

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

STEVEN LEE SCHAFER,

Appellant.

No. 39544-4-II

UNPUBLISHED OPINION

Armstrong, J. — Steven Lee Schafer appeals his sentence entered subsequent to his guilty plea for the crimes of second degree attempted burglary and second degree theft. He claims his sentence was based on an offender score that is unsupported by evidence. The State concedes error and agrees that we should remand the sentence for correction of the offender score.

Schafer was arrested as a suspect in a burglary and theft reported at Air Van Moving and Storage (Air Van). City of Tacoma police responded to a call from witnesses who identified three individuals in possession of property belonging to Air Van. Upon investigation, police located and viewed surveillance video of Schafer and two accomplices committing, or attempting to commit, the charged crimes. Schafer entered a plea agreement with the prosecution and agreed to a sentence of 51 months' confinement on the attempted burglary charge and 29 months' confinement on the theft charge, based upon an offender score of 10.5. However, at sentencing, the prosecution submitted a pre-sentence report noting an offender score of 12.5 based upon an out-of-state conviction and containing the agreed sentence. Schafer refused to sign the document, objecting to the offender score, but he agreed to the sentence. Schafer was sentenced accordingly.

A criminal defendant must be sentenced on the basis of information admitted, acknowledged, or proved in a trial at the time of sentencing. RCW 9.94A.530(2); *State v. Allen*, 150 Wn. App. 300, 315, 207 P.3d 483 (2009). The State proffered no evidence to prove the existence of the prior out-of-state conviction. Therefore, we accept the State's concession and remand with instructions to correct Schafer's offender score to 10.5.<sup>1</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 pursuant to RCW 2.06.040, it is so ordered.

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Armstrong, J.

We concur:

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Quinn-Brintnall, J.

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Penoyar, C.J.

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<sup>1</sup> While we instruct the trial court to correct Schafer's offender score, this correction does not affect the trial court's previous determination of Schafer's sentence, as including the disputed out-of-state conviction does not affect his standard range sentence. *See* RCW 9.94A.510. And Schafer agreed to the parties' joint recommendation to the sentence.