Washington Supreme Court alters sentencing structure for accomplices

By Adam Lynn
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A divided Washington State Supreme Court has overturned the exceptional sentence of a Pierce County man in a decision that some believe will change fundamentally the way criminal accomplices are sentenced in Washington.

In a 5-4 opinion released Thursday, the state's high court ruled that convicted identity thief Larry Hayes should have received a standard-range sentence after being convicted of a host of felonies in 2009.

Instead, he got a 15-year term under a provision that allows prosecutors to seek extra punishment for egregious offenders.

The majority ordered the case back to Pierce County for re-sentencing.

At issue is how people charged as accomplices should be treated under the law at sentencing.

For years, Washington law has prescribed that accomplices and principle actors in a crime be exposed to the same culpability, a concept Pierce County Prosecutor Mark Lindquist on Thursday called "in for a penny, in for a pound."

In an opinion written by Justice Charles Johnson and signed by Justices Charles Wiggins, Susan Owens, Mary Fairhurst and Sheryl Gordon McCloud, the majority ruled that should not always be the case, especially where sentencing is concerned.

Until Thursday, when a prosecutor sought an exceptional sentence for a criminal defendant, he or she had to prove to a jury that certain aggravating factors made the crime worse than usual.

The requirement applied to principle actors and accomplices alike. Thursday's majority opinion said the blanket application to accomplices is improper.

Accomplices should be judged for their specific role in the crime and not just on the crime itself, the majority ruled.

An accomplice, to qualify for an exceptional sentence, must have knowledge that the crime he or she is involved in is worse than usual, Johnson wrote, and prosecutors now must prove that knowledge to a jury.

“...this finding of knowledge ensures that the defendant’s own conduct formed the basis of the sentence,” Johnson wrote.

Hayes, for instance, was convicted of a crime prosecutors said was a “major economic offense,” which qualified him for an exceptional sentence.

But the majority of the high court ruled that because the jury was not shown in court that Hayes knew his crimes were a major economic offense, he could not receive a sentence higher than that prescribed by the standard range.

Justice Debra Stephens authored the dissent, which was signed by Chief Justice Barbara Madsen and Justices Mary Yu and Steven Gonzalez.

Stephens argued that the majority was turning decades of case law on its head for no good reason.

“It makes no sense that a principal should be punished regardless of whether he or she knew the crime was a major economic offense but an accomplice, who committed the same crime, should not be,” she wrote.

She went on to say the ruling would have far-reaching impacts.

“It is no exaggeration to say that the way co-participants have long been tried in this state will need to change in order to accommodate the knowledge finding the majority superimposes on the enhancement statute,” Stephens wrote.

Lindquist agreed with Stephens’ assessment and said he would consider asking state lawmakers to pass legislation clarifying what they want to happen to accomplices.

“They could say, ‘We meant what we wrote: Principals and accomplices are equally culpable,’” Lindquist said.

Appellate attorney Nancy Collins, who worked on Hayes’ appeal, said she thinks the majority got it right and that the application of the ruling would not be onerous.

“I don’t see it as a change in the law at all,” Collins said. “The majority said the jury needs to consider the defendant’s individual conduct.”

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