

67807-8

67807-8

No. 67807-8-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

LENNY PRUITT,

Appellant.

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

BRIEF OF APPELLANT

GREGORY C. LINK
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 FEB 29 PM 4:51

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT..... 2

Because the sentencing court improperly construed an applicable mitigating factor, this Court should reverse Mr. Pruitt’s sentence..... 2

1. This Court may review the sentencing court’s legal error in refusing Mr. Pruitt’s request for a mitigated se2

2. The sentencing court erred in refusing to apply an applicable mitigating factor3

E. CONCLUSION..... 5

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Fowler, 145 Wn.2d 400, 38 P.3d 335 (2002)..... 4

State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (2005) 3, 4

State v. Mail, 121 Wn.2d 707, 854 P.2d 1042 (1993) 3

Washington Court of Appeals

State v. McGill, 112 Wn.App. 95, 47 P.3d 173 (2002) 3

State v. Willhoite, __ Wn.App. __, 2012 WL 164061..... 3

Statutes

RCW 9.94A.535..... 3

RCW 9.94A.585..... 2

A. ASSIGNMENT OF ERROR

The trial court erred in denying Lenny Pruitt's request for an exceptional sentence.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

It is a mitigating factor for sentencing that a person's capacity to appreciate the wrongfulness of his conduct was significantly impaired, unless the impairment is caused by voluntary intoxication. Did the sentencing court err when it concluded it could not apply the mitigating factor unless the record affirmatively established that the impairment was not caused by voluntary intoxication?

C. STATEMENT OF THE CASE

Lenny Pruitt has a long history of mental illness and has been diagnosed with schizoaffective disorder. CP 57. This disorder causes Mr. Pruitt to suffer psychotic episodes during which he suffers auditory and visual hallucinations and his behavior becomes erratic. Id.

Mr. Pruitt pleaded guilty to a charge of second degree robbery involving his robbery of a pharmacy for methadone and Alprazolam. CP 11-33.

Mr. Pruitt offered a psychiatric evaluation by Dr. Steven Juergens, in which Dr. Juergens concluded the current crime appeared to have occurred during one of Mr. Pruitt's psychotic episodes. CP 58. Dr.

Juergens noted further that the crime occurred during a period in which Mr. Pruitt was not taking his psychotropic medication, further exacerbating Mr. Pruitt's inability to make reasonable judgments. Id. Moreover, the evaluation noted the crime occurred during a period in which Mr. Pruitt was suffering heroin and methadone withdrawals, and noted that Mr. Pruitt had been self-medicating with alcohol and anti-anxiety medication. Id. Based upon these facts, Dr. Juergens concluded to a reasonable degree of medical certainty that Mr. Pruitt lacked the ability to form the requisite intent to commit the crime. CP 107.

Based upon Dr. Juergens' evaluation, Mr. Pruitt requested the court impose a mitigated sentence below the standard range. Pointing only to Mr. Pruitt's self-medication, the trial court concluded the law did not permit the imposition of a mitigated sentence in Mr. Pruitt's case. RP 25.

D. ARGUMENT

Because the sentencing court improperly construed an applicable mitigating factor, this Court should reverse Mr. Pruitt's sentence.

1. This Court may review the sentencing court's legal error in refusing Mr. Pruitt's request for a mitigated sentence.

Generally, a standard range sentence may not be appealed. RCW 9.94A.585(1). That statute does not place an absolute prohibition on the

right of appeal; rather, it only precludes review of challenges to the amount of time imposed when the time is within the standard range. State v. McGill, 112 Wn.App. 95, 99, 47 P.3d 173 (2002). Thus, a defendant may challenge the procedure by which a sentence within the standard range is imposed. State v. Mail, 121 Wn.2d 707, 712-13, 854 P.2d 1042 (1993). This Court recently clarified that “a party may challenge the underlying facts and legal conclusions by which a court applies a particular sentencing provision.” State v. Willhoite, __ Wn.App. __, 2012 WL 164061, 2. That allowance is consistent with the principle that “while no defendant is entitled to an exceptional sentence below the standard range, every defendant *is* entitled to ask the trial court to consider such a sentence and to have the alternative considered.” State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005) (emphasis in original).

Here the sentencing court misconstrued the provisions of RCW 9.94A.535(1)(e). This Court can review that legal error.

2. The sentencing court erred in refusing to apply an applicable mitigating factor.

RCW 9.94A.535(1)(e) establishes as a mitigating factor that “the 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. Voluntary use of drugs or alcohol is excluded.” Id.

The sentencing court concluded it could not consider this factor unless the record affirmatively established a complete disconnect between any voluntary intoxication and mental impairment. RP 25. The court said “the cases all seem to say that unless I can find that absent the drug abuse and drug intoxication, he would have been impaired by the mental illness, that I don’t have the authority under the statute to do an exceptional down.” Id. It is clear, however, that the trial court’s interpretation is incorrect.

First, the language of the statute does not impose such a limitation. Second, cases applying the factor have not limited the factor in that manner. In State v. Fowler, the Court held the mitigating factor could not apply where the record established that the mental impairment was induced by the intoxication. 145 Wn.2d 400, 410-11, 38 P.3d 335 (2002). Fowler does not, however, require affirmative proof of the lack of a connection. Nor does caselaw say that intoxication which coexists with mental impairment prevents the use of the mitigating factor. The sentencing court’s formulation of the limits of the mitigating factor was legally erroneous. That incorrect legal conclusion was the basis for the court’s refusal to impose a mitigated sentence.

The trial court’s failure to properly consider Mr. Pruitt’s request for a mitigated sentence requires reversal of his sentence. Grayson, 154 Wn.2d at 342.

E. CONCLUSION

For the reasons above, this Court must reverse Mr. Pruitt's sentence.

Respectfully submitted this 29th day of February, 2012.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', is written over a horizontal line.

GREGORY C. LINK – 25228
Washington Appellate Project – 91072
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67807-8-I
v.)	
)	
LENNY PRUITT,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 29TH DAY OF FEBRUARY, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> LENNY PRUITT 727046 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WAY AB ERDEEN, WA 98520	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 29TH DAY OF FEBRUARY, 2012.

X _____ 

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 FEB 29 PM 4:57

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710