

71702-2

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NO. 71702-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DAVID LAINEZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA S. CAHAN

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

The 60-month exceptional sentence imposed by the trial court was not clearly excessive and does not constitute an abuse of discretion.

B. STATEMENT OF THE CASE

On May 15, 2012, David Lainez was released from custody for stalking Katie Stockman since November 2011. CP 1, 6-7. The next day, May 16, 2012, Lainez once again began contacting Stockman against her wishes. CP 7. After being released for that crime on June 25, 2013, Lainez resumed stalking Stockman. CP 7. On June 29, 2013, Lainez was seen by Stockman attempting to gain entry into her place of employment. CP 7-8. Law enforcement was dispatched to her employment and once law enforcement responded, Lainez assaulted two officers while he was being arrested. CP 7-9.

As a result of this incident, Lainez pled guilty to one count of felony stalking with a rapid recidivism aggravator and two counts of assault in the fourth degree on February 5, 2014. CP 32-33, 35, 53-54.

The statute prohibiting Lainez's behavior, felony stalking, was amended on April 27, 2013, and became effective on July 28,

2013, one month after this crime. This amendment changed non-domestic violence felony stalking from a class C felony to a class B felony.

Lainez's standard range for this crime was 13-17 months.

CP 60. The court imposed an exceptional sentence of 60 months.

CP 62.

C. ARGUMENT

THE IMPOSITION OF THE STATUTORY MAXIMUM TERM OF CONFINEMENT WAS NOT CLEARLY EXCESSIVE BECAUSE THE CIRCUMSTANCES OF THIS CRIME WERE DISTINGUISHABLE FROM OTHER CRIMES IN THE SAME STATUTORY CATEGORY.

An exceptional sentence is "clearly excessive" if it is imposed on untenable grounds or for untenable reasons, or if it is manifestly unreasonable, *State v. Oxborrow*, 106 Wn.2d 525, 530, 723 P.2d 1123 (1986), or "if no reasonable person would impose it." *State v. Creekmore*, 55 Wn. App. 852, 863, 783 P.2d 1068 (1989) (citing *220 *State v. Nelson*, 108 Wn.2d 491, 504-05, 740 P.2d 835 (1987)); *State v. Pascal*, 108 Wn.2d 125, 138-39, 736 P.2d 1065 (1987); *State v. Armstrong*, 106 Wn.2d 547, 550, 723 P.2d 1111 (1986).

Additionally, although the standard of review regarding whether an exceptional sentence is excessive is abuse of discretion, “the length of an exceptional sentence cannot come out of thin air.” *State v. Pryor*, 56 Wn. App. 107, 123, 782 P.2d 1076 (1989) (quoting *State v. Wood*, 42 Wn. App. 78, 84, 709 P.2d 1209 (1985), *review denied*, 105 Wn.2d 1010 (1986)).

Here, the exceptional sentence imposed was for tenable reasons and was reasonable viewing the facts of the case. Lainez continued to contact the victim even after being told repeatedly by the courts to stop contacting her. Most importantly, the defendant continued to violate the court’s orders and the victim’s wishes quickly after being released from custody.

Moreover, the rational basis for the length of the sentence is implicit in the record. That rational basis contained in the record is the aggravating factor of rapid recidivism. Here, the defendant committed this crime after being released from custody approximately two days earlier. In the prior felony case, the defendant was released from custody for previously stalking Stockman and the very next day continued his harassment of her.

Additionally, the legislature increased the punishment for the crime of stalking shortly after this incident. The legislature changed the statutory maximum of the crime from 60 months to 120 months. Had this crime occurred one month later, with the same facts, the defendant's statutory maximum would have been 120 months.

Moreover, Lainez has shown a repetitive disregard for the court's orders and an unwillingness to abide by the victim's wishes to leave her alone. Lainez committed the crime of stalking shortly after being released from custody on two separate occasions. Lainez also demonstrated escalated violent behavior during the commission of this crime by assaulting two officers. Those facts warrant an exceptional sentence and those facts taken together make the circumstances of this case distinguishable from other cases in the same statutory category. Therefore, the court reasonably sentenced Lainez to 60 months based on the aggravator factor.

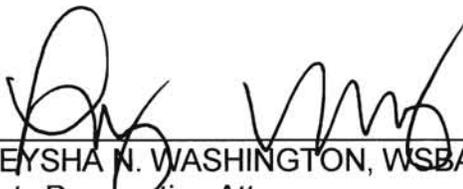
D. CONCLUSION

Viewing the facts of the case, the repeated stalking of Stockman after being released from custody and the increase in punishment, demonstrates that a reasonable person would have imposed the sentence and the sentence is not clearly excessive.

DATED this 8 day of January, 2015.

Respectfully submitted,

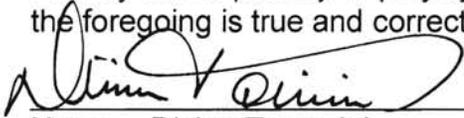
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Maureen M. Cyr, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent and Certificate of Service by Mail, in STATE V. DAVID LAINEZ, Cause No. 71702-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Divina Tomasini
Done in Kent, Washington

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DATE:

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U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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