

FILED
FEB 15, 2017
Court of Appeals
Division III
State of Washington

No. 34814-8-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

STEPHEN R. JACKSON, Appellant.

BRIEF OF APPELLANT

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I. SUMMARY OF ISSUES

1. DID THE COURT ERR IN GRANTING AN EXCEPTIONAL SENTENCE DOWNWARD?

II. SUMMARY OF ARGUMENT

1. THE COURT ERRED IN GRANTING A DOWNWARD DEPARTURE SENTENCE WHERE THE BASIS WAS THE COURT'S DISAGREEMENT WITH THE ESTABLISHED STANDARD RANGE AND THE FACTS OF THE CASE DO NOT ESTABLISH A BASIS FOR DEPARTURE.

III. STATEMENT OF THE CASE

On the night of November 27, 2015, the Defendant, Stephen R. Jackson, was contacted by police regarding a disorderly conduct call. Clerk's Papers, (CP) 1-11. During the contact, the Defendant gave consent to search his person and was patted for weapons. CP 1-11. The officer felt what he recognized to be glass pipe commonly associated with methamphetamine use in his front pants pocket. CP 1-11. At that point the Defendant became uncooperative and was handcuffed for officer safety. CP 1-11. After being cuffed, the Defendant flopped onto the ground and began driving his front pocket area into the ground in an apparent effort to break the pipe. CP 1-11.

The Defendant was placed under arrest and while officers attempted to search him, he struck one of the officers in the groin with his foot. CP 1-11. He was ultimately booked into jail and charged with Assault in the Third Degree, Possession of Methamphetamine, and Possession of Stolen Property in the Third Degree.¹ CP 1-11, 12-14.

Based upon substantial criminal history and a significant number of prior warrants for failing to appear, the Court set bond and ordered the Defendant released on a fifteen thousand dollar (\$15,000.00) cash or surety bond with requirement that he make all subsequent appearances. CP 15-16. The matter proceeded through several hearings² and on February 29, 2016, the Court scheduled the Defendant for a trial date of May 9, 2016 with a pretrial hearing on May 2, 2016 at 9:00 a.m. Report of Proceedings (RP) 62-63. On May 2, 2016, the Defendant was not present when his case was called and, after the court authorized a bench warrant, he appeared late and the trial date was stricken at defense request. RP 69-70. The matter was continued to May 16, 2016 for resetting. RP 69-70.

On May 16, 2016, the Defendant was yet again not present when his case was called and another warrant was authorized. RP

¹The charge of Possession of Stolen Property related to items located in the Defendant's backpack. That charge is not at issue herein and further discussion is unwarranted.

²A trial date was set and stricken for reasons not pertinent to this appeal. RP 41, 52.

74. When he appeared an hour and a half late, the matter was recalled and a new trial and pretrial date was set. RP 74-75. Trial was set for July 26, 2016 and a pretrial conference was scheduled for July 11, 2016 at 9:00 a.m. The Defendant was warned against future tardiness and signed a written promise to appear which listed his next court date and time as July 11, 2016 at 9:00 a.m. RP 75, CP 17.

This document further warned:

The Defendant further acknowledges that failure to appear may result in sanctions, including but not limited to forfeiture of previously posted bond, filing of charges and/or conviction for bail jumping under RCW 9A.76.170 and/or additional incarceration.

CP 17.

On July 11, 2016, the Defendant failed to appear for court and his trial date was stricken. RP 79-80. The court ordered the issuance of a bench warrant and declined to give the Defendant further latitude. RP 79-80.

The Defendant was arrested on the warrant and appeared on July 15, 2016 for a bond hearing. RP 84. The court initially ordered him held but subsequently ordered him released and the original bond reinstated. RP 84-92. The court again admonished the Defendant concerning tardiness and stated:

If you're so much as five minutes late for another hearing, that we have set for you in this case . . . I'm going to have you taken into custody and revoke your bond. You just need to get here on time when I tell you to be here; alright?

RP 92 (*Defendant's interruption omitted*). The court set a next appearance for August 1, 2016. CP 23-24. The State filed a Motion to Amend the Information to add a charge of Bail Jumping (C Felony) based upon his non-appearance on July 11, 2016. CP 25. On August 1, 2016, the Defendant appeared two hours late and was ordered taken into custody. RP 98.

On August 15, 2015, the court set a new trial date for October 6, 2016 and a pretrial conference for September 12, 2016. The State subsequently learned that the forensic scientist who conducted the chemical analysis would not be available for the current trial date. CP 26-27. Further, the officer who had been assaulted and who discovered the methamphetamine pipe, had been terminated and had criminal charges pending³ in the misdemeanor court concerning unrelated events. CP 26-27. Rather than delay the trial any longer, the State opted to dismiss all but the charge of Bail Jumping, and filed its Motion for Second⁴ Order Amending the Information to accomplish this. CP 26-27. The Defendant did not object and the court granted the State's motion. RP 115.

³As of this writing, the charges against the deputy are still pending.

⁴The State's first Motion to Amend Information was never heard as the parties mistakenly believed that the court had already granted the motion and added the charge of Bail Jumping (C Felony). This explains why there is no first Amended Information in the court file and the next Information filed therein was the Second Amended Information, filed in anticipation of proceeding to trial on the sole charge of Bail Jumping (C Felon).

The matter proceed to jury trial on the sole charge of Bail Jumping (C Felony) on October 6, 2016. RP 135-265. A Third⁵ Amended Information was filed just prior to trial to clarify that the knowledge requirement applies to the date. CP 47. At trial, the State called McKenzie Kelley, the Clerk of the Superior Court for Asotin County. RP 158. Through her testimony, the State established that, at all times pertinent herein, the Defendant was charged with Assault in the Third Degree and Possession of a Controlled Substance (Methamphetamine), and had released pursuant to the bond order. RP 161, 162-163. She further testified regarding the Defendant's requirement that he make all court appearances and that he was present on May 16, 2016 when the July 11, 2016 hearing date was set. RP 164-167. Ms Kelley testified that, on that date, the Defendant signed the written promise to appear for July 11, 2016. RP 167. Ms Kelley further testified that on July 11, 2016, the Defendant did not appear as required. RP 168-169. Certified copies of the original Information, the Bond Order, and the Defendant's signed Promise to Appear Pursuant to Bond Order, were admitted into evidence. RP 162, 163, 168.

⁵In the interest of avoiding confusion, the last amended information was titled "Third Amended Information." Further, the amendment was for the purpose of addressing the concerns raised by defense counsel with regard to the State's use of an outdated WPIC listing the elements of Bail Jumping. RP 149-150.

The Defendant took the stand and testified in his own defense. RP 187-209. He testified that he did not remember the court setting a hearing date for July 11, 2016. RP 192. He claimed that he did not remember signing the Promise to Appear. CP 204-205. He claimed he was unaware that he had court on July 11, 2016 and didn't know he had missed court until he was arrested at his DOC probation officer's office on July 14, 2016. RP 194-198. He claimed he believed his next appearance wasn't to occur until his trial date which was scheduled for July 26, 2016. RP 192.

On cross examination, the prosecutor pointed out that the Defendant had three different trial dates in this matter, each of which had a corresponding pretrial conference scheduled a couple weeks prior to trial. RP 207. The Defendant claimed that he did not know about the scheduling of pretrial conferences and claimed he thought that the hearing on May 16, 2016 (two months prior to trial) was his pretrial hearing. RP 207. The prosecutor probed the Defendant regarding his extensive history with the Asotin County Superior Court system and should therefore recognize that court routinely scheduled a pretrial conference to occur within a couple of weeks prior to trial. RP 208. The Defendant again claimed lack of memory. RP 208. Finally, the Defendant was confronted with his extensive history of failing to appear to demonstrate a lack of accident or mistake. RP 208.

The jury deliberated for less than twenty minutes before returning a verdict of guilty on the charge of Bail Jumping (C Felony). RP 260-261, CP 57.

On October 7, 2016, a sentencing hearing was held. RP 269-291. At hearing, the State presented documentation of the Defendant's prior criminal history and supported its calculation for an offender score of eleven. RP 269-271. Based upon the Defendant's high offender score and cavalier attitude toward his court dates throughout the case, the State requested a sentence at the high end of the range. RP 271. The Defendant did not object to his offender score calculation and the defense conceded that there was no arguable basis for a downward departure from the sentencing range of fifty-one to sixty months and requested a sentence at the low end. RP 274.

Sua sponte, the court imposed an exceptional sentence downward of thirty months. RP 286, CP 58-66. In pronouncing sentence, the court expressed its dissatisfaction with the sentencing grid and determination of the range for the offender score herein. CP 282-283. Therein the sentencing judge stated:

A 60-month, ah, sentence would be five years of a man's life for missing a pretrial. Now, that's the, ah -- that's the same sentence that would be imposed -- the **same** minimum sentence that would be imposed for **someone who was convicted of the crime of assault in the first degree or assault of a child in the first degree or they used force or means likely to result in death or**

intended to kill the individual. To say that Mr. Jackson's missing a court date because of his lackadaisical attitude would put him on par with such an individual convicted of that crime to me is nonsensical. I can't – I can't reconcile it in my mind.

CP 282-283. In supporting the exceptional sentence, the Court recited the stated policies listed in the Sentencing Reform Act (RCW 9.94A)(*hereinafter* SRA) and applied each to the case. RP 283-285. The court recognized that the legislature intended the punishment to increase with the offender score, but then determined that imposition of a standard range sentence would diminish respect for the law. RP 284. In its oral pronouncement the court considered whether the punishment was commensurate with others and stated:

Number three: ah, the purpose of the chapter is to be commensurate with the punishment imposed on others committing similar offenses. One would say that would be the reason why we have a score sheet and I understand that that is a statewide standard. However, if I go back and I look at things on a local standard, I'm trying to remember when I have ever seen anybody have a jury trial on a bail jumping offense that was a standalone offense. I've seen it where they've been coupled with other crimes; I've seen them form the basis of a plea agreement; but as a standalone, this might be a first, ah, in my experience.

The court determined that the crime of Bail Jumping doesn't implicate public safety concerns. RP 284-285. The court further stated that a five year sentence would offer little opportunity for personal betterment by the Defendant, and that the State's resources were better served housing violent offenders rather than the Defendant who

was careless in missing court. RP 285. In considering the likelihood of reoffense, the court ignored the Defendant's prior and prolific criminal history and found that there was no "compelling, overriding need in this case" for five years to "drive home the point that he needs to pay attention to his court dates." RP 285.

In response, and caught off guard, the State pointed out that an offender convicted of Assault in the First Degree and an offender score of eleven would be facing substantially more than sixty months.⁶ RP 286. The State pointed out that the legislature deemed it appropriate to establish Bail Jumping (C Felony) as a Level III offense on the sentencing grid. RP 286. The State further pointed out that whether the Defendant was merely **careless** or malicious was of no consequence because nothing more than knowledge of the court date and non-appearance was required. RP 287. The State further pointed out that the sentence imposed by the Court doesn't even occur on the grid for the crime of Bail Jumping and that the court's ruling effectively treated the Defendant as if he had an offender score of six and a half instead of eleven. RP 287.

The State noted the Defendant's recidivism and urged the court to consider the entirety of his history when considering how the

⁶In its argument and without the benefit of the scoring sheet for that crime, the State posited that such an offender would be facing approximately thirty years. The actual range would two hundred forty (240) to three hundred eighteen (318) months or twenty to twenty-six and a half years.

sentence would protect the community. RP 288. With regard to frugal use of resources, the State pointed out how the Defendant's recidivism creates a substantial burden on the system and how earlier release will simply allow the Defendant to reoffend sooner. RP 288. The State pointed to prior efforts to rehabilitate the Defendant through the use of the Drug Offender Sentencing Alternative (RCW 9.94A.660) to no avail. The State took exception to the court's disagreement with the legislature regarding the appropriate and prescribed punishment for the Defendant's crime. RP 288. The court overruled the State's objections and imposed sentence as previously stated. RP 289.

The trial court subsequently entered written findings and conclusions regarding the imposition of the exceptional sentence. CP 106-110. The State filed notice of appeal and now challenges the sentencing court's basis for imposing an exceptional sentence downward.

IV. DISCUSSION

Upon conviction for the crime of Bail Jumping, the trial court imposed a sentence below the standard range. In doing so, the trial court ignored the requirements of the SRA and effectively usurped the plenary authority of the legislature, in imposing a sentence below the punishment statutorily prescribed. Because the reasons cited by the

court are not legally sufficient to support imposition of a mitigated exceptional sentence, this Court should reverse the trial court and remand for resentencing within the standard range.

1. THE COURT ERRED IN GRANTING A DOWNWARD DEPARTURE SENTENCE WHERE THE BASIS WAS THE COURT'S DISAGREEMENT WITH THE ESTABLISHED STANDARD RANGE AND THE FACTS OF THE CASE DO NOT ESTABLISH A BASIS FOR DEPARTURE.

Generally, a sentencing court must impose a sentence within the standard sentence range as established in RCW 9.94A.510. See State v. Fowler, 145 Wn.2d 400, 404, 38 P.3d 335 (2002). The sentencing court may impose a sentence above or below the standard range only where reasons exist that are "substantial and compelling." See *id.* The SRA provides a list of aggravating and mitigating factors which may be considered by the sentencing court for the purpose of determining the appropriateness of an exceptional sentence. RCW 9.94A.535. Specifically, that section contains a non-exclusive list of circumstances which might justify a mitigated exceptional sentence. RCW 9.94A.535(1). Any other justification for a downward departure must relate to the crime and make it more, or less, egregious. See State v. Akin, 77 Wn.App. 575, 584, 892 P.2d 774 (Div. I, 1995).

Generally, "[a]n exceptional sentence is appropriate only when the circumstances of the crime distinguish it from other crimes of the same statutory category."

State v. Murray, 128 Wn.App. 718, 722, 116 P.3d 1072 (Div. III, 2005)(quoting State v. Pennington, 112 Wn.2d 606, 610, 772 P.2d 1009 (1989)).

At sentencing, the court expressed great dissatisfaction with the standard range. CP 280. The trial judge incorrectly⁷ expressed concern that the Defendant was facing a similar sentence to someone who was charged with Assault in the First Degree or Assault of a Child in the First Degree. The sentencing court did not rely upon any listed mitigating factor from RCW 9.94A.535(1) and instead recited the policies set forth in RCW 9.94A.010, which states as follows:

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;

⁷The Defendant was facing 51 to 60 months while a defendant charged with Assault in the First Degree or Assault of a Child in the First Degree would be facing 93 to 123 months with an offender score of "0" pursuant to RCWs 9.94A.510 and 9.94A.515. If that same defendant had the same offender score as the Defendant herein, that defendant would be facing 240 to 318 months. See *id.*

(5) Offer the offender an opportunity to improve himself or herself;

(6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community.

The sentencing judge expounded on each, making findings that factors 2, 3, 4, 5, 6, and 7 supported a mitigated departure downward before declaring imposition of an exceptional sentence of thirty months. RP 284-285. With regard to the second factor the court found, “[P]unishing crimes too harshly in a draconian fashion simply because there is a score sheet to go by” results in disrespect for the law. RP 284. With regard to the third factor, the court then noted that he had never personally witnessed a defendant who went to trial on a “standalone” charge of Bail Jumping. RP 284. Regarding the fourth factor, the court found that Bail Jumping does not implicate public safety concerns. RP 284-285. The court further found that sixty months would not offer the Defendant personal improvement opportunities. RP 285. The court then found that the state’s resources were better used housing dangerous criminals rather than the Defendant. RP 285. Finally, the court considered reduction of the risk of reoffense by offenders, but in so doing, only considered the effect on the Defendant and not other offenders. RP 285.

The sentencing court's reliance upon, and consideration of, these factors in supporting an exceptional sentence was misplaced.

As has been clarified:

The purposes of the SRA are not in and of themselves mitigating circumstances; rather, they may provide support for imposition of an exceptional sentence once a mitigating circumstance has been identified by the trial court.

State v. Powers, 78 Wn.App. 264, 270, 896 P.2d 754, 757 (Div III, 1995). As such, without an independent basis for downward departure, the trial court's discussion of these factors is irrelevant.

In the present case, the trial court's oral ruling make clear that vast majority of the court's reasons supporting an exceptional sentence downward relate to the judge's subjective disagreement with the Legislature's determination of the seriousness level of the crime of Bail Jumping (C Felony). As declared by the Supreme Court:

The power of the Legislature over sentencing is plenary; the fixing of legal punishments for criminal offenses is part of the acknowledged power of the legislature to provide a minimum and maximum term within which the trial court may exercise its discretion in fixing sentence.

State v. Benn, 120 Wn.2d 631, 670, 845 P.2d 289, 312 (1993)(*internal quotations and citations omitted*). Even if a departure from a standard range sentence may promote or preserve one or more of the SRA's goals, the court's subjective belief that the range prescribed is inappropriate, or that it does not adequately advance the

above goals, is not a substantial and compelling reason justifying a departure. State v. Pascal, 108 Wn.2d 125, 137-38, 736 P.2d 1065, 1072 (1987); *see also* State v. Allert, 117 Wn.2d 156, 169, 815 P.2d 752, 759 (1991); State v. Murray, 128 Wn.App. at 724-25. As stated in Pascal:

The Legislature has stated that the sentencing reform act was designed to promote several significant interests, including protection of the public, the need for rehabilitation, and the need to make frugal use of state resources. The presumptive sentence ranges established for each crime represent the legislative judgment as to how these interests shall best be accommodated. The trial court's subjective determination that these ranges are unwise, or that they do not adequately advance the above goals, is not a substantial and compelling reason justifying a departure.

Pascal, at 137-38. The court's improper usurpation of the legislative role is further demonstrated by the written findings entered herein.

CP 106-110. Therein, the Court found in paragraph 2.4:

This Court assesses the appropriateness of a standard range sentence pursuant to RCW 9.94.A.010, including the seven factors listed therein.

CP 106-110. The assessment of the appropriateness of a standard range for a particular crime is properly a legislative function.

Whether a given presumptive sentence is clearly excessive in light of the purposes of the SRA is not a subjective determination dependent upon the individual sentencing philosophy of a given judge. Rather, it is an objective inquiry based on the Legislature's own stated purposes for the act. See RCW 9.94A.010 (setting forth the purposes of the SRA).

State v. Hortman, 76 Wn.App. 454, 463, 886 P.2d 234, 239 (Div. I, 1994).

The court's subjective attitude regarding the proper seriousness level is not a basis to deviate from the legislatively prescribed punishment and neither is the court's lack of experience with any other defendants who had been convicted of Bail Jumping (C Felony) with an offender score of nine or more. CP 106-110, ¶ 2.7. The court's determination that the prescribed sentence would not make frugal use of limited resources is likewise an overstep of the court's authority, as is the determination that such a sentence would not provide him with improvement opportunity. CP 106-110, ¶¶ 2.9, 2.10. Finally, the court's determination that imposing the prescribed penalty "upon a man who as at most merely lackadaisical in behavior is less likely to cause other offenders to take note" is not only a jurisprudential overstep, but is not supported by any information in the record. The only support for this finding was the trial court's personal opinions regarding the wisdom of such punishment which, as discussed above, are not a proper basis upon which to grant an exceptional sentence. CP 106-110, ¶ 2.11. The reasons stated by the trial court do not provide a legal justification to depart from the legislatively prescribed punishment for the offense of Bail Jumping (C Felony) where the offender has an offender score of eleven.

As stated above, an exceptional sentence is appropriate only when the circumstances of the crime distinguish it from other crimes of the same statutory category. See Pennington, 112 Wn.2d at 610. Here, the only reference to the actual facts of this case relate to the Defendant's attitude and the court's characterization that he was merely "lackadaisical" in missing his court date. This too is an insufficient basis upon which to deviate downward from the prescribed range.

The crime of Bail Jumping, as defined in RCW 9A.76.170, contains the following elements:

(1) That on or about (date), the defendant failed [to appear before a court] [or] [to surrender for service of sentence];

(2) That the defendant [was being held for] [or] [was charged with] [or] [had been convicted of] [(fill in crime)] [a crime under RCW (fill in statute)] [a class A felony] [a class B or C felony] [a gross misdemeanor or misdemeanor];

(3) That the defendant had been released by court order [or admitted to bail] with knowledge of [the requirement of a subsequent personal appearance before that court] [or] [the requirement to report to a correctional facility for service of sentence]; and

(4) That any of these acts occurred in the [State of Washington] [City of] [County of].

See WPIC 120.41. At its core, the State must therefore prove that the offender, after release on court order and with knowledge of the requirement that he appear in court at a particular date and time, the

offender failed to do so. *Id.* The State is not required to prove anything more than prior knowledge of the court date and forgetfulness is not a defense to the charge of Bail Jumping. See State v. Carver, 122 Wn.App. 300, 305-306, 93 P.3d 947 (Div. II, 2004); State v. Ball, 97 Wn.App. 534, 987 P.2d 632 (Div. II, 1999). There is no requirement to prove contemptuous intent to miss a court date.

Here, the sentencing court characterized the Defendant's conduct as "lackadaisical" and noted that there did not appear to be any intention to ignore the court's directive to appear. RP 281. First, this finding mischaracterizes the record. The Defendant missed court after twice appearing late, and after the court had authorized the issuance of a bench warrant. RP 62-63, 69-70, 74, 75, 79-80. He was warned regarding being late and failed to appear on July 11, 2016 despite this admonition. Even after being given yet another opportunity, he yet again showed up late. RP 98. These circumstances demonstrate more than mere inattention. Further and more importantly, this characterization by the court ignores the Defendant's trial testimony where he claimed he did not sign the written promise to appear and had never been given notice of the July 11, 2016 court date. RP 192, 201. Finally, just prior to sentencing, the Defendant sent a letter to the clerk who testified at trial suggesting

to her that she misidentified him as the person who appeared in court on May 16, 2016. RP 272. In the letter, he suggested that it was actually his son who appeared on that date and signed the written promise to appear for July 11, 2016. RP 272. The sentencing court characterized this act as “ill-advised” and “desperate” but failed to recognize its connection to his defense or that it suggested he was substantially more than merely “lackadaisical” in missing court. RP 281. For these reasons, the court’s finding of mere inattention is not supported by the record.

Even if the court’s characterization was accurate, this is not a basis upon which to deviate from the standard range. Stated differently, the fact that the Defendant didn’t act with malice is of not a basis for an exceptional sentence below the standard range. The lack of a “bad” motive has been held to be an improper mitigating circumstance in support of an exceptional sentence. See State v. Evans, 80 Wn.App. 806, 815, 911 P.2d 1344, 1349 (Div. I, 1996). In support of imposition of an exceptional sentence, the trial court noted:

This is not a gentleman who skipped town, went on a crime spree across six states, and finally got corralled somewhere in the Badlands of South Dakota.

RP 283. While the court characterized these facts as mitigating, the court’s statement is merely a recognition that there were no aggravating circumstances. However, “[t]he lack of an aggravating

circumstance does not create a mitigating circumstance'." Evans, at 815,(quoting State v. Alexander, 125 Wn.2d 717, 724, 888 P.2d 1169, 1172 (1995)). Here, there were no circumstances justifying deviation from the standard range. There were no facts which differentiated the Defendant's crime from other crimes of the same statutory category. See Pennington, *supra*. The Defendant, after being late on two prior occasions, after admonition, and after signing a written notification of and promise to appear at his next court date and time, simply didn't appear. That is the conduct that RCW 9A.76.170 proscribes. That the Defendant did not commit any other crimes is of no consequence. Likewise is it insignificant that he didn't flee the jurisdiction. There simply were not "substantial and compelling reasons justifying an exceptional sentence" in this case. The sentencing court erred in finding the existence thereof and in sentencing the Defendant below the legislatively prescribed incarceration period. The State would request this Court vacate the sentence imposed herein and remand for imposition of a standard range sentence pursuant to State v. Law, 154 Wn.2d 85, 108 n.21, 110 P.3d 717 (2005).

V. CONCLUSION

The sentencing court erred in finding a basis to deviate from the standard range where none existed. Its reliance upon the seven factors of RCW 9.94A.010 was misplaced as these factors were aptly

and adequately considered by the legislature in establishing the seriousness level of the crime of Bail Jumping (C Felony) as level III on the sentencing grid. None of the facts of the case support the court's findings nor are they legally sufficient to merit downward departure. The State respectfully requests this Court vacate the sentence and remand for imposition of a standard range sentence.

Dated this 15th day of February, 2017.

Respectfully submitted,



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COURT OF APPEALS OF THE STATE OF
WASHINGTON - DIVISION III

THE STATE OF WASHINGTON,
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v.

STEPHEN R. JACKSON,
Appellant.

Court of Appeals No: 348148-III

DECLARATION OF SERVICE

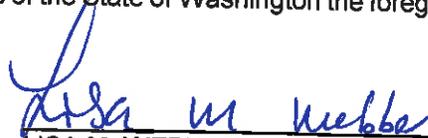
DECLARATION

On February 15, 2017 I electronically mailed, with prior approval from Mr. Nielsen, a copy of the BRIEF OF APPELLANT in this matter to:

ERIC J. NIELSEN
sloanej@nwattorney.net

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on February 15, 2017.



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