71408-2

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NO. 71408-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

LELAND DULANI HARRIS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LAURA GENE MIDDAUGH

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Harris pled guilty to Attempted Murder in the Second Degree as charged, including the aggravating factor that the crime occurred within sight or sound of his or the victim's minor children. His plea of guilty admitted every element of the crime charged, and had the same legal effect as a guilty verdict. Did the court properly consider the aggravating fact to have been established by Harris's plea when it imposed an exceptional sentence above the standard range?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On April 17, 2013, the State of Washington charged the defendant, Leland Dulani Harris, with one count of Attempted Murder in the Second Degree—Domestic Violence, and two counts of Assault in the Fourth Degree—Child Abuse—Domestic Violence. CP 1-3. The count of Attempted Murder in the Second Degree also included allegations that Harris committed the crime within the sight or sound of the victim's or offender's minor child, pursuant to RCW 9.94A.535(3)(h)(ii), and that he was armed with a deadly weapon at the time, pursuant to RCW 9.94A.533(4). CP 1-2.

On December 26, 2013, Harris entered an Alford[1] plea of guilty to count I of the Information, without the benefit of a plea agreement. CP 11-25; RP 69-77. The plea covered both the substantive charge of Attempted Murder in the Second Degree as well as the domestic violence allegation, the minor child aggravating factor, and the deadly weapon enhancement. CP 22. Although Harris stipulated that the court could consider the Statement of Defendant on Plea of Guilty for the purposes of finding a factual basis for the plea, he explicitly refused to allow the court to consider that document for the purposes of imposing sentence. CP 22. The State dismissed the two counts of Assault in the Fourth Degree. CP 35.

At sentencing, the State offered the testimony of the physician who treated the victim, one of the arresting officers, and the victim herself; Harris made no objection to the court's consideration of any of this evidence. RP 98-126. The State recommended that the court impose an exceptional sentence above the standard range of 216 months.[2] RP 127.

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[1] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[2] The parties agreed that the standard range for Harris's offense was 124.5 to 199 months, based on an offender score of one and including 24 months for the deadly weapon enhancement. CP 25-26; RP 127, 130.

Harris sought a sentence at the bottom of the sentencing range. CP 26. In support of his request, he reported becoming involved with the victim six years prior, and that they had two children together. CP 27.

In deciding on a sentence, the court acknowledged that it could not rely on the Certification for Determination of Probable Cause. RP 131-33. The court further stated that it was basing its decision solely on Harris's plea to the aggravating factor, and not on his relationship with his children, the ages of the children, or any other facts related to the aggravating factor. RP 131-33. The court then imposed a total sentence of 216 months—18 years—to ensure that any minor children involved would be 18 years old before Harris was released from custody. RP 131-33. This appeal timely followed. CP 45.

2. SUBSTANTIVE FACTS[3]

As of early 2013, Harris had been in a dating relationship with Carmen Young for about six years. They had two children together, ages 5 and 3. The relationship had been repeatedly marred by domestic violence; Harris had pistol whipped Young, hit her in the head with a shoe hard enough to leave an imprint of the sole on her face, and beat her even while she was pregnant with their children. When Harris was incarcerated

[3] Unless otherwise noted, the facts outlined herein are drawn from the Certification for Determination of Probable Cause. CP 5-8.

in New Jersey, where the family had lived, Young fled home to Washington, found an apartment, and started a new job.

After Harris was released from custody, however, Young allowed him to visit her and their children in Washington for a week. Once here, Harris refused to leave. Eventually, Young told Harris to move out. He agreed. Young bought Harris a plane ticket to return to New Jersey.

On April 13, 2013, the day before Harris was scheduled to leave, Young returned home from work to find Harris drinking outside with a neighbor, Chuka Faletogo, while the two children were playing inside their bedroom. She went into their apartment. Harris came inside, grabbed Young by the hair, and dragged her to the kitchen, where he found a large knife. Young estimated the blade at eight inches long. RP 119-20. Harris then dragged Young by the hair down the hall towards the bedrooms. While Young screamed, Harris told her that she was not going to take his children away from him, punched her in the head, and told her to be quiet.

The children came out of their room and started telling their father to stop. RP 120. Young was holding her three-year-old daughter when Harris stabbed Young in the side, telling her he was going to kill her. Young let go of her daughter and told her to leave; Harris pushed them out of the room and shut the door. Harris then stabbed Young again, this time

in the chest. He repeated that he would kill her, and that he would not let her take his children away from him. Harris then fled with Young's phone.

Young locked the doors to the apartment, including the chain and deadbolt locks, to protect her children if Harris returned. RP 123-24. She then crawled out a window to seek help. She was bleeding profusely. Faletogo found her and called the police.

When the police arrived, they heard one of Young's children say, "Daddy killed Mommy." The children were shaking and obviously distraught. As the police were speaking with Young, she explained that Harris had stabbed her and provided a description of him. Harris then returned to the area and was arrested; he told the officers that he did it and that he was guilty. Faletogo also told the police that Harris had contacted him after the stabbing and told him that something had happened and that he should go check on Young.

Young was transported to Harborview Medical Center. She arrived intubated and with multiple stab wounds. RP 99. The surgeon who treated her said that she was bleeding to death. RP 102. He discovered that she had injuries to her kidney, spleen, and pancreas, and a separate injury to her chest wall and lung that caused leaking of air and bleeding in the chest cavity. RP 99-101. The surgeon removed her

spleen, resulting in a long-term risk of disease, and repaired her other injuries. RP 99-101.

C. ARGUMENT

Harris contends that the trial court violated his right to have a jury find the facts supporting an exceptional sentence when the court imposed an exceptional sentence above the standard range. But Harris pled guilty to the crime of Attempted Murder in the Second Degree as charged. As charged, the crime included the aggravating factor that the crime was committed within sight or sound of his or the victim's minor children. Although Harris entered an Alford plea and refused to allow the court to consider the Certification for purposes of sentencing, the only relevant fact for the purposes of imposing an exceptional sentence was the fact that the crime was committed within sight or sound of the children. By pleading guilty as charged, Harris established that fact as a matter of law. The trial court properly relied on it in determining the appropriate sentence.

Under ordinary circumstances, a court is required to impose a sentence within the standard sentencing range, as determined by reference to the defendant's offender score and the seriousness level of the crime. RCW 9.94A.505(2)(a)(i). Where the State seeks an exceptional sentence above the standard range, it must allege and prove one or more aggravating factors beyond a reasonable doubt. RCW 9.94A.537(1), (3).

All such aggravating factors are delineated by the legislature in RCW 9.94A.535(3). Once the State has established those aggravators, the court may impose a sentence above the standard range if it concludes that there are substantial and compelling reasons that justify an exceptional sentence. RCW 9.94A.537(6).

A reviewing court may reverse an exceptional sentence if the finding of the aggravating factor is not supported by the record, if there are not substantial and compelling reasons that justify a sentence outside the standard range, or if the sentence is clearly excessive. RCW 9.94A.585(4); State v. Fowler, 145 Wn.2d 400, 405, 38 P.3d 335 (2002). On appeal, the appellate court will uphold the finding of an aggravating factor unless it is clearly erroneous. State v. Hale, 146 Wn. App. 299, 305-07, 189 P.3d 829 (2008) (citing Fowler, 145 Wn.2d at 405). The trial court's conclusion that the aggravating factor was a substantial and compelling reason justifying an exceptional sentence is a question of law reviewed de novo. Hale, 146 Wn. App. at 308 (citing Fowler, 145 Wn.2d at 406). And, the length of the exceptional sentence is reviewed for abuse of discretion. Hale, 146 Wn. App. at 308-09 (citing Fowler, 145 Wn.2d at 406).

In Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and Apprendi v. New Jersey, 530 U.S. 466, 120

S. Ct. 2348, 147 L. Ed. 2d 435 (2000), the U.S. Supreme Court held that a criminal defendant has the right to have any fact that increases the statutory maximum sentence to be submitted to a jury and found beyond a reasonable doubt. For these purposes, the "statutory maximum" is the maximum sentence that the court could impose without the finding of any aggravating factors—in other words, the top of the standard range for the crime of conviction. Blakely, 542 U.S. at 303-04. Accordingly, a defendant has the constitutional right to have the aggravating factor upon which an exceptional sentence depends to be proven beyond a reasonable doubt to a unanimous jury.[4]

Here, Harris does not attack the trial court's conclusion that the relevant aggravating factor was a substantial and compelling reason to depart from the standard range, nor does he complain that the length of the sentence is excessive. Harris also does not contend that the aggravating factor was not supported by the record. Instead, he argues that the trial court committed a Blakely error by making the finding that the crime occurred within sight or sound of his or the victim's minor children rather

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[4] Blakely does not impact the sentencing court's decision to impose an exceptional sentence above the standard range once the aggravating fact has been established by the appropriate factfinder beyond a reasonable doubt. Hale, 146 Wn. App. at 306; State v. Rowland, 160 Wn. App. 316, 329-30, 249 P.3d 635 (2011), as corrected (Mar. 29, 2011), aff'd, 174 Wn.2d 150 (2012); State v. Suleiman, 158 Wn.2d 280, 290-91, 143 P.3d 795 (2006).

than submitting that fact to a jury to find beyond a reasonable doubt. Brief of Appellant at 8. The court did no such thing. Because Harris pled guilty, no further factfinding was necessary. Harris's argument misunderstands the consequences of a guilty plea.

By pleading guilty, Harris waived his right to have a jury determine the facts of his case beyond a reasonable doubt. CP 12; RP 33-35. Moreover, Harris entered a plea of guilty "as charged in the information." CP 22. A guilty plea is an admission of all the elements of the crime, whether or not he specifically admitted the element in his allocution. In re Fuamaila, 131 Wn. App. 908, 923, 131 P.3d 318 (2006), citing McCarthy v. United States, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969). The Information in this case charged that Harris committed his crime "within sight or sound of the victim's or the offender's minor child under the age of eighteen years." CP 2. Thus, by pleading guilty, Harris admitted that the crime occurred within sight or sound of his or the victim's children. No further factfinding was required.

Harris contends that the fact that he entered an Alford plea somehow changes this effect, but his explanation is unconvincing. According to Harris, his Alford plea had the effect of waiving his right to trial on the issues of guilt or innocence without admitting to the facts. Brief of Appellant at 9-10. This is correct, as far as it goes.

See North Carolina v. Alford, 400 U.S. 25, 38, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); State v. Newton, 87 Wn.2d 363, 370–71, 552 P.2d 682 (1976). But Harris ignores the fact that his Alford plea also established his guilt as a matter of law; an Alford plea is a guilty plea. In re Cross, 178 Wn.2d 519, 527, 309 P.3d 1186 (2013). A guilty plea, in turn, is a formal admission of guilt, and has the same legal effect as a guilty verdict. State v. Dodd, 70 Wn.2d 513, 519, 424 P.2d 302, 306 (1967); Woods v. Rhay, 68 Wn.2d 601, 605, 414 P.2d 601, 604 (1966); State v. Hinton, 12 Wn. App. 267, 273, 529 P.2d 843, 847 (1974). Thus, whether Harris agreed that he attempted to kill Young in front of their children is ultimately irrelevant. His plea of guilty as charged established that fact beyond a reasonable doubt.

Additionally, Harris misunderstands the purpose of his stipulation to the facts in the Certification for Determination of Probable Cause. For a court to accept a defendant's plea as knowingly, intelligently, and voluntarily made, it must assure that there is a factual basis for the plea. CrR 4.2(d); Newton, 87 Wn.2d at 368. The purpose of establishing a factual basis for a defendant's plea is to ensure that the defendant understands the relation between the defendant's acts and the crime charged. In re Hews, 108 Wn.2d 579, 591-92, 741 P.2d 983 (1987); In re Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1980). The only relevant

difference in this context between an ordinary guilty plea and an Alford plea is whether the factual basis comes from the defendant's own admissions during allocution or from a different source. See Alford, 400 U.S. at 32. Here, the source was the Certification instead of Harris's admissions. The court accepted Harris's plea, and he does not allege that the court erred in doing so.

Finally, Harris's argument fails under the weight of its own logic. According to Harris, because he did not "admit" that minor children were present during the crime or allow the court to consider the Certification, there were no "facts" the court could consider at sentencing that established the aggravator. But, beyond his plea, there were also no "facts" that the court could consider at sentencing that established the underlying offense of Attempted Murder in the Second Degree or the deadly weapon enhancement. But Harris does not contend that the court could not sentence him for that crime or the enhancement. Nor could he. All authority is to the contrary. E.g., Alford, 400 U.S. at 35-37.

In short, if Harris had elected to have the aggravating factor tried to jury, the only question it would have addressed was whether he committed his offense within sight or sound of his or Young's minor children. Instead of a trial, however, Harris pled guilty, establishing this aggravating fact as a matter of law. The trial court relied on no additional

facts in sentencing him to 216 months, nor did it need to. E.g., Hale, 146 Wn. App. at 308. The trial court properly considered the aggravating factor, to which Harris pled, in imposing sentence.

D. CONCLUSION

For the foregoing reasons, this Court should affirm Harris's sentence.

DATED this 11th day of September, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Kevin A. March, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. LELAND HARRIS, Cause No. 71408-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 11th day of September, 2014

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Name
Done in Seattle, Washington