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FILED
DEC 04 2008
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON)	
)	No. 07-1-00946-0
Plaintiff,)	
)	PA# 07-9-27095-1
v.)	RPT# 002-07-0066462
)	RCW 9A.32.055-F (#23771)
ADRIANA L. LYTLE)	
WF 09/21/74)	SENTENCING MEMORANDUM
)	
Defendant(s).)	

I. FACTS

The facts supporting the request for exceptional sentence will be based upon what has already been provided to the court, including all the police reports and video tapes, supplemented by certificates and any testimony presented at the time of sentencing.

1. Exceptional Sentence Procedure.

In *State v. Clarke*, 156 Wn.2d 880, 895, 134 P.3d 188 (2006), the court commented on exceptional sentence procedure. It stated that "RCW 9.94A.537 lays out the procedure for exceptional sentences. The *Clarke* court further stated that "[a]n exceptional sentence upward may be reversed on appeal if (1) under a clearly erroneous standard, the trial court's reasons for imposing the sentence are not supported by the record, (2) those reasons do not justify the exceptional sentence as a matter of law, or (3) under an abuse of discretion standard, the

1 exceptional sentence is clearly too excessive or clearly too lenient. *Clarke*, 124 Wn. App. at 905
2 (citing RCW 9.94A.585(4); *State v. Branch*, 129 Wn2d 635, 645-46, 919 P.2d 1228 (1996))."

3 Our case law on this subject is well-established. In *State v. Law*, 154 Wn.2d 85, 95, 110
4 P.3d 717 (2003), the court stated "[w]e have held that the SRA establishes a two-part test to
5 determine if a sentencing departure is justified as a matter of law. In determining whether a
6 factor legally supports departure from the standard sentence range, this Court employs a two-
7 part test: first, a trial court may not base an exceptional sentence on factors necessarily
8 considered by the Legislature in establishing the standard sentence range; second, the asserted
9 aggravating or mitigating factor must be sufficiently substantial and compelling to distinguish the
10 crime in question from others in the same category. *Ha'mim*, 132 Wn.2d at 840 (citing *State v.*
11 *Alexander*, 125 Wn.2d 717, 725, 888 P.2d 1169 (1995))."

12 RCW 9.94A.537(3) allows a court to determine whether aggravating circumstances exist
13 when a jury is waived. Proof is beyond a reasonable doubt unless the defendant stipulates to the
14 aggravating facts. A "court may sentence an offender pursuant to RCW 9.94A.535 to a term of
15 confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it
16 finds ... that the facts found are substantial and compelling reasons justifying an exceptional
17 sentence." RCW 9.94A.537(6). In this case, Homicide by Abuse is a Class A felony so the
18 maximum sentence is life in prison.

19 II. DELIBERATE CRUELTY AGGRAVATOR

20 The first aggravating factor alleged by the state was the defendants' conduct during the
21 commission of the current offense manifested deliberate cruelty to the victim, as provided by RCW
22 9.94A.535(3)(a). An exceptional sentence may be supported by a finding that "[t]he defendant's
23 conduct during the commission of the current offense manifested deliberate cruelty to the
24 victim." RCW 9.94A.535(3)(a); RCW 9.94A.537; *State v. Valentine*, 108 Wn. App. 24, 30, 29
25 P.3d 42 (2001). "Deliberate cruelty" is defined as gratuitous violence beyond that typically

1 associated with the crime charged. *Valentine*, 108 Wn. App. at 30. "The infliction of multiple
2 injuries in the course of a second degree assault is a factor upon which a court may rely to
3 justify an exceptional sentence." *State v. Crane*, 116 Wn.2d 315, 334-35, 804 P.2d 10 (1991).
4 Deliberate cruelty is " 'gratuitous violence, or other conduct which inflicts physical, psychological
5 or emotional pain as an end in itself.' " *State v. Talley*, 83 Wn. App. 750, 760, 923 P.2d 721
6 (1996) (quoting *State v. Strauss*, 54 Wn. App. 408, 418, 773 P.2d 898 (1989)), *aff'd*, 134 Wn.2d
7 176, 949 P.2d 358 (1998).

8 In *State v. Berube*, 150 Wn.2d 498, 79 P.3d 1144 (2003), a homicide by abuse case
9 remarkably similar to this case, there was testimony showing the child victim was repeatedly
10 beat with the belt. There was evidence the child was beat with a cable cord on at least one
11 occasion because the belt was no longer effective. The day the child died, the child was forced
12 to run in circles around a couch because the defendant thought the child was becoming lazy.
13 There was evidence the child was hit and that both caretakers were responsible for abuse at
14 different times. The child was never taken to a doctor. The trial court's use of deliberate cruelty
15 as an aggravating factor to support the exceptional sentences was not erroneous.

16 III. PARTICULARLY VULNERABLE VICTIM

17 The second aggravating factor alleged by the state was the defendants knew and should
18 have known that the victim of the current offense was particularly vulnerable or incapable of
19 resistance, as provided by RCW 9.94A.535(3)(b). Extreme youth is a valid aggravating factor
20 when considering the vulnerability of a victim. *State v. Russell*, 69 Wn. App 237, 251-252, 848
21 P.2d 742 (1993). The *Russell* court noted on page 252 that the homicide by abuse statute
22 incorporates children between the ages of 1 day and sixteen years.

23 In *State v. Fisher*, 108 Wn.2d 419, 739 P.2d 683 (1987), a five and a half year old was
24 found to be particularly vulnerable. In *State v. Mehlhaff*, 158 Wn.2d 363, 143 P.3d 824 (2006),
25 a six year old was found to be particularly vulnerable. In *State v. J.S.*, 70 Wn. App 659, 855

1 P.2d 280 (1993), a four year old was found to be particularly vulnerable because of their
2 extreme youth. In this case, Summer Phelps was four years old at the time of her death.

3 IV. POSITION OF TRUST

4 The third aggravating factor alleged by the state was the defendant used his or her position
5 of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense, as
6 provided by 9.94A.535(3)(n).

7 A familial or same household relationship is clearly not an element of the homicide by
8 abuse crime. *State v. Russell*, 69 Wn. App 237, 252, 848 P.2d 742 (1993). In *State v. Berube*,
9 150 Wn.2d 498, 513, 79 P.3d 1144 (2003), a parent and a parent figure, just like in this case,
10 were found to have abused their position of trust by continually abusing the child. "It is the trust
11 between the perpetrator and the victim which renders the victim particularly vulnerable." *State*
12 *v. Grewe*, 117 Wn.2d 211, 220, 813 P.2d 1238 (1991). See also *State v. Russell*, 69 Wn. App.
13 237, 252, 848 P.2d 743 (1993) (finding parent's violation of trust relationship with child an
14 aggravating sentencing factor where parent was convicted of homicide of child by abuse); *State*
15 *v. Creekmore*, 55 Wn. App. 852, 868-69, 783 P.2d 1068 (1989), *review denied*, 114 Wn.2d 1020,
16 792 P.2d 533 (1990) (finding victim's extreme youth, abuse of trust, and lack of remorse
17 aggravating factors for the crime of homicide by abuse). Adriana Lytle was placed in the role of
18 primary caregiver, and therefore in a position of trust, for Summer Phelps as Jonathan Phelps
19 worked five days a week while she stayed home with the children.

20 V. LENGTH OF SENTENCE

21 In determining whether an exceptional sentence is clearly excessive, the standard is
22 whether the trial court abused its discretion by relying on an impermissible reason or
23 unsupported facts, or whether the sentence is so long that, in light of the record, it shocks the
24 conscience of the reviewing court. In other words, it must be determined that no reasonable
25 person would adopt the position taken by the trial court. *State v. Ferguson*, 142 Wn.2d 631, 651,

1 sentence for second degree murder despite a standard range of 144-192 months); *State v.*
2 *Harmon*, 50 Wn. App. 755, 761-62, 750 P.2d 664 (upholding a 648 month sentence for first
3 degree murder, which was 315 months longer than standard range sentence), *review denied*,
4 110 Wn.2d 1033 (1988).

5 In *State v. Berube*, 150 Wn.2d 498, 79 P.3d 1144 (2003), the trial court found three
6 aggravating factors to justify the exceptional sentences: victim vulnerability, abuse of trust, and
7 deliberate cruelty. The trial court based the aggravating factor of victim vulnerability on the fact
8 the child was only 23 months old when he was killed, and that the abuse he endured had taken
9 place prior to that time. The fact that Berube was Kyle's parent and Nielsen was a parent-figure
10 gave them unmonitored access to Kyle. Both individuals abused their positions by repeatedly
11 assaulting the child until the injuries finally killed him. With regard to the third aggravating
12 factor, the trial court found that although the crime of homicide by abuse encompasses behavior
13 that generally could be described as deliberate cruelty, it remains possible for a defendant to
14 engage in gratuitous violence more egregious than that proscribed. RP at 2429 ("It is possible to
15 engage in conduct that satisfies the mental element of the crime, extreme indifference to human
16 life, by more passive less violent means...."). The trial court found that deliberate cruelty is a
17 proper aggravating factor because the abuse inflicted on the child resulted in horrendous
18 injuries, far exceeding the prohibited conduct.

19 In *State v. Scott*, 72 Wn. App. 207, 866 P.2d 1258 (1993), a homicide case, an
20 exceptional sentence of 900 months was upheld for a seventeen year old defendant with no
21 prior record. "The rational basis for the length of the sentence can be implicit in the record.
22 Here, that rational basis is the numerous aggravating factors found by the court. As long as the
23 sentencing court relies solely on valid aggravating factors, that is, does not rely on any
24 inappropriate factors, as the courts did in *Pryor* and *Elsberry*, and so long as the duration of the
25 sentence does not exceed the statutory maximum or otherwise shock the appellate court's

1 conscience in all the circumstances of the case being reviewed, it cannot be said that the
 2 sentence, although harsh, is so clearly excessive that no reasonable person would have
 3 imposed it. Certainly Scott received the SRA's determinate sentencing equivalence of a life
 4 sentence for this crime. The aggravating factors are both numerous and individually and
 5 collectively egregious, however. All of the factors fall within the Legislature's own non-exclusive
 6 list of examples of valid aggravating factors. It cannot be said that the sentence is clearly
 7 excessive in light of all the purposes of the SRA." Scott at 221-222.

8 VI. CONCLUSION

9 The State of Washington respectfully requests that the court find that all three
 10 aggravating circumstances: deliberate cruelty, particularly vulnerable victim, and abuse of a
 11 position of trust, have been proven beyond a reasonable doubt. Clearly, the facts show that
 12 Summer Phelps was a four year old girl, entrusted to the care of her father, Jonathan Lytle, and
 13 his wife, Adriana Lytle, by Summer's mother. She ended up, over the course of roughly six
 14 months, being beaten with a belt, kitchen utensils, and hands. She was bitten. She was
 15 shocked with a dog collar. She was burned with cigarettes. She had her head dunked under
 16 water. She was made to wash clothes in a tub of her urine soaked water for hours on end, so
 17 stiffed legged that bruises were left where she had to bend over the tub. Her hair had been
 18 pulled out in clumps. She was made to tear pizza boxes into tiny pieces.

19 The ER physician and charge nurse, both with extensive experience, consider it the worst
 20 case of child abuse they ever saw. Dr. Hval thought when he first saw her that she was a
 21 cancer patient based upon her condition. She had bruises over her entire body, so many that
 22 Dr. Aiken, the medical examiner listed blood loss from having so many bruises as a contributing
 23 cause of her death. The other cause was bronchial pneumonia, most likely from collapsing in
 24 the tub from sheer exhaustion after being made to scrub clothes for hours on end.


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If ever a case cries out for the most severe punishment, it is this one. As it is often said the punishment must fit the crime. Summer Phelps endured the most severe punishment imaginable over a six month period. A country would endure world wide condemnation if they treated a prisoner in the same fashion Summer Phelps was treated. Adriana Lytle deserves the most severe punishment as well.

Based on the aggravating factors in this case, the State of Washington respectfully requests that the court impose an exceptional sentence of 900 months. The State also asks the court to find that it would have imposed the same sentence based upon any single one of the aggravating circumstances.

Respectfully submitted this 4 day of December, 2008



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