

NO. 53417-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

ADAM GROSS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable Brent W. Basden, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court made a scrivener's error on the judgment and sentence in citing an irrelevant RCW on the third-degree theft conviction.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the trial court made a scrivener's error on the judgment and sentence when it listed RCW 9A.50.050 as relevant to Mr. Gross' conviction for theft in the third degree?

C. STATEMENT OF THE CASE

On April 10, 2019, Adam Gross pleaded guilty to an amended information charging malicious mischief in the second degree and theft in the third degree. CP 22-23; RP 4/10/19 4-11.

The court imposed sentence immediately after accepting the plea. RP 4/10/19 13-17. As to count 1, malicious mischief in the second degree, a felony, the court imposed a first offender sentencing option requiring Mr. Gross to serve 30 days in custody and be on community custody for six months. RP 4/10/19 13-17; CP 10-11.

As to count 2, theft in the third degree, a gross misdemeanor, the court imposed a sentence of 364 days with all the time suspended for 24 months on condition Mr. Gross not return to any Serenity House properties. RP 4/10/19 13-17; CP 10, 33.

In entering the judgment and sentence, the court erroneously referenced RCW 9A.50.050 on the third-degree theft conviction. CP 8. RCW 9A.50.050 addresses civil damages for interfering with a health care facility.

Mr. Gross made a timely appeal of his plea and sentence. In his notice of appeal, Gross notes the following: frustration over lack of communication with trial counsel, insufficient proof of property damage over \$750 requiring the court to impose a conviction for the lesser offense of malicious mischief in the third degree, and the necessity to vacate his community custody as he did not agree to it in plea negotiations. CP 6.

Appellate counsel, with Mr. Gross' issues in mind, made a thorough review of the record for all potential direct appeal issues.

Mr. Gross is entitled to file a RAP 10.10 Statement of Additional Grounds for Review. As the court issued his judgment and sentence on April 4, 2019, Mr. Gross is well within the one-year time limit to argue for post-conviction relief at the trial court under CrR 7.8(b) and RCW 10.73.090.

D. ARGUMENT

Issue: A scrivener's error on the judgment and sentence requires remand for correction.

This court must remand Mr. Gross' case to the trial court to strike a scrivener's error from the judgment and sentence.

Scrivener's errors are clerical errors resulting from mistake or inadvertence, especially in writing or copying something on the record. *In re Personal Restraint of Mayer*, 128 Wn. App. 694, 701, 117 P.3d 353 (2005). A scrivener's error is one that, when amended, would correctly convey the intention of the trial court, as expressed in the record at trial. *State v. Priest*, 100 Wn. App. 451, 456, 997 P.2d 452 (2000); see also *Presidential Apartment Assocs. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996).

CrR 7.8(a) provides that clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative or the motion of any party. *State v. Makekau*, 194 Wn. App. 407, 421, 378 P.3d 577 (2016).

There is one scrivener's error on Mr. Gross' judgment and sentence. Contrary to the judgment and sentence, Mr. Gross' plea to theft in the third degree had nothing to do with RCW 9A.50.050, Interference

with a Health Care Facility. In the relevant portion of his plea statement,

Mr. Gross provides:

On or about February 20, 2019, in Clallam County, . . . I also exerted unauthorized control over the property of another with the intent to deprive.


CP 31. Nothing in Mr. Gross' plea – or the appellate record – reveals any connection between Mr. Gross' criminal charges and a health care facility.

Mr. Gross' case should be remanded to strike the irrelevant reference to RCW 9A.50.050 from the judgment and sentence. CP 8.

E. CONCLUSION

On remand, the trial court should strike the irrelevant reference to RCW 9A.50.050 from Mr. Gross' judgment and sentence.

Respectfully submitted November 15, 2019.



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