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Washington State Supreme Court

NO. 89926-~~10~~

C/A No. 31206-2-III

MAY 15 2014
E
Ronald R. Carpenter
Clerk

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON

Respondent

v.

JOHN HERBERT FRIEDLUND

Petitioner/Appellant

SUPPLEMENTAL BRIEF OF RESPONDENT

Mr. Tim Rasmussen, # 32105
Prosecuting Attorney
Stevens County

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I. ASSIGNMENT OF ERROR

1. The Appeals Court Ruling That It Could Review The Exceptional Sentence Based On Oral Rulings Is In Direct Conflict With RCW 9.94A.535, Decisions of This Court And Other Courts of Appeal, And is A Matter Of Substantial Public Interest.

II. STATEMENT OF THE CASE

The State accepts the Appellant's Statement of the Case.

III. ISSUE PRESENTED

1. The Court of Appeals ruling that it could review the exceptional sentence based on the trial court's oral ruling while in conflict with RCW 9.94A.535 is in keeping with the spirit of the Sentencing Reform Act and the decisions of this Court and other courts regarding RCW 9.94A.535.

IV. ARGUMENT

1. THE COURT OF APPEALS RULING THAT IT COULD REVIEW THE EXCEPTIONAL SENTENCE BASED ON THE TRIAL COURT'S ORAL RULING WHILE IN CONFLICT WITH RCW 9.94A.535, IS IN KEEPING WITH THE SPIRIT OF THE SENTENCING REFORM ACT AND DECISIONS OF THIS COURT AND OTHER COURTS REGARDING RCW 9.94A.535.

The Court Appeals ruling that it could rely on the trial court's oral ruling as to the basis for the exceptional sentence is in conflict with RCW 9.94A.535; however, this ruling is in keeping with the intent of RCW 9.94A.535 and the Sentencing Reform Act. RCW 9.94A.010 provides, in pertinent part:

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- ...
- (6) Make frugal use of the state's and local governments' resources
- ...

This Court's ruling in *Breedlove*, which addressed the necessity of written findings in cases involving exceptional sentences, echoed some of the considerations of RCW 9.94A.010. This Court held, "Written findings ensure that the reasons for exceptional sentences are articulated, thus informing the defendant, appellate courts, the Sentencing Guidelines Commission, and the public of the reasons for deviating from the standard range." *In re Breedlove* 138 Wash.2d 298, 311 979 P.2d 417, 425 (1999). The purpose of written findings is so that the court record is as clear and complete as possible.

Mr. Friedlund argues that the Division III's decision in his case is also in conflict with Division II's ruling in *State v. Hale*, 146 Wn.App. 299, 304 189 P.3d 829 (2008). *See* Petitioner's Petition for Review at 8. While the decision in this case may conflict with Division II's decision in *Hale*, it does not conflict with another Division II decision, *State v. Hundall*, which addressed the same issue. In *Hundall* an exceptional sentence was imposed, but, no written findings were filed. *See State v. Hundall* 116 Wash. App. 190, 193, 64 P.3d 687, 688 (2003). The court in *Hundall* held, "The law generally requires explicit findings and conclusions to support an exceptional sentence. *See* former RCW 9.94A.390; *In re Breedlove*, 138 Wash.2d 298, 310-11, 979 P.2d 417 (1999). But given that here the record is clear as to the trial court's reason

for the reduction in community placement and additional delay will not further the cause of justice, we affirm the sentence.” *Id.* at 198, 64 P.3d at 690. The same rationale was the basis for Division III’s decision in *State v. Bluehorse* where it held that if a trial court’s oral ruling was sufficiently clear to facilitate effective appellate review then written facts are merely a formality. *State v. Bluehorse*, 159 Wash. App. 410, 423, 248 P.3d 537, 543 (2011).

The ability of a court to create an adequate record of its proceedings is no longer limited to pen and paper. Most, if not all courts are equipped with audio equipment that records everything that happens during proceedings. The decision in *Bluehorse* recognizes that the court’s ability to create a record is not stagnant. As technology in the court system evolves the manner in which the court conducts its business evolves as well. This Court has recognized in other cases that technology can and does outpace existing legislation. *See generally State v. Townsend* 147 Wash.2d 666, 57 P.3d 255 (2002).

Requiring a written ruling whenever a sentence pursuant to RCW 9.94A.535 is imposed would bring a court in compliance with the strict interpretation of the statute. It should be noted that even the most basic of writing, such as checking a series of boxes in a judgment and sentence, seems to satisfy this requirement. In *State v. Epefanio*, the defendant

argued to Division III that the trial court did not comply with RCW 9.94A.535. *See State v. Epefanio* 156 Wash.App. 378, 391, 234 P.3d 253, 259 (2010) *review denied* 170 Wash.2d 1011, 245 P.3d 773 (2010). The court found compliance with the statute reasoning that, “Paragraph 2.4 of the judgment and sentence reflects that the trial court found substantial and compelling reasons that justified the exceptional sentence, specifically noting the jury's finding of an aggravating factor.” *Id.* at 259 – 260, 234 P.3d at 391. The judgment and sentence which was entered by the trial court in this case was completed in the same manner as the judgment and sentence in *Epefanio*. CP at 128. The existence of a written ruling which poorly articulates a court’s rationale for a sentence does not conform to this Court’s view of why written rulings are crucial as stated in *Breedlove*. However, an oral ruling which clearly lays out a judge’s reasoning and rationale would inform the defendant, public, and any other interested parties for the reasons supporting a sentence.

In the present case, Judge Nielsen’s oral ruling is sufficiently clear to inform the defendant, the appellate court, the public, and all other interested parties as to his rationale for sentencing Mr. Friedlund to 120 months. RP 450 – 452. The oral ruling is as much part of the court record as all of the written documents which were filed. The oral ruling is equally available to the public, the defendant, and any other interested

party. The oral ruling was sufficient for the Division III Court of Appeals to review the case and determine that the sentence which was imposed by the trial court was not excessive. *Slip Op.* at 9. The State therefore respectfully requests that this Court find that the Court of Appeals did not err in its ruling.

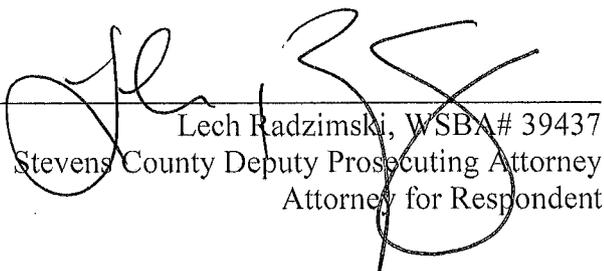
The State nonetheless acknowledges that the Appellate Court's ruling is in conflict with the reading of the statute which requires the trial court to enter written findings. The State would agree with Mr. Friedlund that the appropriate remedy would be to remand this issue to the sentencing court for entry of written findings of fact and conclusions of law consistent with the court's oral ruling.

V. CONCLUSION

The State respectfully requests that this Court find that the Court of Appeals decision is within the spirit of RCW 9.94A.535 and the cases which interpret it. In the alternative, the State would request that this Court remand the matter to the trial court for entry of written findings consistent with its oral ruling.

Respectfully submitted this 13th day of May, 2014.

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the Supplemental Brief of Respondent to the Washington State Supreme Court, Temple of Justice, P.O. Box 40929, Olympia WA 98504-0929 and to Marie Jean Trombley, Attorney at Law, P.O. Box 829, Graham, WA 98338-0829; and to John H. Friedlund, c/o Spokane County Detention Services, 1100 W. Mallon Ave., Spokane, WA 99260 on May 13, 2014.



Michele Lembcke, Legal Assistant
to Lech Radzimski