

August 20, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

SABRINA RENEE CAMPBELL,

Appellant.

No. 52175-0-II

UNPUBLISHED OPINION

LEE, J. — Sabrina R. Campbell appeals her sentence, arguing that her offender score was miscalculated because the trial court failed to determine whether her prior out-of-state convictions were comparable to Washington offenses. The State concedes that the sentencing court erred by not conducting a comparability analysis of Campbell's Texas convictions and argues that remand for resentencing is appropriate. We accept the State's concession, reverse Campbell's sentence, and remand for resentencing.

FACTS

The State charged Campbell with one count of possession of a controlled substance (methamphetamine) under RCW 69.50.4013. Campbell agreed to a stipulated facts trial in order to enter the drug court program. Due to failure to comply with the program, Campbell was terminated from the drug court program. After a trial based on stipulated facts, the trial court found Campbell guilty of possession of a controlled substance (methamphetamine).

At sentencing, the State provided an oral recitation of Campbell's criminal history. The State argued that Campbell's offender score was six based on her criminal history, which included the following offenses from Texas: a 2013 conviction for possession of a controlled substance, a 2009 conviction for evading arrest or detention with a vehicle, and two 2004 convictions for possession of a controlled substance. Campbell did not object to her criminal history or offender score. The only reference in the record to the Texas convictions in comparison to Washington law was the State's remark that "evading arrest and detention with a vehicle which is similar to Washington's elude." Verbatim Report of Proceedings (June 28, 2018) at 57.

The sentencing court accepted Campbell's offender score as six and imposed a standard range sentence of 24 months. Campbell appeals.

ANALYSIS

Campbell appeals the calculation of her offender score, arguing that the sentencing court erroneously included the Texas offense for evading arrest or detention with a vehicle in her offender score because the conviction is not comparable to a Washington offense.¹ The State concedes that the sentencing court erred by not conducting a comparability analysis of Campbell's Texas convictions, but argues that the appropriate remedy is remand for resentencing to allow the sentencing court to determine comparability. We agree that the sentencing court erred by not performing a comparability analysis and that the appropriate remedy is to remand for resentencing.

¹ Campbell also argues that her two 2004 Texas drug convictions should not be included in her offender score because they washed out, her two 2004 Texas drug convictions should have been considered the same criminal conduct, she received ineffective assistance of counsel at sentencing, and the sentencing court erred in imposing certain LFOs. Because we reverse Campbell's sentence and remand for resentencing, we do not consider her additional arguments.

Although Campbell failed to object to her offender score below, illegal or erroneous sentences may be challenged for the first time on appeal. *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). A court must classify all out-of-state convictions during the sentencing process. *Ford*, 137 Wn.2d at 483. “Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.” RCW 9.94A.525(3).

Here, the State agrees that the sentencing court erred by not conducting a comparability analysis before counting Campbell’s Texas conviction for avoiding arrest or detention with a vehicle as a point in Campbell’s offender score.

We next turn to the issue of remedy. “[T]he existence of an erroneous sentence requires resentencing.” *Ford*, 137 Wn.2d at 485 (quoting *Brooks v. Rhay*, 92 Wn.2d 876, 877, 602 P.2d 356 (1979)). The State argues that it should be allowed to offer new evidence to prove comparability. We agree.

Because Campbell failed to object to the calculation of her offender score, the State should be afforded the opportunity to present evidence on remand to prove the proper classification of Campbell’s Texas offenses. *See Ford*, 137 Wn.2d at 485 (“Accordingly, where, as here, the defendant fails to specifically put the court on notice as to any apparent defects, remand for an evidentiary hearing to allow the State to prove the classification of the disputed convictions is appropriate.”); *State v. McCorkle*, 137 Wn.2d 490, 496-97, 973 P.2d 461 (1999) (agreeing with *Ford*’s holding that remand for an evidentiary hearing to allow the State to prove the classification of disputed convictions is appropriate remedy if the defendant makes only a general objection

No. 52175-0-II

below and fails to object to the State's evidence specifically). Therefore, we remand to the trial court for resentencing to allow the sentencing court to determine comparability.

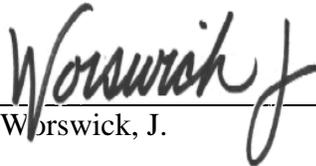
We reverse Campbell's sentence and remand for resentencing.

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.

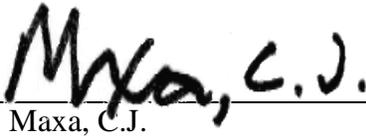


Lee, J.

We concur:



Worswick, J.



Maxa, C.J.