

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 65366-1-I
)	
Respondent,)	
)	
v.)	
)	
MATTHEW DWAYNE WILLIAMS,)	UNPUBLISHED OPINION
)	
)	FILED: June 4, 2012
Appellant.)	
)	

Ellington, J. — Matthew Williams appeals his standard range sentence for three counts of first degree robbery, each with a firearm enhancement. He claims the sentence was vindictive because it was proportionately higher than his original sentence, which was vacated pursuant to his successful personal restraint petition. We affirm.

BACKGROUND

In 2003, Williams pled guilty to three counts of first degree robbery, each with a firearm enhancement. Based on an offender score of 9, the court determined Williams' standard range for each robbery was 129 to 171 months, plus consecutive 60-month terms (180 total months) for each of the three firearm enhancements. The court imposed a sentence at the low end of the range of 129 months for each count,

to run concurrently, plus the enhancements, for a total of 309 months.

Williams successfully challenged the determination of his criminal history and offender score under a personal restraint petition, and the court vacated his original sentence.

Based on his new offender score of 7, Williams' standard range was 87 to 116 months for each count, plus the three 60-month enhancements. At the resentencing hearing, the court imposed a midrange sentence, explaining "the low end of the sentencing range is [not] an accurate reflection of the crimes of which Mr. Williams was convicted."¹ The court ordered 100 months for each robbery count, for a total of 280 months.

DISCUSSION

Williams claims the court imposed a vindictive sentence in violation of his right to due process under the Fourteenth Amendment.

An appellate court may refuse to review a claim of error raised for the first time on appeal.² But it may make an exception for a "manifest error affecting a constitutional right."³ To show an error was "manifest," a defendant must show the alleged error resulted in actual prejudice—that there were practical and identifiable consequences in the proceedings below.⁴

Williams fails to show his due process claim, raised for the first time on

¹ Report of Proceedings (Mar. 26, 2010) at 6.

² RAP 2.5(a).

³ RAP 2.5(a)(3).

⁴ State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

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appeal, is a manifest error. His revised sentence is lower than his original, vacated sentence,

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so there was no prejudice. We thus decline to address his argument.

Affirmed.

Edington, J.

WE CONCUR:

Grosse, J.

Jau, J.