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Court of Appeals
Division II
State of Washington
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NO. 50212-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

CARSIE JAMES TIKKA, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01142-0

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

I. The trial court properly sentenced Tikka to life in prison as a persistent offender.

A. STATEMENT OF THE CASE

After a jury found Carsie Tikka (hereafter 'Tikka') guilty of two counts of Rape of a Child in the First Degree, Attempted Rape of a Child in the First Degree, and two counts of Child Molestation in the First Degree, the trial court entered judgment for two counts of Rape of a Child in the First Degree and two counts of Child Molestation in the First Degree, vacating the Attempted Rape of a Child in the First Degree conviction to avoid double jeopardy. CP 87-97; RP 1002. At the sentencing hearing both the State and Tikka agreed the only possible sentence the court could give was life without the possibility of parole as Tikka was a persistent offender. RP 1004-07. Tikka had a prior conviction for Attempted Child Molestation in the First Degree from 1999. CP 67-75. At the time of sentencing in that prior matter, November 9, 1999, Tikka was notified that this conviction was a "most serious offense" and upon a third conviction of a "most serious offense" he would be sentenced to life imprisonment; Tikka was also informed that that conviction was one listed in RCW

9.94A.030(27)(b), which upon a second conviction for a crime on that list would require a life without parole sentence. CP 74. The trial court agreed with the State and Tikka and found Tikka was a persistent offender and thereby sentenced him to life without the possibility of parole. CP 87-97; RP 1014-15.

This appeal timely follows.

ARGUMENT

For the first time on appeal, Tikka argues that the trial court erred in sentencing him to life without the possibility of parole as a persistent offender because his first “strike” offense was committed over a date range during which he was under the age of eighteen and it therefore does not qualify as a “strike” offense and he should not have been found to have committed his second “strike” which required a life sentence. Tikka’s argument fails as the prior conviction was committed over a date range which included time when Tikka was an adult over the age of eighteen and it was properly considered a “strike” offense, Tikka was notified it was a “strike” offense, and Tikka still chose to engage in behavior which again caused him to be convicted of another “strike” offense. Tikka was properly sentenced by the trial court and his claim should be denied.

The trial court found Tikka was a persistent offender. A
“persistent offender” is an offender who

...

(b)(i) has been convicted of: (A)rape of a child in the first degree, child molestation in the first degree...; or (C) an attempt to commit any crime listed in this subsection (38)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection....

RCW 9.94A.030(38)(b)(i), (ii). An “offender” is defined as “a person who has committed a felony established by state law and is eighteen years of age or older....” RCW 9.94A.030(35). Tikka’s argument rests on his allegation that the State did not prove that he was an “offender” when he committed his first strike offense, Attempted Child Molestation in the First Degree. Tikka argues he was possibly under the age of eighteen when he actually committed the crime that constituted his prior conviction, attempted child molestation in the first degree, because the information charged a date range that included time before Tikka was eighteen years old and after Tikka was eighteen years old. However, Tikka entered a guilty plea, one in which he agreed the offense qualified as a “most serious offense” and

one in which he admitted to committing the crime of attempted child molestation in the first degree over a date range which included time after Tikka was an adult. Therefore, Tikka admitted he was an adult and committed a “most serious offense,” agreed the crime qualified as a “most serious offense,” and was notified at sentencing that it was a “most serious offense.”

Tikka plead guilty and therefore admitted to the relevant conduct during a time period within which he was over the age of 18. Tikka’s situation is analogous to that addressed in *In re Crabtree*, 141 Wash.2d 577, 9 P.3d 814 (2000). In *Crabtree*, the Supreme Court considered whether a defendant was subject to the community placement statute that went into effect mid-way through the date range of the crime to which the defendant entered a guilty plea. There, the defendant entered a guilty plea to Rape of a Child in the First Degree, Child Molestation in the First Degree, and Statutory Rape in the First Degree, that occurred between June 1, 1988 and August 31, 1988. *Crabtree*, 141 Wash.2d at 580. The Supreme Court in *Crabtree* found that the Crabtree’s situation was different from that because Crabtree entered a guilty plea he therefore admitted he committed the offenses between June 1, 1988 and August 31, 1988, and the statute that went into effect mid-way through would apply to him. The court stated,

...in Crabtree's guilty plea statement he admitted he committed rape of a child and child molestation between June 1, 1988 and August 31, 1988. This constituted an admission of criminal acts between July 1 and August 31. Crabtree was convicted and sentenced for crimes he admitted occurred after the effective date of the statute.

Id. at 585. Thus the Supreme Court held a defendant who has entered a guilty plea that covers a date range, admits to the relevant criminal conduct during the entirety of the date range. *Id.*

Here, Tikka entered a guilty plea in 1999 to attempted child molestation in the first degree. CP 52-57. Tikka admitted his guilty in this guilty plea. CP 56. Tikka stated,

Did take a substantial step towards the commission of Child Molestation in the First Degree, to wit: That I did in Clark County, State of Washington, between or about the 20th day of June 1992 through the 27th day of August, 1998, did attempt to have sexual contact with another, to wit: S.R.K. (male, dob 6-20-86) and D.E.H. (male, dob 12-31-91), who were less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

CP 56. As in *Crabtree, supra*, Tikka admitted this act occurred over a time period. By doing so, he therefore admitted this occurred between January 11, 1997 and August 27, 1998, after he had turned eighteen years old. The *Crabtree* Court found that Crabtree was not prejudiced by the charging document in his case "because he was *not* convicted of an offense that *may have* occurred during the month before the statute came into effect."

Crabtree, 141 Wn.2d at 585 (emphasis original). Accordingly, Crabtree admitted he committed these crimes during a charging period which included time after the statute went into effect. *Id.* The same is true for Tikka. He admitted that he committed the crime of attempted child molestation in the first degree during a charging period which included time after he turned eighteen years of age. Thus he admitted to the commission of a crime which was considered a “most serious offense.” Even more, Tikka agreed in his guilty plea statement that he was pleading to a “most serious offense” and that upon a second conviction of such an offense he would be sentenced to life in prison without the possibility of parole. CP 55 (paragraph Q).

By pleading guilty, Tikka admitted during a period when he was eighteen years or older, that he committed an offense which shall is considered a “most serious offense.” When a defendant pleads guilty to an information, he pleads guilty to the information as charged. *State v. Bowerman*, 115 Wn.2d 794, 799, 802 P.2d 116 (1990). His prior guilty plea alone shows Tikka had a prior conviction for a “most serious offense,” one which was subject to the provisions of RCW 9.94A.030(38)(b)(i) and (ii). CP 52-57. The prior judgment and sentence also clearly denotes the crime as a “most serious offense” and one in which a second such conviction would result in Tikka’s life sentence. The

trial court below in this case, considered these documents, Tikka's agreement that he was a persistent offender, and properly found Tikka to be a persistent offender. The trial court did not err in sentencing Tikka.

Because he admitted to sufficient facts in his guilty plea statement for the act to constitute a first "strike" of two, the trial court below did not err in sentencing Tikka as a persistent offender. The trial court's sentence of life without the possibility of parole should be affirmed.

CONCLUSION

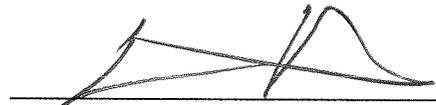
The trial court properly sentenced Tikka as a persistent offender. Tikka's sentence should be affirmed.

DATED this 19 day of March, 2018.

Respectfully submitted:

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