

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MARK EVAN CHATEL,

Appellant.

No. 39112-1-II

UNPUBLISHED OPINION

Armstrong, J. — Mark Evan Chatel appeals the sentence imposed for his Pierce County conviction of second degree domestic violence assault. He argues that the trial court erred when it counted convictions from 1983 and 1984 in his offender score because the State did not prove that those convictions had not washed out.¹ We affirm.

FACTS

The charges arose from a February 2008 incident in which Chatel punched his wife in the face, breaking her nose and damaging her left eye. On March 26, 2009, a jury convicted Chatel as charged.

At sentencing, the State alleged an offender score of two based on two B felony convictions: a 1983 second degree burglary and a 1984 failure to return from work release. The State produced certified copies of the judgment and sentence for each of the felonies and a summary of Chatel's criminal history, indicating the date and nature of each crime. The summary included the two felonies and fifteen misdemeanors, committed between 1987 and 2002.

Chatel declined to stipulate to the criminal history, but he did not object to the admission

¹ A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

of the summary. In addition, during his argument, defense counsel told the court:

As far as his criminal history goes, obviously it all still counts against him because of the intervening misdemeanors, but when one does look at his criminal history as far as his felony history goes, his felony history is, one, not particularly significant, but very distant. His felony history is quite some time ago. Unfortunately, he's had some misdemeanors in between to keep it alive, but I think that is again something the Court should be contemplating when deciding the bottom or the top end or somewhere in between.

Report of Proceedings (Mar. 30, 2009) at 6-7.

The court sentenced Chatel to 14 months, the high end of the standard range with an offender score of 2, and this appeal followed.

ANALYSIS

The State bears the burden of proving the existence of prior convictions by a preponderance of the evidence. *State v. Bergstrom*, 162 Wn.2d 87, 93, 169 P.3d 816 (2007). “A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein.” RCW 9.94A.500(1). The failure to object to criminal history constitutes an acknowledgment. RCW 9.94A.530(2). Thus, in the absence of an objection, the State’s prima facie evidence is sufficient. In this case, Chatel affirmatively acknowledged that his misdemeanor history prevented washout of the felonies. *See State v. Lucero*, 152 Wn. App. 287, 294, --- P.3d --- (2009).

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Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Hunt, J.

Van Deren, C.J.