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

IN THE MATTER OF THE	)	No. 69168-6-I
PERSONAL RESTRAINT OF:	)	
	)	DIVISION ONE
JOHN KIRK,	)	
	)	UNPUBLISHED OPINION
Petitioner.	)	
	)	FILED: MAR 18 2013

PER CURIAM. John Kirk pleaded guilty to one count of attempted promoting commercial sex abuse of a minor in King County Superior Court No. 11-1-00319-8 SEA. He filed a motion to withdraw his plea, alleging that his offender score was miscalculated, the charging document was constitutionally defective, and he was denied effective assistance of counsel. The superior court transferred the motion to this court for consideration as a personal restraint petition. CrR 7.8(c)(2). The State concedes that Kirk's offender score is erroneous. We accept the State's concession of error and remand for further proceedings consistent with this opinion.

At the time of sentencing, the State and defense agreed that Kirk had an offender score of five. Included in his offender score were 1980 convictions for third degree statutory rape and indecent liberties. But these convictions had been dismissed under former RCW 9.95.240, and cannot be considered in Kirk's offender score. See In re Pers. Restraint of Carrier, 173 Wn.2d 791, 818-819, 272 P.3d 209 (2012). Where a defendant is misinformed as to a direct consequence

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of his plea, he is entitled to either withdraw his plea or to specific performance of the plea agreement, unless the State can show that the remedy chosen is unjust and there are compelling reasons not to allow that remedy. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 303, 88 P.3d 390 (2004).

We grant Kirk's request to remand the matter to the superior court where Kirk may withdraw his plea. As such, we need not address Kirk's remaining claims, which Kirk may pursue in the superior court, nor Kirk's objection to the transfer of his motion to this court as a personal restraint petition.

For the court:

Appelwick, J.

Jan, J.

Leach, C. J.