71408-2

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NO. 71408-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

LELAND HARRIS,

Appellant.

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

The Honorable Laura G. Middaugh, Judge

REPLY BRIEF OF APPELLANT

KEVIN A. MARCH
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

A. ARGUMENT IN REPLY

Harris refused to stipulate to any facts that would allow the trial court to impose an exceptional sentence based on RCW 9.94A.535(3)(h)(ii)'s sight-and-sound-of-children aggravating factor. CP 22; RP 70-71, 73, 77. Without a stipulation to facts, consent to judicial fact finding, or a jury trial, the trial court lacked authority to impose an exceptional sentence under the Sixth Amendment or the SRA, chapter 9.94A RCW. Blakely v. Washington, 542 U.S. 296, 310, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); State v. Hagar, 158 Wn.2d 369, 374, 144 P.3d 298 (2006); State v. Suleiman, 158 Wn.2d 280, 293, 143 P.3d 795 (2006); State v. Ermels, 156 Wn.2d 528, 540, 131 P.3d 299 (2006). The exceptional sentence the trial court imposed was illegal and this court must reverse and remand for resentencing.

The State repeatedly asserts that Harris's Alford[1] plea established the facts supporting an exceptional sentence. Br. of Resp't at 9-11. The State argues that no fact finding was necessary here because an Alford plea is a guilty plea. But the State cites no authority for its proposition, ostensibly because all authority is to the contrary.

The State's argument is inconsistent with its express acknowledgment that an Alford plea waives trial on the issues of guilt or innocence without admitting the underlying facts. Br. of Resp't at 9.

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

Indeed, the State concedes that an Alford plea does not admit facts on the one hand yet argues that an Alford plea "establishe[s] . . . fact[s] beyond a reasonable doubt" on the other. Br. of Resp't at 10. This court must reject the State's curious and incorrect effort to parse the meaning of an Alford plea to reach its desired result.

The State's arguments also directly conflict with the arguments its trial deputy addressed to the trial court. The State's position below was that Harris's refusal to stipulate to the facts supporting an exceptional sentence required a jury trial on these facts. RP 81, 90-93. The State fails to provide any explanation for taking the opposite position now.

Finally, it is telling that the State provides no analysis or response to Harris's discussion of the two leading and controlling cases on this subject, Suleiman and Ermels. See Br. of Appellant at 10-12. In those cases, our supreme court clearly required a stipulation to aggravating facts for the imposition of an exceptional sentence. Suleiman, 158 Wn.2d at 293 ("Because . . . factual conclusions were not part of the stipulation and they were not found by a jury beyond a reasonable doubt, we conclude that Suleiman's exceptional sentence violates Blakely."); Ermels, 156 Wn.2d at 540 (holding no Blakely violation "because Ermels stipulated to both the facts supporting his exceptional sentence and that there was a legal basis for the exceptional sentence"). The State's failure to respond to Harris's

analysis of these cases indicates that the State has no response. Instead, the State's apparent tactic is to hope that this court will ignore controlling precedent. This court should decline the State's invitation and hold that the exceptional sentence imposed on Harris violated the SRA and Blakely, requiring reversal and remand for resentencing.

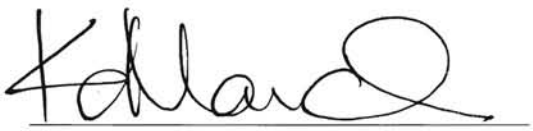
B. CONCLUSION

Harris did not stipulate to any facts that supported an exceptional sentence. The imposition of an exceptional sentence therefore required a jury trial. Because the trial court unlawfully imposed an exceptional sentence, Harris asks this court to reverse his exceptional sentence and remand for resentencing.

DATED this 10th day of October, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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Respondent,	)	
	)	
v.	)	COA NO. 71408-2-I
	)	
LELAND HARRIS,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 10TH DAY OF OCTOBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LELAND HARRIS
DOC NO. 371399
CLALLAM BAY CORRECTIONS CENTER
1830 EAGLE CREST WAY
CLALLAM BAY, WA 98326

SIGNED IN SEATTLE WASHINGTON, THIS 10TH DAY OF OCTOBER 2014.

X Patrick Mayovsky