

December 27, 2017

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In the Matter of the  
Personal Restraint of

JOSHUA NEAL HENSLEY

No. 50462-6-II

UNPUBLISHED OPINION

LEE, J. — Joshua Neal Hensley seeks relief from personal restraint resulting from his 2012 plea of guilty to indecent liberties without forcible compulsion.<sup>1</sup> The trial court sentenced him under RCW 9.94A.507(1)(b) to a minimum term of confinement of 108 months and a maximum term of confinement of 120 months. He argues that because his crime did not involve forcible compulsion and because he does not have a prior conviction that would make him a persistent offender, the trial court erred in sentencing him to an indeterminate sentence under RCW 9.94.507(1)(b).

The State concedes that under *State v. Martell*, 200 Wn. App. 293, 304, 402 P.3d 387 (2017), the trial court erred in sentencing Hensley to an indeterminate sentence under RCW

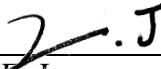
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<sup>1</sup> Hensley filed a motion for relief from his judgment and sentence in the trial court under CrR 7.8. That court transferred his motion to us to be considered as a personal restraint petition under CrR 7.8(c).

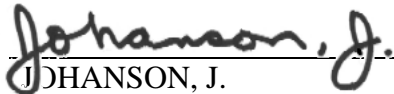
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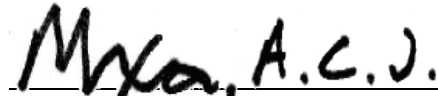
9.94A.507(1)(b). Because Hensley did not have a prior conviction that would make his conviction for indecent liberties without forcible compulsion subject to sentencing under RCW 9.94A.507(1)(b), we accept the State's concession, grant the petition, and remand for resentencing.<sup>2</sup>

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.

  
\_\_\_\_\_  
LEE, J.

We concur:

  
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JOHANSON, J.

  
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MAXA, A.C.J.

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<sup>2</sup> Because the trial court lacked the jurisdiction to sentence Hensley under RCW 9.94A.507(1)(b), RCW 10.73.100(5) exempts his petition from the one-year time bar contained in RCW 10.73.090(1).