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Court of Appeals
Division III
State of Washington
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No. 37050-0-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

Chelan County Superior Court
Cause No. 18-1-00163-4

State of Washington, Appellant

v.

Angela Lee Franklin, Respondent

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

The sentencing court lacked a valid basis to impose an exceptional sentence.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Under RCW 9.94A.535(1), did the sentencing court have a proper basis to impose an exceptional sentence below the standard range where it found (1) “[Franklin] is employed,” (2) [Franklin] “has been sober for 17 months,” (3) “the length of time since the time of the crime + the circumstances since then have substantially changed,” and “imposition of the standard range is not in the interests of justice”? CP 32.

III. STATEMENT OF THE CASE

On March 2, 2018, Franklin committed the crime of unlawful possession of a controlled substance (methamphetamine); approximately one month later on April 4, 2018, the State charged Franklin with this crime; and on August 12, 2019, Franklin was sentenced. CP 1-3, 20. The standard sentence range for this crime was six (plus) months to 12 months, and pursuant to the plea agreement, both parties recommended a sentence of six months and a day. RP 3. However, the court did not follow the parties’ recommendations, instead giving Franklin an exceptional sentence of three months of electronic home monitoring. CP 22-32. The court supported this

exceptional sentence by finding that Franklin was employed, Franklin had been sober for 17 months, the length of time and circumstances between the crime (and presumably the sentencing) had substantially changed, and ultimately that “imposition of the standard range is not in the interests of justice.” CP 32.

Prior to declaring its sentence and entering the findings of fact for the exceptional sentence, the court engaged in a colloquy with Franklin. RP 4-14. Between Franklin’s guilty plea and this colloquy at her sentencing, Franklin made a number of inconsistent declarations. First, Franklin declared that the reason the case took so long to get resolved was because “I went to prison for ten months, and [the State] charged me two weeks before I got out of prison.” RP 4. At least part of this statement is inaccurate: Franklin did not commit the crime in prison and the State charged her approximately one month after the crime occurred. CP 1-6. Second, Franklin admits during the colloquy that she served the ten-month sentence in prison due to a “first degree felony escape and a DOSA revoke,” yet failed to mention that escape conviction in her declaration of criminal history at the time she pled guilty.¹ RP 11; CP 18.

This appeal followed.

¹ The erroneously omitted escape conviction would affect Franklin’s offender score but not her standard range, and the State may file a CrR 7.8 motion to correct this error.

IV. ARGUMENT

A. The court lacked a valid basis to impose an exceptional sentence.

A court may impose an exceptional sentence below the standard range if there are “substantial and compelling reasons” justifying it. RCW 9.94A.535; *State v. Murray*, 128 Wn. App. 718, 722, 116 P.3d 1072 (2005). Courts “may consider a nonexclusive statutory list of mitigating factors that support an exceptional sentence downward, including such reasons as the defendant’s unwillingness to participate in the crime and his or her capacity to appreciate the wrongfulness of the act.” *Murray* at 722; RCW 9.94A.535(1). Generally, “an exceptional sentence is appropriate only when the circumstances of the crime distinguish it from other crimes of the same statutory category.” *State v. Pennington*, 112 Wn.2d 606, 610, 772 P.2d 1009 (1989), *quoted by Murray* at 722. An appellate court will reverse an exceptional sentence on appeal if it finds that (1) the reasons relied upon by the sentencing court do not justify an exceptional sentence under a de novo standard of review; (2) the reasons relied upon by the sentencing court are not supported by the record under a clearly erroneous standard; or (3) the sentence is clearly too lenient or excessive under an abuse of discretion standard. *Murray* at 722; *Pennington* at 608; *see also, State v. Jackson*, 150 Wn.2d 251, 273, 76 P.3d 217 (2003).

In *Murray*, the sentencing court relied on at least 10 reasons in support of ordering an exceptional sentence. *Murray* at 723. These included circumstances such as Murray having regular contact with his son, being chemically dependent, completing outpatient treatment and urine analysis to support his sobriety, participating in counseling, strong ties to his family and community, maintaining gainful employment, being supported by the foster family, being directly involved with his children and family, showing positive accomplishments in his life, etc. *Id.* On appellate review, this Court ruled that none of those reasons justified an exceptional sentence. *Murray* at 725. “Neither addictions nor other personal circumstances of defendants have been found to support exceptional sentences downward. *Id.*; *State v. Freitag*, 127 Wn.2d 141, 145, 896 P.2d 1254 (1995) (defendant’s desire to improve through community service does not justify departing from standard range); *State v. Estrella*, 115 Wn.2d 350, 353, 798 P.2d 289 (1990) (willingness to obtain treatment and attempts to gain employment do not justify departing from standard range); *State v. Amo*, 76 Wn. App. 129, 133, 882 P.2d 1188 (1994) (potential loss of parental rights not sufficient basis); *State v. Hodges*, 70 Wn. App. 621, 623, 855 P.2d 291 (1993). Further, this Court in *Murray* reasoned that:

None of the trial court’s reasons for imposing an exceptional sentence qualify as substantial or compelling reasons to depart from the presumptive range. The findings do not

address how the circumstances of Mr. Murray's crime distinguish it from other crimes in the same category . . . Each finding reflects the trial court's subjective opinion that the presumptive range does not adequately meet Mr. Murray's personal circumstances. And an extraordinary sentence based on such an opinion is not authorized under the SRA.

Murray at 725 (citing *Pennington* at 610; *State v. Allert*, 117 Wn.2d 156, 169, 815 P.2d 752 (1991); *State v. Ritchie*, 126 Wn.2d 388, 394, 894 P.2d 1308 (1995)). By imposing an exceptional sentence, the court invades the province of the legislature to fix the punishment of crimes. *Ritchie* at 394. "Fixing of punishment for crimes is a legislative function," and "judicial dissatisfaction with the sentencing scheme goes to the 'wisdom of dispositional standards' and 'it is the function of the legislature and not the judiciary to alter the sentencing process.'" *Ritchie* at 394 (quoting *State v. Bryan*, 93 Wn.2d 177, 181, 606 P.2d 1228 (1980)).

In the present case, the reasons provided by the sentencing court are not "substantial and compelling" reasons that justify an exceptional sentence. The reasons (employment, sobriety, etc.) are directly analogous to those previously rejected by this Court in *Murray* and other cases throughout the state. They do not distinguish Franklin's crime from other crimes in the same category.

B. Because the court erred in imposing an exceptional sentence, the case must be remanded for resentencing.

Because the sentencing court relied on insufficient reasons to justify its exceptional sentence, the case must be remanded for resentencing.

V. CONCLUSION

Based on the foregoing reasons, the court erred in giving Franklin an exceptional sentence; therefore, the case must be remanded for resentencing.

DATED: November 20, 2019

Respectfully submitted:



Ryan Valaas, WSBA # 40695
Deputy Prosecuting Attorney

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

STATE OF WASHINGTON,

Plaintiff/Appellant,

vs.

ANGELA LEE FRANKLIN,

Defendant/Respondent.

No. 37050-0-III

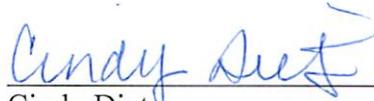
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DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 20th day of November, 2019, I caused the original BRIEF OF APPELLANT to be filed via electronic transmission with the Court of Appeals, Division III, and a true and correct copy of the same to be served on the following in the manner indicated below:

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Signed at Wenatchee, Washington, this 20th day of November, 2019.



Cindy Dietz
Legal Administrative Supervisor
Chelan County Prosecuting Attorney's Office

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CHELAN COUNTY PROSECUTING ATTORNEY

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