

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

BYRON JEFFERY FINISTER,

Appellant.

No. 41542-9-II

UNPUBLISHED OPINION

Johanson, J. — A jury found Byron Finister guilty of felony violation of a court order. The underlying facts are not relevant to our decision. The trial court imposed a standard range sentence of 25 months of confinement. But it did not afford him his right of allocution under RCW 9.94A.500(1) before imposing that sentence. He appeals<sup>1</sup> and asks to be resentenced by a different judge after being afforded his right to allocution. *State v. Aguilar-Rivera*, 83 Wn. App. 199, 203, 920 P.2d 623 (1996).

The State concedes that the trial court did not afford Finister his right to allocution. But it argues that Finister failed to object to not being afforded his right to allocution and cannot raise the issue for the first time on appeal. *State v. Hughes*, 154 Wn.2d 118, 152-53, 110 P.3d 192 (2005), *overruled in part on other grounds in Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).

We agree with the State and conclude that Finister cannot raise this issue for the first time on appeal. Finister points to *State v. Roberson*, 118 Wn. App. 151, 160-62, 74 P.3d 1208 (2003),

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<sup>1</sup> A commissioner of this court initially considered Finister's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

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in which we remanded for resentencing where the trial court had failed to afford a juvenile defendant his right to allocution. But to the extent it allowed the defendant to raise that issue for the first time on appeal, it has been effectively overruled by *Hughes*.

We affirm Finister's sentence.

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.

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Johanson, J.

We concur:

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Hunt, J.

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Worswick, C.J.