

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MARIE GUIZELLE JOHNSON,

Appellant.

No. 42390-1-II

UNPUBLISHED OPINION

Armstrong, P.J.—Marie Johnson appeals from the 24-month exceptional sentence imposed following her convictions for second degree identity theft and second degree theft, arguing that the duration of her sentence is clearly excessive. We affirm.¹

Crystal Martin’s mobility is severely restricted by cerebral palsy. She receives 24-hour care from caregivers provided by Maksu International. Those caregivers assist her with basic functions, including bathing, cooking, cleaning, paying bills, and shopping. Johnson became Martin’s primary caregiver on June 14, 2010. Martin would give Johnson her debit card in order to purchase

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

groceries. Martin recalled that at one point, Johnson had kept her debit card “for several days in a row and I thought that was weird.” Report of Proceedings (RP) (May 16, 2011) at 65-66. On July 2, 2010, Martin wrote a check for her cable television bill and asked Johnson to pay the bill. When Martin received her cable bill for August, she noticed that the July payment was overdue. She asked Richard Westmoreland at Maksu International to review her financial records for discrepancies. Westmoreland noticed several \$100 withdrawals from a cash machine at the Emerald Queen Casino. Martin denied ever giving anyone authority to use her debit card at the casino or at gas or convenience stores. Westmoreland contacted the police. A gaming regulator for the casino provided the police with information about Johnson’s activities at the casino, which correlated with the withdrawals from the cash machine.

The State charged Johnson with one count of second degree identity theft (count I), one count of second degree theft (count II), and two counts of third degree theft (counts III and IV). It alleged that as to counts I and II, aggravating circumstances existed because Martin was particularly vulnerable and because Johnson used a position of trust to commit the crimes. Martin, Westmoreland, and those involved in the police investigation testified as described above. Johnson admitted to having withdrawn money from the cash machine using Martin’s debit card at the casino but said she used the money to shop for Martin. She said she also used the card at a gas station to purchase items for Martin and that she had deposited \$375 back into Martin’s account. Johnson believed Martin had given her authorization to use the debit card and denied intending to take money from Martin.

The jury found Johnson guilty of counts I and II, they found that Martin was particularly vulnerable, and found that Johnson had used her position of trust to commit the crimes.² As to those

² The jury found Johnson guilty of count IV but not guilty of count III.

convictions, the State argued for a 36-month exceptional sentence, based on the two aggravating circumstances found by the jury. Martin told the court that because of Johnson's actions, she can no longer provide her caregivers with her debit card and as a result, "it permanently changed the way that I take care of my errands." RP (July 15, 2011) at 297-98. Johnson argued for a first-time offender waiver, noting her lack of criminal history and her repayment into Martin's bank account. Johnson also apologized to Martin. The trial court imposed an exceptional sentence of 24 months, four times the top of the standard sentence range.

Johnson argues that the duration of her exceptional sentence is clearly excessive. RCW 9.94A.585(4). We review the duration of an exceptional sentence for an abuse of discretion. *State v. Law*, 154 Wn.2d 85, 93, 110 P.3d 717 (2005); *State v. Ferguson*, 142 Wn.2d 631, 646, 15 P.3d 1271 (2001). Johnson contends that because the trial court ignored the facts that she qualified for a first-time offender waiver and that she repaid \$375 into Martin's bank account, it ignored mitigating circumstances under RCW 9.94A.535(1)(b)³ and so abused its discretion in imposing an exceptional sentence four times the top of the standard range. But the jury found two aggravating circumstances. And Martin testified that as a result of Johnson's crimes, her means of paying for her needs has been forever altered. Johnson does not show that the trial court abused its discretion

³ RCW 9.94A.535(1)(b) provides that a mitigating circumstance exists when "[b]efore detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained."

No. 42390-1-II

in imposing a 24-month sentence as a result. We affirm.

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 in accordance with RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Hunt, J.

Quinn-Brintnall, J.