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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29518-4-III**
Appellant,	)	
	)	**Division Three**
v.	)	
	)	
DOUGLAS B. BAKER,	)	**UNPUBLISHED OPINION**
	)	
Respondent.	)	
	)	

Brown, J. • The State of Washington appeals the trial court's decision to allow electronic home monitoring (EHM) for Douglas B. Baker. The State contends the trial court erred by impermissibly modifying Mr. Baker's sentence from work crew after he had failed to complete a drug court contract. The State concedes the issue is moot, but asks us to consider the merits. We decline and dismiss this appeal.

FACTS

On August 19, 2010, Mr. Baker pleaded guilty to controlled substance possession. The court sentenced him to 9 months with credit for 77 days. We lack a sentencing record, but according to the trial court's memorandum decision, Mr. Baker requested EHM at the time of sentencing and the court left the matter hanging:

> Here the Court authorized partial confinement including work crew, but did not check the box as to Electronic Home Monitoring (EHM). A review of the hearing transcript shows the Defendant requested EHM at sentencing. The state objected on the grounds the county no longer supervises EHM, and the private companies that offer EHM do not have a contract with the jail, which the state asserted they must. The defense asserted the contract was not necessary and offered to brief the issue. Ultimately the matter was not addressed by the Court, and the J&S was signed without the matter being resolved.

Clerk's Papers at 20.

Apparently, the State's objection to EHM was partly based on the need to reimburse a private company for EHM service costs and the lack of a current contract for those services. In the judgment and sentence, the trial court expressly authorized Mr. Baker to serve his remaining sentence in partial confinement. It checked the box for work crew, but did not check the box for EHM. On September 20, 2010, after failing drug court and starting work crew, Mr. Baker moved to modify his sentence to allow him to serve the rest of his sentence on EHM. He argued EHM did not need to be through a government contract. The State partly argued the court lacked authority to change the form of partial confinement after the sentence was imposed. Ultimately the trial court reasoned that under the circumstances, the ability to assert the change had been preserved, and granted Mr. Baker's request for EHM. The State appealed.

ANALYSIS

The State contends the trial court exceeded its authority under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, by changing the terms of Mr. Baker's sentence after it had entered the judgment and sentence. Felony criminal sentences in

the State of Washington are governed by the SRA. RCW 9.94A.505(1). Whether a trial court has exceeded its statutory authority under the SRA is an issue of law, which this court reviews independently. *State v. Hale*, 94 Wn. App. 46, 54, 971 P.2d 88 (1999).

Our record review shows the trial court was well aware of the sentencing limits contended by the State. Because this appeal is unopposed, no legal debate is before us and the true nature of the issue has not been well developed. The underlying dispute centers around whether the trial court correctly reasoned the EHM issue had been preserved. While we find no fault with the trial court's reasoning, dispositive is whether this matter is moot. The State acknowledges we can provide no effective relief. *Snohomish County v. State*, 69 Wn. App. 655, 660, 850 P.2d 546 (1993). Mr. Baker has completed his sentence.

The State has not thoroughly briefed whether this appeal is moot. It argues: "If this sort of unsupported, nonemergency, non-emergent modification of sentences is allowed, there will be nothing to prevent other courts and defendants from simply asking for whatever sentencing modifications are desired." Appellant's Br. at 5. The State suggests that deciding this matter would be appropriate to address the issue in order to clarify the sentencing court's authority and to provide future guidance. *Id*. (citing *State v. Blilie*, 132 Wn.2d 484, 488 n.1, 939 P.2d 691 (1997)).

While criminal sentencing is a public matter, because our facts are unique, this situation is unlikely to reoccur; this obviates the need for decisional authority to guide

future decision-makers. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). We have no evidence persuading us this is a matter of continuing and substantial public interest. *Id*. This is a one-sided appeal; no responsive briefing or advocacy is presented, another factor weighing against considering the merits. *Hart v. Dep't of Social & Health Servs*., 111 Wn.2d 445, 448, 759 P.2d 1206 (1988). Finally, the State's presented contention surrounds a well-settled sentencing-modification issue that is unlikely to escape review in the future. *City of Seattle v. State*, 100 Wn.2d 232, 250, 668 P.2d 1266 (1983). All considered, we conclude this appeal is moot and decline further review.

Dismissed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Sweeney, J.

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Siddoway, J.