

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

In re Post-Sentence) COA No. 39144-2-III
Review of:)
) Spokane Co. No.
) 86-1-00928-1
)
CHRISTOPHER MARK) MOTION FOR
BLYSTONE,) ACCELERATED
) REVIEW &
Defendant/Respondent.) DECLARATION OF
) COUNSEL
)
_____)

1. IDENTITY OF MOVING PARTY

Respondent CHRISTOPHER MARK BLYSTONE,
through counsel, requests the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Grant Respondent's motion for accelerated review
of the Department's post-sentence petition.

3. RELEVANT FACTS

Christopher Blystone was resentenced on June 3, 2022,¹ in the criminal case of *State v. Christopher Mark Blystone*, Spokane County Superior Court Cause No. 86-1-00928-1. (Dept. Petition, pgs. 1-3, Ex. 3, filed 8/30/2022). The trial court imposed 480 months of confinement along with 36 months of community custody. (Dept. Petition, Ex. 3 at pg. 4, filed 8/30/2022). Mr. Blystone began serving the term of community custody on September 23, 2022. (Decl. of Counsel, attached hereto). His current potential release date from community custody is not until August 13, 2025. (Decl. of Counsel, attached hereto).

On August 30, 2022, the Department of Corrections (Department) filed a post-sentence petition seeking correction

¹ The Department's petition inadvertently states the date of resentencing as July 3, 2022; however, the judgment and sentence indicates Mr. Blystone was resentenced in Spokane County Superior Court on June 3, 2022. (Dept. Petition, Ex. 3, filed 8/30/2022).

of Mr. Blystone’s sentence. (Dept. Petition, filed 8/30/2022).

The Department alleges the trial court imposed community custody which was not authorized by statute. (Dept. Petition, filed 8/30/2022; Dept. Reply, filed 12/19/2022).

4. GROUND FOR RELIEF AND ARGUMENT

Pursuant to RAP 18.8(a), “[t]he appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice” Further, “[t]he appellate court on its own motion or on motion by a party may set any review proceeding for accelerated disposition.” RAP 18.12.

Mr. Blystone agrees with the Department that community custody was improperly imposed. (Respondent’s Brief, pgs. 1-10, filed 2/21/2023). The State appears to agree the trial court lacked statutory authority to impose the term of

community custody, as well, with caveats.² (State’s Response, pgs. 9-11, filed 12/12/2022). The State does attempt to raise other issues in its response brief. (State’s Response, pgs. 1-47, filed 12/12/2022). Yet, as Mr. Blystone and the Department indicate in their briefing, the State’s additional arguments are not properly before this Court. (Dept. Reply, filed 12/19/2022; Respondent’s Brief, pgs. 10-28, filed 2/21/2023).

It is not unusual for a typical appeal of a criminal conviction proceeding in Division III to take around one to two years from the time an opening brief is filed to receive a decision from the Court. *See e.g., State v. McBride*, 192 Wn. App. 859, 370 P.3d (2016) (opening brief filed 10/14/14) (decision filed 3/8/16); *State v. Tasker*, 193 Wn. App. 575, 373

² The State does raise additional arguments in its response brief, requesting this Court remand Mr. Blystone’s case for a full resentencing. (State’s Response, filed 12/12/2022, pgs. 1-47). Mr. Blystone’s counsel is not attempting to misrepresent the entirety of the State’s arguments; however, the State does agree the term of community custody was not authorized. (State’s Response, pgs. 9-11, filed 12/12/2022).

P.3d 310 (2016) (opening brief filed 5/20/15) (decision filed 4/28/16). While this case is not a direct appeal, the cases above illustrate the process of review can be a lengthy one, during which time Mr. Blystone will continue to serve community custody.

Mr. Blystone is currently serving an unauthorized sentence. Therefore, he respectfully requests this Court accelerate review of the Department's petition.

5. PRAYER FOR RELIEF

Mr. Blystone respectfully requests this Court hear and decide the Department's petition on an accelerated basis.

I certify this document contains 604 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 23rd day of February, 2023.

/s/ Laura M. Chuang
Laura M. Chuang, WSBA #36707

DECLARATION OF COUNSEL

1. The undersigned counsel is representing Christopher Mark Blystone as Respondent in the post-sentence petition filed by the Department of Corrections for his criminal case out of Spokane County, Washington, Cause No. 86-1-00928-1.

2. On February 23, 2023, the undersigned counsel contacted the Washington Department of Corrections (DOC). DOC informed the undersigned that Mr. Blystone began his term of community custody on September 23, 2022, and his currently scheduled release date is August 13, 2025.

The undersigned counsel swears this declaration is a true and correct reflection of the statements contained herein. This statement is made, sworn, and signed under penalty of perjury pursuant to the laws of the State of Washington.

I certify this document contains 115 words, excluding
the parts of the document exempted from the word count by
RAP 18.17.

Signed this 23rd day of February, 2023, in Spokane County,
Washington.

/s/ Laura M. Chuang
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Dated this 23rd day of February, 2023.

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