

five year statutory maximum sentence allowed by law for a class C felony pursuant to RCW 9A.20.021(1)(c).

2. The court erred in finding that "Amos' argument regarding the five-year statutory maximum would be applicable if there was only one count of Forgery," to the extent that the finding implies that Amos' exceptional sentence imposed pursuant to RCW 9.94A.535 involves separate individual sentences for each Forgery offense, rather than, a "determinate sentence" that is subject to the limitations under RCW 9.94A.506, despite the number Forgery offenses that was used to fashion the particular "determinate sentence," and to the extent the finding implies that different limitations apply to each form of exceptional sentence authorized under RCW 9.94A.535. FOF 1.2.

3. The court erred in finding "[t]he applicable statutes are RCW 9.94A.010 (purpose of SRA), RCW 9.94A.535 (departure from the guidelines), RCW 9.94A.589 (consecutive or concurrent sentences), RCW 9A.20.021 (maximum sentences for crimes), and RCW 9A.60.020 (forgery)," to the extent that the court deemed no other statutes, such as RCW 9.94A.506 (standard sentence ranges--Limitations) and RCW 9.94A.030(18) (definition of "determinate sentence"), applied when determining whether or not RCW 9.94A.535 is ambiguous, in part, -- i.e., whether the language "subject to the limitations of the section" can be reasonably interpreted to mean that the "determinate sentence" fashioned by "depart[ing] from the standards in RCW 9.94A.589(1)" is subject to the same limitations that apply to a "determinate sentence" that is fashioned by "impos[ing] a sentence outside the standard sentence range for and offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." FOF 1.4.

4. The court erred finding that "[t]he statutes, RCW 9.94A.535 and 9.94A.589, are not ambiguous," to the extent that the court implies that FOF 1.2, FOF 1.3, and Amos' reasonable interpretation, as argued, were insufficient to warrant application of the rule of lenity, and its standards, which required the court to resolve the ambiguity regarding the "limitations" as it applied to RCW 9.94A.535 as a whole in favor of the defendant and lesser punishment, and to the extent that the court finds that the purpose of the SRA's obligation to sentence within a "statutory maximum" was not the casual factor in that decision. COL 2.1.

5. The court erred in finding that "[t]he requirement regarding "limitations of the sections" found in RCW 9.94A.535 refer to allowing an exceptional sentence only upon specific circumstances, either found by a jury under section RCW 9.94A.535(3) or found by a judge under section RCW 9.94A.535(2)," to the extent that the finding erroneously finds that the language "subject to the limitations of this section" applies to multiple "sections," rather than, the "section" where the language is located, i.e., "this section," and to the extent that the finding erroneously finds that the limitations apply to the reasons justifying the exceptional sentence, rather than, the limitations that the SRA places upon the court's sentencing power and authority to impose an exceptional sentence under RCW 9.94A.535, i.e., RCW 9.94A.506(3). COL 2.2.

6. The court erred in finding that "[o]nce the conditions are met pursuant to RCW 9.94A.535(2) or (3) a judge has the discretion to sentence a defendant up to the statutory maximum sentence, per count, and run each count consecutively pursuant to RCW 9.94A.010, RCW 9.94A.589, and RCW 9A.20.021," to the extent that the finding erroneously finds that one form of an exceptional

sentence is subject to a statutory maximum, while the other form of an exceptional sentence is not subject to any sort of statutory maximum, and to the extent that the court implies that an exceptional sentence fashioned pursuant to RCW 9.94A.535 is not a "determinate sentence" that is subject to the limitations of RCW 9.94A.506(3). COL 2.3.

7. The court erred in finding that "Amos provided no authority that showed his sentence was illegal," to the extent that the court finds that the purpose of the SRA and the proper standards under the rules of statutory construction were not the casual factor in that decision. COL 2.4.

B. Issues Pertaining to the Assignments of Error

1. Did the court fail to apply the proper standards under the rules of statutory construction when determining whether or not RCW 9.94A.535 is ambiguous, in part, -- that the rule of lenity standards required the court to resolve any ambiguity in favor of the defendant and lesser punishment because the language "subject to the limitations of this section" can be reasonably interpreted to mean the same limitations that apply to a sentence outside the standard sentence range, which requires the exceptional sentence to be a "determinate sentence" that is subject to the standard sentence range limitations under RCW 9.94A.506?

2. Did the court err in finding that RCW 9.94A.535 was not ambiguous, in part, since the language "subject to the limitations of this section" can be reasonably interpreted to mean different things?

3. What are the limitations of RCW 9.94A.535 and do they equally apply to each form of an exceptional sentence that can be imposed therein -- that an exceptional sentence, regardless how it is fashioned under RCW 9.94A.535, "shall be a determinate sentence" and subject to the limitations under RCW

9.94A.506?

4. Is an exceptional sentence considered a "determinate sentence" -- despite the number of offenses involved or whether the exceptional sentence was fashioned by either: 1) imposing a sentence outside the standard sentence range, 2) departing from the standards in RCW 9.94A.589(1) and (2) governing whether sentences are to be served consecutively or concurrently, or 3) both? If so, what classification is the "determinate sentence" given in order to determine the applicable statutory maximum pursuant to RCW 9.94A.506?

C. Argument

This court should reverse the trial court's findings of fact and conclusions of law for an abuse of discretion because the limitations of RCW 9.94A.535, and how those limitations apply when the court imposes an exceptional sentence by departing from the standards in RCW 9.94A.589(1), is ambiguous and the court did not apply the proper standards under the rules of statutory construction to resolve such ambiguity. Furthermore, the exceptional sentence imposed herein is clearly excessive because it exceeds the purpose of the SRA as a whole and exceeds the sentencing authority.

By its stated purpose and substantive provisions, the Sentencing Reform Act of 1981 contains an obligation to sentence within a "statutory maximum," it refers to the maximum sentences set forth in RCW 9A.20.021. Compare RCW 9.94A.030(50), .035(3), .505(5), .506(3), .530(3), .533(3)(g)(4)(g)(8)(d)(10)(a)(13), .537(6), .599, .670(5)(a), .685(1), .701(9) which all ensure that no portion of a "determinate sentence" exceeds the statutory maximums set forth in RCW 9A.20.021. The SRA provision at issue here, i.e., RCW 9.94A.535, is no exception; it does not purport to apply

different statutory maximums to an exceptional sentence that is either: 1) outside of the standard sentence range, 2) departs from the standards in RCW 9.94A.589(1) and (2) governing whether sentences are to be served consecutively or concurrently, or 3) both.

In fact, RCW 9.94A.535 clearly implies that the same statutory maximums are recognized, which are applied throughout the entire SRA as a whole, equally applies to any form of an exceptional sentence imposed by the court under the statute, regardless the number of offenses involved and how the particular exceptional sentence is fashioned. This is because an exceptional sentence in the form of "[a] sentence outside the standard sentence range shall be a determinate sentence" that is subject to the standard sentence range limitations under RCW 9.94A.506, which reference the statutory maximum sentences under RCW 9A.20.021. Therefore, keeping these same limitations in mind, an exceptional sentence in the form of consecutive sentences should also be "subject to the same limitations of this section," meaning that "[a] departure from the standards in RCW 9.94A.589(1)" "shall be a determine sentence" itself that is subject to the same limitations under RCW 9.94A.506, regardless the number of offenses involved. RCW 9.94A.535.

So, because both forms of an exceptional sentence under RCW 9.94A.535 "shall be a determinate sentence," the "[exact] number of actual years, months, or days of total confinement, of partial confinement, or community custody, ... or terms of a legal financial obligation" imposed must be within the applicable "statutory maximum" in order to comply with the SRA's sentencing scheme. Otherwise, the purpose of the SRA would be easily thwarted "if [the court] finds, ..., that there are substantial and compelling reasons justifying an exceptional sentence" without also "considering the purpose of

this Chapter [i.e., the SRA]" in conjunction with its finding. *Id.*, RCW 9.94A.030(18).

RCW 9.94A.535 unequivocally requires a simultaneous "finding" and "consideration" by the court in order to impose an exceptional sentence. This statutory requirement undermines the court's erroneous COL 2.2. The language "subject to the limitations of this section" should apply only to the court's "consideration" requirement regarding the purpose of the SRA and how its purpose includes an obligation to limit sentencing to a statutory maximum. It should not apply to the "finding" requirement regarding whether there are substantial and compelling reasons justifying an exceptional sentence. This is because the reasons justifying an exceptional sentence are outlined in other "sections" of RCW 9.94A.535, and not in "this sections" where the limiting language is contained.

Understanding the applicable limitations of RCW 9.94A.535, the question now is what "statutory maximum" applies to the "determinate sentence" that was fashioned by departing from the standards in RCW 9.94A.589(1) and running the sentences on four counts of Forgery consecutively?

Amos asserts that the "determinate sentence" imposed in this case should be limited to a five year statutory maximum because Forgery is classified as a class C felony. See RCW 9A.60.020, RCW 9.94A.506(3), RCW 9A.20.021(1)(c). While caselaw interprets RCW 9A.20.021 to apply to "a crime," meaning that each offense itself carries a statutory maximum that are aggregate together based upon the number of offenses involved, such caselaw did not consider RCW 9A.20.021's interpretation in accordance with the SRA and the specific limiting language found within RCW 9.94A.535. The caselaw includes, but is not limited to, *State v. France*, 176 Wn.App. 463, 308 P.3d 812 (2013), *State v.*

Oxborrow, 106 Wn.2d 525, 723 P.2d 1123 (1986), and State v. Flake, 76 Wn.App. 174, 883 P.2d 341 (1994).

Furthermore, the caselaw does not consider the critical fact that an exceptional sentence imposed pursuant to RCW 9.94A.535 "shall be a determinate sentence," regardless of the number of offenses involved and how the court fashioned the sentence by either: 1) imposing a sentence outside the standard sentence range, 2) departing from the standards in RCW 9.94A.589(1) and (2) governing whether sentences are to be served consecutively or concurrently, or 3) both. While the SRA generally imposes a sentence for each offense resulting in a conviction, and then runs the sentences consecutive or concurrent to each other depending upon the designation and seriousness level of the offenses involved. See generally RCW 9.94A.589. However, this same protocol does not apply to an exceptional sentence under RCW 9.94A.535 because the court chose to depart from that protocol when exercising its discretion to impose an exceptional sentence, therefore, it creates a "determinate sentence," which does not entail multiple sentences. Based thereupon, the court's FOF 1.2 and COL 2.3 are clearly erroneous.

Considering the purpose of the SRA, it contains an obligation throughout its entirety a commitment to sentence within a "statutory maximum." While the SRA refers to the maximum sentences set forth in RCW 9A.20.021, it also has the purpose "which structures, but does not eliminate, discretionary decisions affecting sentences." See RCW 9.94A.010. In other words, it gives the court the discretion to depart from the guidelines in two specific ways under RCW 9.94A.535, which creates a "determinate sentence" in and of itself; however, it does not give the court discretion to depart from the statutory maximum limitations that are contained throughout the SRA to ensure a "determinate

sentence" is lawful. Accordingly, the court's COL 2.3 is clearly erroneous when properly considering the purpose of the SRA as a whole.

Lastly, the court's COL 2.4 is clearly erroneous because Amos clearly showed how the 116 month "determinate sentence" is clearly excessive because it exceeds the applicable five year statutory maximum. Contrary to the court's erroneous conclusion therein, Amos has sustained prejudice resulting from a fundamental defect that inherently results in a complete miscarriage of justice because his exceptional sentence is 56 months longer than the maximum sentence allowed by law for a class C felony.

D. Conclusion

This court should reverse the trial court's erroneous findings of fact and conclusions of law because the language "subject to the limitations of this section," as it applies to exceptional sentences under RCW 9.94A.535, is ambiguous. Therefore, the rule of lenity should apply to resolve the ambiguity in Amos' favor.

By resolving the ambiguity in Amos' favor, it does not create an absurd result because it does not diminish the court's ability to carry out the legislature's intent of the free crime aggravator, which is to ensure no crime goes unpunished. The court still has the ability to fashion an exceptional sentence between the high-end of the standard range with 9+ points, i.e., 29 months, and the five years statutory maximum, which is sufficient enough to ensure that Amos is punished for the low level Forgery offenses in this case. This is consistent with the purpose of the SRA and ensures that punishment is not dealt out by the court without limitations, which seems to what happened herein.

Dated: February 10, 2020.

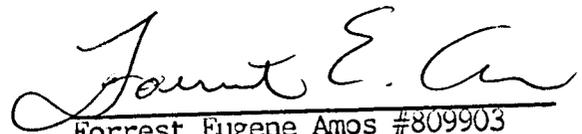
Respectfully submitted,

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DIVISION II

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STATE OF WASHINGTON

BY _____
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-Proof of Service-

I, Forrest Eugene Amos, on February 11, 2020, deposited a true and correct copy of the Statement OF Additional Grounds in the CBCC legal mail system to the following address:

Court of Appeals, Division Two
Attn: Clerk
950 Broadway, suite 300
Tacoma, Wa 98402-4454

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 11 day of February, 2020 at Clallam Bay, Washington.



Forrest Eugene Amos #809903