IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27813-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
DANNY A. TOWNLEY,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J.—Danny Townley appeals his sentence for three counts of delivering methamphetamine and one count of possessing it. He contends the trial court failed to exercise its discretion in sentencing him under the doubling provision of RCW 69.50.408. Pro se, Mr. Townley additionally raises other contentions including: (1) error in applying school zone enhancements, (2) failure to find his drug offenses constituted the same criminal conduct, (3) violation of speedy trial rights, and (4) violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) in sentencing. We affirm.

FACTS

In 2004, Danny Townley was convicted of three counts of delivering methamphetamine within 1,000 feet of a school zone and one count of possessing methamphetamine. The trial court imposed a 192 month sentence, including three consecutive 24-month protected school zone enhancements under RCW 69.50.435.[1]

Mr. Townley appealed the convictions and sentence, partly arguing the court erred in imposing the enhancements consecutively. This court affirmed.

On October 27, 2008, Mr. Townley filed a CrR 7.8 motion to correct his sentence, arguing the enhancements should run concurrently, not consecutively. Mr. Townley argued the 192 month sentence violated *Blakely* because the sentence exceeded the high end of the standard range, which he calculated as 120 months.

The trial court agreed that the three enhancements should run concurrently and reduced the sentence to 144 months (120 + 24 months). The court concluded this sentence did not exceed the standard range, "[b]ecause Mr. Townley had prior drug convictions, RCW 69.50.408(1) operated to double the maximum term to which Mr. Townley was subject from 10 to 20 years." Clerk's Papers (CP) at 57.

Mr. Townley appeals.

ANALYSIS

A. Sentencing

[1] RCW 69.50.435(1)(d) provides in part that anyone who delivers a controlled substance within 1,000 feet of a school perimeter can be sentenced up to twice the imprisonment normally authorized.

The issue is whether the trial court erred by abusing its discretion in sentencing Mr. Townley to 144 months. Mr. Townley contends the trial court failed to exercise discretion when sentencing. He argues the court "failed to exercise discretion by not making it clear that it was choosing to invoke the doubling effect of RCW 69.50.408(1), rather than feeling compelled to do so." Br. of Appellant at 5.

"We review a trial court's sentence for errors of law or abuses of discretion in deciding what sentence applies." *State v. Castro*, 141 Wn. App. 485, 494, 170 P.3d 78 (2007). A trial court has broad discretion in sentencing a defendant. *State v. Haddock*, 141 Wn.2d 103, 110, 3 P.3d 733 (2000).

Here, the court determined Mr. Townley's standard range without enhancements for each of the three delivery convictions was 60 to 120 months. Mr. Townley violated RCW 69.50.435 because he committed the crimes within 1,000 feet of a school perimeter. Therefore, the court added three 24-month enhancements pursuant to RCW 9.94A.533(6)[2] and ran them concurrently, resulting in a total sentence of 144 months. RCW 9.94A.533(6) has been interpreted to require a mandatory 24 months be added to the sentence for any violation falling within its parameters. *State v. Lusby*, 105 Wn. App. 257, 265, 18 P.3d 625 (2001). This enhancement is added to the presumptive sentence. *Id.* at 266 ("[o]nce the presumptive sentence is determined, then [RCW

[2] RCW 9.94A.533(6) states that when a person has violated chapter 69.50 RCW, as well as RCW 69.50.435, "[a]n additional 24 months shall be added to the standard sentence range."

9.94A.533(6)] adds 24 months onto the presumptive sentence").

The trial court correctly determined the 144 month sentence did not constitute an exceptional sentence in violation of *Blakely* because the maximum term doubled from 10 to 20 years (240 months) under RCW 69.50.408(1). This statute provides that "[a]ny person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized." In 1994 and twice in 2001, Mr. Townley was convicted under the Uniform Controlled Substances Act. It is well settled that RCW 69.50.408(1) results in a new maximum sentence. *State v. Clark*, 123 Wn. App. 515, 521, 94 P.3d 335 (2004) ("We conclude that RCW 69.50.408 doubles the maximum penalty."). Because Mr. Townley's sentence does not exceed the statutory maximum, *Blakely* is not implicated. In sum, the trial court did not abuse its discretion in applying the doubling provision under RCW 69.50.408.

B. Additional Grounds

In his statement of additional grounds, Mr. Townley first contends the school zone enhancement under RCW 69.50.435 should not have been applied because all the drug buys took place in a private house.

As discussed above, RCW 69.50.435 is triggered when a person delivers a controlled substance within 1,000 feet of a school perimeter. At trial, a city map established that Mr. Townley's residence was within 1,000 feet of a school's perimeter. RCW 69.50.435 does not provide any exemption for drug sales that occur within private

residences. The trial court did not err in applying RCW 69.50.435(1)(d).

Mr. Townley also contends the State violated his speedy trial rights by delaying the filing of additional charges until the morning of trial. This is an issue Mr. Townley could have raised previously in his direct appeal. Because we are solely reviewing the sentencing issues related to our remand decision, Mr. Townley is precluded from collaterally raising the speedy trial issue, a matter that could have been raised in his direct appeal. *See State v. Gaut*, 111 Wn. App. 875, 800, 46 P.3d 832 (2002).

A commissioner of this court partially addressed this issue and rejected it, noting that the trial court may allow the amendment of the information at any time before verdict if the substantial rights of the defendant are not prejudiced. The commissioner also addressed the speedy trial issue. *See State v. Mannhalt*, 68 Wn. App. 757, 762, 845 P.2d 1023 (1993) (questions determined on appeal, or which could have been determined, if presented, will not be considered in a subsequent appeal if the evidence has not substantially changed).

Mr. Townley contends the sentencing court erred in failing to find that his four drug convictions constituted the same criminal conduct. The Sentencing Reform Act provides that each conviction is counted separately unless they encompass the same criminal conduct. RCW 9.94A.525(5)(a). "Same criminal conduct" means "two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." RCW 9.94A.589(1)(a).

Mr. Townley's original judgment and sentence indicates that the four drug offenses occurred on different dates: 2/12/04, 2/13/04, 2/17/04, and 2/24/07. These facts alone suggest that his four offenses do not constitute the same criminal conduct. Without a record of the original sentencing hearing before us, we do not know whether Mr. Townley raised the issue below. If he failed to do so, the issue was waived. *State v. Nitsch*, 100 Wn. App. 512, 523, 997 P.2d 1000 (2000). Furthermore, in Mr. Townley's previous appeal, this court affirmed the calculation of his offender score. Therefore, Mr. Townley is precluded from raising the issue again.

Next, Mr. Townley contends his sentence violates *Blakely* because it exceeds the statutory maximum. The trial court rejected this argument below, noting,

> Mr. Townley's maximum term doubled because of his prior drug conviction, not because the prior conviction was an element of the underlying crime. . . . Prior convictions resulting in a potential increased maximum term need not be . . . submitted to a jury or proved beyond a reasonable doubt.

CP at 58.

The trial court did not err. As discussed above, Mr. Townley's sentence does not exceed the statutory maximum and therefore does not violate *Blakely.* This court has noted the doubling of the statutory maximum for delivery of controlled substances under RCW 69.50.408(1) for subsequent drug offenses does not implicate *Blakely*. *State v. Roy*, 147 Wn. App. 309, 317, 195 P.3d 967, *review denied*, 165 Wn.2d 1051 (2008).

Mr. Townley's pro se issues are without merit.

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.

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Brown, A.C.J.

WE CONCUR:

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Sweeney, J.

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Korsmo, J.