IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JESSEY FERN REED, Appellant.	No. 42923-3-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Jessey Reed appeals from the denial of his motion to modify his judgment and sentence, contending that it is facially invalid. We reverse and remand for correction of Reed's judgment and sentence.[1]

In 2001, the trial court sentenced Reed for one count of first degree rape of a child and two counts of first degree child molestation committed in 1999. It calculated Reed's offender score as 13. That offender score included three juvenile offenses that Reed had committed when he was 10, 11, and 14 years old, respectively. It imposed a sentence at the top of the standard range, 318 months.

In 2011, Reed moved to modify his judgment and sentence, arguing that because he committed them before he turned 15, his juvenile offenses should not have been included in his offender score because they had "washed out" pursuant to *In re Pers. Restraint of LaChapelle*, 153 Wn.2d 1, 13, 100 P.3d 805 (2004) under former RCW 9.94A.030(12)(b)(ii) (1996). The

[1] A commissioner of this court initially considered Reed's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

trial court denied his motion, ruling that the "SRA amendments the defendant claims were enacted in 2002 were actually enacted in 1997, before the alleged incident date for the juvenile convictions he wishes to have removed from his offender score." Clerk's Papers at 53.

Here, Reed renews his argument that under *LaChapelle*, because he committed his juvenile offenses when he was under 15, those offenses should have washed out of his criminal history and should not have been included in his offender score. The State concedes that under *LaChapelle*, those offenses had washed out, but it contends that any error in Reed's judgment and sentence is harmless because even with the juvenile offenses excluded, his offender score would have been 10 and would have resulted in the same standard sentence range. *State v. Lillard*, 122 Wn. App. 422, 433, 93 P.3d 969 (2004), *review denied*, 154 Wn.2d 1002 (2005); *State v. Argo*, 81 Wn. App. 552, 569, 915 P.2d 1103 (1996).

Neither case is apposite. In *Lillard*, the trial court stopped calculating the offender score when it reached 9 and this court concluded the offender did not have the right to the calculation of an exact offender score. 122 Wn. App at 432-33. Here, the trial court calculated Reed's exact offender score as 13, which is not correct. In *Argo*, the offender asked for a remand for resentencing after showing that his offender score should have been 13 instead of 16. 81 Wn. App. at 569. Here, Reed does not seek resentencing but only seeks correction of his judgment and sentence. A facially incorrect judgment and sentence should be corrected. *State v. Casarez*, 64 Wn. App. 910, 915, 826 P.2d 1102 (1992) (quoting CrR7.8(a)), *aff'd sub nom. State v. Garza-Villarreal*, 123 Wn.2d 42, 864 P.2d 1378 (1993).

We reverse the trial court's order denying Reed's motion to modify his judgment and

sentence and remand for the entry of an order correcting Reed's judgment and sentence by eliminating his juvenile offenses from his criminal history and offender score.[2]

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.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

JOHANSON, J.

[2] Because we grant Reed the relief he sought, we decline to address the grounds raised in his statement of additional grounds filed under RAP 10.10.