

FILED
APRIL 23, 2015
Court of Appeals
Division III
State of Washington

NO. 32842-2-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff-Respondent,

V.

SALVADOR S. NAVA,

Defendant-Appellant.

REPLY BRIEF

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ARGUMENT

The State totally misconstrues Salvador S. Nava's argument. The State asserts that Mr. Nava received a standard range sentence. The State is in error. Mr. Nava received an exceptional sentence.

Mr. Nava was convicted of first degree murder and four (4) counts of first degree assault. The offenses are all class A felonies with a maximum punishment of life imprisonment.

RCW 9.94A.589(1)(a) states, in part: "... Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535."

The trial court sentenced Mr. Nava to consecutive sentences.

A court may not order a sentence beyond that authorized by law. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Any such order is invalid on its face. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002).

Personal Restraint of Tobin, 165 Wn.2d 172, 175-76, 196 P.3d 670 (2008).

In the *Tobin* case the total sentence was one hundred and sixty-eight (168) months. It exceeded the statutory maximum sentence of one hundred and twenty (120) months.

The trial court's sentence of nine hundred forty-three (943) months exceeds Mr. Nava's life expectancy. Mr. Nava relies upon the argument contained in his original brief in support of his position that he needs to be resentenced to life in prison with the possibility of parole.

The State's reliance upon the Eighth Amendment to the United States Constitution and Const. art. I, § 14 is misplaced. Mr. Nava is not contending that his sentence constitutes cruel and unusual punishment.

The State claims that *State v. Whitfield*, 132 Wn. App. 878, 134 P.3d 1203 (2006), relied upon by Mr. Nava in his original brief, supports its argument. This would be so if Mr. Nava was claiming a violation under either the Eighth Amendment or Const. art. I, § 14.

The *Whitfield* case stands for the proposition that "... courts may sentence defendants to life imprisonment when convicted of multiple serious violent offenses." *State v. Whitfield, supra*, 902.

The facts and circumstances of Mr. Nava's case require that his nine hundred and forty-three (943) month sentence be reversed and the case remanded to the trial court for a sentence of life imprisonment with possibility of parole.

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DATED this 23rd day of April, 2015.

Respectfully submitted,

s/Dennis W. Morgan

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COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	YAKIMA COUNTY
Plaintiff,)	NO. 01 1 00902 3
Respondent,)	
)	CERTIFICATE
v.)	OF SERVICE
)	
SALVADOR S. NAVA,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 23rd day of April, 2015, I caused a true and correct copy of the and *APPELLANT'S REPLY BRIEF* to be served on:

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