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5 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

6 THE STATE OF WASHINGTON,)
7)
8) Plaintiff,)
9) v.) No. 12-C-06054-8 SEA
10)
11) KEVIN DEJESUS CASTELLON,) ORDER GRANTING MOTION TO
12)) VACATE JUDGMENT AND SENTENCE
13) Defendant.) PURSUANT TO CRR 7.8, AND SETTING
14)) CASE FOR RESENTENING HEARING
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THIS MATTER came before the Court on a show cause hearing to address defendant Kevin DeJesus Castellon's motion to vacate his judgment and sentence and the State's motion to stay consideration of the defendant's motion. At that start of the hearing, the State withdrew its motion to stay because the State has the right to appeal any vacation of the sentence pursuant to State v. Waller, 98326-7, 2021 WL 727925 (February 25, 2021).

THE COURT has reviewed the docket, including the materials filed by the parties, and considered the parties' legal argument. At Mr. Castellon's sentencing, this Court considered most if not all of the mitigating circumstances and hallmark features related to Mr. Castellon's youth. But this Court did not have discretion to fashion a sentence outside of what the Sentencing Reform Act required. For example, this Court did not have any discretion to decline imposition of a consecutive term of years required by the applicable firearm enhancement. Without that discretion, this Court imposed a consecutive 60-month enhancement term that is not eligible for good time credit.

Given the recent substantial change in the law, the Court now can choose to impose that enhancement, forego it entirely, or order the enhancement term of years to run concurrently to the underlying sentence. The Court is very confident that with the discretion afforded to it under *Houston Sconiers*, upon resentencing Mr. Castellon, that it would impose a different sentence than it did in 2013. For example, the total length of sentence would account for this Court's ability to impose a concurrent as opposed to consecutive term on the firearm enhancement. Mr. Castellon has established actual prejudice: a mandatory term was imposed on him that, with discretion now allotted the Court, would drastically expand the change the sentencing options available to the sentencing Court and result in a different sentence.

This Court hereby GRANTS Mr. Castellon's motion to vacate his judgment and sentence pursuant to CrR 7.8. This matter shall be set for resentencing on Friday, March 26, 2021 at 1:00 p.m.

DONE this 26TH day of February, 2020.

E-signature on last page.

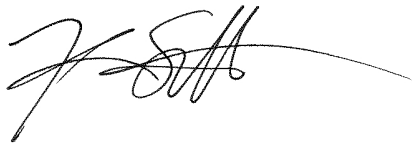
JUDGE KEN SCHUBERT

ORDER GRANTING MOTION TO VACATE JUDGMENT
AND SENTENCE, DENYING MOTION TO STAY,
AND SETTING CASE FOR RESENTENING HEARING

King County Superior Court
Judicial Electronic Signature Page

Case Number: 12-1-06054-8
Case Title: STATE OF WASHINGTON VS CASTELLON, KEVIN DEJESUS
Document Title: ORDER RE GRANTING MTN FOR RESENTENCING

Signed By: Kenneth Schubert
Date: March 01, 2021



Judge: Kenneth Schubert

This document is signed in accordance with the provisions in GR 30.

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O=KCDJA, CN="Ken Schubert:
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