

August 2, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of:

LANCE B. SMITH,

Petitioner.

No. 56449-1-II

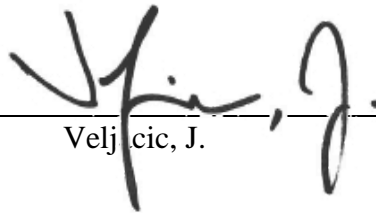
UNPUBLISHED OPINION

VELJACIC, J.—Lance Bill Smith seeks relief from personal restraint imposed following his 2007 convictions for two counts of child molestation in the first degree, three counts of rape of a child in the second degree, one count of child molestation in the second degree, and one count of child molestation in the third degree. His offender score was calculated as 9. His criminal history included two prior convictions for unlawful possession of controlled substances. He was sentenced at the high end of the sentencing range as to each count.

In this, his third petition, Smith argues that he is entitled to be resentenced because his offender score contains convictions invalidated by *State v. Blake*, 197 Wn.2d 188, 195, 481 P.3d 521 (2021). The State concedes that Smith is entitled to have his prior convictions for unlawful possession of controlled substances removed from his criminal history under *Blake*. But it argues he is not entitled to be resentenced because the removal of those prior convictions would not reduce his offender score below 9 and would leave him with the same standard sentence ranges. While the removal of the prior convictions does not change Smith’s standard sentence ranges, it may influence the trial court’s decision to impose sentences at the high end of those ranges. Therefore,

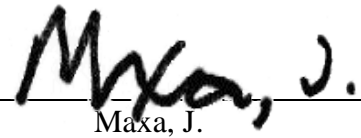
we grant Smith's petition and remand to the trial court for resentencing with a corrected criminal history. We deny his request for appointment of counsel.

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 in accordance with RCW 2.06.040, it is so ordered.



Veljic, J.

We concur:



Maxa, J.



Glasgow, C.J.