

30916-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT,

v.

LUCKY JOE GUZMAN, SR., APPELLANT.

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

Brian C. O'Brien
Senior Deputy Prosecuting Attorney

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509)477-3662

FILED
AUG 06, 2015
Court of Appeals
Division III
State of Washington

INDEX

I. APPELLANT’S ASSIGNMENT OF ERROR..... 1

II. ISSUES PRESENTED 1

III. STATEMENT OF THE CASE 1

IV. ARGUMENT 3

 A. THE TRIAL COURT’S ENTRY OF WRITTEN FINDINGS OF FACTS AND CONCLUSIONS OF LAW SATISFY THE REQUIREMENT UNDER RCW 9.94.A.535 THAT THE COURT SHALL SET FORTH THE REASONS FOR ITS DECISION IN *WRITTEN* FINDINGS OF FACT AND CONCLUSIONS OF LAW.....3

 1. Standard of Review..... 3

V. CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Friedlund, 182 Wn.2d 388, 341 P.3d 280 (2015) 3, 4

STATUTES

RCW 9.94.A.535..... 3

RCW 9.94A.507..... 2

RULES

CrR 7.2..... 4

I. APPELLANT’S ASSIGNMENT OF ERROR

The court erred by not entering written findings of fact and conclusions of law supporting the exceptional sentence.

II. ISSUES PRESENTED

Did the court err by not entering written findings of fact and conclusions of law with the specific nomenclature “exceptional sentence”?

III. STATEMENT OF THE CASE

The defendant was convicted by the trial court of first degree child molestation. The court later entered its written findings supporting the imposition of an exceptional sentence.

As to the first aggravating factor charged in Count I, the Court finds beyond reasonable doubt that KJH was particularly vulnerable at the time of this offense. She was not only vulnerable due to her young age of eight, but was even more vulnerable than a typical eight year old due to her illness that day. She was nauseous, lethargic and suffering from scarlet fever. She was on the defendant's couch trying to rest at the time of this offense.

As to the second aggravating factor charged in Count II, the Court finds beyond reasonable doubt that the defendant acted in a position of trust and used that trust to facilitate the commission of this crime. The defendant is the grandfather of the victim. He was in a position of trust by virtue of his status as her grandfather. Additionally, the defendant was in a position of trust because he had assumed the duty to care for her on June 30, 2010, while KJH was sick. This trust gave the defendant access to KJH. The defendant then used that trust to attempt to persuade KJH to not disclose the nature of his actions by telling her that he would go to jail if she told anyone.

Written Trial Court findings 24 and 25. (CP 144).

From these findings the court concluded: “The defendant committed the offense against a particularly vulnerable victim and abused a position of trust to facilitate the crime. Each of the two aggravating factors have (sic) been proven beyond a reasonable doubt.” Written Conclusion 2, CP 145 (Findings and Conclusions).

These findings were entered at the time of defendant’s sentencing on May 24, 2012. In many ways they reflect the court’s oral ruling at the end of trial five weeks earlier, on April 17, 2012. *See*, RP 459-461 (Court’s Oral Ruling). However, these separate written findings were entered at the time of the defendant’s sentencing. Additionally, at the time of sentencing, the trial court entered its written conclusion that these findings justified an exceptional sentence:

Exceptional Sentence: The Court finds substantial and compelling reasons that justify and exceptional sentence above the standard range for Count I. Aggravating factors were found by the court after the defendant waived jury trial.

CP 142 (Judgment and Sentence page 4, ¶ 2.4).

The court sentenced the defendant to a minimum exceptional sentence of 135 months and a maximum of life under RCW 9.94A.507. (CP 159).

IV. ARGUMENT

A. THE TRIAL COURT'S ENTRY OF *WRITTEN* FINDINGS OF FACTS AND CONCLUSIONS OF LAW SATISFY THE REQUIREMENT UNDER RCW 9.94.A.535 THAT THE COURT SHALL SET FORTH THE REASONS FOR ITS DECISION IN *WRITTEN* FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. Standard of Review

A trial court's failure to enter written findings of fact and conclusions of law to support an exceptional sentence requires remand for entry of findings of fact and conclusions of law. *State v. Friedlund*, 182 Wn.2d 388, 395–97, 341 P.3d 280 (2015).

The defendant cites only one case in his brief, *State v. Friedlund*, *supra*. That case held a trial court's failure to enter written findings of fact and conclusions of law to support an exceptional sentence requires remand. *Friedlund*, 182 Wn.2d at 395–97. There the court reasoned “the SRA's written findings provision requires exactly that—*written* findings. Permitting verbal reasoning—however comprehensive—to substitute for written findings ignores the plain language of the statute.” *Id.* at 394. One of the reasons given by the State Supreme Court for requiring written findings was that the findings must be sent by the superior court clerk to the Washington State Sentencing Guidelines Commission along with the trial court's judgment and sentence pursuant. *Id.* at 394, citing CrR 7.2(d). Without written findings, the defendant would not have an appealable order, and “the

Sentencing Guidelines Commission and the public at large could not readily determine the reasons behind exceptional sentences, greatly hampering the public accountability that the SRA requires.” *Firedlund*, 182 Wn.2d at 345.

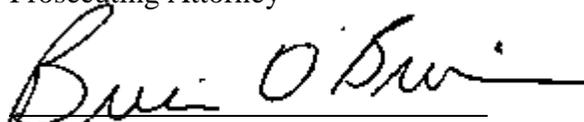
The findings in this case were in writing and presumably sent by the clerk of the superior court to the Guidelines Commission as required by CrR 7.2(d). There is no showing to the contrary. The trial court properly laid out its factual findings and conclusions in writing. This was not an oral colloquy. *Friedlund, supra*, does not support the defendant’s contention that the written findings in the instant case are inadequate. The findings are in writing and are well-reasoned. As *Friedlund* is the only case cited, little more can be said.

V. CONCLUSION

The trial court entered written findings and conclusions supporting the exceptional sentence. The defendant’s claim is without merit.

Dated this 6th day of August, 2015.

LAWRENCE H. HASKELL
Prosecuting Attorney



Brian C. O'Brien #14921
Deputy Prosecuting Attorney
Attorney for Respondent

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

STATE OF WASHINGTON,

Respondent,

v.

LUCKY JOE GUZMAN, SR.,

Appellant,

NO. 30916-9-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on August 6, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Kenneth Kato
khkato@comcast.net

and mailed a copy to:

8/6/2015

(Date)

Spokane, WA

(Place)

Crystal McNees

(Signature)