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Court of Appeals
Division III
State of Washington

No. 31099-0-III

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

SOPHIA MARIE GONZALEZ
Defendant/Appellant.

APPEAL FROM THE KITTITAS COUNTY SUPERIOR COURT
Honorable Scott R. Sparks, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it imposed an exceptional sentence above the standard range.

2. The trial court erred when it failed to enter written findings of fact and conclusions of law in support of its decision to impose an exceptional sentence.

3. The trial court erred when it failed to make a finding that the aggravating sentencing factor found by the jury provides a substantial and compelling reason justifying an exceptional sentence.

4. The record does not support the implied finding that Ms. Gonzalez has the current or future ability to pay Legal Financial Obligations.

5. The trial court erred by imposing discretionary costs.

6. The trial court erred by imposing a variable term of community custody as part of the sentence.

7. There are internal inconsistencies among the Judgment and Sentence, Appendix 4.6 and the domestic violence no-contact order, which should be clarified.

Issues Pertaining to Assignments of Error

1. Where the sentencing statute requires that the trial court enter written findings of fact and conclusions of law explaining its decision to impose an exceptional sentence, and the trial court failed to enter such written findings, should this case be remanded for entry of findings of fact and conclusions of law? (Assignments of Error 1 & 2)

2. Where the sentencing statute requires that the trial court specifically find that the factors relied upon in imposing an exceptional sentence provide substantial and compelling reasons justifying an exceptional sentence, and the trial court failed to make such a finding, should this case be remanded for resentencing? (Assignments of Error 1 & 3)

3. Should the directive to pay legal financial obligations based on an implied finding of current or future ability to pay them be stricken from the Judgment and Sentence as clearly erroneous, where the finding is not supported in the record? (Assignment of Error 4)

4. Does a trial court abuse its discretion in imposing discretionary costs where the record does not reveal that it took Ms. Gonzalez' financial resources into account and considered the burden it would impose on her as required by RCW 10.01.160? (Assignment of Error 5)

5. Does a sentencing court lack statutory authority to impose a variable term of community custody contingent on the amount of earned early release under RCW 9.94A.701, the statute authorizing the superior court to impose a sentence of community custody?(Assignment of Error 6)

6. The court ordered Ms. Gonzalez to participate in and complete a parenting class with her step-son, J.S. At the same time it ordered her to have no contact with her step-son and entered a five year domestic violence no-contact order naming her step-son as the protected party. Should the matter be remanded for clarification? (Assignment of Error 7)

B. STATEMENT OF THE CASE

Sophia Marie Gonzalez was convicted by a jury of third degree assault of a child and second degree criminal mistreatment. CP 329, 332. As to each offense, the jury found that Ms. Gonzalez and the child victim were members of the same household, and that she should have known the victim was particularly vulnerable or incapable of resistance. CP 330–31, 333–34. The jury determined Ms. Gonzalez was criminally negligent in putting her almost three-year-old step-son J.S. into bath water without first checking the final temperature, and was reckless in home-treating (with her husband) the thermal burns for several days before seeking medical care. 7/24/13 RP 4–50; 7/25/12 RP 13–75, 81–82, 89–132, 142–50;

7/26/12 RP 6–102, 106–49, 151–76; 7/27/12 RP 12–68, 70–119; 7/31/12¹ RP 169–202, 206–46, 253–350; 8/1/12 RP 581–85. At the time, Ms. Gonzalez lived with her three children, ages 3, 4 and 7, and her husband Roberto Sanchez². Mr. Sanchez had earlier obtained custody of his son, J.S, who was also living with them. 7/25/12 RP 31; 7/31/12 RP 258–59, 162–63; CP 364.

The court sentenced Ms. Gonzalez to confinement of 6 months³ on the assault and 24 months⁴ on the mistreatment, to run consecutively, for a total period of confinement of 30 months. CP 371. The court made no written findings regarding the exceptional sentence. *See, e.g.* CP 370.

Among the conditions of sentence, the court ordered Ms. Gonzalez to participate in and complete a parenting class with her step-son. 8/31/12 RP 701; CP 372. At the same time it ordered her to have no contact with her step-son (CP 379 at ¶ 19) and entered a five year domestic violence no-contact order naming her step-son as the protected party (CP 374, 382–83).

¹ The transcript of the July 31, 2012 proceeding appears to have been duplicated in the volumes received from court reporter Jewel Smith (to-wit: Vol. II contains transcription of July 31, 2012 at pages 165–365, while Vol. III contains the same transcription of July 31, 2012 at pages 365–565 and ending with Vol. IV at page 566). For purposes of briefing, counsel is citing solely to pages 165–365 for the July 31, 2012 proceeding.

² In a separate proceeding Mr. Sanchez had been convicted of second degree criminal mistreatment arising out of these facts. CP 364.

³ Two times the standard range of 1–3 months, based on an offender score of 0. CP 370.

⁴ Two times the standard range of 6–12 months, based on an offender score of 0. Id.

The trial court imposed the following term of community custody as part of Ms. Gonzalez' sentence:

- (A) The defendant shall be on community custody for the longer of:
(1) the period of early release. RCW 9.94A.728(1), (2); or
(2) the period imposed by the court, as follows:
... [X] 12 months;

CP 371–72 at ¶ 4.2.

The court imposed mandatory costs of \$600 and discretionary costs of \$3,500, for a total amount of Legal Financial Obligations (“LFOs”) of \$4,100. CP 373. The court made no express finding that Ms. Gonzalez had the present or future ability to pay the LFOs. 8/31/12 RP 686–703; *see* CP 371 at ¶ 2.5. However, the Judgment and Sentence contained the following boilerplate language:

¶ 2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change.

CP 371. The court made no inquiry into Ms. Gonzalez' financial resources and the nature of the burden that payment of LFOs would impose. 8/31/12 RP 686–703. The court ordered Ms. Gonzalez to make

monthly payments of no less than \$50 commencing upon her release⁵ and beginning 30 days from August 31, 2012⁶.

This appeal followed. CP 385.

C. ARGUMENT

1. The trial court erred when it failed to make and enter the statutorily required written findings in support of its decision to impose an exceptional sentence.

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). However, a court may impose a sentence that exceeds that sentence range if a jury finds, beyond a reasonable doubt, one or more aggravating factors alleged by the State, and if the court determines that "the facts found are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.537(6); *see also* RCW 9.94A.535. "Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law." RCW 9.94A.535.

⁵ CP 374 at ¶ 4.3.

⁶ The date the Judgment and Sentence was signed. CP 380.

RCW 9.94A.585(4) governs appellate review of the imposition of an exceptional sentence:

To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge OR that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

The reviewing court performs a three-pronged analysis in its review of an exceptional sentence: (1) whether the record supports the jury's special verdict on the aggravating circumstances; (2) whether the trial court's reasons for imposing an exceptional sentence are substantial and compelling; and (3) whether the sentence was clearly excessive or clearly lenient. State v. Hale, 146 Wn. App. 299, 305-06, 189 P.3d 829 (2008); RCW 9.94A.585.

In this case, the jury unanimously found as an aggravating factor that the victim of the two offenses was particularly vulnerable. This is a recognized aggravating factor for sentencing purposes. RCW 9.94A.535(3)(b).

However, the trial court failed to make a finding that this fact provides a substantial and compelling reason justifying exceptional sentence in this case, as required by RCW 9.94A.535. *See also Hale*, 146 Wn. App. at 306 ("the trial court must enter findings and conclusions

justifying its exceptional sentence"). The court also failed to enter written findings of fact as required by RCW 9.94A.535.

By failing to make the required finding that substantial and compelling reasons justify an exceptional sentence, and by failing to enter any written findings and conclusions in support of its decision to impose an exceptional sentence, the trial court failed to fulfill its statutory sentencing obligations.

The failure is prejudicial in this case because a review of the trial court's oral ruling shows that the court did not predominantly rely on the "particular vulnerability" factor found by the jury when it imposed an exceptional sentence. The court reflected that the bare offenses of assault of a child and criminal mistreatment necessarily involve very vulnerable people:

... The court has no authority to impose a[n] exceptional sentence unless the jury has found an aggravating factor has been found. They did that in this case. The jury found that Joey was particularly vulnerable. Now, that particular factor when you're talking about an assault of a child seems to me to be somewhat already inculcated [sic] in the crime just like criminal mistreatment. You have very vulnerable people. Supreme Court answered that question [whether] particular vulnerab[ility] is a proper aggravator for both of these crimes. ...

8/31/12 RP 699.

The court also considered mitigating factors in Ms. Gonzalez'

favor:

... And so we look at the individuals but we also have to look at our entire society and figure out what the right thing to do is. ... I think [the] court's required to look at other people who did something similar, [such as your husband's separate] crime in not obtaining the appropriate medical care in a timely fashion was almost like yours. [But i]n fact there is a slight difference. [He] is a father not a stepparent. His attitude and his actions were slightly different than yours. You actually took the child to the hospital when he couldn't be bothered to. I take that into consideration ... I am also well aware that you never committed another crime in your life—one speeding ticket just happened a couple years ago.

8/31/12 RP 698–99, 701.

Ultimately the court appeared to rely primarily on the fact of conviction as justification for the exceptional sentence:

[At t]he end of the day what we have is Joey being carelessly burned by you. I agree with [your defense attorney] that the jury I don't think [was] entitled to assume the evidence was as [the prosecutor] argued it to the jury because [the jury] didn't buy that argument. They didn't convict you [of that]. But the burn was carelessly inflicted, recklessly as found by the jury. You failed to seek the appropriate medical treatment. I gave [your husband] Mr. Sanchez two times the standard range kind of standard range [sic] and I think that was appropriate for that carelessness. That's what I'm going to impose upon you for [the criminal mistreatment]. In addition ... [for] the negligence in the actual burning I believe the sentence of [two times the standard range on the assault of a child] is appropriate

8/31/12 RP 700–01.

The court wholly failed to explain whether *and/or* why the jury's finding that the victim was particularly vulnerable presents a substantial and compelling reason to deviate from a standard range sentence for the crimes of third degree assault of a child and second degree criminal mistreatment. 8/31/12 RP 698–702. Without the specific written findings required by statute, it is impossible to conclude that the exceptional sentence imposed in this case comports with statutory requirements.

Where the court fails to enter written findings of fact, the case should be remanded for entry of findings. In re Breedlove, 138 Wn.2d 298, 313, 979 P.2d 417 (1999). And when the trial court fails to make a finding of substantial and compelling reasons to justify an exceptional sentence, reversal of the sentence and remand for resentencing is required. State v. Taitt, 93 Wn. App. 783, 792, 970 P.2d 785 (1999).

2. The directive to pay based on an unsupported finding of ability to pay legal financial obligations and the discretionary costs imposed without compliance with RCW 10.01.160 must be stricken from the Judgment and Sentence.

Ms. Gonzalez did not make this argument below. But, illegal or erroneous sentences may be challenged for the first time on appeal. State

v. Calvin, No. 67627-0-I, 2013 WL 2325121 at *11 (Wash.Ct.App. May 28, 2013), citing State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999).

a. The directive to pay on a date certain must be stricken. There is insufficient evidence to support the trial court's implied finding that Ms. Gonzalez has the present and future ability to pay legal financial obligations, and the directive to pay must be stricken. For purposes of this argument, Ms. Gonzalez is not challenging *imposition* of the LFOs. She is, however, challenging separately the imposition of the discretionary costs. *See* subsection 2.b below.

Courts may require an indigent defendant to reimburse the state for the costs only if the defendant has the financial ability to do so. Fuller v. Oregon, 417 U.S. 40, 47-48, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974); State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992); RCW 10.01.160(3); RCW 9.94A.760(2). To do otherwise would violate equal protection by imposing extra punishment on a defendant due to his or her poverty.

RCW 9.94A.760(1) provides that upon a criminal conviction, a superior court “may order the payment of a legal financial obligation.”⁷ RCW 10.01.160(1) authorizes a superior court to “require a defendant to pay costs.” These costs “shall be limited to expenses specially incurred by

⁷ It appears that imposition of legal financial obligations is also contemplated by the Juvenile Justice Act. *See* RCW 13.40.192.

the state in prosecuting the defendant.” RCW 10.01.160(2). In addition, “[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” RCW 10.01.160(3). “In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” RCW 10.01.160(3).

Here, there is insufficient evidence to support the trial court's implied finding that Ms. Gonzalez has the present and future ability to pay legal financial obligations. Curry concluded that while the ability to pay was a necessary threshold to the imposition of costs, a court need not make a specific finding of ability to pay: “[n]either the statute nor the constitution requires a trial court to enter formal, specific findings regarding a defendant's ability to pay court costs.” 118 Wn.2d at 916. Curry recognized, however, that both RCW 10.01.160 and the federal constitution “direct [a court] to consider ability to pay.” Id. at 915-16.

In this case the court considered Ms. Gonzalez’ “present and future ability to pay legal financial obligations” but made no express finding that she had the present or likely future ability to pay those LFOs. The finding, however, is implied because the court ultimately ordered Ms. Gonzalez to

make monthly payments of no less than \$50 commencing upon her release *and* beginning 30 days from August 31, 2012. CP 371, 374 at ¶ 4.3, 380.

Whether a finding is expressed or implied, it must have support in the record. A trial court's findings of fact must be supported by substantial evidence. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006) (citing Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 939, 845 P.2d 1331 (1993)). The trial court's determination “as to the defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard.” State v. Bertrand, 165 Wn. App. 393, 267 P.3d 511, 517 fn.13 (2011), citing State v. Baldwin, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991).

“Although Baldwin does not require formal findings of fact about a defendant's present or future ability to pay LFOs, the record must be sufficient for [the appellate court] to review whether ‘the trial court judge took into account the financial resources of the defendant and the nature of the burden imposed by LFOs under the clearly erroneous standard.’ ” Bertrand, 165 Wn. App. 393, 267 P.3d at 517, citing Baldwin, 63 Wn. App. at 312 (bracketed material added) (internal citation omitted). A finding that is unsupported in the record must be stricken. Bertrand, 165 Wn. App. 393, 267 P.3d at 517.

Here, the record does not show that the trial court took into account Ms. Gonzalez' financial resources and the nature of the burden of imposing LFOs on her. The record contains no evidence to support the trial court's implied finding that she has the present or future ability to pay LFOs. The record instead supports the opposite conclusion: the trial court found Ms. Gonzalez indigent for purposes of pursuing this appeal (SCOMIS sub-no. 115, filed 9/15/12). The implied finding that she has the present or future ability to pay LFOs that is implicit in the directive to make monthly payments of no less than \$50 commencing upon her release *and* beginning 30 days from August 31, 2012 is simply not supported in the record. It is clearly erroneous and the directive must be stricken from the Judgment and Sentence. Bertrand, 165 Wn. App. 393, 267 P.3d at 517.

The remedy of striking the unsupported finding is supported by case law. Findings of fact that are unsupported by substantial evidence, or findings that are insufficient to support imposition of a sentence are stricken and the underlying conclusion or sentence is reversed. State v. Lohr, 164 Wn. App. 414, 263 P.3d 1287, 1289-92 (2011); State v. Schelin, 147 Wn.2d 562, 584, 55 P.3d 632 (2002) (Sanders, J. dissenting). There appears to be no controlling contrary authority holding that it is it

appropriate to send a factual finding without support in the record back to a trial court for purposes of “fixing” it with the taking of new evidence. Cf. State v. Souza (vacation and remand to permit entry of further findings was proper where evidence was sufficient to permit finding that was omitted, the State was not relieved of the burden of proving each element of charged offense beyond reasonable doubt, and insufficiency of findings could be cured without introduction of new evidence), 60 Wn. App. 534, 541, 805 P.2d 237, *recon. denied, rev. denied*, 116 Wn.2d 1026 (1991); Lohr (where evidence is insufficient to support suppression findings, the State does not have a second opportunity to meet its burden of proof), 164 Wn. App. 414, 263 P.3d at 1289–92.

b. The imposition of discretionary costs of \$3,500 must also be stricken. Since the record does not reveal that the trial court took Ms. Gonzalez’ financial resources into account and considered the burden it would impose on her as required by RCW 10.01.160, the imposition of discretionary costs must be stricken from the judgment and sentence.

A court's determination as to the defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard. Baldwin, 63 Wn. App. at 312. The decision to impose discretionary costs requires the trial court to balance the

defendant's ability to pay against the burden of his obligation. This is a judgment which requires discretion and should be reviewed for an abuse of discretion. Id.

Relevant statutory authority. Here, the court ordered Ms. Gonzalez to pay \$500 Victim Assessment, \$100 DNA collection fee, and \$3,500 in discretionary costs⁸, for a total legal financial obligation of \$4,100. CP 373. The trial court may order a defendant to pay discretionary costs pursuant to RCW 10.01.160. But,

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3). It is well-established that this provision does not require the trial court to enter formal, specific findings. *See Curry*, 118 Wn.2d at 916. Rather, it is only necessary that the record is sufficient for the appellate court to review whether the trial court took the defendant's financial resources into account. Bertrand, 165 Wn. App. at 404. Where the trial court does enter a finding, it must be supported by evidence. In the absence of a specific finding, there must still be evidence in the record

⁸ \$200 court costs, \$3,250 for court-appointed attorney and \$50 booking fee. CP 373; RCW 9.94A.760; RCW 10.01.160.

to show compliance with RCW 10.01.160(3). Calvin, No. 67627–0–I, 2013 WL 2325121 at *11.

Here, after considering Ms. Gonzalez’ “present and future ability to pay legal financial obligations” (in boilerplate language), the court imposed discretionary costs of \$3,500. CP 371, 373. At a minimum the imposition of discretionary costs represents an implied finding that Ms. Gonzalez is or will be able to pay them. However, the record reveals no balancing by the court through inquiry into Ms. Gonzalez’ financial resources and the nature of the burden that payment of LFOs would impose on her. 8/31/12 RP 686–703. Further, there was no evidence of Ms. Gonzalez’ present or future employment, her financial resources including debts, or employability. *See Calvin*, No. 67627–0–I, 2013 WL 2325121 at *11.

In sum, the record does not show that the trial court took Ms. Gonzalez’ particular financial resources and her ability (or not) to pay into account as required by RCW 10.01.160(3). The implied finding of ability to pay is unsupported by the record and clearly erroneous. Further, the court’s imposition of discretionary costs without compliance with the balancing requirements of RCW 10.01.160(3) was an abuse of discretion. The remedy is to strike the directive to pay on a date certain *and* the

imposition of court costs. Calvin, No. 67627–0–I, 2013 WL 2325121 at *12; Bertrand, 165 Wn. App. 393, 267 P.3d at 517.

3. The sentencing court did not have statutory authority to impose a variable term of community custody contingent on the amount of earned early release under RCW 9.94A.701, the statute authorizing the superior court to impose a sentence of community custody.

Sentencing is a legislative power, not a judicial power. State v. Bryan, 93 Wn.2d 177, 181, 606 P.2d 1228 (1980). The legislature has the power to fix punishment for crimes subject only to the constitutional limitations against excessive fines and cruel punishment. State v. Mulcare, 189 Wn. 625, 628, 66 P.2d 360 (1937). It is the function of the legislature and not the judiciary to alter the sentencing process. State v. Monday, 85 Wn.2d 906, 909-910, 540 P.2d 416 (1975). A trial court's discretion to impose sentence is limited to what is granted by the legislature, and the court has no inherent power to develop a procedure for imposing a sentence unauthorized by the legislature. State v. Ammons, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986).

Statutory construction is a question of law and reviewed de novo. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583

(2001). A trial court may only impose a sentence that is authorized by statute. In re Pers. Restraint of Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980).

RCW 9.94A.701(3) provides that:

A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for: ...

(a) Any crime against persons under RCW 9.94A.411(2);

...

RCW 9.94A.701(3)(a). Third degree assault of a child is listed as a crime against persons under RCW 9.94A.411(2). Thus, the court could impose a 12-month term of community custody.

However, “[u]nder [RCW 9.94A.701], a court may no longer sentence an offender to a variable term of community custody contingent on the amount of earned release but instead, it must determine the precise length of community custody at the time of sentencing.” State v. Franklin, 172 Wn.2d 831, 836, 263 P.3d 585 (2011).

Here, the trial court imposed the following term of community custody:

(A) The defendant shall be on community custody for the longer of:
(1) the period of early release. RCW 9.94A.728(1), (2); or
(2) the period imposed by the court, as follows:
... [X] 12 months;

CP 371–72 at ¶ 4.25.

The trial court did not have the statutory authority to sentence Ms. Gonzalez to a variable term of community custody contingent on the amount of earned release. Under RCW 9.94A.701 it could only sentence her to a finite term of 12 months. Therefore, the variable term of community custody imposed by the trial court was improper, and the matter should be remanded for resentencing to a finite term.

4. The Judgment and Sentence, Appendix 4.6 and domestic violence no-contact order have internal inconsistencies which cannot be resolved by looking at the oral ruling, and the matter should be remanded for clarification.

Among the conditions of sentence, the court orally ordered Ms. Gonzalez to participate in parenting classes with her step-son. 8/31/12 RP 701. The Judgment and Sentence requires her to complete a parenting class. CP 372. However, Appendix 4.6 to the Judgment and Sentence orders her to have no contact with her step-son. CP 379 at ¶ 19. The court also entered a five year domestic violence no-contact order naming her step-son as the protected party. CP 374 at ¶ 4.6, 382–83.

A court has the authority to correct an erroneous sentence. State v. Broadway, 133 Wn.2d 118, 136, 942 P.2d 363 (1997). An oral ruling on a judgment and sentence is not conclusive or final. State v. Dailey, 93

Wn.2d 454, 458-59, 610 P.2d 357 (1980); State v. Mallory, 69 Wn.2d 532, 533-34, 419 P.2d 324 (1966) (oral decision has no final or binding effect unless formally incorporated into the findings, conclusions and judgment). And although an oral ruling may clarify an ambiguity in a trial court's written decision,⁹ the court's oral decision here sheds no light on how to resolve the conflict among the Judgment and Sentence, Appendix 4.6 and the no-contact order. The matter should be remanded for clarification.

⁹ See State v. Smith, 82 Wn. App. 153, 159, 916 P.2d 960 (1996).

D. CONCLUSION

For the reasons stated, the matter should be remanded for entry of written findings and conclusions in support of the exceptional sentence, and counsel should thereafter be allowed to assign additional assignments of error and provide supplemental briefing if appropriate. Additionally, remand is appropriate with instructions to impose a finite term of 12 months community custody, to strike the implied finding of present and future ability to pay legal financial obligations and the imposition of discretionary costs from the Judgment and Sentence, and to provide clarification of the inconsistent sentencing documents.

Respectfully submitted on July 15, 2013.

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PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on July 15, 2013, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of brief of appellant:

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