

No. 69311-5-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ROWLAND,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

The imposition of an exceptional sentence based on facts never found by a jury violates Mr. Rowland’s right to a fair trial by jury under the state and federal constitutions

“When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.” *Alleyne v. United States*, _ U.S. __, 133 S. Ct. 2151, 2162 (2013). Any fact that produces a higher presumptive sentence is “conclusively” “an element of a distinct and aggravated crime. It must, therefore, be submitted to the jury and found beyond a reasonable doubt.” *Id.* at 2163.

Any time a court imposes a sentence, it must first accurately determine an offender’s standard range before it may consider exceeding the standard range by imposing an exceptional sentence. *State v. Parker*, 132 Wn.2d 182, 187, 937 P.3d 575 (1997); RCW 9.94A.505(2)(a)(i). Both in 2009 and 2012, the court was imposing a new sentence for a single offense upon Mr. Rowland. It had full discretion to impose any sentence, as Judge Knight acknowledged at the 2009 sentencing hearing. 9/16/09RP 24. The Supreme Court also acknowledged the discretionary nature of the resentencing judge’s

authority in 2012, noting that the court did not have to impose an exceptional sentence on remand. *State v. Rowland*, 174 Wn.2d 150, 155-56, 272 P.3d 242 (2012).

The 2012 resentencing court imposed a sentence far in excess of that authorized by the jury's verdict based on a claim of "deliberate cruelty, a fact not found by the jury which had convicted Mr. Rowland as an accomplice to first degree murder and had made no finding as to which person engaged in or knew about which acts. CP 15; *see* CP 98, 107 (noting original sentencing judge found it "impossible" to know which defendant did what). The 2012 sentencing court was not bound by a prior exceptional sentence finding, and instead it exercised its authority to sentence Mr. Rowland. *See* 9/17/12RP 7-18. Based on its broad sentencing authority and after considering the nature of the crime and the pain suffered by the family, the court imposed a sentence greater than the standard range in 2012. 9/17/12RP 18.

As the recent United States Supreme Court decision in *Alleyne* holds, "a fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offense." 133 S.Ct. at 2160. When this fact is not proved to a jury, it may not serve as the basis of an exceptional sentence imposed in 2012. *Id.* at 2162-63. Mr. Rowland's

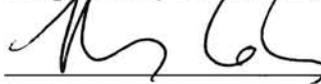
exceptional sentence was imposed upon an accurate understanding of his offender score in 2012 and because the sentence was based on factual findings not made by a jury, it violates Mr. Rowland's rights to a jury trial and due process of law.

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, Mr. Rowland respectfully requests this Court order a new sentencing hearing.

DATED this 18th day of July 2013.

Respectfully submitted,



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