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Court of Appeals  
Division II  
State of Washington  
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NO. 52875-4-II

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

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STATE OF WASHINGTON,

Respondent,

v.

MARSHALL LEWIS,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR Clallam COUNTY

The Honorable Erik S. Rohrer, Judge

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BRIEF OF APPELLANT

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CATHERINE E. GLINSKI  
Attorney for Appellant

Glinski Law Firm PLLC  
P.O. Box 761  
Manchester, WA 98353  
(360) 876-2736

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A. ASSIGNMENT OF ERROR

The court did not make the statutorily required findings and conclusions to support the exceptional sentence.

Issue pertaining to assignment of error

Appellant entered a guilty plea and stipulated to the existence of a statutory aggravating factor. Where the court did not find in writing that the stipulated facts are substantial and compelling reasons justifying an exceptional sentence, must the exceptional sentence be vacated?

B. STATEMENT OF THE CASE

The Clallam County Prosecuting Attorney charged Appellant Marshall Lewis with intimidating a witness and felony harassment, with special allegations that these were domestic violence offenses with an ongoing pattern of psychological abuse and/or manifested deliberate cruelty or intimidation. CP 91-96. Lewis entered guilty pleas to the charges and aggravating factors, and the case proceeded to sentencing. CP 24-34; RP 14-15.

The parties did not agree on a sentencing recommendation. RP 14. The State asked the court to impose an exceptional sentence of the statutory maximum, and Lewis asked for a low-end standard range

sentence. RP 18, 23-25. The court determined there was a basis to exceed the standard range and imposed an exceptional sentence. RP 29.

The court entered written findings of fact that the parties stipulated that Lewis committed crimes of aggravated domestic violence. CP 22. It entered the following written conclusions:

1. Pursuant to the stipulation of the parties, the aggravating circumstance under RCW 9.94A.535(3)(h)(i) and (iii), that the defendant committed a crime of aggravated domestic violence, is present as to Counts I and II.
2. A sentence within the standard range of 67-89 months in Count I and 43-57 months in Count II would constitute a manifest injustice.
3. An exceptional sentence above the standard range is appropriate in this case.

CP 22.

Lewis filed this appeal. CP 6.

C. ARGUMENT

THE COURT DID NOT MAKE THE REQUIRED FINDINGS AND CONCLUSIONS TO JUSTIFY THE EXCEPTIONAL SENTENCE.

The trial court's authority to impose an exceptional sentence is strictly limited by statute. *State v. Friedlund*, 182 Wn.2d 388, 394, 341 P.3d 280 (2015). The Sentencing Reform Act sets forth not only the bases on which a sentence above the standard range may be imposed but also the procedure which must be followed to impose it. RCW 9.94A.535; RCW 9.94A.537. When the defendant stipulates to one or more of the facts

alleged by the State in support of an aggravated sentence, the court may impose a sentence above the standard range “if it finds, considering the purposes of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.” RCW 9.94A.535; RCW 9.94A.537(6).

Washington cases recognize that the sentencing court is precluded from fact finding regarding proof of aggravating factors and is “left only with the legal conclusion of whether the facts alleged and found were sufficiently substantial and compelling to warrant an exceptional sentence.” *State v. Sage*, 1 Wash.App.2d 685, 708, 407 P.3d 359, *review denied*, 191 Wn.2d 1007 (2018), *cert. denied*, 18-7146, 2019 WL 888194 (U.S. Feb. 25, 2019) (citing *State v. Suleiman*, 158 Wn.2d 280, 290-91, 291 n.3, 143 P.3d 795 (2006); *State v. Cardenas*, 129 Wn.2d 1, 6 n.1, 914 P.2d 57 (1997); *State v. Chadderton*, 119 Wn.2d 390, 399, 832 P.2d 481 (1992); *State v. Grewe*, 117 Wn.2d 211, 215-16, 813 P.2d 1238 (1991); *State v. Nordby*, 106 Wn.2d 514, 418, 723 P.2d 1117 (1986)). Moreover, the court’s determination that substantial and compelling reasons justify an exceptional sentence must be set forth in writing. RCW 9.94A.535; *Friedlund*, 182 Wn.2d at 393-94.

In this case, the sentencing court found that Lewis had stipulated to the existence of the statutory aggravating factor. CP 22. It concluded that a standard range sentence would constitute a manifest injustice and that an

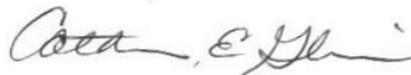
exceptional sentence above the standard range was appropriate. CP 22. The court did not enter written findings or conclusions that “considering the purposes of [the SRA], that the facts found are substantial and compelling reasons justifying an exceptional sentence.” See RCW 9.94A.537(6). Such a written finding is essential to imposition of an exceptional sentence above the standard range. *Friedlund*, 182 Wn.2d at 393-94. The exceptional sentence in this case is not supported by the required findings and conclusions, and it must be vacated.

D. CONCLUSION

The exceptional sentence is not supported by the statutorily required written findings and conclusions and must be vacated.

DATED March 7, 2019.

Respectfully submitted,



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CATHERINE E. GLINSKI  
WSBA No. 20260  
Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in  
*State v. Marshall Lewis*, Cause No. 52875-4-II as follows:

Marshall Lewis/DOC#341910  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

I certify under penalty of perjury of the laws of the State of Washington  
that the foregoing is true and correct.



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Catherine E. Glinski  
Done in Manchester, WA  
March 7, 2019

**GLINSKI LAW FIRM PLLC**

**March 07, 2019 - 12:09 PM**

**Transmittal Information**

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