

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
HOWARD MARQUICE MCCORD,  
  
Appellant.

No. 80742-1-I  
  
DIVISION ONE  
  
UNPUBLISHED OPINION

PER CURIAM — The State charged Howard McCord with one count of first degree burglary and one count of first degree robbery. Based on the law at the time, the convictions would have constituted McCord’s third strike. Accordingly, McCord negotiated a plea agreement in which he pleaded guilty to one count of residential burglary and agreed to an exceptional sentence of 120 months. The court orally noted that the exceptional sentence was “based upon the negotiations and the penalty that Mr. McCord was previously facing,” but did not enter written findings of fact and conclusions of law supporting the exceptional sentence. The court also required McCord to provide a DNA (deoxyribonucleic acid) sample. It did not require him to pay the \$100 DNA collection fee based on the State’s representation that McCord had “paid that in his previous conviction.”

McCord challenges the trial court's failure to enter written findings of fact and conclusions of law supporting the exceptional sentence, as required by RCW 9.94A.535. The State concedes the error. We accept the State's concession and remand for the trial court to enter written findings and conclusions in compliance with the statute.

McCord also contends the trial court erred in imposing the DNA collection requirement. RCW 43.43.754(4) provides that, if an individual's DNA is already on file with the Washington State Patrol crime laboratory, "a subsequent submission is not required to be submitted." McCord contends that he has already submitted a DNA sample as part of a prior felony conviction. He acknowledges that a trial court nonetheless has the discretion to order collection of a DNA sample as part of any felony conviction, but contends that the trial court misunderstood its discretion and believed it was required by statute to order collection of his DNA. Because the record is silent as to the status of McCord's prior DNA submission, the parties may take the opportunity to address the necessity of a DNA sample on remand.

We remand for the trial court to enter findings of fact and conclusions of law supporting the exceptional sentence, and to address the DNA collection

requirement. In all other respects, we affirm.

FOR THE COURT:

Burman, J.

Mann, C.J.

Dwyer, J.