

NO. 46533-7

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

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STATE OF WASHINGTON,

Respondent,

v.

WILLIAM HORTON JR.,

Appellant.

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

The Honorable Stephanie Arend, Judge

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

IT IS CLEAR FROM THE RECORD ON APPEAL THAT THE UNLAWFUL POSSESSION OF A FIREARM CHARGE MUST BE DISMISSED.

Horton was convicted of first degree unlawful possession of a firearm. A conviction on that offense requires proof that the defendant was previously convicted of a serious offense. RCW 9.41.040(1)(a). The predicate offense for Horton's conviction was a 1994 armed robbery from Florida for which the Florida court withheld adjudication. CP 442; Exhibit 10-B. Horton has argued on appeal, as he did below, that the Florida withheld adjudication does not constitute a conviction; there is therefore insufficient evidence to support a conviction on the firearm charge, and that charge must be dismissed. Br. of App. at 29-30; CP 160-62; 1RP 145; 2RP 36-40.

The State argues in its brief that the record on appeal is insufficient to support this claim because the first trial, at which Horton was convicted of the firearm offense, has not been transcribed. The State suggests that "[t]he transcript may reveal that the defendant stipulated that he had a prior conviction for a serious offense or that the State discovered defendant had additional criminal history and presented that to the jury as

proof of the prior conviction.” Br. of Resp. at 38. This argument ignores the record before this Court and should be rejected as meritless.

Contrary to the State’s suggestion, the State has stipulated that the only felony in Horton’s criminal history is the 1994 Florida withheld adjudication for armed robbery. CP 437-38. The only stipulation signed by the parties during trial regarding the firearm charge references the Florida withheld adjudication:

The court has admitted into evidence Exhibit 10-B. This exhibit is a certified copy from the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, in the matter of *State of Florida v. William Horton*, Case Number 93-11582. These records establish that William Horton pled guilty to the charge of armed robbery and that the court entered a sentence of “adjudication withheld.” The person and defendant in that matter, William Horton, is the same person and defendant currently charged in the matter before you for trial, *State of Washington v. William Charles Horton Jr.*, Pierce County Superior Court Cause Number 12-1-04021-6.

CP 237-38. In addition, the court’s instructions to the jury referenced only the Florida armed robbery withheld adjudication:

You have heard evidence that the defendant pled guilty to Armed Robbery and that the court imposed a sentence of “adjudication withheld.” You may consider this evidence only for the purpose of count II. You must not consider this evidence for any other purpose.

CP 303 (Instruction No. 20).

A person commits the crime of unlawful possession of a firearm in the first degree when he has previously been adjudicated guilty as

a juvenile of a serious offense and knowingly owns or has in his possession or control any firearm.

CP 304 (Instruction No. 21).

A guilty plea to the charge of armed robbery, in the State of Florida, with a sentence of “adjudication withheld” as a juvenile, is an adjudication of guilty to a serious offense.

CP 305 (Instruction No. 22).

To convict the defendant of the crime of Unlawful Possession of a Firearm in the First Degree as charged in count II, each of the following elements must be proved beyond a reasonable doubt:

(1) That in the 24<sup>th</sup> day of October, 2012, the defendant knowingly owned a firearm or had a firearm in his possession or control;

(2) That the defendant had previously been adjudicated guilty as a juvenile of a serious offense; and ...

CP 309 (Instruction No. 26).

Moreover, the State acknowledged in pretrial arguments that it was relying on the Florida withheld adjudication as the predicate offense for the firearm charge: “He’s charged in Count 2 with first degree unlawful possession of a firearm. The predicate offense, we’re saying, is a conviction out of Florida for robbery.” 1RP 146; see also 3RP 16-52. In its written response to Horton’s motion to dismiss the firearm charge, the State argued that the 1994 armed robbery on which adjudication was withheld constitutes a predicate offense. CP 163-67. At no time did the

State ever allege that there was any other conviction on which a charge of unlawful possession of a firearm could be based.


Given the State's stipulation to Horton's prior record, it is not necessary to incur the expense of transcribing the first trial to establish that if the Florida withheld adjudication does not constitute a conviction, there is insufficient evidence of unlawful possession of a firearm, and that charge must be dismissed.

B. CONCLUSION

For the reasons discussed above and in Horton's opening brief, Horton's convictions must be reversed and the unlawful possession of a firearm charge must be dismissed.

DATED October 16, 2015.

Respectfully submitted,



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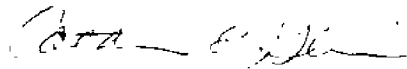
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Certification of Service by Mail

Today I caused to be mailed a copy of the Reply Brief of Appellant  
in *State v. William Horton Jr.*, Cause No. 46533-7 as follows:

William Horton Jr. DOC# 375822  
Washington State Penitentiary  
1313 North 13th Avenue  
Walla Walla, WA 99362

I certify under penalty of perjury of the laws of the State of Washington  
that the foregoing is true and correct.



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Catherine E. Glinski  
Done in Port Orchard, WA  
October 16, 2015



**GLINSKI LAW FIRM PLLC**

**October 16, 2015 - 10:30 AM**

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