No. 98248-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 51906-2-II)

STATE OF WASHINGTON,

Respondent,

vs.

SOCORRO VELAZQUZ,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

On review from the Court of Appeals, Division One,
And the Superior Court of Lewis County

JONATHAN MEYER
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A. COURT OF APPEALS DECISION

The Petitioner, Socorro Velazquez, seeks review of the unpublished opinion in *State v. Socorro Velazquez,* Court of Appeals, Division II, cause number 51906-2-II, filed February 11, 2020, attached for the Court's convenience as Appendix A.

B. COUNTERSTATEMENT OF THE ISSUES:

1. Due to Velazquez's offender score on his prior offenses being eight, was it proper for the trial court to consider the "free crimes" aggravator when it sentenced Velazquez?

2. Is the order the trial court rendered its sentence a factor to be considered when determining if the reasons given by the trial court justify the exceptional sentence or if the sentence was clearly erroneous?

3. Should this Court consider requiring a trial court to incrementally increase, or decrease, its sentence when it determines an exceptional sentence outside the standard range is appropriate?

C. STATEMENT OF FACTS

A red Saturn, driving approximately 12 to 14 miles per hour over the posted speed limit, collided with a white compact car occupied by two women. CP 4-6. The driver of the Saturn, later identified as Velazquez, yelled at a witness to call 911, and then fled the scene. CP 5-6. The driver of the white car, Judith Selmer, sustained broken bones and nerve damage as a result of the

collision. CP 4-5. Both Ms. Selmer and the passenger, A.N., had to be airlifted due to their injuries. *Id.*

The State charged Velazquez with Count I: Vehicular Assault, Count II: Hit and Run Injury, and Count III: Vehicular Assault. CP 7-9. The State and Velazquez came to a plea agreement. RP (4/11/18) 2-3; RP 2-4, 39-49; CP 10-21.[1] Velazquez did not dispute his offender score and stipulated to his criminal history, which consisted of six prior VUCSA convictions for possession of controlled substance, a residential burglary, and a bail jumping for a total of eight points. CP 22-23. Therefore, Velazquez's offender score and standard range for Counts I and III were 9+ (11), 51 to 68 months, and Count II was 9+ (12), 60 to 60 months. CP 23. The State recommended 68 months for Counts I and III and 60 months for Count II, all to run concurrent. RP 3-4. Velazquez's attorney concurred with the agreed recommendation. RP 45.

The victims, along with numbers of their friends and family, provided victim impact statements to the trial court. RP 5-38. All pleaded for the trial court to impose a sentence higher than the standard range. *Id.* The victim statements detailed how deeply

[1] There are two verbatim report of proceedings. The sentencing and formal entry verbatim report of proceedings, dated 5/8/18 and 5/9/18 will be cited as RP. The other verbatim report of proceedings contain the plea hearing will include the date, 4/11/18.

affected the victims had been by the collision, mentally, physically, and emotionally, as well as their friends and family *Id.*

After the victims and their supporters spoke, Velazquez's counsel, while commending many of the remarks also noted several of the statements made were not based in facts. RP 40-45. Velazquez's counsel requested the trial court disregard statements about Velazquez which were based upon speculation, Velazquez did not admit to, or were not proven. *Id.*

The trial court imposed an exceptional sentence above the standard range. RP 46-47, 49-50. The trial court sentenced Velazquez to 60 months on each count, but ran Counts I and II consecutive to each other, for a total of 120 months. RP 47; CP 25-26. The trial court stated,

> I believe that 68 months would not be enough to serve justice, and I'm not even sure that 120 months or 10 years is enough to serve justice, but I do want to recognize that Mr. Velazquez has taken some responsibility and has admitted to his violations and not put everybody through a trial and all of the havoc that that also wreaks.

RP 47. The State asked the trial court for the legal basis for the sentence so it may draft the requisite findings, and the trial court stated:

> It's based on RCW 9.94A.535(2)(c). The defendant has committed multiple current offenses, and the

> defendant's high offender score results in some of the current offenses going unpunished.
>
> Without an exceptional sentence, even if I gave 68 months, that would not punish him for Count II or Count III, so those would be what we sometimes refer to in the legal field as free crimes.

RP 49. The trial court continued:

> I find that there's substantial and compelling reasons, considering the purpose of the Sentencing Reform Act, to impose an exceptional sentence above the standard range, and that is by running those two consecutive.

RP 49-50.

Division Two affirmed the trial court's exceptional sentence, finding the trial court did not abuse its discretion when it applied the free crimes aggravator to Count III, the second Vehicular Assault charge, and sentenced Velazquez to consecutive 60 month sentences for a total of 120 months. *Velazquez,* slip op. at 2-5. The Court of Appeals also reversed the improperly imposed legal financial obligations. *Id.* at 5-6. Velazquez filed this petition for review regarding the exceptional sentence.

D. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

The Court should not accept review in this case. The Court of Appeals affirmation of Velazquez's sentence does not invoke any of the considerations under RAP 13.4(b). Velazquez does not cite to a particular provisions of the considerations for review under RAP

13.4(b), instead Velazquez simply cites to the overarching statutory provision. *See* Petition for Review. Velazquez's petition for review only briefly touches on the Court of Appeals analysis of the case and focuses predominately on the trial court's ruling. *Id.* Velazquez premises his entire argument on the trial court misunderstanding his offender score, when it is Velazquez who appears to misunderstand the offender score. This Court should not accept review because the trial court's decision had a legal basis and was justifiable pursuant to the facts of this case. This Court should not accept review because the Court of Appeals did not commit error in its determination that the trial court's decision was not erroneous. There is not a conflict between the Court of Appeals decision and decisions from this Court or published decisions of the Court of Appeals. RAP 13.4(b)(1)(2). This case does not raise a significant question of law, under either the United States Constitution or the Constitution of the State of Washington. RAP 13.4(b)(3). Finally, Velazquez's petition does not involve issues of substantial public interest this Court should determine. RAP 13.4(b)(4).

E. ARGUMENT.

Velazquez premises his argument to this Court on two basic principles. First, two of the counts could not be "free crimes" because

his offender score was only six prior to the current convictions. Petition 11-19. Second, a judge must first state the legal authority for the exceptional sentence before any other statements regarding the sentence. Petition 8-10. Both of principles are incorrect and lead to faulty analysis and conclusions. Also, Velazquez asks this Court to review and find the trial court failed to adhere to an incremental proportionality standard that is contrary to the law. Therefore, this Court should deny the petition for review.[2]

1. The Trial Court Properly Considered Two Of The Counts "Free Crimes," As Velazquez's Offender Score Was Eight Prior To The Current Convictions.

Velazquez, the State, and the trial court all recognized that Velazquez's offender score was eight points before adding his current offenses due to Velazquez's eight prior felony offenses. RP (4/11/18) 3; RP 41, 47, 49; CP 22-23. None of the prior felonies washed and none were same criminal conduct.

[2] The State is responding to Velazquez's petition as completely as it can discern the issues presented. The State's inadvertent failure to address an issue Velazquez or this Court finds Velazquez has requested review on should not to be considered a concession. If this Court accepts review, the State requests the opportunity to fully brief all issue identified and accepted for review.

Crime		Date of Crime	Date Of Sent.	Sentencing Court	A or J Adult, Juv.	Type of Crime
1	VUCSA-POSS	1-9-13	4-19-13	LEWIS CO	A	NV
2	VUCSA-POSS	2-8-13	4-19-13	LEWIS CO	A	NV
3	RESIDENTIAL BURGLARY	7-9-09	10-1-09	LEWIS CO	A	NV
4	VUCSA-POSS	6-26-09	8-19-09	LEWIS CO	A	NV
5	VUCSA-POSS	6-1-09	8-19-09	LEWIS CO	A	NV
6	BAIL JUMPING	7-03-09	9-19-09	LEWIS CO	A	NV
7	VUCSA-POSS	8-6-05	8-12-05	LEWIS CO	A	NV
8	VUCSA-POSS	7-29-05	9-28-05	LEWIS CO	A	NV

CP 22-23.[3] Velazquez's attorney referenced these prior offenses when making his argument during the sentencing hearing. RP 41. Velazquez's sentencing ranges for each offenses was as follows:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Total Standard Range (including enhancements)	Max Term
I	9+ (11)	III	51-68 MONTHS	51-68 MONTHS	10 YRS
II	9+(12)	IV	60-60 MONTHS	60-60 MONTHS	10 YRS
III	9+(11)	III	51-68 MONTHS	51-68 MONTHS	10 YRS

CP 23;[4] RCW 9.94A.510; RCW 9.94A.515; RCW 9.94A.525; RCW 46.52.020(4)(b); RCW 46.61.522(1)(c); Adult Sentencing Manual, 348, 493 (2017).[5] The number in the parentheses, in the table, is the

[3] The State removed one of the columns from the table as presented in the Stipulation on Prior Record and Offender Score (DV* Yes) and shortened some of the headings to make the table fit. The substantive content is still the same.

[4] The State removed the "Plus enhancements *" column for formatting purposes, as there were no enhancements and it was not necessary.

[5] A copy of the 2017 Adult Sentencing Guidelines Manual is available on the Washington State Caseload Forecast Council website at http://www.cfc.wa.gov/PublicationSentencing/SentencingManual/Adult_Sentencing_Manual_2017.pdf (last visited 7/15/20); The State has also included the two sentencing

total score including the multiplying factor. CP 23; Adult Sentencing Manual, 348, 493 (2017). Without the multiplying factor each count would be 10 points (9+). *Id.*

Velazquez states in his petition that his offender score, not counting any of his current offenses, was six prior to this incident. Petition at 12. Velazquez then states his offender score in Count I only exceeds nine when Count III is added. *Id.* Velazquez adds points to his offender score for Count I as follows: 2 points for Count I, 1 point for Count II, and 2 points for Count III, a total of 5 points plus the 6 original, totaling 11 points. *Id.* This is simply incorrect. A current criminal count does not score against itself, it is only the other current offenses that score against it. RCW 9.94A.525; Adult Sentencing Manual, 348, 493 (2017).

Velazquez had eight prior felony convictions that were included in his offender score. CP 22-23. Regardless of any multiplier, one other conviction raises one of the three counts to nine points, the top of the range. This leaves the other two counts as potential free crimes.

worksheets as Appendix B (Hit and Run Injury) and C (Vehicular Assault, Disregard for the Safety of Others).

Pursuant to what is commonly referred to as the “free crimes” aggravator, the trial court may depart from the standard range without a jury finding, if “[t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.” RCW 9.94A.535(2)(c). Contrary to Velazquez’s argument, he does not have to have an offender score of nine prior to the current offenses for the trial court to consider and impose an exceptional sentence under the free crimes aggravator. *State v. Brundage,* 126 Wn. App. 55, 65-69, 107 P.3d 742 (2005). In *Brundage*, the defendant had eight points prior to his convictions. *Brundage,* 126 Wn. App. at 67. Brundage was convicted of 11 offenses, including seven violations of a court order, rape in the second degree, rape in the first degree, kidnapping in the second degree, unlawful possession of a firearm, and seven counts of violation of a court order. *Id.* at 60. The kidnapping merged with the rape in the first degree. *Id.,* fn. 3. The Court of Appeals determined that the unlawful possession of a firearm added a point, making Brundage’s offender score nine, and therefore, if a standard range sentence had been imposed on the second degree rape conviction that count would have gone unpunished. *Id.* at 67. Thus, only through an exceptional sentence

could the trial court ensure that Brundage did not receive a 'free crime.'" *Id.*

The same is true for Velazquez. It did not require a multiplier to have the second Vehicular Assault conviction be a "free crime." The record does support the factual and legal findings given by the trial court to support the exceptional sentence. The Court of Appeals understood the trial court's ruling was not erroneous and affirmed. The understanding of the offender score does not conflict with cases out of any court, nor does it invoke a significant question of constitutional law, or involve a substantial public interest this Court should determine. RAP 13.4(b)(1)-(4). This matter should not be reviewed.

2. The Order The Trial Court Renders Its Sentence Is Not A Factor In The Determination Of Whether The Sentence Was Clearly Erroneous Or The Reasons Given Do Not Justify The Exceptional Sentence, Therefore The Court Of Appeal Did Not Error When It Affirmed Velazquez's Exceptional Sentence.

Velazquez takes issues with the trial court's statements prior to imposing the exceptional sentence. Petition. 8-10. It appears from his petition (and the briefing in the Court of Appeals below) that it is Velazquez's position that for an exceptional sentence based upon "free crimes" to be lawful a judge must simply state, "[T]he high offender score leaves some of the counts to go unpunished, so I am

imposing this sentence." *Id.* Yet, if a judge were to impose a sentence in such a fashion, there is no doubt a defendant would argue this pronouncement was in violation of the plain language of RCW 9.94A.535 and the sentence must be vacated.

A court must consider the purpose of the SRA, and find "there are substantial and compelling reasons justifying an exceptional sentence" if it is going to "impose a sentence outside the standard sentencing range for an offense." RCW 9.94A.535. The fact that a "defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished" is just one piece of the statutory authority necessary for the trial court to be able to impose the exceptional sentence. RCW 9.94A.535(2)(c); *State v. Ferguson*, 142 Wn.2d 631, 643-44, 15 P.3d 1271 (2001). The trial court is required to consider the reasons set forth in RCW 9.94A.010, which state the purpose of the Sentencing Reform Act. Therefore, keeping with the obligation of being accountable to the public, the trial court, through his brief comments, took into account the considerations listed when determining if there was a substantial and compelling reason to justify sentencing Velazquez to an exceptional sentence. RP 46-47.

There are two counts of vehicular assault, two victims, both of whom spoke at the sentencing hearing detailing their experience, thoughts, and desire for Velazquez to serve a consecutive sentence beyond the 68-month recommendation. RP 5-14, 19-22. The trial court is required to consider the victims statements. RCW 9.94A.500(1). The trial court stated it did not believe 68 months would be enough to serve justice, or that even 10 years would be sufficient, be it did want to recognize that Velazquez has taken some responsibility for his actions. RP 47. The after hearing all of the statements the trial court concluded the standard range was not sufficient, does meet the purposes of the SRA, and in light of the fact one of the offenses would go unpunished, is a substantial and compelling reason for the trial court. RCW 9.94A.010. That the trial court failed to articulate on the record, until prompted by the deputy prosecutor, the precise bases for the trial court ruling, does not mean the ruling was somehow based upon improper grounds. *See* RP 49. The trial court simply failed to articulate prior to stating the sentence, the explicit legal grounds for which it was basing its sentence. There is no required order of operation for the pronouncement of a trial court's exceptional sentence. *See* RCW 9.94A.535.

The Court of Appeals correctly noted the trial court followed the requirements of RCW 9.94.535 by considering the purposes of the SRA, RCW 9.94A.010(2). The trial court supplied the factual and legal requirements to support the exceptional sentence during Velazquez's sentencing hearing. The Court of Appeals did not error when it affirmed the trial court's exceptional sentence. Therefore, none of the consideration for review are met. RAP 13.4(b).

3. There Is No Incremental Increase Requirement For Exceptional Sentences.

Velazquez argues the standard sentencing grids were carefully crafted and there is no compelling reason when an exceptional sentence is ordered to disregard an incremental increase to a defendant's offender score. Petition 18. Velazquez appears to be advocating for this Court to create a judicial rule that strips the trial court of its discretion to fashion an appropriate sentence for a person whom the court determines an exceptional sentence is warranted. The State would caution that this rule would be equally applicable to mitigated sentences, not simply exceptional sentences above the standard range.

The SRA does not eliminate a trial court's discretion. RCW 9.94A.010; RCW 9.94A.535. If the trial court determines the standard range does not promote the purpose of the SRA, there is substantial

and compelling reasons to impose the exceptional sentence, an aggravating factor applies as a matter of law, then "the trial court has all but unbridled discretion in fashioning the structure and length of an exceptional sentence." *State v. France*, 176 Wn. App. 463, 470, 308 P.3d 812 (2013) (internal quotations and citations omitted). If the legislature wanted to require an incremental departure from the standard range, it would have included that directive in RCW 9.94A.535. This Court should decline Velazquez's invitation to accept review to create such a rule. RAP 13.4(b)(4)

F. CONCLUSION

The State respectfully requests this Court not accept review on the issues Velazquez raised in his petition for review.

If this Court were to accept review, the State would respectfully request an opportunity to submit supplemental briefing.

RESPECTFULLY submitted this 16th day of July, 2020.

JONATHAN MEYER
Lewis County Prosecuting Attorney

by:_____
SARA I. BEIGH, WSBA 35564
Attorney for Plaintiff

Appendix A

State v. Socorro Velazquez, No. 51906-2-II (Feb. 11, 2020)

Filed
Washington State
Court of Appeals
Division Two

February 11, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SOCORRO ARMANDO VELAZQUEZ, Appellant.	No. 51906-2-II UNPUBLISHED OPINION

GLASGOW, J. – Socorro Armando Velazquez pleaded guilty to two counts of vehicular assault and one count of hit and run injury for his involvement in a head-on collision that seriously injured two people. The State recommended standard range sentences for each conviction, all running concurrently. The trial court determined that due to Velazquez's high offender score, one of the vehicular assaults would go unpunished, and it imposed exceptional consecutive sentences on Velazquez's vehicular assault convictions.

Velazquez appeals, arguing that the trial court relied on improper reasons in imposing an exceptional sentence and the basis that the court gave did not apply as a matter of law. He also challenges the imposition of certain legal financial obligations. The State concedes that the legal financial obligations were improperly imposed.

We affirm Velazquez's sentence and remand for the trial court to strike the improper legal financial obligations.

FACTS

Velazquez was involved in a head-on collision with another car. The collision resulted in serious injuries to two people. Immediately following the crash, Velazquez fled the scene yelling at onlookers to call 911.

Velazquez later pleaded guilty to two counts of vehicular assault and one count of hit and run injury. Considering his prior convictions and the current offenses, his offender score was over nine for each count. As part of Velazquez's plea deal, the State and Velazquez's attorney jointly recommended 68 months for each of the vehicular assault counts and 60 months for the hit and run count, all to run concurrently.

The court sentenced Velazquez to 60 months on each count, but ran the sentences on the two vehicular assault convictions consecutive to each other, for a total of 120 months. The court ordered that the sentence for the hit and run conviction would be served concurrently. The court explained, "I believe that 68 months would not be enough to serve justice, and I'm not sure that 120 months or 10 years is enough to serve justice, but I do want to recognize that Mr. Velazquez has taken some responsibility and has admitted to his violations." Verbatim Report of Proceedings (VRP) (May 8, 2018) at 47.

When the State asked the court to clarify its basis for imposing this exceptional sentence, the court responded that under RCW 9.94A.535(2)(c), the defendant committed "multiple current offenses, and the defendant's high offender score result[ed] in some of the current offenses going unpunished." VRP at 49. The court noted that without an exceptional sentence, Velazquez would have "free crimes." *Id.*

On Velazquez's judgment and sentence, the court found "substantial and compelling reasons that justify an exceptional sentence." Clerk's Papers at 25. The court reiterated the reasoning expressed in its verbal ruling. The court concluded that an exceptional consecutive sentence was "justified given the facts of this case and the defendant's prior criminal history." *Id.* Thus, the court required that the sentences for counts I and III would run consecutively to each other and the sentence for count II would run concurrently.

The court also imposed a $200 criminal filing fee and $100 DNA collection fee. At the time of sentencing, Velazquez was receiving public assistance and had no other source of income.

Velazquez appeals his sentence and the imposition of these fees.

ANALYSIS

I. EXCEPTIONAL SENTENCE

Velazquez argues that the trial court improperly imposed an exceptional sentence. We disagree.

We will reverse an exceptional sentence only if, "under a clearly erroneous standard, there is insufficient evidence in the record to support the reasons for imposing an exceptional sentence;" the reasons given do not justify an exceptional sentence under a de novo standard; or the sentence is clearly excessive or clearly too lenient under an abuse of discretion standard. *State v. France*, 176 Wn. App. 463, 469, 308 P.3d 812 (2013). A defendant's standard range sentence reaches its maximum limit at an offender score of "'9 or more,'" based on both prior and current convictions. *Id.* at 468; RCW 9.94A.510, .525(1). Where, as here, a defendant has multiple current offenses that result in an offender score greater than nine, additional increases in the score above nine do not increase the standard range. *France*, 176 Wn. App. at 468.

Under the free crimes aggravator in RCW 9.94A.535(2)(c), the trial court may impose an exceptional sentence when the defendant committed multiple current offenses and their high offender score results in some of the current offenses going unpunished. *Id.* at 469. Once the court determines that one or more of the defendant's current offenses will go unpunished, it has discretion to impose an exceptional sentence on all current offenses. *State v. Smith*, 7 Wn. App. 2d 304, 309-11, 433 P.3d 821 (2019), *review denied*, 193 Wn.2d 1010.

Velazquez first argues that the trial court's imposition of an exceptional sentence was improper because its primary motivation was dissatisfaction with the standard range. But the Sentencing Reform Act of 1981, chapter 9.94A RCW, requires the trial court to consider the act's purposes, including "providing punishment which is just," RCW 9.94A.010(2), before imposing an exceptional sentence, RCW 9.94A.535. That is precisely what the trial court did here. And the trial court explained in its findings of fact and conclusions of law that it was relying on the free crimes aggravator. We reject this argument.

Velazquez also argues that the free crimes aggravator does not apply to him as a matter of law because RCW 9.94A.535(2)(c) applies when "*some of* the current *offenses*" would go unpunished, and "some of" means more than one. Br. of Appellant at 15. We recently rejected this precise argument in *Smith*, concluding instead that "some" can be singular or plural. 7 Wn. App. 2d at 309-10.

Here, Velazquez would have been subject to the same standard sentence range had he committed only one vehicular assault. His offender score on each of the vehicular assault convictions was eleven, and each of those convictions counted as two points. RCW 9.94A.525(11). Therefore, Velazquez's offender score still would have been nine even if one of

the vehicular assault convictions were removed, resulting in an identical standard range sentence with or without the second vehicular assault conviction. The legislature has determined that the trial court may impose an exceptional sentence when the defendant's offender score is so high that the presumptive standard range does not account for one of their crimes, and that was the case here.

Velazquez finally contends that because the statutory maximum for his hit and run conviction is 60 months, the free crimes aggravator could not apply to that conviction, citing RCW 9A.20.021(1)(c). But contrary to Velazquez's assertion, he was not improperly sentenced beyond the 60-month maximum for his hit and run conviction; he received a sentence of 60 months running concurrently with the sentences imposed for his other convictions. The trial court did not apply the free crimes aggravator to the hit and run conviction.

We hold that the trial court did not err in applying the free crimes aggravator to impose the exceptional sentence.

II. LEGAL FINANCIAL OBLIGATIONS

Velazquez argues the criminal filing fee and DNA collection fee were improperly imposed. The State concedes that these fees must be stricken. We accept the State's concession and remand to strike the challenged fees.

RCW 36.18.020(h) now prohibits the imposition of the criminal filing fee if a defendant is indigent as defined in RCW 10.101.010(3) (a) through (c). RCW 43.43.7541 authorizes the imposition of a DNA collection fee "unless the state has previously collected the offender's DNA as a result of a prior conviction." Our Supreme Court has held that the newly amended versions

of these statutes apply to cases pending on direct review and not final when the amendments were enacted. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Here, the State concedes that Velazquez is indigent under RCW 10.101.010(3)(a) – (c) because the record shows he was receiving public assistance before he was incarcerated. The State also concedes that its records show that Velazquez's DNA was previously collected and is on file with the Washington State Patrol Crime Lab. The criminal filing fee and DNA collection fee must therefore be stricken from Velazquez's judgment and sentence.

CONCLUSION

We affirm Velazquez's sentence and remand for the trial court to strike the criminal filing fee and DNA collection fee.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, J.

We concur:

Maxa, C.J.

Melnick, J.

Appendix B

Hit and Run – Injury Scoring Sheet

Adult Sentencing Manual 2017

RCW 46.52.020(4)(b)
CLASS C* – NONVIOLENT/TRAFFIC OFFENSE
OFFENDER SCORING RCW 9.94A.525(11)

ADULT HISTORY:

Enter number of Vehicular Homicide and Vehicular Assault felony convictions ..... _____ x 2 = _____

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... _____ x 1 = _____

Enter number of felony convictions ..... _____ x 1 = _____

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of Vehicular Homicide and Vehicular Assault dispositions ..... _____ x 2 = _____

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony dispositions ..... _____ x 1 = _____

Enter number of felony dispositions ..... _____ x ½ = _____

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... _____ x ½ = _____

OTHER CURRENT OFFENSES:

(Other current offenses that do not encompass the same conduct count in offender score)

Enter number of Vehicular Homicide and Vehicular Assault convictions ..... _____ x 2 = _____

Enter number of other Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... _____ x 1 = _____

Enter number of other felony convictions ..... _____ x 1 = _____

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... _____ x 1 = _____

STATUS:

Was the offender on community custody on the date the current offense was committed? (if yes) _____ + 1 = _____

Total the last column to get the **Offender Score** (Round down to the nearest whole number)..... _____

ENTENCE RANGE

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	56.5m 53 - 60*	 60 - 60*

- ✓ For gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 245 for standard range adjustment.
- ✓ For deadly weapon enhancement, see page 253.
- ✓ For sentencing alternatives, see page 235.
- ✓ For community custody eligibility, see page 247.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 242.

Appendix C

Vehicular Assault Disregard for the Safety of Others Scoring Sheet

Adult Sentencing Manual 2017

Vehicular Assault Disregard for the Safety of Others

RCW 46.61.522(1)(c)
CLASS B – NONVIOLENT/TRAFFIC OFFENSE/CRIMES AGAINST PERSONS
OFFENDER SCORING RCW 9.94A.525(11)

ADULT HISTORY:

Enter number of Vehicular Homicide and Vehicular Assault felony convictions ..... _____ x 2 = _____

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... _____ x 1 = _____

Enter number of felony convictions ..... _____ x 1 = _____

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of Vehicular Homicide and Vehicular Assault dispositions..... _____ x 2 = _____

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony dispositions ..... _____ x ½ = _____

Enter number of felony dispositions ..... _____ x ½ = _____

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... _____ x ½ = _____

OTHER CURRENT OFFENSES:

(Other current offenses that do not encompass the same conduct count in offender score)

Enter number of Vehicular Homicide and Vehicular Assault convictions ..... _____ x 2 = _____

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... _____ x 1 = _____

Enter number of other felony convictions ..... _____ x 1 = _____

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... _____ x 1 = _____

STATUS:

Was the offender on community custody on the date the current offense was committed? (if yes) _____ + 1 = _____

Total the last column to get the **Offender Score** (Round down to the nearest whole number)..... _____

SENTENCE RANGE

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	19.5m 17 - 22	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	59.5m 51 - 68

- ✓ For attempt, solicitation, conspiracy (RCW 9.94A.595) see page 66 or for gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 245 for standard range adjustments.
- ✓ For deadly weapon enhancement, see page 253.
- ✓ For sentencing alternatives, see page 235.
- ✓ For community custody eligibility, see page 247.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 242.

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

July 16, 2020 - 4:06 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98248-1
Appellate Court Case Title:	State of Washington v. Socorro A. Velazquez
Superior Court Case Number:	17-1-00768-9

The following documents have been uploaded:

- 982481_Answer_Reply_20200716160335SC399563_7121.pdf
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