentence beyond the maximum for the crime, requiring that, in such instances where it does, the base sentence must be reduced because the enhancement length is mandatory.

Further, when a court sentences a defendant to imprisonment and also to community custody, the judgment and sentence must make clear that the imprisonment and the term of community custody do not, when combined, violate the rule that they may not exceed the statutory maximum for the crime. State v. Boyd, 174 Wn.2d 470, 472, 275 P.3d 321 (2012); see State v. Franklin, 172 Wn.2d 831, 840, 263 P.3d 585 (2011); RCW 9.94A.505(5).

In such cases, when the combined term of imprisonment and community custody exceeds the statutory maximum, the base sentence itself (not including the enhancement) and/or the period of community custody must be reduced such that the total term of imprisonment does not exceed the maximum. RCW 9.94A.701(9).

In Ms. Oeung's case, the total term of imprisonment imposed for Count XIV was a base sentence of 96.75 months plus a firearm enhancement term of 36 months, for a total of 132.5 months. The statutory maximum for the conviction, a Class B felony, is 120 months. RCW 9A.20.021. Further, the addition of the community custody term added an additional 18 months above the statutory maximum.

Ms. Oeung asks that this Court reverse the sentence on Count XIV and remand for re-sentencing.

**E. CONCLUSION**

Based on the foregoing, Soy Oeung requests that this Court reverse her sentence on Count XIV and remand for re-sentencing.

Respectfully submitted this 19<sup>th</sup> day of May, 2016.

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STATE OF WASHINGTON,	)	
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v.	)	NO. 46425-0-II
	)	
SOY OEUNG,	)	
	)	
Appellant.	)	

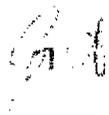
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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 19<sup>TH</sup> DAY OF MAY, 2016, I CAUSED THE ORIGINAL **SUPPLEMENTAL ASSIGNMENT OF ERROR AND BRIEF IN SUPPORT THEREOF** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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|---|----------------------------|---|
| <p>[X] BRIAN WASANKARI, DPA<br/>[PCpatcecf@co.pierce.wa.us]<br/>PIERCE COUNTY PROSECUTOR'S OFFICE<br/>930 TACOMA AVENUE S, ROOM 946<br/>TACOMA, WA 98402-2171</p> | <p>( )<br/>( )<br/>(X)</p> | <p>U.S. MAIL<br/>HAND DELIVERY<br/>E-SERVICE VIA<br/>COA PORTAL</p> |
| <p>[X] JENNIFER WINKLER<br/>[SloaneJ@nwattorney.net]<br/>ATTORNEY AT LAW<br/>NIELSEN BROMAN KOCH, PLLC<br/>1908 E MADISON ST<br/>SEATTLE, WA 98122</p>            | <p>( )<br/>( )<br/>(X)</p> | <p>U.S. MAIL<br/>HAND DELIVERY<br/>E-MAIL</p>                       |

**SIGNED** IN SEATTLE, WASHINGTON THIS 19<sup>TH</sup> DAY OF MAY, 2016.



X \_\_\_\_\_

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# WASHINGTON APPELLATE PROJECT

**May 19, 2016 - 4:04 PM**

## Transmittal Letter

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Case Name: STATE V. SOY OEUNG

Court of Appeals Case Number: 46425-0

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

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Cost Bill

Objection to Cost Bill

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Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: SUPPLEMENTAL ASSIGNMENT OF ERROR AND BRIEF IN SUPPORT

### Comments:

No Comments were entered.

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