

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

RONALD L. CULVER,

Appellant.

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In re the Personal Restraint  
of

RONALD LEROY CULVER, II,

Petitioner.

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No. 40493-1-II

Consolidated with:

No. 40581-4-II

UNPUBLISHED OPINION

Johanson, J. — Ronald L. Culver pleaded guilty to one count of second degree child rape. He appeals his sentence and files a personal restraint petition (PRP), which we consolidated with his appeal. In his direct appeal, Culver argues that the trial court erred in calculating his offender score because two of his prior convictions should have been counted as parts of the same or similar criminal conduct. In his PRP, Culver reiterates the offender score argument, arguing that the trial court erred in imposing a lifetime term of community custody, and that the trial court clerk failed to seal his motion requesting sentencing under the Special Sex Offender Sentencing Alternative (SSOSA), RCW 9.94A.670. We affirm his sentence and deny his PRP.<sup>1</sup>

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<sup>1</sup> A commissioner of this court initially considered Culver's appeal and PRP as a motion on the merits under RAP 18.14 and then transferred both to a panel of judges.

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At Culver’s sentencing, the State contended that he had the following prior convictions:

<b>Crime</b>	<b>Date of Offense</b>	<b>Victim</b>	<b>Date of Sentence</b>	<b>Adult or Juvenile</b>	<b>Felony or Misdemeanor</b>	<b>Score</b>
Controlled Substance Possession	11/21/07		Unknown	Adult	Felony	1
Theft 1	04/21/05	Shane Bennor	08/15/05	Adult	Felony	1
Identity Theft 2	01/21/05	Signs By Erin	08/15/05	Adult	Felony	1
Theft 1, Theft 2, and Identity Theft 1	01/01/05	Theft 1: Shelton Wal-Mart; Theft 2: Ronald Culver, Senior and/or Karen Culver; Identity Theft 1: Ronald Culver, Senior	08/15/05	Adult	Felony	3
Burglary 2	02/25/85		08/20/85	Adult	Felony	Washes

Culver argued that his first degree identity theft and second degree identity theft convictions should merge and that his first degree theft and second degree theft should merge. The trial court rejected his arguments, counted each prior conviction separately, found that his offender score was 6, and sentenced him within the standard range for that offender score.

Culver argues on appeal that his prior convictions for second degree theft and first degree identity theft should have been treated as parts of the same criminal conduct because the crimes occurred at the same place and time and involved the same victim. The State responds that Culver waived his challenge to the offender score calculation because he did not make this argument at sentencing. But assuming that he can raise this issue for the first time on appeal, his argument fails. For prior convictions to be counted together as parts of the same criminal conduct under RCW 9.94A.589(1)(a), they must involve the same victim. According to his 2005 judgment and sentence, the victim of Culver’s second degree theft was Ronald Culver, Sr., and/or Karen Culver. The victim of Culver’s first degree identity theft was Ronald Culver, Sr. He has

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not shown that the crimes had the same victim and so cannot show that those convictions should have been counted together in his offender score. The trial court did not err.

In ground 1 of his PRP, Culver argues that “the courts went outside of the sentence guidelines (exceptional sentence)[.] The courts sentenced me with a 6 point criminal score but only 5 points on record.” PRP at 4. But as noted above, all of his prior convictions had different victims and so counted separately in his offender score of 6.

Second, Culver argues in his PRP that the trial court improperly imposed a lifetime term of community custody. But for convictions for second degree child rape, the sentencing court

shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

RCW 9.94A.507(5). Because the maximum sentence for second degree child rape, a class A felony, is life under RCW 9A.44.076(2) and 9A.20.021(a), the court correctly imposed a lifetime term of community custody.

Finally, Culver argues in his PRP that the trial court clerk failed to seal his motion for a SSOSA sentence. But he presents no evidence of a motion to seal.<sup>2</sup> And even if he did make such a motion, the trial court’s failure to seal his motion for SSOSA sentence does not make his restraint unlawful and so is not the proper subject of a PRP. RAP 16.4(b).

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<sup>2</sup> Nor does there appear to be any ground for sealing such a motion.

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We affirm Culver's sentence and deny his PRP.

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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Johanson, J.

We concur:

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Hunt, J.

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Worswick, A.C.J.