

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 64331-2-I
)
 v.) DIVISION ONE
)
 EDDIE DYSON,) UNPUBLISHED OPINION
)
 Appellant.) FILED: June 7, 2010

PER CURIAM. Eddie Dyson was sentenced in 2009 for two convictions, attempted robbery in the first degree and burglary in the first degree. At issue here is Dyson’s sentence for attempted robbery: 96.75 months, plus a 12 month mandatory deadly weapon enhancement, and 18 to 36 months of community custody. Dyson appealed. The State conceded error, and this court remanded for resentencing. After the remand, but before resentencing, the Supreme Court filed its decision in In re Brooks, 166 Wn.2d 664, 211 P.3d 1023 (2009). The court there held that when a defendant is sentenced to a term of confinement that has the potential to exceed the statutory maximum, here 120 months, the appropriate remedy is to remand to the trial court to amend the judgment and sentence and explicitly state that the combination of confinement and community custody shall not exceed the statutory maximum. Brooks, 166 Wn.2d at 675.

On remand, the State incorrectly asserted that the original judgment and sentence contained the language required by Brooks. Defense counsel did not correct the assertion. The trial court ruled that the original judgment complied with Brooks and no amendment of the judgment and sentence was required.

Dyson filed a second appeal, challenging the judgment and sentence under Brooks. The State concedes error.¹

We remand to the trial court to amend the sentence and explicitly state that the combination of the confinement and custody shall not exceed the statutory maximum.

For the court:

Spencer, J.

Dyer, C. S.

Becker, J.

¹ In its request for relief the State incorrectly requests reversal and remand for a new trial.