

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 71126-1-I
)	
vs.)	
)	STATE'S SUPPLEMENTAL
PEDRO NAVARRO,)	RESPONSE AS INVITED BY
)	PANEL AT ORAL ARGUMENT
Appellant.)	
)	
)	
)	
)	
)	

During oral argument in this case, Judge Becker inquired into two apparent errors in the judgment and sentence that neither party had noted. The first is the imposition of six months of community custody for failure to register as a sex offender, where there was no such allegation in this case. CP 130. The State acknowledges this error must be corrected on remand.

The second potential error was that Navarro's total sentence of 132 months appears to exceed the 10-year statutory maximum for extortion. However, this total term of confinement reflects two

sentences that each fall within the statutory maximum: on each extortion count, the court imposed 96 months as a base sentence, plus 18 months for the enhancement and 6 months of community custody, which equals 120 months (10 years). CP 130-31.

Although Navarro will serve more than 10 years in total, that is only because the two enhancements are required to run consecutively.

RCW 9.94.533(8) provides, "If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced." (Emphasis added.) Thus, while the sentence for each count may not exceed the statutory maximum, nothing bars the combined terms of confinement from exceeding 120 months. State v. Thomas, 150 Wn.2d 666, 80 P.3d 168 (2003) (in the analogous context of firearm enhancements, there was no error where the trial court imposed two firearm-enhanced sentences that each equaled the statutory maximum for the Class B felony, even though the consecutive enhancements resulted in a total term of confinement that exceeded 120 months).

Respectfully submitted this 17th day of April, 2015.

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Christopher Gibson (gibsonc@nwattorney.net), the attorney for the appellant, Pedro Navarro, containing a copy of the State's Supplemental Response, in State v. Navarro, Cause No. 71126-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.

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Name

Done in Seattle, Washington

4/17/15

Date