

Caseload Forecast Council

Recently Discovered Sentencing Issues

October 10, 2014

Issue 1

In order to secure a non-appealable plea bargain, a county charged and accepted a guilty plea for Attempted Felony DUI. The sentence was at 75% of the standard range, but the offense was not dropped in class (which would have made it a gross misdemeanor).

Is this a permissible sentence?

RCW 46.64.08 addresses attempts and conspiracies for infractions and offenses committed under Title 46 RCW.

RCW 46.64.048

Attempting, aiding, abetting, coercing, committing violations, punishable.

Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared by this title to be a traffic infraction or a crime, whether individually or in connection with one or more other persons or as principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcefully, or willfully induces, causes, coerces, requires, permits or directs others to violate any provisions of this title is likewise guilty of such offense.

[1990 c 250 § 60; 1961 c 12 § 46.56.210. Prior: 1937 c 189 § 149; RRS § 6360-149. Formerly RCW 46.61.695.]

Notes:

Severability -- 1990 c 250: See note following RCW 46.18.215.

Issue 2

Several counties are running weapon enhancements concurrent to sentences for certain offenses, essentially applying RCW 9.94A.533(f) over RCW 9.94A.533(e).

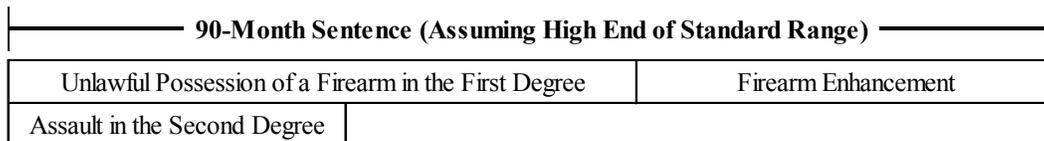
(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

An example of this application is as follows.

An offender is convicted of two felony offenses, Assault in the Second Degree With a Firearm (a Class B felony ranked at Seriousness Level IV on the adult felony sentencing grid, plus a firearm enhancement) and Unlawful Possession of a Firearm in the First Degree (a Class B felony ranked at Seriousness Level VII on the adult felony sentencing grid). Each offense has an offender score of four, making the standard ranges 22-29 months and 41-54 months, respectively. Additionally, there is a 36-month firearm enhancement to be applied.

Should the 36-month firearm enhancement run consecutive to the longer sentence (41-54 months for Unlawful Possession of a Firearm in the First Degree) under RCW 9.94A.533(e)?



Or, should it run consecutive to the shorter sentence (22-29 months for Assault in the Second Degree), under RCW 9.94A.533(f), making in concurrent to the longer sentence?

