No. 103399-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 58259-7-II)

STATE OF WASHINGTON,

Respondent,

vs.

STEVEN B. PERRA,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
And the Superior Court of Lewis County

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A. COURT OF APPEALS' DECISION

Division Two of the Court of Appeals affirmed Perra's sentence in its unpublished opinion in *State v. Steven Perra II,* Court of Appeals, Division II, No. 57160-9-II, (Wash. Crt. App. July 30, 2024) (unpublished), reconsideration denied August 23, 2024.[1] A copy of the decision, and denial of reconsideration, are attached for the Court's convenience as Appendix A, B. Perra's appeal revolved solely around his resentencing after his initial direct appeal from his jury trial. *See, State v. Perra I,* 21 Wn. App. 2d 1032, 1 (2022) (unpublished).[2]

The Court of Appeals held that the trial court's imposition of a 210-month sentence was not clearly excessive. The majority also held that the trial court did not err when it denied Perra's request for a DOSA or that it

[1] The State will refer to the Perra's current case as *Perra II* and his first appeal as *Perra I* to attempt to avoid confusion.
[2] Cited pursuant to GR 14.1 for substantive facts and case history purposes.

failed to properly consider Perra's expression of remorse during sentencing.

J. Glasgow dissented. J. Glasgow agreed that the trial court did not err when it denied Perra's DOSA request, and further agreed that an exceptional sentence was warranted. The dissenting opinion disagreed with the majorities holding that the 210-month exceptional sentence was not clearly excessive.

B. ISSUES PRESENTED IN THIS ANSWER:

1. The petition claims the Court of Appeals' decision denying him resentencing based upon a clearly excessive sentence warrants review by this Court. Should review be denied as Perra only cursorily mentions RAP 13.4(b)(3) and (4) but fails to provide a direct and concise statement to this Court why review should be accepted under one or more of the subsections of RAP 13.4(b)?

2. The petition asserts a claim not raised below for review. Should this Court deny review because the Court of Appeals was not afforded the opportunity to rectify the potential error?

C. STATEMENT OF FACTS

Over the span of several months, Perra committed four burglaries at the Chehalis Walmart. *Perra I,* 21 Wn. App. 2d 1032 at 1. Perra stole over $10,000 worth of merchandise. *Id.* There was security camera footage of the incidents, and Perra was identified by a Chehalis police officer and the asset protection employee. *Id.*

The State charged Perra with Burglary in the Second Degree (Counts 1, 3, 5, and 7), Theft in the First Degree (Count IV), Theft in the Second Degree (Count 8), Theft in the Third Degree (Counts 2 and 6), and Organized Retail Theft in the First Degree (Count 9). CP 29-32. Perra had his case tried to a jury. *Perra,* 21 Wn. App. 2d 1032 at 2. Perra was found guilty as charged.

At his sentencing hearing, Perra "stipulated to the accuracy of his lengthy criminal history and the state's calculation of the offender score on each conviction." *Id.* The State asked the trial court to sentence Perra to an

exceptional sentence of 210 months. RP 10-13.[3] The State pointed to Perra's high offender score, and nonfelony unscored offenses to justify the exceptional sentence. RP 12-13. The State noted that over 30 years, Perra had prolific criminal activity. RP 13. In particular, Perra was prolific in theft and burglary from Walmart. RP 12.

Perra elected to make a statement to the trial court during his sentencing hearing. RP 19-22. Perra proclaimed his innocence and said he was railroaded. RP 20-21. Perra asked the trial court to sentence him to a standard range sentence. RP 22. The trial court granted the State's request for an exceptional sentence and sentenced Perra to serve 210 months in prison. RP 24; CP 35-45. The trial court based the exceptional sentence on Perra's unscored misdemeanor history resulting in a presumptive sentence

[3] The amended verbatim report of proceedings containing 10/20/2020 and 5/26/2023 are cited as RP.

that was clearly too lenient, and the free crimes aggravator. RP 24; CP 44.

Perra appealed his convictions and sentence. Perra raised several assignments of error. *Perra I,* 21 Wn. App. 2d 1032. Ultimately, the case was remanded for resentencing because two counts merged, and the Court did not consider the issue regarding an excessive exceptional sentence. *Id.* at 6.

Perra was resentenced and the State requested the trial court impose the same sentence as it originally ordered. RP 35-37. The State acknowledged the offender score changed, but only minimally. RP 35-36. Perra's total felonies would still far exceed the top of the range, and nothing had changed regarding his unscored misdemeanor history. *Id*. Additionally, the facts had not changed. RP 36-37. Perra requested a prison-based DOSA. RP 40-43. Perra apologized for his conduct and claimed his thefts and burglaries were caused by his drug addiction. RP 42. The

trial court was unmoved by Perra's statements and sentenced Perra to a 210-month exceptional sentence for the same reasons as it did originally. RP 42-44; CP 80-89.

D. ARGUMENT.

The Court of Appeals applied the proper legal analysis when it determined that trial court's exceptional sentence was not clearly excessive. The Court of Appeals followed the established precedent. Perra fails to adequately discuss the enumerated considerations for review that he cursorily cites and that are set forth in RAP 13.4(b)(3), (4).

Further, Perra raises an issue not considered below because he failed to raise it. This Court should deny review of the use of unscored misdemeanor criminal history because Perra failed to raise it in the Court of Appeals and does not adequately discuss how it can be reviewed pursuant to RAP 13.4 or the established case law.

1. Perra Fails To Present A Concise Statement Of The Reasons For Review In Light Of Considerations For Review Pursuant to RAP 13.4(b)(3) and (4).

A person seeking review must choose from the four enumerated reasons for review found in RAP 13.4(b). This Court accepts review for the following reasons:

> Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). A petition should contain, "A direct and concise statement of the reason why review should be accepted under one or more of the tests established in

section (b), with argument." RAP 13.4(c). Perra's petition fails to follow RAP 13.4.

Perra's argument section of his petition begins on page 6. See Petition. In the introductory paragraph, Perra states that, "This court should grant review under RAP 13.4(b)(3), (4) because imposing a 17 year sentence for Walmart thefts stemming from drug addiction raises a significant question of law under the constitution and involves an issue of substantial public interest." Petition at 6. Except for the additional citation in the table of authorities, RAP 13.4 is only cited in that single sentence in Perra's petition. Perra fails to explain what the substantial public interest is or what significant issue under the constitution of the State or United States he is presenting. See Petition.

Perra only mentions "substantial public interest" twice. Petition at 6-7. Once is to assert there is an issue of substantial public interest that this Court should determine

as cited above, and the other is contained within the citation to RAP 13.4(b). Petition at 6-7. Perra does not explain how the Court of Appeals' decision warrants review because it is of substantial public interest. Perra simply reargues that the trial court improperly sentenced him to a 210 month exceptional sentence and that sentence is excessive because it shocks the conscience. This is not sufficient.

Perra mentions the constitution in the same manner he does "substantial public interest." Petition at 6-7. Perra also cites to the Sixth Amendment in the second argument in his petition, but this argument does not fall under RAP 13.4(b)(3). See Petition at 13-14. Rather, Perra's second argument to this Court is that there was a new case that was decided after briefing was finished, and that case applies to Perra's, and this Court should accept review to apply that case. Petition at 12-14. That is not a "significant

question of law under the Constitution," nor does Perra argue that it is. Id.

Perra only mentions the constitution twice. Petition at 6-7. Once is to assert that there is a significant question of law under the constitution, as cited above, and the other is contained within the citation to RAP 13.4(b). Petition at 6-7. Perra does not argue there is a significant question of law under the constitution, nor does he explain or apply RAP 13.4(b)(3) to either argument for review. Therefore, this Court should not grant review pursuant to RAP 13.4(b)(3).

Additionally, it follows reason that this Court has determined that exceptional sentences are not determined or reviewed on a comparative system or some type of proportionality test. *State v. Ritchie,* 126 Wn.2d 388, 392, 894 P.2d 1308 (1995). Perra uses two of the cases from his dissent, *State v. Oxborrow,* 106 Wn.2d 525, 723 P.2d 1123 (1986) and *State v. Knutz,* 161 Wn. App. 395, 253

P.3d 437 (2011) as examples to show that his sentence is excessive. Petition 10; *Perra II,* Slip Op. 58259-7-II at 9-10. Yet, simple numbers with limited facts do not give a complete picture. There are other factors that lead to a sentence being constructed the way it is, whether that be through negotiations, the standard ranges being limited, the number of crimes charged and/or committed, criminal history, and other factors. *Oxborrow,* 106 Wn.2d at 528 ("The statutory maximum sentence for each case was 10 years."); *Knutz,* 161 Wn. App. at 398, 402 (charged with one count of theft in the first degree).

As an example, a comparative sentence for Perra to Knutz (the lower of the two sentences) would be 510 months, or 42.5 years. It should be noted, Knutz had no criminal history. *Knutz,* 161 Wn. App. at 402. Perra cannot state the same. This is why comparative analysis does not work.

This Court should deny review of Perra's claim that his exceptional sentence is clearly excessive. He fails to explain or apply the considerations of RAP 13.4 to show why review is warranted. This procedural omission is sufficient to deny review. Further, even if Perra did sufficiently explain why review should be granted, his claim fails. The Court of Appeals decision does not raise a significant question of law under the constitution. Further, it does not raise an issue of substantial public interest. Review should be denied.

2. Perra failed to raise in the issue in the Court of Appeals that his unscored misdemeanor history should not be a consideration for his exceptional sentence, and therefore review should be denied.

Perra asks this Court to review the Court of Appeals' decision because "[a]fter briefing in Perra's case, Division Two of the Court of Appeals issued an opinion in *State v. Eller,* 29 Wn. App. 2d 537, 541 P.3d 1001 (2024)." Petition at 12. Perra then argues that due to the decision in *Eller,* his case should be reviewed because now his unscored

misdemeanor history was improperly used to impose his exceptional sentence. Petition at 12-14. Perra never raised this issue below.

While the State acknowledges that *Eller* was published after Perra and the State submitted its briefing, the publishing date for *Eller* was January 17, 2024. *Eller,* 29 Wn. App. 2d 537. Perra did not file a supplemental statement of authorities in the Court of Appeals. There was no request by Perra for supplemental briefing based on *Eller.* The parties received notice on January 22, 2024, that the matter would be considered without oral argument on March 14, 2024. Appendix C. Therefore, there was sufficient time if Perra believed that it was necessary to raise this issue.

Further, Perra could have raised the issue in his motion for reconsideration, that was filed July 30, 2024. Perra failed to do so.

This Court refrains from accepting review on issues not previously raised at the Court of Appeals. *State v. Laviollette,* 118 Wn.2d 670, 679-80, 826 P.2d 684 (1992). While the State acknowledges there are limited exception to the rule, those exceptions do not apply here. *Laviollette,* 118 Wn.2d at 680. Perra may argue that the rule does not apply because this is an issue pertaining to an "invasion of a fundamental constitutional right." *See Id.* Yet, a review of the record shows that the trial court made the following conclusion of law, "The Court has determined either of the Findings of Fact outline[d] above, when considered individually, justifies the exceptional sentence imposed under this cause number." CP 87-88. Therefore, while the State acknowledges the unscored misdemeanor language found in *Eller* was used in Perra's case, the trial court did not rest its exceptional sentence on Perra's unscored misdemeanors.

This is why a litigant must raise issues in the Court of Appeals. If Perra somehow believed that the trial court's conclusion of law is not binding, disingenuous, or something else to that effect and wanted to argue that his sentence cannot be solely based on his multiple current offenses and high offender score, then that should have been litigated in the Court of Appeals. Perra had ample time and opportunity to make such arguments and failed to do so. This Court should deny review.

E. CONCLUSION

The State respectfully requests this Court not accept review of Perra's petition.

This document contains 2,289 words, excluding the parts of the document exempted from the words count by RAP 18.17.

RESPECTFULLY submitted this 20th day of November 2024.

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Appendix A

Filed
Washington State
Court of Appeals
Division Two

July 30, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. STEVEN B. PERRA, Appellant.	No. 58259-7-II UNPUBLISHED OPINION

VELJACIC, A.C.J. — Steven B. Perra appeals the exceptional sentence imposed at his resentencing. He argues that the 210-month sentence was clearly excessive because it is more than three times the length of the top end of his standard range. Perra also asserts that the resentencing court erred in failing to consider his expression of remorse and in denying his request for prison based drug offender sentencing alternative (DOSA).

We hold that the resentencing court did not err. Accordingly, we affirm the sentence.

FACTS

In October 2020, a jury found Perra guilty of four counts of burglary in the second degree, one count of theft in the first degree, one count of theft in the second degree, two counts of theft in the third degree, and one count organized retail theft in the first degree. Perra was sentenced to 210 months. The resentencing court based the exceptional sentence on Perra's unscored misdemeanor history coupled with a high offender score, resulting in some of the current offenses going unpunished and a presumptive sentence that was clearly too lenient. The court also noted Perra's "total lack of remorse." Rep. of Proc. (RP) (Oct. 28, 2020) at 26.

Perra appealed his convictions and sentence.[1] The State conceded that two counts merged, which this court accepted. This court remanded for resentencing and reconsideration of whether to impose an exceptional sentence after recalculation of his offender score.

On May 26, 2023, Perra's resentencing occurred. The State requested the resentencing court impose the same exceptional sentence. The State also acknowledged that Perra's offender score changed minimally from 22 to 20. However, it argued that although the same standard range applied, Perra's high offender score coupled with the fact nothing had changed regarding his unscored misdemeanors or the facts at hand, provided a justifiable basis for an exceptional sentence. Perra requested a prison-based DOSA. He also apologized to the court for his conduct and stated he only committed crimes when under the influence and to feed his addiction.

Ultimately, the resentencing court sentenced Perra to the same 210-month exceptional sentence for the same reasons stated at the original sentencing hearing. The court added that although it appreciated Perra's apology, the apology rang hollow given his criminal history and the fact that this was not "your ordinary Walmart burglary" as it was "fairly sophisticated," and he stole well over $10,000, making the exceptional sentence proper. RP (May 26, 2023) at 44. Perra appeals.

ANALYSIS

Perra argues that his exceptional sentence was clearly excessive because it is more than three times the high end of standard sentencing range; Perra's standard range is 51 to 68 months. He also argues that the court failed to acknowledge his remorse and need for treatment. We disagree.

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[1] *State v. Perra*, No. 83418-5-I (Wash. Ct. App. Mar. 21, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/834185.pdf.

I. LEGAL PRINCIPLES

By statute, a Washington court may impose an exceptional sentence outside the standard range if it concludes that "there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535. A sentence outside the standard range is subject to appeal. RCW 9.94A.585(2). But we may reverse a sentence outside the standard sentence range only if we find (a) the reasons provided by the sentencing court are not supported by the record or (b) the sentence was "clearly excessive." RCW 9.94A.585(4). Perra does not assign error to the basis for his exceptional sentence. Rather, he asserts his exceptional sentence is so far beyond the standard range as to be "clearly excessive" because it "shocks the conscience."

A "'clearly excessive'" sentence is one that is "'exercised on untenable grounds or for untenable reasons'" or that is based on an "'action that no reasonable person would have taken.'" *State v. Knutz*, 161 Wn. App. 395, 410, 253 P.3d 437 (2011) (internal quotation marks omitted) (quoting *State v. Kolesnik*, 146 Wn. App. 790, 805, 192 P.3d 937 (2008)). When the trial court bases an exceptional sentence on proper reasons, a sentence is excessive "only if its length, in light of the record, 'shocks the conscience.'" *Id.* at 410-11 (internal quotation marks omitted) (quoting *Kolesnik*, 146 Wn. App. at 805).

Once the sentencing court finds substantial and compelling reasons for imposing an exceptional sentence, the court is permitted to use its discretion to determine "the length of an appropriate exceptional sentence." *Id.* at 410. A sentencing court need not state reasons in addition to those relied on to justify the imposition of an exceptional sentence above the standard range in the first instance. *State v. Ross*, 71 Wn. App. 556, 573, 861 P.2d 473, 883 P.2d 329 (1994).

We review whether an exceptional sentence is clearly excessive for an abuse of discretion. *Knutz*, 161 Wn. App. at 410. The trial court abuses its discretion when it bases its decision on "an impermissible reason (the 'untenable grounds/untenable reasons' prong of the standard) or imposes a sentence which is so long that, in light of the record, it shocks the conscience of the reviewing court (the 'no reasonable person' prong of the standard)." *Ross*, 71 Wn. App. at 571. In *Ross*, this court explained:

> [O]nce a reviewing court has determined that the facts support the reasons given for exceeding the range and that those reasons are substantial and compelling, there is often nothing more to say. The trial and appellate courts simply reiterate those reasons to explain why a particular number of months is appropriate. . . . [T]he length of the sentence must have some basis in the record.

Id. at 571-72 (internal quotation marks omitted).

We have wide latitude in affirming the length of an exceptional sentence. *State v. Halsey*, 140 Wn. App. 313, 325, 165 P.3d 409 (2007). However, if the trial court abuses its authority, the court must remand for resentencing within the standard range. *State v. Ferguson*, 142 Wn.2d 631, 649, 15 P.3d 1271 (2001).

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY IMPOSING THE EXCEPTIONAL SENTENCE

Perra argues that his exceptional sentence "shocks the conscious" because maximum sentences should be reserved for "worst case scenarios," and his crimes do not amount to a "worst case scenario." Br. of Appellant at 6. Specifically, Perra argues that the sentence was clearly

excessive as compared to other crimes carrying a similar sentence, such as rape, child molestation, and kidnapping. Perra argues that his exceptional sentence is more than three times the standard range and the trail court failed to consider his remorse and need for treatment.[2]

Here, the resentencing court determined the length of the exceptional term was appropriate given the free crimes aggravating factor. The court expressed its reasoning:

> [I]t would be different if you were a person who'd maybe found themselves in trouble once or twice or five times or maybe even ten times. But I'm looking at 27 prior convictions dating back to 1993 when you were a juvenile. And they're almost all theft-type burglaries, thefts.
>
> . . . .
>
> [I]f you had come in at plea time and said these things to me, maybe—maybe I would have considered that. But we're way too far down the road at this point, you know.
>
> I'm glad that you're feeling different about it, and you're thinking clearly, it sounds like now. Which is part of the purpose of the sentence in a case like that, to give you time to straighten your head out a little bit.
>
> . . . .
>
> I'll make the same findings that the prior unscored misdemeanor history results in the presumptive sentence that is clearly too lenient, and the multiple current offenses and the high offender score result in some of the current offenses going unpunished. I will restate that either one of those would be sufficient basis for the exceptional sentence.

RP (May 26, 2023) at 43-44. The findings, which Perra does not assign error to, are verities on appeal. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 679, 101 P.3d 1 (2004).

Moreover, the resentencing court was sentencing Perra for the second time. Given this second opportunity to exercise its discretion it again imposed an exceptional sentence of 210 months, deeming it reasonable given Perra's conduct and criminal history. Additionally, that there

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[2] Perra cites to *State v. Bowen*, an unpublished 2015 decision of this court, for the proposition that in a similar theft case, this court determined a 48-month sentence was clearly excessive. No. 46069-6-II (Wash. Ct. App. Sept. 22, 2015) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2046069-6-II%20Unpublished%20Opinion.pdf. But we are not bound by the holding in *Bowen*. *In re Pers. Restraint of Arnold*, 190 Wn.2d 136, 154, 410 P.3d 1133 (2018).

was but a minimal change in Perra's offender score, from 22 to 20 felony points, does not require a lesser sentence. The length of the exceptional sentence was based on permissible reasoning and Perra fails to show that the sentence shocks the conscience. We do not supplant the trial court's reasoning with our own; the resentencing court did not abuse its discretion.

III. THE TRIAL COURT PROPERLY EXERCISED ITS BROAD DISCRETION IN DENYING A DOSA

Perra asserts additional grounds (SAG) for review as allowed by RAP 10.10. In addition to the same arguments raised by counsel, he alleges that the resentencing court failed to consider and failed to afford him the opportunity for DOSA even though his addiction was the reason he committed the crimes.

The DOSA program "authorizes trial judges to give eligible nonviolent drug offenders a reduced sentence, treatment, and increased supervision." *State v. Grayson*, 154 Wn.2d 333, 337, 111 P.3d 1183 (2005). Eligibility for a DOSA is determined by statute, *see* RCW 9.94A.660(1), and it is "offender-based, not offense-based." *In re Postsentence Review of Hardy*, 9 Wn. App. 2d 44, 45, 442 P.3d 14 (2019). The offender must meet certain statutory criteria, including, for example, that they have no prior convictions in this state, and no prior convictions for an equivalent out-of-state or federal offense. RCW 9.94A.660(1)(d).

A DOSA analysis does not end upon the court's consideration of the statutory criteria. *State v. Hender*, 180 Wn. App. 895, 900, 324 P.3d 780 (2014) ("[T]he sentencing court must still determine that 'the alternative sentence is appropriate.'" (quoting *State v. Barton*, 121 Wn. App. 792, 795, 90 P.3d 1138 (2004))). Therefore, the next step after consideration of the statutory criteria is to ask whether a DOSA sentence is appropriate based on the circumstances. *Id.* As part of this inquiry, the court can consider the defendant's "criminal history, whether he would benefit from treatment, and whether a DOSA would serve him or the community." *State v. Jones*, 171

Wn. App. 52, 55, 286 P.3d 83 (2012). Therefore, "eligibility does not automatically lead to a DOSA sentence." *Hender*, 180 Wn. App. at 900. Consequently, deciding whether to grant a DOSA is entirely within the trial court's discretion.

The general rule is that "the trial judge's decision whether to grant a DOSA is not reviewable." *Grayson*, 154 Wn.2d at 338. However, a categorical refusal to consider whether a DOSA sentence is appropriate is an abuse of discretion and reversible error. *Id.* at 342. If the trial court relies on an impermissible basis to make its decision, such as personal animus toward the defendant, that is also an abuse of discretion. *State v. Lemke*, 7 Wn. App. 2d 23, 27, 434 P.3d 551 (2018). But there is a clear "distinction between refusal to exercise judicial discretion at all, and the exercise of judicial discretion based on reasonable factors." *State v. Smith*, 118 Wn. App. 288, 293, 75 P.3d 986 (2003).

The resentencing court did not explicitly state that it would deny Perra's request for a DOSA. Instead, it stated that although Perra now claimed to feel remorse and it "get[s] the reason why [Perra] [did] it . . . trying to get drugs to support [his] habit," it was "way too far down the road at this point." RP (May 26, 2023) at 43. It added that it was glad that Perra felt differently but that the "purpose of the sentence in a case like [this], [was] to give [him] time to straighten [himself] out a little bit." *Id.* There is no evidence in the record that the resentencing court denied a DOSA for an impermissible reason such as animus against Perra. The resentencing court ordered the sentence due to Perra's extensive criminal history, his high offender score, and the application of the free crime aggravator, necessarily excluding the possibility of a DOSA. The resentencing court acted within its discretion in denying Perra's request for a DOSA.

CONCLUSION

Because the resentencing court did not abuse its discretion in imposing sentence, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Veljačić, A.C.J.

I concur:

Price, J.

GLASGOW, J. (dissenting in part) — The majority explains that the standard sentencing range for Perra's burglary and theft convictions is 51 to 68 months (less than six years). The trial court imposed an exceptional sentence more than three times that length, 210 months or 17 years. The State does not dispute that Perra's crimes were nonviolent: no one suffered physical injuries as the result of these crimes, his victim was a corporation, and his crimes were fueled by his drug addiction.

I agree that the trial court did not err in denying a drug offender sentencing alternative. And I agree that Perra should receive an exceptional sentence above the standard range in light of his extensive criminal history, his multiple unscored misdemeanors, and the fact that some of his current crimes would otherwise go unpunished. I also agree that a sentence at the high end of the sentencing range would be clearly too lenient in light of Perra's criminal history. Even an exceptional sentence that doubled the high end of the standard range (for a sentence of about 11 years) would not be an abuse of discretion in my mind.

But more than tripling the high end of the standard sentencing range in these circumstances is clearly unreasonable. A sentence of 17 years for theft of about $10,000 worth of merchandise from Walmart, where no one was physically injured, "'shocks the conscience'". *State v. Ritchie*, 126 Wn.2d 388, 395-96, 894 P.2d 1308 (1995) (reciting the "shocks the conscience" standard) (quoting *State v. Ross*, 71 Wn. App. 556, 571-72, 861 P.2d 473 (1993)). Although there is no mechanical approach to determining whether a sentence is clearly excessive, this case stands in stark contrast with other cases where Washington appellate courts have upheld exceptional sentences for nonviolent crimes. *See State v. Oxborrow*, 106 Wn.2d 525, 533, 723 P.2d 1123 (1986) (defendant was sentenced to 15 years for defrauding investors of *over $1,000,000.00* in a sophisticated pyramid scheme); *State v. Knutz*, 161 Wn. App. 395, 399-400, 402, 253 P.3d 437 (2011)

(defendant received a 60-month sentence where she manipulated an elderly man in an assisted living home in order to steal approximately $347,000 from him).

Although the majority correctly emphasizes the discretion afforded to trial courts in determining the length of an exceptional sentence, the trial court's discretion is not unlimited. If this sentence does not exceed the trial court's discretion, I do not know what would. I would hold that the exceptional sentence that the trial court imposed here was an abuse of discretion. I respectfully dissent in part.

GLASGOW, J.

Appendix B

Filed
Washington State
Court of Appeals
Division Two

August 23, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

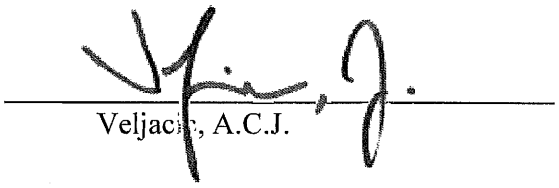
DIVISION II

STATE OF WASHINGTON, Respondent, v. STEVEN B. PERRA, Appellant.	No. 58259-7-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Steven B. Perra, filed a motion for reconsideration of this court's July 30, 2024 opinion. After consideration, we deny the motion. It is

SO ORDERED.

Panel: Jj. Glasgow, Veljacic, Price



Veljacic, A.C.J.

Appendix C

Washington State Court of Appeals
Division Two

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CASE #: 58259-7-II State of Washington, Respondent v Steven B. Perra, Appellant

Counsel:

After a careful review of the issues raised in the above referenced appeal, the court has decided to review this case without oral argument. RAP 11.4(j). Any request to change this decision must be filed not later than ten (10) days after the date of this letter. Unless a panel of judges concludes that oral argument would benefit the court, this matter will be set for consideration on March 14, 2024 and a written opinion will be issued thereafter. If a panel of judges agrees that argument would be beneficial, a letter setting the date and time of oral argument will be sent. In most instances, the date set for oral argument will be the date specified above.

Note: In those cases in which this court must consider an affidavit of financial need in ruling on an attorney fees request, the affidavit of financial need must be filed no later than 10 days before March 14, 2024. *See* RAP 18.1(c).

Very truly yours,

Derek M. Byrne,
Court Clerk

DMB:c

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

November 20, 2024 - 4:17 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,399-1
Appellate Court Case Title:	State of Washington v. Steven B. Perra
Superior Court Case Number:	20-1-00400-1

The following documents have been uploaded:

- 1033991_Briefs_20241120161019SC182301_9381.pdf
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