

Original

79236-4

23698-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ALYSSA KNIGHT, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE JEROME J. LEVEQUE

BRIEF OF RESPONDENT

STEVEN J. TUCKER
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I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The sentencing court erred in calculating the appellant's offender score as four points for counts II and III.
2. The sentencing court erred in calculating appellant's count III standard range as 165-225 months.
3. The sentencing court erred in sentencing appellant to 225 months on count III when it erred in calculating the standard range.
4. The sentencing court erred in calculating appellant's count II standard range as 27-36 months.
5. The sentencing court erred in sentencing appellant to 30 months on count II when it erred in calculating the standard range.

II.

ISSUE PRESENTED

- A. Is conspiracy to commit second degree robbery a "violent offense?"

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the defendant accepts the defendant's statement of the case.

IV.

ARGUMENT

A. CONSPIRACY TO COMMIT SECOND DEGREE ROBBERY IS A "VIOLENT OFFENSE" AND THE TRIAL COURT DID NOT ERR IN SENTENCING THE DEFENDANT.

The defendant asserts arguments based on erroneous facts. The defendant claims that the trial court erred in its calculation and sentencing of the defendant on counts II and III.

The trial court did not err. The defendant pled guilty to conspiracy to commit second degree robbery, conspiracy to commit first degree burglary and second degree murder.

The defendant had no prior countable felony history.

RCW 9A.525(6) reads:

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are

used as criminal history, score them the same as a completed crime.

RCW 9A.525(6) (2003 version).¹

RCW 9.94A.030 defines second degree robbery as a violent offense. RCW 9.94A.030. So, for the purposes of scoring counts II and III in this case, count I (consp. second robbery) is counted as a violent offense.

According to RCW 9A.525(8), when scoring count II, count I will be counted as “two” and count III will be counted as “two.” The court correctly scored the “other current offenses” as “four.”

The correct range for count II would be 75% of the range for the completed crime or 27- 36 months which is the range used by the sentencing court.

The correct range for count III would be 165- 265 which is the range used by the sentencing court.

The defendant is correct in that the court in *State v. Becker*, 59 Wn. App. 848, 801 P.2d 1015 (1990) held that conspiracy to commit second degree robbery was a “violent offense.” The defendant spends much time complaining about *Becker*, but the bottom line is that the case exists and is dispositive of the issues here.

¹ The State agrees with the defendant’s claim that the law at the time of the crime applies. Thus, all statutory references will be to the 2003 code.

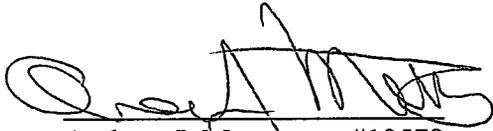
V.

CONCLUSION

For the reasons stated, the sentencing of the defendant should be affirmed.

Dated this 31 day of January, 2006.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", written over a horizontal line.

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