

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal)	No. 63010-5-I
Restraint of:)	
)	DIVISION ONE
)	
GARY SMITH,)	UNPUBLISHED OPINION
)	
Petitioner.)	FILED: November 9, 2009

PER CURIAM. Gary Smith challenges the sentence imposed after he pleaded guilty to delivery of cocaine, possession of cocaine, and second degree escape in King County Nos. 03-C-04426-8, 03-C-06765-9 and 04-1-06499-2. His personal restraint petition was referred to a panel of this court for determination on the merits. RAP 16.11(b). We grant his petition and remand for clarification of the judgment and sentence in accordance with In re Pers. Restraint of Brooks, 166 Wn.2d 664, 211 P.3d 1023 (2009).

Smith asserts that this sentence was invalid because the combined term of confinement and community custody for each of his offenses could exceed that statutory maximum, in violation of RCW 9.94A.505(5).

In Brooks, our Supreme Court held that

when a defendant is sentenced to a term of confinement and community custody that has the potential to exceed the statutory maximum for the crime, the appropriate remedy is to remand to the trial court to amend the sentence and explicitly state that the combination of confinement and community custody shall not exceed the statutory maximum.

Brooks, 166 Wn.2d at 675. When clarified in this manner, a sentence does not exceed the statutory maximum and is not indeterminate or otherwise invalid. Brooks, 166 Wn.2d at 673-74; see also State v. Sloan, 121 Wn. App. 220, 223, 87 P.3d 1214

(2004).

We therefore grant Smith's petition and remand this matter to the trial court solely for entry of an amended judgment and sentence in accordance with Brooks that expressly states the combination of confinement and community custody shall not exceed the statutory maximum.

Remanded.

For the court:

Dwyer, A.C.J.
Schneider, C.J.
Leach, J.