No.
Court of Appeals No. 34175-5-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LORENZO CAMPOS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR BENTON COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND RELIEF REQUESTED

Pursuant to RAP 13.4, Petitioner Lorenzo Caps asks this Court to accept review of the opinion of the Court of Appeals in *State v. Campos*, 34175-5-III.

B. OPINION BELOW

Lorenzo, 19 years-old at the time of his offense, contends the trial court erred when it failed to consider his request for an exceptional mitigated sentence based on his youthfulness. Indeed, Lorenzo's request was not acknowledged by the trial court at all. Nonetheless the Court of Appeals affirmed the sentence.

C. ISSUE PRESENTED

This Court has held that each of the differences between young offenders and other adult offenders can constitute a mitigating factor justifying the imposition of an exceptional sentence. Where raised, a trial court must meaningfully consider youthfulness as a mitigating factor. Where the trial court did not address the differences between Lorenzo and other adult offenders, did the court meaningfully consider youth and its attributes as directed to by this Court?

D. STATEMENT OF THE CASE

Police, responding to a neighbor's complaint of a physical altercation, arrested 19 year-old Lorenzo Campos at the apartment he

shared with Brenda Dominguez and their young daughter. Officers arrested Lorenzo upon discovering a no contact order which prohibited contact between him and Brenda.

The State charged Lorenzo with one Count of felony violation of a no contact order. CP 1-2. The State subsequently added charges of misdemeanor violations of the no contact order and a count of tampering with a witness based upon phone calls Lorenzo made to Brenda while in jail awaiting trial. CP 5-9.

A jury convicted Lorenzo as charged. CP 50-60.

At sentencing, defense counsel asked the court to consider a mitigated sentence. 3/9/16 RP 8. Counsel noted Lorenzo's young age and urged that his actions in this case stemmed from his lack of experience and maturity. *Id*. Counsel urged the court to consider Lorenzo's capacity towards rehabilitation - his ability to "turn his life around." *Id*.

The trial court did not address defense counsel's argument and imposed a sentence of 60 months – the statutory maximum for the offense. CP 67-77.

E. ARGUMENT

The sentencing court abused its discretion when it failed to consider youth as a mitigating factor.

Children are "constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). They are categorically less blameworthy and more likely to be rehabilitated. *Id*.; *Roper v. Simmons*, 543 U.S. 551, 572, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). The principles underlying adult sentences -- retribution, incapacitation, and deterrence -- do not to apply to juveniles in the same way as they do adults. *Graham v. Florida*, 560 U.S. 48, 71, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

Children are less blameworthy because they are less capable of making reasoned decisions. *Miller*, 567 U.S. at 471. Scientists have documented their lack of brain development in areas of judgment. *Id*. at 471-72. Also, children cannot control their environments. *Id*. at 472. They are more vulnerable to and less able to escape from poverty or abuse. *Id*. Most significantly, juveniles' immaturity and failure to appreciate risk or consequence are temporary deficits. *Id*. As children mature and "neurological development occurs," they demonstrate a substantial capacity for change. *Id*. at 473.

Recognizing "youthfulness" is more than merely chronological; *State v. O'Dell* extended these principles to circumstances where

youthful offenders commit offenses as adults. 183 Wn.2d 680, 695-95, 358 P.3d 359 (2015). Examining decisions like *Miller* and the science underlying them, the Court held youthfulness, by itself, is a valid mitigating factor upon which a court may impose an exceptional sentence. *Id*. at 696.

Culpability is not defined by the youthful defendant's participation in the offense. Instead, among the relevant factors the judge should consider as mitigation are: (1) immaturity, impetuosity, and failure to appreciate risks and consequences; (2) lessened blameworthiness and resulting diminishment in justification for retribution: and (3) the increased possibility of rehabilitation. *O'Dell*, 183 Wn.2d at 692-93. The court concluded each of these "differences" between adults and young offenders could justify a mitigated sentence. *Id*. at 693.

When presented to the trial court, the court must meaningfully consider whether youth diminished a defendant's culpability. *O'Dell*, at 697; *State v. Solis-Diaz*, 194 Wn. App. 129, 138–39, 376 P.3d 458, 463, *reversed on other grounds*, 187 Wn.2d 535, 387 P.3d 703 (2017).

Mr. Campos based his request for a mitigated sentence on two bases (1) the victim was a willing participant; and (2) his youthfulness diminished his culpability. With respect to the first basis, the trial court

specifically found it was "beyond the pale." However, with respect to the second, Lorenzo's youthfulness, the court never mentioned it.

The Court of Appeals reasons the "trial court implicitly denied the request when the court imposed a standard range sentence. " Opinion at 6. But, the question is not whether the court denied Lorenzo's request: obviously it did. Instead, the question is whether it first meaningfully considered Lorenzo's youthfulness. That is what *O'Dell* demands. Meaningful consideration must require more than silence. At a minimum meaningful consideration must include an acknowledgement that the request has been made. The trial court's silence in response to a request cannot be considered meaningful consideration of the mitigating evidence.

But, the trial court did not acknowledge the request much less engage in any analysis. At no point, did the court consider how Lorenzo's maturity, culpability, and decision making measured against adult offenders, the vast majority of which are older than him. In doing so, the trial court did not give effect to *O'Dell's* mandate.

Beyond that, the trial court failed to give effect to the Supreme Court's caution that the hallmark attributes of youth are transient. "The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the

impetuousness and recklessness that may dominate in younger years can subside." *Roper*, 543 U.S. at 570. The trial court never assessed Lorenzo's likelihood for rehabilitation brought about simply by maturation as compared to older adult offenders.

Silence cannot be enough. The opinion of the Court of Appeals fails to give effect to and is contrary to *O'Dell*. Review is appropriate under RAP 13.4.

F. CONCLUSION

This Court should accept review.

Respectfully submitted this 28th day of August, 2017.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. LORENZO ALEX CAMPOS, Appellant.	)))))))))	No. 34175-5-III ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of June 22, 2017 is hereby denied.

PANEL: Judges Fearing, Korsmo, Lawrence-Berrey

FOR THE COURT:

George Fearing

GEORGE B. FEARING, Chief Judge

FILED
JUNE 22, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	
	)	No. 34175-5-III
Respondent,	)	
	)	
v.	)	
	)	
LORENZO ALEX CAMPOS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	

FEARING, C.J. — Lorenzo Campos appeals his sentence resulting from convictions for felony violation of a protection order, tampering with a witness, and three gross misdemeanor violations of a protection order. He contends that the trial court errantly refused to consider an exceptional sentence downward, and the trial court erroneously imposed community custody beyond his maximum sentence. We reject his first argument, but accept his second argument. We remand for resentencing.

FACTS

The issues on appeal only concern the sentencing of appellant Lorenzo Campos.

We briefly describe, however, the crimes for which the jury found him guilty.

Brenda Dominguez, the crime victim, is the mother of Lorenzo Campos' daughter. On February 14, 2014, Campos received service of a no-contact order prohibiting contact with Dominguez for two years. On December 12, 2015, Dominguez rested at her apartment with Campos and Dominguez's roommate, Gloria DelAngel, present. DelAngel is the sister of Campos. Dominguez and Campos argued about a cell phone. Olivia Rocha, the neighbor living in the apartment upstairs, heard yelling, fighting, screaming, and Dominguez repeating "Stop. You are hurting me." Report of Proceedings (RP) (Feb. 22, 2016) at 43. Rocha called the police.

Kennewick Police Officer Scott Peterson responded to Brenda Dominguez's apartment as a result of the domestic disturbance call. Officer Peterson observed a crying, visibly shaken, and frightened Dominguez. Dominguez told Peterson that she fought with Lorenzo Campos, the altercation escalated, and Campos "put his hands on" her. RP (Feb. 22, 2016) at 65. Dominguez suffered multiple large bruises. Officer Peterson arrested Campos and placed him in jail. At the time of the altercation, Campos was age nineteen, and Dominguez was age twenty-two.

PROCEDURE

The State of Washington charged Lorenzo Campos with one felony violation of a postconviction protection order. While in jail, Campos phoned Brenda Dominguez on at least three occasions. During one call, Campos directed Dominguez not to speak with

anyone at the court. The State added charges against Campos of tampering with a witness and three gross misdemeanor violations of a postconviction protection order based on the phone calls. A jury found Campos guilty on all counts.

Lorenzo Campos filed a presentence report and memorandum wherein he calculated the standard sentencing range at sixty months, but requested an exceptional sentence downward of twenty-four months of incarceration and twelve months of community custody. Campos contended that Brenda Dominguez willingly participated in the fight, and he emphasized that his youth interfered with his ability to understand the consequences of his conduct.

During the sentencing hearing, the trial court announced that it read Lorenzo Campos' presentence report and memorandum. Campos reiterated his argument that mitigating factors applied including his age, immaturity, lack of experience, and Dominguez's willing participation. The trial court sentenced Campos to sixty months' incarceration for the felony violation of the protection order, twenty-two months for tampering with a witness, and three hundred and sixty-four days each for the three counts of gross misdemeanor violation of a protection order, with the sentences running concurrently.

LAW AND ANALYSIS

Exceptional Sentence Downward

Lorenzo Campos contends the trial court abused its discretion when failing to meaningfully consider youthfulness as a mitigating factor justifying an exceptional downward sentence. The State responds that the trial court considered and denied the defendant's request for an exceptional sentence. We agree with the State.

The trial court sentenced Lorenzo Campos within the standard range. RCW 9.94A.585(1) declares: "A sentence within the standard sentence range . . . for an offense shall not be appealed." Based on this statute, a sentence within the standard range is not subject to appellate review. *State v. Ammons*, 105 Wn.2d 175, 182, 713 P.2d 719, 718 P.2d 796 (1986). The requirement that a trial court "set forth the reasons for its decision in written findings of fact and conclusions of law" is limited by the legislature to sentences outside the standard sentence range. RCW 9.94A.535. The effect of a standard range sentence is to create a presumption that the court properly exercised its discretion. *State v. Ammons*, 105 Wn.2d at 183.

Despite this nearly uncompromising rule, a defendant may appeal the procedure the trial court followed when imposing a sentence. *State v. Knight*, 176 Wn. App. 936, 957, 309 P.3d 776 (2013). While no defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative considered. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). Failure to consider an exceptional sentence is reversible error. *State v. Grayson*, 154 Wn.2d at 342.

The trial court may impose an exceptional sentence below the standard range if it finds mitigating circumstances by a preponderance of the evidence. RCW 9.94A.535(1). A defendant's youth is a possible mitigating factor for a court to consider when deciding whether to impose an exceptional sentence. *State v. O'Dell*, 183 Wn.2d 680, 689, 358 P.3d 359 (2015).

When a defendant requests an exceptional sentence, our review is limited to circumstances when the trial court refused to exercise discretion at all or relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). Impermissible bases for declining a request for an exceptional sentence include race, sex, or religion. *State v. Garcia-Martinez*, 88 Wn. App. at 330. A court refuses to exercise its discretion if it refuses categorically to impose an exceptional sentence below the standard range under any circumstances. *State v. Garcia-Martinez*, 88 Wn. App. at 330.

State v. Grayson, 154 Wn.2d 333 (2005) illustrates a trial court's categorical refusal to impose an exceptional sentence. John Grayson requested a drug offender sentencing alternative (DOSA) as part of his sentence for delivery of crack cocaine, but the trial court denied the request stating:

> The motion for a DOSA . . . is going to be denied. *And my main reason for denying [the DOSA] is because of the fact that the State no longer has money available to treat people who go through a DOSA program.*
>
> So I think in this case if I granted him a DOSA it would be merely to

> the effect of it cutting his sentence in half. I'm unwilling to do that for this purpose alone. There's no money available. He's not going to get any treatment; it's denied.

State v. Grayson, 154 Wn.2d at 337 (alterations and emphasis in original). Our Supreme Court held that the trial court abused its discretion when it refused to impose a DOSA sentence because the lower court failed to consider a statutorily authorized sentencing scheme, regardless of its suitability for the particular defendant.

Lorenzo Campos' sentencing court did not categorically refuse to exercise its discretion by sentencing Campos within the standard range. The trial court gave no indication it would deny all requests for exceptional sentences below the standard range. The court did not rely on an impermissible basis in denying his request for an exceptional sentence. The trial court considered the request for an exceptional sentence when it read Campos' presentence report and heard argument from Campos during sentencing. Campos does not provide any evidence that the trial court refused to consider his request for an exceptional sentence. We may encourage the trial court to expressly state reasons for denying a request for an exceptional sentence downward, but the law does not require such. The trial court implicitly denied the request when the court imposed a standard range sentence of sixty months.

Community Custody

Lorenzo Campos contends that the trial court erred in imposing twelve months of community custody because his sentence, including community custody, exceeded the

statutory maximum for the crime. The State concedes this issue, and this court accepts the State's concession.

A trial court may impose only sentences that statutes authorize. *State v. Albright*, 144 Wn. App. 566, 568, 183 P.3d 1094 (2008). RCW 9.94A.701(9) provides:

> The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

An assault violation of a protection order is a class C felony with a sixty month maximum sentence. RCW 26.50.110(4); RCW 10.99.050(2); RCW 9A.20.021(1)(c). The trial court ordered Lorenzo Campos to serve sixty months of incarceration and twelve months of community custody. The trial court should have reduced the community custody term to zero months so that the combined term of incarceration and community custody did not exceed sixty months. Although the jury convicted Campos of additional crimes, his confinement cannot exceed sixty months because the trial court did not order exceptional consecutive sentences. RCW 9.94A.589. This court should remand to the trial court to strike the term of community custody.

CONCLUSION

We remand this appeal to the trial court to strike the requirement of community custody. Otherwise, we affirm Lorenzo Campos' sentence.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.

Fearing, C.J.

WE CONCUR:

Korsmo, J.

Lawrence-Berrey, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	COA NO. 34175-5-III
	)	
LORENZO CAMPOS,	)	
	)	
PETITIONER.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF AUGUST, 2017, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	ANDREW HOWELL [prosecuting@co.benton.wa.us] BENTON COUNTY PROSECUTOR'S OFFICE 7122 W OKANOGAN AVE KENNEWICK WA 99336-2341	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X]	LORENZO CAMPOS 386767 OLYMPIC CORRECTIONS CENTER 11235 HOH MAINLINE FORKS, WA 98331	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF AUGUST, 2017.

X_____

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WASHINGTON APPELLATE PROJECT

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