

June 1, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint Petition of

PETER A. VAN AUKEN,

Petitioner

No. 48269-0-II

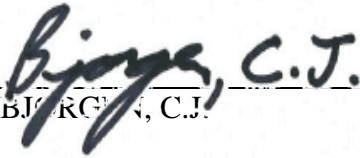
UNPUBLISHED OPINION

BJORGEN, C.J. – Peter Van Auken seeks relief from personal restraint imposed following his 2010 guilty plea to third degree rape of a child. The trial court sentenced him to 15 months of confinement and 36 to 48 months of community custody. Van Auken argues that this sentence exceeds the five-year statutory maximum penalty for his crimes. RCW 9A.20.030(1)(c).

The State concedes that for sentences of this nature imposed on or after August 1, 2009, RCW 9.94A.701(1) requires the imposition of a 36-month term of community custody. LAWS of 2008, ch. 231, §§ 7, 55. Van Auken’s judgment and sentence is facially invalid because it exceeds the prescribed 36-month term of community custody and for that reason is not subject to the time bar contained in RCW 10.73.090(1).

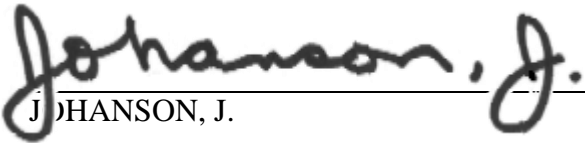
Therefore, we grant Van Auken's personal restraint petition and remand to the trial court to correct his judgment and sentence to the prescribed 36-month term of community custody.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


BERGIN, C.J.

We concur:


WORSWICK, J.


JOHANSON, J.