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NO. ~~67808-8-1~~

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

LENNY PRUITT,

Appellant.

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BETH ANDRUS

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Under RCW 9.94A.535(1)(e), voluntary intoxication is excluded as a mitigating factor for imposition of a sentence below the standard range. In this case, the defense requested an exceptional sentence down based on a doctor's report and opinion that Pruitt's judgment was significantly impaired at the time of the crime by a combination of depression, psychotic disorder, intoxication and blackout from the voluntary use of Alprazolam and alcohol, and withdrawal from methadone and heroin. Did the trial court properly exercise its discretion in denying the defendant's motion for an exceptional sentence below the standard range where there was no evidence in the record that absent the voluntary intoxication, his capacity to appreciate the wrongfulness of his conduct would have been diminished or significantly impaired?

B. STATEMENT OF THE CASE

In February 2011, Lenny Pruitt was charged in King County Superior Court with one count of robbery in the second degree for robbing a pharmacy of Alprazolam and Methadone. CP 1, 4-6. During the robbery, he told the pharmacist, and implied through his

actions, that he had a gun. CP 4-5. Pruitt pled guilty as charged and received a standard range sentence. CP 11-21, 34-42.

At the sentencing hearing, Pruitt submitted to the court an extensive report prepared by Steven Juergens, M.D., that documented his long struggle with drug addiction and mental illness. CP 64-107. This report was offered to support his request for a sentence below the standard range. Dr. Juergens described how Pruitt stated that in the days before the crime was committed, he was consuming alcohol, using high doses of Alprazolam, and also taking heroin and perhaps cocaine. CP 105. During these same days, Pruitt described being quite depressed and psychotic, a claim which is supported by his documented mental health history. Id. Pruitt told Dr. Juergens that he was in a blackout during the robbery and the hours afterward, and remembers nothing about it. Id. Dr. Juergens opined that lack of memory was probable given Pruitt's use of benzodiazepines, alcohol, and Alprazolam on the day of the event. Id. In Dr. Juergens' opinion, Pruitt's judgment was impaired as a result of depression and the psychotic process in combination with drug and alcohol intoxication as well as withdrawal from opioids. CP 106-07. Though Dr. Juergens left open the possibility of diminished capacity, he was

not willing to make this claim with a reasonable degree of medical certainty. CP 107.

At sentencing, Pruitt requested a sentence below the standard range based on RCW 9.94A.535(1)(e), claiming that his capacity to appreciate the wrongfulness of his conduct or conform his conduct to the law was significantly impaired due to his severe depressive disorder and psychosis. RP 21. The trial court denied the request following review of State v. Allert,¹ State v. Fowler,² and a recent 2011 unpublished Division I case, State v. White.³ RP 25. Judge Andrus articulately offered her interpretation of those cases and how they applied to the evidence presented by the defense:

And they seem – 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.

And the materials you provided, Mr. Vernon, the opinion expressed by the psychiatrist was that he was severely impacted because of the combination of depression, the psychotic disorder, intoxication and blackout from voluntary use of Alprazolam and

¹ 117 Wn.2d 156, 815 P.2d 752 (1991)

² 145 Wn.2d 400, 38 P.3d 335 (2002)

³ 161 Wn. App. 1037, 2011 WL 1833828 (Div. 1, 2011)

alcohol, as well as withdrawal from methadone and heroin.

RP 25.

Judge Andrus denied the defendant's request for an exceptional sentence down, stating that while it is clear Pruitt suffers from serious drug and alcohol addictions and mental illness, it is unclear from the evidence presented whether the mental illness issues were the result of or in addition to the alcohol and drug addiction. RP 30. Moreover, she stated that even if the mental illness was in addition to the addictions, she could not find that Pruitt's capacity to appreciate the wrongfulness of his conduct was diminished or significantly impaired absent the voluntary drug and alcohol intoxication. Id.

C. **ARGUMENT**

UNDER RCW 9.94A.535(1)(e), THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION FOR AN EXCEPTIONAL SENTENCE BELOW THE STANDARD RANGE WHERE THERE WAS NO EVIDENCE IN THE RECORD THAT, ABSENT VOLUNTARY INTOXICATION, PRUITT'S CAPACITY TO APPRECIATE THE WRONGFULNESS OF HIS CONDUCT WOULD HAVE BEEN DIMINISHED OR SIGNIFICANTLY IMPAIRED.

A standard range sentence is generally not appealable.

RCW 9.94A.585(1). However, a criminal defendant "may appeal a

standard range sentence if the sentencing court failed to comply with procedural requirements of the [Sentencing Reform Act] or constitutional requirements.” State v. Osman, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006). Where a defendant has requested an exceptional sentence below the standard range, appellate review is limited to two circumstances: (1) where the court has refused to exercise any discretion, or (2) where the court has relied upon an impermissible basis for denying a request for an exceptional sentence. State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). In this case, Pruitt relies upon the latter basis to bring this appeal.

When determining whether the defendant’s capacity to appreciate the wrongfulness of his conduct was diminished or significantly impaired enough to justify a mitigated sentence, RCW 9.94A.535(1)(e) specifically excludes from consideration voluntary intoxication. Given this prohibition, where drug and/or alcohol intoxication is acting in combination with mental illness to impair a person’s judgment, the trial court must be able to find based on evidence in the record that absent the intoxication, the defendant’s capacity to appreciate the wrongfulness of his acts was still significantly impaired. Because the trial court correctly

interpreted this rule from Allert and Fowler, and the record clearly shows that Pruitt's impairment was based on a combination of voluntary intoxication and mental illness that cannot be parsed, the trial court's denial of Pruitt's motion for a sentence below the standard range was proper.

State v. Allert is directly on point with our case. At his sentencing hearing following pleas to two counts of robbery in the first degree, Allert presented testimony of a psychiatrist and a psychologist to support his request for a sentence below the standard range. Allert, 117 Wn.2d 156, 159, 815 P.2d 752 (1991). A sentence below the standard range was imposed, with a finding of fact entered by the trial court that because of the "separate and combined effects" of the defendant's mental disorders and alcoholism, his capacity to appreciate the wrongfulness of his conduct and to conform his conduct to the law was significantly impaired. 117 Wn.2d at 161. On appeal, the state supreme court found that the record – that is, the testimony of the doctors – supported only a finding that the combined effects of depression, compulsive personality disorder, and alcoholism contributed to Allert's impairment; there was no evidence in the record that any one condition alone had such an effect. Id. at 165-66. Because the

experts and trial court clearly utilized the voluntary use of alcohol as a mitigating factor, and the voluntary use of alcohol or drugs is an improper factor to consider under the SRA, the exceptional sentence below the standard range was prohibited as a matter of law. Id. at 166-67.

State v. Fowler, relied upon by Pruitt, is not on point because it did not deal with the combination of mental health issues and intoxication. Instead, in imposing a sentence below the standard range, the trial court found as one of several mitigating factors that the defendant was suffering the effects of extreme sleep deprivation. 145 Wn.2d 400, 410, 38 P.3d 335 (2002). Because the record supported the conclusion that the defendant's sleep deprivation was brought on by voluntary binge drug and alcohol use, this was determined to be a prohibited mitigating circumstance under RCW 9.94A.535(1)(e). Thus, Fowler merely reinforces the rule that voluntary intoxication cannot be considered as a basis for an exceptional sentence down.

In this case, like Allert, nothing in the record supports a finding that Pruitt's impaired judgment was the result of anything other than the combination of intoxication and mental illness. Because of this, an exceptional sentence down would necessarily

be based on the prohibited factor of voluntary intoxication, and unsupportable as a matter of law. No other mitigating circumstances were offered by Pruitt to justify such a sentence. Since there was no legal basis to impose a sentence below the standard range, the trial court properly denied Pruitt's request.

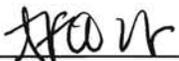
D. CONCLUSION

For all the reasons stated above, the State requests that the court affirm the standard range sentence.

DATED this 18th day of April, 2012.

Respectfully submitted,

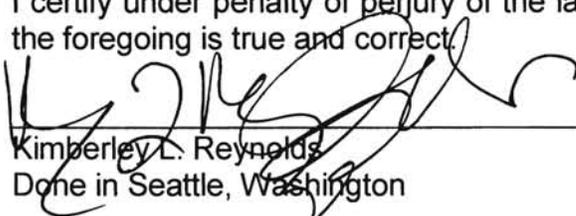
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory C. Link, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. LENNY PRUITT, Cause No. 67807-8-1, 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.



Kimberley L. Reynolds
Done in Seattle, Washington

4/19/12

Date