

COURT OF APPEALS
DIVISION II

No. 35501-9-II

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STATE OF WASHINGTON
BY _____

IN THE
COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

EDDIE E. CRUMBLE,
Appellant.

APPELLANT'S BRIEF

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pm 4/30/07

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A. ASSIGNMENTS OF ERROR

Assignments of Error

1. The superior court erred in convicting Defendant of two counts of attempted murder in the first degree and two counts of assault in the first degree arising from the same conduct.

2. The superior court erred in sentencing Defendant to consecutive terms of life in prison without the possibility of parole for the two attempted murder convictions.

Issues Pertaining to Assignment of Error

1. Did the superior court violate Defendant's protections under the state and federal double jeopardy clauses in convicting him of both attempted murder in the first degree and assault in the first degree when the convictions for both offenses were based on the same gunshots at the same victims? This issue pertains to Assignment of Error No. 1.

2. Did the superior court err in sentencing Defendant to two consecutive terms of imprisonment for the two attempted murder convictions, serious violent

offenses under RCW 9.94A.589, without using an offender score of zero in calculating the sentencing range for one of the offenses? This issue pertains to Assignment of Error No. 2.

Standard of Review

Appellate courts review questions of law *de novo*. *State v. Linton*, 156 Wn.2d 777, 785, 132 P.3d 127 (2006) (citation omitted).

B. STATEMENT OF THE CASE

In a six-count amended information, the State charged the defendant in this case, Eddie Eugene Crumble, with two counts of attempted murder in the first degree while armed with a firearm, one count of unlawful possession of a firearm in the first degree, two counts of assault in the first degree committed with a firearm, and one count of burglary in the first degree while armed with a firearm. CP 6-9.

Waiving his right to a jury trial and his rights to confront and cross examine witnesses, Mr. Crumble proceeded to a stipulated-facts bench trial. CP 10-14; Verbatim Report of Proceedings for October 12, 2006

(RP1) at 6-13; Verbatim Report of Proceedings for October 23, 2006 (RP2) at 10-20. In brief, he stipulated to the following facts: When Mr. Crumble was charged with a third strike offense and faced life in prison, he learned that Shadaya Denegal had identified him to the police. He went to Ms. Denegal's residence with a loaded handgun to prevent her from testifying against him. Upon forcing his way into the residence, he learned that her mother was also at home. He shot Ms. Denegal in the head, then walked into her mother's bedroom and shot her in the head, the torso, and the thigh. He then fled. Both mother and daughter survived, but were severely injured. Previously convicted of a felony, Mr. Crumble was prohibited from possessing a firearm. CP 11-14.

The court, the Honorable Ronald E. Culpepper presiding, found him guilty of all charges. CP 18-21, 25-39. It used the same facts to prove the attempted murder convictions as it did the assault convictions. CP at 19-21.

Mr. Crumble stipulated to his prior criminal history and to the facts that the instant convictions for attempted murder in the first degree, assault in the first degree, and burglary in the first degree were all "third strike" offenses, requiring sentences of life in prison. CP 22-24; see also RP1 at 5 (defense counsel acknowledges two prior strike cases and fact that instant proceeding will result in sentence of life without the possibility of parole); RP2 at 12-13 (defendant acknowledged that if found guilty, he would be sentenced to life in prison without possibility of parole.)

The court orally sentenced Mr. Crumble to five concurrent sentences of life in prison without the possibility of parole for the attempted murder, assault and burglary counts, with 60-month firearm enhancements. The firearm enhancements were to run consecutively, except with regard to the attempted murder in the first degree and first degree assault convictions, which would run concurrently. The court also sentenced Mr. Crumble to a concurrent term of 116

months in prison on the firearm count. RP2 at 29-32. However, in its written Judgment and Sentence, the court ordered the sentences for the two attempted murder convictions to run consecutively to each other. CP 32-33.

This appeal followed. CP 40.

C. ARGUMENT

Point I: The Superior Court Violated Mr. Crumble's Protections under the State and Federal Double Jeopardy Clauses in Convicting Him of Both Attempted Murder in the First Degree and Assault in the First Degree

Mr. Crumble's protections against double jeopardy were violated in this case by the convictions for attempted murder in the first degree and assault in the first degree. Both the state and federal constitutions offer the same double jeopardy protections. *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 815, 100 P.3d 291 (2004) (citation omitted); see Wash. Const. art. I, § 9; U.S. Const. amend. V. "Where a defendant's act supports charges under two criminal statutes, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged

crimes constitute the same offense." *Orange*, 152 Wn.2d at 815.

After conducting a thorough double jeopardy analysis, the Court in *Orange* concluded that convictions for attempted murder in the first degree and first degree assault violated the prohibition against double jeopardy. It reached this conclusion because both crimes were based on the same shot at the same victim and the evidence required to support the conviction for first degree attempted murder was sufficient to convict the defendant of first degree assault. *Orange*, 152 Wn.2d at 820.

The protections against double jeopardy were similarly violated in this case. Here, the same shot at the daughter resulted in convictions for both attempted murder in the first degree and first degree assault. Similarly, the same shots at the mother resulted in additional convictions for both attempted murder in the first degree and first degree assault. Moreover, the evidence required to support the first degree attempted murder convictions was also sufficient

to convict Mr. Crumble of first degree assault. Accordingly, the superior court erred in convicting Mr. Crumble of both crimes in this case and this Court should remand and direct the superior court to vacate the convictions for the offenses carrying the lesser sentence. See *State v. Weber*, 159 Wn.2d 252, 149 P.3d 646 (2006) (the lesser offense for double jeopardy purposes is the offense that carries the lesser sentence).

Point II: The Superior Court Erred in Sentencing Mr. Crumble to Two Consecutive Terms of Imprisonment for the Two Attempted Murder Convictions Without Using an Offender Score of Zero in Calculating the Sentencing Range for One of the Offenses as Required by RCW 9.94A.589

The superior court erred in sentencing Mr. Crumble to consecutive life sentences for the two attempted first degree murder convictions. When a defendant is sentenced on the same date for more than one offense, the sentences must be served concurrently, except for serious violent offenses, which must be served consecutively. RCW 9.94A.589(1). Attempted murder in the first degree is a serious violent offense. RCW 9.94A.030(41).

In this case, the court apparently imposed consecutive sentences under the serious violent offense exception of RCW 9.94A.589(1)(b). However, because the court orally imposed concurrent sentences, its reasoning for changing that decision in the written judgment and imposing consecutive sentences on the murder convictions is not in the record. In any event, the court failed to follow RCW 9.94A.589(1) in imposing the consecutive sentences.

RCW 9.94A.589(1)(b) prescribes a specific method for calculating consecutive sentences:

The standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero.

RCW 9.94A.589(1)(b). Here, the court did not follow the statute's injunction to use an offender score of zero in determining the sentence for the second attempted first degree murder conviction. Instead, it

calculated the sentences for both offenses under the persistent offender provision.¹

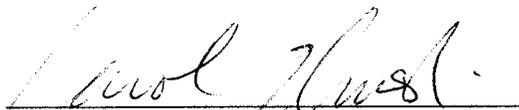
Under these circumstances, the consecutive sentences were imposed illegally and this Court should remand with direction that the court recalculate the sentence for the second attempted first degree murder conviction.

D. CONCLUSION

For all of these reasons, Eddie Eugene Crumble respectfully requests this Court to remand his sentence to the superior court with directions for its partial vacation and correction.

Dated this 30th day of April, 2007.

Respectfully submitted,



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Attorney for Appellant

1. The persistent offender provision provides, in relevant part: "Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release." RCW 9.94A.570.

CERTIFICATE OF SERVICE

I certify that on this 30th day of April, 2007, I served the original and one copy of the attached brief

by hand to:

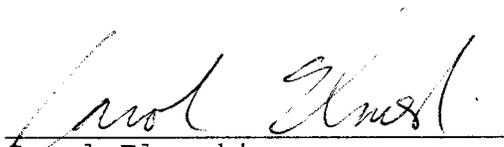
The Court of Appeals
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and one copy of the attached brief to:

Ms. Kathleen Proctor
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