

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

21989-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOHN E. MINES, JR., APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE ROBERT D. AUSTIN

SECOND SUPPLEMENTAL BRIEF OF RESPONDENT

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ORIGINAL

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I.

ISSUE PRESENTED

A. WILL THE CHANGES IN RCW 9.94A.537 AFFECT THE EXCEPTIONAL MINIMUM SENTENCE IN THIS CASE?

II.

STATEMENT OF THE CASE

The State incorporates by reference the Statement of the Case previously filed in this case.

III.

ARGUMENT

Since the State's last response in this case, the issue of the RCW 9.94A.712 exceptional sentences has been decided by the Washington State Supreme Court in *State v. Clarke*, 156 Wn.2d 880, 134 P.3d 188 (2006). There is no longer a split of authority on this issue. In fact, there no longer *is* an issue. Sentences under former RCW 9.94A.712 are indeterminate sentences and the minimums set by the trial court are not subject to *Blakely*. *Id.*

The specific question addressed to the parties in the latest letter from this court inquires about any effect from recent amendments to

RCW 9.94A.537 on this case. The State's succinct response would be that there are no effects applicable to this case as there is no application of *Blakely* or *Apprendi*. The most recent changes to RCW 9.94A.537 allow a trial court to convene a jury for the purposes of determining exceptional sentences on remanded cases. According to *Clarke* and RCW 9.94A.537, if this case were remanded for resentencing, the sentencing court would be authorized to impose the sentence as it currently exists.

IV.

CONCLUSION

Blakely and *Apprendi* do not apply exceptional minimum sentences under RCW 9.94A.712.

Respectfully submitted this 24 day of July, 2007.

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