NO. 32842-2-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SALVADOR S. NAVA,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

Cases

Federal Cases

Other Authorities

TABLE OF AUTHORITIES (continued)

PAGE

Rules and Statutes

I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes one assignment of error;

1. The trial court exceeded its authority when it imposed a standard range sentence of nine-hundred and forty-three months.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. There was no error, the trial court followed the directions of this court and imposed a standard range sentence.

II. STATEMENT OF THE CASE

The only issue presented pertains to the sentence imposed at the resentencing hearing ordered by this Court. There was a previous direct appeal of this case State v. Nava, 177 Wn.App. 272, 311 P.3d 83 (Wash.App. Div. 3 2013) In the opinion, which was published in part, upheld Nava's conviction but overturned the sentence granting the State's cross appeal on that issue. This court ruled as follows;

> We affirm the convictions. For reasons discussed in the unpublished portion of the opinion, we reverse the sentence and remand for resentencing to a term that includes an enhanced sentence on count one of at least 331 months and a sentence for count one that shall run consecutively to the sentences for counts two through five. If the sentences on counts two through five are to run concurrently, the court shall enter findings and conclusions supporting that exceptional downward sentence. State v. Nava, 177 Wn.App. 272, 298, 311 P.3d 83 (Wash.App. Div. 3 2013)

The original sentence was imposed by Judge Schwab (RP 4). Judge Schwab had retired at the time of the resentencing, the sentencing on remand was done by the Honorable Judge Bartheld. (RP 3-4) Judge Bartheld was familiar with the record of the previous sentencing hearing, the previous sentence, the decision of this court and the briefing done by the parties prior to the resentencing hearing. (RP 3-5)

This court ruled;

> Nevertheless, the reason offered for an exceptional sentence must relate to the crime for which the defendant is being sentenced and make it less egregious, distinguishing the defendant's crime from others in the same category. State v. Fowler, 145 Wn.2d 400,404, 38 P.3d 335 (2002). No "multiple offense policy" can explain why the presumptive sentence for a defendant's most serious multiple offense, which the trial court recognized as having an effect completely distinct from the assaults, should receive a sentence below the standard range. *See* State v. Bridges, 104 Wn. App. 98, 15 P.3d 1047 (2001) (in multiple offense case, an exceptional sentence that was less than the standard sentence for one conviction was too lenient and an abuse of discretion). The trial court offered no reason for reducing the sentence for murder below the 331-month minimum of the enhanced standard range. It should have imposed a sentence for murder within the standard range.
>
> …
>
> The trial court might reasonably have concluded that the difference between the four assaults, by themselves, was trivial, justifying exceptional concurrent sentencing. The record provides no basis for finding that there was a nonexistent, trivial, or trifling difference between the murder of Mr. Masovero and the firing of four more shots into the occupied car, however. The provision that the murder sentence run concurrently with the assault sentences cannot

> stand. In order for the provision that the sentences for the four assaults run concurrently to stand, that departure must be supported by adequate findings and conclusions. (Nava slip at 43, 45)

On September 25, 2014 the trial court imposed a sentence what included a "standard range" sentence for count I – First Degree Murder and per statute imposed consecutive sentence on counts II-V. (RP 49-56, CP 100-108)

Although the sentence was within the standard range and reflective of the sentencing statutes this appeal followed. Appellant did not dispute in the trial court that the sentence for count I, the murder charge, must be a "standard range" sentence. (RP 14, 16, 17-18,He did argue to the trial court and renews that argument herein that the sentence for the Assault 1st Degree charges for counts II-V should run concurrent to all counts. This would have required the court to find an exceptional sentence downward.

On appeal Nava does not argue that the standard range sentence imposed for the murder should be overturned or that the courts order that the four assault charges which were run consecutive to the murder count and consecutive to each other were improperly imposed of that the trial court did not have authority to impose this sentence. And in fact "Mr. Nava recognizes that the trial court followed statutory provisions when he was sentenced." (Appellant's brief at 4) What Nava argues is that the

sentence impose is just not fair given the circumstances of his crime and his current age.

The State shall refer to specific sections of the record as needed to address the allegations that have been raised.

III. ARGUMENT

RESPONSE TO ALLEGATION ONE

This was a standard range sentence by statutory definition regarding the sentence imposed on Count I and the sentence imposed on Counts II-V were imposed per statute. RCW 9.94A.589(1)(b) in part;

> Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the of-fender's prior convictions and other current convictions that are not serious violent offenses in the offender score …. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentenced imposed under (a) of this subsection.

The trial court took great care in coming to its ultimate sentence. It considered the record, the argument and briefing of counsel as well as the previous actions of Judge Schwab and after full and fair consideration determined the court, on this occasion, could not find that there was a basis for the court to depart from the sentence mandated by statute "…I

can't find that the sentences that I have imposed and the considerations that I have given would make the sentence clearly excessive." RP 56

The claim that this sentence was improper was not raised in the trial court. The attorney for Nava argued for a lesser sentence, he argued that the sentences should all be run concurrent but there is nothing in the record to indicate that once the sentence was imposed that Nava objected to that sentence. The actions of the trial court followed the statute while acknowledging that the law allowed and this court addressed the possibility of an exceptional sentence downward. The very nomenclature used, "exceptional" supports that fact that the sentence imposed was "standard" or "regular" and therefore not one that can be challenged by right.

This court in its original opinion indicated that the trial court could impose an exceptional sentence stating that if the trial court were to impose an exceptional sentence involving concurrent sentences for the Assault charges that sentence would have to be supported by findings of fact and conclusions of law. The trial court exercised this discretion and followed the statute imposing consecutive sentences.

The basis for determining the offender score of a defendant are prior and concurrent convictions, see RCW 9.94A.525 Offender score.

A standard range sentence is generally not appealable. RCW 9.94A.585(1). Nevertheless, a defendant may appeal the trial court's procedure in imposing his sentence. State v. Ammons, 105 Wn.2d 175, 183, 713 P.2d 719, 718 P.2d 796 (1986). Trial counsel was advocating for a sentence that was clearly an exceptional sentence and this was acknowledged by this court in the original appeal. RCW 9.94A.589. Consecutive or concurrent sentences;

> (b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

When this court addressed the sentence imposed on count I, the murder charge it stated;

> Nevertheless, the reason offered for an exceptional sentence must relate to the crime for which the defendant is being sentenced and make it less egregious, distinguishing the defendant's crime from others in the same category. State v. Fowler, 145 Wn.2d 400, 404, 38 P.3d 335 (2002). No “multiple offense policy" can explain why the presumptive sentence for a defendant's

> most serious multiple offense, which the trial court recognized as having an effect completely distinct from the assaults, should receive a sentence below the standard range. See State v. Bridges, 104 Wn.App. 98, 15 P.3d 1047 (2001) (in multiple offense case, an exceptional sentence that was less than the standard sentence for one conviction was too lenient and an abuse of discretion). The trial court offered no reason for reducing the sentence for murder below the 331-month minimum of the enhanced standard range. It should have imposed a sentence for murder within the standard range. (Slip opinion at pg. 43)

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment. "[T]he Eighth Amendment guarantees individuals the right not to be subjected to excessive sanction." Roper v. Simmons, 543 U.S.551, 560, 125 S.Ct. 1183, 161 L.Ed2d 1 (2005) Punishments that are grossly disproportional to the crime, resulting in extreme sentences, are forbidden by the Eighth Amendment. Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010).

Mr. Nava relies on State v. Frampton, 95 Wn.2d 469, 497, 627 P.2d 922 (1981). The case is clearly distinguishable from Nava's. Frampton pertained the death penalty in this state;

> In summary then, we hold: (1) The present statutory scheme for imposing the death penalty is unconstitutional; (2) under these statutes, the State may not seek and have imposed in cases of aggravated first degree murder the punishment of life imprisonment without the possibility of parole; (3) the special sentencing proceeding for imposing the death penalty does not unconstitutionally withdraw from the jury the question of the appropriate sentence; (4)

> RCW 10.94.020(10)(b), which requires the jury to make a prediction as to the future dangerousness of the defendant is constitutional; and (5) death by hanging violates the Eighth Amendment and Const. art. 1, § 14.

The trial court's ruling regarding the sentence to be imposed addresses the basis for that sentence;

> In this particular circumstance, four to five -- I think five gunshots were fired by Mr. Nava, that was the finding of the jury. Two of them were in the head, the other three were to in -- to various parts of the rear compartment of the vehicle in a total disregard for human life, of the -- of all of those occupied by the vehicle. It's similar to shooting into a crowd of people.
>
> In this particular circumstance the jury found, beyond a reasonable doubt, that there was an intent to inflict serious bodily harm by use of a deadly weapon to all of the individuals in that automobile, one of which lost his life. And the other four of which escaped harm; but were certainly within the realm of being seriously harmed or injured or killed themselves.
>
> To find that a sentence is clearly excessive the Court has to find the difference between the effects of the first criminal act, i.e., the first degree murder and the cumulative effects of the subsequent acts is nonexistent, trivial or trifling. I can't find that.
>
> In this particular circumstance the jury found that Mr. Nava acted with total disregard for the individuals in that automobile that weren't killed, and that's what I interpret the jury's decision to be.
>
> So it is the ruling of this Court on resentencing that Mr. Nava be sentenced to the bottom of the standard range on each of the four first degree assault charges plus the deadly weapons enhancement for each of those four assault charges, and that they run consecutive, as required by the statute.

> I understand why Judge Schwab was motivated in the sense that he was to give Mr. Nava a sentence of five hundred and twenty months and that was to give some hope that he would be released before the expiration of his natural life. And while I don't believe that that is a admirable belief in this case, I believe that I have to follow the law as the Legislature has determined in this case and that I must follow the Sentencing Guidelines and impose them in the manner that I have done so.
>
> I have taken into consideration the fact that I have sentenced Mr. Nava to the low end of the standard range on all five of the serious offenses. I have necessarily included the sixty month enhancements because of the deadly weapons enhancement, which I am required to by statute. And I have also allowed the unlawful possession of a firearm to run concurrent.
>
> Lastly, I have also taken into consideration that this event took place on May -- in May of 2001 and that Mr. Nava was not apprehended until July of 2008, a period of seven years and two months after the fact. And so I think that also has to be taken into consideration.
>
> While it may be true that the other four occupants of that automobile escaped any injury at all, I don't think any one of us in this courtroom would ever trade places and put ourselves in that automobile under those circumstances. And I have to respect the fear and the utter fright that these individuals experienced in that automobile when Mr. Nava opened fire on the automobile that evening.
>
> And I can't find that the sentences that I have imposed and the considerations that I have given would make the sentence clearly excessive.
>
> (The entire statement of the trial court is contained in Appendix A.)

Once again quoting from this court's prior decision;

> In reviewing a trial court's conclusion that the multiple offense policy results in a sentence that is clearly excessive, we apply the same standard first announced as the appellate standard to determine whether a sentence imposed by the trial court is " clearly excessive" within the meaning of RCW 9.94A.585(4): that being whether "the difference between the effects of the first criminal act and the cumulative effects of the subsequent criminal acts is nonexistent, trivial or trifling." Hortman, 76 Wn.App. at 463-64; State v. Kinneman, 120 Wn.App. 327, 342, 84 P.3d 882 (2003); McKee, 141 Wn.App. at 33.
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> …
>
> The trial court might reasonably have concluded that the difference between the four assaults, by themselves, was trivial, justifying exceptional concurrent sentencing. The record provides no basis for finding that there was a nonexistent, trivial, or trifling difference between the murder of Mr. Masovero and the firing of four more shots into the occupied car, however. The provision that the murder sentence run concurrently with the assault sentences cannot stand. In order for the provision that the sentences for the four assaults run concurrently to stand, that departure must be supported by adequate findings and conclusions.

Clearly the trial court did not find that the actions of Nava with regard to the other four victims who were sitting in the same car, two on the same seat, as the deceased "trivial or trifling." The court was well within its discretion when it imposed the sentence that it did.

The trial court was apprised of the length of the sentence in conjunction with the defendant's age. "If you're running consecutive then what it does is adds on about almost thirteen years. He would be

eighty-two point nine one years of age when he got out on this matter -- or if he did all of his time, which is a lifetime. And -- of course the hundred and five point five eight is just -- is way out there." (RP 45)

The addition of twenty-five years to the sentence imposed on the defendant comes about because the legislature determined that "Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death." "Hard Time for Armed Crime Act." Laws of 1995, ch. 129, § 1(1)(a) (Initiative 159 (I-159)).

The simple fact is that Nava made a choice on the day of this crime to take a gun and fire off at least five rounds into a Nissan Altima that was occupied by five young men. Nava's accomplice Mr. Nanamkin stood in an area near the front of this same Nissan with his weapon ready and but for the fact that the weapon jammed or was broken he too would have been firing into this small passenger car. Yes there was additional time added that significantly lengthened this sentence but, if Nava would have walked up to this car and punched the deceased in the head instead of shooting him he would now not be facing sentence which in total is 943 months. (CP 103) Our legislature has spoken with regard to criminals who choose to arm themselves with weapons and especially firearms.

Nava argues that "when viewed in context with the overall sentence the trail court exceeded its authority and Mr. Nava is entitled to

an adjustment in his sentence." The trial court did not exceeded its authority, the trial court exercised its discretion and authority when it considered all factors presented and the opinion of this court and imposed a sentence that was just.

Neither case cited by Nava supports his theory that the trial court exceeded its authority or that is just wrong to give him a sentence that he terms too harsh. Article I, section 14 of the Washington Constitution prohibits cruel punishment and provides more protection than its eighth amendment federal counterpart. State v. Fain, 94 Wn.2d 387, 392, 617 P.2d 720 (1980). Therefore it necessarily follows that if the Washington Constitution is not violated, the sentence also does not violate the United States Constitution. State v. Morin, 100 Wn.App. 25, 29, 995 P.2d 113, review denied, 142 Wn.2d 1010, 16 P.3d 1264 (2000). Article I, section 14 protects against sentences that are "grossly disproportionate" to the crime committed. "A punishment is grossly disproportionate only if the conduct should never be proscribed ... or if the punishment is clearly arbitrary and shocking to the sense of justice." State v. Smith, 93 Wn.2d 329, 344-45, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S.Ct. 213, 66 L.Ed.2d 93 (1980).

In one of the cases cited by Nava, State v. Whitfield, 132 Wn.App. 878, 883, 134 P.3d 1203 (2006), review denied, 159 Wn.2d 1012, 154

P.3d 919 (2007) this court affirmed a sentence of "2,137 months' confinement on 17 counts of first degree assault with sexual motivation, 2 counts of witness tampering, and 3 counts of no-contact order violations." (178.08 years Id at 888) Not to minimize the facts in Whitfield but the legislature has clearly indicated that the crimes Nava was charged and convicted of are greater than or equal in severity in the eyes of that body, a body to whom we have delegated the duty to establish the punishments for criminal acts in this state.

The court in Whitfield analyzed the sentence in light of the "Fain" factors and stated "We hold that Whitfield's sentence is not grossly disproportionate to his crime. The court convicted him of intentionally exposing or transmitting a deadly disease to 17 women. The legislature has a right to discourage such behavior and to protect the public from such offenders. Consequently, the sentence does not violate Washington's prohibition of cruel punishment and Whitfield's argument fails." Id at 902.

State v. Whitfield, 132 Wn.App. at 883;

> Article I, section 14 of the Washington Constitution prohibits cruel and unusual punishment and provides more protection than its federal counterpart. State v. Fain, 94 Wash.2d 387, 392, 617 P.2d 720 (1980). Article I, section 14 protects against sentences that are grossly disproportionate to the crime committed. State v. Morin, 100 Wash.App. 25, 29, 995 P.2d 113, review

> denied, 142 Wash.2d 1010, 16 P.3d 1264 (2000). "A punishment is grossly disproportionate only if ... the punishment is clearly arbitrary and shocking to the sense of justice." State v. Smith, 93 Wash.2d 329, 344-45, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S.Ct. 213, 66 L.Ed.2d 93 (1980).

The sentence handed down was without doubt a very long sentence, it is however far short of the 2,137 months imposed in Whitfield an egregious case but not a case wherein a man was premeditatedly executed in a car full of his friends.

The sentence proposed by Nava is not one that the set forth in the SRA, it would be an exceptional sentence, something the sentencing court stated was not appropriate given the facts and circumstances of this case.

IV. CONCLUSION

For the reasons set forth above this court should deny this appeal. This action of the trial court at the time of the resentencing was a discretionary act. The trial court followed the law regarding sentencing, the sentence impose was not cruel or unusual.

The fact that the sentencing court did not find the assaults of four young men to be “trivial or trifling” is one that can readily be discerned from the facts that were presented to that court.

The actions of the trial court should be upheld and this appeal should be dismissed.

Respectfully submitted this 15th day of April 2015,

s/ David B. Trefry
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APPENDIX A

THE COURT: Okay. Alright. I was not the Judge that was appointed to replace Judge Schwab, that was Judge Robert Lawrence-Berrey, who now has been appointed to the Court of Appeals. But whether it be Judge Lawrence-Berrey sitting here or me, neither one of us had the opportunity to -- to sit in on this trial and to listen to all of the evidence.

Just like all of the other judges here in the Yakima County Superior Court we did not have the benefit of listening to all of the evidence in this case. At best we can do is to review the records and files and -- and glean what we can from the Court of Appeals decision in this case and address the issues that the Court of Appeals asked this Court to -- to address.

The jury in this case found Mr. Nava guilty of first degree murder, which is premeditated murder. In other words, he gave thought about what he was going to do and then carried out that. The jury also found Mr. Nava guilty of first degree assault for the other four individuals in the automobile, the gold-colored sedan that they were seated in. And the jury found Mr. Nava guilty of unlawful possession of a firearm.

I am going to address the first degree murder first. Counsel for Mr. Nava concedes that the sentence of Judge Schwab essentially consisted of a sentence outside of the standard range, two hundred and

twenty months if we are to dissect his opinion. And the Court of Appeals indicated that to justify that that Judge Schwab would have had to find that there was substantial and compelling reasons justifying that exceptional sentence. And the Court of Appeals was clear to indicate that there was no such findings in this case as it related to the first degree murder.

And for purposes of today's hearing the defense concedes that there are not substantial and compelling reasons justifying an exceptional sentence to the first degree murder charge in this case. Thus, the standard range of two hundred and seventy-one to three hundred and sixty-one months on the base sentence for that is the range with which this Court must impose its sentence.

In that regards the Court is going to impose a sentence on the first degree murder of two hundred and seventy-one months plus sixty months, which is the weapons enhancement that was found by the jury in their Special Verdict Form 1. That is a total of three hundred and thirty-one months for first degree murder, which computes to twenty-seven point five eight years.

The unlawful possession of a firearm charge is not a serious offense and according to our Sentencing Guidelines it runs concurrent with the other sentences and I don't believe the State contests that finding. Is that correct Mr. Ramm?

MR. RAMM: That's correct Your Honor.

THE COURT: And so the Court will impose a sentence of the bottom of the range on the unlawful possession of a firearm and it will run concurrent.

The real issue in this case is whether or not the sentences for the first degree assault, there are four convictions on first degree assault, whether or not they should run concurrent or consecutive. The statute requires that they run consecutive because they are a serious offense.

The Court of Appeals decision and the statutes clearly indicate, however, that the Court can find, in certain circumstances, a basis to make them run cons -- concurrent. And that would essentially amount, again, to an exceptional sentence. So the Court has to find that there are substantial and compelling reasons to justify an exceptional sentence to cause them to run concurrent with one another and concurrent with the murder charge.

The argument in this case is that to run them consecutive would result in a sentence that is clearly excessive and the Court of Appeals, in this case, defined clearly excessive as the difference between the effects of the first criminal act and the cumulative effects of subsequent acts is nonexistent, trivial or trifling.

The defense has submitted a proposed Findings of Fact and Conclusions of Law that they believe would justify a finding that a

concurrent -- or consecutive sentence on the first degree assault convictions would be clearly excessive.

And again, my review of the information is substantially limited because I wasn't the trial judge. And so I have to rely upon what I have reviewed, what I have gleaned from the Court of Appeals decision in this case and it's difficult for this Court to find that the difference between the first degree murder charge in this case and the four first degree assault convictions is as suggested by the Court of Appeals, nonexistent, trivial or trifling.

What is apparent in this case, and perhaps it is my perception of the testimony of Ms. Perez and the statements of Mr. Nava overheard and testified to at time of trial is perhaps a little bit different than Mr. Cotterell interprets.

When Mr. Nava reportedly yells before he fires his weapon that this was for my Homey Smurf to perceive that that was simply directed at Mr. Mossavero is a stretch in this Court's opinion. Mr. Mossavero was a passenger in an automobile with four other persons.

And it's obvious from the testimony, gleaned from the Court of Appeals decision, that several people testified in this case that when the car pulled in to the lot essentially the fight was on. In other words, one of them, as I recall, basically said that the driver got out and started talking

smack to the other people. I think she used a little bit different word; but I think that the word smack probably conveys just about the same meaning.

Which would indicate to me that they were all members of a single gang in opposition to the gang that Mr. Nava was a member of. Clearly Mr. Mossavero was a member of the opposing gang and it was believed amongst those that testified that this was a revenge killing for the loss of Mr. Serano.

But to suggest that the evidence in this case is clear that that statement was made simply to Mr. Mossavero and not to the others in the car, again, I -- I can't conclude that, just as I cannot conclude that Mr. Nanampkin was just standing there as an innocent bystander.

Is it speculation to find that Mr. Nanampkin was there to blast the people in the front seat? It think it probably is. But I don't believe it's speculation to conclude that he was there to participate in a gunning down of one or more of the individuals in that automobile.

In this particular circumstance, four to five -- I think five gunshots were fired by Mr. Nava, that was the finding of the jury. Two of them were in the head, the other three were to in -- to various parts of the rear compartment of the vehicle in a total disregard for human life, of the -- of all of those occupied by the vehicle. It's similar to shooting into a crowd of people.

In this particular circumstance the jury found, beyond a reasonable doubt, that there was an intent to inflict serious bodily harm by use of a deadly weapon to all of the individuals in that automobile, one of which lost his life. And the other four of which escaped harm; but were certainly within the realm of being seriously harmed or injured or killed themselves.

To find that a sentence is clearly excessive the Court has to find the difference between the effects of the first criminal act, *i.e.,* the first degree murder and the cumulative effects of the subsequent acts is nonexistent, trivial or trifling. I can't find that.

In this particular circumstance the jury found that Mr. Nava acted with total disregard for the individuals in that automobile that weren't killed, and that's what I interpret the jury's decision to be.

So it is the ruling of this Court on resentencing that Mr. Nava be sentenced to the bottom of the standard range on each of the four first degree assault charges plus the deadly weapons enhancement for each of those four assault charges, and that they run consecutive, as required by the statute.

I understand why Judge Schwab was motivated in the sense that he was to give Mr. Nava a sentence of five hundred and twenty months and that was to give some hope that he would be released before the expiration of his natural life. And while I don't believe that that is a admirable belief

in this case, I believe that I have to follow the law as the Legislature has determined in this case and that I must follow the Sentencing Guidelines and impose them in the manner that I have done so.

I have taken into consideration the fact that I have sentenced Mr. Nava to the low end of the standard range on all five of the serious offenses. I have necessarily included the sixty month enhancements because of the deadly weapons enhancement, which I am required to by statute. And I have also allowed the unlawful possession of a firearm to run concurrent.

Lastly, I have also taken into consideration that this event took place on May -- in May of 2001 and that Mr. Nava was not apprehended until July of 2008, a period of seven years and two months after the fact. And so I think that also has to be taken into consideration.

While it may be true that the other four occupants of that automobile escaped any injury at all, I don't think any one of us in this courtroom would ever trade places and put ourselves in that automobile under those circumstances. And I have to respect the fear and the utter fright that these individuals experienced in that automobile when Mr. Nava opened fire on the automobile that evening.

And I can't find that the sentences that I have imposed and the considerations that I have given would make the sentence clearly

excessive.

So for those reasons I will ask Mr. Ramm to draft a Judgment and Sentence consistent with my ruling in this particular case. Any questions Mr. Ramm? (RP 48-56)

DECLARATION OF SERVICE

I, David B. Trefry state that on April 15, 2015, I emailed a copy, by agreement of the parties, of the Respondent's Brief, to Mr. Dennis Morgan at nodblspk@rcabletv.com and deposited a copy in the United States mail on this date to;

SALVADOR S. NAVA DOC #331749
Washington State Penitentiary
1313 N 13th Ave
Walla Walla, Washington 99362

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

DATED this 15th day of April, 2015 at Spokane, Washington,

s/David B. Trefry
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