IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27769-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JORDAN DAVID KNIPPLING,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J.—In 2008, while jailed and pending a trial for an unrelated 2007 third degree assault charge, Jordan D. Knippling assaulted a corrections officer. Following conviction for the 2008 incident, the court sentenced Mr. Knippling to 43 months, a low-end standard-range sentence, to be served consecutively to the sentence for the 2007 assault conviction imposed two days earlier. Mr. Knippling appeals his consecutive sentence, contending (1) the court imposed an exceptional sentence without notice, (2) the court relied on impermissible factors in imposing an exceptional sentence, and (3) the State manipulated sentencing dates to facilitate an exceptional sentence. We affirm.

FACTS

On January 14, 2009, the court sentenced Mr. Knippling to 50 months for a third degree assault that occurred in 2007. (*See State v. Knippling*, No. 27766-6-III) (*Knippling* I). On January 16, 2009, the court imposed a standard range 43-month sentence for custodial assault, which occurred in 2008 while Mr. Knippling was in custody on the third degree assault charge. Mr. Knippling's trial counsel agreed that the court possessed the discretion to sentence consecutively to the conviction imposed two days earlier, but argued for a concurrent sentence because he had failed to persuade the State to sentence the two matters together. The court ordered the custodial assault sentence to run consecutive to the earlier third degree assault conviction. Mr. Knippling appealed.

ANALYSIS

The issue is whether the trial court erred in consecutively sentencing Mr. Knippling. He contends his sentence is an exceptional sentence which required notice and supporting findings of fact based on permissible exceptional sentence factors. The State responds that the court did not impose an exceptional sentence.

Generally, a defendant cannot appeal a standard range sentence. RCW 9.94A.585(1); *State v. Osman,* 157 Wn.2d 474, 481, 139 P.3d 334 (2006). But,

appellate review is available if the trial court failed to comply with constitutional requirements or procedural requirements of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW. *Osman,* 157 Wn.2d at 481-82.

A sentencing court has "total discretion" under RCW 9.94A.589(3) to impose a sentence consecutive to one imposed for a different felony when the defendant was not serving a sentence when he committed the current crime and a court imposed the sentence for a different felony after the defendant committed the current crime. *State v. Champion,* 134 Wn. App. 483, 487-88, 140 P.3d 633 (2006). In *State v. Mail,* 121 Wn.2d 707, 709-10, 854 P.2d 1042 (1993), a defendant appealed his standard range sentence, arguing that the trial court abused its discretion by considering the facts of an earlier assault conviction. Our Supreme Court rejected his appeal, holding that the SRA did not limit the consideration of such information and barred any appeal of standard range sentences unless a defendant demonstrated that "the sentencing court had a duty to follow some specific procedure required by the SRA, and that the court failed to do so." *Id.* at 712, 714. Mr. Knippling makes no showing that the court failed to comply with constitutional or procedural requirements to justify appealing his standard range sentence.

Mr. Knippling was not serving a sentence (he was incarcerated but not convicted yet) when he committed the current crime and the court imposed the sentence for the prior felony after Mr. Knippling committed the custodial assault. The sentencing for the

2007 (*Knippling* I) and 2008 assaults were not combined in a single hearing. Accordingly, RCW 9.94A.589(3) gives the sentencing court the discretion to sentence Mr. Knippling consecutive to his prior sentence. We are unaware of any requirement for the trial court to give notice of the potential for consecutive sentencing under these facts.

Regarding Mr. Knippling's claim that the State manipulated the sentencing dates, he fails to provide citation to the record to support his argument. Nothing in the record suggests prosecutorial misconduct other than defense counsel's assertion that the State refused to agree to a single sentence hearing for the two cases. Even so, we are not provided briefing showing any legal requirement for the State to accede to such a request. And, the record contains no motion to combine the sentencings or any decision of the trial court refusing to combine the sentencings. Nothing in the record shows any State action that resulted in separate sentencing hearings. Under these circumstances, the proper avenue for bringing claims based on evidence that might be outside the record is through a personal restraint petition, not an appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

In sum, Mr. Knippling does not establish the sentencing court failed to comply with constitutional requirements or SRA procedural requirements to warrant further review of his standard range sentence. The sentencing court had full discretion under RCW 9.94A.589(3) to impose a consecutive sentence.

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, C.J.

Sweeney, J.