

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal)	No. 62159-9-I
Restraint of:)	
)	DIVISION ONE
)	
JOHN COURTRIGHT,)	UNPUBLISHED OPINION
)	
Petitioner.)	FILED: November 9, 2009

PER CURIAM. John Courtright challenges the sentence imposed after he was found guilty at a jury trial of three counts of rape of a child in the third degree, one count of intimidating a witness, and one count of tampering with a witness in King County Superior Court No. 05-1-05020-5. His personal restraint petition was referred to a panel of this court for determination on the merits. RAP 16.11(b). We grant his petition and remand for clarification of the judgment and sentence in accordance with In re Pers. Restraint of Brooks, 166 Wn.2d 664, 211 P.3d 1023 (2009).

Courtright asserts that this sentence was invalid because the combined term of confinement and community custody for his third degree rape counts could exceed that statutory maximum, in violation of RCW 9.94A.505(5).

In Brooks, our Supreme Court held that

when a defendant is sentenced to a term of confinement and community custody that has the potential to exceed the statutory maximum for the crime, the appropriate remedy is to remand to the trial court to amend the sentence and explicitly state that the combination of confinement and community custody shall not exceed the statutory maximum.

Brooks, 166 Wn.2d at 675. When clarified in this manner, a sentence does not exceed the statutory maximum and is not indeterminate or otherwise invalid. Brooks, 166 Wn.2d at 673-74; see also State v. Sloan, 121 Wn. App. 220, 223, 87 P.3d 1214

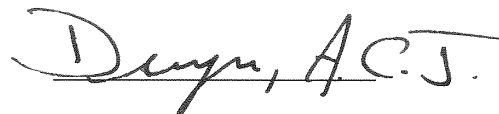
(2004).

Although the State contends that there is no risk of exceeding the statutory maximum because we should apply the applicable maximum sentence for the witness intimidation count of ten years rather than the five-year statutory maximum for third degree child rape, it is clear that the term of community placement assigned to an offense is offense-specific and in this case, the applicable term of community custody is shorter for the intimidation count than for the child rape counts. See State v. Mitchell, 114 Wn. App. 713, 715, 59 P.3d 717 (2002); WAC 437-20-010.

We therefore grant Courtright's petition and remand this matter to the trial court solely for entry of an amended judgment and sentence in accordance with Brooks that expressly states the combination of confinement and community custody shall not exceed the statutory maximum.

Remanded.

For the court:

A handwritten signature in black ink, reading "Dwyer, A.C.J." The signature is written in a cursive style with a horizontal line underneath the name.

Schindler, CT

Seach, J.