

NO. 36506-5-II (Consol.)

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
08 APR 29 PM 2:29
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON, Respondent,

v.

AARON BARNES, Appellant.

AMENDED APPELLANT'S BRIEF

Rebecca Wold Bouchey
WSBA #26081
Attorney for Appellant

P.O. Box 1401
Mercer Island, WA 98040
(206) 275-0551

TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR.....	1
II.	ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	2
III.	STATEMENT OF THE CASE.....	2
IV.	ARGUMENT.....	6
	ISSUE 1: MR. BARNES' GUILTY PLEA WAS RENDERED INVOLUNTARY BECAUSE HE WAS NOT INFORMED THAT THE DIRECT CONSEQUENCE OF HIS PLEA WAS AN EXCEPTIONAL SENTENCE	7
	ISSUE 2: THE TRIAL COURT ERRED BY ENTERING WRITTEN FINDINGS AND CONCLUSIONS TO SUPPORT THE EXCEPTIONAL SENTENCE AFTER THE APPELLANT'S BRIEF WAS FILED AND, BECAUSE THERE IS EVIDENCE THAT THE FINDINGS HAVE BEEN TAILORED TO THE APPEAL, THE FINDINGS AND CONCLUSIONS SHOULD NOT BE CONSIDERED BY THIS COURT AND MR. BONDS IS ENTITLED TO REVERSAL	10
	ISSUE 3: THE TRIAL COURT DEPRIVED MR. BARNES OF DUE PROCESS IN FAILING TO EXERCISE "SPECIAL CARE" IN DETERMINING THAT MR. BARNES' GUILTY PLEAS WERE VOLUNTARY WHERE THE PLEAS WERE PART OF A "PACKAGE DEAL" INVOLVING HIS TWO CO-DEFENDANTS.....	13
V.	CONCLUSION	14

TABLE OF AUTHORITIES

TABLE OF CASES

United States Supreme Court Cases

Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)..... 7

Washington Cases

In re Breedlove, 138 Wn.2d 298, 309, 979 P.2d 417 (1999) 9, 10

In re Pers. Restraint of Isadore, 151 Wn.2d 294, 302, 88 P.3d 390 (2004).
..... 7

In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001)..... 7

State v. Bennett, 62 Wn. App. 702, 710, 814, P.2d 1171 (1991) .. 11-12, 13

State v. Grewe, 117 Wn.2d 211, 214, 813 P.2d 1238 (1991)..... 9

State v. Litts, 64 Wn. App. 831, 837, 827 P.2d 304 (1992) 12, 13

State v. McGary, 37 Wn. App. 856, 683 P.2d 1125 (1984)..... 12

State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988) 7

State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996)..... 7

State v. Royster, 43 Wn. App. 613, 621, 719 P.2d 149 (1986) 11, 13

State v. Smith, 82 Wn. App. 153, 160-61, 916 P.2d 960 (1996) 9

State v. Turley, 149 Wn.2d 395, 399, 69 P.3d 338 (2003)..... 8

State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001)..... 7

State v. Witherspoon, 60 Wn. App. 569, 572, 805 P.2d 248 (1991) 12

STATUTES

RCW 9.94A.535 9

REGULATIONS AND RULES

RAP 10.1 14

CrR 4.2 7

I. ASSIGNMENTS OF ERROR

1. The trial court erred by accepting Mr. Barnes' guilty plea without explaining that the direct consequence of his plea was an exceptional sentence.
2. The trial court erred by entering written findings and conclusions of exceptional sentence after the appellant's brief was filed.
3. The State erred by tailoring the findings of fact to the appellant's assignments of error in his appellant's brief?
4. The trial court erred by finding that Mr. Barnes had stipulated to an exceptional sentence where the record does not support that finding.
5. The trial court erred by finding that Mr. Barnes had waived his right to appeal an exceptional sentence where he was never advised that he was receiving an exceptional sentence and the plea agreement preserves Mr. Barnes' right to appeal a sentence outside the standard range.
6. The trial court erred by finding that Mr. Barnes had waived the right to a jury trial on the exceptional sentence where the court never advised him that he had that right.

7. The trial court erred by accepting Mr. Barnes' guilty plea without exercising "special care" to determine whether Mr. Barnes was unduly pressured by the State's package deal to his co-defendants.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was Mr. Barnes' guilty plea rendered involuntary when he was not informed that the direct consequence of his plea was an exceptional sentence?
2. Did the trial court err by entering findings of fact and conclusions of law after the appellant filed his appellant's brief where there is evidence that the findings were tailored to this appeal?
3. Whether the trial court deprived Mr. Barnes of due process in failing to exercise "special care" in determining that Mr. Barnes' guilty pleas were voluntary where the pleas were part of a "package deal" involving his two co-defendants.

III. STATEMENT OF THE CASE

On June 18, 2007, Mr. Barnes pled guilty, via an Alford plea, to unlawful possession of a controlled substance with intent to deliver and unlawful possession of a firearm in the first degree. RP5 303, RP6 340.

The plea was the result of negotiations dropping the firearm enhancement on count one, while elevating the unlawful possession of a firearm charge to first degree. RP5 303. This plea agreement was a “package deal,” involving the resolution of not only Mr. Barnes’ case, but also of his two co-defendants. RP5 300.

The first degree unlawful possession of a firearm charge was based on a factual fiction—Mr. Barnes’ underlying felony is not a “serious offense.” RP5 304. The prosecutor made the sentencing recommendation of 20 months on count I and 34 months on count II, with consecutive sentences. RP5 304.

The trial court questioned Barnes regarding his knowledge of the terms of the plea. RP5 306-310. They had the following exchange:

THE COURT: Can you tell me your full name?

DEFENDANT: Aaron Darnell Barnes.

THE COURT: You’ve been through high school, 12th grade?

DEFENDANT: Yes, ma’am.

THE COURT: And you have had a chance to go over this statement of defendant on plea of guilty form with Mr. Kim?

DEFENDANT: Yes, ma’am.

THE COURT: Have you asked all your questions and had them answered satisfactorily?

DEFENDANT: Yes, ma'am.

THE COURT: Okay. So you understand that, after the amendment, you are charged with unlawful possession of a controlled substance with intent to deliver?

DEFENDANT: Yes, ma'am.

THE COURT: Do you understand the elements of that crime?

DEFENDANT: Yes, ma'am.

THE COURT: and you are also charged with unlawful possession of a firearm in the first degree, and you understand those elements as well as--

DEFENDANT: Yes, ma'am.

THE COURT: And you do understand what the prosecutor said about this being a legal fiction and part of a plea bargain which I assume would reduce the amount of time you might otherwise be facing if this had proceeded under the old charges and gone to trial?

DEFENDANT: Yes, ma'am.

THE COURT: Okay. And you do understand that your standard range is 12 months and a day to 20 months on the first count, drug count, and 26 to 34 months on the second count?

DEFENDANT: Yes, ma'am.

THE COURT: You understand that both of these, or excuse me, the drug count does have community custody, and when you finish any incarcerated time, you will have to report to your community custody officer and be under their jurisdiction for a period of time from nine to twelve months?

DEFENDANT: Yes, ma'am.

THE COURT: And you do understand what the maximum penalty in these cases are as well: 20 years and 10 years respectively, according to this. . . . Okay. You understand that, when it comes to sentencing, the Court does not have to follow the sentencing recommendation provided to the Court but can sentence you in accordance with the law?

DEFENDANT: Yes, ma'am.

THE COURT: And you understand that, by pleading guilty today, you do give up important constitutional rights, including the right to have a jury trial?

DEFENDANT: Yes, ma'am.

THE COURT: Now, did anyone threaten you in order to get you to plead guilty today?

DEFENDANT: No, ma'am.

THE COURT: Other than what's written in these documents, did anyone make promises to you in order to cause you to enter a guilty plea?

DEFENDANT: No, ma'am.

THE COURT: In Paragraph 11, it says that you are entering this pursuant to the Newton and In re Barr cases because you understand there are not facts sufficient to find you guilty of Count II, but you are pleading guilty to take advantage of the State's offer.

Furthermore, you are pleading guilty not because you are guilty but to take advantage of the State's offer and because, if this case were to proceed to trial, there is a substantial likelihood you would be found guilty. Is that your statement?

DEFENDANT: Yes, ma'am.

THE COURT: I will incorporate, as a further factual basis for this plea, the facts contained in the declaration for determination of probable cause.

What is your plea today: Guilty or not guilty.

DEFENDANT: Guilty.

THE COURT: I'm going to accept Mr. Barnes' plea of guilty. I'm finding his plea to be knowingly, intelligently, and voluntarily made. I'm finding that the defendant understands the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

RP5 306-310. There was no discussion between the judge and Mr. Barnes of the consecutive terms or that this was an exceptional sentence. The words "exceptional sentence" were never uttered at the sentencing hearing.

The court sentenced Mr. Barnes to 20 months on count I and 34 months on count II, with consecutive sentences. RP6 344. The judgment and sentence stated: "By stipulation of the parties, the time imposed on each count shall run consecutively." CP 23.

This appeal timely followed.

Mr. Barnes filed his appellant's brief on December 21, 2007. In that brief, one of the issues raised was the trial court's failure to enter findings of fact and conclusions of law in support of the exceptional sentence. App. Br. 9-10. The trial court entered findings of fact and conclusions of law on April 11, 2008. Supp. CP.

IV. ARGUMENT

ISSUE 1: MR. BARNES' GUILTY PLEA WAS RENDERED INVOLUNTARY BECAUSE HE WAS NOT INFORMED THAT THE DIRECT CONSEQUENCE OF HIS PLEA WAS AN EXCEPTIONAL SENTENCE.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001). A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). A defendant must be informed of all direct consequences of a plea. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). It is not necessary for the defendant to prove that the misinformation was material to his decision to plead guilty. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004).

Failure to inform a defendant of sentencing consequences upon plea of guilty is also governed by court rule. Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea if necessary to correct a manifest injustice. An involuntary plea produces a manifest injustice. *Ross*, 129 Wn.2d at 284; *State v. Walsh*, 143 Wn.2d 1, 8, 17 P.3d 591 (2001) (mutual mistake regarding sentencing consequences renders guilty plea invalid).

Once it has been determined that a plea was involuntary, the defendant is given the choice of specific performance or withdrawal of the plea. *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003). Once the defendant has made his or her choice, the State bears the burden of showing that the remedy chosen is unjust and there are compelling reasons not to allow that remedy. *Turley*, 149 Wn.2d at 401.

In this case, Mr. Barnes was never informed that the prosecutor's recommendation of consecutive sentences constituted an exceptional sentence. Further, although the statement states that the prosecutor's recommendation will be that the two sentences will be served consecutively, nowhere in the agreement does it say that this constitutes an exceptional sentence.¹ CP 11. Nor does Mr. Barnes stipulate to grounds for an exceptional sentence. Moreover, the judge did not tell Mr. Barnes that his plea involved an exceptional sentence.

The judge followed the prosecutor's recommendation and sentenced Mr. Barnes to consecutive terms. CP 23. The judgment and sentence states: "By stipulation of the parties, the time imposed on each count shall run consecutively." CP 23. But Mr. Barnes was not asked to stipulate to an exceptional sentence and the plea agreement states only that

¹ The Statement lists this as the prosecutor's recommendation—the box for a joint recommendation is not checked. CP 11.

he knows that the *prosecutor* will recommend that sentence, not that he will stipulate to it. CP 11. The Statement lists this as the prosecutor's recommendation—the box for a joint recommendation is not checked. CP 11.

At the sentencing hearing, no one ever even mentioned the words exceptional sentence, much less explained it to Mr. Barnes. The prosecutor tells the court that “It is an agreed recommendation.” RP5 304. In response, the defense attorney tells the court: “We went over the recommendation. It is an agreed recommendation . . .” RP5 305. Yet no one ever discusses the fact that this is an exceptional sentence, explains that to Mr. Barnes, or asks for a stipulation to grounds for an exceptional sentence.

The trial court erred by finding that the defense had stipulated to an exceptional sentence because there is no evidence in the record that Mr. Barnes was ever told that this was an exceptional sentence. Although Mr. Barnes signed an agreement to consecutive sentences, there is no evidence that he knew or was told that this was an exceptional sentence, or that he had the right to have the facts decided by a jury.

Furthermore, Mr. Barnes never waived his right to appeal a sentence outside the standard range. Mr. Barnes' guilty plea statement specifically states: “If the judge goes outside the standard range of actual

confinement and community custody, either the State or I can appeal that sentence.” CP 11. Therefore, the trial court erred when it found, without evidence in the record, that Mr. Barnes “understands and acknowledges that he has the right to a jury determination of mitigating or aggravating circumstances and waives any right to appeal this exceptional sentence under *Blakely v. Washington*.” Supp. CP, 2. No one ever told Mr. Barnes he was receiving an exceptional sentence, or that he had the right to a jury determination of the grounds for exceptional sentence. Therefore, there is no evidence in this record to support the court’s finding.

The plea in this case was rendered involuntary because Mr. Barnes was never informed that the prosecutor’s recommendation was for an exceptional sentence. Further, if his plea did stipulate to this result, as the judgment and sentence states, then he should have been specifically informed that he was stipulating to an exceptional sentence and waiving his right to argue for a standard range sentence. Because Mr. Barnes was not informed of a direct result of his plea—an exceptional sentence—he was deprived of due process of law. Therefore, Mr. Barnes’ conviction must be reversed and remanded.

ISSUE 2: THE TRIAL COURT ERRED BY ENTERING WRITTEN FINDINGS AND CONCLUSIONS TO SUPPORT THE EXCEPTIONAL SENTENCE AFTER THE APPELLANT’S BRIEF WAS FILED AND, BECAUSE THERE IS EVIDENCE THAT THE FINDINGS HAVE BEEN TAILORED TO THE APPEAL, THE

FINDINGS AND CONCLUSIONS SHOULD NOT BE CONSIDERED BY THIS COURT AND MR. BONDS IS ENTITLED TO REVERSAL.

In Mr. Bonds' first appellant's brief, he challenged the voluntary nature of his appeal because he was not informed that this was an exceptional sentence, as well as the trial court's failure to enter written findings and conclusions in support of an exceptional sentence. This brief was filed on December 21, 2007. Nearly four months later, on April 11, 2008, the State proposed written findings and conclusions and the trial court signed them. Supp. CP.

Washington courts have held that although the practice of entering late findings is unacceptable, a conviction will not be reversed based on the late entry of findings of fact and conclusions of law absent a showing of prejudice to the defendant.² *State v. Bennett*, 62 Wn. App. 702, 710, 814, P.2d 1171 (1991); *State v. Royster*, 43 Wn. App. 613, 621, 719 P.2d 149 (1986) (citing *State v. McGary*, 37 Wn. App. 856, 861, 683 P.2d 1125, review denied, 102 Wn.2d 1024 (1984)). Courts have held that the defendant is prejudiced only if the defendant's liberty interest would be adversely affected by the late entry of findings and conclusions. *Bennett*,

² Washington courts have also held that sanctions may be imposed on a prosecutor who fails to comply with an order to file written findings and conclusions, or who "circumvents" the appellate process by failing to file written findings and conclusions prior to filing of the appellant's opening brief. *Bennett*, at 712.

at 711. “If the State fails to file written findings and conclusions until after the appellant has submitted his or her opening brief, and the record reflects that the findings and conclusions were tailored to address the assignments of error raised in the appellant’s brief, prejudice may be found.” *State v. Litts*, 64 Wn. App. 831, 837, 827 P.2d 304 (1992). The remedy is reversal because the practice of permitting findings to be entered after the appellant has framed the issues in his brief has an appearance of unfairness. *State v. McGary*, 37 Wn. App. 856, 683 P.2d 1125 (1984). Remand under such circumstances would only exacerbate that appearance of fairness issue. *See State v. Witherspoon*, 60 Wn. App. 569, 572, 805 P.2d 248 (1991).

There is evidence in this case that the findings and conclusions on exceptional sentence were tailored to the assignments of error raised in Mr. Barnes’ original appellant’s brief. Mr. Barnes assigned error to guilty plea because Mr. Barnes was never informed that the direct consequence of his guilty plea was an exceptional sentence, and the failure to enter written findings and conclusions. App. Br., 1. In the written findings, entered months after the appellant’s brief was filed, for the first time and without support in the record, the trial court states that Mr. Barnes “understands and acknowledges” his right to a jury trial on the exceptional sentence. Supp. CP, 2. Yet, the judge never told Mr. Barnes he had that

right, nor asked him to waive it. In the written findings, for the first time and without support in the record, the trial court found that Mr. Barnes had waived his right to appeal an exceptional sentence. Supp CP, 2. Yet, the plea agreement states that both parties retain the right to appeal a sentence outside the standard range. CP 11. And the trial judge never told Mr. Barnes during the colloquy that he was waiving the right to appeal an exceptional sentence. RP5 306-310.

Because there is evidence that the findings have been tailored, Mr. Barnes has been prejudiced by their late filing after his appellant's brief was filed. *State v. Litts*, 64 Wn. App. 831, 837, 827 P.2d 304 (1992). Therefore, he is entitled to reversal. *State v. Bennett*, 62 Wn. App. 702, 710, 814, P.2d 1171 (1991); *State v. Royster*, 43 Wn. App. 613, 621, 719 P.2d 149 (1986) (citing *State v. McGary*, 37 Wn. App. 856, 861, 683 P.2d 1125, review denied, 102 Wn.2d 1024 (1984)).

In the alternative, this court should not consider the findings of fact and conclusions of law in deciding this case, both because they are not supported by the record and because there is evidence that they have been tailored to respond to Mr. Barnes' appeal.

ISSUE 3: THE TRIAL COURT DEPRIVED MR. BARNES OF DUE PROCESS IN FAILING TO EXERCISE "SPECIAL CARE" IN DETERMINING THAT MR. BARNES' GUILTY PLEAS WERE VOLUNTARY WHERE THE PLEAS WERE PART OF A "PACKAGE DEAL" INVOLVING HIS TWO CO-DEFENDANTS.

RAP 10.1(g)(2) provides, in relevant part, that a party in a consolidated case may “file a separate brief and adopt by reference any part of the brief of another.” Pursuant to RAP 10.1(g)(2), Mr. Barnes hereby incorporates by reference the arguments, authorities and attachments set forth on pages 3 through 5 of co-appellant Lee’s opening brief. The claimed error and prejudice discussed in co-appellant Lee’s brief applies equally to Mr. Barnes in his case. The sentencing judge should have specifically inquired whether the “package deal” offered by the State put undue pressure on Mr. Barnes to plead guilty. The failure to do that rendered his plea involuntary and therefore his conviction should be reversed and remanded.

V. CONCLUSION

Mr. Barnes’ plea was rendered involuntary because he was never informed that the prosecutor’s recommendation constituted an exceptional sentence. Nor was he ever questioned as to whether he would stipulate to an exceptional sentence. Because he was not informed of a direct consequence of his plea, his conviction must be reversed.

Moreover, the trial court erred by entering written findings of fact and conclusions of law in support of the exceptional sentence after the appellant’s brief was filed. Mr. Barnes was prejudiced by this error because there is evidence that the findings were tailored to this appeal.

Finally, the trial court failed to exercise special care in ascertaining whether the “package deal” offered by the State placed undue pressure on Mr. Barnes to plead guilty. This also rendered his plea involuntary.

For these reasons, Mr. Barnes’ conviction must be reversed and the case remanded.

DATED: April 28, 2008

By: Rebecca W. Bouchey
Rebecca Wold Bouchey #26081
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on April 28, 2008, I caused a true and correct copy of this Amended Appellant’s Brief to be served on the following via prepaid first class mail:

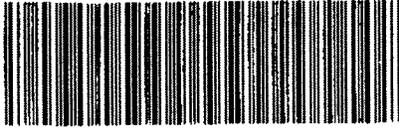
Counsel for the Respondent:
Michelle Hyer
Office of Prosecuting Attorney
930 Tacoma Ave. S., Rm. 946
Tacoma, Washington 98402-2171

Appellant:
Aaron Barnes
DOC #873349
Washington Correction Center
P.O. Box 900
Shelton, WA 98584

FILED
COURT OF APPEALS
DIVISION II
08 APR 29 PM 2:29
STATE OF WASHINGTON
BY DEPUTY

Rebecca W. Bouchey
Rebecca Wold Bouchey
WSB# 26081
Attorney for Appellant

ATTACHMENT 1: FINDINGS OF FACT AND CONCLUSIONS OF LAW
Filed 4/11/08; Supp. CP



06-1-00994-2 29549701 FNFL 04-14-08



2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00994-2

vs.

AARON D. BARNES,

Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE

THIS MATTER having come on before the Honorable Kathryn Nelson, Judge of the above entitled court, for sentencing on one count of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER and on one count of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, the defendant, AARON D. BARNES, having been present *at the time of sentencing* and represented by his attorney, JEFFREY KIM, and the State being represented by Deputy Prosecuting Attorney DIONE J. LUDLOW, and the court having considered all argument from both parties and having considered all written reports presented, and deeming itself fully advised in the premises, does hereby make the following Findings of Fact and Conclusions of Law by a preponderance of the evidence.

FINDINGS OF FACT

I.

The defendant pled guilty on June 18, 2007 to one count of Unlawful Possession of a Controlled Substance with the Intent to Deliver and Unlawful Possession of a Firearm in the First Degree. That the standard range sentence on Count I, Unlawful Possession of a Controlled Substance with Intent to Deliver, is 12 months plus one day to 20 months imprisonment. The defendant also pled guilty to Unlawful Possession of a Firearm in the First Degree on June 18, 2007. That the standard range sentence on this count is 26 to 34 months imprisonment.

II.

That the factors set forth by the Prosecuting Attorney in the State's sentencing recommendation are applicable and are aggravating factors in the instant offense for the reasons set forth by the Prosecuting Attorney, to wit:

The Prosecuting Attorney and Defense previously stipulated to an exceptional sentence above the standard range as part of a plea bargain as allowed by State v. Hilyard, 63 Wn. App. 413 (1991) and agreed that the sentences on the two counts should run consecutively to each other rather than concurrently. The stipulation was reflected in the Judgment and Sentence entered on June 29, 2007.

III

That AARON D. BARNES understands and acknowledges that he has the right to a jury determination of mitigating or aggravating circumstances and waives any right to appeal this exceptional sentence under Blakely v. Washington, 124 S.Ct. 2531, 159 L. Ed. 2d 403, 2004 U.S. Lexis 4573.

05-1-01274-1

CONCLUSIONS OF LAW

I.

That an exceptional sentence above the standard range is permitted as part of a plea bargain under State v. Hilyard, 63 Wn. App. 413 (1991). Such an agreement constitutes a substantial and compelling reason justifying an exceptional sentence outside the standard range.

II.

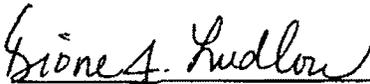
Defendant AARON D. BARNES, should be sentenced to a total of 54 months as reflected in the Judgment and Sentence entered on June 29, 2007. The sentences imposed on Counts I and II should run consecutively to each other consistent with the Judgment and Sentence entered on June 29, 2007.

DONE IN OPEN COURT this 26 day of March, 2008.

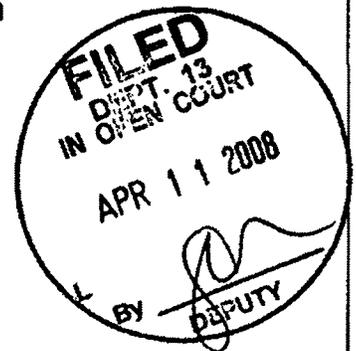


JUDGE
Kathryn J. Nelson

Presented by:



DIONE J. LUDLOW
Deputy Prosecuting Attorney
WSBA #25104



Approved as to Form:



JEFFREY H. KIM
Attorney for Defendant
WSBA # 33634