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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

In The Supreme Court
of
The State of Washington
No. 50335-2-II

Personal Restraint Petition of
Julien Broussard

Supplemental Brief:

Assiment of Error

(A.) The trial court erred in imposing an exceptional Sentence under RCW. 9.94A.535 (2)(C) Where Mr. Broussard had only one crime that would go unpunished, not some current offenses that would go unpunished as required by Statute.

(B.) The trial court erred when going over the Sentencing range imposed, Other than the fact of a prior conviction, any fact that in creasses the penalty for a crime beyond the prescribed Statutory maximum <u>must be Submitted to a Jury</u> and proved beyond a reasonal doubt."

* Issue Related to the Assignment of * (error)

When a person's high offender score results in Some of the current offenses going unpunished the trial court has discretion to impose an exceptional Sentence under the "free crimes" aggravator. RCW 9.994A.535 (2)(C). The plain language of the Statute does not allow for an exceptional Sentence on this basis where only one crime would go unpunished did the trial court err in applying this basis for an exceptional Sentence. And dose the court have to Submitt a finding to the Jury befor prescribing and Sentence over Statutory Max?

* Statement of facts *

Julien Broussard entered a guilty plea to one count of promoting prostitution in the first Degree (Count II) and one count of Assault in the Second Degree (count III) [1] CP 48-57. Mr Broussard entered a stipulation to his prior record and offender score. CP 58-59

On count II, the trial court found that Mr. Broussard's offender score was 9+ (actual score 12), the standard range was 108-144 months, and the statutory maximum was 120 months, which reduced the standard range sentence to 108-120 months. CP 95 (finding of fact II). On Count III, the trial court found that the offender score was 9+ (actual score 12), and the standard range was 63-84 months, and the statutory maximum was 120 months. CP 95 (finding of fact II). ~~That~~ The trial court sentenced Mr. Broussard to 120 months on count II and 63 months on count III, to run consecutively to each other, for a total of 183 months. CP 95 (finding of fact IV) (emphasis in original).

Mr. Broussard appeals the imposition of this exceptional sentence. CP 97.

* Argument *

Mr. Broussard's exceptional sentence was not authorized under the plain language of the Statute or submitted to a Jury.

Under the Sentencing reform Act, when a person is sentenced on two or more offenses at the same time, the sentences on each count must be served concurrently. RCW 9.94A.589 (1)(a).

Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. RCW 9.94A.589 (1)(a). The trial court decided to impose an exceptional sentence under RCW 9.94A.535 (2)(c), known as the "FREE CRIMES" aggravating factor. RP Vol. III 50-52; CP 95 (finding of fact III).

Generally, a court must impose a sentence within the standard sentence rang. State V. Fowler, 145 WA. 2d 400, 404, 38 P. 3d 335 (2002). However, a person may be sentence outside the standard range if there are "substantial and compelling justifying an exceptional sentence." RCW 9.94A.535

Pursuant to the united State Supreme court 9A.88.070 befor a court is permitted to impose Sentences above the standard range, other than the fact of a prior conviction, any fact that incresses the penalty for a crime beyond the prescribed statutory maximum must be submitted to a Jury and proved beyond a reasonbre "doubt".

Blakely V. Washington, 542 V.S. 296, 124 S. Ct. 2531, 159 L, Ed. 2d 403 (2004).

Court found no abuse of discretion in the trial court's imposition of an exceptional Sentence for appellant's conviction of first degree theft with aggravating factors under RCW 9A.56.030(1)(a) and 9A.56.020(1)(b), given that (1) the Jury found all three aggravating factors, (2) the five-year Sentence was only half the maximum term under RCW 9A.20.021(1)(b), and (3) the sentence did not shock the conscience in light of the extreme amounts of money appellant took from her elderly victim over years. State V. Knutz, 161 Wn. App. 395, 253 P.3d 437 (2011) Because defendent was missinformed that statutory maximum Sentence for his first-degree thefts was five years, rather than the correct 10 years under RCW 9A.20.021 and 9A.56.030(2), he should have been allowed to withdraw his pleas pursuant to CrR 4.2. State V. Weyrich, 163 Wn.2d 554, 182 P.3d 965 (2008)

* Conclusion *

Based on the forgoing fact and authorities Mr. Broussard respectfully asks this Court to reverse the trial courts imposition of an exceptional Sentence where it was not authorized by Statute.