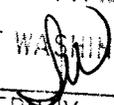


FILED
COURT OF APPEALS
DIVISION II

08 OCT 27 PM 12:51

NO. 37471-4-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY 
DEPUTY

STATE OF WASHINGTON, Respondent

v.

JOHN TOLBERT HOBBS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT A BENNETT
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-01619-8

BRIEF OF RESPONDENT

Attorneys for Respondent:

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Clark County, Washington

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TABLE OF AUTHORITIES

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<u>State v. Bresolin</u> , 13 Wn. App. 386, 396, 534 P.2d 1394 (1975).....	2
<u>State v. Elliott</u> , 114 Wn.2d 6, 17, 785 P.2d 440 (1990).....	2

I. STATEMENT OF FACTS

The State accepts the statement of facts as set forth by the defendant.

II. RESPONSE TO ASSIGNMENT OF ERROR

The assignment of error raised by the defendant concerns the court not fleshing out a jury finding of an aggravator of rapid recidivism and thus imposing an exceptional sentence.

Prior to the sentencing which occurred on February 26, 2008, the prosecution had prepared a State's Sentencing Memorandum. (CP 45). That document is 87 pages long. The State has attached to this brief and incorporated by reference a portion of the State's Sentencing Memorandum dealing with the initial argument by counsel and the Declaration of Criminal History. The other documentation in the packet are the certified copies and other documents justifying the information concerning criminal history. The defendant did not object nor was there any question about the accuracy of the information in the State's Sentencing Memorandum. As this Sentencing Memorandum from the State clearly documents, the defendant had had numerous problems with probation and was in and out of custody repeatedly prior to the commission of the felony that he was convicted of in Clark County. The

State sought an exceptional sentence of 69 months. (RP 253-254). The trial court gave a mid-range sentence of 50 months. (Standard range with his offender score of 9 was 43-57 months.) Further, the exceptional sentence that the jury had found of an aggravator gave him an additional 8 months for a total of 58 months. Thus, the total exceptional sentence that is in dispute here is 30 days. As the Declaration of Criminal History which is attached to the Felony Judgment and Sentence (CP 139) clearly indicates the defendant's history is of thefts, burglaries, and drug possession. The conviction that he had on this most recent case was a possession of stolen motor vehicle. His criminal activity is basically a continuing course of conduct from early 1995 through to the current date.

Washington courts have long held that in imposing sentence, the facts relied upon by the trial court must have some basis in the record. State v. Bresolin, 13 Wn. App. 386, 396, 534 P.2d 1394 (1975).

An Appellate Court will reverse a sentencing court's decision only if it finds a clear abuse of discretion or a misapplication of law. State v. Elliott, 114 Wn.2d 6, 17, 785 P.2d 440 (1990).

The State submits that there has been no abuse by the trial court in the sentencing of this defendant. At the time of the sentencing, the trial court had the information supplied by the State in its Sentencing Memorandum and also had sat through the jury trial and had the finding

by a jury of rapid recidivism. That finding was based on additional testimony in a bifurcated trial which set out what he had been doing about his probation and how recently he had been released from custody. None of these matters were objected to, or complained about, at the time of sentencing. The defendant's primary concern was he considered himself to be a totally innocent man and wanted to get this matter appealed as quickly as possible. With that in mind, he did not make any admissions concerning the probation violations or the aggravating circumstances. There has been no clear abuse of discretion or misapplication of the law by the trial court and, because of that, should be affirmed.

III. CONCLUSION

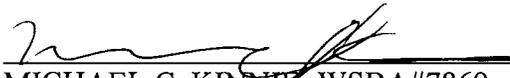
The trial court should be affirmed in all respects.

DATED this 22 day of Oct, 2008.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNE, WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX "A"

STATE'S SENTENCING MEMORANDUM 07-1-01619-8

FILED

FEB 21 2008

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
JOHN TOLBERT HOBBS,
Defendant.

No. 07-1-01619-8

STATE'S SENTENCING
MEMORANDUM

The defendant, John Tolbert Hobbs, was convicted in a jury trial of one count of Possession of Stolen Motor Vehicle and one count of Driving while License Suspended in the Third Degree. Additionally, the jury returned an aggravating circumstance that the defendant committed the offense shortly after being released from incarceration under RCW 9.94A.535(3)(t). This sentencing memorandum is to set forth the state's sentencing recommendation and provide the court with the criminal history as well as the reasons for the recommendation.

STATE'S SENTENCING RECOMMENDATION

The State is seeking an exceptional sentence of 69 Months in prison on the felony offense of Possession of a Stolen Motor Vehicle as charged in Count 1. The State is also seeking the financial obligations including \$ 200. for court costs, the crime victim's

MEMORANDUM IN SUPPORT OF MOTION
FOR PRETRIAL RULING AND NOTICE OF
INTENT - 1

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1 assessment of \$ 500, a fine of \$ 500, a biological collection fee of \$ 100, and appointed
2 attorney fees of \$ 1,000, the statutory jury costs of \$ 250, and restitution in an amount to
3 be set. There is no community custody on this charge. The State is requesting the Court
4 to order that the defendant be prohibited from possession firearms, provide a DNA sample
5 and revoke the defendant's driver's license as required by the statute. (See RCW
6 46.20.285) Additionally, the defendant should be prohibited from contacting the victim,
7 Avery Camacho, for a period of 10 years.
8

9 For Count 2, the Driving While License Suspended in the Third Degree conviction,
10 a simple misdemeanor offense, and the state is asking the court to impose 90 days with
11 said time to run concurrently with the felony offense. Although the State considered that
12 the defendant should be placed on probation, it is unlikely that the defendant would
13 comply with such requirements and therefore, the State is not making that
14 recommendation but rather just asking that the time be served.
15

16 On the Probation Violations in Superior Court Cause Number 006-1-01689-1, the
17 defendant is guilty of violations 1 and 2 by the convictions by the jury. The State is asking
18 the court to dismiss the third violation as charged in allegation 3. The State is
19 recommending that the defendant be sentenced to serve 120 days and that should be
20 served concurrently with the felony offense charged in count 1.
21
22

23 CRIMINAL HISTORY CALCULATIONS

24 The defendant's criminal history is listed on the attached page. Additionally, the
25 State has attached certified copies of the criminal convictions which the court can examine
26 to support the State's claim that the criminal convictions count in the offender score. The
27 offender score is counted as 1 point for each felony conviction except for the Taking a

1 Motor Vehicle Conviction out of Klickitat County, Washington which needs to be multiplied
2 by 3. See RCW 9.94A.525 (20) which states as follows:

3 (20) If the present conviction is for Theft of a Motor Vehicle, Possession
4 of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or
5 Taking a Motor Vehicle Without Permission 2, count priors as in
6 subsections (7) through (18) of this section; however count one point for
7 prior convictions of Vehicle Prowling 2, and three points for each adult
8 and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor
9 vehicle), Possession of Stolen Property 1 (of a motor vehicle),
10 Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor
11 Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
12 Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

13 Additionally, the Unlawful Entry Into a Motor Vehicle conviction out of Benton
14 County, Oregon from September of 2000 is the equivalent of a Vehicle Prowling in the
15 Second Degree conviction in Washington and even though this charge is a misdemeanor,
16 the statute listed above indicates that it counts as 1 point in the offender score.

17 The State has attached a certified copy of each Judgment and Sentence and other
18 supporting documents that prove that these convictions count as indicated on the attached
19 criminal history declaration. See Attachment A. Based upon the calculations in the
20 Declaration of Criminal History, the defendant's offender score is a nine and the standard
21 sentencing range for an offender score of 9 or more would be 43 to 57 Months. This does
22 not take into account the Aggravating Circumstance which the Jury found.
23

24 REASONS FOR THE EXCEPTIONAL SENTENCE

25 The legislature has sent a clear, unequivocal statement regarding auto theft in the
26 State of Washington and has intentionally increased the punishment for this crime. The
27

1 legislature recognized that the automobile is typically the second largest investment
2 people have next to their home and the loss of the vehicle causes significant loss,
3 inconvenience, financial hardship and negative impacts on work, school and personal
4 activities. See Section One of Chapter 199, Washington Laws, 2007, Sec. 1 (a). The
5 intent of the act was to deter motor vehicle theft through tough laws, improving
6 enforcement and effective prosecution. Sec . 2.
7

8 The legislature changed the law so that the value of the motor vehicle did not
9 impact its sentence. The seriousness level was set at level 2 regardless of the value of
10 the vehicle. See RCW 9.94A.515. As a result, the defendant's standard sentencing range
11 was determined by the offender score of 9 and at a seriousness level of II. Under the
12 Adult felony sentencing grid, the defendant's standard sentencing range is 43 to 57
13 Months.
14

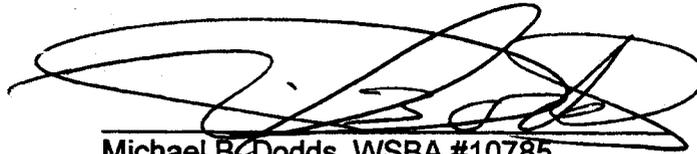
15 However, the legislature also provided for aggravating circumstances and the jury
16 returned an aggravating circumstance that the defendant committed the offense shortly
17 after being released from incarceration under RCW 9.94A.535(3)(t). The defendant has
18 been active in his criminal activity and not been compliant regarding his supervision. The
19 defendant was incarcerated for probation violations from April 30, 2007 to July 6, 2007,
20 first in Clark County Washington from April 30, 2007 to May 22, 2007. This sentence was
21 a 34 days sanction for consuming marijuana. The rest of the time, from May 22, 2007 to
22 July 6, 2007, was served for failing to pay on his financial obligations and failing to report in
23 Klickitat County, Wa. The defendant was released from custody on July 6, 2007. The
24 crime in the instant case occurred on September 14, 2007 or 70 Days after his release.
25
26
27

1 The legislature has indicated that it is appropriate to punish an offender who was
2 recently released from custody. The defendant has even more incarceration periods that
3 are in the same calendar year as the one listed above and they are 2/26/07 to 3/12/07 and
4 9/4/06 to 1/11/07.

5 It is appropriate to increase the defendant's sentence for his inability to remain out
6 of custody and remain law abiding. For this reason, the State is seeking an additional 12
7 months as an exceptional sentence to be added to the top end of the standard sentencing
8 range for a total sentence of 69 Months. The State respectfully requests that the court
9 impose a sentence of 69 Months.
10

11 DATED this 21ST day of February, 2008.

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Michael B. Dodds, WSBA #10785
Deputy Prosecuting Attorney

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4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,
6 Plaintiff,
7 v.
8 JOHN TOLBERT HOBBS,
Defendant

No. 07-1-01619-8

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

9 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of
10 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the
defendant has the following undisputed prior criminal convictions:

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
THEFT 2	ALBANY/OR 95010263M		3/20/1995	0
THEFT 1	GRANTS PASS/OR 96CR0074	2/14/1996	7/15/1996	1
BURGLARY 2	BENTON/OR CM9721297	7/25/1997	8/5/1997	1
BURGLARY 1	BENTON/OR CM9721297	7/25/1997	8/5/1997	1
PCS	BENTON/OR CM9920802	6/4/1999	11/1/1999	1
THEFT 2	BENTON/OR CM9920976	7/2/1999	11/1/1999	0
TMVWOP	KLICKITAT/WA 00-1-00085-7	7/5/2000	9/5/2000	3
UNLAWFUL ENTRY INTO MOTOR VEHICLE	BENTON/OR CM0020942	6/24/2000	12/26/2000	1
ATTEMPTED ASSAULT 2	BENTON/OR CM0220120	1/18/2002	3/8/2002	0
BURGLARY 1	BENTON/OR CM0220120	1/18/2002	3/8/2002	1

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26 **The Total Offender Score is 9.**

27
28
29 **DECLARATION OF CRIMINAL HISTORY**
Revised 9/14/2000

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Attachment 'A'

