

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 66079-9-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
HUNG VAN NGUYEN,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: January 30, 2012

PER CURIAM. Hung Van Nguyen appeals the sentence imposed following our remand for resentencing.¹ He also appeals the disposition of his pro se motion for an exceptional sentence and a new trial under CrR 7.4, 7.5 and 7.8. We affirm.

Nguyen first contends his new sentence must be vacated and remanded for the court to decide whether or not to consider his request for an exceptional sentence. He acknowledges that courts have discretion to decline to consider pro se arguments when, as here, the defendant is represented by counsel. In re Quinn, 154 Wn. App. 816, 841, 226 P.3d 208 (2010). He argues, however, that the record must expressly demonstrate the court’s exercise of such discretion, and absent such a record we must remand for the court to exercise its discretion on the record. Nguyen cites no authority supporting such a requirement. This omission is fatal. RAP 10.3(a)(6); State v. Veliz, 160 Wn.App. 396, 409, 247 P.3d 833 (2011) (appellate court need not consider arguments unsupported by authority). In any event, the record establishes that the court read Nguyen’s

¹ State v. Hung Van Nguyen, No 54933-2-I (2005).

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motion before the resentencing hearing, discussed some of the issues in it at the hearing, and decided to transfer the motion to this court for treatment as a personal restraint petition (PRP). The court exercised its discretion.

Next, for the first time in this second appeal, Nguyen contends the court's imposition of three weapon enhancements based on his use of a single weapon on a single occasion amounts to double jeopardy. He concedes that this court has repeatedly rejected this argument but contends those cases were wrongly decided. See e.g. State v. Husted, 118 Wn. App. 92, 94-95, 74 P.3d 672 (2003), review denied, 151 Wn.2d 1014 (2004); State v. Elmi, 138 Wn. App. 306, 322, 156 P.3d 281 (2007) (citing Husted); State v. Esparza, 135 Wn. App. 54, 67 n.24, 143 P.3d 612 (2006) (following Husted and noting the argument has been repeatedly and "soundly rejected."). We adhere to our decision in Husted.²

Finally, Nguyen contends the trial court lacked authority to "summarily deny" his CrR 7.8 motion and was required to order a show cause hearing or transfer it to this court for consideration as a PRP. He concedes that if, as the State argues, the trial court did not deny his motion and properly transferred it to this court for consideration as a PRP, then his argument is moot. We conclude

² We note that the Legislature is presumed to be aware of judicial construction of statutes and its inaction for a substantial period of time – in this case 8 years – is deemed to signal its approval of such construction. State v. Coe, 109 Wn.2d 832, 845-46, 750 P.2d 208 (1988). Furthermore, our State Supreme Court echoed Husted's interpretation of the enhancement statutes in State v. Mandanas, 168 Wn.2d 84, 88-89, 228 P.3d 13 (2010).

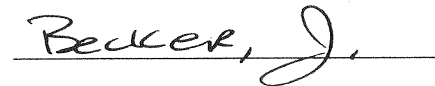
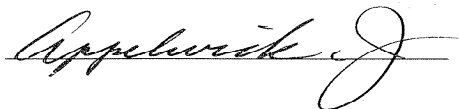
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that the State is correct and that the argument is moot.

Nguyen filed his CrR 7.8 motion twice – once on September 15, 2010 and again on September 28, 2010.³ The superior court did not rule on the motion. Rather, it twice transferred it to this court for treatment as a PRP. The first transfer order was filed in the superior court on September 14, 2010. Inexplicably, this date is the day *before* Nuguyen’s CrR 7.8 motion was filed for the first time. The second transfer order was filed on September 28. Because the same CrR 7.8 motion was attached to the two transfer orders, this court filed them under the same PRP cause number, No. 66084-5-1.⁴ Even assuming the first transfer order was ineffective because its filing date preceded the earliest filing date for the motion, the second transfer order did not suffer from the same flaws.

Affirmed.

For the court:



³ The September 28 filing is in this court’s record in PRP No. 66084-5-1.

⁴ We ultimately granted Nguyen’s motion to voluntarily dismiss PRP No. 66084-5-1.