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COURT OF APPEALS

NO. 33782-7-II

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COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON
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STATE OF WASHINGTON,

Respondent,

vs.

DANIEL W. WHEELER,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COURT
The Honorable Wm. Thomas McPhee, Judge
Cause No. 04-1-02249-9

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

01. The trial court erred in not taking count I, possession of methamphetamine with intent to deliver, from the jury for lack of sufficiency of the evidence.
02. The trial court erred in violating Wheeler's Sixth Amendment right to a jury trial under Blakely v. Washington when it failed to sentence him under the statute in effect at the time of the commission of the offense where the jury was not required to identify the particular substance underlying Wheeler's conviction for unlawful possession of a controlled substance (methamphetamine) with intent to deliver and where it cannot be determined based on the evidence presented that the jury premised Wheeler's conviction on methamphetamine base.
03. The trial court erred in permitting Wheeler to be represented by counsel who provided ineffective assistance by failing to object to the trial court's failure to sentence Wheeler under the statute in effect at the time of the offense, and by failing to argue that a sentence under the correct statute based on the evidence presented would have violated Wheeler's Sixth Amendment right to a jury trial under Blakely v. Washington.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

01. Whether there was sufficient evidence that Wheeler possessed methamphetamine with intent to deliver? [Assignment of Error No. 1].
02. Whether the trial court erred in violating Wheeler's Sixth Amendment right to a jury trial under Blakely v. Washington when it failed to sentence him under the statute in effect at the time of the commission of

the offense where the jury was not required to identify the particular substance underlying Wheeler's conviction for unlawful possession of a controlled substance (methamphetamine) with intent to deliver and where it cannot be determined based on the evidence presented that the jury premised Wheeler's conviction on methamphetamine base? [Assignment of Error No. 2].

03. Whether the trial court erred in permitting Wheeler to be represented by counsel who provided ineffective assistance by failing to object to the trial court's failure to sentence Wheeler under the statute in effect at the time of the offense, and by failing to argue that a sentence under the correct statute based on the evidence presented would have violated Wheeler's Sixth Amendment right to a jury trial under Blakely v. Washington? [Assignment of Error No. 3].

C. STATEMENT OF THE CASE

01. Procedural Facts

Daniel W. Wheeler was charged by second amended information filed in Thurston County Superior Court on February 7, 2005, with possession of methamphetamine with intent to deliver, with school-bus enhancement, count I, and resisting arrest, count II, contrary to RCWs 69.50.401, 69.50.435(3) and 9A.76.040. [CP 20].

The court denied Wheeler's pretrial motion to suppress evidence under CrR 3.6 and entered the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

On December 8, 2004, Thurston County Deputy Sheriff Odegaard was on routine patrol in Thurston County. Part of his general responsibilities were business checks in his designated area, which included the Scott Lake grocery store at 11315 Ave. SW. Approximately two minutes after conducting said check, a report of a burglary in progress of the store came in to Deputy Odegaard, who was only two miles away. The earlier business check by the Deputy revealed no damage to the store, no alarm being sounded and no individuals in the nearby vicinity. When he responded to the reported burglary, he observed a large broken window, the alarm sounding and an individual, later identified as Daniel Wheeler, in the parking lot wearing a red and black coat and possessing a backpack. Deputy Odegaard made eye contact with the individual and identified himself as law enforcement. Mr. Wheeler then jumped on top of some parked vehicles and leaped over a fence. Deputy Odegaard chases him, using the same path to jump the fence. Mr. Wheeler did not identify himself as the property owner nor did he use keys to enter the fenced area through a gate. Deputy Odegaard hit the ground on the other side of the fence and observed Mr. Wheeler make a right turn. Once the officer arrived at the area of the turn, he deduced that Mr. Wheeler could have only gone underneath or into a trailer that was parked on the property. Deputy Odegaard heard something from underneath the trailer and located Mr. Wheeler. Deputy Odegaard asked the individual to come out from underneath the trailer and received no response.

CONCLUSIONS OF LAW

Deputy Odegaard believed the Scott grocery store had recently been burglarized and located a lone individual in close proximity to the store at 4:00 a.m. with the alarm still sounding.

The individual refused to obey the Deputy commands and fled from the scene.

The Deputy gave chase and entered the property by scaling the fence.

The Deputy was still giving chase when he observed the Defendant underneath the trailer.

Any use of a flashlight by the Deputy to illuminate the area underneath the trailer was not an additional search.

Law enforcement did not have the scene under control when the Defendant was discovered by the Deputy and it was likely the suspect would have escaped if the Deputy did not pursue him onto the fenced property.

The Deputy had no way of knowing that the Defendant had any right to be on the property, nor any way of knowing whom he was chasing.

The entry onto the fenced property was a result of a hot pursuit.

The additional pursuit of the defendant under the trailer, and all subsequent actions taken by law enforcement after the defendant was found secreted under the trailer were done to effectuate the defendant's arrest.

All the relevant evidence seized as a result of the Defendant's arrest is admissible.

[CP 23-24].

Trial to a jury commenced on March 2, 2005, the Honorable Wm.

Thomas McPhee presiding. The jury returned verdicts of guilty as charged, including enhancement, Wheeler was sentenced within his standard range plus enhancement and timely notice of this appeal followed. [CP 49-51, 84-95].

02. Substantive Facts: CrR 3.6 Hearing

On the morning of December 8, 2004, at approximately 4:13, Deputy Dave Odegaard responded to a dispatch of “a burglary in progress or a very recent type burglary” at a local grocery store, which he had “gone by” several minutes earlier. [RP 02/07/05 12-14]. Arriving within a “couple of minutes(,)” he could hear the closed store’s alarm and saw the “front window broken out of the store.” [RP 02/07/05 14-15, 18]. After a “quick perusal [RP 02/07/05 22](,)” Odegaard checked the parking lot area in front of the store and observed an individual, later identified as Wheeler, he guessed was between 50 to 100 away “on the right-hand side of the parking lot.” [RP 02/07/05 15, 22, 53]. “I didn’t know who the subject was.” [RP 02/07/05 22].

My recollection is that he was crouching down, squatting-type position, right-hand side of the parking lot, and had a - I think it was a red and black coat and a backpack with him.

[RP 02/07/05 15-16].

But I actually looked over at him and told him to stop, feeling he was related to the burglary break-in at the ... store. Didn’t know who he was at the time. But then he took off running on me.

[RP 02/07/05 19].

I believe I said sheriff’s office, stop. He took off running. I yelled again. He looked back and continued running....

[RP 02/07/05 19].

Odegaard chased Wheeler and “went on the cars and over the fence.” [RP 02/07/05 21]. At the time, he was within five to ten feet of the defendant [RP 02/07/05 23, 55] and believed he was responsible for the break-in: “All I know, front window broken out, alarm sounding, he was running with something (backpack) that commonly could be used to carry merchandise from the store.” [RP 02/07/05 22].

After landing in the compound, Odegaard lost sight of Wheeler for a short period before finding him attempting to hide underneath a trailer. [RP 02/07/05 23, 25-27]. When Deputy Snaza, who had been dispatched to assist Odegaard, arrived, Wheeler continued to refuse to come out from underneath the trailer. [RP 02/09/05 6]. Snaza could see that Wheeler “had a backpack he was pushing with his hands.” [RP 02/09/05 9]. Snaza crawled underneath the trailer and eventually “tazed” Wheeler several times in an attempt to get him to come out. [RP 02/09/05 10-12]. “And he was resisting the whole time. I was able to get a couple officers to pull on my legs while I hung on to him. And they pulled us out.” [RP 02/09/0512]. According to Odegaard,

When we got him out, trying to get him in restraints and handcuffs he was resisting all the way. Basically fighting with us to stop getting handcuffs put on him.

[RP 02/07/05 31].

Items found in the backpack Wheeler had been wearing included a “(s)yringe, electronic scales, large amount of cash, white crystal substance, other items that were photographed.” [RP 02/07/05 37]. The white substance field-tested positive for amphetamines and the cash totaled \$510. [RP 02/07/05 37].

Wheeler was transported by paramedic to the hospital because he was complaining of back pain and breathing problems [RP 02/07/05 38].

Wheeler testified that he was standing right in front of the gate to his family’s property when he first had contact with the police, further asserting that he did not hear the grocery store’s alarm and that there were numerous trespassing signs on the gate. [RP 02/09/05 20-22, 24-25, 28-29]. He heard the officer say ‘freeze’ before he “jumped over (his) fence” and ran to “the storage trailer and crawled under it.” [RP 02/09/05 25]. “I was trying to get away from whoever was after me, yes.” [RP 02/09/05 32].

I’ve been robbed numerous times at my place. And I didn’t want to have to take time to fiddle with getting into my house or whatever. Closest place I could find to hide was underneath the trailer.

[RP 02/09/05 32].

I got OC sprayed and then tazed. I said why are you doing this? And I said because - - or they said we are the

Thurston County sheriff's come out. I said I'm not resisting. I said just pull me out. I'm not resisting.

[RP 02/09/05 35].

03. Substantive Facts: Trial

Deputy Odegaard testified consistent with his testimony at the CrR 3.6 hearing, noting that he was approximately 50 to 100 feet from Wheeler when he thought he said, 'Sheriff's Office, stop.' [RP 03/02/05 57]. "I was in uniform...." [RP 03/02/05 118]. When Odegaard found Wheeler underneath the trailer, he again identified himself and told Wheeler to get out from underneath the trailer. Wheeler responded, "'fuck you' several times." [RP 03/02/05 73].

I basically got to more of a demand to come out from under the trailer, and warned him that I would be using our OC-10, which is pepper spray, if he didn't come out from underneath of the trailer.

[RP 03/02/05 74].

Odegaard sprayed the OC-10 under the trailer with no success. [RP 03/02/05 76]. The \$510 seized from Wheeler's backpack consisted of one \$100 bill, 17 \$20 bills, three \$10 bills, four \$5 bills, three \$2 bills and 14 \$1 bills. [RP 03/02/05 93]. The white substance taken from the backpack tested positive for methamphetamine and weighed 4.4 grams. [RP 03/02/05 107]. Odegaard never heard Wheeler say he was stuck

under the trailer “prior to the deployment of the tazer.” [RP 03/02/05 119].

When Deputy Snaza went underneath the trailer, Wheeler indicated he was stuck while at the same time moving away from the deputy, telling him to “fuck off.” [RP 03/03/05 184]. Snaza eventually grabbed Wheeler’s left leg and tazed him with “a contact shot right around his calf area.” [RP 03/03/05 185]. Although Wheeler then yelled for Snaza to stop, he would not back out. [RP 03/03/05 186]. “He’s kicking back. He doesn’t want me grabbing his legs to pull him out.” [RP 03/03/05 188]. After Wheeler again refused to back out, Snaza “tased him again [RP 03/03/05 189](,)” explaining that a taser, which applies an electric shock, incapacitates a person for a short period of time. RP 03/03/05 193-95]. Snaza ultimately grabbed both of Wheeler’s legs, and another officer, pulled Snaza and Wheeler out from underneath the trailer. [RP 03/03/05 201]. Snaza then retrieved the backpack Wheeler had been holding and other items Wheeler had removed from the backpack from underneath the trailer. [RP 03/03/05 202].

Snaza testified that the average transaction for methamphetamine was \$20 a bag, which hopefully would be “at least a quarter gram.” [RP 03/03/05 209]. The 4.4 grams seized in Wheeler’s backpack would be at least 16 to 18 bags, worth about \$350 to \$400. [RP 03/03/05 209-10].

The place where Wheeler was seized was within one thousand feet of a school bus route stop designated by the school district. [RP 03/03/05 240-48, 259, 264-67].

Wheeler rested without presenting evidence. [RP 03/03/04 288].

D. ARGUMENT

01. THERE WAS INSUFFICIENT EVIDENCE THAT WHEELER POSSESSED THE METHAMPHETAMINE WITH INTENT TO DELIVER.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact would have found the essential elements of a crime beyond a reasonable doubt. State v. Salinas, *supra*. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

Bare possession is not enough to support an inference of intent to deliver. Evidence of an additional factor is required. The corroborating evidence must be substantial. State v. Brown, 68 Wn. App. 480, 485, 843 P.2d 1098 (1993) (officer's opinion that cocaine in defendant's possession exceeded amount commonly possessed for personal use insufficient to support inference of intent to deliver).

The State did not carry its burden to show intent to deliver. Much of the usual evidence of intent was not produced: no contact information, no weapon, no baggies (there was one) or other containers used for distribution, no little bindles packed and ready to go, nothing to indicate the area where Wheeler was initially observed was often used for drug transactions and not a particularly large amount of cash nor a significant quantity of methamphetamine. And the State did not, and could not, demonstrate the absence of evidence of personal use. To the contrary, the syringes found in the backpack indicate a personal habit, a user in the first instance, not the inventory of a merchant.

Given the circumstances, the fact that Wheeler possessed 4.4 grams of methamphetamine is short of enough to support an inference that he intended to be on the delivery end of some future transaction, with the result that his conviction for possession of methamphetamine with intent to deliver should be reversed.

02. THE TRIAL COURT VIOLATED WHEELER'S SIXTH AMENDMENT RIGHT TO A JURY TRIAL UNDER BLAKELY V. WASHINGTON WHEN IT FAILED TO SENTENCE HIM UNDER THE STATUTE IN EFFECT AT THE TIME OF THE COMMISSION OF THE OFFENSE WHERE THE JURY WAS NOT REQUIRED TO IDENTIFY THE PARTICULAR SUBSTANCE UNDERLYING WHEELER'S CONVICTION FOR UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE) WITH INTENT TO DELIVER AND WHERE IT CANNOT BE DETERMINED BASED ON THE EVIDENCE PRESENTED THAT THE JURY PREMISED WHEELER'S CONVICTION ON METHAMPHETAMINE BASE.

Illegal or erroneous sentences may be challenged for the first time on appeal. State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999) (citing State v. Moen, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996)). And while a defendant generally cannot challenge a presumptive standard range sentence, he or she can challenge the procedure by which a sentence within the standard range was imposed. State v. Ammons, 105 Wn.2d 175, 183, 718 P.2d 796, cert. denied, 479 U.S. 930 (1986).

The Washington Supreme Court has held that that a sentence in excess of statutory authority is subject to collateral attack and "that a defendant cannot agree to punishment in excess of that which the Legislature has established." In re Goodwin, 146 Wn.2d 861, 873-74, 50

P.3d 618 (2002). In defining the limitations to this holding, the court, citing State v. Majors, 94 Wn.2d 354, 616 P.2d 1237 (1980) as instructional, went on to explain that waiver does not apply where, as here, the alleged sentencing error is a legal error leading to an excessive sentence, as opposed to where the alleged error “involves an agreement to facts (e.g., agrees to be designated as habitual offender in hopes of obtaining a shorter sentence), later disputed, or if the alleged error involves a matter of trial court discretion.” Id.

Since there was “simply no question that Goodwin’s offender score was miscalculated, and his sentence is as a matter of law in excess of what is statutorily permitted for his crimes given a correct offender score,” the court held that Goodwin “cannot agree to a sentence in excess to that statutorily authorized.” In re Goodwin, 146 Wn.2d at 876.

Wheeler was charged and convicted under RCW 69.50.401.

In that the defendant, DANIEL WADE WHEELER, in the State of Washington, on or about the 8th day of December 2004, did unlawfully possess a controlled substance with intent to deliver, knowing it to be a controlled substance, to-wit: Methamphetamine....

[CP 20].

Former RCW 69.50.401 was amended in 2003, effective date July 1, 2004, Laws 2003, ch. 53 § 331, which merely renumbered the former statute, and then again in 2005, effective July 24, 2005, Laws 2005, ch.

218 § 1, the latter of which inserted “including its salts, isomers, and salts of isomers” in subsections 2(a), three times in 2(b), and in 2(d). Between July 1, 2004 and July 24, 2005, RCW 69.50.401 made no mention of “salts, isomers, and salts of isomers.” It is this version, sans the mention of “salts, isomers, and salts of isomers,” that is applicable to Wheeler, since a criminal defendant has a constitutional right to be charged and sentenced under the law in effect at the time of the commission of the crime. See State v. Lindsey, 194 Wash. 129, 77 P.2d 596 (1938); State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004).

Wheeler should have been sentenced under the version of RCW 69.50.401(1)(2)(b) comparable to former RCW 69.50.401(a)(1)(ii), which did not include “salts, isomers, and salts of isomers,” which was in effect at the time of the commission of his offense, and such a sentence would have violated his Sixth Amendment right to a jury trial under Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). “(T)rial court errors implicating constitutional rights may be raised for the first time on appeal.” State v. Thomas, 150 Wn.2d 821, 868, 83 P.3d 970 (2004); RAP 2.5(a). In addition, challenges to the sufficiency of the evidence implicate due process rights and may be raised for the first time on appeal. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983).

In State v. Morris, 123 Wn. App. 467, 472-73, 98 P.3d 513 (2004), this court held that the language of former RCW 69.50.401(a)(1)(ii) is “unambiguous,” and that “its prohibition only covers methamphetamine in its pure form, its base” and not “methamphetamine hydrochloride.” State v. Morris, 123 Wn. App. at 474.¹; See State v. Evans, 129 Wn. App. 211, 118 P.3d 419 (2005).

The identity of a “controlled substance is an element of the offense where it aggravates the maximum sentence with which the court may sentence a defendant.” State v. Goodman, 150 Wn.2d 774, 83 P.3d 410 (2004) (citing Appendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 435 (2000)). And the “statutory maximum” is “the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” Blakely v. Washington, 124 S. Ct. at 2537.

Even though Wheeler should have been charged and convicted of possession of a controlled substance (methamphetamine) with intent to deliver under the version of RCW 69.50.401(1)(2)(b) comparable to former RCW 69.50.401(a)(1)(ii), which did not include “salts, isomers,

¹ Cf. State v. Cromwell, 127 Wn. App. 746, 112 P.3d 1273, 1275 (2005), review accepted, No. 77356-4 (January 10, 2006), where Division I of this court disagrees with this conclusion, reasoning that “the Legislature intended to penalize the possession with the intent to deliver ... methamphetamine in any form more harshly than the possession with intent and delivery of any controlled substances listed in the schedules.”

and salts of isomers,” it cannot be determined based on the evidence presented that the jury premised his conviction on methamphetamine base. The State introduced evidence of 4.4 grams of a white powder substance, a sampling of which tested positive for methamphetamine [RP 03/02/05 92, 107]. The verdict form did not require the jury to identify the particular substance underlying the conviction. Instead, the jury convicted Wheeler “of the crime of possession of a controlled substance with intent to deliver, as charged in Count I of the Information. [CP 49].

Based on an offender score of 15 and a seriousness level of II, Wheeler was sentenced to 120 months, within the standard range of 60+ to 120 months, plus enhancement under the version of RCW 69.50.401, which is applicable only to offenses occurring after the date of Wheeler’s offense. RCW 9.94A.517. [CP 83]. As Wheeler’s offense was committed on December 8, 2004, his seriousness level was actually VI under former RCW 9.94A.515 (classifying the “(m)anufacture, delivery or possess(ion) with intent to deliver narcotics from Schedule I or II” as an offense with a seriousness level of VI); RCW 69.50.206(d)(2) (classifying “(m)ethamphetamine, its salts, isomers, and salts of its isomers” as Schedule II drugs).

The court sentenced Wheeler beyond the five-year maximum required prior to the July 24, 2005 insertion of “salts, isomers, and salts of

isomers” within the framework of the statute. The sentencing court should have sentenced Wheeler under the version of RCW 69.50.401(1)(2)(b) comparable to former RCW 69.50.401(a)(1)(ii), which omitted “salts, isomers, and salts of isomers,” and which was in effect at the time of the commission of his crime, and, under Blakely, by so doing would have invaded the province of the jury when it determined that Wheeler’s conviction was premised on methamphetamine in its pure form, its base, even where it can not be determined based on the evidence presented that the jury based Wheeler’s conviction on methamphetamine base, with the result that Wheeler’s sentence must be vacated and remanded for resentencing within the five-year maximum sentence.

03. WHEELER WAS PREJUDICED BY HIS COUNSEL’S FAILURE TO OBJECT TO THE TRIAL COURT’S FAILURE TO SENTENCE WHEELER UNDER THE STATUTE IN EFFECT AT THE TIME OF THE COMMISSION OF THE OFFENSE, AND BY FAILING TO ARGUE THAT A SENTENCE UNDER THE CORRECT STATUTE BASED ON THE EVIDENCE PRESENTED WOULD HAVE VIOLATED WHEELER’S SIXTH AMENDMENT RIGHT TO A JURY TRIAL UNDER BLAKELY V. WASHINGTON.

A criminal defendant claiming ineffective assistance must prove (1) that the attorney’s performance was deficient, i.e., that the

representation fell below an objective standard of reasonableness under the prevailing professional norms, and (2) that prejudice resulted from the deficient performance, i.e., that there is a reasonable probability that, but for the attorney's unprofessional errors, the results of the proceedings would have been different. State v. Early, 70 Wn. App. 452, 460, 853 P.2d 964 (1993), review denied, 123 Wn.2d 1004 (1994); State v. Graham, 78 Wn. App. 44, 56, 896 P.2d 704 (1995). Competency of counsel is determined based on the entire record below. State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972) (citing State v. Gilmore, 76 Wn.2d 293, 456 P.2d 344 (1969)). A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on one prong. State v. Tarica, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

Additionally, while the invited error doctrine precludes review of invited errors, see State v. Henderson, 114 Wn.2d 867, 870, 792 P.2d 514 (1990), the same doctrine does not act as a bar to review a claim of ineffective assistance of counsel. State v. Doogan, 82 Wn. App. 185, 188, 917 P.2d 155 (1996), citing State v. Gentry, 125 Wn.2d 570, 646, 888 P.2d 1105, cert. denied, 116 S. Ct. 131 (1995).

Assuming arguendo, this court finds that trial counsel, by agreeing to the recommendation of 120 months plus enhancement, waived the issue

relating to the trial court's sentencing of Wheeler as set forth in the preceding section of this brief, then both elements of ineffective assistance of counsel have been established.

First, the record does not reveal any tactical or strategic reason why trial counsel would have failed to object to the trial court sentencing Wheeler beyond the five-year maximum sentence. For the reasons set forth in the preceding section of this brief, had counsel done so, the trial court would not have so sentenced Wheeler.

Second, the prejudice is self evident: but for counsel's failure to object the trial court would not have imposed a sentence in excess of what is statutorily permitted.

E. CONCLUSION

Based on the above, Wheeler respectfully requests this court to reverse and dismiss his conviction for possession of methamphetamine with intent to deliver or to remand his case for resentencing consistent with the arguments presented herein.

DATED this 26th day of April 2006.

Respectfully submitted,

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CERTIFICATE

I certify that I mailed a copy of the above brief by depositing it in the United States Mail, first class postage pre-paid, to the following people at the addresses indicated:

James C. Powers	Daniel W. Wheeler #285814
Senior Dep Pros Atty	Thurston County Jail
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DATED this 26th day of April 2006.

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