

COURT OF APPEALS
DIVISION II

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SEAL OF WASHINGTON
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No. 41082-6-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JAMES JOHN CHAMBERS, JR., Appellant

Reply Brief Of Appellant

Stephen G. Johnson, WSBA # 24214
Attorney for Appellant

925 South Ridgewood Avenue
Tacoma, WA 98405
Telephone: 253.370.3931
Facsimile: 253.238.1428
Email: badseedlawyer@gmail.com

ORIGINAL

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A. REPLY

1. APPELLANT WAS PROMISED A STANDARD RANGE SENTENCE, AND HE MUST BE RE-SENTENCED TO A STANDARD RANGE SENTENCE.

Generally, a defendant can be sentenced to an exceptional sentence (viz. sentenced outside the standard range). See generally, RCW 9.94A.537. To impose an exceptional sentence, there are numerous procedures to do so. Id. However, these procedures can be avoided if the defendant “agrees” to an exceptional sentence. The defendant can “stipulate to the aggravating facts” that support the imposition of an exceptional sentence. See, RCW 9.94A.537(3).

There is no record that the Appellant agreed to, or stipulated to, an exceptional sentence.

(A). Appellant Was Promised A Standard Range Sentence.

On May 17, 2000, the following conversation occurred during Appellant’s sentencing on Pierce County Superior Court Cause Number 99-1-05307-1:

THE COURT:	I wanted to know if you were ready to proceed to sentencing, if we had any disagreements with regard to the <u>standard range</u> or anything else.
MR. PURTZER:	Your Honor, we do not have any disagreements. We are ready. It is an agreed recommendation in this particular matter, and so we are ready to proceed.
THE COURT:	Thank you. I’ll hear from the State first, then.

MR. ROSE: Your Honor, the State's recommendation on Count I is 60 months to run concurrent with the other counts; Count II is 57 months; Count III is 57 months; Count IV is 116 months; **Count V is 240 months**. All these counts are to be served concurrently, however, consecutive to [Pierce County Superior Court Cause Number] 99-1-00817-2 and 99-1-02235-3. He was sentenced in those matters on the 17th of March, and those matters are running concurrent to one another but consecutive to the matter we're here on today. There is 12 months community placement on Count V; comply with all conditions of Department of Corrections. There is a license suspension as required by law on Count I. Count V also requires a \$3,000 fine **because he's been convicted of manufacturing several times in the past, and that is what makes Count V also the 240 months**.

There's \$110 court costs, \$500 Crime Victim Penalty Assessment, and there's restitution. We haven't gotten all those figures together today and so we need to set a restitution hearing, and that is the recommendation of the State.

THE COURT: And Mr. Rose, **it's my understanding that that's the highest standard range sentence available for each count**.

MR. ROSE: **That's correct, Your Honor, because the law says it's double the standard range for Count V, which is 240 months**. All the other ones essentially really make no difference, so....

THE COURT: All right. Thank you....

See, Exhibit 2, pages 4-6 (emphasis added). During sentencing, the trial court ordered as follows:

THE COURT: Mr. Chambers' life was just totally out of control when this happened, completely, in every way. And because of that, there's really no sentence that's fair other than **the high end of the range** on each of the counts, as is being suggested. I'm going to impose the agreed-on sentence and the other financial conditions and otherwise that the State's requesting.

See, Exhibit 2, page 17 (emphasis added).

The trial court then entered a Judgment and Sentence, presumably being reviewed before being signed by legal counsel for the State (i.e. Mr. Allen P. Rose), trial counsel for the Appellant, and the trial court. See, CP 8-17. In Paragraph 2.3 of the Judgment and Sentence, the stated sentencing range for Count V is 240 months. See, CP 10. 240 months is understood by the State of Washington, Appellant’s trial counsel, and the trial court itself to be the *standard range sentence* for Count V. Id. Further, there is no discussion during sentencing that Count V is anything other than a standard range sentence. See, Exhibit 2. Further, the Judgment and Sentence does not state that the sentence imposed is an exceptional sentence. See, CP 10 (Paragraph 2.4).

A standard range sentence was promised to the Appellant. He plead guilty in reliance upon the imposition of a standard range sentence. This was understood by the State of Washington as well—to reiterate:

THE COURT: And Mr. Rose, *it’s my understanding that that’s the highest standard range sentence available for each count.*

MR. ROSE: *That’s correct, Your Honor, because the law says it’s double the standard range for Count V, which is 240 months.* All the other ones essentially really make no difference, so....

THE COURT: All right. Thank you....

See, Exhibit 2, page 5. The trial court understood that the Appellant was receiving a standard range sentence, and the Respondent emphasized that

the trial court was correct that the Appellant was receiving a standard range sentence. Id. The Appellant understood that he was being sentenced to a standard range sentence. Appellant was promised a standard range sentence, and he pled guilty in reliance upon this promise. Appellant deserves to be resentenced to a correct standard range sentence.

(2.) The Error In Calculating The Standard Range Was The Respondent's Error.

A legal mistake, however, was committed by the Respondent (and, not caught by either Appellant's trial counsel or the trial court)—a mistaken application of RCW 69.50.408. RCW 69.50.408(1) provides that “[a]ny person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.” This meant, in Appellant's case, that his prior convictions for manufacturing controlled substances would double the maximum sentence and maximum fine that could be imposed. The Respondent State of Washington misapplied RCW 69.50.408 when it stated that the statute in question doubled the standard range. See, CP 27 (“As you are also aware, RCW 69.50.408 allows for the doubling of any standard range for a subsequent conviction for manufacturing or possession with intent to deliver.”). See also, Exhibit 2, page 5 (in response to the sentencing

court's observation that the Appellant would be sentenced to the high end of the standard range, the Respondent said "[t]hat's correct, Your Honor, because the law says it's double the standard range for Count V, which is 240 months.) See, In Re Cruz, 157 Wn.2d 83, 87-90, 134 P.3d 116 (2006); State v. Clark, 123 Wn.App. 515, 520-521, 94 P.3d 335 (Div. II, 2004) ("We conclude that RCW 69.50.408 doubles the maximum penalty, but not the standard range.").

It should be noted that erroneous calculation notwithstanding, Respondent State of Washington offered, and Appellant accepted, a standard range sentence. Appellant is entitled to be sentenced to a corrected standard range sentence.

(C.) The Respondent's Post Hoc Claims of Scrivener's Errors, Implied Exceptional Sentences, And Invitations To Withdraw The Guilty Plea Are Nothing Short Of Attempts To Shift The Burden Of Legal Error To The Appellant.

The Appellant was promised a standard range sentence. See, §A-1(A), supra. See also, Exhibit 2, pages 4-6, 17. The Respondent miscalculated that standard range by a misapplication of RCW 69.50.408, claiming the same "doubled the standard range." See, §A-1(B), supra. See also, CP 27. See also, Exhibit 2, page 5. The trial court imposed a sentence on Count V that exceeded the standard range, in reliance upon the Respondent's legal analysis/representations. See, CP 8-17. See also,

Exhibit 2, page 17. Appellant is entitled to be re-sentenced within the standard range.

Every one of Respondent's excuses to deny Appellant relief only serves to illegally shift the burden of their legal mistake to the Appellant. See, State v. Codiga, 162 Wn.2d 912, 929, 175 P.3d 1082 (2008). For instance, Respondent claims that for specific performance to be done, the Respondent would be bound to recommend an exceptional sentence of 240 months. See, Brief of Respondent, page 14-15. In light of all of the Respondent's representations that a standard range sentence would be recommended (see, §A-1(A), supra.) and the complete lack of the specific legal term "exceptional sentence" appearing anywhere in the record to support the 240 month sentence, the Respondent is claiming a right to illegally re-write their plea offer. If allowed, this places the Appellant into an interesting legal Hobson's choice—either serve an illegally imposed (and, subsequently coerced¹) exceptional sentence of 240 months, or face a potential charge and sentence for murder. See, CP 27. This is the price

¹ If Appellant were to withdraw his guilty plea, the State would not be able to proceed with a prosecution of the drug cases because they destroyed all of the evidence. See, Exhibit 1. See also, VRP at 14-15. The State has already informed the Appellant that if he withdraws his guilty plea, he will be prosecuted for felony murder (that was not charged in return for his plea to a standard range sentence). See, CP 26-27. Assuming he was convicted (see, CP 6 (Appellant admitted to causing the death of a pedestrian during the commission of a felony)), and assuming that Appellant's offender score was 7 (see, Brief of Respondent, page 16), his exposure is 338-450 months for Murder 1°, or 216-316 months for Murder 2°. This is the basis of the "coerced" term—either serve an illegal sentence, take an exceptional sentence, or face a felony murder charge and more time; none of which are appealing after pleading to a promised standard range sentence.

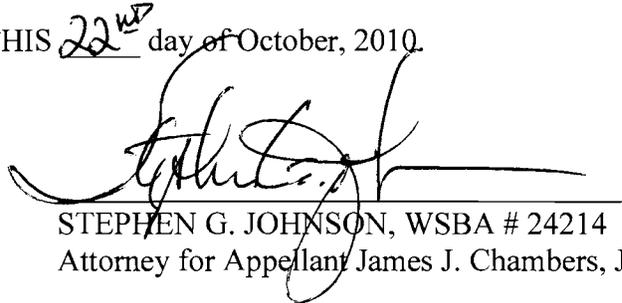
sought from the Appellant for trying to repair the damage caused by the Respondent's legal error and the imposition of an illegal sentence.

The Respondent continues to exact unjust incarceration from the Appellant. Appellant is entitled to relief.

B. CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that the Court of Appeals REVERSE the Pierce County Superior Court, and mandate that the trial court re-sentence the Appellant within the standard range based upon his offender score as of the day of re-sentencing.

DATED THIS 22nd day of October, 2010.



STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant James J. Chambers, Jr.

COURT OF APPEALS
WASHINGTON

DECLARATION OF SERVICE

10 OCT 22 PM 2:48

STATE OF WASHINGTON
BY _____

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused the under named person(s) with a true, correct and complete copy of this document:

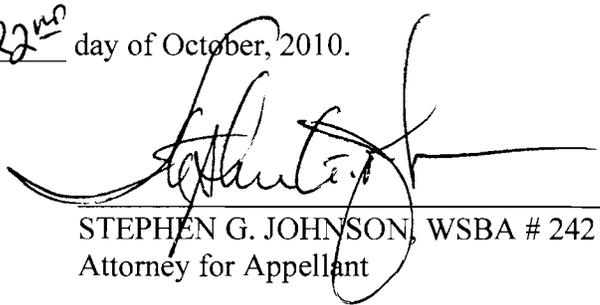
Mr. Stephen Trinen
Ms. Kathleen Proctor, DPA
Pierce County Prosecutor's Office
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402

via Personal Service

Mr. James John Chambers, Jr.
Inmate No. 743702
McNeil Island Correction Center
P.O. Box 881000, Unit D-205-1
Steilacoom, WA 98388-1000

via First Class Mail

DATED THIS 22nd day of October, 2010.


STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Appellant