

**FILED  
Court of Appeals  
Division II  
State of Washington  
11/20/2019 11:28 AM**

NO. 53188-7-II

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

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STATE OF WASHINGTON, Respondent

v.

BRANDON MICHAEL ENGLISH, Appellant

And

CALVIN JAMES QUICHOCHO, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.  
13-1-02318-1 and 14-1-00672-1

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BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The trial court properly imposed exceptional sentences downward for both English and Quichocho based on their youth at time of the crimes.**
- II. **The trial court properly concluded that it did not have the discretion to run the firearm enhancements concurrently.**
- III. **The trial court should not have imposed a \$250 jury demand fee, costs related to community supervision, or allowed for interest accrual on non-restitution legal financial obligations; these improperly imposed legal financial obligations should be stricken upon remand.**

### STATEMENT OF THE CASE

#### A. PROCEDURAL HISTORY

In 2014, Brandon Michael English and Calvin James Quichocho, were each convicted of two counts of Robbery in the First Degree, two counts of Kidnapping in the First Degree, and two counts of Assault in the Second Degree for a home invasion that occurred when they were both 20 years old. *State v. English*, 198 Wn.App. 1019, 2017 WL 1066847 (2017); E<sup>1</sup> CP 1-4; Q<sup>2</sup> CP 1-4. Each count also included a firearm enhancement. E CP 1-4; Q CP 1-4.

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<sup>1</sup> “E CP” refers to English’s clerk’s papers.

<sup>2</sup> “Q CP” refers to Quichocho’s clerk’s papers.

At sentencing, the trial court concluded that the Assault in the Second Degree convictions constituted the same criminal conduct as the other offenses and sentenced both English and Quichocho to 456 months of total confinement, which included 240 months of firearm enhancements. E CP 2, 4; Q CP 2, 4. In a consolidated appeal, the defendants made numerous challenges to their convictions and sentences. *English*, 2017 WL 1066847 at 1.

This Court affirmed except on the issue that the State conceded; that the convictions for Assault in the Second Degree merged with the convictions for Robbery in the First Degree. *Id.* at 5. Thus, this Court held that the convictions for Assault in the Second Degree should be vacated. *Id.*

On remand, English and Quichocho moved to expand the scope of the resentencing to include consideration of their youthfulness at the time of their offenses. E CP 48-58; Q CP 50-51. The trial court agreed and accepted briefing, expert opinion, declarations, and other relevant documentary evidence from the parties to include the State. E CP 144-166, 175-181, 190-96, 208-329, 403-416; Q CP 54, 56-57, 74-76, 79-81, 87-106, 111-61, 165-182. The defense submissions focused on their clients' youth, immaturity, upbringing, deficits, and substance abuse, while the State's detailed the pair's criminal history, the serious nature of the instant

crimes, prior violent behavior, and subsequent violent behavior including prison violence and misbehavior while in the Clark County Jail awaiting resentencing. E CP 144-166, 175-181, 190-96, 208-329, 403-416, 472-488; Q CP 56-57, 74-76, 79-81, 87-106, 111-61, 166-182.

As part of their resentencing argument, English and Quichocho argued that *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017) allowed the trial court to impose—if it so chose—the firearm enhancements concurrently or to reduce the enhancements’ term of confinement pursuant to an exceptional sentence downward that was predicated on the defendants’ youth at the time of the crimes. E CP 51, 184-87; Q CP 94-96; RP 154-55. The State disagreed. Q CP 112-13; RP 119-122. So did the trial court as it held that *Houston-Sconiers* only applied to defendants who were juveniles at the time of their crimes. E CP 507; Q CP 204; RP 213-15.

Nonetheless, the trial court found that at the time the defendants committed their crimes that the youth of each “amounted to a substantial and compelling factor justifying a sentence below the standard sentencing range.” E CP 508; Q CP 205; RP 215-224. Accordingly, the trial court sentenced English to 360 months of confinement (120 months on the substantive offenses and 240 months in firearm enhancements), a reduction of 8 years from his previous sentence. E CP 494-96; RP 219-

220. Similarly, the trial court sentenced Quichocho to 389 months (149 months on the substantive offenses and 240 months in firearm enhancements), a reduction of nearly 6 years from his previous sentence. Q CP 191-93; RP 222-24.

English and Quichocho both appealed their sentences and maintain their argument that *Houston-Sconiers* applies to young adult defendants such as themselves and argue that the trial court abused its discretion at their resentencing by failing to consider running the firearm enhancements concurrently. E CP 511; Q CP 208.

B. STATEMENT OF FACTS

This Court summarized the facts of the crimes that English and Quichocho committed in its 2017 unpublished opinion:

Colby Haugen lived alone in an apartment in Vancouver, Washington, and sold marijuana from his apartment. On December 3, 2013, Austin Bondy was with Haugen at his apartment. John Lujan, Juan Alfaro, and Brandon English went to Haugen's apartment to smoke marijuana and to gather information about Haugen's apartment as a part of their plan to rob Haugen the next day.

On December 4, Lujan, English, and Calvin Quichocho met to carry out the robbery. Bondy and Brittany Horn were waiting in Haugen's apartment while Haugen was at work. When there was a knock at the door, Bondy opened it to find Lujan, English, and Quichocho. After asking to purchase marijuana, Quichocho drew a revolver and ordered Bondy to give them money. Quichocho ordered Lujan to tie up Bondy and Horn, and Lujan complied by wrapping a cord around their wrists. Bondy and Horn were

then put into the bedroom closet and ordered to stay there or they would be killed. Lujan, English, and Quichocho took Haugen's marijuana, Xbox gaming system, iPod, video games, and change jar; Bondy's wallet; and Horn's purse and phone.

Afterwards, Alfaro asked Lujan whether they completed the robbery and what they obtained. Lujan responded that they had taken an Xbox 360 and \$20 worth of marijuana. During the police investigation, Lujan identified English and Quichocho as being involved in the robbery. Bondy and Horn identified Quichocho from a photo montage. Horn also identified English from a photo montage. Lujan reported that Quichocho was driving a dark gray Chevrolet Impala with a Guam sticker on the rear window. Police later located an Impala with a Guam sticker at Quichocho's residence.

*English*, 2017 WL 1066847, 1.

#### ARGUMENT

**I. The trial court properly imposed exceptional sentences downward for both English and Quichocho based on their youth at time of the crimes.**

The trial court in this case considered voluminous materials and arguments regarding the defendants' youth before imposing exceptional sentences downward and reducing their prior sentences by 8 years and nearly 6 years, respectively. Review of a sentence "outside the standard sentence range" is controlled by statute, in particular RCW 9.94A.585(4), which holds that to reverse such a sentence that the reviewing court "must find: (1) under a clearly erroneous standard, there is insufficient evidence

in the record to support the reasons for imposing an exceptional sentence; (2) under a de novo standard, the reasons supplied by the sentencing court do not justify a departure from the standard range; or (3) under an abuse of discretion standard, the sentence is clearly excessive or clearly too lenient.” *State v. France*, 176 Wn.App. 463, 469, 308 P.3d 812 (2013); RCW 9.94A.585(4); *State v. Garcia-Martinez*, 88 Wn.App. 322, 330, 944 P.2d 1104, 1109 (1997). Moreover, in imposing an exceptional sentence, the “trial court has all but unbridled discretion in fashioning the structure and length of” it. *France*, 176 Wn.App. at 470 (internal quotation omitted) (citation omitted).

Here, neither English nor Quichocho<sup>3</sup> properly addresses their exceptional sentences under the above standards of review. *See* English – Brief of Appellant; Quichocho – Br. of App. at 13-15. Thus, their challenges to their respective sentences must fail.

In looking at the pertinent standards of review, sufficient evidence of the defendants’ youth exists in the record—as the defendants of course acknowledge—to support the sentencing court’s reasons for imposing

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<sup>3</sup> Quichocho pays lip service to the “clearly excessive” prong, but provides no reasoned argument linking the relevant facts to the legal standard or any citation to authority for the proposition that a trial court can abuse its discretion by imposing a “clearly excessive” sentence when it imposes an exceptional sentence downward. Quichocho – Brief of Appellant at 14-15. “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)); *State v. Dow*, 162 Wn.App. 324, 331, 253 P.3d 476 (2011).

their exceptional sentences downward. Similarly uncontested, the reason supplied by the sentencing court for imposing an exceptional sentence, the defendants' youth, *does* justify a departure from the standard range and their exceptional sentences downward. And, finally, given the sentencing court's reasoned judgment in weighing the defendants' youth and reduced culpability at the time of the crimes with the gravity of the "incident offenses," their violent criminal histories, and ongoing assaultive behavior, the sentencing court cannot be said to have abused its discretion and to have imposed a "clearly excessive" sentence when it, in fact, imposed an exceptional sentence downwards reducing each defendants' initial sentence by over 5 years. RP 215-224. Therefore, under the applicable standards of review the trial court properly imposed exceptional sentences downward for both English and Quichocho.

**II. The trial court properly concluded that it did not have the discretion to run the firearm enhancements concurrently.**

"A Washington Supreme Court decision is binding on all lower courts in the state." *State v. Mathers*, 193 Wn.App. 913, 923, 376 P.3d 1163 (2016) (citing *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 578, 146 P.3d 423 (2006)). Accordingly, reviewing courts "must follow Supreme Court preceden[t], regardless of any personal disagreement with its premise or correctness." *Shuman v. State*, 3

Wn.App.2d 656, 696, 418 P.3d 125 (2018) (citation omitted). When the “Court of Appeals fails to follow directly controlling authority” by our Supreme Court, “it errs.” *State v. Jussila*, 197 Wn.App. 908, 931, 392 P.3d 1108 (2017) (citation omitted).

Our Supreme Court has explicitly held that courts are statutorily required to impose weapon enhancements and to run those enhancements consecutively to each other and to other sentencing provisions when sentencing adults in superior court. *State v. DeSantiago*, 149 Wn.2d 402, 418, 420-21, 68 P.3d 1065 (2003); *State v. Brown*, 139 Wn.2d 20, 29, 983 P.2d 608 (1999), *overruled in part by Houston-Sconiers*, 188 Wn.2d at 21. In other words, when sentencing adults, trial courts lack the discretion to run weapon enhancements concurrently even as part of an exceptional sentence. *Brown*, 139 Wn.2d at 29.

English and Quichocho’s reliance on *Houston-Sconiers* fails because *Houston-Sconiers* held that when *sentencing juveniles* that “courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant” to include the ability to “impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.” 188 Wn.2d at 21. That is, a sentencing court can impose an exceptional sentence downward on a juvenile defendant by running weapon enhancements concurrently. *Id.* at 18-21. Neither English

nor Quichocho was a juvenile at the time of his crime or sentencing so *Houston-Sconiers* is inapplicable to their sentencing claims.

And while both correctly acknowledge that the plain language in *Houston-Sconiers* limits its holding to juveniles, they nevertheless argue that because “the Court’s reasoning in *Houston-Sconiers* should logically be applied to youthful—but technically adult—offenders” that the sentencing court here abused its discretion in following our Supreme Court’s binding decision in *Brown* rather than this logic. Quichocho – Br. of App. at 12-15; English – Br. of App. at 14-15. This argument is untenable. Until the Supreme Court overrules *Brown* in total, sentencing courts and this Court are bound by that decision irrespective of the persuasiveness of *Houston-Sconiers*’ logic and are bound to run weapon enhancements consecutively when sentencing young adults. *Jussila*, 197 Wn.App. at 931.

Even assuming that the sentencing court was incorrect, and that it had the discretion to impose the firearm enhancements concurrently,

neither English or Quichocho is entitled to a remedy.<sup>4</sup> Remand for a resentencing is only available in situations where the trial court abused its discretion in failing to consider an exceptional sentence and evidence exists to show that it might have actually imposed such a sentence had it known that it had the requisite discretion. *State v. Knight*, 176 Wn.App. 936, 957-58, 309 P.3d 776 (2013); *see also In re Meippen*, 193 Wn.2d 310, 312-13, 317, 440 P.3d 978 (2019) (reviewing the holding of *Houston-Sconiers* and declining to grant collateral relief (a resentencing) where the trial court already had the discretion to impose a lesser sentence but declined to do so).

Here, the sentencing court, in choosing to sentence each defendant to exceptional sentences downward, still imposed *at least 10 years of confinement on the substantive offenses*. Had the sentencing court found the consecutive nature of the firearm enhancements to be excessive it still could have reduced the sentence of each defendant substantially; it chose not to and, instead, described each as a “high probability” to reoffend and a “substantial risk to the public.” RP 219, 223. There is no evidence to

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<sup>4</sup> Quichocho’s remedy analysis states that “[w]hen a sentencing court might have imposed an exceptional sentence if it had known an exceptional sentence was an option, remand is proper.” Quichocho – Br. of App. at 15 (internal quotation omitted). English claims the same stating “[w]here an appellate court cannot say that the sentencing court would have imposed the same sentence had it known an exceptional sentence was an option, remand is the proper remedy. English – Br. of App. at 9-10 (citing *In re Mulholland*, 161 Wn.2d 322, 334, 166 P.3d 677 (2007)). But, of course, the sentencing court knew “an exceptional sentence was an option,” it *imposed* an exceptional sentence downward for the reasons advocated by the defendants.

suggest that had the sentencing court believed that it could have run the firearm enhancements concurrently that it would have. RP 213-224. Consequently, even if the sentencing court was incorrect as to the discretion it had in imposing an exceptional sentence, neither English nor Quichocho is entitled to a remedy.

**III. The trial court should not have imposed a \$250 jury demand fee, costs related to community supervision, or allowed for interest accrual on non-restitution legal financial obligations; these improperly imposed legal financial obligations should be stricken upon remand.**

The State agrees with Quichocho that the sentencing court erred when it imposed the \$250 jury demand fee, costs related to community supervision, and allowed for interest accrual on non-restitution legal financial obligations. Quichocho – Br. of App. at 16-19. It imposed said costs on each defendant despite finding that both were indigent and not anticipated to be able to pay financial obligations in the future. E CP 495, 497-99; Q CP 192, 194-96. Upon remand, these fees and costs should be stricken.

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**CONCLUSION**

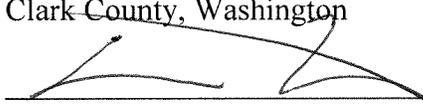
For the reasons argued above, the defendants' sentences should be affirmed and the cases should be remanded to the trial court to strike the \$250 jury demand fees, costs related to community supervision, and the interest accrual on non-restitution legal financial obligations.

DATED this 19<sup>th</sup> day of November, 2019.

Respectfully submitted:

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**November 20, 2019 - 11:28 AM**

**Transmittal Information**

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**Appellate Court Case Title:** State of Washington, Respondent v. Brandon English and Calvin Quichocho, Appellants  
**Superior Court Case Number:** 13-1-02318-1

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