

FILED

March 20, 2012

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 29507-9-III
)	
Respondent,)	
)	Division Three
v.)	
)	
JIMMY GEORGE BUCKMAN,)	
)	UNPUBLISHED OPINION
Appellant.)	
)	

Siddoway, J. — Jimmy George Buckman challenges the computation of his offender score in connection with his 2006 conviction for attempted first degree theft, despite having fully completed his sentence on that offense. Having no effective relief that we can provide in the matter, we dismiss his appeal as moot.

FACTS AND PROCEDURAL BACKGROUND

Pursuant to a plea agreement, Jimmy George Buckman pleaded guilty on February 8, 2006 to one count of attempted first degree theft. His plea statement did not contain a criminal history and none was attached, but he acknowledged that his criminal history resulted in an offender score of eight. He was sentenced to 24.75 months of

confinement based upon that offender score. He later sought to withdraw his plea, arguing the offender score had been incorrect. When his motion to withdraw his plea was denied, he appealed.

Mr. Buckman completed both the confinement and community custody provisions of his sentence on August 30, 2007. His challenge to the determination of his offender score in connection with the 2006 theft conviction has nonetheless wended its way to and from this court in the years since. The initial rationale for continuing to entertain the appeal was our commissioner's recognition that where a defendant seeks to withdraw a guilty plea, the issue is not moot. *State v. Buckman*, noted at 153 Wn. App. 1019, 2009 WL 4043364, at *1 n.1, *review denied*, 168 Wn.2d 1038 (2010). The following proceedings had taken place in connection with Mr. Buckman's appeal by November 24, 2009, as set forth in this court's unpublished opinion entered on that date:

April 17, 2008

After being docketed on this court's motion on the merits, our commissioner denied the motion and remanded the case to the trial court for entry in the record of the eight criminal judgments earlier relied upon by the court and for a determination of the correct offender score.

October 3, 2008 Trial court reference hearing. The State acknowledged that two of the convictions it had earlier relied upon were relied upon in error, but because two others were inadvertently omitted, the offender score would be the same. The trial court declined to consider Mr. Buckman's misdemeanor history, presented for the first time on the record, concluding that materials in the record nonetheless established an offender score of 8.

March 26, 2009 Commissioner again denies the motion on the merits, questioning whether the State has the burden of showing that the prior class C felony convictions did not wash out. The appeal is referred to a panel of judges.

November 24, 2009 In an unpublished decision, this court held that based on the criminal history established on remand, there was more than a five-year gap between Mr. Buckman's release from an eluding conviction in 2000 and his convictions for property crime in 2006; thus, absent some other criminal history not included in the record, all of Mr. Buckman's class C felony convictions prior to March 2005 had washed out and his correct offender score would be three.

This court held that Mr. Buckman was entitled to resentencing with the correct offender score. It noted that the legislature had amended the Sentencing Reform Act of 1981, ch. 9.94A RCW, in 2008, effective retroactively, to permit the trial court to consider the offender's actual and complete criminal history upon resentencing.

Id. at *1-3.

Significant for this appeal is the fact we concluded in entering the prior decision on Mr. Buckman's appeal that remand for correction of the offender score was an adequate remedy. Mr. Buckman filed a petition for review by the Supreme Court, which denied review.

At the resentencing hearing conducted on November 4, 2010, the State presented not only certified copies of Mr. Buckman's eight prior felony convictions but this time also submitted certified copies of three misdemeanor convictions occurring in 2001, 2002, and 2004, which were entered in the record. The trial court again found that Mr. Buckman's offender score had been properly calculated as eight. Mr. Buckman appeals this most recent affirmation of his offender score.

A case is moot if a court can no longer provide effective relief. *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983). While Mr. Buckman's appeal was not moot when he was seeking and might obtain the remedy of withdrawal of his guilty plea, that is no longer the case. The only relief we would grant on this appeal if the offender score appeared erroneous would be to remand for yet a further resentencing. There is no point in a further resentencing in this case where Mr. Buckman has fully served his sentence in respect to the judgment from which he now appeals. An appeal contesting an offender score calculation is moot where the appellant "has been released from confinement, is not

on community custody, and is not subject to another miscalculation based on this alleged error if he is convicted of another crime in the future.” *State v. Harris*, 148 Wn. App. 22, 26, 197 P.3d 1206 (2008).

Mr. Buckman argues only that his appeal is not moot because the allegedly incorrect offender score calculation at issue here could and has formed the basis for determining his offender score at a subsequent sentencing. Mr. Buckman is presently incarcerated based upon a more recent conviction unrelated to the instant appeal. But the suggestion that an error in calculating the offender score for his 2006 conviction could control the calculation of his offender score for a later conviction was expressly rejected by the *Harris* court:

A sentencing court is required to calculate the defendant’s offender score on “the date of sentencing for the offense for which the offender score is being computed.” RCW 9.94A.525(1). . . .

. . . Accordingly, a future sentencing court may not simply rely on a criminal history from a previous judgment but must compute the offender score anew at any future sentencing hearing.

Id. at 27-28. If Mr. Buckman believes that the court responsible for his most recent sentencing erred in determining his offender score, he must make an appeal from that judgment.¹

¹ This case does not present an issue of “continuing and substantial public interest” that could otherwise justify review, *see Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972), nor does Mr. Buckman argue that it does.

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We dismiss the appeal as moot.

A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Siddoway, J.

WE CONCUR:

Kulik, C.J.

Brown, J.