

FILED
COURT OF APPEALS
DIVISION II

2017 SEP 21 AM 11:10

STATE OF WASHINGTON

BY CLD
DEPUTY

COURT OF APPEALS OF WASHINGTON

DIVISION TWO

In re Personal Restraint of:

CHARLES PASCHAL,

Petitioner.

) NO. 50136-8-11
)
) MOTION TO AMEND PERSONAL
) RESTRAINT PETITION
)
)

I. IDENTITY OF MOVING PARTY

Based upon the records and files herein, Mr. Paschal respectfully asks this court for relief designated in Part II.

II. REQUESTED RELIEF SOUGHT

Mr. Paschal timely moves to amend his personal restraint petition, making an additional argument after his initial brief was filed. The new issue presented for review is whether there was sufficient evidence for the jury to find the aggravating factors that the alleged assault, unlawful imprisonment occurred within the "sight or sound" of his minor children.

III. STATEMENT OF THE CASE

Kim Martin claimed that the Petitioner assaulted her over several hours on March 16, 2013. CP 3-4. Her allegations led to charges of assault I, unlawful imprisonment, two counts of assault 2, and rape 1. CP-3-5. A jury convicted Petitioner, and endorsed two aggravating factors: that the offense was domestic violence, and that it occurred within the "sight or sound" of minor children. CP 11; Judgment and Sentence, dated 8/18/14, Supp. CP.

Specifically, Charlise Paschal, Petitioner's minor daughter, testified that she remembered being at a sleep-over at her dad's house and stepmom's -- or dad's girlfriend's house in March of 2013. RP 749. Even though it was nearly a year ago, Charlise remembered all who were present: "me, my dad, my brother, my sister, and my dad's girlfriend." RP 750.

Charlise further testified that her dad picked her up from her mom's house and took her over to Ms. Martins' house to have a sleep-over with her siblings. id. All of the children ate, and watched movies in Petitioner, and Martins' room. Sister Chanelle fell asleep after watching two or three movies. RP 751. Charlise remained awake during the evening. id.

Charlise stated that she heard "thumping and screaming" from outside the bedroom door. Prior to that Charlise -

heard nothing. When Charlise stepped outside of the door, she testified that she merely saw her stepmom on the floor. Petitioner directed Charlise to go back in the room as Charlise wanted to retrieve and hold her baby brother. RP-752. Moments later, Petitioner directed that Charlise and Chanelle leave the residence with him. This attempt to leave was temporarily thwarted by Ms. Martin's insistence that the girls stay by grabbing and tearing Petitioner's shirt. RP 752. Thereafter, Petitioner managed to get away from Ms. Martin, and drove his daughter's to their mothers' residence. RP 753. Apart from these noises, Charlise testified she did not hear anything else that night.

Next, Chanelle testified that she was attending kindergarten. RP 305. A specific time that "mommy and daddy getting in a fight" did not pertain to the day in question, (Petitioner had accidentally burned the floor and Ms. Martin "was very mad and then they got into an argument.") RP 307. Apart from this, Chanelle could not recall the specific night in question. id.

The jury was asked to return two special verdicts as to the alleged aggravating factors: that the offense was domestic violence, and that the alleged crimes occurred within sight or sound of a minor child. CP 11. The jury found that these allegations had been proved. id.

The trial court imposed an exceptional sentence of 360-months of imprisonment. specifically, ruling that the -
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aggravating factors standing alone, was sufficient to warrant the sentence imposed. The court found that the assaults merged with one another and vacated both assault 2 convictions. CP 11.

Mr. Paschal direct appealed the judgment. CP 3. The Court of Appeals reversed the sex offense, holding that the trial court committed prejudicial error when it allowed the jury to hear inadmissible evidence. CP 3-30. The matter was remanded. CP 30.

On remand, the trial court vacated the sex offense conviction. CP 31. Unsurprisingly, the State declined to retry Mr. Paschal on the sex offense but argued for the same sentence, despite its dismissal. RP 4-11.

The trial court gave the same sentence, 360 months, stating that "[m]y feelings the day that I sentenced you originally are the same today, that the 360-month sentence is appropriate." RP 16-17. Mr. Paschal timely appealed.

Mr. Paschal filed his personal restraint petition, alleging that the State failed to prove assault 1 beyond a reasonable doubt. A response is pending.

IV. ARGUMENT

PETITIONER'S CONVICTION WAS A DIRECT RESULT OF INSUFFICIENT EVIDENCE TO SUPPORT AGGRAVATING CIRCUMSTANCES, THEREBY DEPRIVING PETITIONER OF RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

"A claim of insufficiency admits the truth of -

the States evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are deemed equally reliable. An appellate court defers to the jury on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Thomas, 150 WASH.2d 821, 874-75, 83 P.3d 970 (2004), (citing, State v. Cord, 103 Wash.2d 361, 367, 693 P.2d 81 (1985)).

In 2004, the Supreme Court held that all factual findings necessary to impose a sentence beyond the statutory range must be submitted to the jury and proved beyond a reasonable doubt. Blakely v. Washington, 542-U.S. 286, 301-04, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). When jurors find aggravating circumstances, the trial court is bound by those findings, and thereafter, must decide "[w]hether the facts alleged and found were sufficiently substantial and compelling to warrant an exceptional - sentence." State v. Suleiman, 158 Wash.2d 280, 290-91, 143 P.3d 795 (2006); State v. Williams-Walker, 167 Wash.2d 889, 899, 225 P.3d 913 (2010). See also RCW 9.94A.537(6).

In reviewing a jury's special verdict finding the - existence of aggravating circumstances under this "sufficiency of evidence" standard, State v. Stubbs, 170-Wash.2d 117, 123, 240 P.3d 143 (2010), the evidence is viewed in the light most favorable to the State when determining-

whether any rational trier of fact could have found the presence of the aggravating circumstances beyond a reasonable doubt. State v. Varga, 151 Wash.2d 179, 201, 86 P.3d 139 (2004).

In its essentials, the legislature created a sentence enhancement for persons committing acts of domestic violence "within sight or sound" of a minor. RCW 9.94A.-535(3)(h)(ii). (emphasis added); RCW 10.99.020 (domestic-violence).

Here, in supplementing his PRP, Mr. Paschal argues that the evidence and testimony fail to support a finding that his daughters saw or heard any of the alleged crimes alleged by the State.

Specifically, Charlise merely saw her stepmom on the floor when she stepped out of the room where the children were watching movies. Chanelle's testimony appear to be in a rambling discourse, and not tied to particular evidence. RP 752; RP 307. Therefore, sufficient evidence does not support the jury finding that Mr. Paschal committed the alleged offenses within the sight or sound of a minor child. In this regard, no rational trier of fact could have found the aggravating circumstances beyond a reasonable doubt. Varga, 151 Wash.2d, at 201.

V. CONCLUSION

Since it is not clear whether the sentencing court would have imposed the same sentence based on valid factors-

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alone, Mr. Paschal respectfully request that this Court
vacate his convictions, and remand the trial court to
sentence him within the standard range.

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STATE OF WASHINGTON

BY CD
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DATED This 19th. day of September,
2017.

Respectfully submitted,

Charles Paschal
/s/ Charles Paschal
PETITIONER

CERTIFICATE OF SERVICE

)
) ss.

I, Charles Paschal, certify under penalty of perjury, that on September 19, 2017, I filed through prison authorities the above MOTION TO AMEND PERSONAL RESTRAINT PETITION to the following parties:

COURT OF APPEALS, DIV. II

Signed at Grays Harbor, Washington on September 19, 2017.

Charles Paschal
CHARLES PASCHAL
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191 Constantine Way
Aerdeen, WA., 98520