

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RYAN JAY DOERING,

Appellant.

In the Matter of the Personal Restraint
of:

RYAN JAY DOERING,

Petitioner.

No. 41231-4-II

Consolidated with

No. 41286-1-II

UNPUBLISHED OPINION

Worswick, C.J. — On March 20, 2012, we filed an unpublished opinion affirming Ryan Doering’s convictions for felony driving under the influence and second degree driving with license suspended or revoked. *State v. Doering*, noted at 167 Wn. App. 1018, *remanded*, 174 Wn.2d 1020 (2012). But we remanded this case to the trial court to amend its sentencing order to explicitly state that the combination of confinement and community custody cannot exceed the

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statutory maximum sentence, in accordance with *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 211 P.3d 1023 (2009). Our Supreme Court granted Doering's petition for review and on August 8, 2012, and remanded to us for reconsideration in light of *State v. Boyd*, 174 Wn.2d 470, 275 P.3d 321 (2012), and *State v. Franklin*, 172 Wn.2d 831, 263 P.3d 585 (2011). *Doering*, 174 Wn.2d 1020.

We set out the facts in our original opinion and need not repeat them here. The only issue before us is the proper remedy on remand.

Doering argues that the trial court erred in entering a judgment and sentence ordering 60 months of confinement and 12 months of community custody, for a total of six years, because his statutory maximum sentence is five years. The State concurs, and we agree.

Doering's sentence cannot exceed five years, the statutory maximum for felony driving under the influence. RCW 46.61.502(6); RCW 9A.20.021(c). Although the trial court's oral ruling stated that it could not deviate from the 60-month statutory maximum sentence, the trial court's written judgment and sentence imposed 60 months of confinement and 12 months of community custody. Because the total duration of Doering's confinement and community custody is 72 months (i.e., six years), the sentence exceeds the five-year statutory maximum. Thus, we agree with both Doering and the State.

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To remedy the error, the trial court must amend the judgment to reduce the term of community custody, so that Doering's sentence remains within the statutory maximum. RCW 9.94A.701(9); *Boyd*, 174 Wn.2d at 473. We remand for the trial court to amend Doering's sentence in a manner consistent with this opinion.

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.

Worswick, C.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.