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Court of Appeals
Division II
State of Washington
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NO. 51766-3

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ISAAC MAURICE NETTLES, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Edmund Murphy

No. 15-1-03225-1

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court impose a standard range sentence?
2. Was defendant's right to be present upheld where the court considered defendant's pro se motion to correct judgment and sentence without a hearing?

B. STATEMENT OF THE CASE.

On August 15, 2015, Isaac Maurice Nettles, hereinafter "defendant," brought a revolver to Alatino Lorenzo Bolden's house to show his friends. RP 4;¹ CP 2. Defendant emptied four bullets from the gun and pulled the trigger. *Id.* One bullet was still in the gun when defendant pulled the trigger. CP 2. That bullet struck Bolden, killing him. *Id.*

The State charged defendant on August 17, 2015, with one count of first degree manslaughter. CP 1. The State amended the charge to second degree manslaughter on June 8, 2016. CP 3. The State explained the reason for the amended charge being that it could not prove the "recklessness" required for first degree manslaughter beyond a reasonable

¹ The Verbatim Report of Proceedings (RP) are contained in a single file dated 7-12-16 and are referred to by page number.

doubt. RP 5-6; CP 4. Because “defendant apparently believed he had emptied the gun,” the State could not prove defendant “was aware of the substantial risk” when he shot Bolden. CP 4.

On July 12, 2016, defendant pleaded guilty to the amended information. CP 5-14. Defendant’s statement on plea of guilty read:

In Pierce County, Wa., on 8.15.15, I negligently caused the death of my friend, by holding a gun pointed at him and fired in his direction, killing him. I will never forgive myself for what I did. It was not intentional, [and] I should have been aware of the risk. I thought the gun was empty.

CP 5-14. The court accepted defendant’s plea of guilty, finding it was made “knowingly, intelligently, and voluntarily.” RP 19.

After hearing statements from multiple members of Bolden’s family, the court proceeded to sentencing. RP 20-27. The court sentenced defendant to the high end of the standard range, imposing 27 months in prison, followed by 36 months for the firearm enhancement, and 18 months of community custody. CP 18-31; RP 33. The total amount of time defendant was sentenced to was 81 months. *Id.*

On January 30, 2018, defendant filed a pro se motion to correct judgment and sentence, claiming that his sentence exceeded the statutory maximum. CP 36-56. The court entered an ex parte order denying defendant’s motion on March 21, 2018. CP 57. The court explained the motion was denied because:

[T]here is nothing to correct. The defendant was sentenced to a standard range sentence (27 months) plus an additional sentence for the firearm sentencing enhancement (36 months). The firearm sentencing enhancement does not act as an exceptional sentence, but is authorized under the law to be an additional sentence. He was also sentenced to 18 months of Community Custody. The total amount of time that he was sentenced to, including community custody, was 81 months. The statutory maximum for Manslaughter in the Second Degree is 120 months.

CP 57. Defendant filed a timely notice appealing the court's order. CP 58-60. Counsel for defendant thereafter brought a motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed.2d 493, *rehearing denied*, 388 U.S. 924, 87 S. Ct. 2094, 18 L. Ed.2d 1377 (1967) (allowing counsel to withdraw on appeal if counsel can find no basis for a good faith argument for review), and RAP 18.3(a). Defendant subsequently filed a motion to withdraw *Anders* brief, waive counsel, and proceed pro se. CP 85-86.

C. ARGUMENT.

1. EXAMINATION OF THE RECORD REVEALS THAT DEFENDANT'S POTENTIAL CLAIMS ON APPEAL ARE WHOLLY FRIVOLOUS AND CANNOT BE ARGUED IN GOOD FAITH.

An attorney appointed to represent an indigent defendant must file a motion to withdraw if she can find no basis for a good faith argument on review. RAP 18.3(a). Defense counsel has filed a brief acknowledging two issues that might potentially support an appeal, but both are wholly

frivolous. This Court should grant Stephanie Cunningham's motion to withdraw as counsel and dismiss defendant's appeal as frivolous.

- a. The trial court sentenced defendant to a standard range sentence.

The Legislature has the authority to set appropriate punishments for criminal convictions. *State v. Jeffries*, 105 Wn.2d 398, 424, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed.2d 301 (1986). "Whether the sentencing court has exceeded its statutory authority under the Sentencing Reform Act of 1981, chapter 9.94A RCW (SRA), is an issue of law." *In re West*, 154 Wn.2d 204, 211, 110 P.3d 1122 (2005) (citing *State v. Murray*, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003)).

Where, as here, an offender with no criminal history is convicted of second degree manslaughter, he faces a standard range sentence of 21 to 27 months of incarceration. RCW 9.94A.510, 9.94A.515. However, additional time must be added when the offender was armed with a firearm during the commission of the crime. RCW 9.94A.533(3). For class B felonies like second-degree manslaughter, that is an additional three years, or 36 months. RCW 9.94A.533(3), 9A.32.070.

When sentencing an offender to the custody of the department for a violent offense, the court must also, "in addition to the other terms of sentence, sentence an offender to community custody for eighteen

months[.]” RCW 9.94A.701(2).² Presumptive sentence ranges for total confinement do not include periods of community placement. *Matter of Caudle*, 71 Wn. App. 679, 680, 863 P.2d 570 (1993). “As long as the confinement and the community placement do not exceed the statutory maximum sentence, there is no error.” *Id.* The statutory maximum sentence for second degree manslaughter is ten years, or 120 months. RCW 9A.20.021(1)(b), 9A.32.070.

The trial court sentenced defendant to the high end of the standard range for second degree manslaughter: 27 months. CP 18-31; RP 33. The court imposed an additional 36 months for the firearm enhancement, as mandated under RCW 9.94A.533(3). CP 18-31. Finally, the court imposed 18 months of community custody, required by RCW 9.94A.701(2).

The total length of defendant’s sentence amounted to 81 months. CP 18-31. The statutory maximum for second degree manslaughter is 120 months. RCW 9A.20.021(1)(b), 9.94A.535. Defendant’s sentence fell far below the statutory maximum. Therefore, the trial court correctly denied defendant’s pro se motion on this basis. CP 57. Any claim that the court’s ruling was erroneous is without merit. *See Matter of Caudle*, 71 Wn. App. at 680.

² Second degree manslaughter is a “violent offense.” RCW 9.94A.030(55)(a)(iv).

b. The trial court upheld defendant's right to be present when it denied his motion to correct judgment and sentence without a hearing

“The core of a criminal defendant’s constitutional right to be present is the right to be present when evidence is presented.” *In re Lord*, 123 Wn.2d 296, 306, 868 P.2d 835 (1994). “Beyond that, the defendant has a ‘right to be present at a proceeding ‘whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge...’” *In re Lord*, 123 Wn.2d at 306 (citing *United States v. Gagnon*, 470 U.S. 522, 526, 105 S. Ct. 1482, 84 L. Ed.2d 486 (1985)) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 54 S. Ct. 330, 78 L. Ed. 674 (1934)). A defendant does not have to be present during deliberations between court and counsel or during argument on questions of law. *State v. Walker*, 13 Wn. App. 545, 556-57, 536 P.2d 657 (1975). Whether the court imposed an exceptional sentence is a question of law. See RCW 9.94A.535; *In re West*, 154 Wn.2d at 211.

On January 30, 2018, defendant filed a pro se motion to correct his judgment and sentence, arguing that the court imposed an exceptional sentence requiring written findings of fact and conclusions of law. CP 36-56. The court decided the matter ex parte. CP 57. There was no hearing on defendant’s motion.

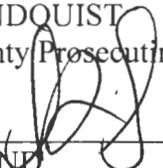
The court entered an order denying defendant's motion on March 21, 2018. CP 57. Defendant had no right to be present where the court decided an issue of law and did not hold a hearing. See *Walker*, 13 Wn. App. at 556-57. No rights of defendant were violated. This Court should dismiss defendant's appeal as frivolous.

D. CONCLUSION.

The State respectfully requests this Court grant Stephanie Cunningham's motion to withdraw as counsel and dismiss defendant's appeal as frivolous.

DATED: September 17, 2018

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Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9.19.18 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

September 19, 2018 - 10:23 AM

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