

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27748-8-III

Respondent,

Division Three

v.

ADRIANA LEA LYTLE,

UNPUBLISHED OPINION

Appellant.

Brown, J. — Adriana L. Lytle pleaded guilty to homicide by abuse for the death of her four-year-old stepdaughter. The court imposed an aggravated exceptional sentence based upon stipulated findings of abuse of trust, victim vulnerability, and deliberate cruelty. Ms. Lytle appeals her sentence, contending her exceptional sentence cannot be based on those factors used to support her homicide by abuse conviction. Because our Supreme Court has rejected Ms. Lytle’s arguments in a similar case, *State v. Berube*, 150 Wn.2d 498, 79 P.3d 1144 (2003), we affirm.

FACTS

Jonathon Phelps took his four-year-old daughter, Summer, to the emergency

room unconscious with multiple bruises, scratches, burn marks, and missing hair. Hospital staff could not revive the little girl. Summer resided with her father and her stepmother, Ms. Lytle. The State charged Ms. Lytle with homicide by abuse aggravated by the victim's vulnerability, abuse of trust, and deliberate cruelty.¹ Ms. Lytle pleaded guilty, stipulating to the aggravating factors alleged by the State. The court sentenced Ms. Lytle to an aggravated, exceptional sentence of 750 months.

ANALYSIS

The issue is whether the sentencing court erred in relying on the stipulated, aggravating factors of abuse of trust, victim vulnerability, and deliberate cruelty in imposing an exceptional sentence. Ms. Lytle contends these aggravating factors are inherent in the offense of homicide by abuse and that the court may not use them to justify an exceptional sentence.

A trial court may impose a sentence outside the standard sentencing range if it finds that substantial and compelling reasons justify an exceptional sentence. RCW 9.94A.535. Under RCW 9.94A.585, appellate courts may review an exceptional sentence to ensure that (1) substantial evidence supports the trial court's reasons for imposing the sentence; (2) the reasons, as a matter of law, justify a departure from the standard range; and (3) the trial court did not abuse its discretion in sentencing the defendant too excessively or too leniently. *State v. Ferguson*, 142 Wn.2d 631, 646-47, 15 P.3d 1271 (2001). Whether a court's stated reasons are sufficiently substantial and

¹ Mr. Phelps was also charged, and found guilty, of homicide by abuse.

compelling to support an exceptional sentence is a question of law that we review de novo. *State v. Suleiman*, 158 Wn.2d 280, 291 n.3, 143 P.3d 795 (2006).

Our Supreme Court rejected Ms. Lytle's argument in *Berube*. There, a jury convicted two defendants of homicide by abuse of a 23-month-old boy. *Berube*, 150 Wn.2d at 501-02. The judge found three aggravating factors: abuse of trust; victim vulnerability; and deliberate cruelty. *Id.* at 512. On appeal, the defendants argued that those three factors inhered in the crime of homicide by abuse and could not support an exceptional sentence. *Id.* at 513. Our Supreme Court disagreed, finding that all three factors were not inherent in the crime. *Id.* at 513-14.

Specifically, the court concluded that the victim's extreme youth made him more vulnerable than other victims. *Id.* at 513 (citing *State v. Russell*, 69 Wn. App. 237, 251-52, 848 P.2d 743 (1993)). And the young victim in that case was extremely vulnerable because he completely depended on the defendants for his well being. *Berube*, 150 Wn.2d at 513.

As in *Berube*, the record here shows that Summer was completely dependent on Ms. Lytle and Mr. Phelps for her well being. Her age also made her more vulnerable than other victims; thus, her extreme youth is a valid aggravating factor. *See id.*, 150 Wn.2d at 513 (citing *Russell*, 69 Wn. App. at 251-52). The sentencing court did not err in relying on the vulnerable victim factor in imposing the exceptional sentence.

Because we affirm a sentence if we find any exceptional factor valid, we need

No. 27748-8-III
State v. Lytle

not consider Ms. Lytle's claims as to the other aggravating factors. See *State v. Cardenas*, 129 Wn.2d 1, 12, 914 P.2d 57 (1996) (a sentence will be affirmed if court finds any exceptional factor valid.) (citing *State v. Fisher*, 108 Wn.2d 419, 429-30, 430 n.7, 739 P.2d 683 (1987)).

Affirmed.

A majority of the panel has determined 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.

Brown, J.

WE CONCUR:

Kulik, A.C.J.

Sweeney, J.