IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27333-4-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
YOLANDA ELLITA MARIA HENDERSON,	)	
	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Yolanda Henderson challenges the sufficiency of the evidence to support the school bus enhancement appended to her sentence for possessing cocaine with intent to deliver. We agree that this record does not establish that the scene of the crime was within 1,000 feet of the school bus stop. Accordingly, we affirm the convictions, but reverse the sentence enhancement and remand for a new sentencing hearing.

FACTS

Walla Walla police officers served a search warrant on the mobile home belonging

to Ms. Henderson located at 1809 Plaza Way, Space 6. They found 21 grams of cocaine, $4,300 in cash, marijuana, and numerous items of drug paraphernalia including scales. Ms. Henderson ultimately was charged with four crimes: (1) possession of cocaine with intent to deliver, committed within 1,000 feet of a school bus stop; (2) possession of less than 40 grams of marijuana; (3) possession of drug paraphernalia; and (4) distribution of a narcotic to a person under age 18.

The case proceeded to jury trial. Testimony established that there was a school bus stop at 1809 Plaza Way, the entrance to the trailer court. Exhibit 1, a map of the school bus stops in the area and the distance between them, was admitted at trial. The exhibit does not contain distances from Space 6 to the stop at the entrance to the trailer park.

During deliberations, the jury on three occasions submitted questions concerning the school bus stop enhancement. The first of the questions asked what the distance was between the bus stop and the residence, and whether the distance had been measured. The court referred the jury to the evidence. The second question asked whether the point of distribution was Space 6 or the trailer park as a whole. The final question concerning what impact inability to agree on the special verdict would have on the trial. On both of the last two questions, the trial judge advised the jury to consider the instructions.

The jury ultimately convicted on the cocaine count and found that it was committed within 1,000 feet of a school bus stop. The jury acquitted on the distribution of narcotic to a minor charge. It also convicted the defendant on the misdemeanor charges of possession of marijuana and possession of drug paraphernalia.

Ms. Henderson was sentenced to 36 months on the possession of cocaine with intent to deliver charge; 24 months of that range resulted from the school bus stop enhancement. She then appealed to this court.

ANALYSIS

The sole question[1] presented by this appeal is whether the offense occurred within 1,000 feet of a school bus stop. The evidence here did not permit the jury to find that it did. Accordingly, we reverse the enhancement.

In reviewing a challenge to the sufficiency of the evidence, the question is whether there was evidence from which the jury could find each element of the offense was proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628

[1] Ms. Henderson filed a statement of additional grounds challenging her attorney's effectiveness at trial, primarily alleging that counsel should have presented evidence that she was a drug addict. However, trial tactics are not a basis for finding counsel ineffective, and addiction is not a defense to drug dealing or a basis for a mitigated sentence. *State v. Gaines*, 122 Wn.2d 502, 859 P.2d 36 (1993); *State v. Hutsell*, 120 Wn.2d 913, 845 P.2d 1325 (1993). Accordingly, we conclude that the ineffective assistance challenge is without merit.

(1980).

RCW 69.50.435(1)(c) creates a sentencing enhancement for anyone who possesses cocaine "within 1,000 feet of a school bus route stop designated by the school district." This requires a showing that the location of the offense was within 1,000 feet of the bus stop. *State v. Clayton*, 84 Wn. App. 318, 322, 927 P.2d 258 (1996). It is not enough that the property on which a house is located was within 1,000 feet. *Id.* at 321-322. Instead, the measurement must extend to the building. *Id.* at 322. *Accord*, *State v. Jones*, 140 Wn. App. 431, 437-438, 166 P.3d 782 (2007).

Here, appellant argues, and we agree, that there was no testimony that the trailer where the offense occurred was shown to be within 1,000 feet of the school bus stop. Respondent argues that the entire trailer park was, by reason of address, the bus stop. There was no evidence presented that the bus actually drove through the trailer park, nor any evidence about how far back from the road the trailer in Space 6 was located. Exhibit 1 and the accompanying testimony established that the bus stop was at the entrance to the trailer park. There is no scale on the exhibit that would allow one to measure into the park from the street. Indeed, there is no indication on the exhibit where Space 6 is even located. There simply was no measurement from the stop to the trailer and, hence, no evidentiary basis for the jury to conclude the crime scene was within the

enhanced protection area.

The evidence does not support the special verdict. Accordingly, we affirm the convictions, reverse the sentence enhancement on count 1, and remand for resentencing.

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

_____
Korsmo, J.

WE CONCUR:

_____
Schultheis, C.J.

_____
Sweeney, J.