IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

	No. 39715-3-II
STATE OF WASHINGTON, Respondent, v. ELIJAH BRANDON WONDERLY, Appellant.	UNPUBLISHED OPINION

Hunt, J. — Elijah Brandon Wonderly appeals his sentence for five first degree incest convictions. He argues that his community custody term and his term of confinement combined exceed the statutory maximum sentence for his crimes.[1] We affirm.

Elijah Brandon Wonderly pled guilty to five counts of first degree incest. On March 3, 2006, the trial court imposed a Special Sex Offender Sentencing Alternative (SSOSA) sentence of 102 months of confinement, with all but six months suspended, and 36 to 48 months of community custody. On June 8, 2007, the trial court revoked the SSOSA, because Wonderly violated the conditions, and re-imposed the 102 months of confinement, with 325 days of credit for time served, to be followed by 36 to 48 months of community custody.

[1] A commissioner of this court initially considered Wonderly's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

On June 9, 2009, Wonderly moved to modify his sentence because the combination of his 102-month term of confinement and his 36- to 48-month term of community custody exceeded the 120-month statutory maximum sentence for his crimes. On July 24, the trial court corrected Wonderly's sentence to add the provision that "the total term of confinement and community custody shall not exceed the statutory maximum of 120 months." CP 96-97. He appeals his corrected sentence.

Wonderly argues that the trial court erred when it corrected his sentence because it did not reduce his term of community custody to 18 months, thereby failing to follow former RCW 9.94A.701(8) (2009). We disagree. Former RCW 9.94A.701(8)[2] did not apply because it did not become effective until July 26, 2009,[3] two days *after* the trial court corrected Wonderly's sentence on July 24. His corrected sentence complied with the law in effect at the time, *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 673, 211 P.3d 1023 (2009), and is, therefore, valid. Accordingly, we hold that the trial court did not err in correcting Wonderly's sentence by ensuring that Wonderly's total term of confinement and community custody would not exceed

---

[2] Former RCW 9.94A.701(8) provided:

> The term of community custody specified by this section 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.

Former RCW 9.94A.701(8) *recodified as* RCW 9.94A.701(9) (Laws of 2010, ch. 224, § 5).

[3] ESSB 5288, which contained the addition of RCW 9.94A.701(8), contained an emergency clause making the addition effective August 1, 2009. Laws of 2009, ch. 375, § 18. But the Governor vetoed the emergency clause, making the addition effective July 26, 2009, 90 days after adjournment sine die. Wash. Const. art. II, § 41. Thus, when the 2009 regular legislative session adjourned on April 26, 2009, this statute became effective 90 days later, on July 26, 2009. That the legislature gave former RCW 9.94A.701(8) retroactive effect, Laws of 2009, ch. 375, § 20, did not entitle Wonderly to be sentenced under that provision *before* the statute's effective date, July 26, 2009.

the statutory maximum.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, PJ.

Van Deren, J.