

FILED
COURT OF APPEALS
DIVISION II

2014 OCT 21 AM 9:14

STATE OF WASHINGTON

BY: 
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

DWAYNE PAUL STEWART,

Respondent.

No. 44332-5-II

UNPUBLISHED OPINION

JOHANSON, C.J. — The State of Washington appeals the superior court’s order amending Dwayne Paul Stewart’s offender score for his third degree domestic violence (DV) assault conviction. The State argues that the superior court should have included Stewart’s other current offense, a misdemeanor fourth degree DV assault, in the third degree DV assault’s offender score because under RCW 9.94A.589(1)(a), the fourth degree DV assault was a “*prior* conviction for a repetitive domestic violence offense” for purposes of RCW 9.94A.525(21)(c) (emphasis added).

Because Stewart has served the entirety of his sentence and that sentence was identical to the sentence the trial court originally imposed when Stewart’s offender score included the fourth degree DV assault, this case is moot. Although this issue could be characterized as a matter of continuing and substantial public interest, we decline to consider this issue in light of our recent decision in *State v. Rodriguez*, No. 44417-8-II (Wash. Ct. App., Oct. 7, 2014), which addresses this identical issue.

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Accordingly, this appeal is dismissed as moot.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.

JOHANSON, C.J.

We concur:

Worswick J

WORSWICK, J.

Melnick, J.

MELNICK, J.