SUPREME COURT NO. 98630-4

NO. 52500-3-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

QIUORDAI TAYLOR,

Petitioner.

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

The Honorable Kitty-Ann van Doorninck, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Qiuordai Taylor, the appellant below, asks this Court to grant review pursuant to RAP 13.4 of the Court of Appeals opinion in State v. Taylor, ___ Wn. App. ___, ___ P.3d ___, 2020 WL 2126517 (No. 52500-3-II, filed May 5, 2020).[1]

B. ISSUES PRESENTED FOR REVIEW

1. Is review appropriate under RAP 13.4(b)(1) and (b)(3) where the Court of Appeals decision concerning resentencing conflicts with this Court's decision in State v. Kilgore[2], and Taylor's youthfulness at the time of the commission of the offenses and sentencing implicates issues of constitutional significance?

2. Is review appropriate under RAP 13.4(b)(2) and (b)(3) where the Court of Appeals decision concerning ineffective assistance of counsel conflicts with Division One's decision in State v. McGill[3] and implicates issues of constitutional significance?

C. STATEMENT OF THE CASE

Taylor was 17 years old when the alleged offenses were committed on November 18, 2014. CP 1-6, 11-16. He was 18 years old when he was

[1] A copy of the opinion is attached as an appendix.

[2] 167 Wn.2d 28, 38-39, 216 P.3d 393 (2009).

[3] 112 Wn. App. 95, 100-01, 47 P.3d 173 (2002).

convicted by a jury in 2016 of 11 felony counts and 10 special firearm and deadly weapon verdicts. CP 17-32. He was also 18 years old when he was sentenced in 2016 to 666 months -- more than 55 years -- in prison. CP 17-32.

At the time, the trial court entered exceptional downward sentences, imposing zero months for each count except the manslaughter count (count I), for which Taylor was sentenced to 102 months in prison. The trial court also imposed consecutive firearm sentencing enhancements on each count, however. CP 17-32; 2RP[4] 63-66.

In imposing the 564 months of consecutive firearm and deadly weapon enhancement flat time, the trial court explained, "I, too, am frustrated with the Sentencing Reform Act. It's very frustrating when the prosecutor has all the discretion, in terms of dealing with time, these things that bind the court, in terms of flat time, the firearm enhancements." BOA at 11-12 (citing 2RP 62). The trial court continued, stating, "everybody agrees it's 47 years flat time. There's no opportunity for good time. That's just the penalty enhancements. They are all stacked all because of the 11 charges. That's a long time for young men." Id. (citing 2RP 63).

[4] The index to the citations to the record is found in the Brief of Appellant (BOA) at 2, n. 1.

Taylor appealed his 2016 convictions, raising several issues on appeal. CP 33-49. In a January 2018 unpublished opinion, Division Two upheld Taylor's convictions but remanded his case to the trial court to address two sentencing errors. CP 50-93. The Court of Appeals concluded there was insufficient evidence to support the firearm enhancement that was imposed against Taylor on count I and accordingly ordered that enhancement be dismissed. CP 52-53, 69-72. The Court of Appeals also concluded that the judgement and sentence improperly listed a firearm enhancement on Taylor's conviction for second degree assault with a knife (count XI). Division Two noted the second degree assault was charged, and found by a jury, to have been committed with a deadly weapon rather than a firearm. The Court of Appeals ordered the judgment and sentence to be corrected to reflect a deadly weapon enhancement instead of a firearm enhancement. CP 91-92.

On September 18, 2018, Taylor reappeared before the Honorable Kitty-Ann van Doorninck for resentencing pursuant to the Court of Appeals opinion. Defense counsel asked to continue to address a change in the law that would be relevant to Taylor's sentencing. As defense counsel explained,

> [I] thought maybe I could brief that as it relates to the sentencing and whether deadly weapon and firearm enhancements are consecutive or potentially concurrent as

> an exceptional downward sentence, based on age mitigation. I know that we addressed that at sentencing, but I understand -- well, that there has been a change in the law that I would like to address, and I thought that would be more efficient than the PRP purposes -- process.

1RP 5.

In response, the trial court questioned whether it could just enter a corrected judgment and sentence. 1RP 5. As the trial court explained, "I mean, the Court of Appeals is pretty clear, they found that portion as an error and resentence, taking away that one firearm enhancement." 1RP 5. Defense counsel agreed the trial court could simply entered an amended judgment and sentence. 1RP 5-6.

Judge van Doorninck asked the State for its input. 1RP 6. The prosecutor responded, "My appellate unit, I will just say, there is somebody in my appellate unit that believes that this may be a resentencing, in general, which would mean that the parties could litigate sentencing again. I don't know. He is telling me that's what it is." 1RP 6. The prosecutor noted that it did not agree with the exceptional downward sentence originally imposed, so if a full resentence hearing was conducted, the State would be recommending a standard range sentence. 1RP 6-7.

After reading the Court of Appeals opinion conclusion, the trial court explained that it intended to reduce Taylor's sentence by five years. 1RP 7. The trial court continued, "I don't think it's a resentencing. I think

it's a, correct the Judgement and sentence." 1RP 8. Defense counsel noted he did not disagree with the trial court. 1RP 8.

Judge van Doorninck concluded the sentencing by noting, "I will say, for the record, I've had other cases with *[sic]* the Court of Appeals says, 'and do a resentencing hearing,' meaning hearing from everybody again. That's not what it said this time; it's pretty direct." 1RP 8.

The judgment and sentence was amended to remove the firearm enhancement on count I, and reflect a deadly weapon enhancement instead of a firearm enhancement on count XI. Taylor was resentenced to 606 months, still more than 50 years imprisonment. CP 97-113. He appealed.

Taylor argued raised two arguments on appeal. First, Taylor argued the trial court failed to recognize and exercise its discretion to conduct a full resentencing hearing, taking into consideration Taylor's youth in determining whether to impose concurrent firearm and deadly weapon enhancements instead of the 504 consecutive month sentence on the enhancements. Second, Taylor argued defense counsel was ineffective in failing to correct the trial court's mistaken belief that it had no discretion to conduct a full resentence hearing concerning imposition of the firearm and deadly weapon enhancements.

In a largely conclusory unpublished opinion, Division Two quoted its prior holding as follows:

> [W]e affirm . . . Taylor's convictions, but we dismiss the firearm sentencing enhancements on the manslaughter conviction[] with prejudice. We also sua sponte remand for correction of the judgement and sentence[] to reflect that one of . . . Taylor's convictions was subject to a deadly weapon enhancement, not a firearm sentencing enhancement.

Op. at 5.

Relying on that language, Division Two concluded the sentencing court did not error because it followed the Court of Appeals mandate and explicit instructions. Id.

Division Two also concluded that Taylor's counsel was not ineffective for failing to alert the sentencing court to its discretion to conduct a full resentencing hearing, because to do so would ask the sentencing court "to deviate from our explicit instructions on remand." Op. at 6.

Taylor now asks this Court to accept review, reverse the Court of Appeals, and remand his case for a full resentencing hearing where his youthfulness can be fully and properly considered.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. THE COURT OF APPEALS DECISION THAT THE TRIAL COURT HAD NO DISCRETION TO CONDUCT A FULL RESENTENCE HEARING CONSIDERING TAYLOR'S YOUTHFULNESS CONFLICTS WITH THIS COURT'S DECISION IN KILGORE AND IMPLICATES IMPORTANT CONSTITUTIONAL ISSUES.

The law of the case doctrine provides that once there is an appellate court ruling, its holding must be followed in all subsequent stages of the same litigation. State v. Schwab, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008). RAP 2.5(c)(1) restricts the law of the case doctrine, providing that, on remand, a trial court has the discretion to revisit an issue that was not the subject of the earlier appeal and exercise its independent judgment. State v. Kilgore, 167 Wn.2d 28, 38-39, 216 P.3d 393 (2009). Where a sentencing court fails to recognize or exercise discretion, it commits reversible error. State v. McFarland, 189 Wn.2d at 47, 58, 399 P.3d 1106 (2017); In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 332-34, 166 P.3d 677 (2007); State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

A trial court's discretion on remand is limited by the scope of the appellate court's mandate. Kilgore, 167 Wn.2d at 42. When the appellate court's opinion states that the court orders remand for resentencing, the resentencing court has broad discretion to resentence on all counts. State v. Toney, 149 Wn. App. 787, 792, 205 P.3d 944 (2009). When the appellate

court remands for only a ministerial correction, the resentencing court does not have discretion to resentence on all counts. Id. As this Court has recognized, when remand is necessary to correct a sentencing error, and the trial court has any discretion in light of the needed correction, then the matter is not "merely ministerial" and the defendant is entitled to full resentencing with all associated rights.[5] State v. Ramos, 171 Wn.2d 46, 49, 246 P.3d 811 (2011).

Here, the trial court erroneously believed it did not have any discretion to resentence Taylor's, based on Division Two's remand language. Specifically, the opening summary of Division Two's opinion concluded, "we affirm . . . Taylor's convictions, but we dismiss the firearm sentencing enhancements on the manslaughter convictions with prejudice. We also sua sponte remand for correction of the judgment and sentences to reflect that one of . . . Taylor's convictions was subject to a deadly weapon enhancement, not a firearm sentencing enhancement." State v. Taylor, 2018 WL 509086, at *1. Division Two's concluding paragraph stated: "We conclude that there is insufficient evidence to support the firearm sentencing enhancements on the manslaughter convictions (count I), so that these enhancements should be dismissed. We remand to the trial court to correct

[5] Consistent with this, Taylor was present at the remand hearing. 1RP 3. See also Ramos, 171 Wn.2d at 48 (recognizing defendant has constitutional right to be present at resentencing).

the judgment and sentences to reflect that for each defendant, a second degree assault with a knife (count XI) was subject to a deadly weapon sentencing enhancement, not a firearm sentencing enhancement." Id. at *20.

The trial court believed the lack of explicit language indicating that it was to "do a resentence hearing" prohibited it from resentencing Taylor. 1RP 8. The Court of Appeals agreed, concluding that the trial court properly "followed the mandate and our explicit instruction." Op. at 5. True, the Court of Appeals did not expressly include the language "resentencing." But neither did it limit the trial court's resentencing discretion on remand.

The fact that a court remands for resentencing with instructions does not limit the resentencing to the mere correction of a ministerial error. See e.g., State v. Barbee, 193 Wn.2d 581, 444 P.3d 10, 11-13 (2019) (recognizing that reversal of an exceptional sentence on one count in the first appeal, resulted in "a brand-new Judgement and Sentence" on remand which properly allowed a new restitution order on a different count to be entered on remand as well); Toney, 149 Wn. App. at 179 (stating the Court "unequivocally" remanded for resentencing when the court included instructions with the order to resentence).

To be sure, remand of Taylor's case necessarily required resentencing because dismissal of the firearm enhancement on count I reduced his overall sentence by a minimum of 5 years. See e.g. In re

Habbitt, 96 Wn.2d 500, 502, 636 P.2d 1098 (1981) (where the trial court improperly applied firearm findings to enhance first degree robbery convictions, remand for resentencing, rather than simply striking firearm enhancements, is the appropriate remedy because "merely striking the findings without resentencing would be an illusory remedy because the cases would not be returned to the posture where the trial court's discretion can be exercised unfettered."). In contrast, had Taylor's case been merely remanded for correction of the scrivener's error involving the imposition of a firearm enhancement instead of a deadly weapon enhancement, it would have involved a "merely ministerial" correction for which the trial court had no discretion.

Two cases provide a useful contrast to one another, and to Taylor's case. In In re Personal Restraint of Sorenson, 200 Wn. App. 692, 699, 403 P.3d 109 (2017), on direct appeal, the appellate court rejected Sorenson's challenges to his convictions, holding, "We affirm, but remand to correct scrivener's errors in Sorenson's judgment and sentence." These instructions "left the trial court with no discretion as to the actions it could take on remand." Id. Rather, remand was for a purely ministerial correction. Id. at 702.

In Kilgore, the trial court imposed an exceptional sentence based on seven current convictions and several aggravating factors. 167 Wn.2d at 33.

The appellate court reversed two of the convictions, affirmed the remaining five counts, and remanded "for further proceedings." Id. On remand, the State declined to retry Kilgore on the two reversed counts. Id. at 34. The court then declined to resentence Kilgore based on Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), which had been decided in the interim, and entered an order striking the two counts and correcting Kilgore's offender score. Kilgore, 167 Wn.2d at 34-35.

This Court recognized the "the trial court had discretion under RAP 2.5(c)(1) to revisit Kilgore's exceptional sentence on the remaining five convictions." Kilgore, 167 Wn.2d at 41. However, the trial court "made clear that in correcting the judgment and sentence to reflect the reversed counts, it was not reconsidering the exceptional sentence imposed on each of the remaining counts." Id. The trial court therefore did not abuse its discretion in declining to resentence Kilgore on remand. Id. at 42. This Court emphasized "[t]he fact that the trial court had discretion to reexamine Kilgore's sentence on remand is not sufficient to revive his right to appeal." Id. at 43.

Kilgore demonstrates that, here, the trial court had discretion to resentence Taylor based on the dismissal of one his firearm enhancements. The difference, though, is that the trial court in Kilgore actually exercised its discretion in declining to resentence Kilgore. The trial court in Taylor's

case, by contrast, believed it had no discretion to resentence Taylor. A trial court's "failure to exercise discretion is itself an abuse of discretion subject to reversal." State v. O'Dell, 183 Wn.2d 680, 697, 358 P.3d 359 (2015); cf. Grayson, 154 Wn.2d at 342 ("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 actually considered."). The resentencing court therefore erred in failing to recognize its discretion.

The Court of Appeals opinion undertakes no analysis of Kilgore and fails to reason how the absence of any limitation on the trial court's resentencing discretion, prevented the trial court from properly exercising its discretion under RAP 2.5(c)(1).

With discretion to resentence Taylor, the trial court could have properly considered his youthfulness at the time of the offenses and sentencing in accordance with State v. Houston-Sconiers, 188 Wn.2d 1, 21, 391 P.3d 409 (2017) and O'Dell, 183 Wn.2d at 696. Significantly, the prosecution does not dispute this. See Brief of Respondent (BOR) at 8; See also Senate Bill 6164, 66th Leg. (Reg. Sess. 2020) (county prosecutor in which an offender was sentenced for a felony offense may petition the sentencing court to resentence an offender if the original sentence no longer advances the interests of justice).

The trial court did not indicate it would have imposed the same sentence if it had exercised discretion in resentencing Taylor. Rather, the record suggests the trial court was very uncomfortable with the original sentence imposed. In originally imposing 564 months of consecutive firearm and deadly weapon enhancement flat time, the trial court explained, "I, too, am frustrated with the Sentencing Reform Act. It's very frustrating when the prosecutor has all the discretion, in terms of dealing with time, these things that bind the court, in terms of flat time, the firearm enhancements." 2RP 62. The trial court continued, stating, "everybody agrees it's 47 years flat time. There's no opportunity for good time. That's just the penalty enhancements. They are all stacked all because of the 11 charges. That's a long time for young men." 2RP 63.

Resentencing is appropriate where "the record suggests at least the possibility" that the sentencing court would have considered a different sentence had it understood its authority to do so. McFarland, 189 Wn.2d at 59. Such an error is “particularly significant” and resentencing is particularly appropriate, where “the trial court made statements on the record which indicated some openness toward an exceptional sentence” or “expressing sympathy toward [the defendant.]” In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 333, 166 P.3d 677 (2007) (remanding where statements on the record "indicated some openness toward an exceptional

sentence"); McFarland, 189 Wn.2d at 56.

There can be little dispute that the trial judge's comments denote sympathy for Taylor and "suggests at least the possibility" that the court would have considered imposing reduced, or concurrent, sentencing enhancements had it properly understood its discretion to do so. That is all that is required for reversal and remand for a full resentencing hearing. Houston-Sconiers, 188 Wn.2d at 56-59; O'Dell, 183 Wn.2d at 683; Mulholland, 161 Wn.2d at 333; State v. McGill, 112 Wn. App. 95, 100-01, 47 P.3d 173 (2002)).

The remand order did not preclude the trial court from exercising its discretion to resentence Taylor on all counts, considering his youthfulness at the time of the offenses. But the resentencing court failed to recognize or exercise its discretion. The Court of Appeals conclusion to the contrary conflicts with Kilgore. Taylor deserves an opportunity for the trial court to meaningfully consider his youthfulness as a mitigating factor in sentencing him. Review is therefore appropriate under RAP 13.4(b)(1) and (b)(3).

2. DIVISION TWO'S DECISION CONCERNING THE INEFFECTIVE ASSISTANCE OF TAYLOR'S COUNSEL CONFLICTS WITH DIVISION ONE'S DECISION IN MCGILL AND IMPLICATES IMPORTANT CONSTITUTIONAL ISSUES.

Sentencing is a critical stage of a criminal proceeding at which a defendant is entitled to the effective assistance of counsel. Gardner v. Florida, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977). The standard of review for an ineffective assistance claim involves a two-prong test. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 LEd. 2d 674 (1984)). To satisfy the first prong, the defendant must show counsel's performance fell below an objective standard of reasonableness. To satisfy the second prong, the defendant must show prejudice, meaning a reasonable probability that but for counsel's performance, the result would have been different. State v. Townsend, 142 Wn.2d 838, 843-44, 847, 15 P.3d 145 (2001).

The performance of Taylor's attorney was deficient because he failed to properly advise the court of its resentencing discretion. When the trial court indicated it read the Court of Appeals opinion as only authorizing a correction to Taylor's judgment and sentence, and not a resentencing, defense counsel acquiesced, noting, "I don't disagree with the Court at all." 1RP 8. This was deficient performance.

Only legitimate trial strategy or tactics constitute reasonable performance. State v. Kyllo, 166 Wn.2d 856, 869, 215 P.3d 177 (2009). Competent counsel would know the trial court had authority to conduct a full resentencing hearing on remand. Counsel has a duty to know the relevant law. Id. at 862. The relevant law is Kilgore, Toney, and Ramos. Counsel's failure to find and apply legal authority relevant to a client's defense, without any legitimate tactical purpose, is constitutionally deficient performance. In re Pers. Restraint of Yung-Cheng Tsai, 183 Wn.2d 91, 102-103, 351 P.3d 138 (2015).

Competent counsel would have researched the law and alerted the trial court that it had discretion to resentence Taylor. "A trial court cannot make an informed decision if it does not know the parameters of its decision-making authority. Nor can it exercise its discretion if it is not told it has discretion to exercise." McGill, 112 Wn. App. at 102; See also Grayson, 154 Wn.2d at 342 (“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 actually considered.”).

The failure to inform the court that it had authority to resentence Taylor cannot be explained as a legitimate tactic. Counsel was aware of the applicability of Houston-Sconiers and O'Dell as evidenced by his

remarks that there had been a change in the law "as it relates to the sentencing and whether deadly weapon and firearm enhancements are consecutive or potentially concurrent as an exceptional downward sentence, based on age mitigation." 1RP 4-5. Thus, counsel's failure to ensure that the trial court recognized and exercised its discretion to apply those cases to Taylor's case was not strategic.

Even with the dismissal of the firearm enhancement on count I, Taylor was still facing a de facto life sentence of 606 months, given the consecutive sentencing enhancements. CP 97-113. Thus, despite the prosecutor's explanation that in the event of a full resentence hearing, he would still be recommending a standard range, Taylor in effect, had nothing to lose by ensuring the trial court was fully aware of its discretion to resentence Taylor and impose an exceptional sentence based on Houston-Sconiers and O'Dell.

Prejudice results from a reasonable probability that the result would have been different but for counsel's performance. Thomas, 109 Wn.2d at 226. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. In McGill, defense counsel was ineffective in failing to cite authority showing the court had discretion to impose an exceptional sentence downward and in failing to request the court to exercise its discretion based on that authority. 112 Wn. App. at

101-02. Remand for the trial court to exercise its principled discretion was appropriate where the court's comments indicated it would have considered an exceptional sentence had it known it could. Id. at 100-01.

The same holds true here. As in McGill, defense counsel failed to cite to the relevant authority and thereby inform the court of its discretionary authority. As a result, the trial court failed to recognize and exercise its discretion to resentence Taylor to an exceptional sentence based on Houston-Sconiers and O'Dell. As in McGill, given the trial court's willingness to impose an exceptional downward sentence on the underlying crimes, and mistaken belief about its lack of discretion to resentence Taylor, there is a reasonable probability the trial court would have exercised discretion when imposing the firearm and deadly weapon enhancements had it understood it had such discretion.

The Court of Appeals decision does not even cite McGill, much less discuss its applicability. Instead, the Court of Appeals simply concludes, "Requesting the court to conduct a full resentencing hearing would amount to asking the court to deviate from our explicit instructions on remand." Op. at 6. But this conclusion wholly ignores two important points. First, defense counsel did not simply fail to request a full resentencing hearing, he acquiesced in the trial court's mistaken belief that it had no discretion despite case law to the contrary. Second, Taylor had

the right to request an exceptional mitigated sentence and have the court consider it, notwithstanding the trial court's mistaken belief it had no discretion. Grayson, 154 Wn.2d at 342.

Taylor's counsel was ineffective in failing to alert the trial court to its discretion and ensuring that it was exercised. Review is appropriate under RAP 13.4(b)(2) and (b)(3).

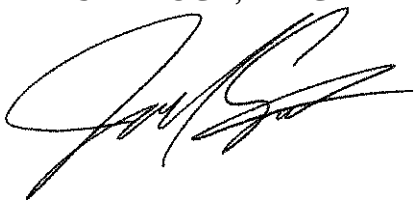
E. CONCLUSION

Because Taylor satisfies the criteria under RAP 13.4(b)(1), (b)(2), and (b)(3), he respectfully asks that this Court grant review, reverse the court of Appeals, and remand for a full resentencing hearing where his youthfulness can be fully and properly considered.

DATED this 4th day of June, 2020.

Respectfully submitted,

NIELSEN KOCH, PLLC



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. QIUORDAI LEWIS TAYLOR, Appellant.	No. 52500-3-II UNPUBLISHED OPINION

SUTTON, J. — Qiuordai Lewis Taylor appeals his judgment and sentence, arguing that he is entitled to another remand for resentencing because the sentencing court abused its discretion by not exercising its discretion to conduct a full resentencing hearing. Taylor also argues that he received ineffective assistance of counsel because his counsel did not request that the sentencing court conduct a full resentencing hearing on remand. We disagree and hold that the sentencing court did not abuse its discretion when it followed the mandate of the Court of Appeals and our explicit instructions, and that Taylor's counsel was not deficient for not requesting a full resentencing, and thus, his claim of ineffective assistance of counsel fails. Accordingly, we affirm the judgment and sentence.

FACTS

In November 2014, Taylor along with two other men, Duprea Romon Wilson and Taijon Voorhees, set out to rob a marijuana dispensary, but mistakenly went to the home of Harry and Janice Lodholm. The three forced themselves into the Lodholm's home, where they held the

Lodholms at gunpoint. The intruders bound the Lodholms, leaving them on their living room floor while ransacking their home.

When the intruders left the house, Harry escaped his bonds, freed Janice, and locked the front door. A shot was fired from outside the front door, and Harry retreated to the bedroom with Janice. Harry then shot Voorhees when he attempted to enter the bedroom, and the three intruders fled. Rather than taking Voorhees to a hospital, where Taylor and Wilson feared questioning, the two drove Voorhees to an apartment complex in Federal Way. By the time Taylor and Wilson left Voorhees in the complex's parking lot, Voorhees had died from the gunshot wounds. Taylor and Wilson were later arrested.

The State charged Taylor with one count of first degree manslaughter, two counts of first degree assault, two counts of first degree robbery, two counts of first degree kidnapping, one count of first degree burglary, and three counts of second degree assault with all but one count with firearms enhancement and one count with a deadly weapon enhancement. A jury found Taylor guilty on all counts.

Taylor was 17 years old at the time he committed the crimes and more than 18 years old at the time of sentencing. The court sentenced Taylor to 102 months on the first degree manslaughter conviction (Count I) and 0 months on the remaining convictions (Counts II-XI). The court imposed an additional 564 months for consecutive firearm enhancements on each count except for the second degree assault with a knife (Count XI) where it imposed a deadly weapon enhancement. The court sentenced Taylor to a total of 666 months.

Taylor appealed his judgment and sentence. On appeal, Taylor argued that (1) insufficient evidence supported his convictions for first degree manslaughter, first degree assault, and the firearm enhancements, (2) the sentencing court failed to instruct the jury on the duty to render aid, (3) the convictions for assault with a knife and first degree robbery violated double jeopardy, and (4) the sentencing court erred by finding that the first degree manslaughter and two counts of first degree assault convictions were not the same criminal conduct.

We found that insufficient evidence supported the firearm sentencing enhancement on the first degree manslaughter conviction (Count I) and a scrivener's error listed a firearm sentencing enhancement on the second degree assault with a knife (Count XI) where it was charged as a deadly weapon enhancement, and we rejected Taylor's other claims. We held as follows:

> [W]e affirm . . . Taylor's convictions, but we dismiss the firearm sentencing enhancements on the manslaughter conviction[] with prejudice. We also sua sponte remand for correction of the judgment and sentence[] to reflect that one of . . . Taylor's convictions was subject to a deadly weapon enhancement, not a firearm sentencing enhancement.

State v. Taylor, 2018 WL 509086, at *1. Taylor sought discretionary review, but the Supreme Court denied the petition. *State v. Taylor*, 190 Wn.2d 1022, 418 P.3d 803 (2018).

On remand, the sentencing court agreed with the parties that this court mandated with explicit instructions to correct the judgment and sentence. The sentencing court was ordered to dismiss the 60 month firearm enhancement on the first degree manslaughter conviction (Count I) and reduce Taylor's sentence by 60 months to a revised total sentence of 606 months, and correct the judgment and sentence for Count XI accordingly. The court stated:

> I will say, for the record, I've had other cases [where] the Court of Appeals says, "and do a resentencing hearing," meaning hearing from everybody again. That's not what it said this time; it's pretty direct.

Verbatim Report of Proceedings (VRP) (Sept. 14, 2018) at 8.

Based on this court's mandate, the sentencing court dismissed the 60 month firearm enhancement on the first degree manslaughter conviction (Count I) and reduced Taylor's sentence by 60 months to a revised total sentence of 606 months, and corrected the judgment and sentence for Count XI accordingly.

Taylor appeals the judgment and sentence.

ANALYSIS

I. RESENTENCING

Taylor argues that the sentencing court on remand abused its discretion by failing to conduct a full resentencing hearing and consider his youthfulness when imposing the firearm and deadly weapon enhancements. We disagree and hold that the sentencing court on remand was constrained by the Court of Appeals mandate to follow our explicit instructions on remand, and thus, it did not abuse its discretion.

Under the law of the case doctrine, the holding of an appellate court decision "must be followed in all of the subsequent stages of the same litigation." *State v. Schwab*, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008). This doctrine promotes finality and efficiency. *Schwab*, 163 Wn.2d at 672. "Once an appellate court issues its mandate, the court's decision becomes 'effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court.'" *State v. Strauss*, 93 Wn. App. 691, 697, 969 P.2d 529 (1999) (quoting RAP 12.2).

When the appellate court issues a directive that leaves no discretion to the lower court, the lower court must comply. *State v. Kilgore*, 167 Wn.2d 28, 42, 216 P.3d 393 (2009). When a mandate merely remands for further proceedings, compliance with that mandate is reviewed for an abuse of discretion. *Kilgore*, 167 Wn.2d at 42-43 (finding that the sentencing court did not abuse its discretion following remand for further specific proceedings). Thus, we review the superior court's decisions on remand for an abuse of discretion. *Kilgore*, 167 Wn.2d at 43.

Here, we instructed the sentencing court to dismiss the 60 month firearm enhancement on the manslaughter conviction (Count I) and revise his sentence, and correct the judgment and sentence to reflect a deadly weapon enhancement on the second degree assault with a knife conviction (Count XI), not a firearm sentencing enhancement. We held as follows:

> [W]e affirm . . . Taylor's convictions, but we dismiss the firearm sentencing enhancements on the manslaughter conviction[] with prejudice. We also sua sponte remand for correction of the judgment and sentence[] to reflect that one of . . . Taylor's convictions was subject to a deadly weapon enhancement, not a firearm sentencing enhancement.

State v. Taylor, 2018 WL 509086, at *1.

When addressing its authority on remand, the sentencing court stated:

> I will say, for the record, I've had other cases [where] the Court of Appeals says "and do a resentencing hearing," meaning hearing from everybody again. That's not what it said this time; it's pretty direct.

VRP (Sept. 14, 2018) at 8. The sentencing court followed the mandate and our explicit instructions.

We hold that the sentencing court did not abuse its discretion on remand when it followed the Court of Appeals mandate and our explicit instructions.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Taylor next argues that he received ineffective assistance of counsel because on remand, his counsel did not request a full resentencing hearing to consider his youthfulness when imposing the firearm and deadly weapon enhancements. We disagree and hold that Taylor's counsel was not deficient, and thus, his claim of ineffective assistance of counsel fails.

To establish ineffective assistance of counsel, Taylor must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that as a result of that deficient performance, the result of his case probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We presume strongly that counsel's performance was reasonable. *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011).

As discussed above, the sentencing court on remand was obligated to follow the Court of Appeals mandate and our explicit instructions. Requesting the court to conduct a full resentencing hearing would amount to asking the court to deviate from our explicit instructions on remand. Taylor fails to show that his counsel's request for a full resentencing contrary to the mandate would have been granted. Thus, he fails to show his counsel was deficient. Accordingly, we hold that Taylor's claim of ineffective assistance of counsel fails.

CONCLUSION

We hold that the sentencing court did not abuse its discretion when it followed the mandate of this court and our explicit instructions on remand and that Taylor's counsel was not ineffective. Accordingly, we affirm Taylor's judgment and sentence.

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.

Sutton, J.

SUTTON, J.

We concur:

, C.J.

LEE, C.J.

Worswick, J.

WORSWICK, J.

NIELSEN KOCH P.L.L.C.

June 04, 2020 - 3:47 PM

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