

NO. 70951-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JAMES EARL TUCKER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GREGORY P. CANOVA

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

The Sentencing Reform Act of 1981 (SRA) dictates that the standard sentencing range for an anticipatory crime charged under the attempt provision of RCW 9A.28.020 is 75 percent of the standard range for the completed crime. The defendant was convicted of attempted delivery of cocaine under the attempt provision of RCW 9A.28.020. Did the trial court properly conclude that the defendant's standard sentencing range was 75 percent of the sentence the defendant would have received for a completed delivery of cocaine?

B. STATEMENT OF THE CASE

The State charged the defendant, James Earl Tucker, with two violations of the Uniform Controlled Substances Act under cause number 10-C-04247-1 SEA.¹ 2CP² 4-5. Tucker entered Drug Diversion Court, and was later terminated from the program.

¹ Tucker's consolidated appeal comprises two cause numbers, 10-1-03654-3 SEA and 10-C-04247-1 SEA. Facts related to cause number 10-1-03654-3 SEA are not included here, as Tucker makes no assignments of error related to that case.

² The State adopts Tucker's manner of referencing the clerk's papers; those designated under cause number 10-1-03654-3 SEA are referred to as 1CP, and those designated under cause number 10-C-04247-1 SEA are referred to as 2CP.

1CP 39-44; 2CP 10. Pursuant to the terms of his Drug Diversion Court Agreement, Tucker then submitted his case for a bench trial on stipulated facts. 1CP 40; 2CP 75. Tucker was found guilty as charged in the second amended Information of two counts of attempted delivery of cocaine, each in violation of RCW 9A.28.020 and RCW 69.50.401(1), (2)(a). 2CP 11-12, 75.

Tucker was sentenced on September 10, 2013. 2CP 75-79. The trial court calculated Tucker's standard range as 45 months and a day to 90 months in prison on each count. 2CP 76. Tucker received concurrent standard range sentences of 60 months. 2CP 75-78. The trial court ordered that these sentences run concurrently with the sentence imposed on the same day in cause number 10-1-03654-3 SEA and with a Drug Offender Sentence Alternative that Tucker had recently received after being convicted of assault in the third degree domestic violence in an unrelated case. 1CP 152-56; 2CP 78; RP³ 3.

³ There is currently a single volume in the Report of Proceedings. It will be referred to as RP (September 10, 2013).

Tucker timely appealed. 2CP 83. The appeal was later consolidated with Tucker's appeal in cause number 10-1-03654-3 SEA.

C. ARGUMENT

TUCKER WAS PROPERLY SENTENCED WITHIN THE STANDARD RANGE FOR A CHARGE INVOLVING CRIMINAL ATTEMPT UNDER RCW 9A.28.020.

Tucker's sole contention on appeal is that the trial court miscalculated the standard sentencing range in cause number 10-C-04247-1 SEA, and, as a result, exceeded its authority by imposing a sentence outside the correct standard range. This claim should be rejected. Tucker was convicted of attempted delivery of cocaine under the criminal attempt provision of RCW 9A.28.020, not under the attempt provision in chapter 69.50 RCW. The trial court properly calculated the standard range for an attempt under RCW 9A.28.020 as 75 percent of the standard range for the completed offense, and imposed a sentence within the correct standard range.

A trial court's sentencing authority is purely statutory. State v. Shove, 113 Wn.2d 83, 89 n.3, 776 P.2d 132 (1989). Unless certain exceptions apply, a trial court must impose a sentence within the standard sentencing range established by the SRA based on the seriousness of the offense and the defendant's offender score. State v. Ha'mim, 132 Wn.2d 834, 839, 940 P.2d 633 (1997); RCW 9.94A.505; RCW 9.94A.510. The SRA states:

For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

RCW 9.94A.595.

The Information in effect when Tucker was found guilty charged him with attempted delivery of cocaine in violation of RCW 9A.28.020 (attempt) and RCW 69.50.401(1), (2)(a) (delivery of a controlled substance). 2CP 11-12, 75. Cocaine is a Schedule II narcotic. RCW 69.50.206(a), (b)(4). Delivery of a Schedule II narcotic is an offense of seriousness level two on the drug offense sentencing grid. RCW 9.94A.518. Tucker's offender score was 12 at the time of sentencing. 2CP 76. For a defendant with an offender score of six or more, the standard range for a level two

drug offense is 60 months and one day to 120 months in prison. RCW 9.94A.517. Tucker's standard sentencing range was thus 75 percent of 60 months and a day to 120 months, for a total standard range of 45 months and a day to 90 months, as the trial court correctly calculated. 2CP 76.

Tucker is correct that a conviction for an attempted drug offense under RCW 69.50.407⁴ is an unranked felony carrying a standard range of zero to twelve months. State v. Mendoza, 63 Wn. App. 373, 378, 819 P.2d 387 (1991). However, because Tucker was convicted under the attempt provision of RCW 9A.28.020, the trial court properly calculated his standard range for attempted delivery of cocaine as 75 percent of the standard range for a completed delivery of cocaine. RCW 9.94A.595. Tucker's 60 month sentence was within that standard range, and was thus statutorily authorized.

⁴ RCW 69.50.407 states, "Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Tucker's sentence.

DATED this 9th day of July, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

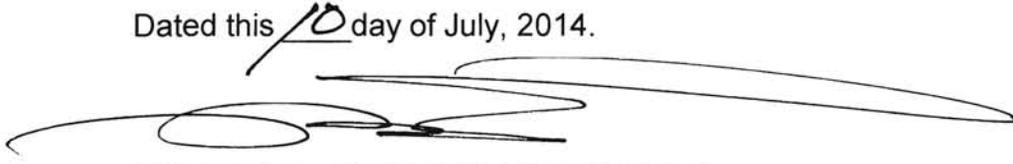
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Casey Grannis, the attorney for the appellant, at Nielsen, Broman & Koch PLLC, 1908 E Madison Street, Seattle, WA, 98122, containing a copy of the BRIEF OF RESPONDENT, in State v. James Earl Tucker, Cause No. 70951-8, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 10 day of July, 2014.



Name
Done in Seattle, Washington

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