

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 67454-4-I
Respondents,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
MAXIMO ARROYO-MIRANDA,)	
)	
Appellant.)	FILED: December 17, 2012
)	

PER CURIAM – Maximo Arroyo-Miranda appeals the trial court’s denial of his “Motion for Specific Performance, and Relief From Judgment” in which he sought relief from his 1993 assault and murder convictions. We affirm in part and remand in part.

In 1992, Arroyo-Miranda pled guilty to one count of first degree murder and three counts of second degree assault. In 1993, the court sentenced him to “416 months for counts I, II, III and IV, to run concurrently.” The court also imposed a condition of community placement requiring him to conduct himself “as a decent, upright, and law-abiding citizen.” In 2003, we vacated this condition.¹

In 2011, Arroyo-Miranda filed a motion for specific performance and relief from judgment under CrR 4.2(f) and CrR 7.8. The superior court denied the motion, but

¹ State v. Maximo Arroyo-Miranda, 117 Wn. App. 1025, 2003 WL 21387966, Wash.App. Div. 1, June 16, 2003.

entered an amended judgment and sentence to correct a clerical error in the original judgment and sentence. The 1993 judgment and sentence imposed “416 months for counts I, II, III and IV.” Read literally, this sentence imposed 416 months for each count and thus exceeded the standard range and the statutory maximum for the assault counts. The court below concluded that the original sentencing court intended to impose a standard range sentence on the assaults but due to a clerical error, failed to do so. The court amended those sentences, imposing a 33-month sentence for each assault. The amended judgment and sentence included a condition requiring Arroyo-Miranda to conduct himself “as a decent, upright, and law-abiding citizen.” He appeals.

DECISION

Arroyo-Miranda’s counsel contends, and the State concedes, that the superior court erred by including the “decent, upright, and law-abiding citizen” condition of community placement in the amended judgment and sentence. We accept the concession of error.²

Arroyo-Miranda raises several additional arguments in a pro se statement of additional grounds for review. He contends the superior court erred in concluding that the original sentencing court’s omission of individual sentences for the assault counts was clerical, rather than judicial error. He claims the sentencing court intended to

² See RCW 9.94A.435; State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004) (“[S]entencing courts must ‘look to the statute in effect at the time [the defendant] committed the [current] crimes’ when determining defendants’ sentences.”) (internal quotations omitted) (quoting State v. Delgado, 148 Wn.2d 723, 776, 63 P.3d 792 (2003); see also State v. Jones, 118 Wn. App. 199, 205-06, 76 P.3d 258 (2003) (concluding that prior to 1999, the Sentencing Reform Act did not authorize the trial court to require a non-first time offender to obey all laws or engage in law-abiding behavior as a condition of sentence).

impose 416 months on all counts, and that 416 months on the assault counts resulted in unsupported exceptional sentences. We disagree.

An error is clerical if the amended judgment corrects the language “to reflect the court's intention.”³ To determine whether an error is clerical or judicial, we look to “whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial.”⁴ A court may correct a clerical mistake or scrivener's error at any time:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

CrR 7.8(a).

Here, the record supports the superior court's conclusion that the sentencing court intended, but neglected, to impose standard range sentences for each of the assaults. There was no request for, or finding supporting, an exceptional sentence above the 33 to 43 month standard range for the assaults. Moreover, a 416-month sentence on the assaults would exceed the ten-year statutory maximum for those crimes. Finally, Arroyo-Miranda concedes that his plea agreement called for standard range sentences on the assaults. The record thus supports the superior court's finding that the sentencing court intended to impose standard range sentences, not 416

³ State v. Snapp, 119 Wn. App. 614, 627, 82 P.3d 252 (2004).

⁴ Snapp, 119 Wn. App. at 627 (quoting Presidential Estates Apartment Assocs. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)).

months, on each of the assaults.

Arroyo-Miranda also contends the prosecutor breached the plea agreement by recommending 416 months on each count. This contention is time barred.⁵ It is also not supported by, and involves matters outside of, the record. Arroyo-Miranda's statement on plea of guilty recites that the prosecutor will recommend that he "serve 416 months in the Department of Corrections. . . ." The portion of the sentencing transcript attached to the statement of additional grounds for review indicates that the prosecutor made the promised recommendation and did not recommend 416 months on the assault counts. In any event, the attachment is not part of the record on appeal and is therefore not properly before us.

Affirmed in part and remanded with directions to strike the condition of community placement requiring Arroyo-Miranda to conduct himself "as a decent, upright, and law-abiding citizen."

Appelwick, J.
Schneider, J.
Spencer, A.C.J.

⁵ RCW 10.73.090.