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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT,

v.

WILLIE JOE RICHARDSON, APPELLANT.

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**AMENDED BRIEF OF RESPONDENT**

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## I. ISSUES PRESENTED

1. Does a sentencing court have a statutory duty to consider post-conviction behavior couched in the form of mitigation evidence when the court resentences a defendant within the standard range?

2. Has the defendant established any procedural error in the imposition of his standard range sentence which would entitle him to any relief?

## II. STATEMENT OF THE CASE

### Procedural history.

Marcella Taylor and Willie Joe Richardson were convicted of first degree murder for the death of Kora Dixon. The death of Ms. Dixon occurred during a robbery in 1995. The conviction was affirmed by unpublished opinion on direct appeal. *State v. Taylor*, 1998 WL 75648, 89 Wn. App. 1033 (1998).

On March 18, 2017, the Supreme Court ordered a reference hearing in the Spokane County Superior Court to determine Mr. Richardson's true date of birth. CP 44-45. Mr. Richardson had alleged a 1991 juvenile felony conviction for malicious mischief should not have been included in his offender score calculation based upon an erroneous date of birth. RP 5-6. After a hearing, the superior court determined Mr. Richardson's true date

of birth.<sup>1</sup> RP 23. Based upon the lower court's ruling, it was determined that Mr. Richardson had to be resentenced with a corrected offender score, excluding the 1991 juvenile malicious mischief conviction. RP 23.

Prior to resentencing, defense counsel submitted a brief to the court in support of an exceptional sentence downward based upon a claim of "youthfulness" at the time of the murder. CP 126-27. The State filed a responsive brief outlining its case authority on what mitigating factors could and could not be considered by the lower court in opposition to the request for an exceptional sentence. CP 62-120. At the resentencing, the State moved the court to impose the low-end of the standard range based upon the egregious nature of the crime. RP 31-36. The deputy prosecutor reserved any argument related to the defendant's presumptive request for an exceptional sentence downward. RP 36.

Defense counsel initially requested the court impose an exceptional sentence downward based upon an assertion of "youthfulness." RP 36-37. After a brief period of argument, defense counsel changed direction and requested a low-end standard range sentence of 261 months. RP 39. In doing so, defense counsel stated:

You have 21 years plus to look at what's happened and what he says he's going to do is not what he says. It's what he did,

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<sup>1</sup> It was determined that Mr. Richardson's true date of birth is December 31, 1976. CP 130.

and he's not the same teenager who was a fool back in 1995 and did something that he's been paying for ever since he was 18 and a half. He's 40 now, and he's been in jail for that long.

It's kind of like the Court of Appeals. You have the advantage of 20/20 hindsight. You have a track record for Mr. Richardson of 22 years, what he's done, what he's doing now and he's not the same guy. He's a better man, and it's not just talk. He did it.

RP 39.

The trial court resentenced Mr. Richardson to a high-end sentence of 347 months. CP 159, RP 46.

Substantive facts.

On June 28, 1995, swimmers discovered the body of Ms. Dixon at the bottom of Red Lake in Stevens County. *See State v. Taylor, supra*. The body was found in a wicker laundry basket, and the body had been wrapped in sheets. CP 173.<sup>2</sup> Large rocks were also placed within the basket. CP 175. Ms. Dixon's hands and feet were bound with duct tape. RP 493. Duct tape was wrapped around her eyes and mouth. The body was in the water 953 feet from the parking area at the lake. CP 176. A trail connected the lake and the parking area. CP 177.

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<sup>2</sup> Respondent has filed a motion to supplement the record to include excerpts of the report of proceedings as taken from a trial before the Honorable Robert Austin commencing on June 24, 1996, which, if granted, will be designated to be transferred to this court as clerk's papers.

Medical Examiner, Nicholas Hartshorne<sup>3</sup>, conducted the autopsy of Ms. Dixon. CP 179-82, 192. Dr. Hartshorne observed Ms. Dixon's hands were tightly bound behind her back, her ankles were also bound, and she had duct tape rolled around her head, including her mouth. CP 184-87. A bandana had been placed all the way down her throat/airway, which caused Ms. Dixon's death. CP 187-88. The medical examiner determined that Ms. Dixon died of asphyxiation, due to an obstruction placed in the airway. CP 188. The doctor estimated that Ms. Dixon had been in the lake between seven days and two weeks, and her body was moderately decomposed. CP 188-89. When asked about the manner of death, the doctor stated:

This is not a comfortable way of dying. It's three to five minutes, we estimate, when someone basically shuts off the airway. Some people it's a little less. Some people it's a little more. But three to five minutes.

CP 189.

[Ms. Dixon] would go through changes, you know, you turn blue because there is no oxygen getting into your bloodstream so you'd turn blue. Then after a period of time, you probably -- go into some, some kind of convulsions, or spasm, as -- the death process just basically occurs.

CP 190.

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<sup>3</sup> Dr. Hartshorne was a medical examiner in King County at the time of autopsy. CP 1176.

Before the murder, Ms. Dixon travelled to Nevada, and left general instructions for Ms. Taylor to periodically check on her apartment. CP 197-98. Ms. Dixon left Nevada at the end of May 1995 and returned approximately June 15, 1995. CP 193, 195-96. While in Nevada, Ms. Dixon had purchased an inexpensive ring. CP 199-200. She returned with the ring and approximately \$1500 in cash. CP 200. Michelle Flippin worked at Evergreen Jewelry and Pawn in Spokane and knew Ms. Taylor. CP 201. On June 17, 1995, Ms. Taylor pawned Ms. Dixon's ring for \$25. CP 199-200, 202-03.

Mr. Richardson was ultimately contacted by a detective. After being advised of his *Miranda* warnings, and waiving those warnings, Mr. Richardson stated that Ms. Dixon had returned from the Tri Cities. CP 205. During the late evening or early morning hours preceding the murder, Ms. Dixon was taped up, and her credit cards were stolen for a trip to Atlanta. CP 206. A detective relayed Mr. Richardson's statements at trial:

[DEFENDANT]: Went in from the side of the side of the bed. When you walk in the bed left-hand in the door, I grab Kora's hands. I held them down. And then I held one. I held her hands down, with one hand. I leaned against the bed so her other hand was trapped against my leg. And pulled it over with my other hand. She was taped around her head. First her mouth. Something was stuck in her mouth, and then started taping her mouth, so she couldn't yell. I grabbed and taped, so she couldn't, Kora couldn't get free to yell. I was holding, the tape was pulled around Kora's mouth. And then Kora's eyes were taped so she couldn't see who was doing

it. And then her hands were taped. And then her -- ankles, and then she was picked up, and set on the floor. Then I left. The credit cards were taken from her purse. Walked to Northtown Mall and went to my mother's house. I couldn't go to my mom's. Got right in the corner of Napa and Francis. And it was too late. So went to Friendship Park to figure out how to get a ride to get to my brother's house, and from I could put, umm, some -- the belongings that I wanted out of the house. Just because, if Kora woke, got untied, by that time, and seen that I wasn't there, she'd know I was part of somebody robbing her.

So, left Friendship Park and I went down to my friend, Knockout's house, which is Anthony Jackson. He's in Walla Walla. Excuse me, he's in -- in Walla Walla. And they weren't there so I came back. And then, when I got back, Kora was dead. Kora's in the car to take her out to this lake and throw her in the lake.

[DETECTIVE]: Which lake is that?

[DEFENDANT]: That's Turtle Lake. That's where I know-

COURT: That's what?

[DEFENDANT]: That's what I know it by. Turtle Lake. I pulled the end of the basket, which was a rope, umm like the end of a blanket, like a sheet or a blanket. I pulled the blanket and it was pushed through this trail, and then I lifted up the fence, and pushed it underneath this barbed wire fence, rather than go around. The basket was pulled up this other trail, and up these -- like these stairs on -- up -- up a trail of rocks like stairs. She was pushed off this cliff area, where people jumped off to go swimming, but she didn't sink, so rocks were put in the blanket so they would pull her down.

CP 206-10.

Mr. Richardson and Ms. Taylor were joined for trial. At trial, the State and Mr. Richardson argued that Ms. Taylor planned the robbery.

CP 211-12. Mr. Richardson also contended that Ms. Taylor placed the tape across Ms. Dixon's mouth that caused her death. CP 2113-14, 219, 223.

Mr. Richardson denied knowledge of the bandana that was placed inside the victim's mouth. CP 2115-16. He further claimed only the victim's credit cards were taken, and not her cash or the \$25 ring. CP 217-18. He admitted on cross-examination that Ms. Dixon was struggling and "crying out." CP 220. The defendant then stated: "She just asked us to stop and she'd give us the money. Then -- you couldn't really hear no words because her mouth had been covered and taped." *Id.* Mr. Richardson also explained during cross-examination that he placed several rocks into the basket to cause it to sink in the lake. CP 221-22.

The jury returned a verdict of guilty on first degree murder against both defendants. At the time of sentencing, with an offender score of three, Mr. Richardson's sentencing range was 271 months to 361 months. CP 8. Judge Austin originally sentenced Mr. Richardson to 361 months, the low-end of the standard sentencing range. CP 11.

### III. ARGUMENT

#### **THE DEFENDANT HAS NOT ESTABLISHED ANY ERROR OCCURRED AT THE TIME OF RESENTENCING WHICH WOULD ALLOW HIM TO APPEAL HIS STANDARD RANGE SENTENCE.**

Although unclear, it appears Mr. Richardson contends he can appeal his standard range sentence alleging the trial court refused to consider his post-conviction behavior as mitigation evidence in consideration of his request for a low-end sentence. Mr. Richardson fails to identify from the record what mitigation evidence, if any, the lower court failed to consider or how the lower court was persuaded it could not consider any proposed mitigation evidence presented by Mr. Richardson because of the pleadings or argument of the State.

Although Mr. Richardson was over the age of 18 at the time he committed the murder, at the resentencing, defense counsel initially requested an exceptional sentence downward based upon Mr. Richardson's "youthfulness," but ultimately requested a low-end of the standard range sentence of 261 months. RP 36-37, 39. The trial court rejected the request for a low-end sentence and imposed the low-end of the standard sentencing range of 347 months. RP 46.

THE COURT: I do want to note what I reviewed because I didn't try the case. I did go back and read the file. It was a lengthy file, a lot of documents filed. I have the briefing from both sides for the sentencing. I, also, have the letters of

support for Mr. Richardson that was provided by counsel and the reference letters. I went back and read the Court of Appeals' decision.

The State had them pull and bring the photographs that were exhibits at the original trial. So the Court did view those exhibits that were listed, which basically are the blow ups for the trial that were presented and admitted, including the photo of Ms. Dixon in life.

One of the things that I note and I went back and I read there's quite a few cases on juveniles and sentencing for juveniles and looking at their youthfulness. I spent a lot of time reading a lot of those cases based on Mr. Richardson's age and whether sophistication, all of that has to do.

RP 43-44.

THE DEFENDANT: He said I had two felonies that were violent. They show if there's a second degree robbery and second degree assault, which was a plea bargain, it was one crime that was pled down to two. Just, I mean, so it doesn't extend the length of my history.

THE COURT: ... I was looking at the one that you signed and was filed at the time. They're almost identical. Somebody hand wrote them on that one. These are at least typed. I do note as the attorney indicated second degree assault, second degree robbery are violent offenses even as juveniles.

Looking at the history that they presented, I would have to agree with Mr. Steinmetz that I did not consider Judge Austin a hard judge. I thought he was very fair. For him to give you the maximum amount on the time, but I didn't see any real factors other than the case that he heard, but when you look at the planning to rob her, the duct tape, coming and gagging her and taping her up and then afterwards leaving her that way and then going to the mall and coming back and the plan to basically dispose of the body and swimming out there and adding the rocks and all of that, all

of those things show that you were a lot more sophisticated than someone who's 18 and a half.

I agree. 18 is just a number, and some people can be 18 and mentally 14 or 18 and 25. Looking at the whole history of how this case came about and how it started and how it ended, I believe you were very sophisticated at that time based on especially the times that you had been through the system.

You got to live a life. You have a son now if I from the reference hearing. You have a wife. You've made some good things of yourself, but I look back and look at Ms. Dixon has nothing and never had children, never got to be grown up. So the Court looks at and do I think that you deserve the low end because you've done things since then? I'm glad you had a life to live. I'm sad that Ms. Dixon didn't.

The Court is going to sentence you to the high end of the 347 months. I think that's what Judge Austin did because that's what he believed at the time. Even going through all the juvenile cases, I couldn't find anything that I believe showed that you were not sophisticated at 18 and a half.

RP 44-46.

Generally, a defendant cannot appeal a standard range sentence. *See* RCW 9.94A.585(1); *State v. Osman*, 157 Wn.2d 474, 481, 139 P.3d 334 (2006). “[S]o long as the sentence falls within the proper presumptive sentencing ranges set by the legislature, there can be no abuse of discretion as a matter of law as to the sentence’s length.” *State v. Williams*, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). Consequently, judges are afforded “nearly unlimited discretion” in determining an appropriate sentence within the standard range. *State v. Mail*, 121 Wn.2d 707, 711-

12 n. 2, 854 P.2d 1042 (1993); *State v. Ammons*, 105 Wn.2d 175, 182, 713 P.2d 719 (1986), *amended*, 105 Wn.2d 175, 718 P.2d 796 (1986). The *Mail* court concluded, “It is almost self-evident that, while cloaking his arguments in ‘procedure’, the ultimate objective of this petitioner in seeking resentencing is to receive a lower sentence within the standard range.” *Id.* at 714.

Notwithstanding the general prohibition against review of standard range sentences, a party may challenge the underlying legal conclusions and determinations by which a court comes to apply a particular sentencing provision. *See Williams*, 149 Wn.2d at 147 (“it is well established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies”). Consequently, an appellate court may review a standard range sentence resulting from constitutional error, procedural error, an error of law, or the trial court’s failure to exercise its discretion. *See, e.g., Williams*, 149 Wn.2d at 147 (the State can appeal a trial court’s determination of a defendant’s eligibility for a sentencing alternative); *Mail*, 121 Wn.2d at 713 (a defendant can challenge a trial court’s failure to follow a specific sentencing provision); *Ammons*, 105 Wn.2d at 183 (a defendant can challenge the procedure by which a sentence within the standard range is imposed); *State v. McGill*, 112 Wn. App. 95, 100, 47 P.3d 173 (2002) (sentencing court erred when it

failed to recognize it had authority to impose an exceptional sentence); *State v. Garcia Martinez*, 88 Wn. App. 322, 329, 944 P.2d 1104 (1997) (failure to consider an exceptional sentence downward).

Procedurally, in determining a standard sentence range for a felony offense, the sentencing court must consider the defendant's criminal history and the seriousness of the criminal offense. RCW 9.94A.030(11) (criminal history); RCW 9.94A.505 (sentences); RCW 9.94A.510 (sentencing grid); RCW 9.94A.525 (offender score); RCW 9.94A.530 (standard range sentence).

In terms of the sentencing court's determination, RCW 9.94A.500 states, in relevant part:

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

In addition, RCW 9.94A.530 provides in part:

2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either

not consider the fact or grant an evidentiary hearing on the point.

Accordingly, to appeal his sentence, Mr. Richardson must show either that the trial court refused to consider information mandated by RCW 9.94A.500 or that he timely and specifically objected to the consideration of certain information and that no evidentiary hearing was held. *See Mail*, 121 Wn.2d at 713. Mr. Richardson does not contend the trial court violated RCW 9.94A.500 or RCW 9.94A.530, nor did he lodge an objection at the time of sentencing. Mr. Richardson fails to demonstrate that the trial court refused to consider the necessary information required under RCW 9.94A.500.

For example, in *Mail*, the defendant appealed his standard range sentence, arguing that the trial court abused its discretion by considering the facts of his earlier assault conviction. Our Supreme Court rejected his appeal, holding that the SRA did not limit consideration of such information and barred any appeal of standard range sentences unless a defendant demonstrated that “the sentencing court had a duty to follow some specific procedure required by the SRA, and that the court failed to do so.” 121 Wn.2d. at 714.

Here, the sentencing court heard argument from defense counsel and the State, reviewed the materials submitted by Mr. Richardson, heard

statements from Mr. Richardson's family members and Mr. Richardson. There was no objection to the State's argument. After considering this information, the court sentenced Mr. Richardson to the low-end of the of the standard range. Regardless of whether the trial court considered Mr. Richardson's post-conviction behavior is not information the trial court had to consider under the applicable statutes. Consequently, Mr. Richardson's assertion that the trial court should have considered his rehabilitative efforts at the resentencing is without merit.<sup>4</sup> As indicated above, there is no evidence in the record that the lower court did not evaluate Mr. Richardson's purported post-crime rehabilitative efforts. Even if the court had not acknowledged Mr. Richardson's claims, it would not have been error to not consider these efforts.

The sentencing guidelines apply "equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant." A defendant's good conduct following the commission of a crime is not a factor which relates to the

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<sup>4</sup> Mr. Richardson's claim that inclusion of post-conviction crimes in an offender score on resentencing supports his theory that the resentencing court can consider post-crime rehabilitative efforts is untenable. Inclusion of additional crimes at a resentencing is authorized by statute. *See* RCW 9.94A.589, RCW 9.94A.525(1) and *State v. Bryan*, 145 Wn. App. 353, 185 P.3d 1230 (2008). Conversely, post-conviction behavior is not included within RCW 9.94A.500 and RCW 9.94A.530, as a factor to be used by the trial court when determining a standard range sentence.

crime itself or the defendant's criminal record. Therefore, it is not an appropriate factor to consider in sentencing.

*State v. Roberts*, 77 Wn. App. 678, 685, 894 P.2d 1340 (1995).

Likewise, in *State v. Medrano*, 80 Wn. App. 108, 906 P.2d 982 (1995), this Court refused to consider a challenge to a standard range sentence regarding the issue of whether the trial court failed to consider a mitigating factor for a downward departure. This Court held that factors relating to a defendant's behavior after conviction could not be cited as mitigating factors because they did not relate to the circumstances of the crime. *Id.* at 112.

Mr. Richardson does not provide any authority suggesting that a sentencing court is required to consider a defendant's post-conviction behavior when determining an appropriate standard range sentence. "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

Relying upon *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989), Mr. Richardson claims the trial court was required to consider his asserted

rehabilitation after the first sentencing. His reliance on *Pearce* is of no moment.

In *Pearce*, the defendants were convicted of crimes and received new trials after successfully appealing their convictions. *Id.* at 713-14. After their second trial, the court imposed harsher sentences than they had received at their first trial. *Id.* The Supreme Court held that there was no absolute bar to imposing a harsher sentence upon retrial under either the Equal Protection Clause or Due Process Clause. The Court held that a trial court may impose a new sentence that is more severe than the sentence at the first trial based on events that occurred after the first conviction. However, the Court held that a harsher sentence after a new trial raises a presumption of “judicial vindictiveness,” which may be overcome by an affirmative showing on the record of the reasons for the harsher sentence. *Id.* at 725-26. *Pearce* does not stand for the proposition advanced by Mr. Richardson that a trial court is procedurally required to consider post-conviction behavior when determining a standard range sentence. His claim fails.

#### **IV. CONCLUSION**

The court’s imposition of a high-end sentence was the result of the egregiousness of Mr. Richardson’s conduct during and after the murder. His lawyer argued for a low-end sentence based upon Mr. Richardson’s

purported rehabilitative efforts after commission of the crime. The trial court rejected this argument. The trial court did not abuse its discretion. The State requests this Court affirm the judgment and sentence.

Respectfully submitted this 5 day of April, 2018.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
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NO. 35460-1-III

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington,  
that on April 5, 2018, a copy of the Amended Brief of Respondent in this matter was  
e-mailed to:

Dennis Morgan  
nodblspk@rcabletv.com

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Spokane, WA  
(Place)

  
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# SPOKANE COUNTY PROSECUTOR

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