

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

STATE OF WASHINGTON,  
Respondent,

v.

RICHARD WAYNE WILSON,  
Appellant.

No. 39856-7-II

UNPUBLISHED OPINION

Van Deren — Richard Wayne Wilson seeks remand and resentencing on his convictions following his guilty pleas to nine counts of unlawful possession of a firearm. He challenges his offender score calculation, arguing that the trial court erred in including his prior convictions because they were based on facially invalid guilty pleas. We affirm.

Facts

On March 3, 2009, the State charged Wilson with nine counts of first degree unlawful possession of a firearm. On June 4, 2009, Wilson pleaded guilty to all nine counts and, in exchange, the State agreed to stipulate that the nine charges of unlawful possession were the same course of conduct, to recommend the low end of the sentence range, and not to file additional charges relating to the incident. The parties had not reached agreement on Wilson's offender score or the applicable standard sentencing range to include in the plea agreement. Wilson signed

a stipulation to his prior record, acknowledging that he had five prior Washington State convictions, three out of state convictions, and three federal convictions. After Wilson entered his plea, the State asked that sentencing occur later so the State could obtain documents to establish Wilson's criminal history and the court could calculate his appropriate offender score. Under the plea agreement, as long as Wilson was sentenced within the standard range, he waived any right to a direct appeal or a collateral attack challenging his conviction or sentence, other than the calculation of his offender score.

The sentencing hearing began on September 25, 2009, and finished on October 2, 2009. On September 25, defense counsel filed a sentencing memorandum arguing that most of Wilson's prior convictions should not be included in calculating his offender score. The State introduced multiple documents regarding Wilson's prior convictions, including certified copies of his judgments and sentences. Wilson did not contest that the convictions were his and he agreed that the convictions did not wash out. Wilson's counsel also retracted some of the arguments he had raised in his sentencing memorandum and agreed that there were no comparability issues. The defense argued, however, that Wilson's prior convictions were constitutionally facially invalid because the State's documentation, which was used to prove the existence of the convictions, did not provide a sufficient factual basis to support Wilson's prior guilty pleas.

During the sentencing hearing, the sentencing court reviewed the documentation submitted by the State for each of Wilson's prior convictions. But it declined to review each of Wilson's prior plea statements to determine whether they were made knowingly, voluntarily, and

intelligently.<sup>1</sup>

Over Wilson's objection, the court ruled that his offender score was nine. The court sentenced Wilson to 87 months on each count, the low end of the standard range, with the sentences on all counts to run concurrently. Wilson appeals.

#### Discussion

Wilson challenges the trial court's offender score calculation, contending that the trial court improperly included facially invalid prior convictions. He contends that the documentation submitted by the State to show his prior convictions failed to prove that the guilty pleas on which his convictions were based were knowingly, intelligently, and voluntarily made. Wilson misconstrues the appropriate burdens at sentencing.

The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, requires a trial court to examine a defendant's prior convictions to determine his offender score. *State v. Thompson*, 143 Wn. App. 861, 865-66, 181 P.3d 858 (2008) (citing RCW 9.94A.525). "This offender score is then used to determine a defendant's standard sentencing range." *Thompson*, 143 Wn. App. at 866 (citing RCW 9.94A.530). While the State has the burden of proving prior convictions used to calculate an offender score, it is not responsible for proving the underlying constitutional validity of those convictions. *State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719, 718 P.2d 796 (1986); *Thompson*, 143 Wn. App. at 866. Accordingly, "the constitutional validity of the prior convictions is generally not subject to challenge in sentencing proceedings." *State v. Jones*,

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<sup>1</sup> In reviewing each conviction, the trial court found that Wilson's 1974 Lewis County plea to and conviction for destruction of property could not be counted as a prior conviction because the plea did not contain the amount of damage. The court did, however, include the 1974 Lewis County riot conviction listed in the same judgment in Wilson's criminal history, thus his 1974 conviction remained as one point toward his offender score.

110 Wn.2d 74, 77, 750 P.2d 620 (1988). If such challenges were permitted, sentencing proceedings for the current conviction “would become an appellate forum for prior convictions.” *Thompson*, 143 Wn. App. at 866. “[A] defendant has no right to contest a prior conviction at a subsequent sentencing. To allow an attack at that point would unduly and unjustifiably overburden the sentencing court. The defendant has available[] more appropriate arenas for the determination of the constitutional validity of a prior conviction.” *Ammons*, 105 Wn.2d at 188. For this reason, the *Ammons* court “severely restricted a defendant’s ability to mount a collateral attack on a prior conviction at a sentencing hearing.” *State v. Bembry*, 46 Wn. App. 288, 289, 730 P.2d 115 (1986).

There are two exceptions to this general rule: (1) where a previous conviction has been determined to have been unconstitutionally obtained or (2) where the conviction is invalid on its face, such convictions shall not be considered in calculating defendant’s offender score. *Ammons*, 105 Wn.2d at 187-88. Only the second exception is at issue here.

Constitutionally invalid on its face means a “conviction [that] without further elaboration evidences infirmities of a constitutional magnitude.” *Ammons*, 105 Wn.2d at 188. “The defendant, and not the State, ‘bears the burden of establishing the unconstitutionality of his or her prior convictions at such a proceeding.’” *Thompson*, 143 Wn. App. at 866 (quoting *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 368, 759 P.2d 436 (1988)).

“To determine facial invalidity of a prior conviction, the sentencing court may review the judgment and sentence and any other document that qualifies as ‘the face of the conviction.’” *Thompson*, 143 Wn. App. at 866 (internal quotation marks omitted) (quoting *State v. Gimarelli*, 105 Wn. App. 370, 377, 20 P.3d 430 (2001)). “The face of the conviction” has been interpreted

to include those documents signed as part of a plea agreement. *See State v. Phillips*, 94 Wn. App. 313, 317, 972 P.2d 932 (1999); *State v. Davis*, 47 Wn. App. 91, 94, 734 P.2d 500 (1987); *Bembry*, 46 Wn. App. at 291. In reviewing the plea agreement documents, where a clear determination of constitutional invalidity cannot be made, the conviction is not facially invalid. *Ammons*, 105 Wn.2d at 189. If the “trial court would have to go behind the verdict and sentence and judgment to make” a determination on constitutional invalidity, the conviction is not facially invalid. *Ammons*, 105 Wn.2d at 189.

In *Ammons*, one of the defendants, Eugene Garrett, claimed facial invalidity of a prior conviction at sentencing where the plea forms (1) “failed to show that he was aware of his right to remain silent, [(2)] failed to set forth the elements of the crime of burglary, [and (3)] failed to set forth the consequences of pleading guilty.” 105 Wn.2d at 189. From the record, it was not clear whether Garrett’s attorney or the trial court informed Garrett of the necessary elements, rights, and consequences missing from the plea forms. The *Ammons* court conceded that the prior conviction could be unconstitutional but, because such a determination could not be made from the guilty plea forms alone, Garrett’s claim of facial invalidity failed. 105 Wn.2d at 189. Our Supreme Court held that where a defendant failed to make such an affirmative showing, he “must pursue the usual channels for relief,” an appeal or personal restraint petition. *Ammons*, 105 Wn.2d at 189.

Here, Wilson argues generally that the certified documents submitted by the State are insufficient, noting that our Supreme Court has held that “a guilty plea is invalid unless the defendant is informed of the elements of the charged offense and understands that his conduct satisfies those elements.” Br. of Appellant at 7 (citing *In re Pers. Restraint of Hews*, 108 Wn.2d

579, 589, 741 P.2d 983 (1987)). But the *Hews* case, upon which Wilson relies, did not address the sentencing context at issue here. As noted, the State submitted certified copies of Wilson's prior convictions and Wilson agreed that the prior convictions were his and that there were no comparability issues. Thus, under *Ammons*, the State submitted sufficient documentation to establish Wilson's relevant criminal history for purposes of calculating his offender score. Moreover, *Ammons* places the burden on Wilson to make an affirmative showing of any facial invalidity regarding those documents. His general assertion, that the guilty pleas underlying his past convictions do not state a sufficient factual basis for those convictions, does not suffice. We hold that Wilson has failed to make the required showing under *Ammons*. Accordingly, his challenge to his offender score based on the inclusion of his past convictions fails.

We affirm Wilson's sentence.

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.

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Van Deren, J.

We concur:

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Hunt, J.

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Worswick, A.C.J.