

FILED
May 17, 2016
Court of Appeals
Division III
State of Washington

No. 33311-6-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

State of Washington, Respondent

v.

Manuel Rodriguez-Flores, Appellant

BRIEF OF RESPONDENT

Ryan S. Valaas, WSBA #40695
Deputy Prosecuting Attorney
Douglas County Courthouse
P.O. BOX 360
Waterville, WA 98858
(509) 745-8535

Table of Contents

Statement of the Issues	1
Statement of the Case	1
A. <u>Statement of Facts:</u>	1
B. <u>Procedural History:</u>	1
Argument	4
A. <u>There was sufficient evidence to support the school zone enhancements based on Mr. Rodriguez’s stipulation to them</u>	4
B. <u>Based on the recent holding in <i>State v. Conover</i>, 183 Wn.2d 706, 355 P.3d 1093 (2015) that interpreted RCW 9.94A.533, the State concedes that the case should be remanded to the trial court to determine whether the sentence enhancements should run concurrently or consecutively with each other</u>	5
C. <u>The trial court did not err when it sentenced Mr. Rodriguez within the standard range</u>	6
D. <u>The issue of whether Mr. Rodriguez had the ability to pay his legal financial obligations was not preserved for appeal</u>	8
Conclusion	9

Table of Authorities

Cases

<i>State v. Ammons</i> , 105 Wn.2d 175, 13 P.2d 719 (1986)	6
<i>State v. Blazina</i> , 182 Wn.2d 827, 832-33, 344 P.3d 680 (2015)	8
<i>State v. Conover</i> , 183 Wn.2d 706, 355 P.3d 1093 (2015)	5-6
<i>State v. Friederich-Tibbets</i> , 123 Wn.2d 250, 866 P.2d 1257 (1994);.....	6
<i>State v. Mail</i> , 121 Wn.2d 707, 854 P.2d 1042 (1993)	6
<i>State v. Rousseau</i> , 78 Wn. App. 774, 898 P.2d 870 (1995).....	6
<i>State v. Thomas</i> , 150 Wn.2d 821, 874 P.3d 970 (2004)	4
<i>State v. Wolf</i> , 134 Wn. App. 196, 139 P.3d 414 (2006).	4

Statutes

RCW 9.94A.533(6).....	5-6
RCW 9.94A.589	5-6

I. STATEMENT OF THE ISSUES

- A. Was there sufficient evidence to support the jury's finding that Mr. Rodriguez delivered methamphetamine within 1000 feet of a school bus stop route where Mr. Rodriguez stipulated to this fact?
- B. Pursuant to RCW 9.94A.589, did the trial court err in running the three school zone enhancement consecutively?
- C. Did the trial court err in imposing a standard range sentence?
- D. Did Mr. Rodriguez fail to preserve the issue regarding his ability to pay legal financial obligations when he did not raise the issue at the trial court?

II. STATEMENT OF THE CASE

A. Statement of Facts:

On October 14, 16, and 20, of 2015, as well as January 25, 2016, Mr. Rodriguez sold methamphetamine to a confidential informant. RP 135-151. Three of these deliveries occurred within 1000 feet of a school bus stop route. RP 175-176.

B. Procedural History:

On April 20, 2015, the State filed an Amended Information charging Mr. Rodriguez with four counts of Delivery of Methamphetamine; additionally, the State alleged that that three of these deliveries occurred within 1000 feet of a school bus route stop. CP 15-19. The case went to trial and on April 24, 2015, a jury found Mr. Rodriguez guilty of the four

deliveries and found that three of the deliveries occurred within 1000 feet of a school bus stop route. CP 76-82. During the trial, Mr. Rodriguez stipulated that the deliveries occurred within 1000 feet of a school bus stop:

The court: I'm assuming that you have witnesses available at this very moment that will testify that Counts 1, II, and IV happened within 1,000 feet of a school bus stop?

Mr. Valaas: Yes, Your Honor.

The court: Okay. And Defendant understands that he has a right to have the State prove those allegations by beyond a reasonable doubt?

Defendant: Yes.

The court: And you agree to stipulate, sir, that these acts occurred within 1,000 feet of a school bus stop?

Defendant: Yes.

The court: Alright.

RP 175-176. The court then informed the jury of Mr. Rodriguez's stipulation to the school zone enhancements:

Ladies and gentlemen, evidence is now to be presented to you by means of a stipulation . . . the parties stipulate that as to Counts I, II, and IV, that the location of the alleged acts occurred within 1,000 feet of a school bus stop.

RP 176-177.

The court sentenced Mr. Rodriguez on May 4, 2015. CP 87. At the sentencing hearing, Mr. Rodriguez told the court (essentially) that he hadn't committed the crimes he was being convicted of: "they judged me

for something that I – that was not true.” RP 237. The trial court responded to this by stating,

Well, Mr. Rodriguez-Flores, let me tell you this: You had no defense. They had you on video. They had you under surveillance. You had absolutely no defense and you went to trial anyway. And I know because of what was going on in this Court at that time that I had another jury in that you were offered a plea bargain of significantly less time. I have absolutely no question in my mind that you will be released and continue to do the same kind of stuff. I don't think you have any remorse; I don't think you have any concern. 132 months.

RP 238. The 132 month sentence imposed by the trial court consisted of 60 months for the underlying offenses (run concurrently with each other) and 72 months for the enhancements (24 months for each of the three enhancements run consecutively with each other). CP 90.

In addition to the 132 months imposed by the court, it also ordered Mr. Rodriguez to pay legal financial obligations totaling \$2,050.00 at a rate of \$25 per month. CP 92-93. Prior to imposing these LFOs, the court confirmed with Mr. Rodriguez that he could afford to pay them. RP 241. Mr. Rodriguez's attorney confirmed that he could afford to pay the LFOs; furthermore, Mr. Rodriguez never objected to the amount of LFOs or the rate at which the court ordered him to pay them. RP 241.

This appeal followed.

III. ARGUMENT

A. There was sufficient evidence to support the school zone enhancements based on Mr. Rodriguez's stipulation to them.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Thomas*, 150 Wn.2d 821, 874 P.3d 970 (2004).

A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom . . . Credibility determinations are for the trier of fact and are not subject to review. [The appellate] court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

Thomas at 874-75.

A stipulation is an express waiver, "conceding for the purposes of the trial the truth of some alleged act, with the effect that one party need offer no evidence to prove it and the other is not allowed to disprove it." *State v. Wolf*, 134 Wn. App. 196, 199, 139 P.3d 414 (2006).

In the present case, Mr. Rodriguez stipulated that the alleged acts in Counts I, II, and IV occurred within 1000 feet of a school bus stop; i.e., Mr. Rodriguez stipulated that the enhancement had been committed for those three counts. RP 176-77. It's common sense then that a stipulation to the enhancement itself inherently encompasses the elements and

definitions associated with that enhancement. It is therefore illogical for Mr. Rodriguez to stipulate that the acts occurred within 1000 feet of a school bus stop and then argue on appeal that there was insufficient evidence of a school bus stop (e.g., a bus having a seating capacity of 10+ occupants, a stop that was designated by a school district).

Based on the stipulation by Mr. Rodriguez that the alleged acts of Counts I, II, and IV occurred within 1000 feet of a school bus stop, a rational trier of fact could have found that the enhancement occurred beyond a reasonable doubt. Therefore, Mr. Rodriguez's claim of insufficiency should be denied.

B. Based on the recent holding in *State v. Conover*, 183 Wn.2d 706, 355 P.3d 1093 (2015) that interpreted RCW 9.94A.533, the State concedes that the case should be remanded to the trial court to determine whether the sentence enhancements should run concurrently or consecutively with each other.

Regarding the imposition of school zone enhancements, "All enhancements under this subsection shall run consecutively to all other sentencing provision, for all offenses sentenced under this chapter." RCW 9.94A.533(6). The Washington Supreme Court recently interpreted this statute to not require that the enhancements run consecutively with each other; rather, RCW 9.94A.589 governs this determination. *Conover*, 183

Wn.2d at 719. Based on the holding in *Conover*, the State concedes that the case should be remanded to determine whether the sentence enhancements should run concurrently or consecutively (with each other) under RCW 9.94A.589.

C. The trial court did not err when it sentenced Mr. Rodriguez within the standard range.

Generally, “a sentence within the standard sentence range . . . shall not be appealed.” RCW 9.94A.585(1); *State v. Friederich-Tibbets*, 123 Wn.2d 250, 252, 866 P.2d 1257 (1994); *State v. Rousseau*, 78 Wn. App. 774, 776, 898 P.2d 870 (1995). “A trial court’s decision regarding the length of a sentence within the standard range is not appealable because ‘as a matter of law there can be no abuse of discretion.’” *State v. Mail*, 121 Wn.2d 707, 710, 854 P.2d 1042 (1993) (quoting *State v. Ammons*, 105 Wn.2d 175, 183, 713 P.2d 719 (1986)). “This accords with the traditional notion that, outside of narrow constitutional or statutory limitations, a sentencing judge’s discretion remains largely unfettered.” *Id.*

In the present case, the trial court ordered a sentence within the standard range. In rendering the sentence, the court noted how strong the evidence against Mr. Rodriguez was, e.g., stating “they had you on video, “you had no defense.” RP 238. Based on the State’s strong case, the court went on to express surprise that Mr. Rodriguez chose to go to trial rather

than accept the State's plea bargain. *Id.* The court then goes on to express its concern that Mr. Rodriguez will continue with these activities upon his release: "I have absolutely no question in my mind that you will be released and continue to do the same kind of stuff. I don't think you have any remorse; I don't think you have any concern. 132 months." *Id.*

Based on these statements from the court and the context they were made in (rebutting Mr. Rodriguez's claim during his allocution that he didn't commit the crimes), there is no evidence to support Mr. Rodriguez's current claim that the trial court punished him for going to trial. The trial court's reference to the fact that Mr. Rodriguez chose to go to trial simply reflects the court's surprise at his decision based on (1) the State's strong case and (2) the plea bargain offered to him. The court's sentence was based on its belief that Mr. Rodriguez had no remorse for his actions and that physical confinement was the only means of preventing Mr. Rodriguez from continuing to sell drugs.

Mr. Rodriguez argues that the court's imposition of a high-end sentence following its discussion of the strength of the evidence presented at trial as well as a brief reference to a plea bargain must have violated Mr. Rodriguez's right to trial. But Mr. Rodriguez cites to no Washington authority to support this conclusion. Furthermore, given the amorphous, attenuated connection that Mr. Rodriguez attempts to draw, a holding in

concurrence with his request would result in a similarly amorphous line regarding when, and to what extent, a sentencing court would be allowed to discuss the evidence presented or prior plea bargains.

Because the court imposed a standard range sentence, the sentence is proper and not appealable; therefore, Mr. Rodriguez's request should be denied.

D. The issue of whether Mr. Rodriguez had the ability to pay his legal financial obligations was not preserved for appeal.

A defendant is not entitled to automatic review of the imposition of legal financial obligations for the first time on appeal where he did not object at the trial court. *State v. Blazina*, 182 Wn.2d 827, 832-33, 344 P.3d 680 (2015).

Because Mr. Rodriguez did not preserve the "ability to pay" issue at the trial court level, this court should decline to address it now for the first time on appeal. However even if the court chooses to accept review of this unpreserved issue, the trial court specifically asked Mr. Rodriguez if he had the ability to pay the LFOs and his attorney responded affirmatively. RP 241. Mr. Rodriguez's appeal as to LFOs should be denied, both because (1) he failed to preserve the issue for appeal, and (2) affirmatively

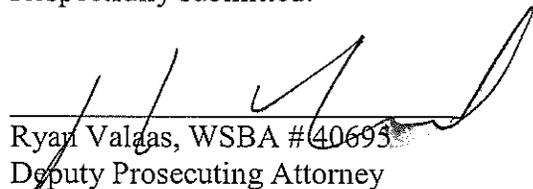
advised the trial court that he would have the ability to pay the LFOs after getting out of prison.

IV. CONCLUSION

Based on the foregoing reasons, Mr. Rodriguez's appeal should be denied except for the issue regarding sentence enhancements. As to that one issue, the State concedes that the case should be remanded for the sole purpose of determining whether the enhancements run consecutively or concurrently, as determined by RCW 9.94A.589. For all other issues, Mr. Rodriguez's appeal should be denied and the convictions affirmed.

DATED: May 17, 2016

Respectfully submitted:



Ryan Valaas, WSBA #40695
Deputy Prosecuting Attorney