

FILED
DEC 21, 2016
Court of Appeals
Division III
State of Washington

No. 34175-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

LORENZO CAMPOS,

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 15-1-01403-3

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

Andrew M. Howell, Deputy
Prosecuting Attorney
BAR NO. 45034
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The trial court did not abuse its discretion.
- B. The trial court erred in imposing community custody.

II. STATEMENT OF FACTS

On February 22, 2016, the State charged the defendant by first amended information with violation of post-conviction protection order – felony with domestic violence allegation, RCW 10.99.050(2), RCW 26.50.110(4), RCW 10.99.020; tampering with a witness with domestic violence allegation, RCW 9A.72.120(1)(a), RCW 10.99.020; and three counts violation of post-conviction protection order – gross misdemeanor with domestic violence allegation, RCW 10.99.050(2), RCW 26.50.110(1), RCW 10.99.020. CP 5-9. On February 22, 2016, the defendant was tried in front of a jury for the charges filed in the first amended information. RP 02/22/2016 and 02/23/2016. The jury convicted the defendant as charged. CP 50-51, 54-61; RP 02/23/2016 at 138-40.

At sentencing, defense counsel filed a sentencing memorandum asking the court for an exceptional sentence downward. CP 62-66. Counsel argued that the court should consider the defendant's age and lack of consideration of consequences as a mitigating factor. *Id.* The court heard oral argument from the State and the defendant. RP 03/09/2016 at 2-11. The court denied the defendant's request for an exceptional sentence

downward and imposed a standard range sentence of 60 months. CP 67-77; RP 03/09/2016 at 12. The defendant timely appeals.

III. ARGUMENT

A. The trial court did not abuse its discretion.

The trial court considered and denied the defendant's request for an exceptional sentence downward. Every defendant is entitled to ask the trial court to consider an exceptional sentence below the standard range; however, no defendant is entitled to an exceptional sentence. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). When a defendant has requested a mitigated exceptional sentence, review is available when the court refused to exercise discretion or relied on an impermissible basis for refusing to impose an exceptional sentence. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997), *review denied*, 136 Wn.2d 1002 (1998). Here, the trial court did not abuse its discretion because it considered the defendant's request for a mitigated exceptional sentence.

The defendant relies on *State v. O'Dell*; however, the facts of the case before the Court are distinguishable. 183 Wn.2d 680, 358 P.3d 359 (2015). In *O'Dell*, the defendant committed the offense of rape of a child in the second degree ten days after his 18th birthday. *Id.* at 683. At sentencing, the defense asked the court to impose an exceptional sentence below the standard range. *Id.* at 685. The defense argued that O'Dell was

still in high school, that he would have faced a range of 15-36 weeks at a JRA facility if the offense had been committed eleven days earlier, and that his adult sentencing range was exceptionally higher than the range he would have faced as a juvenile. *Id.* The trial court acknowledged this argument but ruled that it could not consider age as a mitigating circumstance. *Id.* In its decision on appeal, the Court held that youthfulness is a valid mitigating factor and remanded for resentencing because it was not considered by the trial court. *Id.* at 697.

In the case at hand, defense counsel provided the trial court with a sentencing memorandum. CP 62-66. The memorandum argued for an exceptional sentence downward based on the defendant's assertion that the victim was a willing participant and the defendant's age and youthfulness. *Id.* At sentencing, defense counsel asked the court if it had received its sentencing memorandum. RP 03/09/2016 at 5. The court responded that the memorandum had been read. *Id.* Here, the trial court considered both oral argument from defense and the defendant's sentencing memorandum, which included arguments for the mitigating factor of youth. The court was not required to impose an exceptional sentence downward just because the defendant may have presented the mitigating factor of youth. The court was within its discretion when it imposed a standard range sentence of 60 months.

B. The trial court erred in imposing community custody beyond the maximum term of confinement.

The court erred in imposing 12 months of community custody. The defendant was sentenced to a standard range sentence of 60 months. CP 67-77. The offenses of violation of a post-conviction protection order – felony and tampering with a witness are Class C felonies with statutory maximum sentences of 60 months. RCW 9A.20.021(1)(c); RCW 10.99.050; RCW 26.50.110. The trial court ordered the defendant’s convictions to be served concurrent with each other. RP 03/09/2016 at 12. The State agrees with the defendant’s interpretation of RCW 9.94A.701(9) and agrees that the trial court should have reduced the term of community custody to zero months. Accordingly, the State requests that the case be remanded to strike the term of community custody.

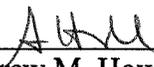
IV. CONCLUSION

Based on the aforementioned rationale, the State respectfully requests the defendant’s 60-month sentence be affirmed, and the matter remanded to the superior court to strike the term of community custody.

RESPECTFULLY SUBMITTED this 21st day of December,

2016.

ANDY MILLER
Prosecutor



Andrew M. Howell, Deputy
Prosecuting Attorney
Bar No. 45034
OFC ID NO. 91004

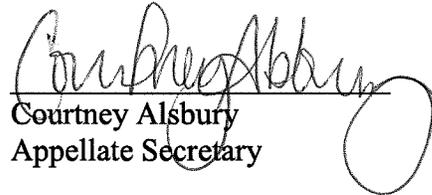
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Gregory C. Link
Washington Appellate Project
1511 3rd Ave., Suite 701
Seattle, WA 98101-3647

E-mail service by agreement was made to the following parties:
wapofficemail@washapp.org

Signed at Kennewick, Washington on December 21, 2016.


Courtney Alsbury
Appellate Secretary