IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CLIFFORD L. STONE, JR., Appellant.	No. 39202-0-II UNPUBLISHED OPINION

Armstrong, J. — Clifford Stone appeals his conviction for felony driving under the influence, arguing that (1) the finding of a prior conviction was unsupported by sufficient evidence; (2) the waiver of his right to a jury trial was invalid; and (3) his combined sentence exceeded the statutory maximum for the crime charged. We affirm.

FACTS

The State charged Clifford Stone with felony driving under the influence (DUI), alleging that Stone had been previously convicted of vehicular assault while driving under the influence. *See* RCW 46.61.502(1)(6)(b)(ii).

Before trial, both Stone and his attorney signed a written jury waiver. At the time, the court discussed the waiver with Stone:

> THE COURT: Mr. Stone, you understand you have a right to a jury trial and have this matter decided by a jury of 12 people? Do you understand that?
> MR. STONE: Yes.
> THE COURT: By signing a waiver you give that right up and that means that all of the decisions will be made by one person, it will be the Judge who will make all those decisions. Do you understand that?
> MR. STONE: Yes, I do.
> THE COURT: And you've discussed that completely with your attorney?
> MR. STONE: Yes, I have.
> THE COURT: And you're signing that waiver voluntarily?
> MR. STONE: Yes.
> THE COURT: I'll approve the waiver subject, of course, to final approval by the trial judge. Right now that is Judge Brosey.

Report of Proceedings (April 16, 2009) at 2-3.

Stone proceeded to a bench trial on stipulated facts. The parties agreed to the court's consideration of certain documents intended to prove Stone's prior conviction, including identification records, the information, the order determining probable cause, and the judgment and sentence.

The court found Stone guilty of felony driving under the influence and sentenced him to 60 months' confinement, the statutory maximum, plus 9-18 months of community custody. The court explained that "[t]he combined term of community confinement [sic] and community custody shall not exceed the maximum statutory sentence." Clerk's Papers (CP) at 6.

ANALYSIS

I. Sufficiency of the Evidence

Stone argues that the State did not present evidence sufficient to prove his prior

conviction for vehicular assault while driving under the influence. Stone claims the stipulated evidence fails to identify him as the person named in the 1990 judgment and sentence. He also claims that the judgment does not prove that he was convicted under the "driving while intoxicated" alternative for vehicular assault.

The State can elevate the crime of DUI to a felony by proving that the defendant has been previously convicted of vehicular assault while driving under the influence of an intoxicating liquor or any drug. RCW 46.61.502(6)(b)(ii). As an element of the crime, the State must prove prior convictions, including the defendant's identity as the perpetrator, beyond a reasonable doubt. *State v. Roswell*, 165 Wn.2d 186, 192, 196 P.3d 705 (2008); *State v. Hunter*, 29 Wn. App. 218, 221, 627 P.2d 1339 (1981). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201.

A. Identification

Where a former judgment is an element of the substantive crime, identification by name alone is insufficient to prove that the defendant's identity is the same as the individual convicted. *Hunter*, 29 Wn. App. at 221. The State must produce some corroborating evidence that the person formerly convicted is the defendant in the present action. *Hunter*, 29 Wn. App. at 221.

Attached to the stipulated facts is a Lewis County Sheriff's report comparing Stone's fingerprints taken after his 2009 DUI arrest with fingerprints appearing on the 1990 judgment and

sentence for vehicular assault. The author of the report, Detective Kimsey, found that the fingerprints on the documents matched. A second detective verified that the fingerprints belonged to the same person. This independent evidence is sufficient to prove that the defendant in the instant matter is the same "Clifford L. Stone Jr." convicted of vehicular assault in 1990.

B. Conviction

Stone's argument rests on the premise that the State charged the defendant with vehicular assault by driving recklessly or, alternatively, by driving while under the influence. In fact, the information charged the crime as follows: "[T]he defendant(s) on or about March 19, 1990 in Lewis County, Washington, then and there did operate and drive a vehicle in a reckless manner *and* while under the influence of intoxicating liquor. . ." CP at 49 (emphasis added). Stone's argument that the judgment does not prove that he was convicted under the "driving while under the influence" alternative is without merit as the crime was charged in the conjunctive. By finding Stone guilty of vehicular assault as charged, the court necessarily concluded that he had been driving a vehicle in a reckless manner while under the influence of an intoxicating liquor.

A certified copy of the judgment and sentence is the best evidence of a prior conviction. *State v. Rivers*, 130 Wn. App. 689, 698, 128 P.3d 608 (2005). Thus, the 1990 judgment and sentence is sufficient to prove Stone's prior conviction by a preponderance of the evidence. Additional documents from the vehicular assault case, such as the affidavit of probable cause, assert that Stone was intoxicated at the time of the arrest. The judgment and sentence also contains a provision that the defendant should refrain from the use of alcohol, which would have been necessary only if Stone had been convicted of driving under the influence. Accordingly, the

evidence is sufficient to prove Stone's prior conviction for vehicular assault while driving under the influence.

II. Jury Right Waiver

Stone contends that he did not knowingly, intelligently, and voluntarily waive a jury trial. Stone argues that he was not informed that under the Washington Constitution there has to be complete jury unanimity in order to enter a guilty verdict.

We review a trial court's decision to accept the defendant's jury trial waiver de novo. *State v. Ramirez-Dominguez*, 140 Wn. App. 233, 239, 165 P.3d 391 (2007). A defendant may waive the right to a jury trial as long as he acts knowingly, intelligently, voluntarily, and free from improper influences. *State v. Stegall*, 124 Wn.2d 719, 725, 881 P.2d 979 (1994). We will not presume that a defendant waived his jury trial right unless the record establishes a valid waiver. *State v. Pierce*, 134 Wn. App. 763, 771, 142 P.3d 610 (2006); CrR 6.1(a) ("cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court"). While not determinative, a written waiver is strong evidence that a defendant validly waived a jury trial. *Pierce*, 134 Wn. App. at 771. Courts are not required to engage in an extended colloquy; the only requirement is a personal expression of waiver by the defendant. *Stegall*, 124 Wn.2d at 725.

The record here establishes a valid waiver. The court's explanation of the right on the record shows that Stone was adequately informed of his right to a jury trial. *See Pierce*, 134 Wn. App. at 772-73 (determining that defendant had enough information to validly waive his right when the court explained the essence of the right to a jury trial). Stone offers no legal authority

to support his contention that the trial court must specifically inform him of every derivative jury trial right. In fact, Washington courts have explicitly rejected the claim that an extended colloquy is necessary to waive the right. *State v. Brand*, 55 Wn. App. 780, 785, 780 P.2d 894 (1989). In response to questioning by the court, Stone stated he understood that he was giving up the right to have his case heard by 12 people, and that a judge would make all the decisions. He also stated that he discussed the matter with his attorney and that he was signing the waiver voluntarily. We conclude that Stone validly waived his right to a jury trial.

III. Sentencing

Stone argues that his sentence exceeds the statutory maximum of 60 months for a class C felony. He claims the court's instruction—that the combined term of "community confinement" and "community custody" is not to exceed the statutory maximum—is insufficient to properly limit his sentence. The State concedes the term "community confinement" is confusing, and that the sentence must be amended to correct the scrivener's error.

No person convicted of a class C felony shall be punished by confinement exceeding five years. RCW 9A.20.021(c). When a defendant is sentenced to a term of confinement and community custody that has the potential to exceed the statutory maximum for the crime, the appropriate remedy is to remand to the trial court to amend the sentence and explicitly state that the combination of confinement and community custody shall not exceed the statutory maximum. *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 675, 211 P.3d 1023 (2009).

Here, the court used the phrase "community confinement" instead of "confinement". The court clearly intended to limit the combined term of confinement and community custody to the

statutory maximum. We remand for the trial court to amend the sentence by correcting the obvious error. *Brooks*, 166 Wn.2d at 675.

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Penoyar, C.J.

Worswick, J.