

FILED
Court of Appeals
Division II
State of Washington

NO. 52875-4-II
3/27/2019 3:08 PM

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

STATE OF WASHINGTON,

Respondent,

v.

MARSHAL J. LEWIS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 18-1-00172-05

BRIEF OF RESPONDENT

MARK B. NICHOLS
Prosecuting Attorney

JESSE ESPINOZA
Deputy Prosecuting Attorney

223 East 4th Street, Suite 11
Port Angeles, WA 98362-301

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

I. COUNTERSTATEMENT OF THE ISSUES 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 4

 A. THE TRIAL COURT’S FINDINGS ARE SUPPORTED BY THE
 RECORD AND JUSTIFY AN EXCEPTIONAL SENTENCE
 UPWARD. 4

 1. Trial court’s findings are supported by the record. 5

 2. The courts findings and the record support an exceptional
 sentence upward. 6

IV. CONCLUSION 7

 CERTIFICATE OF DELIVERY 8

APPENDIX

RCW 9.94A.535..... A

RCW 9.94A.537..... B

RCW 9.94A.585..... C

TABLE OF AUTHORITIES

Statutes

RCW 9.94A.535(3).....	5
RCW 9.94A.535(3)(h)(i)	5
RCW 9.94A.535(3)(h)(iii)	5
RCW 9.94A.585.....	4
RCW 9.94A.585(4).....	4
RCW 9.94A.585(5).....	4

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the exceptional sentence upward should be upheld because the trial court, by accepting and adopting the stipulation by the parties that the defendant committed a crime of aggravated domestic violence under RCW9.94A.535(3)(h)(i) and (iii), supplied a reason in writing justifying the sentence.

II. STATEMENT OF THE CASE

The defendant entered a plea of guilty to charges of Intimidating a Witness, Domestic Violence with circumstances of Aggravated Domestic Violence, and Felony Harassment, Domestic Violence with circumstances of Aggravated Domestic Violence under Clallam County Superior Court cause no. 18-1-00172-05. CP 24, 33. The defendant stipulated to the aggravating factors. CP 10, 22. In particular, the parties stipulated that “the defendant, in committing the crimes alleged in Counts I and II, committed crimes of aggravated domestic violence by engaging in a pattern of ongoing psychological abuse manifested by multiple incidents over a prolonged period of time and manifested deliberate cruelty or intimidation of the victim.” CP 22.

The trial court concluded, based upon the findings of fact, that “the aggravating circumstance under RCW 9.94.535(3)(h)(i) and (iii), that the defendant committed a crime of aggravated domestic violence, is present

as to Counts I and II.” CP 22. The court also concluded that a standard sentence range under the circumstances would constitute a manifest injustice and that a sentence above the standard range was appropriate. CP 22.

At sentencing, the defendant’s standard sentence range based on an offender score of 8 was 67–89 months for Intimidating a Witness and 43–57 months for Felony Harassment. CP 10; RP 20. The State recommended an exceptional sentence upward consisting of the maximum sentence for each charge, 120 months for count 1 and 60 months on count to, and to run them concurrently but consecutive to the sentence of 126 months under cause 16-1-00022-2. RP 18.

The defense recommended a sentence of 67 months to be served consecutively to the sentence of 126 months under cause 16-1-00022-2. RP 25, 26. The defense stated on behalf of Lewis that:

Mr. Lewis came here today to tell the court that he committed this crime and he will accept the punishment for it and we certainly would not ask the court to run this concurrent with the 126 months that he was sentenced to, for the crimes that we’re all aware of. We’re certainly accepting that further time in prison is appropriate. Mr. Lewis admits that he wrote a letter.

RP 24.

Cause 16-1-00022-2 consisted of convictions for Arson in the First Degree, Residential Burglary, Cyberstalking, Telephone Harassment. RP

19. These crimes were all crimes of domestic violence in which Lewis ultimately set fire to the victim's home when she was not there. RP 19. The crimes in the instant cause occurred a day before the original sentencing date under cause 16-1-00022-2. RP 19. Lewis had tried to send to the victim of the Arson a letter he had written threatening the her with gang rape, murder of those close to her, and Lewis threatened her children and mother as well. RP 19.

The trial court imposed an exceptional sentence upward, 100 months for Count 1 and 60 months for Count 2. CP 11. The court ordered that both counts be served concurrently but they be served consecutively to the sentence under Clallam Co. cause no. 16-1-00022-2. CP 11. The judgment and sentence states, "The court finds substantial and compelling reasons for the exceptional sentence: above the standard range for Count(s) I, II." CP 10 (paragraph 2.4).

The trial court then entered "Findings of Fact and Conclusions of Law on the Departure Above the Standard Range in Counts I and II." CP 21.

//

//

III. ARGUMENT

A. THE TRIAL COURT'S FINDINGS ARE SUPPORTED BY THE RECORD AND JUSTIFY AN EXCEPTIONAL SENTENCE UPWARD.

RCW 9.94A.585 governs the procedures for review of an exceptional sentence. *See* App. C.

“If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).” RCW 9.94A.535 (App. A-1).

To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

RCW 9.94A.585(4).

“A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.” RCW 9.94A.585(5).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in

this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).”

RCW 9.94A.535.

1. Trial court’s reasons are supported by the record.

“The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. . . . If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.” RCW 9.94A.537(3) (App. B-1).

“Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.” RCW 9.94A.535(3) (aggravating circumstances).

“The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time[.]” RCW 9.94A.535(3)(h)(i) (App. A-2 through A-3). “The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.” RCW 9.94A.535(3)(h)(iii).

Here, Lewis stipulated and the parties filed a stipulation to factual circumstances set forth in RCW 9.94.535(3)(h)(iii) and (i) which support

an exceptional sentence upward. Therefore the court's conclusion that the aggravating facts exist is supported by the record. CP 10, 22. Lewis does not argue that the sentence was clearly to excessive.

2. The courts findings and the record support an exceptional sentence upward.

The defendant's attorney joined the State in recommending an exceptional sentence by recommending that the sentence be run consecutive to the 126 month sentence under cause 16-1-00022-1. *See* RCW 9.94A.535. The defense stated that his client wanted to take responsibility and that the consecutive sentencing was appropriate. The defense recommended that 67 months run consecutive to the 126 months imposed in the other sentence for a total of 193 months. The State's recommendation was for a total 240 months, both cases combined. This is a difference of 47 months.

Considering that the parties stipulated to the aggravating factors under RCW9.94A.535(3)(h)(i) and (iii) which support an exceptional sentence upward, and that the court concluded that the factors were present, the court's reasons justified sentencing the defendant to the 100 months and running it consecutive to the other case for a total of 226 months, 33 months more than recommended by the defense.

Lewis argues that the court did not make a written finding that “that the facts found are substantial and compelling reasons justifying an exceptional sentence.” Br. of Appellant at 4. This is not accurate because paragraph 2.4 of the Judgment and Sentence states: “The court finds substantial and compelling reasons that justify an exceptional sentence above the standard range for Count(s) I, II.” CP 10.

IV. CONCLUSION

The record supports the trial courts findings and justifies an exceptional sentence upward. Therefore, this Court should affirm the sentence.

Respectfully submitted this 27th day of March, 2019.

MARK B. NICHOLS
Prosecuting Attorney



JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Catherine E. Glinski on March 27, 2019.

MARK B. NICHOLS, Prosecutor



Jesse Espinoza

RCW 9.94A.535**Departures from the guidelines.**

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(k) The defendant was convicted of vehicular homicide, by the operation of a vehicle in a reckless manner and has committed no other previous serious traffic offenses as defined in RCW 9.94A.030, and the sentence is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be

consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) 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.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

- (i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;
- (ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or
- (iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.
- (i) The offense resulted in the pregnancy of a child victim of rape.
- (j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.
- (k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.
- (l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.
- (m) The offense involved a high degree of sophistication or planning.
- (n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.
- (o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.
- (p) The offense involved an invasion of the victim's privacy.
- (q) The defendant demonstrated or displayed an egregious lack of remorse.
- (r) The offense involved a destructive and foreseeable impact on persons other than the victim.
- (s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.
- (t) The defendant committed the current offense shortly after being released from incarceration.
- (u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.
- (v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.
- (w) The defendant committed the offense against a victim who was acting as a good samaritan.
- (x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.
- (y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).
- (z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.
- (ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.
- (aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.
- (bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).
- (cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater.

[2016 c 6 § 2; 2013 2nd sp.s. c 35 § 37. Prior: 2013 c 256 § 2; 2013 c 84 § 26; 2011 c 87 § 1; prior: 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; prior: 2008 c 276 § 303; 2008 c 233 § 9; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4; prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

NOTES:

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2010 c 9: See note following RCW 69.50.315.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1996 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

Effective date—Application—1990 c 3 §§ 601 through 605: See note following RCW 9.94A.835.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

RCW 9.94A.537**Aggravating circumstances—Sentences above standard range.**

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

[2007 c 205 § 2; 2005 c 68 § 4.]

NOTES:

Intent—2007 c 205: "In *State v. Pillatos*, 150 P.3d 1130 (2007), the Washington supreme court held that the changes made to the sentencing reform act concerning exceptional sentences in chapter 68, Laws of 2005 do not apply to cases where the trials had already begun or guilty pleas had already been entered prior to the effective date of the act on April 15, 2005. The legislature intends that the superior courts shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing." [2007 c 205 § 1.]

Effective date—2007 c 205: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2007]." [2007 c 205 § 3.]

Intent—2005 c 68: "The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

Severability—2005 c 68: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 68 § 6.]

Effective date—2005 c 68: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 68 § 7.]

RCW 9.94A.585**Which sentences appealable—Procedure—Grounds for reversal—Written opinions.**

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

[2002 c 290 § 19; 2000 c 28 § 10; 1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21. Formerly RCW 9.94A.210.]

NOTES:

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

App. C

CLALLAM COUNTY DEPUTY PROSECUTING ATTORN

March 27, 2019 - 3:08 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52875-4
Appellate Court Case Title: State of Washington, Respondent v. Marshall Jay Lewis, Appellant
Superior Court Case Number: 18-1-00172-1

The following documents have been uploaded:

- 528754_Briefs_20190327150730D2330342_3505.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Lewis II - 52875-4-II - Br of Resp and Appendix.pdf

A copy of the uploaded files will be sent to:

- glinskilaw@wavecable.com

Comments:

Sender Name: Jesse Espinoza - Email: jespinoza@co.clallam.wa.us
Address:
223 E 4TH ST STE 11
PORT ANGELES, WA, 98362-3000
Phone: 360-417-2301

Note: The Filing Id is 20190327150730D2330342