

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Appellant,

v.

ALFREDO GUZMAN-PARTIDA, a/k/a  
CHRISTAIN GUADALUPE PONCE,

Respondent.

No. 39252-6-II

UNPUBLISHED OPINION

Armstrong, P.J. — The State appeals the sentence imposed after Alfredo Guzman-Partida pleaded guilty to possession of a controlled substance (heroin) with intent to deliver while armed with a firearm. We vacate the sentence and remand for resentencing.

Facts

The State charged Guzman-Partida by second amended information with possession of heroin with intent to deliver and possession of cocaine with intent to deliver, both with school zone and firearm enhancements, and with first degree unlawful possession of a firearm. At his arraignment, Guzman-Partida indicated through an interpreter that he understood the charges.

A few days later, Guzman-Partida pleaded guilty to a third amended information

charging him with possession of heroin with intent to deliver while armed with a firearm. At the plea hearing, defense counsel informed the court that the parties disagreed on whether the State could use the firearm enhancement to increase the seriousness level of Guzman-Partida's offense, thereby increasing his standard range, while also using it to add 36 months to his base sentence.

At sentencing, the trial court concluded that it did not have authority to increase the seriousness level of the offense because Guzman-Partida was charged with a firearm enhancement rather than a deadly weapon enhancement. Based on Guzman-Partida's offender score of 1 and a seriousness level of II, the trial court agreed with defense counsel that his standard range was 10 to 22 months. The court imposed a base sentence of 20 months to run consecutively to the 36-month firearm enhancement. The State appeals the sentence imposed, and Guzman-Partida raises an issue concerning his guilty plea.

## ANALYSIS

### I. Sentencing

The State contends that the trial court erred in refusing to elevate the seriousness level of Guzman-Partida's offense because of the firearm enhancement to which he pleaded guilty.

Possession of heroin with intent to deliver is a level II offense. RCW 9.94A.518. A level II offender with an offender score of 0-2 has a standard range of 12+ to 20 months. RCW 9.94A.517(1). Any felony drug offense with a deadly weapon special verdict under former RCW 9.94A.602 (2009) is a level III offense.<sup>1</sup> RCW 9.94A.518. A level III drug offender with an offender score of 0-2 has a standard range of 51 to 68 months. RCW 9.94A.517(1).

The trial court held that it could not sentence Guzman-Partida as a level III offender

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<sup>1</sup> RCW 9.94A.602 was recodified as RCW 9.94A.825 by Laws of 2009, ch. 28, § 41.

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because he was charged with and pleaded guilty to a firearm enhancement rather than a deadly weapon enhancement. But we recently held that the deadly weapon enhancement referred to in former RCW 9.94A.602 incorporates firearm enhancements. *State v. McGrew*, 156 Wn. App. 546, 560, 234 P.3d 268 (2010); *accord*, *State v. Nguyen*, 134 Wn. App. 863, 870, 142 P.3d 1117 (2006), *review denied*, 163 Wn.2d 1053, 187 P.3d 752, *cert. denied*, 129 S. Ct 644, 172 L. Ed. 2d 626, 77 U.S.L.W. 3324 (2008). This is because the definition of a deadly weapon in former RCW 9.94A.602 expressly includes firearms. *McGrew*, 156 Wn. App. at 559-60; *Nguyen*, 134 Wn. App. at 870. Consequently, when the jury found that McGrew was armed with a firearm while he delivered cocaine, it necessarily found that he committed a drug offense while armed with a deadly weapon, and the trial court did not err in raising the seriousness level of his offense from level II to level III. *McGrew*, 156 Wn. App. at 558; *see also In re Pers. Restraint of Cruze*, --- P.3d ---, 2010 WL 3170334 (Wash. 2010) (special verdict finding that defendant was armed with firearm was deadly weapon verdict).

The fact that this results in a double enhancement for drug offenders is commonly accepted. As a leading treatise observes,

Many drug offenses are subject to a double enhancement. First, the presence of a weapon enhancement raises the crime to drug seriousness level III. This increases the standard range for any crime that was drug level I or II. Second, the weapon enhancement is still added to this increased range.

13A Seth A. Fine & Douglas J. Ende, *Washington Practice: Criminal Law* § 109, at 5 (2d ed. Supp. 2009-10). There is no distinction between a firearm enhancement and a deadly weapon enhancement in this context. A firearm is a deadly weapon, and a felony drug offender's possession thereof subjects him to a double enhancement under Washington law.

## II. Guilty Plea

Guzman-Partida does not address the State's argument but contends that an insufficient factual basis for the firearm enhancement implicates the voluntariness of his plea. He does not wish to withdraw his plea but asks us to order the trial court to resentence him without the 36-month enhancement.

Guzman-Partida raised this issue without filing a cross appeal. There is no need to cross appeal an issue that flows naturally from other issues being considered on appeal. *State v. Greve*, 67 Wn. App. 166, 171-72 n.3, 834 P.2d 656 (1992). The issue Guzman-Partida raises, however, does not flow naturally from the State's appeal. Although Guzman-Partida attempts to portray his claim as one of sentencing error, it is actually a challenge to his underlying plea. Guzman-Partida's failure to file a cross appeal deprived the State of an opportunity to respond and to supplement the record as necessary, and we cannot consider the issue he raises. *See State v. Greenway*, 15 Wn. App. 216, 217 n.2, 547 P.2d 1231 (1976) (where State appealed suppression ruling, defendant could not challenge legality of arrest in absence of cross appeal).

Furthermore, even if we were to address the merits of the issue and agree that there was an insufficient factual basis for the enhancement, we could not grant Guzman-Partida the relief he requests. Where a plea agreement is indivisible, a defendant cannot challenge the invalidity of his sentence without challenging the entire plea. *See State v. Ermels*, 156 Wn.2d 528, 540-41, 131 P.3d 299 (2006) (where plea agreement involves one bargain or a "package deal," the defendant cannot challenge only part of that deal). Guzman-Partida pleaded guilty to a single charge and did not indicate that the enhancement was separable from the rest of the plea agreement.

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Consequently, he cannot challenge the enhancement without challenging the entire agreement. *See Ermels*, 156 Wn.2d at 541.

Because we must remand this case for resentencing, we do so with the instructions that Guzman-Partida may raise the factual basis issue below, should he seek to withdraw his plea. We hereby vacate the sentence and remand for proceedings in accordance with this opinion.

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.

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Armstrong, P.J.

We concur:

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Hunt, J.

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Quinn-Brintnall, J.