IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHAD C. HOVRUD, Appellant.	No. 40625-0-II (Consolidated With No. 40628-4-II) UNPUBLISHED OPINION

Armstrong, J. — Chad Hovrud appeals from the trial court's refusal to consider imposing an exceptional sentence below the standard sentence range. We affirm.[1]

Hovrud pleaded guilty to (1) unlawful possession of methamphetamine with intent to deliver (with a firearm enhancement); (2) second degree unlawful possession of a firearm; (3) second degree assault; and (4) first degree unlawful possession of a firearm. His standard sentence ranges were (1) 60 to 84 months plus a 36-month firearm enhancement; (2) 51 to 60 months; (3) 63 to 84 months; (4) and 87 to 116 months. The State argued for sentences at the top of the standard ranges. Hovrud argued for an exceptional sentence below the standard ranges, contending that his crimes were the results of his drug and alcohol addictions. He asked

[1] A commissioner of this court initially considered Hovrud's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

the trial court to impose a base sentence of 24 months, plus the 36-month firearm enhancement, to be followed by substance abuse treatment. The trial court declined Hovrud's request, noting that it would be "making new law" if it imposed an exceptional sentence below the standard sentence ranges. Report of Proceedings at 7. It imposed concurrent sentences of 120 months, 51 months, 84 months, and 116 months, respectively.

Hovrud argues that the trial court erred in concluding that it could not impose an exceptional sentence below the standard sentence range. He contends that because he presented a combination of (1) alcohol addiction, (2) drug addiction, and (3) the legislature's direction in the Sentencing Reform Act to "[m]ake frugal use of the state's and local governments' resources," the trial court should have recognized that it had discretion to impose an exceptional sentence. RCW 9.94A.010(6). He acknowledges that taken separately, our Supreme Court has rejected each of these circumstances as a valid reason for an exceptional sentence below the standard range. *State v. Allert*, 117 Wn.2d 156, 167, 815 P.2d 752 (1991) (alcohol addiction); *State v. Gaines*, 122 Wn.2d 502, 509-10, 859 P.2d 36 (1993) (drug addiction); *State v. Pascal*, 108 Wn.2d 125, 137-38, 736 P.2d 1065 (1987) (frugal use of state resources). But he contends that taken together, they should be recognized as a valid reason for such an exceptional sentence. To do so would essentially require us to overrule the Supreme Court, which we cannot do. And it would be contrary to the legislature's direction that the "[v]oluntary use of drugs or alcohol" is not a valid reason for an exceptional sentence below the standard range. RCW 9.94A.535(1)(e).

We affirm the trial court's conclusion that Hovrud did not present a valid reason for it to consider an exceptional sentence below the standard range.

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 pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Hunt, J.

Penoyar, C.J.