

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE )  
PERSONAL RESTRAINT OF: )  
RICHARD LEE SCALES, )  
Petitioner. )

No. 71888-6-I  
DIVISION ONE  
UNPUBLISHED OPINION  
FILED: October 20, 2014

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2014 OCT 20 AM 9:08

PER CURIAM. Richard Scales challenges his judgment and sentence in King County Superior Court No. 09-1-06193-5 SEA, claiming his term of confinement in combination with his term of community custody exceeds the applicable statutory maximum for count III, third degree assault. On April 9, 2010, the trial court imposed standard range sentences of 116 months for first degree unlawful possession of a firearm, 84 months for residential burglary, and 60 months for third degree assault. The court also imposed a community custody term of 12 months for a crime against person under RCW 9.94A.411, which could apply only to the third degree assault.

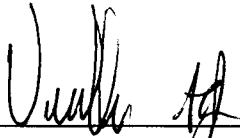
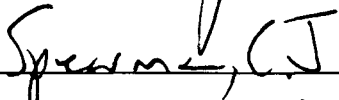
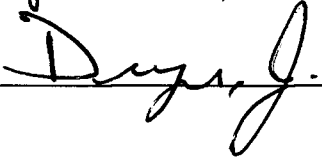
We accept the State’s concession that the trial court exceeded its authority in sentencing Scales to a term of community custody in addition to a standard range term of confinement of 60 months for third degree assault. See RCW 9.94A.701(9). Because Scales was sentenced in April 2010, the trial court, not Department of Corrections, has the obligation to reduce the term of community custody to avoid a sentence in excess of the statutory maximum. State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012); see also State v. Winborne, 167 Wn. App. 320, 329, 273 P.3d 454, review

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denied, 174 Wn.2d 1019 (2012). Accordingly, we remand to the trial court to amend the community custody term consistent with RCW 9.94A.701(9) to zero. See Boyd, 174 Wn.2d at 473.

Remanded.

For the court:

  
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