

FILED
COURT OF APPEALS

STATE OF WASHINGTON
COURT OF APPEALS

BY _____

No. 41082-6-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JAMES JOHN CHAMBERS, JR., Appellant

Opening Brief Of Appellant

Stephen G. Johnson, WSBA # 24214
Attorney for Appellant

925 South Ridgewood Avenue
Tacoma, WA 98405
Telephone: 253.370.3931
Facsimile: 253.238.1428
Email: badseedlawyer@gmail.com

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	1
<u>Issues Pertaining To Assignments Of Error</u>	1
III. STATEMENT OF THE CASE	2
IV. SUMMARY OF ARGUMENT	6
V. ARGUMENT	6
A. THE TRIAL COURT ERRED BY DENYING APPELLANT RELIEF FROM AN ILLEGAL AND UNJUST SENTENCE.	7
1. <u>Doubling The Standard Range Is Illegal.</u>	7
2. <u>Appellant's Selected Remedy Is To Be Sentenced Within The Correct Standard Range For His Offenses And Offender Score.</u>	8
3. <u>The State Of Washington Failed To Demonstrate That The Appellant's Choice Of Remedy Is Unjust.</u>	9
VI. CONCLUSION	12
Certificate of Service	13

TABLE OF AUTHORITIES

Table of Cases

<u>Cruz, In Re</u> , 157 Wn.2d 83, 134 P.3d 1166 (2006)	7
<u>Clark, State v.</u> , 123 Wn.App. 515, 94 P.3d 335 (Div. II, 2004)	7
<u>Codiga, State v.</u> , 162 Wn.2d 912, 175 P.3d 1082 (2008)	11
<u>Eilts, State v.</u> , 94 Wn.2d 489, 617 P.2d 993 (1980)	11
<u>Elmore, State v.</u> , No. 34861-6-II (2010)	6
<u>Gardner, In Re</u> , 92 Wn.2d 504, 617 P.2d 1001 (1980)	11
<u>Goodwin, In Re</u> , 146 Wn.2d 861, 50 P.3d 618 (2002)	11
<u>Hinton, In Re</u> , 152 Wn.2d 853, 100 P.3d 801 (2004)	11
<u>Miller, State v.</u> , 110 Wn.2d 528, 756 P.2d 122 (1988)	8
<u>Moore, Matter of</u> , 116 Wn.2d 30, 830 P.2d 300 (1991)	11
<u>Murray, State v.</u> , 118 Wn.App. 518, 77 P.2d 1188 (Div. 1, 2003)	6
<u>Thompson, In Re</u> , 141 Wn.2d 712, 10 P.3d 380 (2000)	11
<u>Toney, State v.</u> , 149 Wn.App. 787, 205 P.3d 944 (Div. II, 2009)	9
<u>Turley, State v.</u> , 149 Wn.2d 395, 69 P.3d 338 (2003)	8
<u>West, In Re</u> , 154 Wn.2d 204, 110 P.3d 1122 (2005)	10, 11

Statutes

RCW 9.94A.010 et seq.	7
RCW 9.94A.030	8
RCW 9.94A.030(45)	8

Statutes, Cont.

RCW 9.94A.530	8
RCW 9.94A.537	8
RCW 9A.20.021(1)(b)	9
RCW 69.50.408	2, 6, 7, 9, 11

I. INTRODUCTION.

COMES NOW the Appellant James John Chambers, Jr., by and through his attorney Stephen G. Johnson, to respectfully submit this opening brief in his appeal from the trial/sentencing court's refusal to vacate the judgment and sentence below and resentence him in accordance with state law.

II. ASSIGNMENTS OF ERROR.

- A. The trial court erred in denying Appellant his motion to vacate the judgment and sentence below, and resentence in accordance with Washington State law.

Issues Pertaining To Assignments of Error.

- (1.) Did the trial court sentence the Appellant to a term of imprisonment outside of the standard range for his offense when it doubled the standard range pursuant to RCW 69.50.408 (Assignment of Error A)?
- (2.) Did the trial court sentence the Appellant to an implied exceptional sentence (Assignment of Error A)?
- (3.) Did the trial court burden the Appellant with the legal errors of his own attorney, the State's attorney, and the trial court itself (Assignment of Error A)?

- (4.) Did the trial court unjustly hold the Appellant to an “agreement” that was the basis for the trial court to illegally exceed its statutory authority (Assignment of Error A)?

III. STATEMENT OF THE CASE.

On or about February 9, 2000, Pierce County Deputy Prosecuting Attorney Allen P. Rose wrote to Appellant’s then trial attorney the State’s proposed resolution of Appellant’s case under Pierce County Superior Court Cause number 99-1-05307-1. CP 24-25. The State related, *inter alia*, that:

As you are aware, RCW 69.50.408 sets forth the statutory maximum for a crime involving manufacture or possession with intent to deliver. This statutory maximum is ten (10) years. *As you are also aware, RCW 69.50.408 allows for **the doubling of any standard range** for a subsequent conviction for manufacturing or possession with intent to deliver.*
[...]

Your client would have to agree to 240¹ months on the manufacturing on the 99-1-05307-1 matter. The other counts on this matter involve lesser amounts of time. Of course there would be the standard legal financial obligations, restitution, 12 months of community of placement and all the usual

¹ According to the Respondent State, the judgment and sentence should have reflected at standard range of 149 – 198 months, based on Appellant’s then calculated offender score. If these numbered ranges are “doubled,” the resulting range exceeds the 240 months of the jurisdictional maximum that could be imposed. This is the basis for the number “240 months.” *See*, CP 60.

conditions. This would run consecutive to the 02235-3 and 00817-2 matters.

CP 24-25 (emphasis added).

On March 17, 2000, Appellant entered a plea of guilty to charges of Failure to Remain at Injury Accident, Possession of Stolen Property in the First Degree (two (2) counts), Unlawful Possession of a Firearm in the First Degree, and Unlawful Manufacturing of a Controlled Substance (Methamphetamine). CP 8-15. In paragraph 6(f), the prosecutor's recommendation for sentence was outlined:

The state will recommend 240 months incarceration, time to be served consecutive to the sentences arising from 99-1-00817-2 and 99-1-02235-3 cause numbers. The State will further agree to not amend charges to include Murder 2^o, nor will they seek sentences for firearm enhancements². Ct [sic] I 60 mo [sic], Ct II & Ct III 57 mo [sic] Ct IV 116 mo [sic] Ct V 240 mo [sic] concurrent with each other consecutive to 99-1-00817-2 & 99-1-02235-3 [sic] 12 mo [sic] community placement on Ct V [sic] license suspension as required by law on Ct I, \$3000 fine on Ct V [sic] \$110, \$500 CVPA [sic] restitution on all counts.

CP 4.

On or about May 5, 2000, Appellant was sentenced before Department 15 of the Pierce County Superior Court. At the sentencing hearing, the trial court asked:

² The handwriting style changes at this point on the Statement of Defendant on Plea of Guilty. See, CP 4.

THE COURT: I wanted to know if you [Appellant] were ready to proceed to sentencing, if *we had any disagreements with regard to the standard range or anything else.*

MR. PURTZER³: Your Honor, *we do not have any disagreements. We are ready. It is an agreed recommendation in this particular matter, and so we are ready to proceed.*

See, Exhibit 2 at page 4 (emphasis added). The State recited, *inter alia*, that the standard range sentence for Count V would be 240 months. Id. at page 5. The trial court asked:

THE COURT: And Mr. Rose, it's my understanding that *that's the highest standard range sentence available for each count.*

Mr. ROSE: That's correct, Your Honor, because *the law says it's double the standard range for Count V, which is 240 months.* All the other ones essentially really make no difference, so...

Id. at 5-6 (emphasis added). During sentencing, the trial court stated:

THE COURT: [Appellant]'s life was just totally out of control when this happened, completely, in

³ Mr. Lance Hester is listed as the attorney of record for the Appellant for the plea. Mr. Brett Purtzer appeared at Appellant's sentencing for Mr. Hester. See, Exhibit 2, page 3.

every way. *And because of that, there's really no sentence that's fair other than the high end of the [standard] range on each of the counts, as is being suggested. I'm going to impose the agreed-on sentence and the other financial conditions and otherwise that the State's requesting.*

Id. at 17 (emphasis added). In the Judgment and Sentence, the trial court did not impose an exceptional sentence (viz. paragraph 2.4 of the Judgment and Sentence is not checked or filled in). CP 10. Never once during plea negotiations, plea, and sentencing was the term “exceptional sentence” used by the State of Washington, the trial court, or the Appellant and his attorney.

On July 2, 2010, Appellant filed a motion for relief from the judgment and sentence. CP 16-42. On August 4, 2010, the State of Washington responded. CP 43-57. On August 5, 2010, the Appellant responded. CP 58-60. Both the Appellant and the State of Washington agreed that the motion was timely even though it was filed more than one (1) year beyond the entry of the judgment and sentence—Appellant claimed that the judgment and sentence was facially invalid because the standard range was illegally doubled (CP 18-19), and the State claimed

that the judgment and sentence was facially invalid because the standard range should have read 149 – 198 months rather than 240 months (CP 45).

After consideration of the motion, briefs, exhibits and other pleadings, the trial court denied Appellant's request for relief. RP 18-19. CP 2. This appeal was timely filed.

IV. SUMMARY OF ARGUMENT.

The Court must reverse the trial/sentencing court, and remand with instructions to vacate the judgment and sentence entered on May 17, 2000, and re-sentence the Appellant to a standard range sentence. The trial court erroneously doubled the standard range, pursuant to RCW 69.50.408. It was error to not grant relief.

V. ARGUMENT.

Review of a sentencing court's statutory authority is a de novo review of a question of law. State v. Elmore, No. 34861-6-II (2010), *citing* State v. Murray, 118 Wn.App. 518, 521, 77 P.2d 1188 (Div. I, 2003).

////

////

////

A. THE TRIAL COURT ERRED BY DENYING APPELLANT RELIEF FROM AN ILLEGAL AND UNJUST SENTENCE.

1. Doubling The Standard Range Is Illegal.

The sentencing court's application of RCW 69.50.408 to "double the standard range" of the Defendant's sentence for unlawful manufacture of a controlled substance (methamphetamine) is illegal and is erroneous. The doubling provision of RCW 69.50.408 allows the doubling of the jurisdictional maximum punishment that could be imposed, but does not affect the standard range that must be imposed upon the Defendant under the Sentencing Reform Act of 1981 (as amended). See, In Re Cruz, 157 Wn.2d 83, 87-90, 134 P.3d 1166 (2006); State v. Clark, 123 Wn.App. 515, 520-521, 94 P.3d 335 (Div. II, 2004). The imposition of a 240 month sentence on Count V is the imposition of an exceptional sentence under the Sentencing Reform Act (RCW 9.94A.010 et seq.) without substantial and compelling reasons. This division of the Court of Appeals could not have been clearer on this issue than it was in State v. Clark:

We conclude that RCW 69.50.408 doubles the maximum penalty, but not the standard range.

Clark, 123 Wn.2d at 521. *Accord, In Re Cruz, infra.*

////

2. Appellant's Selected Remedy Is To Be Sentenced Within The Correct Standard Range For His Offenses And Offender Score.

The Appellant has the choice as to which remedy he elects to correct the trial court's illegal sentence—withdrawal of the guilty plea, or specific performance. State v. Turley, 149 Wn.2d 395, 401, 69 P.3d 338 (2003). Once the Defendant chooses his remedy, the State of Washington bears the burden of “demonstrating that the defendant's choice of remedy is unjust.” Id., *citing* State v. Miller, 110 Wn.2d 528, 536, 756 P.2d 122 (1988).

Appellant sought from the trial court specific performance of the plea agreement he entered into with the State of Washington—to be sentenced within the standard sentence range for his offenses and offender score⁴.

Not once does the words “exceptional sentence” appear in any correspondence, plea form, stipulation, judgment, or transcript that is part of this record. Rather, the term “standard range⁵” is repeatedly used and was understood, although erroneously calculated. See, CP 4, 10, 24-25,

⁴ On or about 05/28/2010, the Court entered an order dismissing Pierce County Superior Court Cause Number 99-1-00817-2. As such, Defendant's points that he was originally sentenced to under the instant cause number have changed, and therefore require further review for sentencing purposes. See, RP 13, In. 6-7, and CP 19, footnote 1.

⁵ The term “standard sentence range” is defined as “the sentencing court's discretionary range in imposing a nonappealable sentence.” See, RCW 9.94A.030(45). This is in opposition to the understood term “exceptional sentence” which is understood to be any sentence outside of the standard range. See generally, RCW 9.94A.530. See also, RCW 9.94A.537.

and Exhibit 2, pages 4, 5-6. Appellant bargained for a standard range sentence, and Appellant wants a standard range sentence.

The standard range that Appellant faced on Count V of the guilty plea was a term of incarceration of 149 months to 198 months⁶. CP 45. It was clear error to apply RCW 69.50.408 to the standard range of 149 months to 198 months to double that range, and it was clear error to impose a 240 month maximum allowable sentence against Appellant. Appellant is entitled to specific performance of his plea, which was to be sentenced to a standard range sentence.

3. The State Of Washington Failed To Demonstrate That The Appellant's Choice Of Remedy Is Unjust.

Appellant seeks a standard range sentence. The State of Washington argued, and the Court accepted, that the Appellant's choice of remedy was unjust because he bargained for and received an illegal sentence. RP 14-19. Further, Appellant's choice of remedy was unjust because all evidence that supported his conviction had been destroyed. RP 13; Exhibit 1.

⁶ Count V is a class B felony, with a maximum sentence of ten (10) years. See, RCW 9A.20.021(1)(b). With seventeen (17) offender points on a seriousness level X offense, the standard range of 149 months to 198 months exceeds the maximum sentence of ten (10) years, resulting in a maximum allowable sentence, or presumptive sentence, of ten (10) years, or 120 months. See generally, State v. Toney, 149 Wn.App. 787, 795, 205 P.3d 944 (Div. II, 2009). HOWEVER, RCW 69.50.408 operates to double the maximum sentence of ten (10) years to twenty (20) years for the Appellant. Therefore, the calculated standard range of 149 months to 198 months imprisonment was correct, and within the maximum allowable sentence.

First, the Appellant *IS NOT* seeking a withdrawal of his guilty plea, even though it is one of his options for relief. See, §V A(2), page 8, supra. If the Appellant chose this remedy, and his guilty plea was withdrawn, it is likely that the State of Washington would not be able to pursue the charges due to a lack of evidence. See, Exhibit 1. See also, RP 13. This would likely result in Counts I through V being dismissed for lack of evidence. Appellant does not want this result⁷. Appellant merely desires a corrected sentence.

Second, the sentencing court's refusal to correctly sentence the Appellant means that the sentencing court has purposely exceeded its statutory authority. By holding that the Appellant bargained for (and received) a 240 month sentence (viz. an exceptional sentence by implication), the sentencing court states that the Appellant gave it permission to exceed its statutory authority. This is not permitted. The Washington State Supreme Court in In Re Pers. Restraint of West, 154 Wn.2d 204 110 P.3d 1122 (2005), addressed this situation:

⁷ Theoretically, if Appellant were to withdraw his guilty plea, he would be considered in "breach" of the plea deal. The "plea deal" noted that if the Appellant did not accept the State's offer, the State would amend the information to add a charge of felony murder and "gun enhancements" on the manufacturing charge. CP 25. Paragraph (f) of the guilty plea form states, *inter alia*, "[t]he State will further agree to not amend charges to include Murder 2°, nor will they seek sentences for firearm enhancements." CP 4. Withdrawal of Appellant's guilty plea would result in charges against him for murder and exposure to incarceration for a considerably longer period of time than 240 months. Appellant took responsibility for his actions on Counts I through V, and plead guilty. Appellant only seeks a legal sentence.

This court has repeatedly held that “an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law.” In Re Pers. Restraint of Hinton, 152 Wn.2d 853, 861, 100 P.3d 801 (2004). See also Goodwin, 146 Wash.2d at 870, 50 P.3d 618 (“a plea bargaining agreement cannot exceed the statutory authority given to the courts.”) (quoting In Re Pers. Restraint of Gardner, 92 Wn.2d 504, 507, 617 P.2d 1001 (1980)); Thompson, 141 Wash.2d at 723, 10 P.3d 380 (“[T]he actual sentence imposed pursuant to a plea bargain must be statutorily authorized....”) Moore, 116 Wash.2d 30, 38, 803 P.2d 300 (1991)). A defendant simply “cannot empower a sentencing court to exceed its statutory authorization.” State v. Eilts, 94 Wash.2d 489, 495-96, 617 P.2d 993 (1980). The fact that a defendant agreed to a particular sentence does not cure a facial defect in the judgment and sentence where the sentencing court acted outside its authority.

In Re Pers. Restraint of West, 154 Wn.2d 204, 213-214, 110 P.3d 1122 (2005). Thus, it is an absurdity to claim and hold that relieving the Appellant from an illegal sentence is somehow “unjust.”

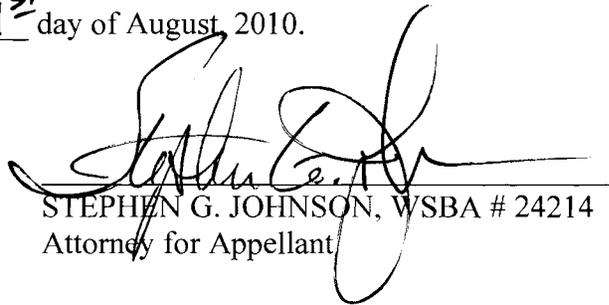
Third, “the [Appellant] should not be burdened with assuming the risk of legal mistake.” State vs. Codiga, 162 Wn.2d 912, 929, 175 P.3d 1082 (2008). The State’s attorney, the Appellant’s trial attorney, and the Court **ALL** made a fundamental legal mistake in believing that RCW 69.50.408 doubled the standard sentencing range under the SRA. It is axiomatically unjust to hold the Appellant responsible for the legal mistakes of others.

The State of Washington has failed to establish that Appellant's request to be re-sentenced is unjust. Appellant is entitled to relief. The Court must reverse the sentencing court's denial of relief.

VI. CONCLUSION.

For the foregoing reasons, the Appellant James John Chambers, Jr., respectfully requests that the Court reverse the trial court's order, and remand with instructions to vacate the judgment and sentence and re-sentence him to a standard range sentence with an offender score calculated as of the day of re-sentencing.

DATED THIS 31st day of August, 2010.



STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant

DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused the under named person(s) with a true, correct and complete copy of this document:

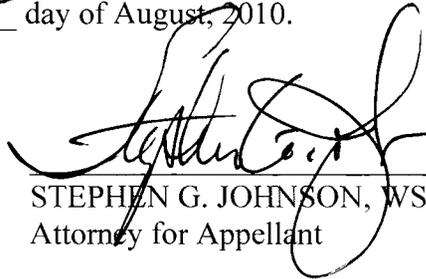
Ms. Kathleen Proctor, DPA
Pierce County Prosecutor's Office
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

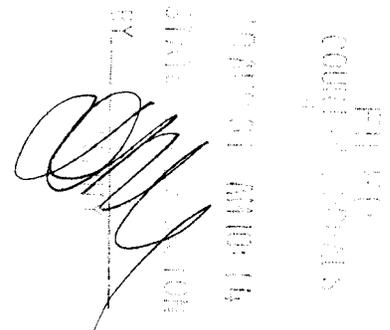
via Personal Service

Mr. James John Chambers, Jr.
Inmate No. 743702
McNeil Island Correction Center
P.O. Box 881000, Unit D-205-1
Steilacoom, WA 98388-1000

via First Class Mail

DATED THIS 31st day of August, 2010.


STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant


BY: [Signature]
STATE OF WASHINGTON
JUL 31 2010
COUNTY OF PIERCE