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NO. 86859-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NICHOLAS A. PAPPAS,

Petitioner.

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STATE OF WASHINGTON
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ANSWER TO
PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The facts are set out in the Court of Appeals opinion.

III. ARGUMENT

THE COURT OF APPEALS CORRECTLY APPLIED THE STATUTORY INTERPRETATION SET OUT BY THIS COURT IN STUBBS.

The trial court imposed an exceptional sentence based on the aggravating factor set out in RCW 9.94A.535(3)(y): “The victim’s injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the offense.” This court interpreted that statute in State v. Stubbs, 170 Wn.2d 117, 240 P.3d 143 (2010). The court held that the statute only applies when the victim’s injuries fall within a higher statutory category than the category necessary to satisfy the elements of the offense. It does not apply to a higher degree of injury within the same statutory category:

One case of “great bodily harm” ... is not qualitatively different than another case. Such a leap is best understood as the jump from “bodily harm” to “substantial bodily harm,” or from “substantial bodily harm” to “great bodily harm.” This is what is meant by “substantially exceeds.”

Id. at 130 ¶ 18 (court's emphasis).

The situation described in Stubbs is exactly what occurred in the present case. The crime of vehicular homicide requires the infliction of "substantial bodily harm." RCW 46.61.522. The evidence showed that the victim suffered great bodily harm. As the Court of Appeals pointed out, "she has little control over the left side of her body, she cannot eat or bathe unassisted, and she can barely talk. Due to this injury, [she] will require care for the rest of her life." State v. Pappas, ___ Wn. App. ___, 265 P.3d 948 ¶ 11 (2011). Clearly, this constitutes "a significant permanent loss or impairment of the function of any bodily part or organ" – which establishes "great bodily harm." RCW 9A.04.110(4)(c).

The petitioner does not dispute the Court of Appeals' conclusion that the victim suffered "great bodily harm." He contends, however, that "*any* injuries short of death were necessarily also considered by the Legislature in defining vehicular assault and cannot be considered in imposing an exceptional sentence." Petition for Review at 7 (petitioner's emphasis). The claim seems to be that as long as the definition of a crime requires *any* degree of injury, an exceptional sentence cannot be based on infliction of *greater* injury.

This claim is contrary to the statutory language. RCW 9.94A.535(3)(y) contemplates situations in which *some* level of bodily harm is “necessary to satisfy the elements of the offense.” If the victim’s injuries “substantially exceed” that level of harm, an exceptional sentence is warranted. Nothing in the statute limits its application to statutes that include no element of bodily harm.

The Court of Appeals correctly construed RCW 9.94A.535(3)(y) in accordance with its language and this court’s interpretation in Stubbs. Further review is not warranted.

IV. CONCLUSION

The petition for review should be denied.

Respectfully submitted on January 20, 2012.

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