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Oct 15, 2015
Court of Appeals
Division I
State of Washington

No. 72332-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RICKY LEE LEWIS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S REPLY BRIEF

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A. STATEMENT OF FACTS IN REPLY

The State's brief contains factual allegations regarding the current charges. SRB at 1. Those allegations were never proved. Mr. Lewis denies the truth of the allegations. By entering an Alford[1] plea, he did not agree that they were true. He entered the plea in order to avoid a potentially worse consequence. In his plea statement, he explained,

> I have discussed this case with my attorneys, and I believe there is a substantial likelihood that if this case proceeded to trial a jury could find me guilty of a crime or crimes which could result in my serving a life sentence. Although I do not believe I am guilty of these 3 crimes, I am pleading guilty to take advantage of the plea offer and to avoid the risk of a life sentence. I understand the court will consider the attached documents [probable cause certification regarding BP, and 2 page prosecutor's summary regarding CS] to determine a factual basis for my plea and for sentencing.

CP 78.

[1] North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

B. ARGUMENT IN REPLY

Mr. Lewis's prior Georgia conviction for auto theft, which he received when he was 17 years old, should have been classified as a "juvenile" offense in calculating his offender score

The State contends that whether or not Mr. Lewis's prior Georgia conviction for auto theft should be classified as an adult or a juvenile offense depends upon how it was treated under Georgia law. SRB at 3-4. The State's argument is contrary to the Sentencing Reform Act (SRA), which requires that courts treat out-of-state prior offenses as if they had been committed in Washington State.

RCW 9.94A.525(3) provides: "Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences *provided by Washington law*." (emphasis added).

This means that the determination of how a conviction from another jurisdiction should be treated when calculating the offender score is made by the law of Washington, not the law of the jurisdiction where the conviction occurred. David Boerner, Sentencing in Washington, §5.6(b), at 5-8 (1985). Determining the classification of crimes by reference to Washington law rather than the law of the foreign jurisdiction "insures that the policy decisions inherent in

determining the relative seriousness of crimes are made by the Washington Legislature, and that all defendants being sentenced by Washington courts will have their prior criminal history determined by a single set of policy determinations." Id. This is consistent with the underlying policy of the SRA, which 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." RCW 9.94A.010(1). Allowing the classification of an offense to be determined by foreign law would be contrary to this policy because "the same conduct could be classified differently depending on the jurisdiction in which it occurred." Boerner, Sentencing in Washington, §5.6(b), at 5-9.

Thus, if an out-of-state prior offense would have been classified as a juvenile offense if it had been committed in Washington, it must be counted as a juvenile offense in calculating the current offender score. Cf. State v. Brown, 47 Wn. App. 565, 736 P.2d 693 (1987), aff'd, 113 Wn.2d 520, 782 P.2d 1013 (1989). In Brown, Brown was convicted in federal court when he was 21 years old of automobile theft and sentenced as a "youth offender." Id. at 574. He argued the offense must be considered a "juvenile" offense when calculating his offender score for a later conviction he received in Washington State. This

Court disagreed. The Court held, “it is Washington’s designation of a felony and the sentence which Washington would impose that is the criterion in sentencing under the SRA.” Id. Because Brown was 21 years old when he stole the automobile, he would have been convicted in adult court if he had committed the crime in Washington. “The mere fact that he was sentenced as a ‘youth offender’ under federal law does not make his crime a juvenile conviction under the Sentencing Reform Act.” Id.

Similarly, here, whether or not Mr. Lewis was treated as a juvenile offender under Georgia law does not determine whether the offense should be classified as an adult or a juvenile offense for purposes of calculating his offender score in Washington. That determination must be made by reference to Washington law.

In Washington, children under the age of 18 are prosecuted in juvenile court rather than adult court except under limited circumstances. A “juvenile” is a person under 18 years of age who was not previously transferred to adult court or who is not otherwise under adult court jurisdiction. RCW 13.40.020(15); State v. Sharon, 100 Wn.2d 230, 231, 668 P.2d 584 (1983). There are only two ways by which jurisdiction over a juvenile is transferred to an adult court: either

by (1) the filing of specified charges which may automatically bring the juvenile under the jurisdiction of adult court, or (b) following a declination hearing by the juvenile court in which the court transfers the juvenile to adult court for adult criminal prosecution. State v. Mora, 138 Wn.2d 43, 49, 977 P.2d 564 (1999); RCW 13.34.030(1); RCW 13.40.110.

Mr. Lewis was convicted in Georgia at the age of 17 of the crime of "auto theft." CP 89. He had no prior criminal convictions. CP 89-90. The crime of auto theft is not the kind of serious violent offense which would have automatically brought him under the jurisdiction of adult court in Washington. See RCW 13.04.030(1)(v).

Moreover, it is unlikely that a juvenile court in Washington would have exercised its discretion to transfer the case to adult court. The court would have been authorized to transfer the case to adult court only upon the filing of a motion by the prosecutor, the juvenile himself, or the court. RCW 13.40.110(1). In deciding whether to decline jurisdiction, the juvenile court would have been required to weigh various factors including Mr. Lewis's age, his criminal history, the seriousness of the offense, whether the offense was against persons or only property, and whether the protection of the community required

declination. State v. Furman, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993); RCW 13.40.110(3). Given that Mr. Lewis had no prior criminal history, the offense was only against property, and auto theft is not considered a serious offense, the juvenile court would most certainly have retained jurisdiction.

In short, had Mr. Lewis been convicted of this offense in Washington, it would have been a "juvenile offense." It should therefore be considered a "juvenile offense" when calculating his offender score for the current convictions in Washington. RCW 9.94A.525(3); Brown, 47 Wn. App. at 574; Boerner, Sentencing in Washington, §5.6(b), at 5-8 to 5-9.

Treating the prior conviction as a juvenile offense is consistent with the underlying purposes and policies of the SRA. In drafting the SRA, the Sentencing Guidelines Commission believed it was necessary to distinguish between adult and juvenile prior convictions. Boerner, Sentencing in Washington, § 5.11, at 5-23 to 5-24. Although the Commission wanted to treat convictions of violent crimes similarly whether committed by an adult or a juvenile, it believed that nonviolent juvenile convictions frequently represent significantly less serious conduct than that represented by an adult conviction for the same

crime. Id. For this reason, the Commission decided to assign violent juvenile convictions the same weight as adult violent convictions but assign lower weights to nonviolent juvenile convictions than assigned to adult nonviolent convictions. Id. Thus, the Commission assigned a score of one-half point to almost all juvenile nonviolent prior convictions, and provided that all total scores were to be rounded down to the next lower number. Id.

Mr. Lewis's prior Georgia conviction for "auto theft," which he received when he was only 17 years old, is a nonviolent offense. RCW 9.94A.030(34). Under the SRA, it is considered less serious than it would be had Mr. Lewis committed the offense as an adult. Boerner, Sentencing in Washington, § 5.11, at 5-23 to 5-24. The court should have assigned only one-half point to the conviction when calculating his current offender score. RCW 9.94A.525(8).

C. CONCLUSION

Mr. Lewis's prior Georgia conviction for auto theft, which he received when he was 17 years old, was a "juvenile" offense for purposes of calculating his offender score. It should have counted as only one-half point. Because the court erred in counting the prior

offense as a whole point, resulting in a miscalculation of the offender score, Mr. Lewis must be resentenced.

Respectfully submitted this 15th day of October, 2015.

s/ Maureen M. Cyr

____

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	)	
RICKY LEWIS,	)	
	)	
Appellant.	)	

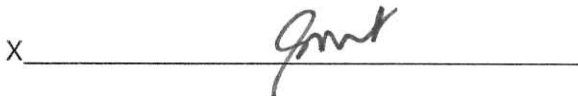
DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 15TH DAY OF OCTOBER, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] PHILIP SANCHEZ, DPA [paoappellateunitmail@kingcounty.gov] [philip.sanchez@kingcounty.gov] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL
[X] RICKY LEWIS 290870 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326	(X) ( ) ( )	U.S. MAIL HAND DELIVERY ____________

SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF OCTOBER, 2015.

X______________________________



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