

FILED
March 17, 2016
Court of Appeals
Division I
State of Washington

NO. 73131-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARQUES CRAWFORD,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ANDREA DARVAS

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JENNIFER P. JOSEPH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL HISTORY	1
2. SUBSTANTIVE FACTS	2
3. SENTENCING FACTS	6
C. <u>ARGUMENT</u>	7
CRAWFORD'S STANDARD-RANGE SENTENCE IS NOT APPEALABLE	7
D. <u>CONCLUSION</u>	14

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Ammons, 105 Wn.2d 175,
713 P.2d 719 (1986)..... 8

State v. Garcia-Martinez, 88 Wn. App. 322,
944 P.2d 1104 (1997)..... 8

State v. Handley, 115 Wn.2d 275,
796 P.2d 1266 (1990)..... 10

State v. Houf, 120 Wn.2d 327,
841 P.2d 42 (1992)..... 11

State v. Mail, 121 Wn.2d 707,
854 P.2d 1042 (1993)..... 7, 8, 9, 10, 11, 12

State v. Morreira, 107 Wn. App. 450,
27 P.3d 639 (2001)..... 9

State v. Oxborrow, 106 Wn.2d 525,
723 P.2d 1123 (1986)..... 14

State v. Sandefer, 79 Wn. App. 178,
900 P.2d 1132 (1995)..... 8

State v. Tierney, 74 Wn. App. 346,
872 P.2d 1145 (1994)..... 12

State v. Williams, 149 Wn.2d 143,
65 P.3d 1214 (2002)..... 7, 8

Statutes

Washington State:

Former RCW 9.94A.370..... 10
Laws of 2001, ch. 10, § 6 10
RCW 9.94A.530 10, 13
RCW 9.94A.585 7, 13, 14

Other Authorities

David Boerner, Sentencing in Washington § 6-13 (1985) 10
Sentencing Reform Act 10, 12

A. ISSUES PRESENTED

1. The “real facts” doctrine precludes the trial court from relying on facts that establish the elements of a more serious crime or additional crimes when imposing an exceptional sentence. No such prohibition limits the sources of information the trial court may rely upon in determining an appropriate sentence within the standard range. Here, the trial court imposed a standard-range sentence, which is generally not appealable. Is the defendant’s appeal entirely without merit?

2. A non-constitutional error is harmless if it does not affect the outcome of the case. Here, the record shows that the trial court’s determination of the appropriate standard-range sentence was the same whether or not it considered facts relevant to a charge on which the jury hung. Is any conceivable error harmless?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

By amended information, the State charged Marques Crawford with promoting commercial sexual abuse of a minor (“promoting”), rape of a child in the third degree, and violation of the Uniform Controlled Substances Act - delivery of methamphetamine

to a minor (“delivery”). CP 119-20. The State alleged that Crawford had a sexual relationship with 15-year-old N.J., supplied her with methamphetamine, forced her into prostitution, and knowingly profited from that activity. CP 5-8.

After a trial before the Honorable Andrea Darvas, a jury convicted Crawford of the rape and delivery, but could not reach a verdict on the promoting charge. CP 156-58; 20RP 10-11.¹ The State agreed to dismiss the promoting charge. 22RP 14.

The trial court imposed standard-range sentences of 18 months for the rape conviction and 61 months for the delivery.² CP 208-21; 22RP 23-24. Crawford appeals.

2. SUBSTANTIVE FACTS

Fifteen-year-old N.J. met thirty-year-old Marques Crawford through a social networking site called Tagged. 15RP 71. N.J. claimed that she was 18. 15RP 77. On their second in-person meeting in August 2013, Crawford provided methamphetamine to N.J. and took her to his home. 15RP 85. Crawford was suspicious about N.J.’s age and told her he did not feel like she was 18, but

¹ The State adopts the appellant’s citation convention for the 22-volume Verbatim Report of Proceedings. See Brief of Appellant at 2 n.1.

² Appellant mistakenly reverses the sentences in his Statement of the Case. Brief of Appellant at 2.

that they “could work around it[.]” 15RP 88. N.J. continued to insist that she was 18, but when she was unable to instantly give her birth year, Crawford said, “That’s how I know you’re not 18.” 15RP 90.

Crawford immediately began grooming N.J. to work for him as a prostitute. 15RP 86-88. He told her that they would work as a team and share the money, and indicated that he would buy her clothes and pay to have her hair done. 15RP 87-88.

The next time N.J. went to Crawford’s house, Crawford gave her methamphetamine and the two had sex. 15RP 92-94. Their sexual relationship continued until December. 15RP 95, 97. Crawford continued to supply N.J. with methamphetamine. 15RP 99, 107, 110. N.J. thought they were a couple, but Crawford’s attitude was less clear. 15RP 104; 16RP 56.

Crawford kept encouraging N.J. to prostitute, and N.J. kept making excuses for not doing it. 15RP 107, 112. She eventually admitted that she was only 15 years old, to which Crawford had little reaction. 15RP 108-09. He asserted that the two would not be “hanging out” as much anymore, but there was no change in the frequency of their encounters. 15RP 109.

Crawford’s demeanor changed in October. 15RP 112. He told N.J. that she would have to begin prostituting if she wanted to

be in his "presence" any longer. 15RP 114. One day, Crawford simply announced that N.J. would begin prostituting that night. 15RP 115. She cried and refused, and he left her alone for a while. 15RP 115-17. He continued to pressure her to prostitute and was angry when she refused. 15RP 118-19. The next time that Crawford insisted that N.J. prostitute, he drove her to Pacific Highway and told her to get out and walk until she found a customer. 15RP 120-23. When she cried and said she did not want to do it, he drove her to another location and told her to walk there. 15RP 123-24. He told her that he "didn't give a fuck about [her] crying" and yanked her out of the car by her arm. 15RP 124-25. But when a police car drove by, he told her to get back in the car. 15RP 125. As they drove, he called her names, hit her in the face, and grabbed her by the hair. 15RP 125-26. Later, he told her that she had brought the abuse on herself. 15RP 129.

About a week later, N.J. agreed to go "walk" on Aurora because she knew he would not stop asking. 16RP 4-5. She found a customer, had sex with him for \$140, and called Crawford. 16RP 7-9. She attempted to secretly keep some of the money, but Crawford was not fooled and threatened N.J. until she gave him all the money. 16RP 9-11. The next time she prostituted, she gave

Crawford all the money she earned. 16RP 17. Crawford had N.J. "walk" more than 20 more times. 16RP 19.

Eventually, Crawford allowed N.J. to find customers with internet ads instead of walking the streets. 16RP 20-21. But when she attempted to post her ad in the "dating" category instead of the escort section, Crawford slapped her and told her to stop playing him. 16RP 35. When N.J. stuttered while speaking to prospective customers on the phone, Crawford slapped her and started answering the calls himself. 16RP 37. When she came back with less money than Crawford expected, he hit her. 16RP 40-41. Over about five months with Crawford, N.J. earned \$3,500 through prostitution and Crawford took every penny. 16RP 38.

In December, Crawford warned N.J. that she needed to get away from him because he was going to end up really hurting her. 16RP 43. She felt threatened and scared. 16RP 44. Later that day, she snuck out and made an anonymous 911 call to tell police that Crawford was "pimping juveniles, he has warrants, and he also has a gun." 16RP 47. She gave Crawford's address and started packing. 16RP 47. Responding police arrested N.J. on a warrant, and arrested Crawford. 16RP 53; CP 9.

3. SENTENCING FACTS

With an offender score of 1, the standard sentencing range for Crawford was 15-20 months for the rape conviction and 51-68 months for the delivery conviction. 22RP 15-16. The defense requested low end sentences, pointing out Crawford's limited criminal history. 22RP 20-21. Citing "the overarching behavior by the defendant" and the jury's 9-3 vote to convict him of the promoting charge, the State recommended sentences at the high end of each range. 22RP 16. Crawford objected to the court's consideration of facts "unrelated to crimes in which he was convicted," citing the "real facts doctrine." 22RP 18. Crawford himself asked the court to impose low-end sentences, asserting that "a lot was told that wasn't true in this case." 22RP 21-22.

The trial court imposed sentences near the middle of the range for each conviction: 18 months for the rape and 61 months for the delivery. 22RP 23-24. The court acknowledged that Crawford "disagree[s] with a lot of the facts," but emphasized his crimes' impact on the victim: "the actions that you took, even if I only considered the crimes that you were convicted of, really had a profound effect on [N.J.'s] life. And that's true even if she was already addicted to meth when she met you, that was true even if

she was involved in various sexual activities before she met you.”

22RP 22. The court encouraged Crawford to think about “what kind of relationship you’re going to have with other people, including women in your life, going forward.” 22RP 22-23.

C. ARGUMENT

CRAWFORD’S STANDARD-RANGE SENTENCE IS NOT APPEALABLE.

Crawford contends that the trial court violated the “real facts doctrine” by considering evidence related to the dismissed promoting charge in determining the appropriate sentence for his delivery and rape convictions. This Court should reject the claim because Crawford’s standard-range sentence is not appealable. There is no evidence that the court did not follow the proper procedure in imposing the sentence, and any conceivable error was clearly harmless.

Generally, a party cannot appeal a standard range sentence. RCW 9.94A.585(1) (“A sentence within the standard sentence range ... shall not be appealed”); State v. Williams, 149 Wn.2d 143, 146, 65 P.3d 1214 (2002). Trial judges are afforded “nearly unlimited discretion” in determining an appropriate sentence within the standard range. State v. Mail, 121 Wn.2d 707, 711 n.2, 854

P.2d 1042 (1993). “[S]o long as the sentence falls within the proper presumptive sentencing ranges set by the legislature, there can be no abuse of discretion as a matter of law as to the sentence’s length.” Williams, 149 Wn.2d at 146-47. A trial judge is “under no obligation” to explain her reason for imposing a sentence within the standard range. Mail, 121 Wn.2d at 714. Where it is the trial judge’s “discretionary decision to do so that forms the basis for [] appeal,” review is not warranted. Id.

Notwithstanding the general prohibition against review of standard-range sentences, appellate courts may review standard-range sentences resulting from constitutional error, procedural error, an error of law, or the trial court’s failure to exercise discretion. See, e.g., Williams, 149 Wn.2d at 147 (alleged legal error); Mail, 121 Wn.2d at 713 (statute allows appeal on procedural or constitutional grounds); State v. Ammons, 105 Wn.2d 175, 183, 713 P.2d 719 (1986) (party may appeal standard range sentence based upon procedural error); State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997) (alleged failure to exercise discretion); State v. Sandefer, 79 Wn. App. 178, 181, 900 P.2d 1132 (1995) (alleged constitutional error). A defendant may not gain review by simply “cloaking his arguments in ‘procedure’” when

“the ultimate object ... in seeking resentencing is to receive a lower sentence within the standard range.” Mail, 121 Wn.2d at 714.

Crawford fails to acknowledge the general prohibition against review of standard-range sentences. His argument appears to be that the trial judge committed procedural error. He alleges that the court considered evidence pertaining to the later-dismissed promoting charge. To make this argument, Crawford relies heavily on State v. Morreira, 107 Wn. App. 450, 27 P.3d 639 (2001). His reliance is misplaced. Morreira is an exceptional sentence case in which the trial court explicitly relied on facts establishing the intent element of first-degree assault when imposing a sentence for second-degree assault that was nearly five times more than the top of the standard range. Id. at 454-55. Crawford’s case is different. Here, the trial court imposed sentences in the middle of the standard range. Morreira is inapposite.

Mail is more analogous. There, a defendant attempted to appeal his standard-range sentence, arguing that the trial court violated the same statutory provision Crawford relies upon here³ by considering the facts of an unrelated prior assault conviction. 121 Wn.2d at 709-10. The supreme court pointed out that the Sentencing Reform Act (SRA) specifies what information the court “may rely on” in arriving at a sentence within the standard range, but “*does not limit in any way* the sources of information a sentencing court may consider.” Id. at 711 (citing State v. Handley, 115 Wn.2d 275, 282, 796 P.2d 1266 (1990); David Boerner, Sentencing in Washington § 6-13, at 6-21 (1985)) (emphasis added). This is in contrast to exceptional sentences:

³ The Mail court interpreted former RCW 9.94A.370(2), which was recodified in 2001 as RCW 9.94A.530(2). Laws of 2001, ch. 10, § 6. Both versions of the statute provide:

In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of evidence.

In addition, former RCW 9.94A.370(2) further provided that “Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for” by statute. This language is now found at RCW 9.94A.530(3).

Unlike the nearly unlimited discretion afforded to judges in imposing the appropriate sentence within the standard range, the discretion to impose an exceptional sentence is both more limited and more amenable to review. ... *Most importantly, trial courts are explicitly prohibited by the "real facts doctrine" from relying on "[f]acts that establish the elements of a more serious crime or additional crimes" in imposing an exceptional sentence. ... No such limitation exists in sentencing within the standard range.*

Mail, 121 Wn.2d at 711 n.2 (emphasis added). See also State v. Houf, 120 Wn.2d 327, 334, 841 P.2d 42 (1992) ("The 'real facts' doctrine does not allow facts which establish the elements of crimes completely unconnected to those charged to be considering in meting out an *exceptional* sentence.") (emphasis added).

Here, there is no evidence from the court's comments at sentencing that it relied on evidence pertaining to the promoting charge when it imposed sentences "close to the middle of the standard range" on each count.⁴ 22RP 23. But even if the court

⁴ Since the State's recommendation for a high-end sentence was expressly based upon how close the jury had come to convicting Crawford of promoting, and the trial court rejected that recommendation and instead imposed a mid-range sentence, logic suggests that the court did not rely on the promoting charge to determine the appropriate sentences. Nothing in the trial court's oral remarks establishes the contrary. That the court noted that Crawford "disagree[d] with a lot of the facts" reflects Crawford's complaint at sentencing that certain evidence was excluded from the trial and his belief that the "whole story" had not been told. 22RP 21. The court's statement that Crawford's conduct "really had a profound effect" on the victim's life "even if I only considered the crimes that you were convicted of" does not show that the court considered the promoting charge in arriving at the appropriate sentences; rather, it demonstrates that the court would have imposed the same sentence regardless of the promoting charge. The court's emphasis on how Crawford's conduct impacted the victim regardless of whether N.J. was already "involved in

did consider such evidence, nothing in the SRA prohibited the court from considering that information. Mail, 121 Wn.2d at 711. Indeed, even if the real facts doctrine applies in the context of a standard-range sentence, it would not foreclose consideration of “those facts closely connected to the circumstances underlying the charged offenses simply because they also establish elements of additional uncharged [or dismissed] crimes.” State v. Tierney, 74 Wn. App. 346, 351, 872 P.2d 1145 (1994). Since the facts pertaining to N.J.’s forced prostitution were intertwined with those underlying the rape and delivery charges, the trial court was free to consider them.

As in Mail, Judge Darvas was under no obligation to explain her reasons for imposing a sentence within the standard range, yet “it is [her] discretionary decision to do so that forms the basis for this appeal.” 121 Wn.2d at 714. And as in that case, “It is almost self-evident that, while cloaking his arguments in ‘procedure,’ the

various sexual activities before she met you” does not necessarily refer to evidence that N.J. had done escort work before meeting Crawford (evidence that was excluded by the court, see CP 116-17; 16RP 59-74), but could as easily refer to the evidence that N.J. was sexually active before meeting Crawford. Finally, the court’s statement that Crawford will have to make choices about “what kind of relationship you’re going to have with other people, including women in your life, going forward” does not clearly refer to “his treatment of women as mere objects to profit from,” as Crawford argues. BOA at 14-15. The evidence in this case showed that Crawford courted a 15-year-old runaway, engaged her in a sexual relationship, supplied her with drugs, and physically abused her when he was angry. Surely, even assuming he did not also pimp the girl out, this behavior would warrant the court’s suggestion that Crawford re-think his relationship with women.

ultimate object of this petitioner in seeking resentencing is to receive a lower sentence within the standard range. Such an outcome can only be allowed to correct egregious errors in procedure.” Id. Where no such error is established, appeal is barred by RCW 9.94A.585(1). Id.

There was no procedural error here. Even when a defendant disputes a material fact presented at sentencing, the trial court is not necessarily precluded from considering that fact. Rather, “the court must either not consider the fact or grant an evidentiary hearing on the point,” at which “[t]he facts shall be deemed proved ... by a preponderance of the evidence[.]” RCW 9.94A.530(2). Here, there was no need to conduct an evidentiary hearing because, as Judge Darvas pointed out, “this is not a plea, this is a trial where I listened to all the evidence just as the jury did.” 22RP 18.

Further, even if the trial court violated the real facts doctrine, any error was clearly harmless. The court indicated that its sentence would be the same whether or not it considered the evidence concerning the promoting charge. 22RP 21 (noting that the delivery and rape counts alone had a profoundly negative impact on N.J.). Where there is no evidence that the trial court

relied on unproven factual allegations in determining the appropriate sentence, the court's consideration of such allegations is harmless. State v. Oxborrow, 106 Wn.2d 525, 537, 723 P.2d 1123 (1986).

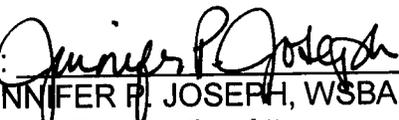
D. CONCLUSION

Because the trial court imposed sentences within the standard range, and Crawford establishes no procedural error in doing so, his appeal is barred by RCW 9.94A.585(1) and should be rejected on its merits if reached by the Court.

DATED this 17th day of March, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
JENNIFER P. JOSEPH, WSBA #35042
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Christopher Gibson (gibsonc@nwattorney.net), the attorney for the appellant, Marcques Crawford, containing a copy of the Brief of Respondent in State v. Crawford, Cause No. 73131-9 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame

Name

Done in Seattle, Washington

3/17/16

Date