

81244-6

C.O.A. # 263631

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR REVIEW

STATE OF WASHINGTON,
RESPONDENT,

V.

SHAWN CHRISTOPHER RAINEY,
PETITIONER/APPELLANT

BRIEF OF PETITIONER

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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SHAWN CHRISTOPHER RAINEY

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I. IDENTITY OF PETITIONER.

Petitioner SHAWN CHRISTOPHER RAINEY asks this Court to accept review of the Court of Appeals decision terminating review, designated in Part II of this petition.

II. COURT OF APPEALS DECISION.

The petitioner seeks review of the Court of Appeals decision filed February 1, 2008 which confirmed his sentence. A copy of the Court's unpublished opinion is attached hereto at Appendix A.

III. ISSUE PRESENTED FOR REVIEW.

Was Mr. Rainey denied his federal constitutional right to have a jury determine beyond a reasonable doubt all facts legally essential to his sentence? Did the sentence violate his Sixth Amendment right to trial by jury (U.S. const. Amend, VI); Blakely V. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed.2d 403 (2004), State V. Zavala-Reynoso, 127 Wn. App. 119. 110 P.3d 827 (2005), and State V. Knotek, 136 Wn. App. 412, 149 P.3d 676 (2006).

IV. STATEMENT OF THE CASE.

The statement of facts, as set forth in Appellant's Opening Brief, transferred to C.O.A. on July 31, 2007

and Petitioner's answer to Respondent's Brief is attached as Appendix B and incorporated herein.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

Considerations which govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes this court should accept review of the issues because the decision of the Court of Appeals is in conflict with other decisions of this court, the U.S. Supreme Court, and the Court of Appeals [(RAP 13.4(b)(1) and (2)], and involves a significant question of law under the Constitution of the United States and Washington State Constitution (RAP 13.4(b)(3)), and the petition involves an issue of substantial public interest that should be determined by the Supreme Court (RAP 13.4(b)(4)).

Mr. Rainey was given an exceptional sentence and sentence provision, when he was sentenced to 68 months confinement and 24-48 months community custody, and a lifetime no-contact order with his minor child, who was not a victim of his crime, which violated the Sixth Amendment of the U.S. Constitution, Blakely, Zavala-Reynoso, and Knotek supra.

As outlined in the C.O.A. decision, "the court clarified the statutory maximum of Apprendi and Blakely to mean the top of the Standard Sentence Range." The C.O.A. decision asserts that Blakely "is not relevant because the statutory maximum at issue is that set forth in 9A.20.021(1)(a) (lifetime maximum for a class A felonies)." Which is in fact the same statutory maximum that Blakely dealt with and Knotek defined as "A life sentence is possible for a class A felony ONLY if the trier of facts [jury] specifically finds beyond a reasonable doubt or the defendant admits to aggravating facts supporting an exceptional sentence, otherwise, the effective maximum sentence for a class A felony is the top end of the standard sentencing range." As outlined in Knotek and Blakely, there are only two statutory maximum sentences, the lifetime allowed by the legislature, which MUST be found by a jury, and the top end of the Standard Sentence Range as defined in Knotek, and Blakely. RCW 9.94A.030(40) defines "'Statutory maximum sentence' means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in the statute defining the crime", RCW 9A.40.020(1).

RCW 9.94A.505(2)(a) "The court shall impose a sentence as provided in the following sections and as applicable in the case:" (i) "unless another term of confinement applies, the court SHALL impose a sentence within the standard sentence range established in RCW 9.94A.510." The C.O.A. decision asserts that another term applies, RCW 9A.20.021(1)(a), (life maximum for class A felony crimes). This assertion is incorrect because of the clarifications in Blakely, Apprendi, and Knotek, as well as by RCW 9A.20.021(1), which states "Felony. UNLESS a felony is SPECIFICALLY ESTABLISHED BY A STATUTE OF THIS STATE, no person convicted of a crime..."

Mr. Rainey's crime is Kidnap 1st degree, RCW 9A.40.020 is clearly a statute of this state.

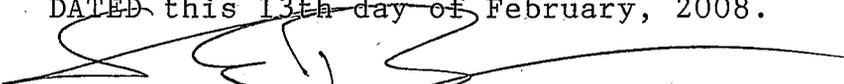
The C.O.A. decision goes on to say "Moreover, the addition of community custody does not implicate Blakely because there is no fact finding involved. Rather, community custody is mandated for Mr. Rainey's offense." While it is true that Mr. Rainey's crime does mandate a term of 24-48 months community custody, as defined in Washington Practice guide #13 §4815 "community custody means that portion of CONFINEMENT served in the community subject to controls placed

on the inmate's movement and activities by the Department of Corrections." As outlined in State V Zavala-Reynoso supra, the community custody **can not**, when combined with total confinement, exceed the top end of the standard sentencing range **unless** a treir of facts [jury] specifically finds aggravating facts to support an exceptional sentence as defined in Knotek, which Mr.Rainey's [jury] did not.

VI. CONCLUSION.

This court should grant review of this case. Mr.Rainey should be afforded his right to a trial by jury, and be resentenced within the 68 months which are allowed by the standard sentence range.

DATED this 13th day of February, 2008.


Shawn C. Rainey
Pro Se
Petitioner



SUBSCRIBED AND SWORN TO BEFORE ME THIS 13 DAY OF FEBRUARY, 2008.
MY COMMISSION EXPIRES: 3/10/08.

Mary Lou Nelson
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT SPOKANE.

EXHIBIT 1

FILED

FEB -1 2009

COURT OF APPEALS
DIVISION III
SPOKANE COUNTY WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 26363-1-III
of:)	
)	
SHAWN CHRISTOPHER RAINEY,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
Petitioner.)	

Shawn Christopher Rainey seeks relief from personal restraint imposed for his 2005 Spokane County conviction of first degree kidnapping—domestic violence. The court imposed a 68-month standard range sentence and a community custody term of 24-48 months.

Mr. Rainey initially filed this matter as a CrR 7.8 motion to vacate or modify his sentence in the Superior Court, which has transferred the matter to this Court for consideration as a personal restraint petition. *See* CrR 7.8(c)(2). Mr. Rainey previously filed a direct appeal and this Court affirmed the judgment and sentence in an unpublished

No. 26363-1-III

PRP of Rainey

opinion. *See State v. Rainey*, slip op. no. 24827-5-III (Wa. Ct. App. 2007).¹

To obtain relief in a personal restraint petition, Mr. Rainey must show actual and substantial prejudice resulting from alleged constitutional errors, or for alleged nonconstitutional errors a fundamental defect that inherently results in a miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

Mr. Rainey claims his sentence is fundamentally defective because the terms of incarceration and community custody combine to exceed the statutory maximum sentence for first degree kidnapping. He relies principally on *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and *State v. Zavala-Reynoso*, 127 Wn. App. 119, 110 P.3d 827 (2005), to support his arguments that his sentence is unlawful. His arguments are frivolous.

In *Apprendi*, the United States Supreme Court held that other than the fact of a prior conviction, any fact that increases penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). In *Blakely*, the Supreme Court clarified *Apprendi* to mean that the statutory maximum "is the maximum sentence a judge may impose solely on the basis of the facts reflected in

¹ The appeal is not yet final, as a petition for review is pending in Supreme Court cause no. 80111-8.

the jury verdict or admitted by the defendant.” *Blakely*, 542 U.S. at 303. In *Evans*, the Court clarified that the statutory maximum referred to in *Apprendi* and *Blakely* was not the maximum sentence authorized by the legislature for the crime but the top of the standard sentencing range. *State v. Evans*, 154 Wn.2d 438, 441-42, 114 P.3d 627, *cert. denied*, 546 U.S. 983, 126 S. Ct. 560, 163 L. Ed. 2d 472 (2005); *see also State v. Knotek*, 136 Wn. App. 412, 425, 149 P.3d 676 (2006).

Mr. Rainey argues that the *Blakely* interpretation of statutory maximum applies here, such that his sentence including community custody unlawfully exceeds the 68-month high end of the standard range. But *Blakely* is not relevant in this context because the statutory maximum at issue is that set forth in 9A.20.021(1)(a) (life maximum for class A felony crimes). *See* RCW 9.94A.505(5). Moreover, the addition of community custody does not implicate *Blakely* because there is no fact finding involved. Rather, community custody is mandated for Mr. Rainey’s offense. *See* RCW 9.94A.715.

Zavala-Reynoso is also inapposite. There, the term of confinement plus the community custody term exceeded the 120-month sentence possible for the defendant’s class B felony. *State v. Zavala-Reynoso*, 127 Wn. App. at 124. Here, Mr. Rainey’s term of confinement plus community custody will not exceed 116 months—well beneath the statutory life maximum for first degree kidnapping.

Mr. Rainey further claims his sentence unlawfully exceeds the statutory maximum

No. 26363-1-III
PRP of Rainey

because it contains an order of no-contact with the child victim for life. This claim is also frivolous. Crime-related no-contact orders may last for the statutory maximum for the defendant's crime. *State v. Armendariz*, 160 Wn.2d 106, 118-20, 156 P.3d 201 (2007).

There is no error.

Mr. Rainey makes no claim entitling him to relief in a personal restraint petition. He fails his burden under *In re Pers. Restraint of Cook*, 114 Wn.2d at 813. Accordingly, the petition is dismissed as frivolous. RAP 16.11(b). The Court also denies Mr. Rainey's request for appointed counsel. See *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).

DATED: February 1, 2008

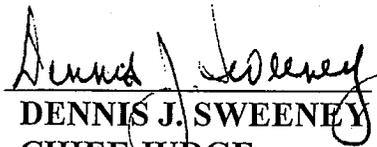

DENNIS J. SWEENEY
CHIEF JUDGE

EXHIBIT 2

exceptional sentence. **otherwise, the effective maximum sentence for a class A felony is the top end of the standard sentencing range.**

Mr. Rainey is asking that he be resentenced within the 68 months, his effective maximum as set forth in Blakely, Knotek, and State V Zavala-Reynoso, 127 Wn.App. 119, 2005. all of these decisions parallel the petitioners case.

To overcome the time limit for collateral attack refer to RCW 10.73.090(1) which states " If the judgement and sentence is not valid on it's face then collateral attack is overcome. RCW 9.94A.505(5) states community custody cannot exceed Mr.Rainey's maximum sentence as provided in RCW 9A.020" The adult sentencing manual 2005, page III-120 for offence RCW 9A.40.020 Kidnapping in the first degree, sectionII, paragraph D states " when a court sentences an offender to the custody of the Department of Corrections, the court **shall** also sentence the offender to community custody for the range of 24-48 months, or to the period of earned release, whichever is longer." RCW 9A.20.021 supports that Mr.Rainey's maximum sentence is 68 months.

When you combine the 68 months confinement time with the 24-48 months community custody, Mr.Rainey has a sentence total of 96-116 months which puts him 24-48 months over his effective maximum sentence under the SRA. The same holds true for the lifetime no contact order with his child L.A.R. which can only be a maximum of 68 months.

Relief

The petitioner respectfully request the court order a modification of his sentence to reflect a sentence of 32 months confinement plus 36 months community custody or 44 months confinement plus 24 months community custody for a lawful sentence total of 68 months, and the lifetime no contact order should be reduced to his effective maximum sentence as provided for in the SRA and reflective of the decisions

found in the Knotek, and Zavala-Reynoso cases, this sentence amendment request would be just and equitable for all involved parties, thus petitioner respectfully presents.

submitted this _____ day of _____, 2007.

Shawn C. Rainey
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Airway Heights, Wa. 99001-1839

In the Court of Appeals for the State of Washington

Division III

In Re Personal Restraint) C.O.A. No: 263631
Petition of:)
)
Shawn C. Rainey,) Petitioner's answer to
) Respondent's Brief:
)
Petitioner.)
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The question of whether a no-contact order can legally be given to Mr.Rainey for **LIFE**, has a simple and definitive answer, **NO**. According to the SRA, Mr.Rainey's Judgement and sentence, RCW 9A.20.021(1), RCW 9.94A.505(2)(a)(i), State v Knotek, 136 Wn.App.412-414 [13], Blakely V Washington, 542 U.S. 296 (2004). The single most important issue in this Petition is, would a life sentence in Mr.Rainey's case be an exceptional sentence? The answer is **YES**.

Mr.Korsmo refers to RCW 9A.20.021(1)(a), this is not even a question in Mr.Rainey's case because he was **NOT** sentenced under RCW 9A.20.021(1)(a). Mr.Rainey was sentenced under RCW 9.94A.505(2)(a)(i), nowhere in Mr.Rainey's judgement and sentence does it say that he is sentenced under RCW 9A.20.021(1)(a) as Mr.Korsmo implies. On every

page of Mr. Rainey's Judgment and Sentence, at the bottom it says that Mr. Rainey is sentenced under RCW 9.94A.500, .505. Where Mr. Korsmo makes his mistake is when he reads RCW 9.94A.505(5) which states that a court may not impose a sentence which exceeds the statutory maximum for the crime as provided in Chapter RCW 9A.20.

RCW 9A.20.021(1) clearly states " Felony. UNLESS a felony is SPECIFICALLY ESTABLISHED BY A STATUTE OF THIS STATE, no person convicted of a crime...." This section alone shows that Mr. Rainey WAS NOT sentenced under RCW 9A.20 because Mr. Rainey was convicted of **Kidnapping 1st degree**, RCW 9A.40.020(1) which is clearly a STATUTE OF THIS STATE as required under RCW 9A.20.021(1), so as NOT to be sentenced under RCW 9A.20.021(1)(a), as Mr. Korsmo implies.

As well in State V Knotek, Division II Court of Appeals further supports Mr. Rainey in stating that "A life sentence is possible for a class A felony **only** if the trier of facts [**Jury**] specifically finds beyond a reasonable doubt or the defendant admits to aggravating facts supporting an exceptional sentence. OTHERWISE, THE EFFECTIVE MAXIMUM SENTENCE FOR A CLASS A FELONY IS THE TOP END OF THE STANDARD SENTENCING RANGE." In Mr. Rainey's case the [**Jury**] never found that aggravating facts existed.

RCW 9.94A.505(2)(a) states "The court **SHALL** impose a sentence as provided in the following sections and as applicable in the case:" (i) unless another term of

confinment applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.510, which further supports that Mr. Rainey's **EFFECTIVE MAXIMUM SENTENCE** after finding Kidnapping 1st degree is a seriousness level of X in RCW 9.94A.515, and with zero points, has a **STATUTORY MAXIMUM SENTENCE** range of 51-68 Months.

Mr. Korsmo also argues that under State V Armendariz, the court may impose a crime-related prohibition as part of a sentence, he is correct that a court may impose a crime-related prohibition, however the prohibition, confinement time, and the community custody, can only be to the maximum of the standard sentence range as outlined above for the conviction of the crime of Kidnapping 1st degree, RCW 9A.40.020(1).



A handwritten signature in black ink, appearing to read "Shawn Christopher Rainey".

Shawn Christopher Rainey
Pro Se
Petitioner

SUBSCRIBED AND SWORN TO BEFORE ME THIS 17 DAY OF October, 2007.

MY COMMISSION EXPIRES: 3/10/08

Mary Lou Nelson

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT SPOKANE.