SUPREME COURT NO. 99472-2

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARK JUJUAN PAUL,

Petitioner.

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

The Honorable Marshall L. Ferguson, Judge

PETITION FOR REVIEW (AMENDED)

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A. IDENTITY OF PETITIONER

Mark Paul asks the Supreme Court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Paul requests review of the decision in State v. Mark Jujuan Paul, Court of Appeals No. 80569-0-I (slip op. filed January 4, 2021), attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Whether sentencing courts have discretion to reduce firearm enhancements or run them concurrent to the underlying sentence under the exceptional sentence provision of the Sentencing Reform Act based on the mitigating factor of youth for a 19-year-old and, if so, whether resentencing is appropriate because the court failed to recognize its discretion to do so?

2. If the firearm enhancement statute cannot be interpreted to permit an exceptional mitigated sentence based on youth for a young adult, whether the statute violates the prohibition on cruel punishment under Article I, section 14 of the Washington Constitution?

D. STATEMENT OF THE CASE

Mark Paul pleaded guilty to first degree robbery with an accompanying firearm enhancement and first degree unlawful possession of a firearm. CP 78-107; RP 14-39. The facts show Paul and three others

were involved in the robbery of two college students on the street at gunpoint. CP 99-100. Paul was 19 years old at the time. CP 108, 113. His cohorts were 17 years old and 19 years old. CP 120.

Defense counsel argued for an exceptional sentence downward based on youth as a mitigating factor. CP 118-31. In support of the request, counsel submitted an expert forensic evaluation performed by Dr. Sarah Heavin, a licensed clinical psychologist. CP 134-59. Dr. Heavin testified at the sentencing hearing. RP 47-64.

As related by the doctor, Paul was born to a drug addicted mother, resulting in him being adopted. CP 138. Kids that feel securely attached to a supportive environment are less likely to exhibit rule breaking behavior. RP 53; CP 155. The most important attachment period is in the first 6-12 months of life. RP 62. Paul did not have that secure attachment with a care giver during that period. RP 62-63. Homelife was chaotic. CP 153. He was subjected to harsh corporal punishment. CP 155. Kids who don't trust their care giver to meet their needs in that first 12 months typically engage in more rule-breaking behaviors down the line because they don't see the world as a safe place and have difficulty forming relationships. RP 63. Paul's risk factors for aggressive and impulsive rule breaking behavior included being exposed to cocaine in utero, a chaotic upbringing, food scarcity, physical abuse and sexual abuse. RP 51.

Paul became alienated from his mother when he was about 12 years old upon learning that she was not his biological mother. RP 51; CP 139. Paul felt left without a family. CP 138. He began spending more time with his delinquent foster siblings, who modeled rule breaking behavior and were a negative influence on him. RP 51; CP 138, 153. By age 14, Paul began living on the streets and no longer regularly attended school while struggling with drug and alcohol abuse. CP 138-39, 153.

At age 14, Paul watched his best friend get shot to death in front of him. RP 52; CP 139, 141-42, 149-50. After that, Paul's behavior problems and substance use dramatically increased. RP 52. Paul experienced other trauma. Two of his uncles were murdered. CP 139, 141. His grandfather, a role model and the closest thing he had to a father figure, died from cancer. CP 139, 141-42. His cousin died unexpectedly. CP 139, 141. His friend hung himself. CP 141.

Dr. Heavin diagnosed Paul with posttraumatic stress disorder, major depressive disorder, and substance use disorders. RP 57, 62; CP 154. Paul was also diagnosed with attention deficit hyperactivity disorder in the sixth grade, which essentially went untreated. RP 51-52. A variety of treatments were recommended by a previous doctor to alter Paul's trajectory, but Paul did not receive them. RP 53. Although Paul received substance use treatment, he received no trauma treatment. RP 54. The

untreated trauma was the underlying reason for his substance use and drove his rule-breaking behaviors. RP 54, 57. While youthfulness is a risk factor by itself, Paul's combined risk factors made it much for difficult for Paul to conform his conduct to social norms. RP 63.

Dr. Heavin described Paul as a cognitively capable academic student with untreated mental health problems and executive functioning deficits commonly seen among young adults with both ADHD and in utero drug exposure. CP 153. The doctor pointed out that executive function is the last thing to develop. RP 59. Executive function inhibits impulses and involves ability to reason. RP 59. It does not finish developing until the mid-twenties. CP 157. Paul scored at the 99th percentile for his age group on global executive functioning, meaning his functioning was worse than his same-aged peers. RP 59-60; CP 151, 157.

Dr. Heavin opined Paul's youthfulness, combined with his trauma history, fetal cocaine exposure, and antisocial peer models, factored into his offending behaviors. CP 158. At the time of offense, Paul was likely more developmentally immature and impulsive than the average 19-year-old. CP 158. The doctor believed Paul to be a great candidate for treatment. RP 64.

Celeste Paul, Paul's adoptive mother, spoke at sentencing. RP 65. She recounted her son's rough start in life and the tragedies he experienced

as a young teen, including the loss of his role models. RP 65-67. Since being incarcerated, her son had grown up and become accountable. RP 67.

Mark Paul asked the court for forgiveness. RP 75. He described himself as "very young minded" at the time of offense, but three years in custody had given him a lot of time to think. RP 73. He had grown more mature since then and was able to recognize the underlying issues that led to his criminal actions. RP 73-76. He was determined to prove himself able to become a successful man in the community.[1] RP 76.

Defense counsel cited State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015) and State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017) in support of an exceptional sentence downward based on the mitigating circumstance of youth. RP 76-79. Counsel included the firearm enhancement in that request, contending Paul was essentially a "juvenile in adult court." RP 78-79, 84; CP 128-29. The State argued the firearm enhancement was mandatory and the court did not have discretion to impose an exceptional sentence on the enhancement. RP 71-72.

The court determined the mitigating factor of youth justified an exceptional sentence downward. RP 84-85. It imposed an exceptional sentence on the robbery count, departing downward on the standard range.

[1] Although Paul's ADHD persists, he managed his symptoms effectively enough to demonstrate solid academic performance while incarcerated. CP 148, 154. He obtained his GED. RP 16; CP 78.

RP 85. But the court ruled it did not have discretion to reduce the 60-month term for the firearm enhancement or run the enhancement concurrent to the base sentence. RP 85-86. The court imposed 27 months confinement on each count to run consecutive to the 60-month firearm enhancement. CP 111.

On appeal, Paul argued the sentencing court erred in failing to recognize the firearm enhancement could be reduced or run concurrent based on the mitigating circumstance of youth. The Court of Appeals rejected the argument, citing its recent decision in State v. Mandefero, 14 Wn. App. 2d 825, 828, 473 P.3d 1239 (2020), which held "[t]rial courts do not have the discretion to impose an exceptional sentence downward for firearm enhancements when the offender is not a juvenile at the time they commit the crime." Slip op. at 1-2.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. WHETHER FIREARM ENHANCEMENTS FOR YOUNG ADULTS ARE SUBJECT TO A MITIGATED EXCEPTIONAL SENTENCE IS AN ISSUE OF CONSTITUTIONAL SIGNIFICANCE AND SUBSTANTIAL PUBLIC INTEREST.

Paul was 19 years old at the time of offense. Although an adult by chronological age, he still possessed the hallmark features of youth. This Court has held enhancement statutes do not bar judges from considering the mitigating qualities of juveniles at sentencing, even in adult court.

Houston-Sconiers, 188 Wn.2d at 21 n.5, 24-26. It is time for this Court to address the related question of whether judges have discretion to consider the mitigating qualities of youth in imposing firearm enhancements on young adults. This Court's recent decision in In re Pers. Restraint of Monschke, __Wn.2d__, 482 P.3d 276, 280-81 (2021) extended the constitutional protections enjoyed by juveniles to young adults facing a mandatory life sentence because no meaningful difference exists in their mental development. The same reasoning should apply to young adults subject to mandatory firearm enhancements. Paul seeks review under RAP 13.4(b)(3) and (b)(4).

a. The enhancement statute does not categorically prohibit exceptional mitigated sentences.

The Sentencing Reform Act (SRA) seeks to "[e]nsure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history" and "commensurate with the punishment imposed on others committing similar offenses." RCW 9.94A.010(1), (3). The SRA "structures, but does not eliminate, discretionary decisions affecting sentences." RCW 9.94A.010.

Consistent with the overarching principle of structured discretion, a court "may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of [the SRA], that there are

substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535. The exceptional sentence statute, RCW 9.94A.535, does not categorically prohibit any type of sentence from eligibility for a mitigated term.

Under the SRA, the only expressed categorical prohibition on imposing an mitigated exceptional sentence are for those mandatory minimum sentences required under RCW 9.94A.540(1), which provides: "Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535."[2] The statute lists the minimum sentence term for various offenses ranging from aggravated first degree murder for a juvenile (25-year minimum term) to first degree assault (five-year minimum term). RCW 9.94A.540(1)(a)-(e). Where a statute specifies the things on which it operates, courts infer the legislature intended all omissions. Queets Band of Indians v. State, 102 Wn.2d 1, 5, 682 P.2d 909 (1984). The legislature intended RCW 9.94A.540(1) to be the sole instance in which an exceptional mitigated sentence is categorically prohibited. Paul's convictions do not fall under RCW 9.94A.540(1).

[2] Subsection (3) prohibits application of section (1) to offenses committed after July 24, 2005 or to juveniles tried as adults, neither of which is applicable here.

As Washington Supreme Court decisions show, sentencing courts have greater discretion to impose mitigated exceptional sentences than may be immediately obvious from the language of the SRA. Exceptional sentences, for example, may be imposed even when a statute appears to mandate consecutive terms.

In In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 329-31, 166 P.3d 677 (2007), the Supreme Court held that the SRA gives trial courts discretion to impose a mitigated sentence of concurrent terms for serious violent offenses, even though RCW 9.94A.589(1)(b) states that sentences for such offenses "shall" be consecutive. The mandatory language of RCW 9.94A.589(1)(b) did not render the exceptional sentence provisions of RCW 9.94A.535 inapplicable. Id. at 328-30. The trial court's erroneous belief it lacked discretion to impose concurrent sentences constituted a fundamental defect justifying collateral relief in that case. Id. at 332-33.

"Building on the logic of Mulholland," the Supreme Court in State v. McFarland, 189 Wn.2d 47, 55, 399 P.3d 1106 (2017) held "in a case in which standard range consecutive sentencing for multiple firearm-related convictions 'results in a presumptive sentence that is clearly excessive in light of the purpose of [the SRA],' a sentencing court has discretion to impose an exceptional, mitigated sentence by imposing concurrent

firearm-related sentences." The Hard Time for Hard Crime Act, which was aimed at singling out firearm-related offenses for presumptively harsh penalties, "does not preclude exceptional sentences downward." Id. at 54.

The firearm statute provides in relevant part that "[n]otwithstanding any other law," if an offender is convicted of either unlawful possession of a firearm in the first or second degree, or for the felony crime of theft of a firearm, or both, "then the offender shall serve consecutive sentences for each of the felony crimes of conviction." RCW 9.41.040(6). The multiple offense subsection of the SRA provides in relevant part that if an offender is convicted under RCW 9.41.040, "[t]he offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed." RCW 9.94A.589(1)(c). Despite the mandatory language in these provisions, the Supreme Court held a mitigated exceptional sentence downward was still available for such crimes under RCW 9.94A.535. McFarland, 189 Wn.2d at 55.

Just as the consecutive-sentence requirement for multiple serious violent offenses and firearm-related convictions set forth in RCW 9.94A.589(1)(b) and (c) are subject to the exceptional sentence provisions of RCW 9.94A.535, the firearm enhancement requirements set forth in the

Hard Time for Hard Crimes Act under RCW 9.94A.533(3) should be subject to the same exception.

RCW 9.94A.533(3)(e) provides: "Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter."

Like RCW 9.94A.589(1)(b) and (c), the language in RCW 9.94A.533(3)(e) provides all firearm enhancements must be imposed, served in total confinement, and consecutive to all other sentence terms. Similar to RCW 9.94A.589(1)(b) and (c), and unlike RCW 9.94A.540(1), RCW 9.94A.533(3) contains no express categorical prohibition on applying RCW 9.94A.535 to the presumptive standard range sentence it creates. Properly understood, RCW 9.94A.533 does not prohibit the imposition of an exceptional mitigated sentence for firearm enhancements. RCW 9.94A.533 does not mention exceptional sentences and does not preclude their potential availability. While the presumptive standard range for firearm enhancements provides for consecutive terms under RCW 9.94A.533, courts are not precluded from considering the applicability of a reduced term under the exceptional sentence statute.

In State v. Brown, 139 Wn.2d 20, 27-28, 983 P.2d 608 (1999) the Supreme Court held by a 5-4 vote that the statute on deadly weapon enhancements bars an exceptional sentence below the standard range for that enhancement.

More recently, Justice Madsen in a concurring opinion concluded firearm enhancements are amenable to the exceptional sentence provision under RCW 9.94A.535. State v. Houston-Sconiers, 188 Wn.2d 1, 34-40, 391 P.3d 409 (2017) (Madsen, J., concurring). Justice Madsen's concurrence in Houston-Sconiers tracks her dissent in Brown. In Brown, the four-justice dissent authored by Justice Madsen noted the Court's prior holding that "[a]n enhancement increases the presumptive or standard sentence." Brown, 188 Wn.2d at 32 (quoting State v. Silva-Baltazar, 125 Wn.2d 472, 475, 886 P.2d 138 (1994)). Thus, statutorily authorized sentence enhancements are distinct from "mandatory minimum" sentences as set forth in RCW 9.94A.540(1). Id. Unlike statutorily imposed mandatory minimum sentences, which are expressly exempt from application of RCW 9.94A.535, statutorily imposed sentence enhancements are part of the presumptive standard range sentence and subject to modification, up or down, as provided under RCW 9.94A.535. Houston-Sconiers, 188 Wn.2d at 37-38 (Madsen, J., concurring).

b. To comply with constitutional demands, the enhancement statute must be construed to permit an exceptional mitigated sentence based on youth; if it can't, it is unconstitutional.

Subsequent decisions addressing youth as a mitigating circumstance have eroded Brown. In Houston-Sconiers, the Supreme Court held "sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system, regardless of whether the juvenile is there following a decline hearing or not." Houston-Sconiers, 188 Wn.2d at 21. The juveniles in that case received firearm enhancement sentences. Id. at 8. The Court held enhancement statutes do not bar sentencing courts from considering the mitigating qualities of youth at sentencing, even in adult court. Id. at 24-26. Houston-Sconiers overruled Brown insofar as it interpreted statutes to bar such discretion with regard to juveniles. Id. at 21, n.5.

Houston-Sconiers abrogates the reasoning of the majority opinion in Brown. It shows that despite statutory language indicating firearm enhancements must be imposed to run consecutively to the base sentence, such mandatory language must yield to the imperative that the mitigating qualities of youth must be considered at sentencing. In this circumstance, the SRA was not intended to mandate the harshest possible terms in all

cases, but to allow for court discretion based on the particulars of the young individual being sentenced.

Houston-Sconiers "went so far as to question *any* statute that acts to limit consideration of the mitigating factors of youth during sentencing." State v. Gilbert, 193 Wn.2d 169, 175, 438 P.3d 133 (2019).[3] The constitutional protections enunciated in Houston-Sconiers are not limited to mandatory life sentences. Rather, "Houston-Sconiers applies to adult standard range sentences as well as mandatory enhancements under the SRA imposed for crimes committed while the defendant was a child." In re Pers. Restraint of Ali, 196 Wn.2d 220, 235, 474 P.3d 507 (2020).

Houston-Sconiers rooted its holding in the "children are different" principle found in the Eighth Amendment prohibition against cruel and unusual punishment. Id. at 8. Criminal procedure laws that fail to take youthfulness into account are flawed. Id. Regarding sentencing enhancements, the Court interpreted the SRA to allow for mitigated exceptional sentences to avoid an Eighth Amendment violation. Id. at 24-26. The Court emphasized "that we do not read our state statutes as

[3] In Gilbert, the Supreme Court addressed a court's sentencing authority under RCW 10.95.035, which requires resentencing for juvenile offenders sentenced to life without parole. Gilbert, 193 Wn.2d at 174. Gilbert held that even if the statute, "on its face, limits the scope of a resentencing hearing to merely adjusting aggravated murder sentences," the court was, nevertheless, required to consider youth as a mitigating factor and had discretion to impose a downward sentence. Id. at 176.

contrary to our Eighth Amendment holding." Houston-Sconiers, 188 Wn.2d at 23-24. It cited the holding in O'Dell that "a sentencing court may consider a defendant's youth as a mitigating factor justifying an exceptional sentence below the sentencing guidelines under the SRA." Id. at 24. In State v. Bassett, 192 Wn.2d 67, 73, 428 P.3d 343 (2018), this Court cited its holding in O'Dell as an application of the "children are different" principle, recognizing "age may well mitigate a defendant's culpability, even if the defendant is slightly older than 18."

In O'Dell, this Court held "a defendant's youthfulness can support an exceptional sentence below the standard range applicable to an adult felony defendant, and that the sentencing court must exercise its discretion to decide when that is." O'Dell, 183 Wn.2d at 698-99. There is a "clear connection between youth and decreased moral culpability for criminal conduct" and "this connection may persist well past an individual's 18th birthday." Id. at 695. "Until full neurological maturity, young people in general have less ability to control their emotions, clearly identify consequences, and make reasoned decisions than they will when they enter their late twenties and beyond." Id. at 693 (quoting amicus with approval).

The holding in Houston-Sconiers encompasses sentencing of juveniles, but it is now established that chronological age is not

determinative of mental development. The hallmark qualities of youth that mandate constitutional protection in the sentencing context persist into one's early 20s. The mitigating factor of youth can apply to young adults. O'Dell, 183 Wn.2d at 698-99.

As recognized by O'Dell, the age of 18 is not a meaningful dividing line between those who are less culpable by reason of youth and those who are not. Young adults and juveniles by chronological age share the same hallmark qualities of youth. Because we now know "that age may well mitigate a defendant's culpability, even if that defendant is over the age of 18," O'Dell, 183 Wn.2d at 693, the same mitigating qualities of youth that require discretionary enhancement sentences for juveniles should apply to young adults who harbor the same mitigating qualities.

In this regard, this Court's recent decision in Monschke is significant because it is the first one to give the same constitutional protections to young adults that were previously limited to juveniles in the context of sentencing. In Monschke, the Court held mandatory life without parole sentences for 18-20-year-old defendants violated the constitutional requirement that judges must exercise discretion when sentencing those within this age range. Monschke, 482 P.3d at 277. Of importance to Paul's appeal, the Court recognized "many youthful defendants older than 18 share the same developing brains and impulsive

behavioral attributes as those under 18. Thus, we hold that these 19- and 20-year-old petitioners must qualify for some of the same constitutional protections as well." Id. at 280-81.

Under Monschke, courts must have discretion to consider individual attributes of youthfulness "as they apply to each individual youthful offender. That is why mandatory sentences for youthful defendants are unconstitutional." Id. at 285. In support, Monschke cited Houston-Sconiers, which addressed the mandatory firearm enhancement provision, as "requiring consideration at sentencing of defendant's individual youthful characteristics and many other individual factors related to culpability." Id. at 286 (citing Houston-Sconiers, 188 Wn.2d at 23).

"Neuroscientists now know that all three of the 'general differences between juveniles under 18 and adults' recognized by [Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)] are present in people older than 18." Monschke, 482 P.3d at 286. This Court deemed these "objective scientific differences between 18- to 20-year-olds . . . on the one hand, and persons with fully developed brains on the other hand, to be constitutionally significant under article I, section 14." Id. Because no meaningful neurological bright line exists between age 17 on one hand and ages 18, 19, or 20 on the other hand, "sentencing courts must have

discretion to take the mitigating qualities of youth — those qualities emphasized in [Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)] and Houston-Sconiers — into account for defendants younger and older than 18." Id. at 287.

Paul was 19 years old when he committed his offense. He presented evidence that he possessed mitigating qualities of youth. He was nevertheless subjected to a firearm enhancement that the sentencing judge thought he had no choice but to impose and run consecutively to the base sentence. Under Monschke, Paul should have the same constitutional protections as a juvenile when it comes to mandatory sentencing provisions under the SRA.

Courts have a duty to construe a statute so as to uphold its constitutionality. Houston-Sconiers, 188 Wn.2d at 24 (citing State v. Furman, 122 Wn.2d 440, 458, 858 P.2d 1092 (1993)). In Houston-Sconiers, the Court concluded the legislature did not intend to mandate a sentence that ran afoul of the Eighth Amendment. Id. at 26. To avoid a constitutional violation, the enhancement statute should likewise be interpreted to permit a mitigated exceptional sentence based on the youthful qualities of a young adult. If the statute cannot be so construed, then it violates article I, section 14 in barring sentencing courts from exercising individualized discretion in deciding whether a firearm

enhancement is appropriate for a young adult exhibiting the mitigating qualities of youth.

c. The court abused its discretion in failing to recognize firearm enhancements are subject to an exceptional mitigated sentence.

"When a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law." McFarland, 189 Wn.2d at 56. "A trial court errs when it operates under the 'mistaken belief that it did not have the discretion to impose a mitigated exceptional sentence for which [a defendant] may have been eligible.'" State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997), review denied, 136 Wn.2d 1002, 966 P.2d 902 (1998). In this circumstance, the failure to exercise discretion is an abuse of discretion. O'Dell, 183 Wn.2d at 697.

The trial court in Paul's case correctly recognized youth can be a mitigating factor for a young adult and imposed a sentence below the standard range based on that mitigator. RP 84-85. But it mistakenly thought the firearm enhancement could not be reduced or run concurrently with the base sentence. The court stated "I will impose the firearm enhancement of 60 months. I do not believe I can lessen that. I believe the legislature has made it clear that firearm crimes, or crimes that involve firearms are to be punished differently from other crimes. And I don't

believe I possess authority to reduce that or to make it concurrent in any way." RP 85-86.

The court erred in misapprehending its sentencing authority. Developments in the law show the sentencing court here abused its discretion as a matter of law by concluding it lacked legal authority to entertain Paul's request to impose a mitigated exceptional sentence for the firearm enhancement portion of the sentence under RCW 9.94A.535. The court's failure to understand its sentencing authority when imposing an exceptional sentence requires a new sentencing hearing at which the court can exercise its discretion on the enhancement portion of the sentence.

F. CONCLUSION

For the reasons stated, Paul requests that this Court grant review.

DATED this 22nd day of April 2021.

Respectfully submitted,

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APPENDIX

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

STATE OF WASHINGTON, Respondent, v. MARK JUJUAN PAUL, Appellant.	No. 80569-0-I DIVISION ONE UNPUBLISHED OPINION

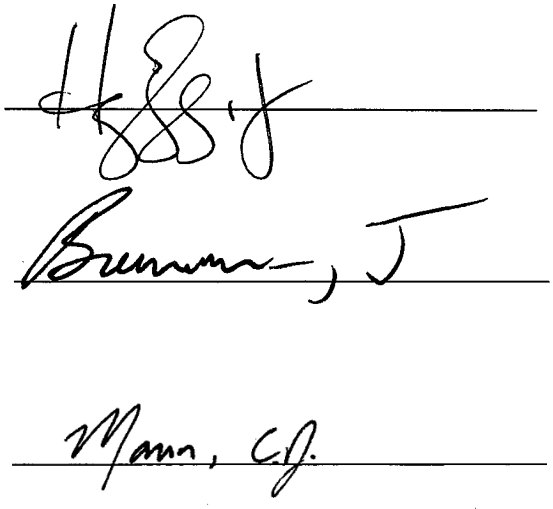
PER CURIAM — Mark Paul pleaded guilty to first degree robbery with a firearm enhancement and unlawful possession of a firearm, committed when he was 19 years old. At sentencing, he requested an exceptional sentence below the standard range based on his youthfulness. With regard to the base sentence, the trial court imposed a concurrent sentence of 27 months for the robbery and 27 months for the firearm, which was below the standard range. But with regard to the firearm enhancement, the trial court imposed a consecutive 60 month firearm enhancement, concluding that it did not have the authority to reduce the enhancement or run it concurrently with the base sentence.

Paul contends that the trial court failed to recognize its discretion to reduce the length of the firearm enhancement or run it concurrently with the base sentence as part of an exceptional sentence based on his youth. But, as this court recently held in State v. Mandefero, 14 Wn. App. 2d 825, 828, 473 P.3d 1239 (2020), "[t]rial courts do not have the discretion to impose an exceptional

sentence downward for firearm enhancements when the offender is not a juvenile at the time they commit the crime."

Paul additionally contends that the trial court erred in imposing a lifetime no-contact order with all Safeway stores in Washington, as Safeway was neither the victim of or witness to the crimes. Paul also argues that the judgment and sentence erroneously requires him to pay the costs of supervision when the trial court's oral ruling clearly indicated it did not intend to impose such a requirement. The State concedes both errors.

We accept the State's concessions, and remand for the trial court to correct the errors with regard to the no-contact order and the costs of supervision. In all other respects, we affirm.



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