71702-2

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No. 71702-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DAVID LAINEZ,

Appellant.

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 OCT 15 AM 11:42

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The 60 month exceptional sentence imposed by the trial court was clearly excessive and constitutes an abuse of discretion.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Even if the reason for an exceptional sentence is supported by the record and that reason justifies an exceptional sentence, an exceptional sentence will be reversed if the sentence imposed was clearly excessive. A "clearly excessive" sentence is one that is manifestly unreasonable. Is the trial court's imposition of the statutory maximum term of confinement clearly unreasonable where Mr. Lainez had only one prior felony conviction and had never previously been required to serve a prison range term of incarceration?

C. STATEMENT OF THE CASE

David Lainez entered a guilty plea to the charge of stalking in King County Superior Court. CP 32-33. As part of his plea agreement, Mr. Lainez stipulated to the aggravating circumstance that he committed this offense shortly after being released from incarceration (i.e., rapid recidivism). CP 35, 53-54. Mr. Lainez had an offender score of two, resulting in a standard sentencing range of 13 to 17 months. CP 22. Mr. Lainez had one prior felony conviction and was

on community custody at the time of the offense. CP 57. The State recommended an exceptional sentence of 60 months, which was the statutory maximum. CP 25.

At sentencing, Mr. Lainez requested that the trial court impose 13 months of confinement. CP 76; 2/14/14 RP 14. The longest term of incarceration that Mr. Lainez previously served was nine months. CP 76; 2/14/14 RP 10. The trial court imposed an exceptional sentence of 60 months followed by 12 months of community custody.[1] CP 62-63.

D. ARGUMENT

The imposition of the statutory maximum term of confinement was clearly excessive because its length shocks the conscience in light of the record.

A trial court may impose a sentence outside the standard range for an offender if it finds, considering the purposes of the Sentencing Reform Act (SRA), that there are substantial and compelling reasons justifying an exceptional sentence. RCW 9.94A.535. Generally, an exceptional sentence is appropriate "only when the circumstances of the crime distinguish it from other crimes of the same statutory

[1] The trial court subsequently entered an order striking the 12 months of community custody, recognizing that the term of community custody would cause the sentence to exceed the statutory maximum. CP 79-80.

category." *State v. Pennington*, 112 Wn.2d 606, 610, 772 P.2d 1009 (1989).

The purpose of the SRA 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[.]" RCW 9.94A.010. Additionally, the SRA's purpose is 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; (4) protect the public; (5) offer the offender an opportunity to improve himself or herself; (6) make frugal use of the state's and local governments' resources; and (7) reduce the risk of reoffending by offenders in the community. *Id.*

RCW 9.94A.585 governs when an exceptional sentence may be reversed by a reviewing court. "To reverse a sentence which is outside the standard range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a

sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient." RCW 9.94A.585(4).

Consequently, to reverse an exceptional sentence, a reviewing court must find: (1) under a clearly erroneous standard, there is insufficient evidence in the record to support the reasons for imposing an exceptional sentence; (2) under a de novo standard, the reasons supplied by the sentencing court do not justify a departure from the standard range; or (3) under an abuse of discretion standard, the sentence is clearly excessive or clearly too lenient. *State v. France*, 176 Wn. App. 463, 469, 308 P.3d 812 (2013) (citing RCW 9.94A.585(4)).

Mr. Lainez does not contend that there was insufficient evidence in the record to establish the rapid recidivism aggravator or that this aggravator does not justify a departure from the standard range. However, the imposition of a 60 month exceptional sentence, the statutory maximum for an individual convicted of stalking, is clearly excessive.

Whether an exceptional sentence is clearly excessive is reviewed for an abuse of discretion. *State v. Law*, 154 Wn.2d 85, 93, 110 P.3d 717 (2005). The sentencing court may exercise its discretion

to determine the precise length of the exceptional sentence appropriate on a determination of substantial and compelling reasons supported by the aggravating factor. *State v. Oxborrow*, 106 Wn.2d 525, 530, 723 P.2d 1123 (1986). Action is excessive if it goes beyond the usual, reasonable, or lawful limit. *Id.* at 531. "Thus, for action to be clearly excessive, it must be shown to be clearly unreasonable, i.e., exercised on untenable grounds or for untenable reasons, or an action that no reasonable person would have taken." *Id.*

When a sentencing court does not base its sentence on improper reasons, a reviewing court will find a sentence excessive if, in light of the record, its length "shocks the conscience." *State v. Vaughn*, 83 Wn. App. 669, 681, 924 P.2d 27 (1996) (quoting *State v. Ritchie*, 126 Wn.2d 388, 396, 894 P.2d 1308 (1995)). Exceptional circumstances must truly distinguish the crime from others of the same category. *State v. Tili*, 148 Wn.2d 350, 369, 60 P.3d 1192 (2003).

The 60 month sentence imposed represents more than quadruple the low end of the standard range and more than triple the high end. Mr. Lainez had only one prior felony conviction and had never previously been sentenced to a prison range term of confinement. CP 57, 76. As such, his circumstances were not sufficiently "exceptional"

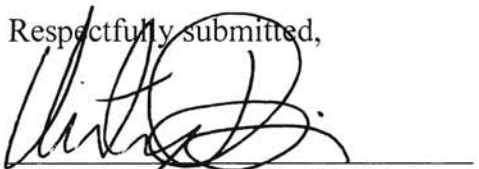
to distinguish him from others committing the crime of stalking. Moreover, his offense was not so aggravated as to merit the statutory maximum for this crime. The length of the sentence imposed therefore "shocks the conscience" and should be reversed.

E. CONCLUSION

The trial court abused its discretion when it imposed the statutory maximum. The 60 month sentence is clearly excessive and this Court should reverse and remand for a new sentencing hearing.

DATED this 13th day of October, 2014.

Respectfully submitted,



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Respondent,	)	
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	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13TH DAY OF OCTOBER, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] DAVID LAINEZ 361112 WASHINGTON CORRECTIONS CENTER PO BOX 900 SHELTON, WA 98584	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 13TH DAY OF OCTOBER, 2014.

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