

FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 30230-0-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
TASHA ANN HANSON,)	
A.K.A.: Tasha Ann Douglas,)	
)	
Appellant.)	
)	

Kulik, J. — The trial court sentenced Tasha Ann Hanson to a 6-month jail sentence for second degree theft. At the sentencing hearing, the court determined that Ms. Hanson’s offender score was 5 by including Ms. Hanson’s previous conviction that was beyond the 5-year statutory period allowing inclusion. Ms. Hanson appeals the sentence arguing that, pursuant to RCW 9.94A.525(2)(c), the “wash out” statute, her previous conviction should not have been included in the offender score calculation. We agree that there is a question about whether the previous conviction should have been excluded. We, therefore, remand for a new sentencing hearing.

FACTS

On July 2, 2009, a jury found Tasha Ann Hanson guilty of second degree theft. Initially, the trial court granted Ms. Hanson's motion to arrest the verdict, but this court reversed the trial court's decision, reinstated the jury verdict and remanded the case for sentencing. Ms. Hanson asked the court to impose a sentence below the standard range based on mitigating circumstances. The court found that these circumstances did not apply and imposed a 6-month sentence, but the court did allow Ms. Hanson to serve 3 of the 6 months on a work crew. On September 14, 2011, Ms. Hanson requested that the court stay the sentence pending this appeal. The court denied this request.

When calculating Ms. Hanson's offender score, the court included 4 felony convictions from 2005, a 1995 conviction for taking a motor vehicle without permission, and a 1992 conviction for residential burglary. Ms. Hanson was a juvenile for both the 1992 and the 1995 convictions. The court noted that these prior convictions produced an offender score of 5. Had Ms. Hanson's 1995 conviction for taking a motor vehicle without permission been excluded from the calculation, her offender score would have been 4. For second degree theft, the standard sentence range for an offender score of 5 is 4 to 12 months, while the sentence range for an offender score of 4 is 3 to 8 months.

ANALYSIS

We review de novo a court's determination of a defendant's offender score. *State v. Moeurn*, 170 Wn.2d 169, 172, 240 P.3d 1158 (2010). "A sentencing court acts without statutory authority . . . when it imposes a sentence based on a miscalculated offender score." *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997). This error "can be addressed for the first time on appeal." *State v. Paine*, 69 Wn. App. 873, 884, 850 P.2d 1369 (1993).

Taking a motor vehicle without permission in the second degree is a class C felony. RCW 9A.56.075(2). Regarding class C felonies, RCW 9.94A.525(2)(c) provides in part:

[C]lass C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

Here, the record shows that following Ms. Hanson's conviction for taking a motor vehicle without permission in 1995, her next conviction was not until 2005. There is no other evidence that Ms. Hanson was convicted of any other crimes during this period. The 10-year window without a conviction clearly satisfies the statutory requirement of 5

years. Therefore, the court may have erred by including Ms. Hanson's 1995 conviction for taking a motor vehicle without permission in her offender score calculation.

The State claims that Ms. Hanson was convicted of misdemeanors during this period and that these convictions prevent the 1995 conviction from washing out. The State bears the burden to show a prior conviction by a preponderance of the evidence. Generally, this is accomplished by providing a certified copy of a past judgment and sentence. *State v. Bergstrom*, 162 Wn.2d 87, 93, 169 P.3d 816 (2007). Significantly, no evidence of these misdemeanors was submitted during sentencing.

In light of these circumstances, it is appropriate that both parties request a new sentencing hearing. “[I]f the State alleges the existence of prior convictions at sentencing and the defense fails to [object] before the imposition of the sentence, then the case is remanded for resentencing and the State is permitted to introduce new evidence.” *Id.* Here, the State alleged that the 1995 conviction should be included in the calculation and, on appeal, the State argues this is still appropriate because other misdemeanor convictions interrupt the statutory wash out period. Ms. Hanson failed to object at sentencing.

On appeal, however, we cannot determine whether there was a clear showing of a miscalculation. If the sentencing court miscalculated Ms. Hanson's offender score, it acted without statutory authority. As a result, Ms. Hanson is entitled to a new sentencing

hearing. At a new hearing, the State has the opportunity to present evidence in support of its claim that Ms. Hanson’s offender score of 5 is accurate. Former RCW 9.94A.525(21) (2008) provides: “Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.”

We remand for a new sentencing hearing to determine an accurate offender score. At the hearing, the State may present any evidence of other convictions to support its assertion that Ms. Hanson’s offender score of 5 is accurate.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Brown, J.

Korsmo, C.J.