

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 67927-9-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
DONNIE WAYNE DURRETT,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: <u>September 4, 2012</u>

Per Curiam — In 2007, a jury found Donnie Durrett guilty of two counts of failure to register as a sex offender. In State v. Durrett, 150 Wn. App. 402, 208 P.3d 1174 (2009), this court held that one of Donnie Durrett’s convictions violated double jeopardy and remanded for resentencing. Durrett now appeals from the 2011 judgment and sentence entered after resentencing.

We accept the State’s concession that the trial court on resentencing erred in failing to enter a fixed term of community custody and remand to the trial court to enter a term of community custody consistent with RCW 9.94A.701(9); see State v. Boyd, \_\_\_ Wn.2d \_\_\_, 275 P.3d 321 (2012) (trial court, not Department of Corrections, has obligation to reduce term of community custody to avoid a sentence in excess of the statutory maximum).

Durrett has also filed a pro se statement of additional grounds for review. See RAP 10.10. He first contends that the trial court erred in ruling that he remained on community custody following this court’s remand for resentencing. The precise

nature of Durrett's claim is unclear, but it appears to rest on the faulty assumption that this court reversed both of his convictions on appeal. In any event, because Durrett has now been resentenced, this court cannot provide any effective relief. Durrett's allegations are directed solely to his status during the period between this court's remand following his first appeal and resentencing. Accordingly, the issue is moot. See State v. Gentry, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995) ("A case is moot if a court can no longer provide effective relief").

Durrett appears to allege the existence of an ex post facto violation. He also contends that his counsel's performance was constitutionally deficient at resentencing. But Durrett has not sufficiently identified that nature of the alleged errors to permit appellate review. See RAP 10.10(c) (appellate court will not consider statement of additional grounds for review unless it informs the court of the nature and occurrence of alleged errors).

Finally, Durrett asks this court to consider, as part of his pro se statement of additional grounds for review, the motion for a new trial that defense counsel submitted after resentencing. But this court will generally not consider attempts to incorporate arguments and issues by reference to documents presented to the trial court. See U.S. West Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n, 134 Wn.2d 74, 111–12, 949 P.2d 1337 (1997).

Moreover, the trial court denied defense counsel's motion for a continuance of

the resentencing hearing while he researched the basis for the motion for a new trial. Durrett has not demonstrated any abuse of discretion in that decision. And when defense counsel filed the motion for a new trial after resentencing, the trial court did not rule on it. Rather, the trial court transferred the motion to this court for consideration as a personal restraint petition. See CrR 7.8(c)(2). That petition is pending under No. 68685-2-1. Under the circumstances, issues related to the motion for a new trial are not properly before us on Durrett's appeal from the resentencing decision.

We accept the State's concession and remand solely for entry of a community custody period consistent with RCW 9.94A.701(9). The trial court's resentencing decision is otherwise affirmed.

Remanded.

For the Court:

Cox, J.  
Eaton, J.  
Appelwick, J.