IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. FLOYD DONNELL GRIFFIN, Appellant.	No. 38326-8-II UNPUBLISHED OPINION

Bridgewater, P.J. — Floyd Donnell Griffin appeals his sentence imposed following a resentencing for two counts of first degree child molestation, arguing that the trial court erred in calculating his offender score.[1] We affirm.

Because Griffin challenges only his offender score, we need not review the substantive facts. At his resentencing on September 12, 2008, the State calculated Griffin's offender score as 8 by including a 1998 conviction for attempted unlawful possession of a controlled substance. Griffin argued that the 1998 conviction had "washed out" of his offender score under the law in effect when he committed the crimes of child molestation in 1990 and 1991. The trial court ruled that the then-current version of the "wash out" rule applied and under that rule, the 1998 conviction did not wash out. The trial court found Griffin's offender score to be 8, and he appeals.

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[1] A commissioner of this court initially considered Griffin's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

Griffin renews his argument that the trial court should have applied the 1991 version of the "wash out" rule to his 1998 conviction. He is correct. *State v. Varga*, 151 Wn.2d 179, 191, 86 P.3d 139 (2004). But even under that version of the rule, his 1998 conviction does not wash out. For crimes committed in 1990 and 1991, former RCW 9.94A.360(2) (1990) provided that:

> Class 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 being convicted of any felonies.

Griffin's 1998 conviction was a class C felony other than a sex offense. But after his release from confinement on that conviction, he did not spend five consecutive years in the community without being convicted of any felonies. He was convicted of felony bank fraud in federal court in 2000. While that conviction was not included in Griffin's offender score because it is not comparable to a crime defined under Washington law (former RCW 9.94A.360(3)), it is still a felony conviction that, under former RCW 9.94A.360(2), stops Griffin's 1998 conviction from washing out. This court may affirm the trial court's decision on any ground supported by the record. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004). Thus, the trial court's calculation of Griffin's offender score as 8 is affirmed.

In his statement of additional grounds, Griffin argues that the trial court erred in including his 1998 conviction in his offender score because the judgment and sentence in that matter is facially invalid for the following reasons: (1) his statement on plea of guilty stated the maximum sentence for the crime was 12 months, while the judgment and sentence stated correctly that the maximum sentence was five years; and (2) he had not been charged with attempted unlawful possession of a controlled substance.[2] But the discrepancy between his statement on plea of

guilty and his judgment and sentence does not demonstrate facial invalidity because it had no actual effect on his rights.[3] *In re Pers. Restraint of McKiearnan*, 165 Wn.2d 777, 782-83, 203 P.3d 375 (2009). And his conviction for attempted unlawful possession of a controlled substance was the result of a plea agreement following charges of unlawful delivery of a controlled substance. He has not demonstrated the facial invalidity of his 1998 conviction.

Affirmed.

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

Bridgewater, P.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.

[2] He also argues that the statute he was found guilty of violating, RCW 69.50.401, was not enacted until July 1998, after the date of his crime. But while amended in 1998, the relevant portions of RCW 69.50.401 have been in effect since before the commission of his crime.

[3] The court imposed a standard range sentence of 56 days of confinement, with 56 days of credit for time served.