

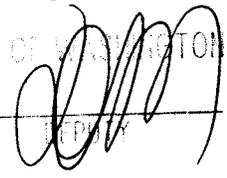
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DIVISION II

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STATE OF WASHINGTON

No. 39869-9-II

COURT OF APPEALS, DIVISION II BY \_\_\_\_\_  
STATE OF WASHINGTON



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STATE OF WASHINGTON,

Respondent,

vs.

REGINALD BELL,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 08-1-00994-9  
The Honorable James Cayce, Visiting Judge  
The Honorable Vicki Hogan, Judge

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OPENING BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court erred when it denied Appellant's CrR 3.6 motion to suppress.
2. In denying Appellant's CrR 3.6 motion to suppress, the trial court erred when it concluded that Appellant did not have standing to challenge the search of the motel room conducted while he was present as a visitor of the registered guest.
3. In denying Appellant's CrR 3.6 motion to suppress, the trial court erred when it concluded that Appellant was not improperly seized by the investigating officers.
4. The 240-month exceptional sentence imposed by the trial court was clearly excessive in length.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Did the trial court err when it concluded that Appellant did not have standing to challenge the search of the motel room conducted while he was present as a visitor of the registered guest, where Appellant was charged with possessing items discovered during the search? (Assignments of Error 1 & 2)
2. Did the trial court err when it concluded that Appellant was not improperly seized by the investigating officers, where

Appellant was ordered to sit and stay on a bed in the motel room even though the officers did not suspect Appellant of committing a crime? (Assignment of Error 1 & 3)

3. Should the trial court have suppressed all evidence seized during the search of the motel room, where Appellant was improperly seized by investigating officers before the search? (Assignment of Error 1 & 3)
3. Was the 240-month (20-year) exceptional sentence imposed by the trial court clearly excessive, where the standard range maximum for Appellant's current crimes of possession of a controlled substance with intent to deliver and bail jumping were 120 months and 60 months? (Assignment of Error 4)

### **III. STATEMENT OF THE CASE**

#### **A. Procedural History**

The State charged Reginald Bell by Information with one count of possession of a controlled substance with intent to deliver (RCW 69.50.401). (CP 1-2) At two pretrial hearings, Bell did not respond when his case was called, so the State amended the Information to add two counts of bail jumping (RCW 9A.76.170).

(CP 94-95; 2 RP 167-68, 169, 171-72, 281, 285; Exh. 20, 28)<sup>1</sup>

Bell moved pursuant to CrR 3.6 to suppress the evidence discovered during a search of the motel room conducted while he was present as a visitor of the registered guest. (CP 10-20) The trial court denied the motion. (CP 269-80; 9/9 RP 129-33)

The jury convicted Bell of all three crimes. (4 RP 508-10; CP 123-26) The trial court imposed an exceptional sentence by ordering that the terms of confinement for each conviction be served consecutively. (CP 196-97; 4 RP 531-32) This appeal timely follows.

## B. Substantive Facts

### 1. *Facts from the CrR 3.6 Hearing*

Bonnie Barker manages the Norman Bates Motel in Fife, Washington. (9/9 RP 5) The motel is in an area known for drug and prostitution activities. (9/9 RP 52) All overnight guests of the motel must register and provide identification. (9/9 RP 7) Each additional overnight guest must register and also pay a nominal fee. (9/9 RP 7, 10-11) A sign explaining his policy is posted in the

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<sup>1</sup> Citations to the CrR 3.6 hearing in the transcript labeled September 9, 2009, will be to "9/9 RP" followed by the page number. Citations to the trial and sentencing dates, contained in the transcript volumes labeled 1 thru 4, will be to the volume number (# RP) followed by the page number.

office. (9/9 RP 7)

Shirley Butts had rented a room at the motel in February, 2008. (9/9 RP 6) Barker had trouble with Butts because she had several unregistered overnight guests and a large number of short-term visitors during her stay at the motel. (9/9 RP 6) Barker had reminded Butts several times about the registration and fee requirements for additional overnights guests. (9/9 RP 6, 7) Butts had also decided, and informed Butts, that she should register every guest, even if they did not stay overnight. (9/9 RP 6, 12-13)

In the late morning of February 24, 2008, another motel guest told Barker that there was someone staying in Butts' room. (9/9 RP 6, 32) Barker did not personally see anyone enter Butts' room, but she decided to call the police anyway so that they could investigate, and tell any visitor to either register or leave. (9/9 RP 6-7, 11)

Five Police Officers Robert Eugley and Ryan Micenko responded. (9/9 RP 16, 38) After talking briefly with Barker, they went to Butt's room and knocked on the door. (9/9 RP 16, 38) At first there was no answer, so the officer's knocked again and verbally announced their presence. (9/9 RP 16, 38, 39-40) A few seconds later Butts opened the door. (9/9 RP 16, 38, 39-40) The

officers asked if anyone was with her in the room. (9/9 RP 17, 38) Butts first said no, then admitted that there was and walked towards the bathroom to tell her guest to come out. (9/9 RP 17, 38, 39-40)

Reginald Bell walked out of the bathroom, and Eugley immediately told Bell and Butts to sit on the bed with their hands in front of them. (9/9 RP 18, 19, 38-39, 43) The officers testified that they were concerned for their safety because the room was cluttered. (9/9 RP 18-19, 33)

The officers stood outside the door and began to question Butts and Bell. (9/9 RP 18, 43, 45) The officers noticed Butts reaching for items on the nightstand, which they recognized as a marijuana smoking pipe and a small clear canister. (9/9 RP 19-20, 43-44) Eugley asked whether there was marijuana in the canister, and Butts admitted that there was. (9/9 RP 24) To prevent destruction of the evidence, Eugley entered the room and placed Butts under arrest. (9/9 RP 19-20, 44-45)

Eugley questioned Butts, and received her consent to search the room. (9/9 RP 21, 25, 27) Eugley found several small and large pieces of what he believed was crack cocaine, and items used to divide and use crack cocaine. (9/9 RP 25-27) During the search, Bell was not free to leave. (9/9 RP 55) After the search,

Butts told the officers that the cocaine belonged to Bell, so they placed him under arrest as well. (9/9 RP 27-28, 49)

During processing, Eugley also discovered a SODA court order issued to Bell, which prohibited him from being in the area of Fife where the Bates Motel is located. (9/9 RP 90-92)

## *2. Facts from Trial*

The relevant testimony of the officers at trial was substantially similar to their testimony at the CrR 3.6 hearing. (1 RP 67-72) The nearly 60 grams of white substance discovered in the motel room by the officers tested positive as cocaine. (3 RP 347-49) The officers testified that such a large amount of crack cocaine is more consistent with sales than with personal use. (1 RP 92-93; 3 RP 365) The street value of this amount of cocaine is approximately \$6,000.00. (3 RP 367) Micenko also testified that Bell had \$964.00 in his pocket. (1 RP 108, 109)

Butts testified at trial that Bell arrived on the morning of February 24, and asked if he could hang out. (2 RP 210) She knew Bell because she had purchased drugs from him in the past, so she agreed to let him come in. (2 RP 210, 211, 213-24) According to Butts, Bell brought powder cocaine into the room with him, and “cooked” it into rock cocaine in the bathroom. (2 RP 212,

214) Bell offered some of the product to Butts, and she smoked it. (2 RP 214) She testified that as Bell sat at the table and began cutting a large rock of cocaine into smaller pieces, the police knocked on the door. (2 RP 216-17, 218)

Also at trial, two Deputy Prosecuting Attorney's presented scheduling orders purportedly signed by Bell, which listed hearing dates and courtrooms for his case. They testified that when a defendant does not respond when his case is called at a hearing, they request an arrest warrant. The Deputies presented copies of requests for warrants and the issued warrants relating to two dates where Bell did not respond when his case was called. (2 RP 159-60, 161, 166-67, 167-68, 171-73, 263, 265, 267, 281-83, 285; Exh. 17, 18, 20, 21, 23, 24, 27, 28, 29)

#### **IV. ARGUMENT & AUTHORITIES**

##### **A. The trial court erred when it denied Bell's motion to suppress.**

When reviewing the denial of a motion to suppress, the court should determine whether substantial evidence supports the challenged findings of fact. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999) (citing State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)). Substantial evidence is evidence sufficient to

persuade a fair-minded, rational person of the truth of the finding. Mendez, 137 Wn.2d at 214 (citing Hill, 123 Wn.2d at 644). “A trial court’s erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal.” Hill, 123 Wn.2d at 647. The trial court’s conclusions of law are reviewed *de novo*. Mendez, 137 Wn.2d at 214 (citing State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996)).

1. *Bell can assert automatic standing to challenge the search of the motel room because he was charged with possessing items found during the search.*

A trial court’s decision on standing is reviewed *de novo*. State v. Jones, 146 Wn.2d 328, 331-35, 45 P.3d 1062 (2002). The trial court in this case concluded that Bell did not have standing to challenge the search of the motel room:

7. The defendant does not have automatic standing to challenge the search of the motel room because the defendant was not legitimately and lawfully on the premises where the search occurred. . . .
8. Furthermore, the court finds that even if the defendant was legitimately on the premises, he still does not have automatic standing to challenge the search of the motel room because he did not have a reasonable expectation of privacy in the premises because he was merely a “casual visitor.”

(CP 278) The trial court was incorrect, and apparently confused as to the appropriate factors to consider in determining whether Bell

had standing to challenge the search.

As a prerequisite to asserting an unconstitutional invasion of privacy rights, a criminal defendant has traditionally had the burden of demonstrating that his or her rights were violated by the unconstitutional activity. 3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 11.3, at 280 (2d ed. 1978). In Jones v. United States, the Supreme Court created an exception to this rule by giving defendants “automatic standing” to challenge the search or seizure of property where the charged offense involves possession of property as an element of the crime. 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed 2d 697 (1960).

Although the United State’s Supreme Court has since abolished automatic standing under the Fourth Amendment, Washington courts continue to adhere to the automatic standing rule as part of the protections guaranteed by art. I, § 7 of the Washington State Constitution. State v. Simpson, 95 Wn.2d 170, 181, 622 P.2d 1199 (1980); State v. Carter, 127 Wn.2d 836, 850, 904 P.2d 290 (1995); State v. Williams, 142 Wn.2d 17, 22, 11 P.3d 714 (2000).

Contrary to the trial court’s findings, a defendant need not establish that he was legitimately on the searched premises or that

he had an expectation of privacy in the searched premises. (CP 277) This is because the automatic standing doctrine is intended to protect a defendant from having to provide testimony that would establish standing, but that could later be used against him at trial to establish guilt:

Without automatic standing, a defendant will ordinarily be deterred from asserting a possessor interest in illegally seized evidence because of the risk that statements made at the suppression hearing will later be used to incriminate him, albeit under the guise of impeachment. For a defendant, the only solution to this dilemma is to relinquish his constitutional right to testify in his own defense.

Simpson, 95 Wn.2d at 180; see also Jones, 146 Wn.2d at 334.

Accordingly, where the challenged police action produced evidence against a defendant, the defendant may assert automatic standing if: (1) he is charged with an offense that involves possession as an essential element; and (2) if he had actual or constructive possession of the contraband at the time of the search or seizure. Jones, 146 Wn.2d at 332-33; Simpson, 95 Wn.2d at 181; State v. Zakel, 119 Wn.2d 563, 568, 834 P.2d 1046 (1992); State v. Michaels, 60 Wn.2d 638, 644-47, 374 P.2d 989 (1962).

Here, Bell satisfies both requirements necessary to assert automatic standing. Bell was charged with unlawful possession of

a controlled substance with intent to deliver. (CP 94) Possession is an essential element of this crime. RCW 69.50.401; WIPIC 50.14. And because the cocaine belonged to Bell (according to Butts), he had dominion and control over the cocaine and was therefore in constructive possession of the seized items.<sup>2</sup> Bell did have standing to challenge the search of the motel room.

*2. The officers improperly seized and detained Bell and Butts, so all contraband discovered during a subsequent search should have been suppressed.*

The United States Constitution protects a citizen's right to be free from unreasonable search and seizure. U.S. Const., amd. IV. The Washington State Constitution goes further and requires actual authority of law before the State may disturb an individual's private affairs. Wash. Const. art. I, § 7; see also State v. Evans, 159 Wn.2d 402, 150 P.3d 105 (2007).<sup>3</sup>

All seizures of a person, even those involving only brief detentions, must be tested against the constitutional guarantee of freedom from unreasonable searches and seizures. Terry v. Ohio,

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<sup>2</sup> A person has constructive possession of drugs if he has dominion and control over them. State v. Staley, 123 Wn.2d 794, 798, 872 P.2d 502 (1994); State v. Spruell, 57 Wn. App. 383, 385, 788 P.2d 21 (1990).

<sup>3</sup> Generally, a motel guest has the same expectation of privacy during his tenancy as the owner or renter of a private residence. Stoner v. California, 376 U.S. 483, 486, 84 S. Ct. 889, 891, 11 L. Ed. 2d 856 (1964); State v. York, 11 Wn. App. 137, 141, 521 P.2d 950 (1974).

392 U.S. 1, 17, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1986).

The individual asserting a seizure in violation of art. I, § 7 bears the burden of proving that there was a seizure. State v. Young, 135 Wn.2d 498, 510, 957 P.2d 681 (1998). Where the facts are undisputed, the determination of whether there is a violation of art. I, § 7 is a question of law reviewed de novo. State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202 (2004).

When analyzing police-citizen interactions, the court must first determine whether a warrantless search or seizure has taken place, and if it has, whether the action was justified by an exception to the warrant requirement. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003). In this case, the trial court concluded that Bell and Butts were not seized when the officers ordered them to sit on the bed “because the officers remained outside of the room, they had not drawn their weapons or made any show of force, and [Bell and Butts] remained unrestrained.” (CP 277)

A seizure occurs under art. I, § 7 when, considering all the circumstances, an individual’s freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer’s use of force or display of authority. O'Neill, 148 Wn.2d at 574. This determination is made

by objectively looking at the actions of the law enforcement officer.  
Young, 135 Wn.2d at 501.

The question in this case is whether a reasonable person in Bell's position would have believed he was free to go or otherwise terminate the encounter, given the actions of the two officers.  
Young, 135 Wn.2d at 510-11.

Washington courts have found that permissive encounters “ripen . . . into seizures when an officer commands the defendant to wait, retains valuable property, or blocks the defendant from leaving.” State v. Coyne, 99 Wn. App. 566, 573, 995 P.2d 78 (2000).

Police need not take actual physical custody of the defendant for a seizure to have occurred. In State v. Ellwood, for example, the court found that an officer's request that the defendant “wait right here” constituted a seizure. 52 Wn. App. 70, 73, 757 P.2d 547 (1988). In State v. Barnes, the defendant was seized when the officer communicated a mistaken belief that the defendant had an outstanding warrant and told him to “wait.” 96 Wn. App. 217, 223, 978 P.2d 1131 (1999).

And a seizure may occur by an officer's command or request even if the words used do not explicitly or specifically deny a

defendant the freedom to walk away. State v. Richardson, 64 Wn. App. 693, 696, 825 P.2d 754 (1992) (police directive to empty pockets and place hands on patrol car transformed encounter into seizure); State v. Pressley, 64 Wn. App. 591, 598, 825 P.2d 749 (1992) (implicitly concluding that officer's request to defendant "to remove her hand or to show him what was in it" was a detention requiring legal justification); State v. Moreno, 21 Wn. App. 430, 434, 585 P.2d 481 (1978) ("officer cannot proceed with specific questions designed to elicit incriminating statements without being adjudged to have made a formal arrest").

Here, Officers Micenko and Eugley stood together at the threshold of the motel room, effectively blocking the exit from the premises. (9/9/ RP 18) Once Bell emerged voluntarily from the bathroom, Officer Eugley ordered both he and Butts to sit on the bed while they were questioned. (9/9 RP 17, 18, 43) Bell was not free to leave, and was clearly seized.

The trial court concluded that even if Bell and Butts were seized:

the seizure was reasonable in scope and justified in light of the officer's reasonable investigation of the possible trespassing or theft of services crime taking place. . . . Furthermore, asking the occupants to sit on the bed and keep their hands in view was a

reasonable and unobtrusive request to address the officer's legitimate safety concerns during their brief investigation.

(CP 277) This conclusion is false, because there was no evidence that Bell was committing the "possible" crimes of "trespassing or theft of services."

"[If] a police officer's conduct or display of authority, objectively viewed, rises to the level of a seizure, that seizure is valid only where there are 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the detention of the person." O'Neill, 148 Wn.2d at 576 (quoting Terry, 392 U.S. at 21). The level of articulable suspicion necessary to support an investigative detention is "a substantial possibility that criminal conduct has occurred or is about to occur." State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). In this case, the facts known to the officers when they initiated contact with Butts and Bell did not give rise to an articulable suspicion of criminal conduct.

First, the information that a guest was in Butts' room came from an unidentified third party; the motel manager had not seen anyone in Butts' room and had only heard from another guest that someone was there. (9/9 RP 6, 11) Second, there was no reliable

indication that the current guest had stayed overnight. (9/9 RP 6, 13) And third, only an overnight guest is required to pay the “nominal” fee. (9/9 RP 7) At most, there was a violation of the rental agreement between the motel and Butts. This is a civil, contractual matter, not a criminal matter.

Even if this contractual matter did rise to the level of a criminal act, the act was committed by Butts, not Bell. Butts rented the motel room and thereby agreed to follow the motel’s guest policies regarding overnight guests. (9/9 RP 7, 12-13) Butts had been told by the manager to register any guests, whether temporary or overnight. (9/9 RP 7, 12-13) Bell was simply a temporary and invited guest who had not been informed of any of these registration requirements. He did not violate the motel’s policies, Butts did. He did not possess the marijuana and pipe, Butts did. (9/9 RP 19, 24) If there was a crime, it was committed only by Butts. But an individual's proximity to others suspected of criminal activity will not support an investigatory detention. Richardson, 64 Wn. App. at 697.

Moreover, it is well established that presence in a high crime area or obvious attempts to avoid an officer also will not justify an investigative detention. See State v. Crane, 105 Wn. App. 301,

309, 19 P.3d 1100 (2001); State v. Little, 116 Wn.2d 488, 504, 806 P.2d 749 (1991); State v. Soto-Garcia, 68 Wn. App. 20, 26, 841 P.2d 1271 (1992); State v. Gluck, 83 Wn.2d 424, 518 P.2d 703 (1974).

The fact that Bell was in a cluttered motel room with a person who was potentially committing a crime and did not immediately respond to the officer's knocks, did not provide the officers with authority to seize and detain Bell.

The officers were asked to determine whether there was an unregistered visitor in Butts' room, and if so, to ask that visitor to either register or leave. In the words of Officer Micenko, they were assisting with a "business thing," not a criminal thing. (9/9 RP 38) Officer Eugley testified that the only reason they were there was to tell the guest to register or leave. (9/9 RP 33) The officers could have completed this task without detaining and seizing Bell and Butts. Upon seeing Bell, the officers could have very simply asked him to step outside, then delivered their message to register or leave the motel. But they did not. Instead, they began interviewing Bell and Butts about their identity and activities. (9/9 RP 43, 45)

The officers obviously detained and seized both Bell and Butts inside the room because they wanted to investigate potential

criminal activity unrelated to the motel guest registration policy. Officer Micenko testified that the motel was in an area well known for drug and prostitution activities, and he suspected drug activity even before he arrived at the motel. (9/9 RP 52) And Micenko also recognized Bell from prior drug-related incidents. (9/9 RP 42) The officers went beyond the proper scope of their mission and instead began a criminal investigation without the required articulable suspicion.

Because the initial contact was a seizure and detention, conducted without a reasonable and articulable suspicion of criminal activity, all evidence and statements obtained as a result of the contact should have been suppressed. Kennedy, 107 Wn.2d at 4 (citing Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)); State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999) (When an unconstitutional search occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed).

B. The 20-year exceptional sentence imposed by the court is clearly excessive.

Sentences must fall within the proper presumptive sentencing ranges set by the legislature. State v. Williams, 149

Wn.2d 143, 146, 65 P.3d 1214 (2003). When an offender is sentenced on two or more current offenses, the sentences imposed on each crime should be served concurrently. RCW 9.94A.589(1)(a). However, a trial judge may order that the sentences be served consecutively under the exceptional sentence provisions of RCW 9.94A.535 if “[t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.” RCW 9.94A.535(2)(c); RCW 9.94A.589(1)(a).<sup>4</sup> But an exceptional sentence may be reversed on appeal if the length of the sentence imposed is “clearly excessive.” RCW 9.94A.585(4)(b).

Bell has an offender score of 15 points for each of his three current convictions. (CP 194) The possession with intent to deliver conviction has a standard range of 60-120 months, and each of the bail jumping convictions has a standard range of 51-60 months. (CP 194) The trial court imposed sentences at the top of the standard range for each count; 120 months for the possession conviction and 60 months for each bail jumping conviction. (CP

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<sup>4</sup> An exceptional sentence based on a defendant's high offender score does not violate the defendant's Sixth Amendment jury trial rights. State v. Newlum, 142 Wn. App. 730, 742-43, 176 P.3d 529, review denied 165 Wn.2d 1007, 198 P.3d 513 (2008).

196; 4 RP 531-32) Then the court ordered that all three sentences be served consecutively, for a term of confinement totaling 240 months. (CP 196-97; 4 RP 532)

The court reasoned that due to Bell's "high offender score on all counts, some of his current offenses will go unpunished if a sentence within the standard range is imposed." (CP 187) But a sentence of 20 years, twice the maximum standard range for the possession conviction and four times the maximum standard range for each bail jumping conviction, is excessive in length.

In determining the standard range sentence for bail jumping, the Legislature determined that each additional point increases the standard range for that crime anywhere from four to 15 months. RCW 9.94A.510; RCW 9A.20.021(1). The Legislature believed that each additional point required no more than 15 months of additional punishment when an offender is sentenced for the crime of bail jumping.

For the crime of possession with intent to deliver, the standard range actually does not change unless an offender score increases by several points. An offender score of zero to two has a standard range of 12-20 months, an offender score of three to five has a standard range of 20-60 months, and an offender score of six

to nine has an offender score of 60-120 months. RCW 9.94A.517, .518. Again, the Legislature made its intention clear that an offender should receive only a slight increase in punishment, if any, for each additional point when sentenced for the crime of possession with intent to deliver.

The 240 month sentence imposed in this case adds up to 30 months for each additional point above the nine-point offender score maximum. This is clearly above and beyond the length of time that the Legislature deemed appropriate punishment for these crimes.

Moreover, the trial court already imposed the maximum of the standard range for possession with intent to deliver, which is a full 60 months, or five years, above the standard range minimum. (CP 194, 196) Similarly, the court imposed the maximum of the standard range for each bail jumping charge, which is 9 months above the standard range minimum for that crime. (CP 194, 196) The court could have easily fashioned a sentence that would have taken into consideration Bell's high offender score. But 20 years of confinement for non-violent class B and class C felonies is clearly excessive. This court should remand this case for imposition of a more appropriate and proportionate sentence.

**V. CONCLUSION**

Because Bell was charged with possessing the items discovered during the motel room search, he had automatic standing to challenge the search. In addition, because Bell and Butts were improperly seized before the search, and because all contraband was observed or found by the officers as a direct result of the improper seizures, the evidence should have been suppressed. For this reason, Bell's conviction should be reversed. Alternatively, the 20 year term of confinement imposed in this case is clearly excessive considering the Legislature's clear indication that additional points should result in only minimal additional time. This court should reverse Bell's sentence and remand for resentencing.

DATED: April 8, 2010



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Attorney for Reginald Bell

**CERTIFICATE OF MAILING**

I certify that on 04/08/2010, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kathleen Proctor, DPA, Prosecuting Attorney's Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402; and (2) Reginald Bell # 963274, Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, WA 99362.



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