

FILED  
Court of Appeals  
WASHINGTON STATE COURT DIVISION I HEALS DIVISION TWO  
State of Washington  
11/19/2019 3:55 PM

STATE OF WASHINGTON ) Case No. 53092-9-II  
Respondent, )  
v. ) STATEMENT OF ADDITIONAL  
DENNIS CARLOS OYA ) GROUNDS FOR REVIEW  
Appellant. )  
\_\_\_\_\_ )

I, Dennis Carlos Oya, have conferred with my appellate attorney, to which counsel has failed to follow explicit instructions regarding issue(s) to be raised in the opening brief; do hereby elect the following assignments of error:

INEFFECTIVE APPELLATE COUNSEL

Appellant has made very clear to counsel of His wishes, regarding issue(s) to be raised within the 'Opening Brief' of appellant. Counsel has refused to brief any of the following meritorious claims for relief. "As a matter of professional responsibility, an attorney owes a duty of loyalty to his client. This duty encompasses an obligation to defer to the client's wishes on major litigation decisions." In re Agent Orange' Prod. Liab. Litig., 800 F.2d 14(2d cir. 1986). See Also: Strickland v. Washington, 466 U.S. 668(1984); Reagan v. Norris, 279 F.3d 651, 657(8th cir. 2002)("....post-trial counsel either failed to recognize or did not adequately assist [appellant] in pursuing this claim and thus failed to preserve it on appeal.").

### ILLEGAL SENTENCE

Appellant was denied His constitutional right(s) under The United States Constitution, Amendment VI; when He recieved an illegal sentence without: 1.) Recieving notice of The State's intent, and 2.) The trial court did not enter 'Findings Of Fact And Conclusions Of Law', justifying the imposition of an exceptional sentence, outside the standard range.

Its clearly established within the four corners of the Judgement and Sentence, that Appellant recieved a sentence totaling 303 months(207 months of confinement, 60 months of enhancements, 36 months of community custody); although the standard range sentence is 178-236 months(with an offender score of 7, as to Count I). Thus the 'relevant statutory maximum' is 236 months.

Appellant's illegal sentence was imposed in violation of His sixth amendment right to a jury trial. This is a question of law that the appellate court reviews De Novo. State v. Saltz, 137 Wn. App. 576(2007).

Further, the trial court unconstitutionally applied chapter 9.94A RCW to the facts of this case. The interpretation of The Sentencing Reform Act of 1981 is a question of law that is ruled De Novo. State v. Caldwell, 2015 Wash. App. LEXIS 347(2015).

The State did not satisfy RCW 9.94A.537(1) because The State did not give Appellant pre-trial notice of its intention to seek an exceptional sentence. State v. Vance, No. 55364-0-I(2008)(citing State v. Womac, 160 Wn.2d 643(2007)). Accordingly,

the trial court unconstitutionally applied RCW 9.94A.537(1) to this case, by imposing an exceptional sentence in which "the notice shall state aggravating circumstances upon which the requested sentence was based."

The trial court also unconstitutionally applied RCW 9.94A.525, as it is well established that Appellant's relevant statutory maximum is 236 months. It is of no matter that the maximum penalty is LIFE. See: Apprendi v. New Jersey, 530 U.S. 466(2000). In United State v. Booker, 543 U.S. 220(2005), the court held that the sixth amendment as construed in Blakely v. Washington, 542 U.S. 296(2004) does apply to the sentencing guidelines. Further, The Washington Supreme Court clarified in State v. Evans, 154 Wn.2d 438(2005) that the statutory maximum is the top end of the standard range sentence. The maximum term for an offense that the legislature authorized for a specific crime. The determination has also been upheld in: State v. Hughes, 74147-6(2004); State v. Alvarado, 81069-9(2008).

Under the doctrine of stare decisis, "Once we have decided an issue of state law, that interpretation is binding until we overrule it." Soproni v. Polygon Apartment Partners, 137 Wn.2d 319(1999). Appellant moves this court to take judicial notice, requesting that the court "turn to [its own precedent, as well as the decision of [the] federal courts, in order to determine whether the state decision violates the general principles enuciated by the supreme court and is thus contrary to clearly established federal law." Robinson v. Ignacio, 360 F.3d 1044, 1057(9th cir. 2004). See Also: Supremacy Clause, U.S.C. Art. IV,

cl. 2; Canon 1; Canon 3(c).

Further, the trial court unconstitutionally applied RCW 9.94A.533(g), and RCW 9.94A.701(9) to the facts of this case; failing to reduce the term of confinement and community custody "so that the total confinement does not exceed the statutory maximum." This is a clear and convincing application and misrepresentation of the legislature's intent in the statutes. See Also: RCW 9.94A.599(also unconstitutionally applied).

#### INCORRECT OFFENDER SCORE

Appellant was convicted of Assault In The First Degree, a serious violent offense. Therefore, His offender score is to be applied pursuant to RCW 9.94A.525(9), which states:

(9)If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each adult and juvenile violent convictions(not already counted), one point for each prior adult nonviolent conviction, and  $\frac{1}{2}$  point for each prior juvenile nonviolent felony conviction.

Therefore, Appellant's offender score, as intended by the legislature, is to be calculated as follows:

1 pt. PSP 1, Adult, NV, 6/23/1998  
1 pt. PSP 2, Adult, NV, 2/3/1999  
1 pt. UPCS-Cocaine, Adult, NV, 9/16/2002  
1 pt. UDCS-Meth, Adult, NV, 11/8/2006  
1 pt. Assault 3, Adult, NV, 11/8/2006  
1 pt. PSP 1, Adult, NV, 11/8/2006

The current offender score, for sentencing purposes is (6), not 7 as erroneously miscalculated by the trial court. However, the remedy to issue: "BRADY VIOLATION" reduces this calculation to 0. "The calculation of an offender score, as a matter of law, is ruled De Novo." State v. Tili, 148 Wn.2d 350(2003).

The incorrect offender score calculation effectively implicates: U.S.C. Amend. VI; Apprendi v. New Jersey, 530 U.S. 466(2000); Blakely v. Washington, 542 U.S. 296(2004). "[A] sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a complete miscarriage of justice." In re Goodwin, 146 Wn.2d 861(2002).

A sentencing court that erroneously calculates an offender score acts without authority under The SRA. In re Call, 144 Wn.2d 315(2001). The court has the power and duty to correct the erroneous calculation of an offender score. In re Carle, 93 Wn.2d 31(1980).

#### BRADY VIOLATION

Pursuant to CrR 2.1(e), the prosecution is required to obtain a complete criminal history, of Appellant, and proof/evidence in support of-prior to the formal charging decision. However, Appellant was never provided copies of this information, which was used to enhance the punishment(sentence range).

The prosecution willfully withheld documentation which tends to show proof of Appellant's prior criminal history, in violation of His constitutional rights of the 5th, 6th, and 14th amendments, and the suppression of evidence. See: Kyles v.

Whitley, 514 U.S. 419(1995); Brady v. Maryland, 373 U.S. 83(1963); Ashley v. Texas, 319 F.3d 80(5th cir. 1963). See Also: ABA MODEL RULES OF PROF'L CONDUCT, Rule 3.8(d).

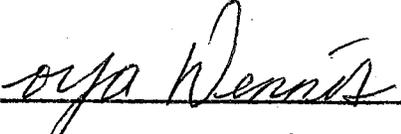
In order to prevail on a Brady claim, Appellant must establish the evidence at issue was: 1.) Exculpatory, 2.) Suppressed by The State, and 3.) Material. See: Brady v. Maryland, supra. Appellant has met this burden.

#### CONCLUSION

Based upon the above, Appellant requests the following relief: 1.) Resentencing to reflect a correct offender score, and 2.) A standard range sentence, as applied to a correct offender score calculation, which does not offend the ruling in Blakely v. Washington.

SIGNED and DATED this 13<sup>TH</sup> day of November, 2019.

Respectfully Submitted,

  
\_\_\_\_\_  
Dennis Carlos Oya/Appellant

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

STATE OF WASHINGTON,

RESPONDENT,

v.

DENNIS OYA,

APPELLANT.

NO. 53092-9-II

**DECLARATION OF SERVICE**

I, MARIA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 19<sup>TH</sup> DAY OF NOVEMBER, 2019, I CAUSED A TRUE COPY OF THE STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

TERESA CHEN, DPA

[PCpatcecf@co.pierce.wa.us]

[teresa.chen@piercecountywa.gov]

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U.S. MAIL

HAND DELIVERY

E-SERVICE VIA PORTAL

**SIGNED** IN SEATTLE, WASHINGTON THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2019.

X \_\_\_\_\_



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# WASHINGTON APPELLATE PROJECT

November 19, 2019 - 3:55 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53092-9  
**Appellate Court Case Title:** State of Washington, Respondent v Dennis Carlos Oya, Appellant  
**Superior Court Case Number:** 09-1-00534-8

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