

FILED
DECEMBER 15, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 37082-8-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
NIKOLAYEVICH PETR SICHKAR,)	
)	
Appellant.)	

PENNELL, C.J. — Petr Sichkar appeals his sentences for two counts of misdemeanor assault with sexual motivation. We affirm.

FACTS

Mr. Sichkar entered *Alford*¹ pleas to two counts of fourth degree assault with sexual motivation, both gross misdemeanors. The pleas were entered as part of a plea agreement, through which the State agreed to recommend no jail time. As originally charged, Mr. Sichkar would have faced multiple class A felonies and a sentencing range

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

No. 37082-8-III
State v. Sichkar

of 300 months to life. The State amended the charges due to proof problems and a prior hung jury.

At sentencing, the court heard from one of the victims, who recommended Mr. Sichkar receive two years' custody. The court imposed the statutory maximum sentence of 364 days on each count, to run consecutively. The judge stated he based his decision in part on Mr. Sichkar's failure to take responsibility for his offense conduct. The court was also concerned with the seriousness of Mr. Sichkar's offense. The judge stated he was not penalizing Mr. Sichkar for exercising his right to enter an *Alford* plea.

Mr. Sichkar appeals.

ANALYSIS

Courts have wide discretion in imposing sentences for misdemeanors and gross misdemeanors. *State v. Anderson*, 151 Wn. App. 396, 402, 212 P.3d 591 (2009). Misdemeanors and gross misdemeanors are not governed by the Sentencing Reform Act of 1981, chapter 9.94A RCW. RCW 9.94A.010; *State v. Snedden*, 149 Wn.2d 914, 922, 73 P.3d 995 (2003). As a consequence, sentences for misdemeanor offenses are not restricted by guideline ranges or the real facts doctrine. *See* RCW 9.94A.530(2). A court imposing sentence for a misdemeanor has broad discretion to issue a sentence up to the statutory maximum. *Anderson*, 151 Wn. App. at 402.

Mr. Sichkar claims the sentencing judge was prohibited from considering his lack of responsibility at sentencing. This proposition lacks legal authority and is unpersuasive. A defendant's acceptance of criminal responsibility, or lack thereof, is highly relevant to sentencing. In fact, federal court judges are expected to take a defendant's acceptance of responsibility, or lack thereof, into account in almost every criminal case. *See* U.S. SENTENCING GUIDELINES COMM'N, GUIDELINES MANUAL § 3E1.1 (Nov. 2018).

Crediting acceptance of responsibility does not penalize a defendant for exercising a constitutional right. There is no constitutional right to plead guilty, let alone a right to enter an *Alford* plea. *See State v. Bowerman*, 115 Wn.2d 794, 799, 802 P.2d 116 (1990). A defendant who enters an *Alford* plea denies guilt and typically (though not necessarily) refuses to apologize or express remorse for criminal conduct. Nothing prohibits a judge from taking such information into account in exercising sentencing discretion. *See* Bryan H. Ward, *A Plea Best Not Taken: Why Criminal Defendants Should Avoid the Alford Plea*, 68 MO. L. REV. 913, 923 (2003).


Mr. Sichkar's other allegations that the judge considered unproven facts or usurped the executive role in imposing his sentence are unsupported by the record.

No. 37082-8-III
State v. Sichkar

CONCLUSION

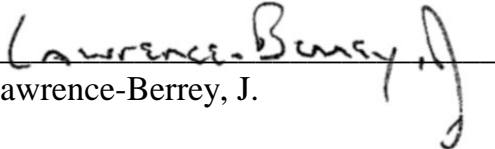
The judgment and sentence is affirmed.

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.



Pennell, C.J.

WE CONCUR:



Lawrence-Berrey, J.



Korsmo, J.