

74357-1

FILED  
October 10, 2016  
Court of Appeals  
Division I  
State of Washington

74357-1

NO. 74357-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

LESLIE VERONIKA BOWLAN,

Appellant.

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

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APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

**1. The parties agree the sentencing court applied the wrong standard range .**

This Court should accept the State's concession that the sentencing court applied the wrong standard range. The matter should be remanded for resentencing.

**2. Ms. Bowlan did not waive her equitable argument.**

Ms. Bowlan contends offenses committed while the State affirmatively neglected to exercise its power to extradite Ms. Bowlan should not be included in her offender score. The State argues Ms. Bowlan waived the argument because she did not object before the sentencing court. Resp. Br. at 4 (citing to 11/6/15 4-6). However, legal errors at sentencing are reviewable for the first time on appeal. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002) (defendant need not affirmatively object to offender score to preserve legal error in miscalculation upward); *State v. Wilson*, 170 Wn.2d 682, 244 P.3d 950 (2010) (erroneously scored prior conviction is a legal error resulting in miscalculated offender score) *see also State v. Hunley*, 175 Wn.2d 901, 912, 287 P.3d 584 (2012) (only defendant's affirmative acknowledgment of facts and information alleged at sentencing relieves State of its burden). Ms. Bowlan did not

affirmatively waive this argument below, and it should be reviewed by this court. Alternatively, the matter can be addressed in the Superior Court on resentencing for the improper standard range.

**3. The Court should exercise its discretion and remand with instructions to not impose LFOs on remand.**

The sentencing court imposed \$1200 in LFOs and entered a boilerplate finding on ability to pay where the record reflects Ms. Bowlan's indigency. This Court should exercise its discretion under *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015); .RAP 1.2, and RAP 2.5, and review the issue raised in the opening brief. Op. Br. at 9-16.

**B. CONCLUSION**

The court should remand for resentencing because the sentencing court applied an incorrect, and higher, standard range. The Court should also hold that, on remand, the four out-of-state convictions accrued from 2003 to 2015 cannot be included in Ms.

Bowlan's offender score under the doctrine of equitable estoppel.  
Finally, the Court should remand with instructions to strike LFOs  
imposed without an individualized inquiry into Ms. Bowlan's ability to  
pay.

DATED this 10th day of October, 2016.

Respectfully submitted,

s/ Marla L. Zink  
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Washington Appellate Project  
Attorney for Appellant

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DIVISION I**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 74357-1-I
	)	
LESLIE BOWLAN,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> 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] MARY KATHLEEN WEBBER, DPA<br>[kwebber@co.snohomish.wa.us]<br>SNOHOMISH COUNTY PROSECUTOR'S OFFICE<br>3000 ROCKEFELLER<br>EVERETT, WA 98201 | ( )<br>( )<br>(X) | U.S. MAIL<br>HAND DELIVERY<br>AGREED E-SERVICE<br>VIA COA PORTAL |
| [X] LESLIE BOWLAN<br>385492<br>MISSION CREEK CC FOR WOMEN<br>3420 NE SAND HILL RD<br>BELFAIR, WA 98528   | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____                              |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 10<sup>TH</sup> DAY OF OCTOBER, 2016.



X \_\_\_\_\_

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