IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27188-9-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
CHARLES DAVID YOUNG,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, C.J. — Charles Young pleaded guilty to one count of solicitation to commit manslaughter in the first degree—unborn quick child, after attempting to hire someone to kill his unborn child. Mr. Young appeals, asserting that his sentence is unlawful because the terms of confinement and community custody exceed the statutory maximum. We affirm Mr. Young's conviction.

FACTS

Charles Young had a relationship with S.R.A., a 17-year-old female, for approximately 10 months. S.R.A. became pregnant. Mr. Young told S.R.A. that he did not want to have anything to do with her and the baby. Mr. Young spoke with C.Y.

about making his problem "disappear." Clerk's Papers (CP) at 6.

C.Y. contacted law enforcement and agreed to introduce Mr. Young to a "hit man" who was actually an undercover police officer. CP at 7. Mr. Young met with the undercover police officer and stated that he did not care what happened to S.R.A., but that he wanted the unborn baby killed. Mr. Young provided the hit man with a photograph of S.R.A., a map to S.R.A.'s house, and a down payment of $1,620. S.R.A. was eight months pregnant at the time Mr. Young planned the attack.

On April 3, 2007, Mr. Young pleaded guilty to one count of solicitation to commit manslaughter in the first degree—unborn quick child. The court sentenced Mr. Young to 76.5 months of incarceration, the high end of the standard range. The court also sentenced Mr. Young to 24 to 48 months of community custody. On December 10, Mr. Young moved the trial court to modify his judgment and sentence on the grounds that his sentence violated *Blakely*[1] and *Apprendi.*[2] The trial court found that *Blakely* and *Apprendi* did not apply to Mr. Young's sentence, but that it was possible that Mr. Young's total amount of time spent in incarceration and in community custody could exceed the statutory maximum. The statutory maximum for solicitation to commit first

[1] *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

[2] *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

degree manslaughter is 120 months. RCW 9A.20.021(1)(b). To ensure Mr. Young's sentence did not exceed the statutory maximum, the trial court amended Mr. Young's judgment and sentence as follows:

> Defendant shall be on community custody after release from prison for a period of 24 to 48 months, or for the period of earned early release, whichever is longer, provided that the total of the time defendant is incarcerated on this conviction plus any community custody ordered by [the Department of Corrections] shall not exceed 120 months. If necessary to accomplish this, the period of community custody, rather than the period of incarceration, shall be shortened.

CP at 143-44.

On appeal, Mr. Young asserts that his sentence is unlawful because the terms of confinement and community custody exceed the statutory maximum, which he claims is the high end of the standard range per *Blakely*. Mr. Young also asserts numerous errors in his statement of additional grounds for review.

Mr. Young asserts the trial court misinterpreted the statutory maximum when imposing his sentence. We review questions of law de novo. *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 667, 211 P.3d 1023 (2009).

The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, prohibits a court from imposing a sentence when the term of confinement and the term of community custody exceed the statutory maximum for the defendant's crime. RCW 9.94A.505(5).

Mr. Young asserts that, according to *Blakely*, the relevant statutory maximum is the high end of the standard range. He contends that his sentence of 76.5 months of confinement, plus 24 to 48 months of community custody, exceeds the high end of the standard range and, therefore, his sentence should be remanded for resentencing.

State v. Toney rejected Mr. Young's argument. *State v. Toney*, 149 Wn. App. 787, 796, 205 P.3d 944 (2009). The statutory maximum is determined by RCW 9A.20.021. Solicitation to commit manslaughter in the first degree—unborn quick child is a class B felony, carrying a maximum sentence of 10 years. RCW 9A.20.021(1)(b). The standard range for Mr. Young's crime is 58.5 months to 76.5 months. RCW 9.94A.510.

Community placement is not included in presumptive sentence ranges. *In re Pers. Restraint of Caudle*, 71 Wn. App. 679, 680, 863 P.2d 570 (1993). There is no sentencing error as long as the period of confinement and the period of community custody do not exceed the statutory maximum sentence. Here, the court sentenced Mr. Young to 76.5 months of confinement, the high end of the standard range. In addition, the court imposed community custody for 24 to 48 months, or the period of earned early release, whichever is longer. However, in the order modifying the judgment and sentence, the court specified that the total time spent in confinement and in community custody could not exceed 120 months.

The trial court imposed a term of confinement within the standard range and stated that the combined terms of confinement and community custody could not exceed the statutory maximum. The trial court did not err.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Mr. Young asserts: (1) his judgment and sentence is invalid on its face because it subjects him to an indeterminate sentence; (2) community custody ordered by the trial court reflects multiple punishment for the same offense; (3) further definition and clarification of the term "confinement" is necessary; (4) clarification of section 4.6 of his judgment and sentence is necessary; and (5) the trial court's improper delegation of authority violated the separation of powers doctrine.

Indeterminate Sentence. Mr. Young asserts that his judgment and sentence is invalid on its face because it fails to clarify the exact periods of confinement and community custody. The Washington Supreme Court recently addressed this issue, stating that the exact amount of time served can almost never be determined at the time of sentencing because of the possibility of earned early release. *Brooks*, 166 Wn.2d at 674. The maximum term of confinement and the maximum time an offender may serve in totality can only be determined at sentencing. *Id.* In *Brooks*, Jeffrey Brooks was sentenced to confinement within the standard range, with a term of community custody

following. If Mr. Brooks were to serve the entire sentence, it would have exceeded the statutory maximum, but the sentencing court added language to his judgment and sentence limiting his total sentence to the statutory maximum. The Supreme Court upheld Mr. Brooks's sentence. *Id.*

Mr. Young's situation is virtually identical to Mr. Brooks's. Mr. Young was sentenced to confinement within the standard sentencing range, with a period of community custody following his confinement. If Mr. Young were to serve the maximum of his community custody time, his sentence would exceed the statutory maximum. Therefore, the court added language stating that the totality of time served must not exceed 120 months. The Supreme Court found that Mr. Brooks's sentence was determinate. Likewise, here, Mr. Young's sentence is determinate and does not exceed the statutory maximum.

Double Jeopardy. Mr. Young asserts that the court violated double jeopardy by imposing both a term of confinement and a term of community custody. The United States Constitution and the Washington Constitution prohibit multiple punishments for the same offense. U.S. Const. amend. V; Const. art I, § 9. Mr. Young's assertion is without merit because the SRA not only permits sentences that combine confinement and community custody, but actually requires a term of community custody, in addition to

confinement, for committing violent offenses. Former RCW 9.94A.715(1) (2006). Mr. Young did not receive two punishments for the same offense, he received one punishment with two parts.[3]

Clarification of "Confinement." Mr. Young asserts that the court should clarify the meaning of "confinement." He appears to argue that community custody is confinement. This issue was addressed by *State v. Gartrell*, 138 Wn. App. 787, 790, 158 P.3d 636 (2007) where the court found that "[c]ommunity custody is plainly not confinement." Therefore, Mr. Young's argument is without merit.

Clarification of Judgment and Sentence. Mr. Young contends that this court should clarify section 4.6 of his judgment and sentence. In this section, the court sentenced Mr. Young to community custody for 24 to 48 months, or for the period of earned release, whichever is longer. Mr. Young asserts that, at most, he can earn 7.65 months of early release, and it is obvious that 24 to 48 months is longer than 7.65 months. While Mr. Young's calculations appear to be correct, he fails to explain how and why section 4.6 needs clarification.

Separation of Powers. Lastly, Mr. Young asserts that the trial court violated the

[3] Mr. Young also asserts that the fact that an offender can be sanctioned while in community custody, and sent back to confinement, violates double jeopardy. However, Mr. Young's argument is premature because he has not been sanctioned while in community custody. Thus, this issue is not ripe for review.

separation of powers doctrine by placing the burden on the Department of Corrections (DOC) to determine the length of his sentence. Separation of powers principles are violated when "'the activity of one branch threatens the independence or integrity or invades the prerogatives of another.'" *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994) (quoting *Zylstra v. Piva*, 85 Wn.2d 743, 750, 539 P.2d 823 (1975)). The Washington Supreme Court recently stated "[i]t is the SRA itself that gave courts the power to impose sentences and the DOC the responsibility to set the amount of community custody to be served within that sentence." *Brooks*, 166 Wn.2d at 674. The legislature has delegated power to the courts and the DOC through the SRA and, therefore, no branch is threatening or invading the prerogatives of the other. No separation of powers issue exists here.

We affirm Mr. Young's conviction.

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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Kulik, C.J.

WE CONCUR:

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Sweeney, J. Korsmo, J.