

66836-6

file

66836-6

COA No. 66836-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RICHARD SWEAT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

The Honorable Mariane Spearman

APPELLANT'S SUPPLEMENTAL BRIEF

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A. SUPPLEMENTAL ARGUMENT

THE LEGISLATIVE HISTORY OF THE SENTENCING STATUTES AT ISSUE REVEALS NO INTENT TO EXPAND THE SCOPE OF THE AGGRAVATING FACTOR BEYOND THE SENTENCING REFORM ACT'S DEFINITION OF "VICTIM," WHICH MEANS PERSONS SUSTAINING INJURY AS A "DIRECT RESULT OF THE CRIME CHARGED."

The definition of "victim" in the SRA encompasses any person who sustained injury as a result of the charged crime, a category that includes more persons beyond just the specific complainant. RCW 9.94A.030, the definitional section of the SRA, provides that the term "victim" is defined as follows:

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(Emphasis added.) RCW 9.94A.030(53). The term "multiple victims" (which was added to the aggravating factor at .535(3)(h)(i) by the Washington Legislature in 2010) simply uses the defined term, "victim," in the plural. Laws 2010, ch. 274, sec 402. The provision now provides that it is an aggravating factor that:

[t]he current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present: (i) The offense was part of an ongoing pattern of psychological, physical, or sexual

abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time[.]

RCW 9.94A.535(3)(h)(i). The State does not dispute that the term “victim” is defined by the SRA as referring to the victim of the current offense, but contends that the term “multiple victims” is an entirely different animal qualitatively, and must be read to include the victims of the defendant’s prior convictions who are wholly unconnected to the current charge being sentenced, and that the term must be read to override the applicable SRA definition section of the statute. BOR at 7.

The State cites no authority whatsoever for this proposition that the Legislature’s use of a statutorily defined term (here, “victim”) in the *plural* (“multiple victims”), somehow changes the definition of the statutory term, which definition controls. State v. Watson, 146 Wn.2d 947, 954–55, 51 P.3d 66 (2002) (legislative definitions included in a statute are controlling).

A charged crime may have numerous “victims” for purposes of the SRA definition, which includes within its ambit “any person” who has sustained injury including emotional and property injury, as a result of the current crime. RCW 9.94A.030(53). The Legislature’s addition of the term “multiple victims,” rather than

expanding the scope of the aggravator to ensnare the defendant's prior conduct toward persons unconnected to the current case, has a different, unambiguous meaning. It ensures that a defendant, found guilty of committing an offense against a victim/complainant, may be subject to the aggravating factor regardless of whether there were *other* victims of the current conviction, or *other* victims who were also injured by the defendant's prior conduct toward the current victim.

This is the plain language of the statutory aggravating factor, and the definition of victim, which must be read together and in harmony. State v. Powell, 167 Wn.2d 672, 695–96, 223 P.3d 493 (2009) (courts will read statute to keep provisions in harmony).

Unsurprisingly, the State does not contend that the Legislature's use of the term "multiple victims" renders the aggravating factor ambiguous as to whether it permits aggravated punishment based on past conduct towards persons who were not victims of the current offense).

Were the State to do so, the "Rule of Lenity" would apply. If, following a court's efforts at statutory interpretation, a statutory provision is still subject to more than one reasonable interpretation, it is ambiguous. State v. Jacobs, 154 Wn.2d 596, 600–01, 115

P.3d 281 (2005). “If a statute is ambiguous, the rule of lenity requires [the courts] to interpret the statute in favor of the defendant absent legislative intent to the contrary.” Jacobs, 154 Wn.2d at 601.

Here, the Rule of Lenity would apply (if the statute was ambiguous, which it is not), because the State can show nothing in the legislative history of these provisions in the SRA that evinces any purpose to expand the aggravating factor to encompass past conduct toward persons wholly and *exclusively* different from the victim of the current charged crime.

If the statutory provision is ambiguous (and if the Rule of Lenity were nonetheless disregarded), a review of the pertinent sentencing statutes’ legislative history reveals no indication that the term “multiple victims” was added to the aggravating factor’s language with any other intent than the simple purpose of ensuring it applied to current prosecutions and past conduct that harmed either the current victim, or the current victim and others who “sustained . . . injury.”¹

¹ The statement of Legislative Intent reveals no purpose to dramatically expand the aggravating factor in question in order to encompass the defendant’s prior conduct toward persons who are not a victim of the current offense. It states:

For example, a defendant might be sentenced in a case in which the current charge involved solely the complainant as “victim,” whereas the prior conduct by the defendant had caused injury not only to the current complainant, but also to *other* victims. The definition of victim makes clear that other persons may be victims of the defendant’s conduct in addition to the complainant, and even so, the “pattern” of abuse required by the aggravating factor may still be found. RCW 9.94A.030(53).

The Legislative history of the change to the aggravating factor reveals a simple change to the factor to employ the

The legislature intends to improve the lives of persons who suffer from the adverse effects of domestic violence and to require reasonable, coordinated measures to prevent domestic violence from occurring. The legislature intends to give law enforcement and the courts better tools to identify violent perpetrators of domestic violence and hold them accountable. The legislature intends to: Increase the safety afforded to individuals who seek protection of public and private agencies involved in domestic violence prevention; improve the ability of agencies to address the needs of victims and their children and the delivery of services; upgrade the quality of treatment programs; and enhance the ability of the justice system to respond quickly and fairly to domestic violence. In order to improve the lives of persons who have, or may suffer, the effects of domestic violence the legislature intends to achieve more uniformity in the decision-making processes at public and private agencies that address domestic violence by reducing inconsistencies and duplications allowing domestic violence victims to achieve safety and stability in their lives.

Laws 2010 Ch. 274 (S.H.B. 274) (sec. 101, referencing RCW 10.31.100).

statutorily-defined term “victim” in the plural. Certainly, there is nothing in the Legislative history that reveals a purpose to modify this one particular aggravating factor in so dramatic and unique a manner as to render the SRA’s definition of the term “victim” inoperative. Thus the Final Bill Report of ESHB 2777, although it is not intended as a statement of legislative intent, simply indicates the addition of the term “multiple victims” to the statute, without any further comment.

In 2010, the Act that included the modification to the aggravating factor at issue established several changes to the law in the area of domestic violence, including regarding arrest, and courts’ issuance of no-contact orders. Laws 2010, ch. 274, sec. 201. With regard to sentencing, the Act made modifications to the existing offender score calculation for domestic violence defendants, and in particular (1) added a mitigating factor, and (2) changed the aggravating factor that is here at issue. Laws 2010, ch. 274, sec. 402.

Both of the two latter changes addressed the question of the defendant’s previously established, ongoing relationship of abuse with the victim. Thus, the law added a new mitigating factor, which is shown where the accused’s crime was a justifiable response to

an “ongoing pattern” of battering of the accused by the complainant. Laws 2010, ch. 274, sec. 201.

This informs the meaning of the change to the aggravating factor at issue. See State v. Thorne, 129 Wn.2d 736, 761, 921 P.2d 514 (1996) (meaning of an enactment is read as a whole in relation to surrounding provisions). As did the new mitigating factor, the modified aggravating factor similarly addressed the fact of an ongoing relationship of abuse in which the defendant’s current crime was the latest manifestation of an pattern of abuse, including psychological abuse, of the victim over time. The modified language of the provision simply makes clear that the victim in the present prosecution, in order for the aggravating factor of “pattern” to apply, need not be the sole person injured as a result of the defendant’s current, or past, domestic violence conduct, for the aggravating “pattern” to exist. For further example, a defendant’s current crime might have several victims, and his past conduct might only have victimized one of those persons – but the required “pattern” may still be found. The addition of the term “multiple victims” has no greater significance than that, and the Legislative History is not to the contrary.

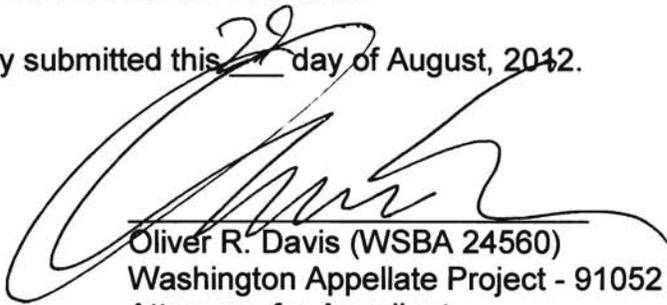
The SRA’s plain language – i.e., the aggravator at issue, and

the controlling SRA definition of "victim" -- clearly and unambiguously establishes that various other complainants plucked from past cases in Mr. Sweat's prior criminal history (who have nothing to do with the complainant in the current case) do not constitute "victims" for purposes of aggravating the defendant's current offense under RCW 9.94A.535(3)(h)(i). The past complainants in cases that the trial court below used to aggravate Mr. Sweat's crime at sentencing, did not fit the definition of "victim" in the Sentencing Reform Act, and the State's evidence at the bench trial below was therefore insufficient.

B. CONCLUSION

Based on the foregoing and on his Appellant's Opening Brief and Reply Brief, Mr. Sweat respectfully requests this Court reverse the judgment and sentence of the trial court.

Respectfully submitted this 22 day of August, 2012.



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RICHARD SWEAT,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 29TH DAY OF AUGUST, 2012, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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APPELLATE UNIT	()	_____
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SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 29TH DAY OF AUGUST, 2012.

X _____ 

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