

FILED
SUPREME COURT
STATE OF WASHINGTON
6/5/2020 4:44 PM
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No. 98201-5

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

v.

JERRY L. PETERSON

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. Supplemental Argument

In *State v. Cyr*, 97323-7, this Court remanded Mr. Cyr's case for resentencing. Mr. Cyr was convicted of three convictions for selling a controlled substance (heroin) for profit. RCW 69.50.410. The first paragraph of this Court's decision reads in its entirety:

This case requires us to determine the statutory maximum sentence for petitioner Johnny Ray Cyr's three convictions for selling a controlled substance (heroin) for profit. We hold that *if* Cyr has a prior conviction for violating the Uniform Controlled Substances Act (UCSA), ch. 69.50 RCW, "or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs," then his statutory maximum sentence is 120 months. RCW 69.50.408(2). In that case, he must be sentenced within the standard range provided by the Sentencing Reform Act of 1981 (SRA), ch. 9.94A. However, it is not clear from the record whether Cyr has such a prior qualifying conviction. We therefore remand to the trial court to address that question and, depending on the answer, to conduct further proceedings as directed by this opinion.

(Emphasis added.) The final paragraph of the opinion reads:

[W]e hold that *if* Cyr has a prior qualifying conviction, he must be sentenced within the standard range provided by the SRA. We therefore vacate and remand to the trial court for further proceedings consistent with this opinion.

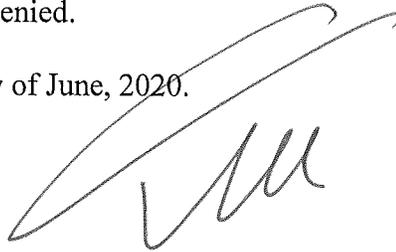
(Emphasis added.) As one can see, the primary issue on appeal was whether Mr. Cyr was required to be sentenced pursuant to the SRA *if* he has a prior qualifying drug conviction. This Court determined that *if* he has such a conviction, RCW 69.50.408 doubles the maximum penalty for RCW 69.50.410 from five years to ten years and remanded for Mr. Cyr to be sentenced pursuant to the SRA.

It is undisputed that Ms. Peterson does not have a prior qualifying drug conviction and RCW 69.50.408 is inapplicable to her. As such, the holding of *Cyr* is not dispositive on her case. Because the material facts of Ms. Peterson's case are distinguishable there is no reason for this Court to grant review

B. Conclusion

Review should be denied.

DATED this 5th day of June, 2020.

A handwritten signature in black ink, appearing to read 'T. E. Weaver', is written over a horizontal line. The signature is fluid and cursive.

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Attorney for Respondent

THE LAW OFFICE OF THOMAS E. WEAVER

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