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Court of Appeals
Division III
State of Washington
5/1/2020 1:10 PM

NO. 36764-9-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

CARLOS JAMIE-MCDOUGALL,
Appellant.

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

Spokane County Cause No. 16-1-01233-8

The Honorable John O. Cooney, Judge

BRIEF OF APPELLANT

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ISSUES AND ASSIGNMENTS OF ERROR

1. No rational jury could have found Mr. Jamie-McDougall guilty of one of the counts of rape of a child beyond a reasonable doubt.
2. The state presented insufficient evidence to convict Mr. Jamie-McDougall of two counts of rape of a child.
3. In the alternative, the trial court violated Mr. Jamie-McDougall's Sixth and Fourteenth Amendment right to be free from double jeopardy by failing to give a "separate and distinct acts" instruction.
4. In the alternative, the trial court violated Mr. Jamie-McDougall's Wash. Const. art. I, § 9 right to be free from double jeopardy by failing to give a "separate and distinct acts" instruction.

ISSUE 1: A conviction must be reversed for insufficient evidence when no rational jury could have found the allegation proved beyond a reasonable doubt. Did the state present insufficient evidence to convict Mr. Jamie-McDougall of two counts of rape of a child when the prosecutor elected to base one of those counts on an allegation that was not supported by any evidence?

5. Mr. Jamie-McDougall was denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel at sentencing.
6. Defense counsel provided ineffective assistance by unreasonably failing to raise Mr. Jamie-McDougall's youthfulness as a mitigating factor at sentencing.
7. Mr. Jamie-McDougall was prejudiced by his attorney's deficient performance.

ISSUE 2: A defense attorney provides ineffective assistance of counsel by failing to bring applicable mitigating factors to the court's attention during sentencing. Did Mr. Jamie-McDougall's attorney provide ineffective assistance by failing to argue that his youth posed a mitigating factor when he was twenty-one years old at the time of the alleged offenses and the court sentenced him to the low end of the standard sentencing range?

8. The sentencing court exceeded its authority by ordering Mr. Jamie-McDougall to undergo random urinalysis and breathalyzer testing.
9. The order requiring Mr. Jamie-McDougall to undergo random urinalysis and breathalyzer testing was not crime related.

ISSUE 3: A sentencing court exceeds its authority by ordering a sentencing condition that is not crime-related or otherwise permitted by statute. Did the court exceed its authority by ordering Mr. Jamie-McDougall to submit to random urinalysis and breathalyzer testing when there was no evidence that drugs or alcohol had been involved in the offenses?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Carlos Jamie-McDougall was nineteen years old when his daughter, I.J.M. was born. RP 96.¹ Mr. Jamie-McDougall spent time with I.J.M. almost daily. RP 91. But, per the parenting plan with her mother, Mr. Jamie-McDougall was never allowed to be alone with his daughter. RP 98. All of his contact with I.J.M. had to supervised by someone else. RP 98. This was not difficult to achieve because Mr. Jamie-McDougall lived in a household with six other people. RP 99.

In fact, I.J.M.'s mother was also present during almost all of Mr. Jamie-McDougall's time with his daughter. RP 90-91.

When I.J.M. was about four years old, she disclosed to several family members that her mother's current boyfriend, Antonio Castillo, had touched her inappropriately. RP 166-67, 174, 184-85. I.J.M. lived with her mother and Castillo at the time. RP 99.

Those family members told I.J.M.'s mother about what she had said. RP 167, 174, 185. But the mother never took any action. Instead, she accused Mr. Jamie-McDougall of touching I.J.M. inappropriately and reported those claims to the police. *See* RP 92-94.

¹ Unless otherwise specified, all citations to the Verbatim Report of Proceedings refer to the chronologically-paginated volumes spanning 2/11/19 *et seq.*

The state charged Mr. Jamie-McDougall with two counts of rape of a child in the first degree and one count of first-degree child molestation. CP 1-2.

The police never took any steps to investigate the allegations against Castillo. RP 150.

Mr. Jamie-McDougall's trial occurred about four years later, when I.J.M. was eight years old. *See RP generally*. By that time, I.J.M. claimed not to remember what had happened. RP 106-07.

At trial, I.J.M. testified that no one else had lived with her and her mother at the time of the abuse, apparently forgetting that Castillo lived with them at that time. RP 99, 110.

I.J.M. also said that she spent the night at her father's house frequently during the time of the allegations. RP 111. But her mother testified that she only spent the night there one or two times. RP 100.

The vast majority of the state's evidence was in the form of a video of a forensic interview conducted when I.J.M. was four years old. *See Ex. 1*. Many of I.J.M.'s claims during that interview were internally inconsistent. *See RP* (exhibit 1).

For example, I.J.M. said that Mr. Jamie-McDougall's fingers had been inside her body and that he had put "his privates" in hers. RP (exhibit

1) 21, 25. But she also said that nobody put anything inside her body. RP (exhibit 1) 30.

When asked to circle parts on a picture of a child's body that had been touched, I.J.M. circled her vaginal area in addition to her buttocks. RP (exhibit 1) 24; RP 127-28. But she did not say anything about where she had been touched on her buttocks or what part of Mr. Jamie-McDougall's body (if any) had touched her there. *See* RP (exhibit 1) *generally*.

Even so, during closing argument, the prosecutor elected to rely on the claim that Mr. Jamie-McDougall's penis had contacted I.J.M.'s anus for one of the two charges of rape of a child. RP 220. The other count was based on the allegation that Mr. Jamie-McDougall's fingers had penetrated I.J.M.'s vagina. RP 221.

At sentencing, Mr. Jamie-McDougall's attorney did not point out to the court that his age of twenty-one at the time of the alleged offenses rendered him eligible for an exceptional sentence below the standard range based on youthfulness. RP 243-65. Accordingly, the court did not consider imposing such a sentence. But the court did sentence Mr. Jamie-McDougall to the low end of the standard range. RP 258.

Because there was no evidence regarding drugs or alcohol presented at trial, the court did not find that a chemical dependency had

contributed to the offenses. CP 130. But the court, nonetheless, required Mr. Jamie-McDougall to “submit to UA²/BA³ testing” as a condition of his sentence. CP 146.

This timely appeal follows. CP 149.

ARGUMENT

I. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO CONVICT MR. JAMIE-McDOUGALL OF ONE OF THE COUNTS OF RAPE OF A CHILD.

A conviction must be reversed for insufficient evidence if, taking the evidence in the light most favorable to the state, no rational trier of fact could have found each element of the charge proven beyond a reasonable doubt. *State v. Chouinard*, 169 Wn. App. 895, 899, 282 P.3d 117 (2012) *review denied*, 176 Wn.2d 1003, 297 P.3d 67 (2013).

In order to convict Mr. Jamie-McDougall of rape of a child in Counts I and II, the state was required to prove beyond a reasonable doubt that he engaged in sexual intercourse with I.J.M. CP 1; RCW 9A.44.073.

The term sexual intercourse is defined as follows:

“Sexual intercourse”

- (a) has its ordinary meaning and occurs upon any penetration, however slight, and
- (b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another,

² Urinalysis.

³ Breathalyzer.

whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

RCW 9A.44.010(1).

In order to differentiate Count I from Count II – both of which charged Mr. Jamie-McDougall with rape of a child – the state elected to rely upon a different type of alleged conduct in support of each charge.

See RP 212-21.

The prosecutor informed the jury that one of the counts was based on the allegation that Mr. Jamie-McDougall had penetrated I.J.M.'s vagina with his fingers. RP 221. The other count was based on the state's claim that Mr. Jamie-McDougall's penis had come into contact with I.J.M.'s anus. RP 220.

But there was no evidence that Mr. Jamie-McDougall's penis had ever contacted I.J.M.'s anus. *See* RP *generally*. When I.J.M. circled the areas where Mr. Jamie-McDougall had touched her on a picture of a child's body, she indicated that he had touched her buttocks. *See* RP (exhibit 1) 24; RP 127-28. But she did not say anything about where she had been touched on her buttocks or what part of Mr. Jamie-McDougall's body (if any) had touched her there. *See* RP (exhibit 1) *generally*.

I.J.M. said that Mr. Jamie-McDougall touched her with his hand. RP (exhibit 1) 25. She was explicit that Mr. Jamie-McDougall did not touch her with anything other than his hands. RP (exhibit 1) 29. She also explicitly said that Mr. Jamie-McDougall's "private" did not touch her anywhere on her body. RP (exhibit 1) 30.

I.J.M. also said, contradictorily that Mr. Jamie-McDougall had put his "private" inside of her "private." RP (exhibit 1) 25. The prosecution apparently took that disclosure to mean that Mr. Jamie-McDougall had penetrated I.J.M.'s vagina, electing to rely on that allegation for one of the counts of rape of a child.

But there was no evidence to support the state's claim that Mr. Jamie-McDougall's penis had contacted I.J.M.'s anus, as claimed in the prosecutor's election for the second count of rape of a child. *See* RP (exhibit 1) *generally*. Indeed, there was no evidence that any part of his body had ever touched her anus, only that something had touched her buttocks. I.J.M. did not clarify what part of Mr. Jamie-McDougall's body, if any, had touched her buttocks. *See* RP (exhibit 1) *generally*. No rational jury could have found the allegation of contact between Mr. Jamie-McDougall's penis and I.J.M.'s anus proved beyond a reasonable doubt.

Because the prosecution elected to rely upon the allegation of contact between Mr. Jamie-McDougall's penis and I.J.M.'s anus to

support one of the charges of a rape of a child, one of those convictions must be vacated based on the state's failure to prove that allegation.

In order to protect the constitutional prohibition on double jeopardy, when the state presents evidence of multiple acts of like conduct in support of two or more identical charges, the state must either elect to rely upon specific acts in support of each charge or the court must instruct the jury that each count has to be based on proof of a "separate and distinct act." *State v. Mutch*, 171 Wn.2d 646, 662, 254 P.3d 803 (2011); *State v. Kitchen*, 110 Wn.2d 403, 411, 756 P.2d 105 (1988) (*abrogated on other grounds as recognized in In re Stockwell*, 179 Wn.2d 588, 597, 316 P.3d 1007 (2014)). Otherwise, the jury is permitted to convict for multiple charges based on proof of a single act, in violation of double jeopardy. *Id.*

In Mr. Jamie-McDougall's case, the court did not give a "separate and distinct act" instruction to the jury. CP 78-99. Instead, the prosecutor chose to elect to rely on two different alleged types of intercourse to support the two charges of rape of a child. RP 220-21.

Because the prosecutor chose to elect a specific allegation upon which to rely for each count, the insufficient evidence analysis must look to whether that allegation was supported by proof beyond a reasonable doubt. *See e.g. State v. Spencer*, 128 Wn. App. 132, 141, 114 P.3d 1222

(2005) (regarding election in alternative means cases).⁴ The prosecutor elected to base one of Mr. Jamie-McDougall's rape of a child counts on the claim that there had been contact between his penis and I.J.M.'s anus. RP 220-21. Because the state failed to support that allegation with proof beyond a reasonable doubt, that charge is supported by insufficient evidence.

No rational jury could have found beyond a reasonable doubt that Mr. Jamie-McDougall committed two counts of rape of a child, as they were elected by the prosecutor during closing. One of Mr. Jamie-McDougall's convictions for rape of a child must be reversed for insufficient evidence. *Chouinard*, 169 Wn. App. at 899.

II. MR. JAMIE-McDOUGALL RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING. DEFENSE COUNSEL UNREASONABLY FAILED TO RAISE MR. JAMIE-McDOUGALL'S YOUTHFULNESS AS A MITIGATING FACTOR, PERMITTING AN EXCEPTIONAL SENTENCE BELOW THE STANDARD RANGE.

Mr. Jamie-McDougall was twenty-one years old during the commission of the alleged offenses offense. *See* CP 151-52, 167. But his attorney did not point out to the court that he was eligible for an

⁴ In the alternative, if this Court holds that the prosecution did not elect, then reversal is nonetheless required because the court failed to give a "separate and distinct acts" instruction, permitting multiple convictions for a single act in violation of Mr. Jamie-McDougall's right to remain free from double jeopardy. *Mutch*, 171 Wn.2d at 662; U.S. Const. Amends. VI, XIV; art. I, § 9.

exceptional sentence below the standard range because of his youthfulness and attendant reduced culpability. *See* RP 243-65. As a result, the sentencing court did not consider an exceptional sentence on that basis. *See* RP generally. Mr. Jamie-McDougall received ineffective assistance of counsel at sentencing.

The right to counsel includes the right to the effective assistance of counsel. U.S. Const. Amends. VI, XIV; *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). The accused is prejudiced by counsel's deficient performance if there is a reasonable probability that it affected the outcome of the proceedings. *Kylo*, 166 Wn.2d at 862.⁵

A criminal defendant has a right to the effective assistance of counsel at sentencing. *Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977); *State v. Adamy*, 151 Wn. App. 583, 588, 213 P.3d 627 (2009), *as amended* (Sept. 17, 2009). This includes a duty to investigate and present evidence and argument relating to mitigating factors. *See, e.g., Becton v. Barnett*, 2 F.3d 1149 (4th Cir. 1993).

⁵ Ineffective assistance of counsel is an issue of constitutional magnitude that can be raised for the first time on appeal. *Kylo*, 166 Wn.2d at 862; RAP 2.5(a). Generally, one cannot appeal a standard-range sentence. *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017). But that rule does not apply to appeals addressing (a) a sentencing court's mistaken belief that a mitigating factor did not apply or (b) ineffective assistance of counsel by counsel's failure to research and raise an applicable mitigator. *Id.*

A defense attorney provides ineffective assistance of counsel by failing to recognize and point the sentencing court to appropriate caselaw permitting leniency in sentencing. *Adamy*, 151 Wn. App. at 588 (citing *State v. McGill*, 112 Wn. App. 95, 101, 47 P.3d 173 (2002)). This is because “[a] trial court cannot make an informed decision if it does not know the parameters of its decision-making authority.” *McGill*, 112 Wn. App. at 102. “Nor can [the court] exercise its discretion if it is not told it has discretion to exercise.” *Id.*

An accused person is prejudiced by such a failure when there is a reasonable probability that the sentencing court would have imposed a more lenient sentence if the applicable mitigating factor had been properly raised. *Id.* This prejudice standard does not require the sentencing court to overtly express discomfort with the sentence imposed. See *McFarland*, 189 Wn.2d at 59. Rather, reversal is required so long as “the record suggests at least the possibility that the sentencing court would have considered [imposing a lesser sentence] had it properly understood its discretion to do so.” *Id.*

In this case, Mr. Jamie-McDougall’s defense counsel provided ineffective assistance at sentencing by failing to argue for an exceptional sentence below the standard range based on his client’s youthfulness at the time of the offenses.

Recent advances in brain science have revealed “fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.” *State v. O’Dell*, 183 Wn.2d 680, 692, 358 P.3d 359 (2015) (citing *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 Ann. N.Y. Acad. Sci. 77 (2004)).

These characteristics of the still-developing adolescent brain cause young people to be “overrepresented statistically in virtually every category of reckless behavior.” *Roper*, 543 U.S. at 569 (citing Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339 (1992)); *Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).

Young adults’ relative lack of control over their conduct and environment means that “their irresponsible conduct is not as morally reprehensible” as that of a fully-mature adult. *Roper*, 543 U.S. at 570; *O’Dell*, 183 Wn.2d at 692. This diminished blameworthiness and “the distinctive attributes of youth” “diminish the penological justifications for imposing the harshest sentences.” *O’Dell*, 183 Wn.2d at 692 (citing *Miller*

v. Alabama, 567 U.S. 460, 477-78, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Graham*, 560 U.S. at 71; *Roper*, 543 U.S. at 571).

Additionally, a young person’s “inability to deal with police officers or prosecutors (including during a plea agreement) or his incapacity to assist his own attorneys” also create a greater likelihood that a young person will be convicted of a more serious offense in circumstances under which an older adult would only have sustained a less serious conviction. *Miller*, 567 U.S. at 477-78 (citing *Graham*, 560 U.S. at 78; *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011)).

Because the parts of the brain involved in behavior control remain undeveloped “well into a person’s 20s,” these advances in adolescent brain science apply to younger adults, in addition to juveniles. *O’Dell*, 183 Wn.2d 691 (citing Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 Notre Dame L. Rev. 89, 152 & n.252 (2009) (collecting studies); Giedd, 1021 Ann. N.Y. Acad. Sci. 77); *Roper*, 543 U.S. at 574.

As a result, the Washington Supreme Court has ruled that a sentencing court must be permitted to consider youth as a mitigating factor

in cases involving offenses committed shortly after a person reaches legal adulthood. *O'Dell*, 183 Wn.2d at 696.⁶

While an offender is never entitled to an exceptional sentence below the standard range, “every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered.” *In re Mulholland*, 161 Wn.2d 322, 334, 166 P.3d 677 (2007). A sentence imposed without proper consideration of “an authorized mitigated sentence” qualifies as a “‘fundamental defect’ resulting in a miscarriage of justice.” *McFarland*, 189 Wn.2d at 58 (*citing Mulholland*, 161 Wn.2d at 332).

Mr. Jamie-McDougall was entitled to request a mitigated sentence based on his youth and impulsivity at the time of the alleged offenses. *O'Dell*, 183 Wn.2d at 696. His defense attorney provided ineffective assistance of counsel by failing to recognize and request that the sentencing court take his youthfulness into consideration. *Adamy*, 151 Wn. App. at 588; *McGill*, 112 Wn. App. at 101.

Mr. Jamie-McDougall was prejudiced by his defense counsel’s negligence because there is a reasonable probability that the sentencing court would have imposed an exceptional sentence below the standard

⁶ This type of discretion is also required by the Eighth Amendment. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 19, 391 P.3d 409 (2017).

range if his youthfulness had been properly considered. *McGill*, 112 Wn. App. at 102. The court sentenced Mr. Jamie-McDougall to the low end of the standard sentencing range, noting that the sentence was indeterminate anyway, meaning that he would not be released until experts had adjudged it safe. RP 258. There is “at least the possibility that the sentencing court would have considered” imposing an exceptional sentence downward in Mr. Jamie-McDougall’s case if his attorney had pointed that option out to the court. *McFarland*, 189 Wn.2d at 59; *McGill*, 112 Wn. App. at 102. Counsel’s error requires that Mr. Jamie-McDougall’s case be remanded for resentencing. *Id.*

Mr. Jamie-McDougall’s defense attorney provided ineffective assistance of counsel at sentencing by unreasonably failing to request an exceptional sentence below the standard range based on his client’s youth. *Id.* Mr. Jamie-McDougall’s case must be remanded for resentencing with that factor properly considered. *Id.*

III. THE SENTENCING COURT EXCEEDED ITS AUTHORITY BY ORDERING MR. JAMIE-McDOUGAL TO SUBMIT TO RANDOM URINALYSIS AND BREATHALYZER TESTING WHEN IT HAD NOT FOUND – AND COULD NOT HAVE FOUND – THAT A CHEMICAL DEPENDENCY CONTRIBUTED TO THE OFFENSES.

The trial court did not find that a chemical dependency had contributed to Mr. Jamie-McDougall’s offense. CP 130. Even so, the court required him, as condition of his sentence, to submit to random Urinalysis

and Breathalyzer testing. CP 146. The court exceeded its authority by entering those orders, because the condition was not crime related.

The trial court does not have power to impose community custody conditions unless they are authorized by statute.⁷ *State v. Warnock*, 174 Wn. App. 608, 611, 299 P.3d 1173 (2013). Statute permits a court to order a person on supervision to “comply with any crime-related prohibitions.” RCW 9.94A.703(3)(f). A sentencing court may also require an offender to “perform affirmative conduct reasonably related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community.” RCW 9.94A.703(3)(d).

“Crime-related prohibition” is defined as “an order of a court prohibiting conduct that directly relates to the circumstances for which the offender has been convicted.” RCW 9.94A.030(10). A condition is not crime-related if there is no evidence linking the prohibited conduct to the offense. *State v. O’Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

The philosophy behind the provision for crime-related sentencing conditions is that “persons may be punished for their crimes and they may be prohibited from doing things which are directly related to their crimes, but they may not be coerced into doing things which are believed to

⁷ Whether a court has imposed a community custody condition beyond the bounds of its authority is reviewed *de novo*. *Warnock*, 174 Wn. App. at 611.

rehabilitate them.” *State v. Cordero*, 170 Wn. App. 351, 373–74, 284 P.3d 773 (2012) (quoting *State v. Riley*, 121 Wn.2d 22, 36-37, 846 P.2d 1365 (1993)).

Specifically, a sentencing court may only condition a community custody term upon completion of a chemical dependency evaluation and compliance with recommended treatment if it first finds that the offender has a chemical dependency that contributed to the offense. RCW 9.94A.607(1). A sentencing condition requiring an offender to undergo urinalysis or breathalyzer testing is, likewise, only permissible if his/her crime involved the use of drugs or alcohol, respectively. *See State v. Parramore*, 53 Wn. App. 527, 531, 768 P.2d 530 (1989).

The court did not find that a chemical dependency has contributed to Mr. Jamie-McDougall’s offense. CP 130. Accordingly, it did not have the authority to enter sentencing conditions related to drug or alcohol treatment. RCW 9.94A.607(1). Nor were there any other facts indicating that either drugs or alcohol had contributed to Mr. Jamie-McDougall’s alleged offenses. *See RP generally*. Accordingly, the court did not have the authority to order him to submit to urinalysis and breathalyzer testing. *Parramore*, 53 Wn. App. at 531.

The sentencing court exceeded its statutory authority by ordering Mr. Jamie-McDougall to submit to random urinalysis and breathalyzer

testing without finding that a chemical dependency had contributed to the offenses and when those conditions were not otherwise crime-related. *Id.* RCW 9.94A.030(10); *O'Cain*, 144 Wn. App. at 775. That condition must be stricken from Mr. Jamie-McDougall's Judgment and Sentence. *Id.*

CONCLUSION

No rational jury could have found that the state proved two counts of rape of a child – as they were elected in this case – beyond a reasonable doubt. One of Mr. Jamie-McDougall's convictions for that charge must be dismissed.

In the alternative, Mr. Jamie-McDougall's defense attorney provided ineffective assistance of counsel by failing to advocate for an exceptional sentence below the standard range based on his youthfulness at the time of the offense. The sentencing court also exceeded its authority by entering one community custody condition that was not crime-related or otherwise authorized by statute. Mr. Jamie-McDougall's case must be remanded for resentencing and the impermissible sentencing condition must be stricken from his Judgment and Sentence.

Respectfully submitted on May 1, 2020,



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Carlos Jamie-McDougall/DOC# 404168
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Spokane County Prosecuting Attorney
SCPAappeals@spokanecounty.org

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on May 1, 2020.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

LAW OFFICE OF SKYLAR BRETT

May 01, 2020 - 1:10 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36764-9
Appellate Court Case Title: State of Washington v. Carlos Anthony Jaime-McDougall
Superior Court Case Number: 16-1-01233-8

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