

NO. 37906-6

FILED
COURT OF APPEALS
DIVISION II

09 MAR -6 PM 3:05

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON
BY CM
DEPUTY

STATE OF WASHINGTON, RESPONDENT

v.

SARA MIHALI

Appeal from the Superior Court of Pierce County
The Honorable Ronald Culpepper

No. 99-1-01818-6

REPLY BRIEF

GERALD A. HORNE
Prosecuting Attorney

By
KAREN A. WATSON
Deputy Prosecuting Attorney
WSB # 24259

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

1. Is defendant’s conviction for conspiracy to manufacture methamphetamine an unranked Class B felony where the maximum penalty is 10 years in jail? 1

B. STATEMENT OF THE CASE. 1

C. ARGUMENT..... 1

1. DEFENDANT’S CONVICTION FOR CONSPIRACY TO MANUFACTURE METHAMPHETAMINE IS AN UNRANKED, CLASS B FELONY THAT MUST BE COUNTED AS PART OF DEFENDANT’S OFFENDER SCORE PURSUANT TO RCW 9.94A.525. 1

D. CONCLUSION. 4

Table of Authorities

State Cases

<i>State v. Mendoza</i> , 63 Wn. App. 373, 819 P.2d 387 (1991).....	2
---	---

Statutes

RCW 60.50.401	3
RCW 69.50.401	1
RCW 69.50.401(a)(1)(ii)	1
RCW 69.50.407	1, 2
RCW 9.41.040(4)(b)(i)	4
RCW 9.94A.035	3
RCW 9.94A.035(2).....	3
RCW 9.94A.120(6).....	2, 3
RCW 9.94A.505(2)(b).....	2
RCW 9.94A.525	1

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Is defendant's conviction for conspiracy to manufacture methamphetamine an unranked Class B felony where the maximum penalty is 10 years in jail?

B. STATEMENT OF THE CASE.

Appellant's Statement of the Case may be found in the Appellant's Opening Brief.

C. ARGUMENT.

1. DEFENDANT'S CONVICTION FOR CONSPIRACY TO MANUFACTURE METHAMPHETAMINE IS AN UNRANKED, CLASS B FELONY THAT MUST BE COUNTED AS PART OF DEFENDANT'S OFFENDER SCORE PURSUANT TO RCW 9.94A.525.

Defendant pled guilty to one count of conspiracy to manufacture methamphetamine on September 21, 1999. CP 6-15. The maximum penalty for conspiracy to manufacture methamphetamine is 10 years in prison. *See* 1999 version of RCW 69.50.401(a)(1)(ii) and RCW 69.50.407¹. Then RCW 69.50.401 states in the relevant part:

¹ RCW 69.50.407 has not been amended since its enactment in 1971.

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture...a controlled substance.

(1) Any person who violates this subsection with respect to:

(ii) amphetamine or methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years...

RCW 69.50.407 states:

Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

The legislature did not set a seriousness level for conspiracies charged under RCW 69.50.407 and, therefore, no standard range can be established. *State v. Mendoza*, 63 Wn. App. 373, 819 P.2d 387 (1991).

Under these circumstances, RCW 9.94A.120(6)² controls. RCW

9.94A.120(6) states:

If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement...

This is exactly what occurred in defendant's case. She was convicted of conspiracy to manufacture methamphetamine pursuant to RCW 69.50.407

² RCW 9.94A.120(6) has been recodified as RCW 9.94A.505(2)(b).

and RCW 60.50.401. Because no standard range had been established for her crime, she was sentenced between 0 and twelve months as an unranked felony under then RCW 9.94A.120(6).

The fact that defendant's crime is unranked does not impact whether her conviction is classified as an 'A,' 'B,' or a 'C'. RCW 9.94A.035³ controls the classification of crimes not included in Title 9A. RCW 9.94A.035 states:

For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

- (1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;
- (2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter.
- (3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter.

In the present case, defendant's conviction for conspiracy to manufacture methamphetamine falls squarely within RCW 9.94A.035(2). Because conspiracy to manufacture methamphetamine is punishable by a

³ RCW 9.94A.035 has not been amended since its enactment in 1996.

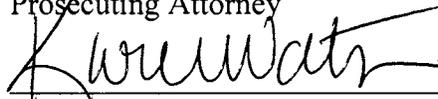
term of imprisonment of more than eight, but less than twenty, years,
conspiracy to manufacture methamphetamine is a Class B felony.
Defendant's arguments to the contrary are without merit.

D. CONCLUSION.

This court should reverse the trial court order reinstating
defendant's right to possess a firearm under RCW 9.41.040(4)(b)(i),
because on the date defendant petitioned the court for reinstatement,
defendant had a felony conviction that prohibited the possession of a
firearm counted as part of her offender score.

DATED: March 6, 2009.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



KAREN A. WATSON
Deputy Prosecuting Attorney
WSB # 24259

FILED
COURT OF APPEALS
DIVISION II
09 MAR -6 PM 3:05
STATE OF WASHINGTON
BY  DEPUTY

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or
ABC-LMI delivery to the attorney of record for the appellant and appellant
c/o his attorney true and correct copies of the document to which this certificate
is attached. This statement is certified to be true and correct under penalty of
perjury of the laws of the State of Washington. Signed at Tacoma, Washington,
on the date below.


Date Signature