

FILED: January 30, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ADAM COREY WILLIAMS,
Defendant-Appellant.

Marion County Circuit Court
10C41319, 10C42507

A145773 (Control)
A145774

Joseph C. Guimond, Judge.

On appellant's petition for reconsideration filed December 5, 2012. Affirmed without opinion November 21, 2012. 253 Or App 608, ___ P3d ___.

Submitted on December 05, 2012.

Peter Gartlan, Chief Defender, and Anne Fujita Munsey, Senior Deputy Public Defender, Office of Public Defense Services, for petition.

Before Armstrong, Presiding Judge, and Duncan, Judge, and Brewer, Judge pro tempore.

PER CURIAM

Reconsideration allowed; former disposition withdrawn; in Case No. 10C42507, remanded for resentencing, otherwise affirmed; in Case No. 10C41319, affirmed.

1 PER CURIAM

2 Defendant petitions for reconsideration of our decision in *State v. Williams*,
3 253 Or App 608, ___ P3d ___ (2012), in which we affirmed without opinion the trial
4 court's judgments in two cases that were consolidated on appeal, Marion County Case
5 Nos. 10C41319 and 10C42507. He argues that we instead should have remanded for
6 resentencing, based on his third assignment of error, in which he argued--and the state
7 conceded--that the trial court had erred in sentencing him as a repeat property offender
8 under ORS 137.717 (2009)¹ on one of the counts for which he was convicted because it
9 relied on a conviction that was not a qualifying offense. Defendant is correct.

10 On Count 2 in Case No. 10C42507, the trial court sentenced defendant as a
11 repeat property offender under ORS 137.717, using defendant's conviction for theft of
12 services in Case No. 10C41319 as one of the four predicate convictions required under
13 that statute to impose a repeat property offender sentence. Theft of services, ORS
14 164.125,² is not a qualifying predicate offense that can give rise to a repeat property
15 offense sentence. ORS 137.717(2) (listing qualifying offenses). Thus, as the state
16 concedes, the court erred.

17 In his brief on appeal, defendant asserted that the proper remedy for that

¹ The amendments to ORS 137.717 made by the legislature in Oregon Laws 2009, chapter 660, section 8, apply in this case. *See* Or Laws 2009, ch 660, §§ 48(3) [renumbered to (2) by amendment in 2011], 49(4). We therefore refer to the 2009 version in this opinion.

² ORS 164.125 has been amended since defendant committed his crime; however, because those amendments do not affect our analysis, we refer to the current version of the statute in this opinion.

1 error is to remand for resentencing in Case No. 10C42507. Although defendant now
2 requests that we remand both cases for resentencing, we allow reconsideration only as to
3 the narrow issue discussed above and grant defendant the relief that he requested on
4 appeal.

5 Reconsideration allowed; former disposition withdrawn; in Case No.
6 10C42507, remanded for resentencing, otherwise affirmed; in Case No. 10C41319,
7 affirmed.