

FILED
COURT OF APPEALS
DIVISION II

2014 JAN 22 AM 9:19

STATE OF WASHINGTON

BY 
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 44678-2-II

Respondent.

v.

SHAWN VINCENT BALETO BIRD,

UNPUBLISHED OPINION

Appellant.

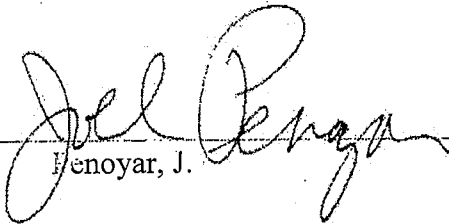
PENOYAR, J. — Shawn Vincent Baleto Bird appeals his sentence for conspiracy to deliver methamphetamine with an enhancement for commission while in a jail facility and two counts of unlawful possession of a firearm. The State concedes that the trial court erred when it imposed a “jail zone” sentencing enhancement for his conspiracy conviction. Accepting the State’s concession, we remand with instructions to strike the sentencing enhancement from Bird’s judgment and sentence.

The State alleged the conspiracy to deliver methamphetamine was committed in a jail or correctional facility, which would require an 18-month sentencing enhancement under RCW 9.94A.533(5)(a). This statute lists seven crimes to which the enhancement applies, but not the crime Bird was convicted of committing.

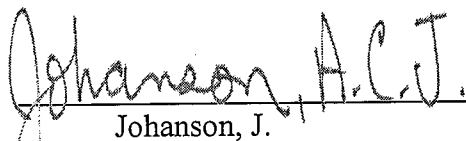
RCW 9.94A.533(5) by its own terms only applies to anticipatory offenses under chapter 9A.28 RCW. Because Bird was convicted under RCW 69.50.407, the enhancement was improperly applied to him. *State v. Mendoza*, 63 Wn. App. 373, 377-78, 819 P.2d 387 (1991) (provisions that applied to “persons convicted of . . . conspiracy under chapter 9A.28 RCW” did not apply to a conviction under RCW 69.50.408) (quoting former RCW 9.94A.410 (2000)) (emphasis in the original). The enhancement should therefore be stricken.

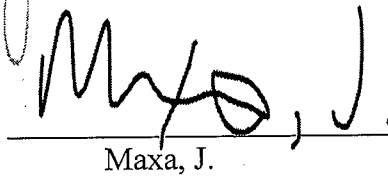
We remand to the trial court to strike the sentencing enhancement from Bird's judgment and sentence.

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.


Penoyar, J.

We concur:


Johanson, J.


Maxa, J.