

FILED

APR 21, 2014

Court of Appeals
Division III
State of Washington

32046-4-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

TROY R. HOLWAY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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INDEX

APPELLANT’S ASSIGNMENTS OF ERROR.....1

ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....1

ARGUMENT.....2

 A. SUFFICIENT EVIDENCE SUPPORTED
 THE JURY SPECIAL VERDICTS THAT
 DEFENDANT COMMITTED THE
 DELIVERIES OF A CONTROLLED
 SUBSTANCE WITHIN A SCHOOL ZONE.....2

 B. THE TRIAL COURT PROPERLY
 CONCLUDED THAT NO SUBSTANTIAL
 AND COMPELLING REASONS
 JUSTIFIED THE IMPOSITION OF AN
 EXCEPTIONAL SENTENCE OUTSIDE
 THE STANDARD RANGE PROVIDED
 BY THE SRA4

CONCLUSION.....6

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. BRIGHT, 129 Wn.2d 257, 916 P.2d 922 (1996).....	3
STATE V. DELMARTER, 94 Wn.2d 634, 618 P.2d 99 (1980).....	4
STATE V. GARCIA-MARTINEZ, 88 Wn. App. 322, 944 P.2d 1104 (1997).....	5
STATE V. GREEN, 94 Wn.2d 216, 616 P.2d 628 (1980).....	3
STATE V. MYLES, 127 Wn.2d 807, 903 P.2d 979 (1995).....	3
STATE V. PEARSON, 31132-5, slip op. (Div III. April 10, 2014).....	3
STATE V. SALINAS, 119 Wn.2d 192, 829 P.2d 1068 (1992).....	3
STATE V. SANCHEZ, 104 Wn. App. 976, 17 P.3d 1275 (2001).....	2, 4
STATE V. SMITH, 106 Wn.2d 772, 725 P.2d 951 (1988).....	3
STATE V. WILLIAMS, 149 Wn.2d 143, 65 P.3d 1214 (2003).....	5

STATUTES

RCW 9.94A.535.....	5
RCW 9.94A.585(1).....	4
RCW 69.50.435	2

I.

APPELLANT’S ASSIGNMENTS OF ERROR

- (1) The trial court erred imposing sentencing enhancements based upon the jury’s special verdicts finding that defendant delivered a controlled substance in a school bus stop zone.
- (2) The trial court abused its discretion by declining to impose an exceptional sentence below the standard sentencing range set by the Sentencing Reform Act (“SRA”).

II.

ISSUES PRESENTED

- (1) Did sufficient evidence support the jury special verdicts that defendant delivered a controlled substance in a school bus stop zone?
- (2) Did the trial court abuse its discretion in declining to impose an exceptional sentence below the standard range set by the SRA?

III.

STATEMENT OF THE CASE

Respondent accepts the Appellant’s statement of the case for purposes of this appeal only.

IV.

ARGUMENT

A. SUFFICIENT EVIDENCE SUPPORTED THE JURY SPECIAL VERDICTS THAT DEFENDANT COMMITTED THE DELIVERIES OF A CONTROLLED SUBSTANCE WITHIN A SCHOOL ZONE.

Appellant contends that insufficient evidence supported the special verdicts returned by the jury finding that he committed the three deliveries of a controlled substance within a school bus zone. Appellant focuses the argument on the fact that the State did not have *the* individual designated by School District #81 to “designate school bus stop locations” testify. Appellant cites to the interpretation of RCW 69.50.435 announced in *State v. Sanchez*, 104 Wn. App. 976, 17 P.3d 1275 (2001), to support this argument. Appellant argues that the District #81 “transportation liaison in charge of regular ed routing” agent, Ms. McLellan, did not testify that she had the authority to designate school bus stops as mandated by RCW 69.50.435.

Defendant did not object to the testimony of Ms. McLellan with regard to the location of the school bus stops at issue. Defendant had the opportunity to cross-examine Ms. McLellan with regard to the identity of the District’s bus stop designator, yet elected not to so inquire. Defendant also chose not to object to the map produced by Spokane County

Engineering Dept. Technician Joel Edgar which established the location of the school bus stops affected by the three separate deliveries of heroin by defendant. Here, there is no confrontation clause problem as addressed by this Court in *State v. Pearson*, 31132-5, slip op. (Div III. April 10, 2014), with respect to either the map establishing the school bus stops or the testimony of School District #81's Transportation Liaison in Charge of Regular Ed Routing, Ms. McLellan.

"There is sufficient proof of an element of a crime to support a jury's verdict when, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that element beyond a reasonable doubt." *State v. Bright*, 129 Wn.2d 257, 266 n.30, 916 P.2d 922 (1996). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (1988); *State v. Myles*, 127 Wn.2d 807, 816, 903 P.2d 979 (1995). The defendant admits to the truth of the State's

evidence and the viewing of the State's evidence in a light most favorable to the prosecution.

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Appellant has failed to satisfy the threshold showing that *no rational trier of fact could have found that the sentencing enhancements had been proved beyond a reasonable doubt* as required to negate the special verdicts returned by the jury in this case.

B. THE TRIAL COURT PROPERLY CONCLUDED THAT NO SUBSTANTIAL AND COMPELLING REASONS JUSTIFIED THE IMPOSITION OF AN EXCEPTIONAL SENTENCE OUTSIDE THE STANDARD RANGE PROVIDED BY THE SRA.

Appellant takes issue with the trial court's imposition of a standard range sentence. Appellant contends that the facts of this case provided substantial and compelling reasons for the trial court to impose an exceptional sentence below the standard range based upon the multiple offense policy. Appellant cites to the holding in *State v. Sanchez*, 104 Wn. App. 976, as support for its position, yet the court therein resolved the imposition of consecutive versus concurrent sentences.

Generally, a defendant cannot appeal a standard range sentence. RCW 9.94A.585(1); *State v. Williams*, 149 Wn.2d 143, 146, 65 P.3d 1214

(2003). Appellate review is still available to correct legal errors or abuses of discretion in the determination of what sentence applies. *Id.*, 149 Wn.2d at 147. Here, appellant claims that the trial court abused its discretion by finding that the circumstances of his case did not provide substantial and compelling reasons to justify an exceptional sentence.

An exceptional sentence may be imposed if the trial court finds “substantial and compelling reasons to go outside the standard range. RCW 9.94A.535. A standard range sentence can only be challenged on the basis that the court refused to exercise discretion or relied upon an improper basis for declining to consider an exceptional sentence request. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). Under such circumstances, it is the trial court’s refusal to exercise discretion that is appealable, not the sentence. *Id.*

Conversely, a trial court that has considered the facts and has concluded that there is no basis for an exceptional sentence has exercised its discretion, and defendant may not appeal that ruling.

Id., 88 Wn. App. at 330 .

Here, the trial court declined to impose an exceptional sentence below the standard range because it concluded there was no factual basis to justify imposing such a sentence. It based its conclusion on its analysis of the circumstances of this case. It was the defendant who chose the

three locations to perpetrate the separate deliveries of the controlled substance heroin. Defendant had a criminal history confirming that he was a convicted heroin dealer. The trial court simply disagreed with defendant's perspective of what was an appropriate sentence given the circumstances of this case. The trial court appropriately exercised its discretion by weighing the evidence and circumstances to conclude that substantial and compelling reasons did not exist to justify an exceptional sentence. Appellant has not established that the trial court abused its discretion in imposing its sentence in this case.

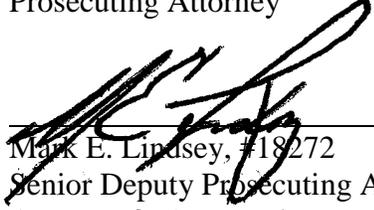
V.

CONCLUSION

For the reasons stated, the convictions and sentencing enhancements should be affirmed.

Respectfully submitted this 21st day of April, 2014.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)
)
 Respondent,) NO. 32046-4-III
 v.)
)
TROY R. HOLWAY,)
)
 Appellant,)

I certify under penalty of perjury under the laws of the State of Washington, that on April 21, 2014, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

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4/21/2014
(Date)

Spokane, WA
(Place)



(Signature)