IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28155-8-III**
	)	**(consolidated with**
Respondent,	)	**(No. 28209-1-III)**
	)	
v.	)	
	)	
TRACY WAYNE LYDEN,	)	
	)	**Division Three**
Appellant.	)	
----------	)	
In re Personal Restraint Petition of:	)	
	)	
TRACY LYDEN,	)	
	)	**UNPUBLISHED OPINION**
Petitioner.	)	
	)	

Sweeney, J. — This appeal follows a sentence for manufacturing methamphetamine with a minor present. The defendant had prior drug convictions, which caused his statutory maximum sentence to double from 120 months to 240 months. The defendant argues that this increase on his statutory maximum sentence was discretionary with the trial judge. And, since the judge did not exercise his discretion on

the record to double the maximum sentence, the maximum sentence remained 120 months. We disagree and therefore affirm the sentence.

FACTS

Tracy Lyden was convicted of manufacturing methamphetamine "when a juvenile was present in or upon the premises of manufacture." Clerk's Papers (CP) at 135. The court sentenced him based on an offender score of six and included a 24-month enhancement for manufacturing methamphetamine in a juvenile's presence. His total standard range sentence was, then, 122 to 154 months. And the statutory maximum sentence for his offense was 240 months because he had a prior drug conviction.

The court sentenced Mr. Lyden to a standard range term of 138 months under the drug offender sentencing alternative, former RCW 9.94A.660 (2001).

DISCUSSION

Mr. Lyden contends the decision to double the statutory maximum for his offense is discretionary with the sentencing judge and the judge here did not specifically recite that he was doubling it. He therefore urges us to conclude that the maximum sentence here remained 120 months, not the 240 months that would have followed an election to double the statutory maximum sentence for his offense, and that the sentence imposed exceeds that maximum.

We will review de novo the question Mr. Lyden raises. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007); *State*

v. Pleasant, 148 Wn. App. 408, 411, 200 P.3d 722 (2009).

Mr. Lyden's argument is based on two faulty premises: (1) the statutory maximum sentence for his crime is 120 months; and (2) a sentencing court must state on the record that it is exercising its discretion under RCW 69.50.408 to impose a sentence up to twice the term authorized.

Generally, the maximum sentence authorized for manufacturing methamphetamine is 120 months. Former RCW 69.50.401(a)(1)(ii) (1998). But "RCW 69.50.408 doubles the maximum sentence" for second or subsequent drug convictions. *In re Pers. Restraint of Cruz*, 157 Wn.2d 83, 90, 134 P.3d 1166 (2006). "Any person convicted of a second or subsequent offense under [the Uniform Controlled Substances Act, chapter 69.50 RCW,] may be imprisoned for a term up to twice the term otherwise authorized." Former RCW 69.50.408(a) (1989). Mr. Lyden has been convicted of drug crimes before. Former RCW 69.50.408(a), therefore, doubles the maximum sentence authorized for his current offense to 240 months. His judgment and sentence reflects this increased maximum sentence. *See* CP at 136-37. And neither the statute's language nor any other authority requires that a sentencing court cite RCW 69.50.408 on the record for it to apply. "The maximum sentence available remained double the initial maximum sentence, whether the judge chose to impose it or not." *State v. Roy*, 147 Wn. App. 309, 315, 195 P.3d 967 (2008).

Mr. Lyden's 138-month sentence, then, does not exceed the authorized 240-month maximum term for his offense. It is a

standard range sentence within that maximum term.

Mr. Lyden also challenges his sentence by way of a personal restraint petition. *See* CrR 7.8(c)(2). In it, he urges that the court should have used the scoring form for a first drug conviction instead of the scoring form for a subsequent drug conviction. He is mistaken. The conviction here is not Mr. Lyden's first drug conviction. The sentencing court, then, used the correct scoring form to calculate his offender score and determine his standard range sentence. We deny Mr. Lyden's personal restraint petition. RAP 16.4(a).

We affirm the sentence.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____
Sweeney, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Brown, J.