

NO. 74205-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

TIMOTHY J. FERNANDEZ,

Respondent.

FILED
Aug 18, 2016
Court of Appeals
Division I
State of Washington

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE J. WESLEY SAINT CLAIR

REPLY BRIEF

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A. ARGUMENTS IN REPLY

The sentencing court in this case offered three legal reasons to depart from the standard sentencing range. CP 59. The State has argued on appeal that all three reasons were deficient. Fernandez defends only one of the court's reasons, to wit: that an exceptional sentence 22 times lower than the bottom of the standard range was appropriate because Fernandez escaped without using violence. Brief of Respondent, at 9-16. This argument should be rejected. The level of violence used in an escape is irrelevant to punishment.

Fernandez seems to recognize that the crime of escape contains not a single element related to violence. In fact, Fernandez points out that some legislators expressly asked about violent escapes versus non-violent escapes when considering amendments statute in 2001. Representatives from the Washington Association of Prosecuting Attorneys (WAPA) pointed out that, as had always been the case under Washington law, the seriousness of an escape was measured by the

seriousness of the crime that gave rise to the term of commitment that the defendant was serving. RCW 9A.76.120. A defendant will not be punished more or less severely based on whether he was violent or passive during his escape.

Fernandez argues that “escapes from most types of custody would require harm or the threat of harm to persons or property.” Brief of Respondent, at 14. He cites newspaper articles from Ohio, New York, Nebraska, New Mexico, and California. Of course, a person *could* use violence during an escape, but in Washington, if a defendant threatens, assaults, kidnaps, or murders someone during an escape, he is charged with those separate crimes, and punished accordingly. Moreover, by eliminating the crime of Failure to Return to Work Release – which is passive by its very nature – and replacing it with the crime of escape, the legislature clearly demonstrated that it was the act of eluding custody, not violence, that was relevant to punishment. All escapes are treated the same, except as to the nature of the underlying term of commitment. Thus, the legislature has determined that violence is simply irrelevant vis-à-vis the stand-alone crime of escape. If violence is

irrelevant to the crime and the standard range, then a lack of violence does not distinguish one perpetrator from others.¹

Finally, Fernandez argues that the sentence imposed is not “clearly too lenient.” Brief of Respondent, at 17-18. The standard range sentence defines the baseline punishment that the legislature contemplated for the offender’s crime and criminal history. Although there is no precise metric to determine whether a sentence is “clearly too lenient” or “clearly excessive,” there must be *some* limit, or an exceptional sentence could *be* any length, robbing the “clearly too lenient” language of its meaning. In State v. Ritchie, 126 Wn.2d 388, 894 P.2d 1371 (1995), the Court held that a sentence three times the standard range was not excessive. The sentence imposed in this case, however, is 22 times shorter than the sentence called for by the bottom of the standard range. Surely, a sentence so much shorter than the presumed sentence must be “clearly too lenient.”

¹ Fernandez says without citation to authority his “peaceful” escape is “in sharp contrast to the high risk and great danger posed by most escapes.” Brief of Respondent, at 15. In fact, escapes from secure prisons – and especially violent escapes – are relatively rare. See, e.g., <http://www.usatoday.com/story/news/2015/06/08/prison-escape-statistics/28693731/>. The vast majority of escapes charged in Washington stem from inmates who fail to abide by partial-release conditions. Fernandez’s case is typical.

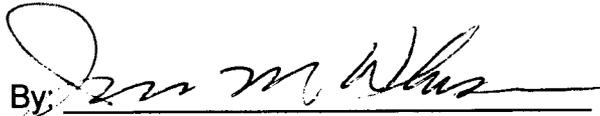
B. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to reverse the sentence and remand with instructions to impose a standard range sentence.

DATED this 18th day of August, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Gregory Link, the attorney for the appellant, at Greg@washapp.org, containing a copy of the **REPLY BRIEF**, in State v. Timothy J Fernandez, Cause No. 74205-1, 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.

Dated this 18TH day of August, 2016.



Name:
Done in Seattle, Washington