

FILED
Court of Appeals
Division II
State of Washington
3/27/2018 2:24 PM
No. 51097-9-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ERIC V. TRENT SR.,

Appellant.

Appeal from the Superior Court of Washington for Pacific County

Respondent's Brief

MARK MCCLAIN
Pacific County Prosecuting Attorney

By:



Mark McClain, WSBA No. 30909
Prosecuting Attorney

Pacific County Prosecutor's Office
PO Box 45
South Bend, WA 98586
(360) 875-9361

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

I. ISSUES 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 3

 A. THE INFORMATION WAS CONSTITUTIONALLY SUFFICIENT AS IT CONTAINED ALL OF THE ESSENTIAL ELEMENTS OF THE CHARGED OFFENSES 3

 1. Standard Of Review 4

 2. Liberally Construed, The Amended Information Contained All The Essential Elements Of The Crimes Charged 5

 B. THE EXCEPTIONAL SENTENCE RESTS ON PROPER GROUNDS 9

 1. Standard Of Review 10

 2. The Trial Court's Sentence was Proper 11

 C. THE TRIAL COURT PROPERLY IMPOSED LEGAL FINANCIAL OBLIGATIONS 16

 1. Standard Of Review 18

 2. The Financial Obligations Were Proper 18

IV. CONCLUSION 20

TABLE OF AUTHORITIES

Washington Cases

City of Bothell v. Kaiser, 152 Wn. App. 466, 217 P.3d 339 (2009).....4

State v. Alvarado, 164 Wn.2d 556, 192 P.3d 345 (2008).....15

State v. Baldwin, 63 Wn.App. 303, 818 P.2d 1116 (1991).....18

State v. Bertrand, 165 Wn.App. 393, 267 P.3d 511 (2011).....18

State v. Bonds, 98 Wn.2d 1, 653 P.2d 1024 (1982).....5

State ex rel. Carroll v. Junker, 79 Wn.2d 12, 482 P.2d 775 (1971).....18

State v. Clark, 191 Wn.App. 369, 362 P.3d 309 (2015).....17, 18

State v. Clarke, 156 Wn.2d 880, 134 P.3d 188 (2006).....16

State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992).....18

State v. Danis, 64 Wn. App. 814, 826 P.2d 1015, *review denied*, 119 Wn.2d 1015, 833 P.2d 1389 (1992).....19

State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1985).....5, 8

State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005).....10

State v. Killiona-Garramone, 166 Wn.App. 16, 267 P.3d 426 (2011).....7, 8

State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991).....4, 5, 7, 8

State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989).....5, 9

State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995).....19

State v. O'Hara, 167 Wn.2d 91, 217 P.3d 756 (2009).....19

State v. Phillips, 65 Wn. App. 239, 828 P.2d (1992).....18

State v. Phillips, 98 Wn. App. 936, 991 P.2d 1195 (2000).....7, 8

State v. Ralph, 85 Wn. App. 82, 930 P.2d 1235 (1997).....6

State v. Ritchie, 126 Wn.2d 388, 894 P.2d 1308 (1995).....14

<i>State v. Saltz</i> , 137 Wn. App. 376, 154 P.3d 282 (2007).....	15
<i>State v. Sao</i> , 156 Wn. App. 67, 230 P.2d 277 (2010), <i>review denied</i> , 170 Wn.2d 1017 (2011).....	14
<i>State v. Scott</i> , 110 Wn.2d 682, 757 P.2d 492 (1988).....	19
<i>State v. Tili</i> , 148 Wn.2d 350, 60 P.3d 1192 (2003).....	10
<i>State v. Vangerpen</i> , 125 Wn.2d 782, 888 P.2d 1177 (1995).....	6
<i>State v. Williams</i> , 162 Wn.2d 177, 170 P.3d 30 (2007).....	4
<i>State v. Winings</i> , 126 Wn. App. 75, 107 P.3d 141 (2005).....	8
<i>State v. Zillyette</i> , 178 Wn.2d 153, 307 P.3d 712 (2013).....	5

Washington Statutes

9A.52.020(1).....	2, 8
9.94A.030(55).....	12
9.94A.525.....	3, 10, 11
9.94A.525(2)(a).....	12
9.94A.532(2)(d).....	3, 11, 12
9.94A.525(5)(a).....	13
9.94A.525(9).....	12
9.94A.525(10).....	13
9.94A.535.....	11
9.94A.555.....	13
10.01.160.....	18

Constitutional Provisions

United States Constitution, Sixth Amendment5

Washington Constitution, Article I § 22.....5

Other Rules or Authorities

RAP 2.5(a).....17, 19

Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* (1984).....7

I. ISSUES

- A. The information was sufficient because it contained the essential elements of first degree burglary.
- B. The trial court properly imposed an exceptional sentence following a bench trial.
- C. The trial court properly imposed LFO's.

II. STATEMENT OF THE CASE

On October 21, 2016 Hope Stigall¹ and her husband, Joshua Stigall, were in their bed asleep. They awoke around 2:00 AM to the sound of someone trying to break into their locked bedroom at 216 Butte Creek Road, Raymond, Washington. RP² 15-16, 18-19, 40, 56. Eric V. Trent Sr. was attempting to force his way into their room and had kicked the door a dozen times before eventually forcing the door open. RP 19-20, 69-70, 102. Upon entering, Trent instantly jumped on top of Joshua and repeatedly punched him in the face with both fists. *Id.* Joshua sustained an eye injury and his face was bloody and his eye swollen. RP 22. After the protracted assault, angry words were exchanged before Trent again attacked Joshua, taking him to the ground and again repeatedly punching Joshua in the face. CP

¹ Hope Stigall (Adams at the time) and her husband, Joshua Stigall, will be referred to by their first names in order to avoid confusion. No disrespect is intended.

² Verbatim Report of Proceedings of the bench trial (7/17/17)

22-23³. After the assault, Trent, and his girlfriend, Makayla Jimenez, fled to avoid the police. *Id.* Trent and Jimenez had consumed not less than five to six hits of methamphetamine prior to their arrival at the Stigall residence, and Trent had also consumed hard alcohol. *Id.*

Joshua and Hope had the exclusive use of the bedroom they were sleeping in and at no point was Trent permitted to be in the room. CP 24, 41, 66-67.

Trent was charged by second amended information with two counts of second degree assault and one count of first degree burglary. Trent did not seek a bill of particulars. The charging language Trent takes issues with informed him:

The defendant, Eric V. Trent Sr., in the State of Washington, on or about October 21, 2016, did enter or remain unlawfully, in a building located at 216 Butte Creek Rd, Pacific County, and in entering or while in the building or immediate flight therefrom, did intentionally assault any person therein, to wit: Joshua Stigall or Hope Stigall (a/k/a Hope Adams), in violation of RCW 9A.52.020(1).

CP 30.

Trent waived his right to a jury trial and at his bench trial Trent was convicted of second degree assault involving Joshua Stigall as well as first degree burglary. The trial court dismissed the second

³ Trial "Court's Decision"

degree assault conviction involving Joshua on double jeopardy grounds. CP 73.⁴

Trent stipulated to his felony criminal history and offender score of 20. CP 70. A standard range sentence was 87-116 months, but Trent was sentenced to an exceptional sentence above the standard range of 136 months based on RCW 9.94A.532(2)(d), 9.94A.525, a presumptive sentence that is clearly too lenient. CP 73, 81.

The trial court further imposed mandatory costs of a \$500 victim assessment, \$200 in court costs, and a \$100 DNA collection fee. CP 81. A non-mandatory public defense fee of \$250 was also assessed. *Id.* Restitution was reserved and no fines were assessed. *Id.*

Trent timely appealed.

III. ARGUMENT

A. THE INFORMATION WAS CONSTITUTIONALLY SUFFICIENT AS IT CONTAINED ALL OF THE ESSENTIAL ELEMENTS FOR FIRST DEGREE BURGLARY.

Trent argues the charging document was constitutionally defective because it failed to include all “essential elements” of the

⁴ Court’s Decision re Aggravating Factors and Double Jeopardy

offense, specifically omitting the element “with the intent to commit a crime against a person or property therein.”⁵ The information was not deficient as the information informed Trent that he was accused of “entering or remaining unlawfully” and “intentionally assaulted a person therein.” CP 30.

1. Standard Of Review.

This court reviews challenges regarding the sufficiency of a charging documents *de novo*. *State v. Williams*, 162 Wn.2d 177, 182, 170 P.3d 30 (2007). The standard for a deficient charging document on review is dependent upon when the sufficiency challenge is raised. *City of Bothell v. Kaiser*, 152 Wn. App. 466, 471, 217 P.3d 339 (2009). A charging document challenged for the first time on appeal, as is the case here, is “liberally construed in favor of validity.” *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86 (1991). In applying this liberal construction standard, reviewing courts read the words in the information as a whole and consider whether the necessary elements appear in any form. *Williams*, 162 Wn.2d at 185; *Kjorsvik*, 117 Wn.2d at 109. A defendant may not challenge an information for vagueness on appeal if he did not request a bill of particulars at trial.

⁵ Appellant’s Brief at 5, 8

State v. Leach, 113 Wn.2d 679, 687, 782 P.2d 552 (1989), citing *State v. Holt*, 104 Wn.2d 315, 320, 704 P.2d 1189 (1985), citing *State v. Bonds*, 98 Wn.2d 1, 653 P.2d 1024 (1982).

2. Liberally Construed, The Amended Information Contained All The Essential Elements Of The Crimes Charged.

Under the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution, a charging document must include all essential elements of a crime to inform a defendant of the charges against him and to allow preparation for the defense. *State v. Phillips*, 98 Wn. App. 936, 939, 991 P.2d 1195 (2000), citing *Kjorsvik*, 117 Wn.2d at 101–02. A charging document is constitutionally sufficient if the information states each statutory element of the crime, even if it is vague as to some other matter significant to the defense. *Holt*, 104 Wn.2d at 320. “An essential element is one whose specification is necessary to establish the very illegality of the behavior charged.” *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013). The primary reasons for the essential elements rule is it requires the State to give notice of the nature of the crime the defendant is accused of committing and it allows a defendant to adequately prepare his or her case. *Zillyette*, 178 Wn.2d at 158-59.

When a defendant challenges the sufficiency of a charging document, the standard of review depends on the timing of the challenge. *State v. Ralph*, 85 Wn. App. 82, 84, 930 P.2d 1235 (1997). If a defendant challenges the sufficiency of the information “at or before trial,” the court is to construe the information strictly. *Phillips*, 98 Wn. App. at 940, quoting *State v. Vangerpen*, 125 Wn.2d 782, 788, 888 P.2d 1177 (1995). Under this strict construction standard, if a defendant challenges the sufficiency of the information before the State rests and the information omits an essential element of the crime, the court must dismiss the case “without prejudice to the State’s ability to re-file the charges.” *Phillips*, 98 Wn. App. at 940, quoting *Ralph*, 85 Wn. App. at 86.

If, however, a defendant moves to dismiss an allegedly insufficient charging document after a point when the State can no longer amend the information, such as when the State has rested its case, the court is to construe the information liberally in favor of validity. *Phillips*, 98 Wn. App. at 942–43. As this Court has noted, these differing standards illustrate the balance between giving defendants sufficient notice to prepare a defense and “discouraging defendants’ ‘sandbagging,’ the potential practice of remaining silent in the face of a constitutionally defective charging document (in lieu

of a timely challenge or request for a bill of particulars, which could result in the State's amending the information to cure the defect such that the trial could proceed)." *State v. Killiona-Garramone*, 166 Wn. App. 16, 23 n.7, 267 P.3d 426 (2011), citing *Kjorsvik*, 117 Wn.2d at 103; *Phillips*, 98 Wn. App. at 940 (citing 2 Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 19.2, at 442 n. 36 (1984)).

In the present case, Trent did not challenge the sufficiency of the second amended information below. Trent did not requested a bill of particulars. The amended information contained three counts: first degree burglary, and two counts of second degree assault. CP 47. As such, this Court is to apply the liberal standard set forth in *Kjorsvik* and construe the information in favor of its validity. *Killiona-Garramone*, 166 Wn. App. at 24; *Phillips*, 98 Wn. App. at 942–43.

Under this liberal standard of review, the court must decide whether (1) the necessary facts appear in any form, or by fair construction are found, in the charging document; and if so, (2) whether the defendant can show that he or she was nonetheless actually prejudiced by the inartful or vague language that he alleges caused a lack of notice. *Phillips*, 98 Wn. App. at 940, citing *Kjorsvik*, 117 Wn.2d at 105–06. Prejudice is not presumed and a defendant must make an actual showing of prejudice when the defendant had

failed to object to the information below. *Kjorsvik*, 117 Wn.2d at 106-07; *Kiliona-Garramone*, 166 Wn. App. at 24; *Phillips*, 98 Wn. App. at 940.

Trent argues the charging document was constitutionally defective because it omitted the element “with the intent to commit a crime against a person or property therein.”⁶ However, a fair construction of the charging document informs Trent that he was accused of “entering or remaining unlawfully” and “intentionally assaulted a person therein.” CP 30. Thus, the information included unlawful entry or remaining and intentionally assaulting a person therein, specifically accusing Trent of intentionally assaulting Joshua Stigall or Hope Adams while unlawfully remaining in a building. CP 30. RCW 9A.52.020, statutorily, requires entering or remaining unlawfully in a building with the intent to commit a crime therein and, relevant here, assaulting a person. These statutory elements are fairly contained within the information.

Because the charging document is constitutionally sufficient, even if it is vague as to some other matter significant to the defense, the information is sufficient.⁷ *Holt*, 104 Wn.2d at 320. Washington

⁶ Appellant’s Brief at 5, 8. Trent makes no other complaints about the sufficiency of the charging document or the sufficiency of the evidence upon which the conviction rests.

⁷ The State is not admitting the charging document is vague, but for the sake of argument explains why vagueness is not a fatal flaw in this information.

courts distinguish between charging documents that are constitutionally deficient because of the State's failure to allege each essential element of the crime charged and charging documents that are factually vague as to some other significant matter. *State v. Winings*, 126 Wn. App. 75, 84, 107 P.3d 141 (2005). The State may correct a vague charging document with a bill of particulars. *State v. Leach*, 113 Wn.2d 679, 686–87, 782 P.2d 552 (1989). As stated above, Trent failed to request a bill of particulars, thus, he waived any vagueness challenge. *Leach*, 113 Wn.2d at 687.

Finally, even if this Court were to assume for the sake of the argument that there was some deficiency with the information, Trent's claim must still fail because he has not and cannot show prejudice. In fact, Trent does not argue he was prejudiced and that is because Trent cannot show any surprise or prejudice. Therefore, because he cannot and has not demonstrate prejudice, the verdict should stand.

B. TRENT'S EXCEPTIONAL SENTENCE RESTS ON PROPER GROUNDS.

Trent argues the exceptional sentence was unsupported by the record and, alternatively, was not found by the jury.⁸ Trent waived

⁸ Brief of Appellant at 12-13

his right to a jury determination and instead requested a bench trial. Thus, the issue of a jury determination is moot. Furthermore, this aggravator rests, in addition to the misdemeanor assault offenses, on Trent's stipulated criminal history. CP 73, 81, 93. The trial court found the failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 resulted in a presumptive sentence that was clearly too lenient. Omitted, and thus unpunished, are the underlying prior offenses and the enhancement points for each of Trent's prior class A and burglary convictions. The aggravator, as plead and proven, ensured Trent was appropriately punished for an offender score which far exceeded 9 points. To do otherwise would render the statutory maximum unattainable and render RCW 9.94A.525 meaningless.

1. Standard Of Review.

Whether a sentencing court was authorized to impose an exceptional sentence is a question of law reviewed *de novo*. *State v. Hughes*, 154 Wn.2d 118, 110 P.3d 192 (2005). A trial court's imposition of a sentence is reviewed for abuse of discretion. *State v. Tili*, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003).

2. The Trial Court As The Finder Of Fact Properly Exercised Discretion Imposing An Exceptional Sentence.

A court may impose a sentence outside the standard range if it finds “there are substantial and compelling reasons justifying an exceptional sentence.” RCW 9.94A.535. The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient provides for an exceptional sentence. RCW 9.94A.535(2)(d). Following Trent’s bench trial, the trial court found that Trent’s offender score at more than two times the highest score possible justified the exceptional sentence. CP 73, 81. Trent waived a jury determination of this issue. CP 36. Therefore, the question of whether a jury was to make this determination is moot despite Appellant’s assertion to the contrary.⁹ Appellant also claims Trent’s criminal history was not stipulated.¹⁰ This is inaccurate. Trent’s offender score and prior criminal history was stipulated. CP 70. Therefore, the lone question is whether the exceptional sentence was authorized.

Trent asserts RCW 9.94A.535(2)(d) may only be utilized in those instances where convictions have “washed out” after an

⁹ Brief of Appellant at 20, 24.

¹⁰ *Id.*

offender has gone crime-free for a specific period of time.¹¹ Specifically, Trent asserts “the dispositive questions, then, is whether any of Trent’s prior convictions washed out of his criminal history... if not, then the court’s reason for imposing an exception sentence is necessarily erroneous.”¹² Were Appellant’s contention to be accurate, RCW 9.94A.535(2)(d) would not contain the words “omitted,” but instead reference only the “wash-out” provision of RCW 9.94A.525(2)(b) and (c). Appellant’s reading fails to account for other history omitted from an offender score, such as the required enhancement points for serious violent and burglary prior offenses for this particular offense, which were omitted and therefore unpunished, in Trent’s offender score.

Trent was convicted of first degree burglary, a violent offense. RCW 9.94A.030(55). Trent stipulated to his criminal history. CP 70. In arriving at Trent’s offender score of 21 points,¹³ each of Trent’s three prior class A violent felony offenses were counted as three points as required by RCW 9.94A.525(2)(a) and RCW 9.94A.525(9). This resulted in three offender score points for each prior violent felony conviction, reaching an offender score of 9 without

¹¹ Brief of Appellant at 14-15, 17

¹² Brief of Appellant at 15.

¹³ Had the second degree assault conviction counted, Trent’s offender score would have been 23.

considering other prior felony convictions. Next, each of Trent's three prior juvenile second degree burglary offenses were counted as one full point pursuant to RCW 9.94A.525(10) rather than half points. Because of Trent's high offender score these points were omitted and thus unpunished. Each additional adult felony was counted as one point. The result is an offender score of 21. None of Trent's prior offenses encompassed the same course of conduct. Therefore, pursuant to RCW 9.94A.525(5)(a), Trent's multiple prior convictions were counted separately. As agreed by Appellant, none of Trent's criminal history "washed-out." Therefore, omitted from Trent's score were the additional enhancement points omitted from Trent's offender calculation. In light of the Legislature's express intention of prioritizing community protection from persistent offenders and punishment for criminal offenses being proportionate to both the seriousness of the crime and the prior criminal history, it is clear the legislature intended to punish an offender with this level of history more significantly than an offender with 9 points. See RCW 9.94A.555.

In imposing the exceptional sentence, the trial court opined it "simply could not ignore that there are unscored felonies here and that the nine plus years... is not sufficient under these

circumstances.” RP (8/18/17) 250. The trial court recognized that Trent had spent most of his life committing crimes in this small community, living a life accepting a certain degree of violence and waking up every day not figuring out how to be a productive person, but, rather, how to be productive to get drugs. CP 244, 248-49. This, the current offense, and the omission of a number of unpunished felony points demonstrated to the trial court that a standard range sentence was clearly too lenient.

Whether a sentence is “clearly too lenient” is a discretionary judgment that can be made by the sentencing judge, not a factual issue that must be decided by the jury. When a valid aggravating factor exists, the court is entitled to impose any sentence up to the maximum allowed for the particular crime category. The only limitation on this authority is review for abuse of discretion. *State v. Ritchie*, 126 Wn.2d 388, 392-93, 894 P.2d 1308 (1995); see *State v. Sao*, 156 Wn. App. 67, 80, 230 P.2d 277 (2010), *review denied*, 170 Wn.2d 1017 (2011). Consequently, the existence of the “unpunished offense” factor in the present case allowed the trial court to impose a sentence between 87 months to life. Based on the single aggravating factor, the court had full discretion to select any sentence within this broad range. When the existence of a fact does not alter the

maximum available sentence, no jury finding is required as to that fact. *State v. Alvarado*, 164 Wn.2d 556, 567, 23, 192 P.3d 345 (2008). The trial court's reasoning was sound and the sentence should not be disturbed on appeal.

As Appellant points out, Division Three of this court has held that the "unscored misdemeanor history" aggravating factor requires jury findings. *State v. Saltz*, 137 Wn. App. 376, 154 P.3d 282 (2007).

This court reasoned as follows:

The *fact of the existence* of misdemeanor history is an objective determination. However, the existence of misdemeanor criminal history is subjective in the "too lenient" context because, like in multiple offense policy cases, an additional determination must be made: that a standard range sentence would clearly be too lenient, because of the serious harm or culpability given the number or nature of unscored misdemeanors, which would not be accounted for in accounting the sentencing range.

Id. at 582 at 14 (court's emphasis).

This reasoning reflects two analytical errors. First, the requirement for jury findings does not turn on whether the issue is "objective" or "subjective." Rather, it turns on whether the issue involves a factual determination (which must be made by juries) or the exercise of sentencing discretion (which is normally made by judges).

Second, application of this aggravating factor does not require a factual finding. Rather, it can be based solely on the defendant criminal history and the current offenses. *State v. Clarke*, 156 Wn.2d 880, 895-96, 134 P.3d 188 (2006). Division Three was thus mistaken in concluding that this aggravating factor requires specific jury findings. This court should reject that holding. Further, this case is unlike *Saltz*, in that the trial court was the finder of fact and found the criminal history, as stipulated, resulted in a sentence that was clearly too lenient.

Appellant asserts that the trial counsel endorsed the trial court's interpretation of this aggravator, yet fails to cite to the record establishing this fact.¹⁴ Accordingly, the state will not address whether trial counsel was ineffective on this point as the matter should be resolved by addressing the validity of the sentence.

C. THE TRIAL COURT PROPERLY IMPOSED LEGAL FINANCIAL OBLIGATIONS.

Trent's only complaint is the imposition of a \$250 public defender reimbursement fee. The State agrees with Appellant that the trial court did not make an individualized determination of Trent's ability to pay when it imposed the \$250 public defender

¹⁴ Brief of Appellant at 18.

reimbursement fee. The State also agrees that Trent did not object to the imposition of this fee. However, as noted by Appellant, in *State v. Clark*, 191 Wn.App. 369, 362 P.3d 309 (2015) a defendant who made no objection to the imposition of Legal Financial Obligations (LFOs) at sentencing was not automatically entitled to appellate review.

Here, the trial court was familiar with Trent and knew him to be a talented artist at only 50 years of age. Thus, he likely had the future ability to pay \$250 for his defense despite the lack of further inquiry.

Regardless, because Trent failed to object below, he should not be permitted to raise the issue here because it is not of constitutional magnitude.

Appellant asserts RAP 2.5(a) authorizes review. Brief of Appellant at 30. However, RAP 2.5(a) requires a showing (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. There can be no showing that the trial court did not have jurisdiction to imposition a \$250 public defender fee, nor a showing of a manifest error affecting a constitutional right. As a result, this court should decline review of this issue.

1. Standard Of Review

Imposition of LFOs is reviewed for abuse of discretion. *State v. Clark supra*, citing *State v. Baldwin*, 63 Wn.App. 303, 312, 818 P.2d 1116 (1991). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). The trial court's factual determination concerning a defendant's resources and ability to pay is reviewed under the "clearly erroneous" standard. *State v. Bertrand*, 165 Wh.App. 393, 403–04, 267 P.3d 511 (2011).

2. The Financial Obligations Were Proper.

The Washington State Supreme Court determined that the imposition of legal financial obligations alone is not enough to implicate constitutional concerns. *State v. Curry*, 118 Wn.2d 911, 917 n.3, 829 P.2d 166 (1992). "[F]ailure to object when the trial court imposed court costs under RCW 10.01.160 amounted to a waiver of the statutory (not constitutional) right to have formal findings entered as to [a defendant's] financial circumstances." *State v. Phillips*, 65 Wn. App. 239, 244, 828 P.2d (1992) (citations omitted).

There was no objection to the imposition of legal financial obligations at the sentencing hearing. A timely objection would have

made the clearest record on this question. Therefore, the absence of an objection is good cause to refuse to review this question. RAP 2.5(a) (the appellate court may refuse to review any claim of error not raised in the trial court); *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988)(RAP 2.5(a) reflects a policy encouraging the efficient use of judicial resources and discouraging a late claim that could have been corrected with a timely objection); *State v. Danis*, 64 Wn. App. 814, 822, 826 P.2d 1015, *review denied*, 119 Wn.2d 1015, 833 P.2d 1389 (1992)(refusing to hear challenge to the restitution order when the defendant objected to the restitution amount for the first time on appeal). The alleged error is not of constitutional magnitude. Even, if this Court finds the error is an error of constitutional magnitude, the error is not manifest because there is not a sufficient record for this Court to review the merits of the alleged error. *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). This court should decline review.

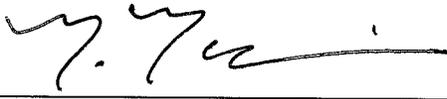
In the event of review, the trial court observed Trent physically, heard from him on several motions seeking a drug court disposition, and reasoned that a talented artist in his 50's is certainly capable of paying a \$250 fee.

IV. CONCLUSION

The information was not deficient and adequately informed Trent of the charges against him. The trial court properly imposed an exceptional sentence and the \$250 public defender fee should not be reviewed.

RESPECTFULLY submitted this 27th day of March, 2018.

MARK MCCLAIN
Pacific County Prosecuting Attorney

by: 

Mark McClain, WSBA 30909
Attorney for Respondent

PACIFIC COUNTY PROSECUTING ATTORNEY

March 27, 2018 - 2:24 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51097-9
Appellate Court Case Title: State of Washington, Respondent v. Eric V. Trent, Appellant
Superior Court Case Number: 16-1-00213-5

The following documents have been uploaded:

- 510979_Briefs_20180327142316D2984569_1935.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 20180327_141226.pdf
- 510979_Other_20180327142316D2984569_8728.pdf
This File Contains:
Other - Certificate of Service
The Original File Name was 20180327_141307.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- grannisc@nwattorney.net
- nielsene@nwattorney.net

Comments:

Sender Name: Bonnie Walker - Email: bwalker@co.pacific.wa.us

Filing on Behalf of: Mark D McClain - Email: mmclain@co.pacific.wa.us (Alternate Email:)

Address:
PO Box 45
South Bend, WA, 98586
Phone: (360) 875-9361 EXT 4

Note: The Filing Id is 20180327142316D2984569

FILED
Court of Appeals
Division II
State of Washington
3/27/2018 2:24 PM

THE COURT OF APPEALS, DIVISION TWO, OF THE STATE OF WASHINGTON,

STATE OF WASHINGTON,)
)
 Respondent,) No. 51097-9-II
)
 ERIC V. TRENT,) CERTIFICATE OF SERVICE
)
 Appellant.)
)

STATE OF WASHINGTON)
) ss.
 County of Pacific)

The undersigned being first duly sworn on oath deposes and states: That on the 27th day of March, 2018, affiant delivered by electronic mail a true and correct copy of Brief of Respondent to:

Erin J. Nielsen
nielsene@nwattorney.net

Casey Grannis
grannisc@nwattorney.net

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington.

Dated this 27th day of March, 2018, in South Bend, Washington.


Bonnie Walker
Paralegal

PACIFIC COUNTY PROSECUTING ATTORNEY

March 27, 2018 - 2:24 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51097-9
Appellate Court Case Title: State of Washington, Respondent v. Eric V. Trent, Appellant
Superior Court Case Number: 16-1-00213-5

The following documents have been uploaded:

- 510979_Briefs_20180327142316D2984569_1935.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 20180327_141226.pdf
- 510979_Other_20180327142316D2984569_8728.pdf
This File Contains:
Other - Certificate of Service
The Original File Name was 20180327_141307.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- grannisc@nwattorney.net
- nielsene@nwattorney.net

Comments:

Sender Name: Bonnie Walker - Email: bwalker@co.pacific.wa.us

Filing on Behalf of: Mark D McClain - Email: mmclain@co.pacific.wa.us (Alternate Email:)

Address:
PO Box 45
South Bend, WA, 98586
Phone: (360) 875-9361 EXT 4

Note: The Filing Id is 20180327142316D2984569