Supreme Court No. (to be set)
Court of Appeals No. 57076-9-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

MATTHEW ADAM LEWIS,
Appellant.

PETITION FOR REVIEW BY THE APPELLANT

ON APPEAL FROM THE SUPERIOR COURT OF
WASHINGTON FOR GRAYS HARBOR COUNTY
THE HONORABLE DAVID L. MISTACHKIN, JUDGE

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I. IDENTITY OF PETITIONER

Matthew Lewis, Appellant, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part II.

II. COURT OF APPEALS DECISION

Mr. Lewis seeks review of the published opinion of the Court of Appeals, Division II, issued on January 23, 2024, attached. App. at 1-17. Division II declined to reconsider this opinion in an order dated February 28, 2024. App. at 18.

III. ISSUE PRESENTED FOR REVIEW

Should this Court grant review and reverse when Division II misinterpreted the offender score statute, RCW 9.94A.525(3),[1] contradicting Washington case law?

IV. STATEMENT OF THE CASE

On July 24, 2020, Matthew Lewis was charged in Grays Harbor County, Washington, with a total of four crimes related

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[1] This petition cites to the current versions of all statutes because recent amendments do not impact the issues presented.

to sexually explicit images of children. CP 1-3. Specifically, he was charged with two counts of dealing in depictions of a minor engaged in sexually explicit conduct, one count of possession of depictions of a minor engaged in sexually explicit conduct, and one count of communication with a minor for immoral purposes. *Id*.

Mr. Lewis pled guilty to the first three counts. CP 117. The only issue in dispute was the calculation of his offender score. CP 98-99. Mr. Lewis has three convictions from the Australian state of South Australia. CP 99. In 2017, he pled guilty to: "count 1, aggravated dissemination of child exploitation material; count 2, communicating with the intention of making a child amenable to sexual activity; and count 3, aggravated possession of child exploitation material." CP 193.

Mr. Lewis argued that these convictions should not count towards his offender score. CP 10. He raised two arguments. First, he argued that the State did not present a certified copy of a judgment and sentence or equivalent document, and thus the

court could not verify the convictions or compare them to Washington convictions. CP 10-12. Second, he argued that regardless of documentation, foreign country convictions cannot count as points towards a person's offender score under Washington law. CP 12-14.

The State disagreed and argued that the Australian convictions were factually comparable to Washington crimes. CP 29-34. At the court's request, the State obtained a certified copy of the Australian court's "sentencing remarks". CP 100. The State also verified with the Australian court that these sentencing remarks are the equivalent of our judgment and sentences, albeit in a narrative format. *Id*.

The trial court determined that foreign country convictions could count as points in an offender score. 4/4/22 VRP at 13. The court decided that the certified sentencing remarks were sufficient to verify these offenses and Mr. Lewis's identity. CP 100-02. Finally, the court decided that the Australian

convictions were factually comparable to felonies in Washington State. CP 102.

The court sentenced Mr. Lewis to a total of 102 months confinement, based on an offender score of 9+ points. CP 214-15. Mr. Lewis appealed, challenging the inclusion of his Australian convictions in his offender score. CP 212. The Court of Appeals, Division II, affirmed and declined to reconsider its decision. App. at 2, 18. Mr. Lewis seeks review.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Mr. Lewis respectfully requests that the Washington Supreme Court grant review and reverse the Court of Appeals, Division II. This Court grants review under four circumstances:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Here, review is appropriate under subsections (1), (2), and (4).

The term "out-of-state convictions" as used in the offender score statute, RCW 9.94A.525(3), is ambiguous. *State v. Villegas*, 72 Wn. App. 34, 37, 863 P.2d 560 (1993); *see also State v. Morley*, 134 Wn.2d 588, 599, 952 P.2d 167 (1998). Under the rule of lenity, this statute must be construed in Mr. Lewis's favor to exclude his Australian convictions from his offender score calculation. *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 462, 219 P.3d 686 (2009).

This Court should grant review because the correct scope of RCW 9.94A.525 is an issue of substantial public interest. RAP 13.4(b)(4). This Court should reverse because Division II's conclusion that RCW 9.94A.525(3) unambiguously includes foreign country convictions conflicts with *Villegas*, 72 Wn. App. 34 and *Morley*, 134 Wn.2d 588. RAP 13.4(b)(1), (2).

A. The Term "Out-of-State Convictions", as Used in Washington's Offender Score Statute, is Ambiguous.

Division II concluded that Washington's offender score statute unambiguously includes foreign country convictions. App. at 14. This Court should reverse because the text of RCW 9.94A.525 and the broader context of the Sentencing Reform Act (SRA) show that the term "out-of-state convictions" is open to multiple reasonable interpretations and is thus ambiguous.

1. The term "out-of-state" is not defined in the Sentencing Reform Act.

This case turns on the definition of "out-of-state convictions" in Washington's offender score statute, RCW 9.94A.525. Appellate courts review issues of statutory interpretation de novo. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010).

The goal of statutory interpretation is to "determine the legislature's intent." *Id*. (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). The "surest indication" of

legislative intent is "the text of the statutory provision in question, as well as 'the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id*. (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)).

If the text and context is clear, then that plain language does not require construction. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). Alternatively, "[i]f the statute is susceptible to more than one reasonable interpretation after this inquiry, it is ambiguous and [courts] 'may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.'" *State v. Valdiglesias LaValle*, 2 Wn.3d 310, 318, 535 P.3d 856 (2023) (quoting *State v. Haggard*, 195 Wn.2d 544, 548, 461 P.3d 1159 (2020)) (internal quotation marks omitted).

Here, the text and context are not clear, and the term "out-of-state" is ambiguous. Beginning with the text, a person's

offender score is calculated according to RCW 9.94A.525. This statute refers to "out-of-state" and "federal" convictions:

> Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. . . .

RCW 9.94A.525(3). It does not define "out-of-state convictions", nor is the term defined elsewhere in the SRA. [2] Chapter 9.94A RCW.

When a term is not defined, courts can determine its plain meaning from a standard English dictionary. *State v. Fuentes*,

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[2] By contrast, statutes in other jurisdictions often specify whether convictions from other countries count towards an offender score. For example, under federal law, "[s]entences resulting from foreign convictions are not counted" as criminal history, "but may be considered" as a basis for departing from a standard range. USSG § 4A1.2(h). By contrast, in Kansas, "[c]onvictions or adjudications occurring within the federal system, other state systems, the District of Columbia, ***foreign***, tribal or military courts are considered out-of-state convictions or adjudications." K.S.A. 21-6811(e)(4) (emphasis added).

183 Wn.2d 149, 160, 352 P.3d 152 (2015). But a dictionary is not helpful in this case. Some dictionaries define "out-of-state" as from another state within a federal system, and some define this term as from anywhere outside the state in question. *See* App. at 9-11. For instance, "out-of-state" could mean outside "a politically organized body of people usually occupying a definite territory," or outside "one of the constituent units of a nation having a federal government." *Id*. at 11 (quoting *Merriam-Webster*). This term thus has multiple reasonable definitions.

2. The term "out-of-state" is subject to multiple reasonable interpretations.

Division II held that "[w]hen read in context, RCW 9.94A.525(3) by its plain language does not exclude foreign country convictions" and "is unambiguous." App. at 14. The Court noted that a purpose of the SRA is to "[e]nsure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history", and "criminal history" is broadly defined. App. at 12. But it does

not follow that all criminal history must be included in a person's offender score. Division II erred because a reasonable interpretation of the SRA is that the legislature intended to broadly include foreign country convictions in an offender's criminal history but exclude these convictions from his offender score.

The SRA broadly defines "criminal history" as "the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere". RCW 9.94A.030(11). "Elsewhere reaches all foreign convictions, whether from other state courts, federal courts, military courts, and perhaps even courts in foreign countries." *Morley*, 134 Wn.2d at 599.

The terms "criminal history" and "offender score" are clearly related. Washington courts have stated that "[t]he offender score is based on prior criminal history", as defined in RCW 9.94A.030. *Villegas*, 72 Wn. App. at 36. However, these terms are not coextensive. RCW 9.94A.030 defines criminal

history as distinct from—and broader than—a person's offender score:

> ***The determination of a defendant's criminal history is distinct from the determination of an offender score***. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

RCW 9.94A.030(11)(c) (emphasis added).

The SRA mentions "foreign" convictions twice—both in reference to a person's criminal history, not his offender score. First, a criminal history summary properly includes convictions reported by "a state, federal, or foreign governmental agency". RCW 9.94A.500(1) ("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."). Second, "unscored foreign criminal history" can be considered when entering an exceptional sentence. RCW 9.94A.535(2)(b); *see also State v. Payne,* 117 Wn. App. 99, 105, 69 P.3d 889

(2003) (trial court could properly consider defendant's Canadian conviction "as an unscored offense that would support an exceptional sentence").

In other words, the SRA broadly defines criminal history, and then specifically includes "foreign" convictions as part of that criminal history. RCW 9.94A.030(11); RCW 9.94A.500(1); RCW 9.94A.535(2)(b). A reasonable interpretation is that the legislature intended "criminal history" to include all convictions, whether state, federal, or foreign. This interpretation is consistent with Washington case law. *Payne,* 117 Wn. App. at 105; *State v. Herzog*, 112 Wn.2d 419, 430, 432, 771 P.2d 739 (1989) (hereinafter *Herzog II*) (trial court could not count foreign country conviction as a point in the defendant's offender score but could consider it when sentencing him within the standard range).

But not all criminal history counts as points in an offender score. RCW 9.94A.030(11)(c); *Payne,* 117 Wn. App. at 105; *Herzog II*, 112 Wn.2d at 430. Division II's decision collapses

the difference between a person's criminal history and his offender score. Division II acknowledged that criminal history is "*distinct*" from an offender score but concluded that this "is not dispositive." App. at 12-13 (citing RCW 9.94A.030(11)(c)) (emphasis in original). The Court effectively held that the term "out-of-state" in the offender score statute, RCW 9.94A.525(3), means the same as the term "elsewhere" in the statute defining criminal history, RCW 9.94A.030(11): "Accordingly, we must interpret the term 'out-of-state convictions' in harmony with the SRA's purpose of promoting proportionality of punishment with all of the offender's prior convictions, including convictions from 'elsewhere.'" App. at 12 (citing RCW 9.94A.030(11)).

Division II erred because "when different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word." *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) (internal quotation marks omitted). In the SRA, the term "out-of-state" is used in the offender score statute, and the term "elsewhere" is

used in the definition of criminal history. RCW 9.94A.525(3); RCW 9.94A.030(11). Additionally, "out-of-state" is listed distinctly from the terms "federal", "tribal", "military", "county", and "municipal". RCW 9.94A.030(42) ("'Repetitive domestic violence offense' means any: . . . (b) Any ***federal, out-of-state, tribal court, military, county, or municipal conviction*** for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection." (emphasis added)). This establishes that "out-of-state" has a different definition from each of these terms and is not merely a catch-all for any non-Washington conviction. *Simpson Inv. Co.*, 141 Wn.2d at 160. Division II erred by conflating this term with "elsewhere". App. at 12. Instead, "out-of-state" has multiple reasonable explanations and is thus ambiguous.

A contrary interpretation is that foreign country convictions count as criminal history, but not as offender score points. This interpretation is reasonable because it accounts for

the differences between "criminal history" and "offender score" as these terms are used throughout the SRA. The SRA specifically distinguishes between a broad definition of "criminal history" and a narrower definition of "offender score". RCW 9.94A.030(11)(c). A person's "criminal history" includes all convictions from "state", "federal", or "elsewhere", RCW 9.94A.030; while his "offender score" only includes "out-of-state" and "federal" convictions, RCW 9.94A.525(3). Convictions from a "foreign governmental agency" are specifically included in a criminal history summary but are not listed in the definition of an offender score. *Compare* RCW 9.94A.500(1) *with* RCW 9.94A.525(3).

This interpretation of "out-of-state" in the offender score statute, RCW 9.94A.525, is also consistent with purposes of the SRA. The purpose of the offender score statute "is to ensure that defendants with equivalent prior convictions are treated 'the same way, regardless of whether their prior convictions were incurred in Washington or elsewhere.'" *Villegas*, 72 Wn. App.

at 38-39, 863 P.2d 560 (quoting *State v. Weiand*, 66 Wn. App. 29, 34, 831 P.2d 749 (1992)).

Foreign countries have inherently different criminal justice systems. There is no guarantee that the minimum constitutional safeguards required in the United States are present in foreign countries. Rather than pick and choose between countries with acceptable criminal justice systems and those without, the legislature could choose to treat all foreign country convictions the same. Regardless of the country, foreign convictions do not count towards a person's offender score but may be considered when sentencing someone within the standard range. This mirrors the federal government's treatment of convictions from foreign countries. *See supra* 8, footnote 2. It is also consistent with the offender score statute's purpose of treating similarly situated defendants the same.

3. Washington caselaw shows that the term "out-of-state convictions" is ambiguous.

Washington caselaw also shows that the term "out-of-state convictions" is ambiguous. No prior Washington case has held that a conviction from a foreign country counts as an offender score point under the SRA.

The earliest case to examine this issue was *State v. Herzog*, 48 Wn. App. 831, 740 P.2d 380 (1987) (hereinafter *Herzog I*), *abrogated on other grounds by Herzog II*, 112 Wn.2d at 430. Herzog was convicted of rape in West Germany. *Herzog I*, 48 Wn. App. at 832. The trial court did not count this conviction towards his offender score because it was constitutionally deficient: the trial was conducted before a panel of only two jurors. *Id*. The Court of Appeals, Division I, affirmed, holding that "[b]y the constitutional standards of the United States, Herzog's conviction is facially invalid", and the trial court "correctly refused" to count it as a point. *Id*. at 834. This Court reversed in part, holding that although this conviction did not

count as a point in his offender score, the trial court could consider the underlying facts when sentencing Herzog within the standard range. *Herzog II*, 112 Wn.2d at 432.

Herzog I, like the present case, considered a conviction from a foreign country. 48 Wn. App. at 832. But ultimately the Court of Appeals held that this conviction did not count towards the defendant's offender score for reasons unrelated to the definition of "out-of-state convictions" in the offender score statute. *Id*. at 834. This case does not address whether this term is ambiguous.

A few years later, in 1993, Division I has held that the term "out-of-state convictions" in the offender score statute is ambiguous. *Villegas*, 72 Wn. App. at 37. The Court concluded that because the offender score statute "could be interpreted to mean *only* convictions from other states or could be interpreted to mean *all* non-Washington convictions, including out-of-state, federal, and foreign convictions, the term 'out-of-state convictions' is ambiguous." *Id*. But this case concerned a

federal conviction without a comparable Washington analog; it did not consider a foreign country conviction. *Id*. at 35.

This Court considered a court martial conviction in *Morley*, in 1998. Relying on *Villegas* and *Herzog I*, this Court held that a United States court martial "unambiguously constitutes a conviction from elsewhere" and is thus "included in a defendant's criminal history". 134 Wn.2d at 600. A court martial conviction can count as a point in an offender score if it is comparable to a Washington offense. *Id*.

Morley did not directly address convictions from foreign countries. 134 Wn.2d at 593, 599. However, this Court noted that the SRA broadly defined criminal history to include prior convictions "whether in this state, in federal court, or elsewhere." *Id*. at 599. "The term is all-encompassing and it contains no restrictions. Elsewhere reaches all foreign convictions, whether from other state courts, federal courts, military courts, ***and perhaps even courts in foreign countries***." *Id*. (emphasis added) (citing *Herzog I*, 48 Wn. App. 831). Similarly, "[t]he term, out-

of-state, is equally broad in its scope." *Id*. at 600 (citing *Villegas*, 72 Wn. App. at 37).

In other words, this Court opined in *Morley* that *perhaps* convictions from foreign countries are included in a person's criminal history or offender score. *Id*. at 599-600. "Perhaps" expresses uncertainty and thus ambiguity.[3]

Following *Morley*, Division II considered the sentencing impact of a foreign country conviction in *Payne*, in 2004. 117 Wn. App. 99. Payne was convicted of first degree child molestation. *Id*. at 102. He received a life sentence as a persistent offender. *Id*. At sentencing, the trial court considered his Canadian conviction as a strike under Washington's Persistent Offender Accountability Act (POAA). *Id*. at 103. Division II held that the Canadian conviction was not a strike

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[3] *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/perhaps (last visited Mar. 29, 2024) ("possibly but not certainly").

under the two-strike POAA statute but could be a strike under the three-strike POAA statute. *Id*. at 104-05.

Payne did not consider the offender score statute, RCW 9.94A.525. *Id*. at 102-11. Instead, Division II held that the Canadian conviction could be considered an "unscored offense that would support an exceptional sentence." *Id*. at 105; *see also* RCW 9.94A.535(2)(b) (defendant's "prior unscored foreign criminal history" can justify an exceptional sentence). This is consistent with this Court's decision in *Herzog II*. 112 Wn.2d at 430, 432 (trial court could not count foreign country conviction as a point in the defendant's offender score but could consider it when sentencing him within the standard range).

This case law shows that courts can consider foreign convictions when choosing a sentence within the standard range. *Herzog II*, 112 Wn.2d at 432. Foreign country convictions, if constitutionally valid, may also support an exceptional sentence. *Payne*, 117 Wn. App. at 105; RCW 9.94A.535(2)(b).

But courts have not counted foreign country convictions as points in an offender score to automatically increase the standard range. *Herzog I*, 48 Wn. App. at 832; *Payne*, 117 Wn. App. at 105. The only case to specifically address the term "out-of-state convictions"—*Villegas*—concluded that his term is ambiguous. 72 Wn. App. at 37.

Taken together, this caselaw shows that "out-of-state convictions" is an ambiguous term as used in the offender score statute. As discussed below, the rule of lenity operates to ensure that "an ambiguous criminal statute cannot be interpreted to increase the penalty imposed." *Winebrenner*, 167 Wn.2d at 462. This Court should grant review because Division II's decision that "out-of-state convictions" unambiguously includes foreign country convictions conflicts with Washington caselaw. RAP 13.4(b)(1), (2).

B. This Court Should Interpret the Offender Score Statute in Mr. Lewis's Favor Under the Rule of Lenity.

As explained above, the term "out-of-state convictions" as used in the offender score statute is ambiguous. When a criminal statute is ambiguous, the rule of lenity applies. *State v. Conover*, 183 Wn.2d 706, 712, 355 P.3d 1093 (2015). This rule means that courts must interpret the statute in favor of the accused unless there is clear legislative intent to the contrary. *Winebrenner*, 167 Wn.2d at 462.

This Court should apply the reasoning used in *Villegas*. 72 Wn. App. at 37. As discussed above, *Villegas* concerned a federal conviction with no comparable Washington offense. *Id*. at 40. Applying "the rule of lenity", the trial court refused to include the federal conviction in the defendant's offender score. *Id*. at 35. The State appealed, arguing that all federal convictions count in an offender score, regardless of comparability. *Id*. at 36-37. Division I upheld the trial court's decision. *Id*. at 37.

Villegas demonstrates that the term "out-of-state convictions" is ambiguous and must be construed in the defendant's favor. *Id*. at 35, 37. In that case, the rule of lenity required excluding a federal conviction from an offender score because it had no comparable Washington offense. *Id*. at 40. Here, the rule of lenity requires excluding international convictions from Mr. Lewis's offender score because they are not clearly "out-of-state convictions" within the meaning of the SRA.

Legislative intent does not contradict this interpretation. *Winebrenner*, 167 Wn.2d at 462. Again, the "surest indication" of legislative intent is "the text of the statutory provision in question, as well as 'the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Ervin*, 169 Wn.2d at 820 (quoting *Campbell & Gwinn, LLC*, 146 Wn.2d at 9).

Within the SRA, the legislature chose to distinguish an offender's criminal history from his offender score and specified

that criminal history is broader in scope. RCW 9.94A.030(11)(c). Foreign convictions are specifically mentioned in the SRA twice: in the criminal history summary statute and as unscored criminal history to justify an exceptional sentence. RCW 9.94A.500(1); RCW 9.94A.535(2)(b). This shows that the legislature knew how to include foreign convictions in the SRA but chose not to do so in the offender score statute. RCW 9.94A.525(3).

The broader context of Washington's crimes and punishments code, Title 9 RCW, shows that the legislature most likely intended "out-of-state" refers to other states within the United States, not foreign countries. For example, the Uniform Act for Out-of-State Supervision uses "out-of-state" to mean "***any of the United States***". RCW 9.95.270 (emphasis added). Similarly, Washington's firearm statutes use "out-of-state" to mean "***in a state other than Washington***". RCW 9.41.122 (statute titled "Out-of-state purchasing") (emphasis added).

The legislature also knew how to include both international and domestic legal systems in a statutory scheme. For example, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Chapter 11.90 RCW, has a statute on "Foreign country treatment", RCW 11.90.030, and a separate statute about "Communications with out-of-state courts", RCW 11.90.040. The latter uses "out-of-state" to mean "***in another state***". RCW 11.90.040 (emphasis added). Chapter 11.90 RCW shows that the legislature is fully capable of including both foreign countries and other U.S. states in a single statutory scheme. It chose not to do so in the SRA.

Excluding foreign country convictions from an offender score is also consistent with the purposes of the SRA. A purpose of the SRA is to ensure that punishment is "proportionate to the seriousness of the offense and the offender's criminal history". RCW 9.94A.010(1). This interpretation treats all international convictions the same—courts do not need to parse out the constitutionality of international convictions on a case-by-case

basis. These indications of legislative intent require interpreting RCW 9.94A.525(3) in Mr. Lewis's favor under the rule of lenity. *Winebrenner*, 167 Wn.2d at 462.

VI. CONCLUSION

Mr. Lewis respectfully requests that the Washington Supreme Court grant review and reverse the Court of Appeals.

Pursuant to RAP 18.17, this document is proportionately spaced using Times New Roman 14-point font and contains 4504 words, excluding the appendix (word count by Microsoft Word).

RESPECTFULLY SUBMITTED on March 29, 2024.

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VII. APPENDIX

Filed
Washington State
Court of Appeals
Division Two

January 23, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MATTHEW ADAM LEWIS, Appellant.	No. 57076-9-II PUBLISHED OPINION

CRUSER, A.C.J. — Matthew Lewis was sentenced to 102 months of confinement after pleading guilty to two counts of dealing in depictions of a minor engaged in sexually explicit conduct and one count of possession of depictions of a minor engaged in sexually explicit conduct. His offender score was 9-plus, accounting for three prior sex offense convictions that Lewis pleaded guilty to in Australian court in 2017.

Lewis now appeals his sentence, arguing that the trial court erred when it included his Australian convictions in his offender score calculation. He argues that the plain language of the offender score statute unambiguously excludes prior convictions from outside the United States. He argues in the alternative that if the statute is ambiguous, the rule of lenity requires us to exclude foreign country convictions. Finally, he argues that even if foreign country convictions may generally be included in one's offender score, his Australian convictions should be excluded from his score as facially invalid.

We hold that the term "out-of-state" as used in the offender score statute is unambiguous and does not exclude foreign country convictions. We further hold that Lewis' Australian convictions are not facially invalid. We therefore affirm Lewis' sentence.

FACTS

Lewis pleaded guilty in Australian court to three offenses related to child sexual abuse material that he committed in 2017. His conduct included sending explicit messages and child sexual abuse material to a 14-year-old girl when Lewis was 28. The girl reported his behavior to the police, who seized and searched Lewis' phone and found more images. Lewis was arrested and pleaded guilty to "aggravated dissemination of child exploitation material;" "communicating with the intention of making a child amenable to sexual activity;" and "aggravated possession of child exploitation material." Clerk's Papers (CP) at 193.

Lewis served 18 months in an Australian prison for his crimes. The Australian court explained in its sentencing remarks (equivalent to our judgment and sentence) that:

> Jane [pseudonym] immediately reported the matter to the Victor Harbor police. That afternoon police located you and seized a mobile phone that you were holding. You were arrested and taken to the Victor Harbor Police Station where you were interviewed.

Id. at 194.

Upon Lewis' release from prison in 2018, he was deported to the United States and moved in with his mother in Aberdeen. Lewis registered as a sex offender in Grays Harbor County, listing his Australian offenses on his registration form.

Lewis later faced charges in Grays Harbor County arising from social media records showing that Lewis sent explicit messages and images to underage users, including child sexual abuse material, in 2019. He was charged with two counts of dealing in depictions of a minor

engaged in sexually explicit conduct, one count of possession of depictions of a minor engaged in sexually explicit conduct, and one count of communication with a minor for immoral purposes.

In plea negotiations, Lewis and the State reached an agreement as to all but the appropriate offender score. The parties disagreed about whether Lewis' Australian charges should be counted in his offender score. Whereas Lewis thought his score should be 6, the State believed that Lewis' score should be 9-plus. Lewis sought to plead guilty and to reserve the offender score issue for the time of sentencing, but the court expressed reservations about whether Lewis could knowingly and voluntarily enter a guilty plea without knowing what his offender score and corresponding sentencing range could be.

The court would not accept the plea and asked the parties to brief the offender score issue. The State provided the court with a copy of Lewis' Australian sentencing remarks and certificate of record. The trial court considered these documents and heard argument on the issue at two hearings.

The trial court concluded that Lewis' Australian convictions should be counted in his offender score as sex offense convictions. It found that the offenses were factually comparable to Washington felonies and that the Australian sentencing remarks provided by the State were equivalent to our judgment and sentence. It also concluded that the language "out-of-state" did not exclude foreign offenses. The trial court entered findings of fact and conclusions of law to that effect.

Lewis then pleaded guilty to two counts of dealing in depictions of a minor engaged in sexually explicit conduct and one count of possession of depictions of a minor engaged in sexually

explicit conduct. His plea agreement provided that his offender score was 9-plus, assigning three points to each of his three Australian convictions.[1]

Based on the offender score of 9-plus, Lewis faced a standard range of 87-116 months for counts one and two and a standard range of 77-102 months for count three. The State recommended a low-end sentence of 87 months. The Department of Corrections recommended a sentence of 102 months, taking into account his Australian crimes and his lack of remorse. The court sentenced Lewis to 102 months' confinement. Lewis now appeals his sentence.

DISCUSSION

I. MEANING OF "OUT-OF-STATE" WITHIN THE SRA

Lewis argues that the trial court erred when it included his Australian convictions in calculating his offender score. Specifically, he argues that the plain language of the relevant statutory provision excludes a defendant's prior foreign country convictions from the calculation of the defendant's offender score. We disagree.

A. LEGAL PRINCIPLES

i. Statutory Interpretation

Statutory interpretation is a question of law that we review de novo. *State v. Valdiglesias LaValle*, 2 Wn.3d 310, 317, 535 P.3d 856 (2023). Our goal is to "ascertain and carry out the Legislature's intent." *Id.* at 317-18 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)).

[1] Lewis' plea agreement indicated that he agreed the criminal history listed on the plea agreement is accurate, but that he disputed the calculation of his offender score.

If the plain meaning of a statute is clear, our inquiry ends and we give effect to that meaning. *Id.* at 318. We determine the plain meaning of a statute by examining the text, the statutory context, related provisions, and the statutory scheme as a whole. *Id.* Undefined terms are given their ordinary meaning unless doing so would contradict the legislature's intent. *Id.*

Alternatively, if the statute can be reasonably interpreted in more than one way, the statute is ambiguous. *Id.* A term is not ambiguous simply because it can be interpreted in more than one *possible* way; rather, it must be subject to multiple *reasonable* interpretations. *Id.* We interpret an ambiguous term by employing principles of statutory construction, and examining legislative history and relevant case law. *Id.*

ii. Sentencing Reform Act Generally

Washington's Sentencing Reform Act of 1981 (SRA) is codified at chapter 9.94A RCW. *See* RCW 9.94A.020. Its purpose is "to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences." RCW 9.94A.010. It is also intended to "[e]nsure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history." RCW 9.94A.010(1). "Criminal history" means "the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere." RCW 9.94A.030(11).

The SRA directs courts to determine the standard sentence range for a felony by first calculating the defendant's offender score and determining the seriousness level of the current

offense. RCW 9.94A.525, .530.[2] The offender score and seriousness level are then used to locate the standard sentence in the tables (grids) codified at RCW 9.94A.510 and 9.94A.517. The court then applies any adjustments to the standard range that are located in RCW 9.94A.533.[3] The court has discretion to sentence offenders within the standard range. RCW 9.94A.530. If aggravating factors are present, the court may impose an exceptional sentence above the standard range. RCW 9.94A.537.

Offender scores are calculated by adding together points for the defendant's prior convictions according to RCW 9.94A.525. Each prior conviction is assigned a point value depending on the offense and its severity. RCW 9.94A.525(7)-(21).

iii. Out-of-State Prior Convictions

An out-of-state prior conviction counts toward one's offender score as if it were a conviction for the comparable Washington crime. RCW 9.94A.525(3). The comparability analysis requires "rough comparability" with a Washington crime rather than an exact match. *State v. Jordan*, 180 Wn.2d 456, 465, 325 P.3d 181 (2014). This is so because "the legislature purposefully created the SRA scheme broadly in order to 'ensure that defendants with equivalent prior convictions are treated the same way, regardless of whether their prior convictions were incurred in Washington or elsewhere.' " *Id.* (internal quotation marks omitted) (quoting *State v. Morley*, 134 Wn.2d 588, 602, 952 P.2d 167 (1998)).

[2] We cite to the current version of these statutes because recent statutory amendments do not impact our analysis. *See* LAWS OF 2023, ch. 415, § 2; LAWS OF 2021, ch. 215, § 100 (RCW 9.94A.525); LAWS OF 2023, ch. 102, § 15 (RCW 9.94A.530).

[3] We cite to the current version of this statute because recent statutory amendments do not impact our analysis. LAWS OF 2020, ch. 330, § 1.

The SRA does not define "out-of-state." *See* RCW 9.94A.030. In the SRA's offender score provision, the term "out-of-state" is used as follows:

> Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

RCW 9.94A.525(3).

Interpreting a former version of this provision, Division One of this court held in *State v. Villegas*, 72 Wn. App. 34, 40, 863 P.2d 560 (1993), that "out-of-state convictions" includes "all non-Washington convictions, including federal convictions." At the time, the provision did not include any reference to federal convictions; it read, "Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law." Former RCW 9.94A.360(3) (1992), *recodified as* RCW 9.94A.525 (LAWS OF 2001, ch. 10, § 6). The current statute now includes a reference to "federal convictions." *Compare* RCW 9.94A.525(3), *with* former RCW 9.94A.360(3).

In *Villegas*, the trial court applied the rule of lenity to omit a prior federal felony conviction from the defendant's offender score because there was no comparable Washington offense. 72 Wn. App. at 35. The State appealed, arguing that the conviction should have been included despite lacking a comparable Washington offense. *Id.* It argued that the provision requiring a comparable Washington offense referred only to "out-of-state convictions" whereas elsewhere in the SRA, federal and out-of-state convictions were referred to separately. *Id.* at 36-37. In the State's view, this indicated that the legislature intended to exclude federal crimes from the meaning of the statutory term "out-of-state." *Id.*

The *Villegas* court reached its result by first determining that the term was ambiguous because it could be interpreted in two ways: to mean only convictions from other states within the United States or to mean "all non-Washington convictions, including out-of-state, federal, and foreign convictions." *Id.* at 37. The court then reasoned that interpreting "out-of-state" to exclude federal convictions "would create disharmony" by excluding *all* federal convictions from the offender score calculation, including those with a Washington counterpart. *Id.* It concluded that this interpretation must be contrary to the legislature's intent because it would render meaningless the SRA's definition of "criminal history," which included all prior convictions "whether in this state, in federal court, or elsewhere." *Id.* at 38; *id.* at 38 n.2 (quoting former RCW 9.94A.030(12)(a) (1992)). It affirmed the trial court. *Id.* at 40.

After *Villegas*, the legislature amended the offender score provision to provide that "federal convictions" as well as "out-of-state convictions" must have a Washington analog to be included in the offender score calculation. *Compare* former RCW 9.94A.360(3) (1995), *with* former RCW 9.94A.360(3) (1992). *See also* LAWS OF 1995, ch. 316, § 1. The term has not been re-evaluated since then.

Without discussing this statutory change, the supreme court later relied on *Villegas* to hold that military courts-martial are included in the SRA's language referring to out-of-state convictions and convictions from elsewhere. *State v. Morley*, 134 Wn.2d 588, 600, 952 P.2d 167 (1998). Comparing the term "elsewhere" to the term "out-of-state," the court noted that each term was "equally broad in its scope." *Morley*, 134 Wn.2d at 600. However, because the case did not concern a conviction from a foreign country, the court stopped short of deciding whether such a conviction would be encompassed by those terms: " 'Elsewhere' reaches all foreign convictions, whether

from other state courts, federal courts, military courts, and *perhaps even courts in foreign countries*." *Id.* at 599 (emphasis added).

B. APPLICATION

On appeal, Lewis asks us to hold that the plain language of former RCW 9.94A.525(3) unambiguously excludes foreign convictions or, at the very least, that the statute is ambiguous. The State provides no argument as to whether the term is ambiguous.[4] We disagree with Lewis and hold that the plain language of RCW 9.94A.525(3) does not exclude foreign convictions from the calculation of one's offender score.

i. Dictionary Definitions

Our plain meaning inquiry begins by looking at the text itself. *Valdiglesias LaValle*, 2 Wn.3d at 318. If a term is undefined, we use the ordinary meaning of the term as defined in a standard dictionary. *Id.* We also employ the ordinary rules of grammar. *Id.*

Lewis argues that dictionary definitions support his theory that "out-of-state" refers plainly to other states within the United States. He points to two sources: Oxford Advanced American Dictionary and Dictionary.com. His first source, Oxford, defines the term as "coming from or

[4] The State, instead of arguing for its own interpretation of the statute, asserts that *State v. Payne*, 117 Wn. App. 99, 69 P.3d 889 (2003), "affirmatively held that such [foreign country] convictions can be considered." Br. of Resp't at 2. This is a misreading of *Payne*. It relies upon the following language: "Although the State concedes that the [Canadian] conviction cannot be counted under the two-strike statute, it correctly contends that the trial court can consider the conviction on remand under the three-strike statute or as an unscored offense that would support an exceptional sentence." *Payne*, 117 Wn. App. at 105. Nowhere in *Payne*, however, did either party argue that foreign, out-of-United States convictions should be excluded from the offender score statute. That issue was not before the court. Accordingly, we are not convinced by the State's argument that settled law resolves the issue of whether trial courts can properly consider foreign offenses when calculating an offender score.

happening in a different state."[5] However, the same source defines "state" primarily as "a country considered as an organized political community controlled by one government."[6] Reading these two definitions together suggests that Oxford's definition of "out-of-state" includes foreign countries. Accordingly, Oxford's definition of "out-of-state" does not support Lewis' plain language argument.

Lewis' second source, Dictionary.com, defines the term "out-of-state" to mean "of, relating to, or from another state of the U.S."[7] Thus, he has identified a single source, Dictionary.com, that would support his interpretation.

But we are not confined to the sources identified by Lewis. Also instructive is the definition of "out of" found in *Merriam-Webster*.[8] *Merriam-Webster* explains that the prepositional phrase "out of" is "used as a function word to indicate a position or situation beyond the range, limits, or sphere of."[9] The definition of "out of" found in *Merriam-Webster* suggests that "out-of-state

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[5] OXFORD ADVANCED AMERICAN DICTIONARY, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/out-of-state (last visited Jan. 18, 2024).

[6] OXFORD ADVANCED AMERICAN DICTIONARY, https://www.oxfordlearnersdictionaries.com/us/definition/english/state (last visited Jan. 18, 2024).

[7] Dictionary.com, https://www.dictionary.com/browse/out%20of%20state (last visited Jan. 18, 2024).

[8] *Merriam-Webster* does not define the term "out-of-state."

[9] MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/out%20of (last visited Jan. 18, 2024).

Merriam-Webster contains other phrases beginning with "out-of" followed by a noun: "out-of-bounds," for example, means "outside the prescribed or conventional boundaries or limits." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/out-of-bounds (last visited Jan. 18, 2024). Similarly, *Black's Law Dictionary* at 1329 defines "out-of-court" to mean "[n]ot done or made as part of a judicial proceeding." BLACK'S LAW DICTIONARY (11th ed. 2019).

conviction" plainly means a conviction originating from "beyond the range, limits, or sphere of" the state of Washington. This meaning does not exclude foreign country convictions.

Moreover, *Merriam-Webster* defines "state" alternatively as "a politically organized body of people usually occupying a definite territory," "the operations or concerns of the government of a country," or "one of the constituent units of a nation having a federal government."[10] Similarly, *Black's Law Dictionary* at 1697 defines "state" first as "[t]he political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people," and second as "[a]n institution of self-government within a larger political entity; esp., one of the constituent parts of a country having a federal government."[11]

Together, these definitions suggest that "out-of-state conviction" refers to a conviction from anywhere outside of the target state, in this case Washington. The dictionary definitions do not show that the ordinary meaning of "out-of-state conviction" as used in the offender score statute refers *exclusively* to convictions from states within the United States but outside of Washington. It refers to non-Washington convictions more generally, including both convictions from foreign nations and the from the constituent units (states) of a larger federal entity such as the states within the United States. Thus, Lewis' view is unpersuasive.

ii. Context and Related Provisions

Our plain meaning inquiry next requires that we examine the term "in the context of the whole statute, 'not in isolation or subject to all possible meanings found in a dictionary.' "

[10] MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/state (last visited Jan. 18, 2024).

[11] BLACK'S LAW DICTIONARY (11th ed. 2019).

Valdiglesias LaValle, 2 Wn.3d at 319 (quoting *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686 (2008)). We examine the text, its context, related statutory provisions, and the statutory scheme as a whole. *Id.* at 318.

The legislature intended the SRA to "[e]nsure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's *criminal history*." RCW 9.94A.010(1) (emphasis added). In turn, it defines "[c]riminal history" as the "list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or *elsewhere*." RCW 9.94A.030(11) (emphasis added). The supreme court has stated that "elsewhere" as used in the definition of criminal history is "all-encompassing and it contains no restrictions." *Morley*, 134 Wn.2d at 600. Accordingly, it explained that one's criminal history includes "all foreign convictions, whether from other state courts, federal courts, military courts, and perhaps[12] even courts in foreign countries." *Id.*

Accordingly, we must interpret the term "out-of-state convictions" in harmony with the SRA's purpose of promoting proportionality of punishment with *all of* the offender's prior convictions, including convictions from "elsewhere." RCW 9.94A.030(11). Considering this purpose, we cannot accept Lewis' argument that "out-of-state convictions" plainly means only convictions from other states within the United States. Although "[t]he determination of a defendant's criminal history is distinct from the determination of an offender score," RCW 9.94A.030(11)(c), the definition of criminal history is inextricably tied to the purpose of the SRA,

[12] Lewis correctly points out that the *Morely* court did not hold that foreign country convictions were to be included in one's criminal history—it held only that military courts-martial were to be included. *Morley*, 134 Wn.2d at 601. The question of foreign country convictions was not before the court in that case.

and thus, to the meaning of the offender score provision. The fact that these two determinations are *distinct* is not dispositive. To exclude foreign country convictions from the offender score provision would be contrary to the SRA's purpose of ensuring that defendants are punished proportionally to their criminal histories.

Lewis asserts that his interpretation is consistent with the SRA's purpose because the constitutional safeguards that are present in the United States and its constituent states may not be present in foreign country convictions.[13] Although the international variation in constitutional protections presents a valid policy concern, Lewis has not made clear why *excluding all foreign country convictions* from the offender score calculation is more aligned with the legislature's stated purpose than including them. He transposes his own policy argument onto the SRA rather than showing how his interpretation is consistent with the text explaining the statute's purpose.

We reject Lewis' argument. Under our reading, a defendant who was convicted of possessing child sexual abuse material in Australia is treated the same as one who was convicted of possessing child sexual abuse material in Oregon. Under Lewis' reading, the two would be treated differently. We believe our reading is more aligned with the SRA's stated purpose.

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[13] Lewis also urges that we look to other statutes, such as the "Uniform Act for Out-of-State Supervision," RCW 9.95.270, that define the term "out-of-state" to include only other states within the United States. It is true that we may "derive the construction of a statutory phrase from an interpretation given to that phrase in other statutes, provided those other statutes are in pari materia." *Puget Sound Med. Supply v. Dep't of Soc. & Health Servs.*, 156 Wn. App. 364, 370-71, 234 P.3d 246 (2010). But the statutes Lewis cites are unrelated and address different subjects. Thus, even if the provision at issue here required construction, those statutes would not be helpful to discern its meaning. Lewis also asserts that the *inclusion* of language in those statutes limiting the term "out-of-state" to only mean other states within the United States suggests that the legislature knew how to narrow the definition of "out-of-state," and thus similarly intended to do so here. That is not the correct inference to draw from this legislative choice. It is *because* the legislature plainly knew how to limit the scope of this language that we can conclude that here, they did not intend to do so based on their omission of similarly restrictive language.

When read in context, RCW 9.94A.525(3) by its plain language does not exclude foreign country convictions. The statute is unambiguous. And because the statute is unambiguous, we need not reach Lewis' alternative argument, that the rule of lenity requires us to interpret the provision in his favor. We presume the legislature will familiarize itself with our interpretations of its enactments. *State v. Ervin*, 169 Wn.2d 815, 825, 239 P.3d 354 (2010). Should the legislature disagree with our interpretation of the term "out-of-state," we await its clarification of its intent.

II. FACIAL VALIDITY OF AUSTRALIAN CONVICTIONS

Lewis argues for the first time on appeal that even if foreign convictions may be considered when calculating offender scores, his Australian convictions were facially invalid due to a warrantless search and seizure of his cell phone and should therefore not be included in his score. The State responds that Lewis waived[14] any claim of error by failing to raise the issue before the trial court, and that even if the claim of error was not waived, Lewis' challenge to the validity of his Australian convictions would require going beyond the face of the convictions. We hold that Lewis' Australian convictions were properly considered because they are not facially invalid.

[14] The State also argues that Lewis waived any claim of error by pleading guilty in Australia. But this argument conflates the issue of waiver of the right to directly appeal one's conviction with waiver of a challenge to one's ultimate sentence on the ground that the offender score included a prior conviction that was facially invalid. The State's position is also inconsistent with the seminal case of *Ammons*, where the supreme court entertained challenges to the facial validity of prior convictions by examining the guilty pleas of two defendants and determined that the convictions were not facially invalid for sentencing purposes. *State v. Ammons*, 105 Wn.2d 175, 186-89, 713 P.2d 719, 718 P.2d 796 (1986). *But see State v. Aronson*, 82 Wn. App. 762, 766, 919 P.2d 133 (1996) (concluding that prior military conviction was not invalid on its face in part because defendant's guilty plea rendered certain constitutional protections "inapplicable").

A. LEGAL PRINCIPLES

We review de novo a trial court's calculation of an offender score. *State v. Schwartz*, 194 Wn.2d 432, 438, 450 P.3d 141 (2019). Although Lewis did not challenge the facial validity of his Australian convictions below, illegal or erroneous sentences may be challenged for the first time on appeal, including challenges to an offender score calculation. *State v. Ross*, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004). *See also State v. Ford*, 137 Wn.2d 472, 477-78, 973 P.2d 452 (1999) (collecting cases).

Criminal history must be proved by a preponderance of the evidence to be considered at sentencing. RCW 9.94A.500. Generally, the State does not need to prove the constitutional validity of a defendant's prior conviction for use in a sentencing proceeding. *State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719, 718 P.2d 796 (1986).

However, if a conviction is constitutionally invalid on its face, it may not be considered. *Id.* at 187-88. A conviction is constitutionally invalid on its face if, "without further elaboration," the conviction affirmatively shows a defect of constitutional magnitude. *Id.* at 188. Trial courts should not "go behind the verdict and sentence and judgment" to determine whether a conviction should be considered. *Id.* at 189.

Rather than merely showing the possibility of a violation, the face of the conviction must *affirmatively show* that the constitutional violation occurred. *Id.* For example, in *Ammons*, one appellant argued that his prior conviction was facially invalid because his guilty plea form did not show that he was advised of his right to remain silent, did not list the elements of his crime, and did not contain the consequences of pleading guilty. *Id.* The supreme court rejected this argument,

reasoning that although the defendant raised valid concerns, no infirmities were evident on the face of his guilty plea. *Id.*

B. APPLICATION

Lewis contends that South Australian police searched and seized his phone without a warrant and argues that this renders his Australian convictions facially invalid. However, his conviction does not affirmatively show that the police lacked a warrant; it merely fails to mention that a warrant was obtained. The sentencing remarks read in pertinent part:

> Jane [pseudonym] immediately reported the matter to the Victor Harbor police. That afternoon police located you and seized a mobile phone that you were holding. You were arrested and taken to the Victor Harbor Police Station where you were interviewed.

CP at 194. Where Lewis claims that "a plain reading of this narrative shows that police did not obtain any kind of warrant," he is incorrect. Br. of Appellant at 25. It is a logical fallacy to assume that the failure to mention a warrant evidences that one was not obtained.

Moreover, even if it were evident from the sentencing remarks that no warrant was obtained, the remarks would not show a facial constitutional infirmity because they do not foreclose the possibility that an exception to the warrant requirement would have allowed such a search and seizure under our constitution. Washington case law requires an *affirmative* showing of a constitutional infirmity to be evident on the face of the conviction. *Ammons*, 105 Wn.2d at 189. In this case, that would require showing not only that the Australian police did not obtain a warrant, but also that no exception applied that would have rendered a warrantless search constitutional. *See State v. Bowman*, 198 Wn.2d 609, 618-19, 498 P.3d 478 (2021) (explaining that a warrant is not the only form of legal justification for intruding into a citizen's private affairs). The face of the conviction here does not provide this information; it fails to mention, for example,

whether Lewis consented to the search and seizure of his phone. *See id.* at 620-21 (holding that no illegal search of cell phone occurred where owner of cell phone consented to the search). Therefore, Lewis' Australian conviction is not facially invalid.

We affirm the Lewis' judgment and sentence.

CRUSER, A.C.J.

We concur:

MAXA, J.

LANESE, J.P.T.[15]

[15] Judge Lanese is serving as a judge pro tempore of the court pursuant to RCW 2.06.150.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

February 28, 2024

STATE OF WASHINGTON, Respondent, v. MATTHEW ADAM LEWIS, Appellant.	No. 57076-9-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Matthew Lewis moves for reconsideration of the Court's published opinion filed on January 23, 2024. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Cruser, Lanese

FOR THE COURT:

CRUSER, A.C.J.

Supreme Court No. (to be set)
Court of Appeals No. 57076-9-II

CERTIFICATE OF SERVICE

I, Stephanie Taplin, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

On March 29, 2024, I filed a true and correct copy of the **Petition for Review by the Appellant, Matthew Adam Lewis,** via the Washington State Appellate Courts' Secure Portal to the Washington Court of Appeals, Division II. I also served said document as indicated below:

Norma Tillotson, William Leraas, Grays Harbor County Pros. Office	(X) via email to: ntillotson@graysharbor.us, appeals@graysharbor.us, wleraas@co.grays-harbor.wa.us

SIGNED in Tacoma, WA, on March 29, 2024.

STEPHANIE TAPLIN
WSBA No. 47850
Attorney for Appellant, Matthew Adam Lewis

HARRIS TAPLIN LAW OFFICE

March 29, 2024 - 10:48 AM

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