

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL WAYNE JONES,

Appellant.

No. 40834-1-II

UNPUBLISHED OPINION
AFTER REMAND FROM THE
WASHINGTON SUPREME COURT

Hunt, J. — On January 31, 2012, we filed an unpublished opinion affirming Michael Wayne Jones’ convictions for two counts of unlawful possession of a firearm and one count of unlawful methamphetamine possession with a special-verdict-enhanced sentence. *State v. Jones*, noted at 166 Wn. App. 1013, *remanded*, ___ Wn.2d ___, 2012 WL 4928903. On October 10, 2012, the Supreme Court granted Jones’ petition for review and remanded his case to us for reconsideration of his enhanced sentence in light of *State v. Boyd*, 174 Wn.2d 470, 275 P.3d 321 (2012). We now remand to the trial court.

FACTS

Smith was sentenced on May 28, 2010. On remand, he continues to argue that his enhanced drug possession sentence exceeded the 5-year statutory maximum for the offense because his total sentence, 5 years of confinement followed by 12 months of community custody, was 6 years; therefore, RCW 9.94A.701(9)¹ requires the trial court

“to remove the term of community custody” and to enter a corrected judgment and sentence. Br. of Appellant at 19. Earlier this year, we rejected this argument and affirmed his enhanced sentence because (1) it included language specifying that “the total term of confinement plus term of community custody actually served” shall not “exceed the statutory maximum for each offense”; and (2) under *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 211 P.3d 1023 (2009), this language was deemed effective to prevent his sentence from exceeding the statutory maximum. *Jones*, 166 Wn. App. at *4.

Four months after we affirmed Jones’ enhanced sentence under *Brooks*, however, our Supreme Court issued *Boyd*. In *Boyd*, the Supreme Court held that sentences imposed after RCW 9.94A.701(9) became effective would no longer comply with statutory requirements, despite inclusion of the above “*Brooks*” notation. 174 Wn.2d at 472. Because Jones was sentenced after RCW 9.94A.701(9)’s July 26, 2009 effective date, his combined six-year sentence exceeds the five-year statutory maximum. And *Boyd* requires us to remand to the trial court to correct Jones’ judgment and sentence.

Accordingly, we remand to the trial court either to amend Jones’ community custody term or to resentence him on the drug possession conviction consistent with RCW 9.94A.701(9).

A majority of the panel having determined that this opinion will not be printed in

¹ RCW 9.94A.701(9) provides:

The term of community custody specified by this section shall be reduced *by the court* whenever an offender’s standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

(Emphasis added). This subsection was originally codified as RCW 9.94A.701(8). The legislature renumbered this subsection to subsection (9) in 2010. Laws of 2010, ch. 224, § 5.

40834-1-II

the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Johanson, A.C.J.

Armstrong, J.P.T.