No.
Court of Appeals No. 59268-1-II

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONALD BIANCHI,

Petitioner.

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

Petition for Review

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A. Identity of Petitioner and Opinion Below

When he was resentenced, Ronald Bianchi was entitled to have the court consider his arguments for a mitigated sentence without concern for what the previous sentencing court had done. He was entitled to have the court properly calculate his sentence. He was entitled to a sentence which comports with constitutional standards. He did not get any of that.

Mr. Bianchi asks this Court to accept review of the opinion of the Court of Appeals denying him the sentencing hearing to which is entitled. *State v. Bianchi*, 59268-1-II.

B. Issues Presented

1. The Sentencing Reform Act (SRA) establishes a court's authority and duty to conduct sentencing hearings. The trial court imposed a sentence more than 5 years longer than the standard range. The court did so without complying with the statutory directive of RCW 9.94A.535. The court imposed the exceptional sentence without any oral acknowledgement it was

doing so, or on which offense(s) it was imposing the sentence. The trial court imposed a term of community custody substantially longer than permitted. Through it all the court mistakenly believed it was appropriate to defer to a prior sentencing judge's intent. The resulting sentence is erroneous. The Court of Appeals agreed. But while this Court's precedent make clear the erroneous sentence must be vacated the Court of Appeals did not do that.

2. This Court has said where a person makes a request for a mitigated sentence, a court must properly consider that request. This Court has said when a case is remanded for resentencing, the court must approach it as a blank slate. Mr. Bianchi set forth a factual and legal basis for a mitigated sentence. The court wrongly believed it should instead defer to the prior sentencing decisions and did not properly consider Mr. Bianchi's request.

3. Two decades ago the United States Supreme Court declared Washington's exceptional sentence procedure violated

the Sixth and Fourteenth Amendments. The Legislature resolved some of the constitutional infirmities, but others persist. The statute still requires judicial fact finding to impose an aggravated sentence without proper notice or proof beyond a reasonable doubt of every fact necessary to the sentence. Review is required so this Court may bring sentencing practice in line with the dictates of the Sixth and Fourteenth Amendments.

C. Statement of the Case

Within days of his arrest in 1997, Mr. Bianchi gave a full confession to his crimes. *State v. Bianchi*, 21 Wn. App. 2d 1047, 3 (2022) (unpublished). Those crimes included acting as an accomplice to three counts of attempted murder of three police officers during their pursuit of Mr. Bianchi and two others after an ill-conceived bank robbery. *Id.* at 2. Mr. Bianchi was 25 at that time.

Mr. Bianchi's involvement in such a crime seemed almost an extension of his childhood.

Mr. Bianchi's father made what money he could smuggling drugs and exotic animals from South America. CP 174-75. The family led an isolated and nomadic life driven by his parents' next scheme or "hustle." CP 173. His sister described it as "Not just your ordinary crazy but a kind of crazy movies are made out of." *Id.*

He smoked cigarettes and drank regularly as a small child. CP 174. While some families share meals, his family used drugs "daily as a family." CP 174. His parents gave him cocaine when he was 8 CP 136. His parents encouraged drug use, teaching him and his siblings how to freebase and snort drugs. CP 174.

His family lived in extreme poverty, stealing items from Goodwill donation boxes and eating what they could find at convenience stores. CP 173-74.

He was emotionally, physical and sexually abused throughout his childhood by a number of adults. CP 136.

Mr. Bianchi scored 10 out 10 on a test of adverse childhood experiences. CP 159. He would have scored higher had the scale permitted it. *Id.* In Mr. Bianchi's words, "That was the way I was raised and the only life I knew." RP 13.

That is the person who committed the crimes. He originally pleaded guilty. *Bianchi*, at 3. A personal restraint petition led to reversal of his convictions for attempted murder and his plea was withdrawn. *Bianchi*, at 3. Following a trial in 2019, he was convicted of 9 counts and received a sentence of 1,311 months. *Id.* That sentence was 22 years longer than the one imposed in 1998.

One of the convictions was reversed on appeal and his case remanded for resentencing. *Bianchi*, at 1.

At that resentencing, Mr. Bianchi requested the court impose a mitigated sentence of 30 years. First, he pointed to his rehabilitation. Next, relying on *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) he pointed to his youthfulness at the time of the crimes. CP 140. Finally, he noted the multiple offense

policy resulted in a clearly excessive sentence in light of the purposes of the SRA. CP 140; RCW 9.94A.535(1)(g).

Essentially illiterate when he entered prison, Mr. Bianchi has his GED. CP 137. He explained "I am not the same dumb, uneducated, illiterate kid who was using drugs and could not even read or write that I was when I committed these crimes in 1997." RP 14.

Dr. Jack Litman, who evaluated Mr. Bianchi in 2018 and 2023, offered "Ronald Bianchi should not have been able to rehabilitate himself given his horrific upbringing" but he has. CP 170.

Nonetheless, the court determined Mr. Bianchi should die in prison imposing the same 94 year sentence. CP 265.

D. Argument

"Sentencing is a critical step in our criminal justice system." *State v. Ford*, 137 Wn.2d 472, 484, 973 P.2d 452, 458 (1999). A sentence cannot "be rendered in a cursory fashion." *Id*. An erroneous sentnce must be reversed. *Id*. at 485. "To

uphold procedurally defective sentencing hearings would send the wrong message to trial courts, criminal defendants, and the public." *State v. Hunley*, 175 Wn.2d 901, 910, 287 P.3d 584, 589 (2012) (quoting *Id.*).

What occurred at sentencing does not instill confidence in the reliability or accuracy of the sentence. Quite the opposite. The trial court imposed an exceptional sentence unaware it was doing so. Even if it knew what it was doing, the court sentence still violated RCW 9.94A.535. The court imposed a term of community custody well in excess of the statutorily permitted term.

Despite this Court's directive that erroneous sentences must be vacated, the Court of Appeals dismissed it all as a clerical mistake. Rather than order a sentencing hearing which comports with statutory requirements and this Court's precedent, the Court of Appeals concluded all that is required is for the trial court to "cure the deficiencies in the judgment and sentence." Opinion at 16.

That Opinion merits review under RAP 13.4.

1. The Court of Appeals agreed the trial court imposed an unlawful sentence. But, the Court of Appeals refused to order the trial court to resentence Mr. Bianchi.

Courts derive sentencing authority strictly from statutes, subject to constitutional limitations. *Blakely v. Washington*, 542 U.S. 296, 303-04, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *State v. Ammons*, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986). Where a court acts outside its statutory authority, the resulting unlawful sentence must be reversed. *Ford*, 137 Wn.2d at 485.

The trial court imposed a sentence 5 years longer than otherwise permitted by statute, an exceptional sentence. The trial court's oral ruling was silent on any intent to impose an exceptional sentence. The trial the court never used the words "exceptional" or "aggravating" or anything similar to suggest such an intent. The written judgment imposes standard range sentences for each of Mr. Bianchi's offenses. CP 264. But, the written judgment and sentence imposes a total sentence for the

multiple offenses which is 60 months longer than the sum of the standard range sentences imposed for each. CP 265.

That sentence is an unlawful exceptional sentence for three reasons. First, contrary to RCW 9.94A.535, the trial court merely added an additional 60 months to the combined term of all three offenses rather than impose an exceptional sentence on any of the offenses individually. That statute requires a court assess the aggravating factors found by the jury for the specific offense and determine those factors warrant an exceptional sentence for that specific offense. Second, even had the trial court complied with the statutory directive that required judicial weighing of facts violates the Sixth and Fourteenth Amendments.

The Court of Appeals recognized the trial court's sentence violated RCW 9.94A.535. Opinion at 10-11. Yet the Court of Appeals dismisses that statutory violation as a mere clerical error. Opinion at 12. It is not. The unlawful sentence imposed entitles Mr. Bianchi to a new sentencing.

a. The Court of Appeals properly recognized the trial court's exceptional sentence violated RCW 9.94A.535.

RCW 9.94A.535 provides:

> The court may impose a sentence outside the standard sentence range **for an offense** if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(Emphasis added). The statute's plain language permits imposition of an exceptional sentence "for an offense," not some collection of offenses. If the court wishes to impose an exceptional term where there are multiple convictions, it does so by imposing an exceptional sentence on one or more of the offenses to achieve the desired total.

This is no mere ministerial act. The trial court must assess the aggravating factors found by the jury for the specific offense and determine those factors warrant an exceptional sentence for that specific offense.

So here, if the court wished to add an additional 60 months to the total sentence, it could have added 60 months to

any of Counts 1, 2, or 3. The court could have imposed 20 months on each, or any other number which when combined equals 60. But, for any sentence for an individual count, the court had to determine "considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence" for that offense. The court could not simply impose 8 standard range sentences and toss in an extra 60 months. But that is what the trial court did. And the Court of Appeals recognized the sentence was unlawful. Opinion 10-11.

The trial court's oral ruling says nothing of how these unmentioned aggravating factors provide substantial and compelling reasons to aggravate the sentence for any specific offense. Nowhere in its oral ruling did the court even acknowledge it was imposing an exceptional sentence. In fact, the judgement an sentence does not even indicate the term imposed was an exceptional term. Other than impose a total term which exceeds what the SRA permits, the court gave no indication it intended to impose an exceptional sentence, and

seemed unaware that it was. Courts cannot impose exceptional sentence by accident.

The Court of Appeals agreed the statute did not permit that sentence. Opinion at 10-11. That conclusion is correct. The words of the statute are clear, a court may only impose an exceptional sentence "for an offense" not some collection of offenses. But, despite recognizing the sentence was unlawful, the Court of Appeals refused to order a new sentencing. Opinion at 12.

b. Because his sentence is unlawful Mr. Bianchi is entitled to a new sentencing.

"It has been the consistent holding of this court that the existence of an erroneous sentence requires resentencing." *Ford*, 137 Wn.2d at 485 (quoting *Brooks v. Rhay,* 92 Wn.2d 876, 877, 602 P.2d 356 (1979)). Because Mr. Bianchi's sentence is not permitted by statute, the sentence is unlawful and must be reversed. *Id*, 137 Wn.2d at 485. But the Court of Appeals refused to do that.

Instead, the opinion dismisses the trial court's failure to comply with RCW 9.94.535 as a "clerical mistake" and an "oversight." Opinion at 12. Thus, rather than resentencing, this Court remands to "cure the deficiencies." Opinion at 16.

A clerical mistake in a judgment is one where the written document does not reflect the sentence pronounced by the court. "[I]n deciding whether an error is "judicial" or "clerical," a reviewing court must ask itself whether the judgment . . . embodies the trial court's intention, as expressed in the record at trial." *Presidential Ests. Apt. Assocs.*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996).

The trial court's oral ruling does not evince any intent to impose an additional 60 months on any one sentence. The oral ruling does not evince an intent to impose additional terms on any of the offense which would total 60 months. In fact, the court never used the words "exceptional" or "aggravating" or anything similar.

Even if the Court of Appeals could surmise the trial court wanted to impose an exceptional sentence, there is still nothing in the record to suggest on which offense. There is nothing to suggest the trial court engaged in the analysis required by RCW 9.94.535.

Where there is no "expression in the trial record showing [what] the trial court intended at the time the original judgment was entered" the error is judicial not clerical. *Presidential Estates Apartment Associates*, 129 Wn.2d at 328. From the oral ruling this Court cannot say the court intended to aggravate only one of the sentences by 60 months, or two by 30 months, all 3 by 20 months, or some other combination. The oral ruling is silent on that point. Even after the court belatedly attempted to correct the judgment to note it was imposing an exceptional sentence, it still did not indicate the offense on which it was imposing an exceptional sentence for any specific offense. CP 31. The trial court's intent as to the specific sentences it the

Court of Appeals believes the trial court wished to impose appears nowhere in the record.

This is no clerical error or oversight. At most, the record reveals the trial court thought it could do exactly what it did, never mind the statute. That is a judicial error.

In *Ford*, this Court reiterated "[s]entencing is a critical step in our criminal justice system." 137 Wn.2d at 484. A sentence cannot "be rendered in a cursory fashion." *Id*. Upholding such a sentence "would send the wrong message to trial courts, criminal defendants, and the public." *Hunley*, 175 Wn.2d at 910 (quoting *Id.*).

The opinion in this case ignores all that. The opinion dismisses the unlawful sentence, one 5 years longer than permitted by statute, as a mere clerical deficency. The trial court's failure to conduct the analysis required by RCW 9.94A.535 is no mere oversight or the failure to check a box. The absence of that analysis is a fundamental misapplication of the law.

Mr. Bianchi's sentence is not permitted by statute. The sentence is unlawful and must be reversed. *Ford*, 137 Wn.2d at 485. Mr. Bianchi is entitled to a new sentencing hearing.

The opinion of the Court of Appeals is contrary to *Ford*, contrary to settled holdings of this Court requiring resentencing. The opinion is contrary to this Court's settled delineation of clerical versus judicial errors. By dismissing an unlawful sentence as a mere clerical error or oversight, the opinion presents an issue of substantial public interest. Review is appropriate under RAP 13.4.

2. More than two decades after *Blakely v. Washington*, Washington courts continue to impose aggravated exceptional sentences which violate the Sixth and Fourteenth Amendments.

a. Every finding which increases the permissible sentence must be pled and proven to a jury beyond a reasonable doubt.

The rights to due process and trial by jury guarantee a jury finding beyond a reasonable doubt for every fact essential to punishment. *Hurst v. Florida*, 577 U.S. 92, 97-98, 136 S. Ct.

616, 193 L. Ed. 2d 504 (2016); *Alleyne v. United States*, 570 U.S. 99, 103, 133 S. Ct. 2151, 186 L.Ed.2d 314 (2013), U.S. Const. amend. VI, XIV; Const. art. I, §§ 21, 22. This is so because "any facts that increase the prescribed range of penalties to which a criminal defendant is exposed are elements of the crime.'" *Alleyne*, 570 U.S. at 111 (cleaned up)).

Blakely concluded Washington's SRA violated these tenets as it permitted a judge to increase a person's sentence, *i.e.*, impose an exceptional sentence, without notice or a jury finding beyond a reasonable doubt. 542 U.S. at 303-04. As with any element, the State must provide notice prior to opening statements at trial. *State v. Recuenco*, 163 Wn.2d 428, 440-41, 180 P.3d 1276 (2008) (*Recuenco III*) .

The trial court's imposition of an exceptional sentence in this case violated these precepts.

b. The SRA requirement that courts independently find tfacts are substantial and compelling violates the Sixth and Fourteenth Amendments.

i. Imposition of an aggravated sentence an impermissible judicial fact-finding.

Following *Blakely*, the legislature amended the SRA so the imposition of an aggravated sentence, in most cases, requires two steps. First, a unanimous jury must find one or more of the aggravating factors from RCW 9.94A.533 beyond a reasonable doubt. Second, a court must find, considering the purposes of the SRA, the aggravating factors constitute a substantial and compelling reason justifying an exceptional sentence. RCW 9.94A.533; RCW 9.94A.535(6).

The Supreme Court held a similar sentencing scheme which required a jury to make a factual finding which permits, but does not require, a judge to impose a greater sentence violated the Sixth and Fourteenth Amendments. *Hurst*, 577 U.S. at 99. That Florida statute mirrors Washington's scheme.

A jury convicted Mr. Hurst of a crime for which the maximum sentence is life in prison. *Hurst*, 577 U.S. at 95. Following the conviction, the jury determined the existence of an aggravating factor which permitted, but did not require, a court to impose the greater sentence of death. *Id*. at 96. The Florida statute then required the judge to weigh the evidence of aggravating and mitigating factors to determine what sentence to impose. *Id*. After weighing the evidence, the court sentenced Mr. Hurst to death. *Id.* As required by Florida law, the court entered written findings of fact detailing its decision. *Id.*

The Court explained "the Florida statute does not make a defendant eligible for death until a finding by the court that such person shall be put to death" 577 U.S. at 100 (Internal citations omitted). Because that additional judicial finding is a prerequisite to the sentence imposed, the sentence violated the Sixth and Fourteenth Amendments. 577 U.S. at 99

The jury in this case did find the existence of aggravating factors on each offense. But those findings alone did not permit

the exceptional sentence. Instead, both RCW 9.94A.535 and RCW 9.94A.537(6) required the judge to make an additional juridical determination before it could impose ans aggravated sentence; the court must "find[], considering the purposes of this chapter, that the facts found [by the jury] are substantial and compelling reasons justifying an exceptional sentence." If the court makes such a finding, the court is required to enter written findings of fact. RCW 9.94A.535; *State v. Friedlund*, 182 Wn. 2d 388, 390–91, 341 P.3d 280 (2015).

In both Florida and Washington's schemes the jury's verdict alone cannot support the greater sentence. Instead, each requires the judge to make a factual determination beyond the jury's verdict to impose the greater sentence. In both, the jury's verdict is a prerequisite to but on its own insufficient to impose that greater sentence.

The Florida scheme did not require a judge find the aggravating factor but did require the judge to independently weigh any aggravating factor against mitigation. *Hurst*, 577

U.S. at 100. Similarly, the SRA does not permit a judge to find the aggravating factor, but just as the Florida statute, the SRA requires the judge alone to "find[] . . . the facts found [by the jury] are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.537(6). Both schemes require the judge to enter specific written findings of fact. *Hurst*, 577 at 96; RCW 9.94A.535. Both schemes hinge imposition of the greater sentence on the judge's findings.

"When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts . . . and the judge exceeds his proper authority." *Blakely*, 542 U.S. at 303-04. Had the judge imposed an exceptional sentence in Mr. Johnson's case based solely on the jury's verdict without the additional determination the sentence would be unlawful. Mr. Bianchi's sentence violates his rights under the Sixth and Fourteenth Amendments.

ii. The determination that facts are substantial and compelling in light of the purposes of the SRA is a factual determination.

Weighing of facts to find if they are sufficiently substantial and compelling to warrant an exceptional sentence is a factual determination.

With no analysis to speak of, *State v. Sage* brushed *Hurst* aside, opining the requiring a judge "find" substantial and compelling reasons is a legal, not factual, determination. 1 Wn. App. 2d 685. 709, 407 P.3d 359 (2017), *see also, State v. Johnson*, 29 Wn. App. 2d 401, 425-26, 540 P.3d 831, *cert denied*. __ U.S. __ 220 L.Ed.2d 273 (2024). The opinion here blindly follows *Sage*. Opinion at 14-15.

The label attached does not matter. "The relevant inquiry is not one of form, but of effect." *Ring v. Arizona*, 536 U.S. 536 U.S. 584, 604, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002). Because an aggravated sentence is not permissible based upon the jury's verdict alone, the judicial weighing of facts violates the Sixth and Fourteenth Amendments. *Hurst*, 577 U.S. at 99.

Beyond the clear weight of *Hurst*, the conclusion in *Sage* is wrong for a number of other reasons.

First, the legislature has required a court "find," not "conclude," there are substantial and compelling reasons. The statute goes further and requires the court enter written findings of fact. RCW 9.94A.535. If a court is not making a factual finding how can it possibly enter findings of fact?

Prior to *Blakely*, judicially-found factors were substantial and compelling so long as they were not contemplated in setting the standard range for the offense and differentiated the present crime from other crimes of the same category. *See, State v. Grewe*, 117 Wn.2d 211, 216, 813 P.2d 1238 (1991). The later determination plainly involves a factual rather than legal assessment.

Requiring a determination that facts are substantial and compelling, with nothing more, is plainly a factual determination. But the judge must also consider whether the facts are substantial and compelling in light of the purposes of

the SRA. RCW 9.94A.535, RCW 9.94A.537(6). This Court and the Court of Appeals have already determined similarly worded requirements trigger *Blakely.*

This Court found a judicial determination that a standard range sentence was "clearly too lenient in light of the purposes of the [SRA]" violated the Sixth Amendment. *State v. Ose* 156 Wn.2d 140, 149, 124 P.3d 635 (2005). So too does a judicial finding that concurrent sentences were clearly too lenient. *In re the Pers. Restraint of VanDelft*, 158 Wn.2d 731, 733-34, 147 P.3d 573 (2006). The same is true of a finding that a defendant's prior unscored misdemeanors or foreign criminal history resulted in a clearly too lenient sentence in light of the purpose of this chapter. *State v. Eller*, 29 Wn. App. 2d 537, 545, 541 P.3d 1001 (2024). Because they require a subjective assessment of relative culpability these must be made by a jury rather than a judge. The reasoning of these cases mirrors that of *Hurst*.

Whether facts are substantial and compelling in light of the purposes of the SRA is a subjective and qualitative factual determination. There is no legal or objective standard that guides that determination. The finding required in RCW 9.9A.535 and RCW 9.94.537(6) is a factual finding only a jury can make.

Twenty years after *Blakely*, Washington's sentencing scheme still violates the Sixth and Fourteenth Amendments. The statutes still permit, and in fact require, imposition of an exceptional sentence based upon a judicial finding by less than proof beyond a reasonable doubt. That continued practice in the face of clear precedent from the United States Supreme Court merits review under every criteria in RAP 13.4.

3. The court did not give proper consideration to Mr. Bianchi's request for a mitigated sentence.

A trial court must properly address the requested sentence. *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183

(2005). A person "may always challenge the procedure by which a sentence was imposed." *Id.*

Both the prosecutor and court began the sentencing hearing with a belief the proceeding was limited in some fashion. CP 178. Rather than fully consider the mitigation in this case, the court deferred to the prior court's judgment. Mr. Bianchi is entitled to have the court properly consider the mitigating qualities of his youthfulness, rehabilitation, and sentences imposed in similar cases

"When a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law." *O'Dell*, 183 Wn.2d at 697; *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017). This includes revisiting whether an exceptional sentence is appropriate. *State v. Brown*, 193 Wn.2d 280, 284-86, 440 P.3d 962 (2019) (holding court may exercise authority to impose exceptional sentence at remanded hearing even where it did not impose exceptional sentence at prior sentencing).

For example, in *State v. Harrison*, the defendant received a resentencing hearing because the prosecution encouraged the court to treat the offender score as "8" rather than "7," contrary to its promise in the plea agreement. 148 Wn.2d 550, 553, 61 P.3d 1104 (2003). On remand, the trial court ruled it was bound by the original sentencing court's decision to impose an exceptional sentence. *Id.* at 553-54. The Supreme Court reversed, explaining a resentencing hearing is a de novo proceeding at which the court must exercise its discretion over all sentencing matters. *Id.* at 554, *see also*, *State v. Dunbar*, 27 Wn. App. 2d 238, 532 P.3d 652 (2023). *Harrison* explicitly rejected the reasoning that "The only thing that has changed" at resentencing "is the difference in offender score," or that remand was limited "to correct that mistake." *Id.* at 555 (quoting trial record).

In response, the prosecutor below made the very same contention rejected in *Harrison*, claiming the "only change" was a "small" or "negligible" change in the offender score. CP

178. As *Dunbar* and *Harrison* made clear, what "changed" is this was an entirely new sentencing hearing. And the court was required to treat it as such. It did not do that.

Rather than approach sentencing as a blank slate, as *Harrison* and *Dunbar* require, the court used the prior sentencing as the starting point. The court said "my inclination and I think it's judicially appropriate and judicially conservative is to give significant deference to the sentencing court. I do appreciate the defendant's arguments on all of the grounds that I have recited and as briefed in defendant's materials. I'm not persuaded to change the sentence from the original sentencing court, notwithstanding the most recent ruling from the Court of Appeals." RP 17.

While a judge may consider the prior rulings of other judges in the matter, the resentencing court must "exercise independent discretion." *Dunbar*, 27 Wn. App. 2d 238 at 244. The court did not do that.

"When a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law." *O'Dell*, 183 Wn.2d at 367. When the sentencing court does not do that, a person is entitled to a new sentencing hearing. *Id*.

The Opinion of the Court of Appeals points to the trial court's passing reference to Mr. Bianchi's briefing and "legal standards" as indicating the trial court understood its task and duties. Opinion at 7. But those references aside, it is clear the court did not understand what was before it. Yet the opinion, concludes the trial court "explained the reasoning behind the sentence imposed. *Id.* Far from it.

The court did not even seem to understand it was imposing an exceptional sentence. The court did not understand "legal standards" such as RCW 9.94A.535. The trial court's statement that it would afford "significant deference to the sentencing court" makes that clear. After all, *it was the sentencing court*. The trial court offering it was "not persuaded

to change the sentence" makes clear the court did not understand the posture of the case or its role. Because the matter was sent back for resentencing, the prior sentence "no longer exist[ed] as a final judgment on the merits." *Harrison,* 148 Wn.2d at 561-62. There was no existing sentence to "change," it was the court's task to determine what the sentence should be in the first instance. The court's admissions and the numerous legal errors in the sentence imposed make clear Mr. Bianchi did not receive the sentencing hearing to which he was entitled.

Mr. Bianchi presented facts and argument warranting a mitigated sentence. First, he pointed to his rehabilitation. *See e.g. In re the Personal Restraint of Delbosque*, 195 Wn.2d 106, 456 P.3d 806 (2020). Next, he pointed to his youthfulness at the time of the crimes as a basis for a mitigated sentence. CP 140; *O'Dell*, 183 Wn.2d 680. He argued the multiple offense policy resulted in a clearly excessive sentence in light of the purposes

of the SRA. *Id.*; RCW 9.94A.535(1)(g); *see also*, *State v. Graham,* 181 Wn.2d 878, 885, 337 P.3d 319 (2014).

Each of those individually and collectively warranted a mitigated sentence. The trial court did not understand nor comply with its duty. The opinion affirming that sentence presents an issue of substantial public interest warranting review. RAP 13.4.

E. Conclusion

Mr. Bianchi established a basis for a mitigated sentence. He was entitled to have the court properly consider that request. Mr. Bianchi was entitled to have the judge properly determine his sentence and comply with constitutional standards.

The opinion of the Court of Appeals affirming the unlawful procedure and sentence warrants under RAP 13.4.

This pleading complies with RAP 18.17 and contains 4998 words.

Respectfully submitted this 6th day of March, 2025.

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Filed
Washington State
Court of Appeals
Division Two

February 4, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RONALD JAY BIANCHI, Appellant.	No. 59268-1-II ORDER GRANTING EXTENSION OF TIME AND ORDER DENYING MOTION FOR RECONSIDERATION

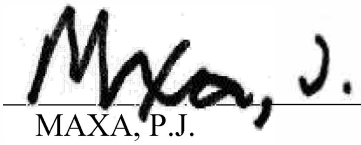
Appellant moves for reconsideration of the court's December 31, 2024 opinion. The court issued an order calling for an answer to the motion. Respondent filed a motion for extension of time to file the answer. The court grants the motion for extension of time and accepts the answer.

Upon consideration, the court denies the motion for reconsideration. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Price, Che

FOR THE COURT:



MAXA, P.J.

Filed
Washington State
Court of Appeals
Division Two

December 31, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RONALD JAY BIANCHI, Appellant.	No. 59268-1-II UNPUBLISHED OPINION

MAXA, P.J. – Ronald Bianchi appeals his sentence imposed after a 2023 resentencing hearing for multiple convictions related to a 1997 bank robbery and subsequent police chase during which his accomplices fired multiple shots at pursuing officers. His convictions included three counts of attempted first degree murder, two counts of first degree robbery, second degree possession of stolen property, second degree assault, and second degree malicious explosion.

Following a retrial, the trial court sentenced Bianchi to 1,131 months in confinement, which represented the high end of the standard sentencing range for the three attempted murder convictions plus a 60 month exceptional sentence. An appellate court vacated a second degree possession of stolen property conviction and remanded for resentencing. At resentencing, a different judge imposed the same 1,131 month sentence.

Bianchi argues that (1) the trial court failed to give meaningful consideration to his request for an exceptional sentence below the standard range based on mitigating circumstances,

(2) the court miscalculated his sentence by adding 60 months to the standard range sentence without properly imposing an exceptional sentence, and (3) imposition of the exceptional sentence was unconstitutional because it was based on impermissible judicial fact-finding. In his statement of additional grounds (SAG), Bianchi also challenges the imposition of a 36 month community custody term, arguing that the term exceeds the statutory limit of 24 months.

We hold that (1) the trial court adequately considered Bianchi's request for an exceptional sentence below the standard range; (2) the judgment and sentence was deficient regarding the exceptional sentence, and we remand for the trial court to cure the deficiencies; (3) imposition of the exceptional sentence was not unconstitutional; and (4) as the State concedes, Bianchi's community custody term must be reduced to 24 months.

Accordingly, we affirm Bianchi's sentence, but we remand for the trial court to cure the deficiencies in the judgment and sentence regarding the exceptional sentence and to reduce the community custody term to 24 months.

FACTS

In October 1997, Bianchi along with two accomplices robbed a bank in Vancouver, Washington. During the robbery, they held bank employees and customers at gunpoint and stole several thousand dollars in cash before fleeing in stolen vehicles.

Law enforcement pursued the suspects in a high-speed chase through residential neighborhoods. The suspects fired multiple bullets from a shotgun and an automatic weapon at pursuing officers, striking patrol cars, houses, and other vehicles. Three officers came under heavy gunfire during the chase. The pursuit ended when the suspects' vehicle crashed into a tree. Bianchi fled into a nearby ravine while his accomplices exchanged gunfire with officers, resulting in the deaths of both accomplices. Bianchi was 25 years old at the time.

In 1998, Bianchi pleaded guilty to multiple charges and was sentenced to 864 months in confinement and 24 months of community custody placement. His convictions included three counts of attempted first degree felony murder.

In 2008, the Supreme Court invalidated the crime of attempted felony murder, leading the Court of Appeals to vacate the three attempted first degree felony murder convictions. The trial court subsequently allowed Bianchi to withdraw his guilty plea.

In 2019, Bianchi was retried and again was convicted of multiple offenses, including three counts of attempted first degree murder and two counts of second degree possession of stolen property. The trial court imposed a sentence of 1,131 months, which was at the top of the standard range for the three attempted murder convictions plus a 60 month exceptional sentence for aggravating factors found by the jury. On direct appeal, Division One of this court vacated one of Bianchi's second degree possession of stolen property convictions and remanded for resentencing. *State v. Bianchi*, No. 83338-3-I (Wash. Ct. App. Apr. 4, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/833383.pdf. The holding only affected the offender score on the other second degree possession of stolen property conviction, and did not affect the offender scores for the attempted murder convictions.

At his June 2023 resentencing, Bianchi requested a mitigated sentence of 30.68 years, emphasizing his traumatic upbringing and his significant rehabilitation during incarceration. Evidence he presented included a score of 10 out of 10 on the Adverse Childhood Experiences test, reflecting severe trauma throughout his youth. Bianchi's upbringing was characterized by learning disorders, illiteracy, chronic abuse, neglect, and exposure to criminality, including being introduced to cocaine by his parents at the age of eight, and using methamphetamine by age 15.

In addition, he suffered physical and sexual abuse from family members and peers and endured a transient lifestyle marked by poverty and instability.

Despite these challenges, Bianchi achieved significant personal growth while incarcerated. He obtained his GED, completed multiple vocational certifications, developed a business plan, maintained long-term sobriety, established a meaningful relationship with his daughter and mother, and was married. Psychological evaluations highlighted his remarkable rehabilitation, with experts noting his transformation despite the profound disadvantages of his upbringing.

The trial court stated that its typical practice was to "start with what has already been sentenced by the sentencing court and to give a certain amount of deference to that, subject to the legal standards and subject to the briefing and the arguments by the parties." Rep. of Proc. (RP) at 16.

The trial court reviewed materials submitted by both Bianchi and the State, heard argument from counsel, heard statements from an expert who prepared a report on Bianchi's upbringing, and heard from Bianchi himself. The trial court noted Bianchi's arguments regarding his youthfulness and childhood trauma and his rehabilitation. The court stated, "I consider all these things and I weigh them against the nature of the crime and the conviction." RP at 16. The court then highlighted the extensive planning and execution of the offenses and their devastating impact on victims and law enforcement.

The court concluded,

> I've given this case quite a bit of thought. And, again, my inclination and I think it's judicially appropriate and judicially conservative is to give significant deference to the sentencing Court. I do appreciate the defendant's arguments on all of the grounds that I have recited and as briefed in defendant's materials. I'm not persuaded to change the sentence from the original sentencing court.

RP at 17. The trial court judge imposed the same 1,131 month sentence that the prior judge had imposed.

On June 16, 2023, the trial court entered an amended judgment and sentence. The court sentenced Bianchi to 471 months on one of the attempted first degree murder convictions and 300 months each on the other two attempted first degree murder convictions. The sentences were at the top of the standard range, including firearm enhancements. Those sentences ran consecutively, with the other sentences running concurrently. However, the court stated that the number of months in total confinement was 1,131 months, when the sentences that ran consecutively only totaled 1,071 months (471 + 300 + 300).

The trial court found substantial and compelling reasons to impose an exceptional sentence above the standard range for the three attempted first degree murder convictions, based on aggravating factors found by the jury. However, the judgment and sentence did not expressly refer to any sentence above the standard range other than stating that the total sentence was 60 months more than the total of the three sentences for attempted murder.

On September 21, 2023, the trial court entered an order correcting Bianchi's judgment and sentence. The order stated that the judgment and sentence "shall be amended to reflect that to the sentence imposed is an additional 60 months of total confinement for the aggravator found by the jury. The total confinement order is 1,131 months." Clerk's Papers at 315. Bianchi's defense counsel signed as approving the form of the order. Although the case had been appealed, the trial court did not obtain permission from this court before entering the order.

Bianchi appeals his sentence and the duration of his community custody.

ANALYSIS

A. CONSIDERATION OF REQUEST FOR EXCEPTIONAL SENTENCE DOWNWARD

Bianchi argues that the trial court failed to meaningfully consider his request for an exceptional sentence below the standard range based on mitigating circumstances when imposing the 1,131 month sentence. We disagree.

1. Legal Principles

Under RCW 9.94A.535, the trial court "may impose a sentence outside the standard sentence range for an offense if it finds . . . substantial and compelling reasons justifying an exceptional sentence." Under RCW 9.94A.535(1), the court must find that a preponderance of the evidence establishes mitigating circumstances justifying a sentence below the standard range. RCW 9.94A.535(1) contains an illustrative, but not exclusive, list of mitigating circumstances that could justify an exceptional sentence downward.

Every defendant is entitled to ask the trial court to consider an exceptional sentence below the standard range and to have the exceptional sentence actually considered. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). But our review is limited to circumstances where the trial court " 'refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range.' " *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017) (quoting *State v. McGill*, 112 Wn. App. 95, 100, 47 P.3d 173 (2002)). A trial court has exercised its discretion when it "has considered the facts and has concluded that there is no basis for an exceptional sentence." *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997).

2. Analysis

First, Bianchi argues that the court erred in merely deferring to the prior judge's 1,131 sentence rather than engaging in a de novo analysis. Bianchi relies on *State v. Dunbar*, in which Division Three of this court held that any resentencing on remand is de novo. 27 Wn. App. 2d 238, 244, 532 P.3d 652 (2023). The court stated, "[t]he resentencing judge may not rely on a previous court's sentence determination and fail to conduct its own independent review." *Id.* at 249. However, as long as the resentencing court exercises independent discretion, the court may consider rulings by another judge at the earlier sentencing. *Id.* at 244. And "[d]uring resentencing, the trial court may impose the identical sentence . . . within its discretion." *Id.* at 249.

Assuming without deciding that a full, de novo resentencing was required here, we conclude that the trial court did not err. The trial court did state that it would "give significant deference to the sentencing Court." RP at 17. However, earlier the court stated that this deference was "subject to the legal standards and subject to the briefing and the arguments by the parties." RP at 16. And the court stated, "I do appreciate the defendant's arguments on all of the grounds that I have recited and as briefed in defendant's materials." RP at 17.

As noted above, even under *Dunbar* the trial court was allowed to consider the prior sentence. 27 Wn. App. 2d at 244. Further, the court never stated that it was bound by the prior judge's sentence. Instead, the court considered the materials Bianchi submitted, heard argument from counsel, and explained the reasoning behind the sentence imposed. The fact that the court imposed the same sentence as before does not mean that the court failed to exercise discretion. We reject Bianchi's argument.

Second, Bianchi argues that the trial court failed to consider his rehabilitation while in prison. A trial court has discretion to consider post-conviction rehabilitation at resentencing. *Dunbar*, 27 Wn. App. 2d at 247. However, a court is not required to consider rehabilitation. The Supreme Court stated, "While a resentencing court may certainly exercise its discretion to consider evidence of subsequent rehabilitation where such evidence is relevant to the circumstances of the crime or the offender's culpability, we decline to hold that the court is constitutionally required to consider such evidence in every case." *State v. Ramos*, 187 Wn.2d 420, 449, 387 P.3d 650 (2017).

Here, the trial court did consider Bianchi's rehabilitation argument. The court stated, "The other gist of the argument is the passage of time and significant rehabilitation. And, there's extensive materials on that. That this is a life that is still redeemable, post custody and the Department of Corrections." RP at 16. However, the court decided that Bianchi's rehabilitation did not warrant an exceptional sentence downward. That decision was within the court's discretion. We reject Bianchi's argument.

Third, Bianchi argues that the trial court failed to consider the mitigating qualities of his youthfulness at the time of the crimes. Bianchi was 25 years old when he committed the offenses that lead to his convictions. Youthfulness is a mitigating factor that may justify an exceptional sentence below statutory guidelines, even when the defendant is a legal adult. *State v. O'Dell*, 183 Wn.2d 680, 689, 358 P.3d 359 (2015). However, "age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence." *Id.* at 695.

Here, the trial court did consider Bianchi's youthfulness argument. The court summarized Bianchi's argument:

> [H]e was young at the time, 25 years old. That is – that's not the kind of youth that I think I have in mind when you're talking about an adolescent. I know there's

> arguments about child – childhood trauma, etcetera and I appreciate those and recognize those. But, I have to weigh those for the interest of the community. So, youth of the defendant at the time of the crime would be one argument.

RP at 16. However, the court decided that Bianchi's youthfulness did not warrant an exceptional sentence downward. That decision was within the court's discretion. We reject Bianchi's argument.

Fourth, Bianchi argues that the trial court should have found a mitigating factor under RCW 9.94A.535(1)(g). RCW 9.94A.535(1)(g) states the following mitigating factor that can support an exceptional sentence below the standard range: "The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010." Whether or not to impose an exceptional sentence downward based on RCW 9.94A.535(1)(g) is within the trial court's discretion. *State v. McGill*, 112 Wn. App. 95, 99, 47 P.3d 173 (2002).

Here, the trial court did not expressly address RCW 9.94A.535(1)(g) in its oral ruling. However, the court noted that it had read all the materials submitted by the parties. And the court stated, "I do appreciate the defendant's arguments on all of the grounds that I have recited and as briefed in defendant's materials." RP at 17. Bianchi argued in his materials that RCW 9.94A.535(1)(g) provided a basis for an exceptional sentence downward. There is no indication in the record that the trial court failed to recognize that it had the authority to impose an exceptional sentence downward on this basis. Instead, the trial court determined in the exercise of its discretion that an exceptional sentence below the standard range was not appropriate. We reject Bianchi's argument.

We hold that the trial court adequately considered Bianchi's request for an exceptional sentence below the standard range based on mitigating circumstances.

B. IMPOSITION OF EXCEPTIONAL SENTENCE

Bianchi argues that the trial court did not properly impose the 60 month exceptional sentence in the judgment and sentence. We agree.

Bianchi argues that the 60 month exceptional sentence must be vacated because (1) the judgment and sentence did not reflect the imposition of such a sentence and (2) the 60 months was not added to any specific conviction. We agree that the judgment and sentence was deficient, but we conclude that the trial court made clerical errors that can be corrected on remand.

1. Failure to Include Exceptional Sentence in List of Sentences

The trial court failed to expressly reflect in the judgment and sentence that it was imposing a 60 month exceptional sentence for the attempted first degree murder convictions. The court found substantial and compelling reasons to impose an exceptional sentence based on the jury finding of aggravating factors. But the judgment and sentence only showed sentences at the top of the standard range for the three attempted murder convictions, which totaled 1,071 months. On the other hand, the court stated in its oral ruling that it was imposing a sentence of 1,131 months. And the judgment and sentence showed a total confinement of 1,131 months – 60 months more than the three consecutive standard range sentences.

The State relies on the order correcting the judgment and sentence that was entered after this appeal was filed. Under CrR 7.8(a), clerical mistakes in a judgment and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or upon the motion of any party. But CrR 7.8(a) also states that if review has been accepted by an appellate court, a clerical mistake can be corrected pursuant to RAP 7.2(e). Under RAP 7.2(e), regarding the modification of a decision, "[i]f the trial court determination will change a decision then

being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision."

Here, the "decision" we are reviewing is entry of the judgment and sentence. And the trial court's correction order changed the judgment and sentence. Therefore, the trial court was required to obtain permission from this court before entering the correction order.

Because the State and the trial court did not comply with RAP 7.2(e), we will disregard the order correcting the judgment and sentence. And without that order, we agree that the judgment and sentence was deficient because it did not expressly impose the exceptional 60 months in the list of sentences for the three attempted first degree murder convictions.

2. Nonspecific Exceptional Sentence

Bianchi argues that the judgment and sentence also was deficient because the 60 month exceptional sentence was not allocated to any specific conviction. Bianchi relies on RCW 9.94A.535, which states, "The court may impose a sentence outside the standard sentence range *for an offense* if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." (Emphasis added.) He claims that the "for an offense" language allows the trial court to impose an exceptional sentence only for specific offenses, not a group of offenses.

The State does not address this argument on the merits. Instead, in a footnote, the State claims that Bianchi did not provide meaningful argument or authority on this issue. We disagree. Bianchi cited authority – RCW 9.94A.535 – and provided an argument based on that authority.

In the absence of any contrary argument from the State, we conclude that the trial court erred in not allocating the 60 month exceptional sentence to a specific conviction or convictions.

3. Correcting Clerical Mistakes

Bianchi argues that the remedy for the deficiencies in the judgment and sentence is vacation of the exceptional sentence. We disagree.

We conclude that the trial court's failure to show the 60 month exceptional sentence in the judgment and sentence was a clerical mistake. The trial court's clear intention – stated in the judgment and sentence – was to impose an exceptional sentence, and the 1,131 month sentence referenced in the judgment and sentence was 60 months more than the consecutive standard ranges for the attempted murder convictions. Therefore, the trial court can correct this mistake with our permission.

Similarly, we conclude that the trial court's failure to allocate the exceptional sentence to a specific conviction was a clerical mistake. The trial court's clear intention was to impose a 60 month exceptional sentence, and the failure to allocate the 60 months to a specific conviction was an oversight. Therefore, the trial court can correct this mistake with this court's permission.

We remand for the trial court to amend the judgment and sentence provide for a 60 month exceptional sentence and to allocate the 60 month exceptional sentence to a specific conviction or to divide the 60 months among more than one conviction.

C. CONSTITUTIONALITY OF EXCEPTIONAL SENTENCE

Bianchi argues that the trial court's imposition of an exceptional sentence based on judicial fact-finding violated his rights under the Sixth and Fourteenth Amendments to the United States Constitution. We disagree.

1. Legal Principles

Under RCW 9.94A.535 and RCW 9.94A.537, a trial court may impose an exceptional sentence if it finds there are "substantial and compelling reasons justifying an exceptional

sentence," provided that the aggravating factors have been found by a jury beyond a reasonable doubt. Specifically, RCW 9.94A.535(3)(v) permits an exceptional sentence if "[t]he offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense." The jury must determine the existence of aggravating factors, but the trial court determines whether those factors warrant an exceptional sentence. *State v. Suleiman*, 158 Wn.2d 280, 290-91, 143 P.3d 795 (2006).

The Sixth and Fourteenth Amendments guarantee a defendant the right to a jury trial for every fact that increases the penalty for a crime beyond the statutory maximum. *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). " 'Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.' " *Id.* (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)).

However, Division One of this court in *State v. Sage* held that determinations that involve applying the law to facts already found by the jury are legal conclusions, not factual findings, and do not require additional jury consideration. 1 Wn. App. 2d 685, 708-10, 407 P.3d 359 (2017). The court stated,

> Washington cases recognize that once the jury by special verdict makes the factual determination whether aggravating circumstances have been proved beyond a reasonable doubt, "[t]he trial judge [is] left only with the legal conclusion of whether the facts alleged and found were sufficiently substantial and compelling to warrant an exceptional sentence."

Id. at 708 (alterations in original) (quoting *Suleiman*, 158 Wn.2d at 290-91).

Washington courts have emphasized that the judicial role in determining whether a sentence is justified under RCW 9.94A.535 involves applying the law to facts already found by the jury. This approach does not violate constitutional protections. *Suleiman*, 158 Wn.2d at 290-91; *Sage*, 1 Wn. App. 2d at 708-10.

2. Analysis

Bianchi challenges the trial court's determination that the jury's findings provided "substantial and compelling reasons" for an exceptional sentence, arguing that this amounted to impermissible judicial fact-finding in violation of his constitutional rights. He relies on *Hurst v. Florida*, 577 U.S. 92, 97-99, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), to argue that any determination leading to an increased sentence should have been submitted to the jury. In *Hurst,* the Supreme Court addressed Florida's death penalty sentencing scheme for capital felonies, in which the jury provided a recommendation of a life or death sentence without stating the factual basis of its recommendation. *Id.* at 95-96. Although the trial court would consider the jury's recommendation, the court exercised independent judgment to determine whether a death sentence was justified. *Id.* The Court held that Florida's death penalty sentencing scheme was unconstitutional because it allowed judges, rather than juries, to independently determine the existence of aggravating circumstances necessary to impose a death sentence. *Id.* at 98-100.

However, Washington's sentencing scheme is distinguishable. Unlike Florida's law, which required judges to find aggravating factors and weigh them against mitigation, Washington requires a jury to find the existence of aggravating factors beyond a reasonable doubt before a court can consider whether those factors are substantial and compelling. RCW 9.94A.535; RCW 9.94A.537(6). The trial court has no role in the jury's determination. Only

once the jury has made its factual findings can the trial court determine as a matter of law that those findings justify an exceptional sentence. *See Sage*, 1 Wn. App. 2d at 708-09.

Bianchi also argues that *Sage* was wrongly decided. We disagree. *Sage* relied on and quoted from our Supreme Court's decision in *Suleiman*, 158 Wn.2d at 290-91 & 291 n.3. *Sage*, 1 Wn. App. 2d at 708 & n.80. And our Supreme Court denied review in *Sage*. 191 Wn.2d 1007 (2018).

Here, the trial court complied with constitutional and statutory requirements. The jury found the existence of aggravating factors beyond a reasonable doubt, specifically that the offenses were committed against law enforcement officers performing official duties. RCW 9.94A.535(3)(v). The trial court then determined that these findings constituted "substantial and compelling reasons" to impose an exceptional sentence, as required by RCW 9.94A.535 and RCW 9.94A.537(6). This determination was a legal conclusion rather than a factual determination and therefore was appropriately made by the court. *Sage*, 1 Wn. App. 2d at 708.

We hold that the trial court's imposition of an exceptional sentence did not violate Bianchi's constitutional rights.

D. SAG CLAIM

Bianchi argues, and the State concedes, that the trial court improperly imposed a 36 month term of community custody, exceeding the statutory maximum of 24 months authorized under RCW 9.94A.728 at the time of his crime in 1997 and original judgment and sentence in 1998. Former RCW 9.94A.150 (1981). We agree.

The trial court sentenced Bianchi to 36 months of community custody under RCW 9.94A.701(1), which mandates that term for a serious violent offense. However, RCW 9.94B.050(2)(b) states that the term of community custody is 24 months for "[a] serious violent

offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000." RCW 9.94B.010(2) states that chapter 9.94B RCW supplements chapter 9.94A RCW.

Bianchi committed his offenses in 1997. Therefore, RCW 9.94B.050(2)(a) applied to his sentence and the correct term of community custody was 24 months. We remand for the trial court to correct the judgment and sentence.

CONCLUSION

We affirm Bianchi's sentence, but we remand for the trial court to cure the deficiencies in the judgment and sentence regarding the exceptional sentence and to reduce the community custody term to 24 months.

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.

MAXA, P.J.

We concur:

PRICE, J.

CHE, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 59268-1-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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☒ petitioner

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MARIA ANA ARRANZA RILEY, Paralegal Date: March 6, 2025
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