

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MONTIAE C. McHENRY,

Appellant.

No. 41063-0-II

UNPUBLISHED OPINION

Armstrong, J. — Montiae C. McHenry appeals the trial court’s community custody sentence of 18 to 36 months, arguing that the trial court erred by imposing more than 18 months of community custody. We accept the State’s concession of the error. Accordingly, we remand for resentencing of the community custody term.

FACTS

In 2006, a jury convicted McHenry of second degree assault with a deadly weapon, a firearm, second degree assault with a deadly weapon, a knife, and unlawful possession of a firearm in the first degree. On appeal, we reversed his conviction for assault with a deadly weapon and remanded for resentencing. The trial court dismissed McHenry’s conviction for assault with a deadly weapon, a knife, and sentenced him to 93 months, with 18 to 36 months of community custody.

ANALYSIS

McHenry argues that the trial court erred in imposing a community custody sentence ranging from 18 to 36 months because RCW 9.94A.701(2) mandates an 18-month sentence for crimes of a nonserious, violent nature. The State concedes this error.

I. Community Custody Sentence

Under RCW 9.94A.701(2), defendants who have been convicted of violent, nonserious offenses are required to serve 18 months of community custody:

A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

Under RCW 9.94A.030(53), assault in the second degree is a nonserious, violent offense. McHenry's second degree assault conviction with a deadly weapon is a nonserious, violent offense, and the trial court should have sentenced McHenry to not more than 18 months of community custody under RCW 9.94A.701(2). We accept the State's concession and remand for the trial court to resentence McHenry to a community custody term of not more than 18 months.

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 pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Johanson, J.