

FILED
Oct 28, 2016
Court of Appeals
Division I
State of Washington

No. 73411-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MARIA GONZALES ESQUIVEL,

Appellant.

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

The Honorable James D. Cayce

REPLY BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711
tom@washapp.org

TABLE OF CONTENTS

A. ARGUMENT 1

 1. The trial court erroneously imposed a “life”
 sentence 1

 2. The condition of the sentence barring Ms.
 Esquivel from contacting her biological daughter
 violated her fundamental right to parent..... 2

B. CONCLUSION..... 3

TABLE OF AUTHORITIES

WASHINGTON CASES

In re Rainey, 168 Wn.2d 367, 299 P.3d 686 (2010)..... 3

State v. Hale, 94 Wn.App. 46, 971 P.2d 88 (1999) 1

State v. Ross, 152 Wn.2d 220, 95 P.3d 1225 (2004) 1

A. ARGUMENT

1. **The trial court erroneously imposed a “life” sentence**

The trial court imposed a “life” sentence on Ms. Esquivel for the first degree assault count. The State has conceded this was error. This Court should accept the State’s concession as well taken.

Regarding the remedy, the State invites this Court to remand solely for the trial court to amend the judgment and sentence to a determinate sentence of the high end of the standard range. Brief of Respondent at 33.

“When a trial court exceeds its sentencing authority under the SRA, it commits reversible error.” *State v. Hale*, 94 Wn.App. 46, 53, 971 P.2d 88 (1999). The remedy for erroneous sentencing is remand to the trial court for resentencing. *State v. Ross*, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004).

While the State’s argument that the assault sentence will be subsumed in the indeterminate rape sentence is arguably correct, it is not necessarily true that the trial court would impose the high end of the standard range. Remand for resentencing is necessary so that the court can determine the correct sentence.

2. The condition of the sentence barring Ms. Esquivel from contacting her biological daughter violated her fundamental right to parent

The trial court imposed a 20 year no contact order barring Ms. Esquivel from contacting her biological daughter. In its response brief, the State posits several reasons why such an order might be necessary. Unfortunately, the State concedes: “The record contains no discussion about the relative duration of the no-contact orders[.]” Brief of Respondent at 26. Thus, the State’s reasons stated in the brief are mere speculation and not the rationale of the trial court.

The trial court imposed the no-contact order without any comment or without stating its rationale for imposing the no-contact order. CP 504; RP 4868-69. The State, in recommending the no-contact order, also failed to provide any rationale for imposition of the order. RP 4861 (“We are asking for a 20-year no contact order with [E.G.] in this matter.”).

The court here failed to make a finding of a reasonable necessity for either the scope or duration of the no-contact order, which plainly infringed on Ms. Esquivel’s fundamental right to parent. The remedy for the court’s failure is to strike the no-contact order and remand to the trial court. *In re Rainey*, 168 Wn.2d 367, 381-82, 299 P.3d 686 (2010)

("[W]e strike the no-contact order as to L.R. and remand for resentencing, so that the sentencing court may address the parameters of the no-contact order under the "reasonably necessary" standard"). This Court should follow the decision in *Rainey* and strike the no-contact order.

B. CONCLUSION

For the reasons stated in the previously filed Brief of Appellant and the instant reply brief, Ms. Esquivel asks this Court to reverse her convictions and remand for a new trial. Alternatively, Ms. Esquivel asks this Court to strike the no-contact order barring her from seeing her daughter. In addition, Ms. Esquivel asks this Court to reverse her sentence and strike the aggravating factors. Finally, Ms. Esquivel asks this Court to accept the State's concession and remand for resentencing to a determinate sentence.

DATED this 28th day of October 2016.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)

Washington Appellate Project – 91052

tom@washapp.org

Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 73411-3-I
v.)	
)	
MARIA ESQUIVEL,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF OCTOBER, 2016, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] JENNIFER JOSEPH, DPA	()	U.S. MAIL
[paoappellateunitmail@kingcounty.gov]	()	HAND DELIVERY
[jennifer.joseph@kingcounty.gov]	(X)	AGREED E-SERVICE
KING COUNTY PROSECUTING ATTORNEY		VIA COA PORTAL
APPELLATE UNIT		
KING COUNTY COURTHOUSE		
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

[X] MARIA ESQUIVEL	(X)	U.S. MAIL
380846	()	HAND DELIVERY
WACC FOR WOMEN	()	_____
9601 BUJACICH RD NW		
GIG HARBOR, WA 98332		

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF OCTOBER, 2016.



X _____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710