

imposed a two-year term of community placement. Leigh completed the final consecutive 123-month confinement term for first degree assault in February 2011. The Department then released him from prison to begin the two-year term of community placement.

On June 1, 2012, Leigh filed a motion in the trial court seeking clarification of his sentence. He asserted that the statutory maximum sentence for his last term of confinement was 123 months, the high end of the standard range, and that the addition of the full 24-month period of community placement would exceed that statutory maximum. Leigh maintained that he was therefore entitled to be released from all Department supervision no later than July 28, 2012.

On June 11, 2012, the trial court entered an "Agreed Order Clarifying Sentence and Mandating Release from Community Custody." The order, which was also signed by a King County deputy prosecutor, directed the Department to release Leigh from all restraint no later than July 28, 2012. After unsuccessfully attempting to resolve the issue in the trial court, the Department filed this petition in accordance with RCW 9.94A.585(7) and RAP 16.18.

A court may not impose a sentence for which the combined total of confinement and community custody exceeds the "statutory maximum." RCW 9.94A.505(5). Leigh's claim that his sentence exceeds the statutory maximum rests entirely on the faulty premise that the high end of a standard range sentence

constitutes the “statutory maximum.” But the “statutory maximum” within which the terms of confinement and community custody must be set is that specified by RCW 9A.20.021. RCW 9.94A.505(5) (court may not impose sentence providing a term of confinement or community custody that exceeds the statutory maximum for that crime “as provided in chapter 9A.20 RCW”). For Leigh’s first degree assault conviction, a class A felony, the statutory maximum is life imprisonment. See RCW 9A.36.011(2); 9A.20.021(1)(a). Clearly, Leigh’s sentence of 123 months of confinement and 24 months of community placement will not exceed that period of time. See also RCW 9.94A.701(9) (sentencing court shall reduce community custody term whenever term of confinement and term of community custody “exceed the statutory maximum for the crime as provided in RCW 9A.20.012”); In re Pers. Restraint of Brooks, 166 Wn.2d 664, 668, 211 P.3d 1023 (2009); State v. Toney, 149 Wn. App. 787, 795-96, 205 P.3d 944 (2009), review denied, 169 Wn.2d 1027 (2010).

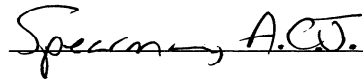

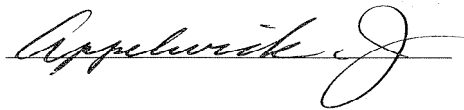
Leigh’s apparent reliance on Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), fails for at least two reasons. First, Blakely does not apply retroactively to Leigh’s 1992 conviction. State v. Evans, 154 Wn.2d 438, 448, 114 P.3d 627 (2005). Second, the sentencing court’s imposition of community placement for Leigh’s first degree assault conviction was mandated by statute. See former RCW 9.94A.120(8)(b). Consequently, the term of community custody

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resulted directly from the jury's verdict of guilty without any improper judicial fact-finding and therefore did not violate Blakely.

Because Leigh's sentence did not exceed the statutory maximum, the trial court had no authority to modify the length of the community placement term.² Accordingly, we lift the temporary stay, grant the Department's petition, and vacate the trial court's June 11, 2012 order requiring Leigh's premature release from Department supervision.

For the court:



² In its response, the King County Prosecutor's Office acknowledges that it signed the trial court order in error and that the order should be vacated.