

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN RE THE POST-SENTENCE)
REVIEW OF:) No. 69382-4-I
)
) DIVISION ONE
LARS AKSEL LARSEN.)
) UNPUBLISHED OPINION
)
) FILED: JUN 24 2013

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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PER CURIAM. The Department of Corrections (Department) has filed this petition under RCW 9.94A.585(7) and RAP 16.18 seeking post-sentence review of the community custody term imposed in State v. Lars A. Larsen, Whatcom County Superior Court Cause No. 10-1-00941-1. The Department contends that the 24-month community custody term violates RCW 9.94A.650(3), providing that the term of community custody imposed as part of a first-time offender waiver “shall not exceed one year.” We agree and remand for imposition of a community custody term consistent with RCW 9.94A.650(3).

Larsen pleaded guilty to residential burglary and attempted voyeurism committed in July 2010. On June 6, 2012, the trial court imposed a first-time offender waiver under RCW 9.94A.650. Despite acknowledging “the recent reduction in DOC supervision for FTOW sentences,” the trial court imposed a community custody term of 24 months. Judgment and Sentence at 4.

When imposing a first-time offender waiver under RCW 9.94A.650, “The court may impose up to six months of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed one year.” RCW 9.94A.650(3).

The Legislature specifically applied this provision to offenders sentenced before and after the effective date of the statute, stating, "Except as otherwise provided in this section, the provisions of this act apply to persons convicted before, on, or after [June 15, 2011]." LAWS OF 2011, 1st Spec. Sess., ch. 40, § 42.¹

Because the sentencing court lacked authority to impose a community custody term in excess of one year, we remand to the trial court for amendment of Larsen's community custody term.

Granted.

For the court:

Speicher, A.C.J.
Dryden, J.
Beach, C.J.

¹ The Legislature also tasked the Department with recalculating the community custody term of each offender previously sentenced under the former version of RCW 9.94A.650. LAWS OF 2011, ch. 40, § 42(3) ("By January 1, 2012, consistent with the provisions of RCW 9.94A.650, the department of corrections shall recalculate the term of community custody for each offender sentenced to a first-time offender waiver under RCW 9.94A.650 and currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.").