Supreme Court No. 99480-3
(COA No. 53195-0-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER ROBERSON,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Christopher Roberson, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review. RAP 13.3, RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Roberson seeks review of the Court of Appeals decision dated January 5, 2020, attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Should a trial court have the authority to depart from the sentencing guidelines to account for a person's mental health needs?

2. Must a trial court impose a sentence of a year and a day when the government proves the special allegation of endangerment by eluding, where facts establish a departure from the standard range is warranted?

D. STATEMENT OF THE CASE

Christopher Roberson has PTSD and experienced an episode of it when a Pierce County deputy tried to pull him over for a routine traffic stop. CP 1; RP 11 (01-09-19), CP 42.

According to the car passenger, Mr. Roberson was highly agitated and panicked right before the deputy attempted to pull him over, which contributed to his erratic driving. CP 42.

The government charged Mr. Roberson with attempting to elude a police vehicle, and also charged the endangerment enhancement. Mr. Roberson pled guilty to the eluding charge, with the prosecutor agreeing to recommend a sentence of twelve months and one day. CP 9.

At the time of his sentencing, Mr. Roberson had already served 131 days. RP 5 (01-09-2019). The court had information at sentencing that Greater Lakes Mental Health could treat Mr. Roberson for his mental health conditions, where he had already received a referral. CP 57.

At the hearing, Mr. Roberson and the passenger in the car requested that the court issue an exceptional sentence below the range agreed to in the plea bargain because Mr. Roberson's PTSD episode compromised his ability to conform his conduct to the law. CP 52; RP 10 (01-09-2019).

The court indicated it did not believe it could issue a downward departure from the sentence enhancement. RP 7 (01-09-2019). The court declared:

> You do understand the legislature decides the length of time. I'm not a knight-errant.

RP 7 (01-09-2019).

The sentencing court acknowledged that Mr. Roberson's PTSD episode might have played a role in his flight but believed it did not have the authority to depart from the standard range. The court stated:

> THE COURT: I understand that there have been mental health issues that may have manifested themselves here. I also understand that there was an agreed upon sentence that has an enhancement, and that relates to both your decision and the State's decision about what kind of a deal they are going to offer and whether they are going to prosecute you and for what crime. I don't think it's my place here to jump into that at this late stage of the game.

RP 12 (01-09-2019).

The court then sentenced Mr. Roberson to twelve months and a day, as stated in the plea bargain. The Court of Appeals denied Mr. Roberson relief, holding that the trial

court did not err when it followed the attorney's recommendation. App. 1.

E. ARGUMENT

Mr. Roberson asks this Court to accept review of whether the trial court was bound to impose the sentencing enhancement and whether the parties proposed sentencing agreement means the court is not required to assess whether a sentence below the standard range should be considered. The Court of Appeals decision to the contrary warrants review, as what role mental health needs plays in sentencing is an issue of substantial public interest this Court should resolve. RAP 13.4.

Before imposing a sentence on a person with mental health needs, the sentencing court must determine whether a prison sentence is an effective punishment for the crimes committed.

In denying Mr. Roberson's appeal, the trial court focuses on whether it believed it could depart from the recommendation made by the government and made part of the plea bargain. App. 7. In accepting review, this Court should recognize that the sentencing court did not believe it

had the authority to depart from the enhanced sentence, declaring that the court was not a knight-errant. RP 7 (01-09-2019). Instead, it stated that only the legislature had the authority to change the rule for when to impose this enhancement. *Id*.

In its opinion, the Court of Appeals emphasizes that the parties came to the court with an agreed recommendation. App. 1. While this is true, the record also shows that Mr. Roberson asked the court to consider mitigating his sentence to address his mental health needs. CP 52; RP 10 (01-09-2019). In asking for a mitigated sentence, the court heard from Mr. Roberson and others who hoped the court would place Mr. Roberson in a therapeutic setting. CP 52.

In response to these pleas, the court stated it did not believe it had the authority to deviate from the standard range and impose a prison sentence. RP 7 (01-09-2019). Rather than make an independent assessment of Mr. Roberson's needs, the court declared, "I don't think it's my

place here to jump into that at this late stage of the game." RP 12 (01-09-2019).

Despite the Court of Appeals decision to the contrary, the sentencing court had an independent obligation to inquire into Mr. Roberson's mental health and impose a sentence that would not aggravate his issues. For while the sentencing court and the Court of Appeals largely rely on the attorneys' recommendation in determining the legality of the sentence, this ignores the court's obligation to impose a sentence that accounts for the community's needs, including those of Mr. Roberson. RCW 9.94A.010.[1] The issue of how persons in need of mental health treatment should be treated by the courts is an issue of substantial public interest that this Court should determine. RAP 13.4 Mr. Roberson asks this Court to grant review. RAP 13.4.

[1] The goals of the Sentencing Reform Act are to: 1. Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history; 2. Promote respect for the law by providing punishment which is just; 3. Ensure that the punishment imposed on any offender is commensurate with the punishment imposed on others committing similar offenses; 4. Protect the public; 5. Offer the offender an opportunity to improve him or herself; 6. Make frugal use of the state's and local governments' resources; and 7. Reduce the risk of re-offending by offenders in the community. RCW 9.94A.010.

1. The over-incarceration of persons with mental health needs conflicts with the purposes of the Sentencing Reform Act.

This Court should recognize the enormous toll mental illness plays in the criminal legal system. Largely, jails and prisons have become America's de facto mental hospitals. Michael B. Mushlin & Michele Deitch, *Opening Up a Closed World: What Constitutes Effective Prison Oversight?,* 30 Pace L. Rev. 1383, 1390–91 (2012). According to the Department of Social and Health Services, 58% of adults booked into Washington jails have mental health treatment needs. Paula Ditton Henzel, et al., *Behavioral Health Needs of Jail Inmates in Washington State*, Report to the Washington State Office of Financial Management's Statistical Analysis Center, 1 (2016).[2]

The mental health conditions of people like Mr. Roberson do not improve in prison. Studies strongly suggest that prison exacerbates psychiatric disabilities. Michael J. Sage et al., *Butler County SAMI Court: A Unique Approach to*

[2] Available at https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-226a.pdf

Treating Felons with Co-Occurring Disorders, 32 Cap. U. L. Rev. 951, 953 (2004). The evidence demonstrates that individuals with major mental illnesses face a substantial likelihood of incurring serious harm in prison and are far more likely to suffer serious harm than non-ill prisoners. E. Lea Johnston, *Vulnerability and Just Desert: A Theory of Sentencing and Mental Illness*, 103 J. Crim. L. & Criminology 147, 229 (2013).

These harms are significant. Mentally ill prisoners are more likely to be the victim of physical assaults. Paula M. Ditton, *Bureau of Justice Statistics, U.S. Dep't of Justice, Mental Health and Treatment of Inmates and Probationers* 9 (1999)[3]. Victimization by staff is also more common. *See* Cynthia L. Blitz et al., *Physical Victimization in Prison: The Role of Mental Illness*, 31 Int'l J.L. & Psychiatry 385, 389-90 (2008) (Tables 2 and 3). They are also at a heightened risk of sexual victimization. Johnston, at 222 (citing Nancy Wolff et al., *Rates of Sexual Victimization in Prison for Inmates with*

[3] Available at http://bjs.ojp.usdoj.gov/content/pub/pdf/mhtip.pdf.

and Without Mental Disorders, 58 Psychiatric Servs. 1087, 1088 (2007)). Additionally, mentally ill prisoners are more likely to be confined in stark conditions, including solitary confinement. *See, e.g.*, Maureen L. O'Keefe et al., *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*, at iv (2010) (estimating that inmates' rate with mental illnesses in administrative segregation is around 50% higher than the rate within the general prison population).[4]

2. The sentencing court did not appreciate it had the authority to mitigate Mr. Roberson's sentence to address his mental health needs.

The legislature enacted the Sentencing Reform Act to "structure, but . . . not eliminate, the discretionary decisions affecting sentences." RCW 9.94A.010. To achieve these goals, the Sentencing Reform Act gave judges extensive discretion to impose sentences outside of the standard range if they found substantial or compelling reasons to distinguish a crime from others in the same category. RCW 9.94A.535.

[4] Available at https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf.

The Sentencing Reform Act contains a non-exhaustive list of mitigating factors that include whether a "defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired." RCW 9.94A.535(1)(e). Where the record shows that a person convicted of a crime possessed a mental condition that caused a significant impairment to their ability to appreciate the wrongfulness of their conduct or to conform their conduct to the law, a court may consider that condition at sentencing. *See State v. Rogers*, 112 Wn.2d 180, 185, 770 P.2d 180 (1989). A new sentencing hearing is required when a court imposes a sentence without properly considering mitigating factors. *State v. O'Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015).

Mr. Roberson has Post-Traumatic Stress Disorder, a disorder associated with intrusive episodes of intense or prolonged psychological distress or marked physiological reactions at exposure to internal or external cues that resemble or symbolize a past traumatic event. American

Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 271-272 (David J. Kupfer et al. eds., 5th ed. 2013). This disorder can cause marked alterations in arousal and reactivity, exhibited through an exaggerated startle response, hypervigilance, and reckless or self-destructive behavior, among other potential symptoms. *Id*. Mr. Roberson's reaction to the police appears to be a classic case of triggering, where a routine stop became much more serious because of Mr. Roberson's mental health.

Mr. Roberson's mental health was established in the record. His passenger's written statement included the following statement which read: "I believe that the erratic driving which led to the offense is related to [the] defendant's mental health condition and I recall the arresting officers making some comment about mental health issues as there was no real other explanation for the erratic driving." CP 42.

The sentencing court recognized Mr. Roberson's mental health may have contributed to his criminal act. RP 12 (01-09-2019). Nonetheless, the court believed it was constrained

to impose a sentence outside of the guidelines, declaring that the court was "not a knight-errant." RP 12 (01-09-2019).

The court's belief that it was constrained to act was in error. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). Instead, this Court has held upheld mitigated sentences imposed where the person accused of the crime had substantial impairments, including PTSD and battered women's syndrome. *See State v. Janes*, 121 Wn.2d 220, 231, 850 P.2d 495 (1993). The sentencing court's error in believing it could not act was in error. Because this error involves an issue of substantial public interest that this Court should determine, review should be granted. RAP 13.4.

3. A court does not have to impose an exceptional sentence when the government proves the endangerment enhancement for attempting to elude.

The Court of Appeals chose not to address whether the endangerment enhancement is mandatory, holding that whether the enhancement was not mandatory was not relevant to the trial court's sentencing decision. App. 8. In accepting review of whether the court erred when it did not

properly consider Mr. Roberson's mental health needs at sentencing, this Court should also accept the question of whether imposition of the endangerment enhancement is mandatory.

Where the government files a special allegation of endangerment by eluding, the court has the authority to impose an additional twelve months and a day to the standard range sentence. RCW 9.94A.834; RCW 9.94A.533(11).

Unlike other sentence adjustments in 9.94A.533, the legislature did not specify that confinement for the endangerment enhancement was mandatory. Conversely, the legislature did specify other sentence enhancements within RCW 9.94A.533 as mandatory, including enhancements for firearms, deadly weapons, impaired driving, and sexually motivated crimes. See, e.g., RCW 9.94A.533(13) (These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions).

Where the legislature willfully choses to exclude the mandatory and consecutive language for the endangerment enhancement while including such language for other enhancements, it is clear the legislature did not intend for this enhancement to carry a mandatory period of confinement or to run consecutively to the base sentence. *See State v. Conover*, 183 Wn.2d 706, 712-713, 355 P.3d 1093 (2015). Because RCW 9.94A.533(11) lacks the specific mandatory and consecutive language other sentence adjustments within the statute carry, it should be read that the legislature intended RCW 9.94A.533(11) to be a non-mandatory and non-consecutive sentence enhancement. To correct this error on resentencing and because it is an issue of substantial public interest that this Court should determine, review should be granted. RAP 13.4.

4. Addressing how to sentencing persons in need of mental health services is an important issue this Court should address.

While the prosecutor and defense attorney presented an agreed recommendation to the court, Mr. Roberson

independently asked for leniency. Unfortunately, mental health needs are frequently discounted in negotiations, as they were in this case.

Because mental health needs are not given sufficient weight, courts must make an independent assessment of whether to consider mental health needs at sentencing. Here, the court believed it did not have the authority and, effectively, demurred the lawyers' negotiations. RP 7, 12 (01-09-2019).

This Court should accept review to hold that sentencing courts must have the discretion to impose a mitigating sentence, even when the sentence is agreed. *See O'Dell*, 183 Wn.2d at 696. When the sentencing court indicated it did not believe it could deviate from the legislature's mandate in the enhancement provision because of Mr. Roberson's mental health crisis, it indicated that it had not considered the mitigating factors before imposing its sentence. RP 7, 12 (01-09-2019).

Both as a matter of justice and to promote public safety, it was in society's best interests to address Mr. Roberson's mental health needs through means other than incarceration. At the time of his sentencing, Mr. Roberson had already served 131 days. RP 5 (01-09-2019). No further incarceration was necessary to deliver a commensurate and appropriate sentence. A downward departure from the twelve months and a day agreed to in the plea bargain would have allowed Mr. Roberson the ability to seek treatment for his mental illness at Greater Lakes Mental Health, where he had already received a referral. CP 57.

Unfortunately, Mr. Roberson's circumstances are not unique. With so many persons in need of mental health treatment incarcerated, this Court should accept review of this case to establish that mental health needs, especially when they contributed so dramatically to the crimes Mr. Roberson committed, provide a basis for a departure from the standard range and enhanced sentencing practices. Because this error involves an issue of substantial public interest that

this Court should determine, review should be granted. RAP 13.4.

F. CONCLUSION

Mr. Roberson respectfully requests that this Court grant review pursuant to RAP 13.4(b).

DATED this 4th day of February 2021.

Respectfully submitted,

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHRISTOPHER JAMES ROBERSON, Appellant.	No. 53195-0-II UNPUBLISHED OPINION

GLASGOW, J.—Christopher James Roberson failed to stop at a stop sign and police officers attempted to pull him over. Roberson led police on a high speed car chase onto Interstate 5. During the chase, Roberson narrowly avoided hitting a police officer who attempted to lay out stop sticks. Roberson ultimately pleaded guilty to attempting to elude a pursuing police vehicle with an enhancement based on endangerment of one or more persons. The superior court imposed a standard range sentence following the parties' joint recommendation.

Roberson appeals his standard range sentence and argues that the superior court abused its discretion by failing to consider an exceptional downward sentence based on Roberson's mental condition, even though neither party asked for an exceptional sentence. In a statement of additional grounds for review (SAG), Roberson also argues that the superior court erred by denying him a referral to Felony Mental Health Court. We disagree and affirm.

FACTS

Around noon one day in May 2018, two uniformed police officers were on patrol in their unmarked police SUV. The officers saw Roberson approach a stop sign at a high speed, go into a sideway drift as he ran the stop sign, and begin fishtailing as he skidded around the corner.

Roberson accelerated away from the officers as the officers made a U-turn and pursued him. Roberson began passing vehicles on the shoulder and in oncoming lanes of traffic. The officers activated their emergency lights and siren, but Roberson continued to accelerate. The high speed pursuit continued onto the interstate where Roberson accelerated to over 100 miles per hour, weaving between traffic. Roberson briefly exited, then attempted to reenter, the interstate. A fully marked police vehicle with its emergency lights activated was on the ramp onto the interstate as an officer attempted to deploy stop sticks. Roberson swerved to avoid striking the stop sticks and narrowly avoided hitting the officer.

The pursuit came to an end when a State Patrol vehicle made a successful precision immobilization technique (PIT) maneuver.[1] A passenger in Roberson's vehicle, Leonard Hahn, told police officers that he yelled at Roberson several times to stop and that he was scared for his life. Roberson yelled that he did not want to go to jail, but otherwise was detained without further incident.

The State initially charged Roberson with attempting to elude a pursuing police vehicle, violation of a no contact order, and third degree driving while his license was in suspended or revoked status. Roberson ultimately pleaded guilty to attempting to elude a pursuing police vehicle with an enhancement based on endangerment of one or more persons. In his plea, he stated:

> On 5-17-18 in Pierce County WA, I was driving a car on the public roadways when I observed a uniformed officer in a vehicle equipped with police lights and sirens signal me with police emergency lights to stop. I willfully decided not to stop, and tried to escape the pursuing officers by driving in a reckless manner (high speeds, dangerous lane travel, ignoring traffic control devices, etc.) as multiple police vehicles joined in my pursuit. During the pursuit my dangerous driving behaviors

[1] A PIT maneuver is an attempt to disable a vehicle by using the front end of one vehicle to hit the back of the other vehicle to spin it and stop it.

> endangered persons other than myself and the pursuing officers, including other motorists around me and [Detective] Yabe (who was on foot and trying to lay down spike strips and was almost injured by the dangerous driving maneuver I used to avoid the spikes.

Clerk's Papers (CP) at 14. The charge carried a standard range of zero to 90 days, and the enhancement required an additional 12 months and 1 day sentence.

At sentencing, Roberson's defense counsel and the State made a joint recommendation of 12 months and 1 day—a standard range sentence. Roberson's defense counsel told the court that the defense and the State had "spent a good deal of time hammering out the particulars in this case," and requested that the trial court adopt the recommendation. Verbatim Report of Proceedings (VRP) (Jan. 9, 2019) at 8.

Hahn, the passenger in Roberson's car during the incident, submitted several written statements to the trial court and addressed the court at the sentencing hearing. Hahn requested that the trial court prioritize Roberson's treatment for mental health issues and impose a sentence of time served. The trial court thanked Hahn for his comments and stated, "You do understand the legislature decides the length of time. I'm not a knight-errant." *Id.* at 7. The trial court also explained that it was not the mental health court coordinator.

Roberson addressed the trial court and stated that he had learned his lesson and "should have just pulled over." *Id.* at 9. He told the court that he looked forward to "getting this over with and behind me and getting back into some sort of recovery-based treatment program." *Id.* The trial court asked Roberson about his treatment up to that point, and Roberson responded that he had been receiving mental health care even though he was "denied mental health court." *Id.* at 10. He told the court:

> I thought it would be more important for me to get my mental health in check because of the simple fact that I was having sort of an episode at the time that all this had happened.
>
> It kind of got compounded into like me making the rash decision that I did. And having given thought about it, you know, I was like maybe I should just go to treatment, period, with or without your guys' incentive.
>
> . . . .
>
> I mean I know that I screwed up, and I know that I'm probably going to prison on all of this. That's okay because in the long run of it, when I get out of here, I'm going to get out, and I'm going to Greater Lakes, and I'm going to do everything that I need to do to worry about me and making myself better.

Id.

The court adopted the joint recommendation, explaining:

> I understand that there have been mental health issues that may have manifested themselves here.
>
> I also understand that there was an agreed upon sentence that has an enhancement, and that relates to both your decision and the State's decision about what kind of a deal they are going to offer and whether they are going to prosecute you and for what crime. I don't think it's my place here to jump into that at this late stage of the game.

Id. at 12.

Roberson filed a timely notice of appeal to this court seeking review of "the decision of the Superior Court to deny therapeutic court without a hearing before the authorized judge." CP at 34. He attached his judgment and sentence to the notice of appeal, but he did not attach any court order or any other decision denying his request to participate in mental health court.

ANALYSIS

A. Roberson's Notice of Appeal

As an initial matter, the State argues that we should dismiss Roberson's appeal because Roberson seeks review of a decision that was not identified in his notice of appeal. Roberson's notice of appeal states that he seeks review of "the decision of the Superior Court to deny therapeutic court without a hearing before the authorized judge." CP at 34. Roberson's appellate brief does not address this decision and instead focuses entirely on the trial court's decision to impose the jointly-recommended standard range sentence. The State contends that Roberson's limited notice of appeal was insufficient to appeal his standard range sentence because it did not mention the sentence imposed by the superior court.

RAP 5.3(a) requires that a notice of appeal (1) be entitled a notice of appeal, (2) specify the party seeking review, (3) "designate the decision *or part of decision*, which the party wants reviewed," and (4) contain the "name [of] the appellate court to which the review is taken." (Emphasis added.) RAP 5.3(a) provides that the party filing the notice of appeal "should attach to the notice of appeal a copy of the signed order or judgment from which the appeal is made." RAP 5.3(a) also directs the trial court clerk to "attach a copy of the judgment and sentence" with the notice of appeal if a criminal defendant appeals but is unrepresented at the time.

"Nothing in RAP 5.3 requires a complete listing in the notice of appeal of the issues to be reviewed." *Stevens v. Gordon*, 118 Wn. App. 43, 58, 74 P.3d 653 (2003). And although RAP 5.3(a) permits a party to limit their appeal to only a portion of a trial court's decision, "[t]he appellate court will disregard defects in the form of a notice of appeal or a notice for discretionary review if the notice clearly reflects an intent by a party to seek review." RAP 5.3(f).

Here, Roberson attached a copy of the judgment and sentence to his notice of appeal. Although the language he used in the contents of his notice of appeal referred only to a superior court decision denying participation in therapeutic court, he otherwise satisfied the minimal requirements in RAP 5.3(a) for obtaining review of his judgment and sentence. And his SAG addresses the issue specified in the notice of appeal. To the extent there is a defect in his notice of appeal, we disregard it and decline to dismiss the appeal.

B. Roberson's Standard Range Sentence

Even though both parties jointly recommended the standard range sentence that the trial court adopted, Roberson now argues that the superior court abused its discretion by failing to recognize its ability to impose an exceptional downward sentence based on his mental condition. But Roberson never sought an exceptional downward sentence in the trial court. Moreover, the record shows that, after considering all the circumstances of the crime, including Roberson's mental health challenges, the superior court exercised its discretion and chose to impose a standard range sentence in accordance with the plea agreement reached by both parties.

A standard range sentence cannot normally be appealed. RCW 9.94A.585(1). A defendant may challenge a standard range sentence on appeal where the trial court categorically refused to impose an exceptional sentence below the standard range under any circumstances. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

Here, Roberson did not request an exceptional downward sentence at his sentencing hearing. Rather, the record reflects that Roberson urged the superior court to accept the joint recommendation made by defense counsel and the State in the course of plea negotiations and

ultimately adopted by the court. Absent any request for an exceptional downward sentence, we cannot conclude that the trial court categorically refused to consider one.

Nor did Roberson put forth any evidence that an exceptional sentence was warranted. A superior court may impose an exceptional downward sentence based on a defendant's mental condition under RCW 9.94A.535(1)(e). To qualify for a downward departure under RCW 9.94A.535(l)(e), the record must establish not only the existence of the mental condition, but also a connection between the condition and significant impairment of the defendant's ability to appreciate the wrongfulness of their conduct or to conform their conduct to the requirement of the law. *State v. Schloredt*, 97 Wn. App. 789, 802, 987 P.2d 647 (1999). RCW 9.94A.535(1)(e) requires the defendant to show by a preponderance of the evidence that their mental condition prevented them from appreciating the wrongfulness of their conduct. On appeal, Roberson claims he suffered a posttraumatic stress disorder (PTSD) episode during the high speed chase with law enforcement. But nothing in the record supports this contention. PTSD was never mentioned below. The only evidence of any mental condition was Roberson's statement that he wanted to get his mental health in check and had been referred for treatment.

Moreover, the record does not contain any indication that the superior court misunderstood its authority to impose an exceptional sentence. Roberson makes much of the trial court's statement that it was "not a knight-errant." *See* VRP (Jan. 9, 2019) at 7. But Roberson takes this statement out of context. The statement was in response to Hahn's request that the superior court refer Roberson to mental health court instead of prison. The comment was not part of the superior court's ruling on sentencing.

Roberson also argues that the superior court misunderstood its authority to impose an exceptional sentence because it erroneously believed the endangerment enhancement was mandatory under RCW 9.94A.533(11).[2] But nothing in the record suggests that the superior court imposed Roberson's standard range sentence because it believed it was bound by statute. Rather, the superior court indicated it was imposing the sentence based on the joint recommendation of the State and Roberson. Because the record does not contain any indication that the superior court misunderstood its discretion, we hold that the superior court did not abuse its discretion by imposing a standard range sentence.

Roberson also argues that this court should hold that the endangerment enhancement is not mandatory. Because the superior court accepted the joint recommendation, it did not rule on the mandatory nature of the endangerment enhancement, nor did Roberson make any argument on this issue below. Whether the enhancement was mandatory was not relevant to the trial court's decision on sentencing, and we do not address this issue on appeal.

C. Statement of Additional Grounds for Review

In his SAG, Roberson argues that the superior court erred by denying him participation in Felony Mental Health Court as a prison alternative. But the record on appeal does not contain any such decision. The only references to mental health court at the sentencing hearing occurred when (1) Hahn urged the superior court to permit Roberson to proceed to mental health court and the

[2] Former RCW 9.94A.533(11) (2016) states:

> An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

superior court explained that it was not the mental health court coordinator, and (2) Roberson told the superior court he had been denied participation in mental health court. We do not consider claims based on evidence outside the record in a direct appeal. *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995). Accordingly, we do not address Roberson's SAG argument.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, J.

We concur:

Sutton, A.C.J.

Cruser, J

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 53195-0-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Kristie Barham
Pierce County Prosecutor's Office
[PCpatcecf@co.pierce.wa.us]

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: February 4, 2021
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