71216-1

71216-1

NO. 71216-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JEFF HEURTELOU,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

In imposing sentence, the trial court may consider any information that is admitted, acknowledged, or proved. If the defendant disputes a fact, the court must either not consider it or grant an evidentiary hearing on the matter. A standard range sentence is ordinarily not reviewable on appeal. Here, the sentencing court heard information about the victims and about the sentence imposed on a similarly situated co-defendant. Heurtelou made no objection. The court imposed a standard range sentence. Is Heurtelou's appeal precluded because the court imposed a standard range sentence? Should this Court decline to hear this appeal because Heurtelou failed to preserve any error and no exception to RAP 2.5(a) applies? Did the sentencing court properly consider facts at sentencing that Heurtelou not only failed to contest, but acknowledged during his own presentation to the court?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On October 29, 2012, the State of Washington charged the defendant, Jeff Heurtelou, with one count of Robbery in the First Degree with a firearm enhancement, and one count of Burglary in the First Degree. CP 1-2. Also charged in the Information were two co-defendants, Dwaun Antonio Spraggans-Conroy and William Scott

Parker.[1] CP 1-2. The two charged crimes arose out of a substantial series of robbery and burglary offenses, detailed below.

As a result of the extensive criminal conduct, the State and Heurtelou reached a plea agreement that involved Heurtelou pleading guilty to seven counts of Robbery in the First Degree, one with a firearm enhancement (count IX), and two counts of Burglary in the First Degree, one with a firearm enhancement (count II) and one with a deadly weapon enhancement (count IV). CP 22-44.

Because of the number of violent offenses and the three weapon enhancements, Heurtelou faced a significant sentence: 144 months on the weapons enhancements alone, consecutive to a standard range sentence on the most serious offenses of 129-171 months. CP 40; 1RP[2] 10-11, 14-15. The State requested the high end of the standard range, for a total sentence of 315 months. CP 44; 1RP 13; 2RP 4-5, 9. Heurtelou sought a low end sentence of 273 months. CP 43.

At sentencing on November 1, 2013, the State explained to the court how it had reached the plea agreement with Heurtelou, and indicated

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[1] It appears that the court reporter at sentencing did not understand that Spraggans-Conroy is a single person. The transcript of that hearing repeatedly refers to "Spriggs" and "Conroy" as if they are two people. E.g., 2RP 9. Where relevant, the State will correct the reference in this brief.

[2] The two volumes of the Verbatim Report of Proceedings are referred to as follows: 1RP is the guilty plea proceeding on August 13, 2013; 2RP is the sentencing hearing on November 1, 2013.

that Heurtelou and co-defendant Spraggans-Conroy were given the same offer. 2RP 3-4. The court asked whether Spraggans-Conroy had been sentenced; the State represented that he had, and that he had received a sentence of about 25 years, somewhat less than what the State had recommended for both Heurtelou and Spraggans-Conroy. 2RP 4. Defense counsel interjected to advise the court that she had a copy of Spraggans-Conroy's Judgment and Sentence, and that he had been sentenced to 297 months of incarceration. 2RP 5.

The prosecutor also represented to the court that she had met with many of the victims, and that they supported the resolution of the case. 2RP 6. The court then asked the prosecutor to describe the victims. 2RP 7. The prosecutor explained that most of the victims, all women of Southeast-Asian descent, were brought to the Bellevue area by a group of individuals (not including Heurtelou or his co-defendants) who had since been indicted for human trafficking. 2RP 7-9. The prosecutor concluded her presentation by asking for the high end of the range, consistent with the State's written recommendation, but observing that the court may wish to impose the same sentence on Heurtelou that another court did on Spraggans-Conroy. 2RP 9. Heurtelou did not object to any portion of the State's presentation.

Heurtelou's attorney then spoke on his behalf. She indicated that Heurtelou did not know that the victims of his crimes were also the victims of human trafficking, and that learning that information had made the facts of what he had done even more painful for him. 2RP 10-11.

The sentencing court then imposed a total sentence of 297 months. CP 48; 2RP 14. In doing so, the court told the parties that it saw no basis to distinguish Heurtelou's conduct from Spraggans-Conroy's, and that it believed that "like defendants, who commit like offenses in like ways, should be treated alike." 2RP 13-14.

This appeal timely followed. CP 55-56.

2. SUBSTANTIVE FACTS[3]

Heurtelou and co-defendants Spraggans-Conroy and Parker, along with Kevin de Jesus Castellon, a juvenile later charged by Amended Information,[4] terrorized Asian women advertising massage services on Backpage.com by committing take-over style armed robberies at the women's Bellevue apartments. Specifically, Heurtelou and Spraggans-Conroy planned a series of robberies in the Bellevue area that involved

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[3] Because this matter resolved with a guilty plea instead of a trial, the substantive facts are drawn entirely from the Certification for Determination of Probable Cause and Prosecutor's Summary, as well as Heurtelou's Statement of Defendant on Plea of Guilty. CP 3-11, 41-42. Heurtelou stipulated to these facts at the time of his plea. CP 41-43.

[4] CP 13-21 (Amended Information including co-defendant Castellon); 2RP 5-6 (prosecutor describing involvement of "Mr. Cast[e]llon, 17 years old at this time").

Parker or Castellon calling a number listed in a massage ad on Backpage.com or a similar advertising site to make an appointment. Parker or Castellon would then go to the apartment building where the appointment was to take place and gain access to the building, propping the door open for Heurtelou and Spraggans-Conroy to follow. Parker or Castellon would then go to the specific apartment and make contact with the intended victim. Heurtelou and Spraggans-Conroy would then either rush into the apartment, or be summoned to the apartment via text message from Parker or Castellon.

Once inside, Heurtelou and Spraggans-Conroy, who both wore masks, would hold the apartment's occupants, typically young Asian women, at gunpoint. One of the guns used was a 9 mm semi-automatic pistol; the other was a black paintball pistol. Heurtelou and Spraggans-Conroy would then order the women onto the floor, secure the women's hands behind their backs with zip ties, and cover their mouths with duct tape. The two then stole property from the apartments, including cash, cameras, watches, purses, cell phones, and other items. This series of robberies included seven separate incidents, and involved at least twelve victims, one of whom was victimized twice.

On August 22, 2012, Heurtelou and Spraggans-Conroy robbed Jennifer Hensel of money.

On October 15, 2012, Heurtelou, Spraggans-Conroy, and Parker robbed Rungrat Thummakul and Sumalee Malisan of money and other personal property.

On October 21, 2012, Heurtelou, Spraggans-Conroy, and Parker returned to Thummakul's apartment and robbed her and another woman present of money.

On October 22, 2012, Heurtelou, Spraggans-Conroy, and Castellon robbed Nattha Sawettawan, John Wunderlich, and another woman identified only as Cindy of personal property.

On the same day at another apartment, the same three co-defendants robbed Buppha Inchum of money and personal property.

On the same day at yet another apartment, the three robbed Nuchjariyah and Surarak Anukrakjaroensri of money and personal property. During one of the October 22, 2012, robberies, the women were ordered to remove their clothes, and one was sexually assaulted.[5]

On October 26, 2012, Heurtelou, Spraggans-Conroy, and Parker robbed Araya Pornpiriyasani, Vanee Suetrong, and Saifon Kinkade of money and personal property. During the robbery, one of the men pointed

[5] At Heurtelou's sentencing, the prosecutor indicated that the co-defendant who sexually assaulted this victim was likely Spraggans-Conroy, but that both he and Heurtelou had ordered victims to remove their clothing. 2RP 6.

a gun at Kinkade's head and demanded the PIN for her debit card. After the men had left this apartment, Spraggans-Conroy realized he had left his backpack—containing stolen property from the robbery, the paintball pistol, duct tape, and cable ties—in the apartment. He returned to retrieve it; when he confronted the women this time, they jumped from their second floor windows to escape.

The police arrived shortly thereafter, and Heurtelou, Spraggans-Conroy, and Parker were all arrested. The 9 mm pistol was recovered from Spraggans-Conroy, along with a loaded magazine. A search of the backpack pursuant to a warrant revealed duct tape, a box of latex gloves, cable ties, the paintball pistol, a mask, and stolen watches, purses, and other property. A search warrant executed at the home where Heurtelou and Spraggans-Conroy were residing resulted in the recovery of 15 laptop computers, 14 women's wallets and purses, 25 cellular phones, 12 cameras and other electronic devices, two women's watches, an Asian woman's passport, an identification document from another woman, cash, including Thai currency, and documents detailing potential robbery locations in Bellevue and other areas.

Parker and Castellon, and to some extent Spraggans-Conroy, provided statements to the police acknowledging their participation in these crimes.[6]

C. ARGUMENT

Heurtelou contends that the trial court erred by relying on unproven allegations presented by the prosecutor at sentencing to determine his standard range sentence. Specifically, he complains that the trial court improperly relied on the State's explanation that the victims of Heurtelou's crimes were also victims of human trafficking committed by others unconnected to him, and the State's representation as to the sentence received by co-defendant Spraggans-Conroy, to determine his sentence of 297 months. Heurtelou's claim must be rejected. First, it is uncontested that Heurtelou received a standard-range sentence; such sentences may not be appealed except in circumstances not applicable here. Second, Heurtelou failed to preserve his claim by objecting, so pursuant to RAP 2.5(a), this Court should not reach it. Third, the trial court did not err in considering information about the sentence imposed on Spraggans-Conroy and about the victims—all of which Heurtelou acknowledged—in deciding the appropriate sentence in this case.

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[6] At Heurtelou's sentencing, the prosecutor provided additional information about Castellon's involvement in the crimes. 2RP 5-6.

1. HEURTELOU'S APPEAL OF HIS STANDARD RANGE SENTENCE IS BARRED BY STATUTE.

Heurtelou was sentenced to 297 months of incarceration, squarely within the standard range for his crimes. A standard range sentence is not appealable, except under circumstances not applicable here. This appeal must be dismissed.

Heurtelou does not contend that his sentence was outside the standard range. Nor could he. His offender score was properly calculated as a 16.[7] Based on this offender score, Heurtelou's standard range for his most serious offense, Robbery in the First Degree, is 129 to 171 months.[8] Heurtelou also pled guilty to firearm enhancements on counts II and IX, and a deadly weapon enhancement on count IV. A firearm enhancement on a Class A felony adds 60 months to the sentence; a deadly weapon

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[7] Heurtelou pled guilty to seven counts of Robbery in the First Degree and two counts of Burglary in the First Degree. CP 22-44. All of these offenses are "violent offenses." RCW 9.94A.030(54)(a)(i) (all Class A felonies are violent offenses); RCW 9A.56.200(2) (Robbery in the First Degree is a Class A felony); RCW 9A.52.020(2) (Burglary in the First Degree is a Class A felony). He had no prior felony criminal history. CP 3. Heurtelou's offender score for the crimes of Robbery in the First Degree was calculated by counting two points for each prior adult violent felony conviction. RCW 9.94A.525(8). His offender score for the crimes of Burglary in the First Degree was likewise calculated by counting two points for each prior adult violent felony conviction. RCW 9.94A.525(8), (9). Other current convictions are counted as prior convictions for purposes of determining the offender score. RCW 9.94A.589(1)(a). Accordingly, for each of Heurtelou's nine current felony convictions, all of his eight other current convictions—all violent offenses—counted as two points each, for a total offender score of 16 for each conviction.

[8] RCW 9.94A.515 (Robbery in the First Degree is a level IX offense), .510 (standard range for a level IX offense with an offender score of 9 or more is 129-171 months).

enhancement adds 24 months.[9] Each enhancement runs consecutively to all other sentencing provisions, including other enhancements.[10] Accordingly, the enhancements added a combined 144 months to Heurtelou's standard range, for a total standard range of 273 to 315 months. The 297-month sentence is within this standard range.

Pursuant to RCW 9.94A.585(1), a standard range sentence may not be appealed. State v. Williams, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). As a matter of law, the imposition of a standard range sentence cannot be an abuse of discretion. Id. at 146-47. Washington courts, however, have recognized a few exceptions to this statutory prohibition. In particular, an appeal of a standard range sentence may lie where the sentencing court committed a legal error or abused its discretion in determining how to calculate the sentence. Id. (citing State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452 (1999) (permitting appeal of inclusion of foreign offense in offender score), and State v. Channon, 105 Wn. App. 869, 876, 20 P.3d 476 (2001) (considering appeal of same criminal conduct determination)).

Here, Heurtelou contends that he is entitled to appeal because "the sentencing court had a duty to follow a specific procedure under the

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[9] RCW 9.94A.533(3)(a), (4)(a).

[10] RCW 9.94A.533(3)(e), (4)(e).

[Sentencing Reform Act] and failed to carry out that duty." Brief of Appellant at 2. Specifically, he argues that the sentencing court failed to comply with the procedure detailed in RCW 9.94A.530(2). But the very case upon which Heurtelou relies, State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993), forecloses his appeal.

In Mail, the Supreme Court considered whether the sentencing court's consideration of the defendant's probation violations and the facts of another assault conviction to impose a particular sentence within the standard range resulted in appealable error. Id. at 709-10. The court first held that, "where the sentencing court had a duty to follow some specific procedure required by the SRA, and . . . the court failed to do so," an appeal will be permitted. Id. at 712 (applying former RCW 9.94A.210(a), now recodified at RCW 9.94A.585(1)). The court then examined whether the sentencing court had in fact failed in its duty to follow a procedure mandated by the SRA. Specifically, it considered whether the sentencing court violated former RCW 9.94A.370(2), now recodified at RCW 9.94A.530(2), in considering extraneous information in setting Mail's sentence. Mail, 121 Wn.2d at 713. In determining that it did not, the Mail court concluded that the trial court followed the correct procedure when it considered additional facts at sentencing to which the defendant did not object, because the statute permits the court to consider such facts unless

the defendant objects. Id. at 714; see also State v. Herzog, 112 Wn.2d 419, 430-32, 771 P.2d 739 (1989). Accordingly, the Mail court disallowed the defendant's appeal of his sentence.

Mail controls the outcome here. Although Heurtelou contends that the sentencing court violated RCW 9.94A.530(2) by considering facts not proven by a preponderance of the evidence, the court was entitled to consider those facts without holding an evidentiary hearing because Heurtelou acknowledged and did not contest them. In short, the sentencing court followed the procedures of RCW 9.94A.530(2). Heurtelou's appeal must be dismissed pursuant to RCW 9.94A.585(1).

2. THIS COURT SHOULD DECLINE TO CONSIDER HEURTELOU'S CLAIM OF ERROR PURSUANT TO RAP 2.5(a).

Generally, an appellate court will not consider an issue raised for the first time on appeal. State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). The policy underlying the rule is to encourage the efficient use of judicial resources: where an objection could have given the trial court an opportunity to correct any error and avoid an appeal, the appellate court should not sanction a party's failure to timely object. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

RAP 2.5(a)(3) permits the defendant to raise a claim of error for the first time on appeal if it is a manifest error affecting a constitutional

right. Kirkman, 159 Wn.2d at 926. The purposes of this exception in RAP 2.5 are to correct any "serious injustice to the accused" and to preserve the fairness and integrity of the judicial proceedings. State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). To warrant review, however, any such alleged error must be truly of constitutional magnitude. Id. (citation omitted); Kirkman, 159 Wn.2d at 926. Moreover, it must be "manifest," meaning that the defendant must demonstrate actual prejudice to his rights at trial, and that prejudice must appear in the record. Kirkman, 159 Wn.2d at 926-27; McFarland, 127 Wn.2d at 334. "Actual prejudice," in turn, means that the alleged error had "practical and identifiable consequences" in the trial. O'Hara, 167 Wn.2d at 99 (citations omitted). This exception to the ordinary requirement that an error be preserved by a timely objection at trial must be construed narrowly. Kirkman, 159 Wn.2d at 935.

Here, Heurtelou objects for the first time on appeal that the trial court improperly considered the victims' status and the co-defendant's sentence. This is not a claim of constitutional magnitude; indeed, Heurtelou cites to no constitutional provision in his brief. Rather, it is premised entirely on a purported violation of a statutory provision. As such, it falls within no exception to RAP 2.5(a). This appeal is procedurally barred.

3. THE TRIAL COURT DID NOT ERR IN CONSIDERING INFORMATION ABOUT THE VICTIMS OF HEURTELOU'S CRIMES AND THE SENTENCE IMPOSED ON HIS CO-DEFENDANT.

Even if this Court determines that it may entertain Heurtelou's claim, the sentence should be affirmed on the merits. The trial court properly followed the statutory procedures before considering facts about the victims or Spraggans-Conroy's sentence. Not only did Heurtelou fail to object to these facts, he acknowledged them. And, the information about the victims was not material in any event, so any improper consideration of it was harmless error.

In sentencing a defendant, a court may impose any standard range sentence it deems appropriate. RCW 9.94A.530(1). Its broad discretion is statutorily constrained in only limited ways. In imposing sentence, the court is required to consider any risk assessment or presentence reports, any victim impact statement, the defendant's criminal history, arguments by the State, defense counsel, the victim or her representative, and law enforcement, and the defendant's allocution. RCW 9.94A.500(1). Additionally, if the defendant disputes material facts, the court must either not consider the fact or must grant an evidentiary hearing on the point.

RCW 9.94A.530(2).[11] If, however, the defendant remains silent or acknowledges the fact, the court may consider it. Id.; Mail, 121 Wn.2d at 712-14. Here, the trial court's consideration of information about the victims and the co-defendant's sentence did not run afoul of these constraints.

Turning first to Heurtelou's contention that the trial court erred by considering Spraggans-Conroy's sentence, this argument is without merit. At sentencing, the prosecutor pointed out that Spraggans-Conroy was sentenced to "approximately 25 years." 2RP 4. Heurtelou did not object. Indeed, he had no reason to do so. Spraggans-Conroy received a shorter sentence than the State had sought, so to the extent that the trial court thought that Heurtelou and Spraggans-Conroy should be treated alike—as the prosecutor's plea agreements suggested and the court ultimately determined—that fact redounded to his benefit. Pursuant to RCW

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[11] RCW 9.94A.530(2) provides:

> In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537. On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.

9.94A.530(2), his failure to object constituted acknowledgement,[12] and because Heurtelou did not dispute the fact, the sentencing court was not required to grant an evidentiary hearing on the matter, but could consider the fact as proven.[13]

But Heurtelou did not merely remain silent. Instead, he affirmatively agreed with the State's representation as to Spraggans-Conroy's sentence. His attorney interrupted the State's presentation to

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[12] To the extent that Heurtelou relies on Ford, 137 Wn.2d 472, and State v. Hunley, 175 Wn.2d 901, 287 P.3d 584 (2012), for the proposition that failure to object cannot constitute acknowledgement, those cases are distinguishable. In Ford, the court addressed the inclusion in the offender score of three out-of-state convictions that the State had not entered into the record but that the defendant had not contested as to comparability. 137 Wn.2d at 475-76. That case held that the State must introduce evidence to support the criminal history, even in the absence of an objection from the defendant. Id. at 480-82. Ford is limited to facts regarding criminal history. First, the SRA explicitly requires the State to prove a defendant's criminal history informing the offender score by a preponderance of the evidence. Id. at 479-80 (discussing former RCW 9.94A.110, recodified as amended at RCW 9.94A.500(1)). Second, calculation of the offender score is fundamentally different from determining the appropriate sentence, as it is the combination of the offender score and seriousness level of the instant offense that provides the standard range, which circumscribes the court's exercise of discretion in determining the appropriate sentence.

In Hunley, the court held that a 2008 amendment to the SRA was unconstitutional because it relieved the State of its burden to prove prior convictions by a preponderance of the evidence. 175 Wn.2d at 908. Specifically, the court invalidated statutory amendments that provided that a "criminal history summary relating to the defendant from the prosecuting attorney . . . shall be prima facie evidence of the existence and validity of the convictions listed therein," and that "[a]cknowledgement includes . . . not objecting to criminal history presented at the time of sentencing." Id. at 909 (quoting RCW 9.94A.500(1) and .530(2) respectively) (emphasis added). Again, the decision was limited to the State's unchallenged assertion of the defendant's criminal history. It should not be extended to cover other facts, especially in light of Mail, in which the Supreme Court prohibited the defendant from appealing a sentence that was based on facts adduced at sentencing that the defendant failed to challenge. 121 Wn.2d at 712.

[13] Disputing Spraggans-Conroy's sentence would have been futile. The sentence is a matter of public record, and that record is kept by the King County Superior Court itself and is available electronically to the court and the parties. The sentencing court could access the judgment and sentence via computer without leaving the bench or taking a recess.

advise the court, "I have the judgment and sentence for the other individual, your Honor. If you would like to know about it, it was 297 months." 2RP 5. By representing to the court exactly what sentence Spraggans-Conroy had received, as well as the basis of knowledge for that information, Heurtelou admitted that fact within the meaning of RCW 9.94A.530(2). Indeed, he sought to have the court rely on it. The court did not err in doing so.

With respect to Heurtelou's argument that the court should not have considered the fact that the victims of his crimes were also the victims of human trafficking, this too should be rejected. As with the information about Spraggans-Conroy's sentence, Heurtelou failed to object in any way or dispute that fact. The court could properly consider it. Moreover, he also affirmatively acknowledged this fact when his lawyer told the court that Heurtelou "did not understand or know that these individuals were involved in human trafficking," and that learning that information had made the situation even more painful for him. 2RP 10-11. In short, Heurtelou again used that fact to his advantage, expressing greater remorse even while denying contemporaneous knowledge of the victims' circumstances. The sentencing court could properly consider the fact that Heurtelou's victims were also victims of human trafficking by others.

Even if the court erred in this regard, however, any consideration of that fact was harmless. Because the right to an evidentiary hearing on a disputed fact is statutory, nonconstitutional harmless error analysis applies. Compare State v. Templeton, 148 Wn.2d 193, 220, 59 P.3d 632 (2002) (applying nonconstitutional harmless error analysis to violation of court rule); State v. Southerland, 109 Wn.2d 389, 390-91, 745 P.2d 33 (1987) (applying nonconstitutional harmless error standard to violation of statute). Under that analysis, an error is not prejudicial unless, within reasonable probabilities, the outcome would have been materially affected had the error not occurred. State v. Cunningham, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). Here, any error was harmless for two reasons.

First, the information provided by the State—that the victims of the robberies were the victims of human trafficking committed by others—was not materially different from what the sentencing court could infer from the Certification for Determination of Probable Cause and the other documents to which Heurtelou had stipulated. Those documents showed that the victims of Heurtelou's crimes were a number of Asian women in the Bellevue area advertising on Backpage.com, a website well understood to facilitate human trafficking. See, e.g., "McGinn urges Backpage.com to check ages on sex ads," Seattle P-I, May 7, 2012, available at http://www.seattlepi.com/local/article/McGinn-urges-

Backpage-com-to-check-ages-on-sex-ads-3540889.php (visited July 9, 2014); Editorial, "Crack down on online prostitution sites like backpage.com," Seattle Times, Apr. 24, 2014, available at http://seattletimes.com/html/editorials/2023453812_sextraffickingbackpageminorseditxml.html (visited July 9, 2014). From the Certification, the sentencing court had already surmised—before being provided any information by the prosecutor—that the robbery victims were also being trafficked. 2RP 13 ("I suspected it, when I saw the names here and the gender").

Second, the sentence that the court imposed was plainly based not on the fact that the robbery victims had been subjected to human trafficking, but solely on the sentence that Spraggans-Conroy received. In concluding its remarks, the sentencing court stated, "So, my feeling here I can't find a basis to distinguish you from Mr. [Spraggans-Conroy]. . . . I am going to track with [what] Judge Middaugh did [in sentencing him]. I think that is the just thing to do. I think[] like defendants, who commit like offenses in like ways, should be treated alike." 2RP 14. The court then imposed the same term of confinement that Spraggans-Conroy received. Compare 2RP 5 (defense counsel represented Spraggans-Conroy was sentenced to 297 months) with CP 48 (Heurtelou sentenced to 297 months). Heurtelou's sentence was not materially affected by the

court's consideration of the prosecutor's representation that the women were victims of human trafficking.

D. CONCLUSION

For all of the foregoing reasons, Heurtelou's sentence should be affirmed.

DATED this 17th day of July, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory C. Link, attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JEFF HEURTELOU, Cause No. 71216-1-I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 17th day of July, 2014

LBrame

Name
Done in Seattle, Washington