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

State of Washington,)	
Respondent,)	C.O.A. NO. 21989-5-III
)	
vs.)	SUPPLEMENTAL BRIEF
)	
John Edward Mines, Jr.,)	
Appellant.)	
_____)	

Appellant John Mines Jr. was convicted of First Degree Rape(Count I), Second Degree Assault (Count II), and Kidnaping in the First Degree (Count III). Cp 227-228. His standard range for Count I is 129-171 months, for Count II 15-20 months and for Count III 72- 96 months. Cp 229. The Judge sentenced him to an exceptional sentence of 207 months on Count I, 17 months on Count II, and 96 months on Count III. Cp 233. Count II and Count III are served concurrent to Count I. Cp 233. The Judge found that the

acts alleged were done with deliberate cruelty and thus justified an exceptional sentence. Rp 521-522.

The determination of deliberate cruelty was not submitted to the jury, rather the Judge made the determination after trial. In June the United States Supreme Court decided *Blakely vs. Washington*, 542 U.S. _____ (2004). (A copy of the Slip Opinion is attached). In *Blakeley* the defendant entered a plea in exchange for the State's recommendation of a standard range sentence of 49-53 months. *Blakeley* pg. 3. The Judge rejected the State's recommendation and imposed a sentence of 90 months after a three day hearing before the bench. *Blakeley* pg 3-4.

The Supreme court in the *Blakeley* decision applied the rule set out in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000): “ ‘Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.’ This rule reflects two longstanding tenets of common-law criminal jurisprudence: that the ‘truth of every accusation’ against a defendant ‘should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors,’ 4 W Blackstone, Commentaries of the Laws of England 434 (1769), and that ‘as accusation

which lacks any particular fact which the law makes essential to the punishment is . . .no accusation within the requirements of the common law, and it is no accusation in reason,' 1 J. Bishop, Criminal Procedure §87, p. 55 (2d ed. 1872).” *Blakeley* pg. 5.

In this case, as in *Blakeley*, the defendant was sentenced to three years above the standard range because he had acted with “deliberate cruelty”. The facts supporting the sentence were not admitted by the defendant nor was there a jury finding of deliberate cruelty. The “statutory maximum” for *Apprendi* purposes is the maximum sentence a judge may impose based only on the basis of facts admitted by the defendant or reflected by the jury verdict. *Blakeley* pg 7. “ In other words the relevant “statutory maximum” is not the maximum sentence a judge may impose after finding additional fact, but the maximum he may impose *without* any additional findings. When a judge inflicts punishment that the jury’s verdict alone does not allow, the jury has not found all the facts “which the law makes essential to the punishment,” Bishop, *supra*, §87, at 55, and the judge exceeds his proper authority.” *Blakeley* pg 7.

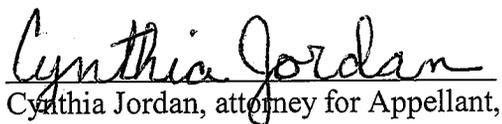
The Supreme Court found that for a judge to impose an exceptional sentence without the necessary jury finding is a violation of the Sixth

Amendment of the Constitution right to a trial by jury stating: "Our commitment to *Apprendi* in this context reflects not just the respect for longstanding precedent, but the need to give intelligible content to the right of jury trial. That right is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." *Blakeley* pg 9.

Based on the above the appellant respectfully requests that this court overturn his conviction and remand this case back to the trial court for a new trial. In the alternative the appellant requests that this court overturn his sentence and remand for re-sentencing.

Dated this 31st day of July, 2004.

Respectfully submitted by:


Cynthia Jordan, attorney for Appellant,

WSBA #22220

Jordan Law Office

921 W. Broadway

Spokane, WA 99201

(509)325-8274

Fax (509)328-8362