

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

THE STATE OF WASHINGTON,)	COA No. 73904-2-I
)	
Respondent,)	APPELLANT'S STATEMENT OF
)	ADDITIONAL GROUNDS FOR REVIEW
v.)	
)	RAP <u>10.10</u>
CLIFTON EUGENE TURNER,)	
)	
Appellant.)	
)	

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 COURT OF APPEALS DIV
 STATE OF WASHINGTON
 CR

A. ADDITIONAL GROUND FOR REVIEW

1. The Trial Court Miscalculated Turner's Offender Score for Sentencing Purposes. Turner appeared before the trial court on August 17, 2015, for sentencing following his June 26, 2015, convictions by jury of two counts of violation of RCW 9A.44.086. At the sentencing hearing, the trial court found that Turner had the following criminal history which would be included in his offender score calculation, a 1996 conviction for "Violation of the Uniformed Controlled Substance Act (VUCSA) Possession With Intent to Manufacture/Deliver (Cocaine)." See, Attachment One: Judgment and Sentence, pg. 3 §2.2.

2. Based on Turner's current offenses and prior VUCSA offense, the trial court determined that Turner had an offender score of 5 for purposes of sentencing on each of his current offenses, and at seriousness level VII, for each offense the

resulting standard sentencing ranges for each of Turner's current offenses was 41-54 months. The trial court imposed high-end, 54-month sentences for each current offense, then ordered they be served by Turner concurrently. Because the trial court below miscalculated Turner's offender score, as set forth infra, Turner is entitled to a new sentencing hearing.

B. ARGUMENT INSUPPORT OF A NEW SENTENCING HEARING

3. The trial court must conduct a sentencing hearing before imposing a sentence on a convicted defendant. RCW 9.94A.500(1). A defendant's offender score affects the sentencing range and is generally calculated by adding together the defendant's current offenses and the prior convictions. RCW 9.94A.589(1)(a). In determining the proper offender score, the court "may rely on no more information than is ... admitted, acknowledged, or proved in a trial or at the time of sentencing." RCW 9.94A.530(2). The purpose of this limitation is "to protect against the possibility that a defendant's due process rights will be infringed upon by the sentencing judge's reliance on false information." State v. Herzog, 112 Wash.2d 419, 431-32, 771 P.2d 739 (1989); Wash. Const. art. I, §3 ("No person shall be deprived of life, liberty, or property, without due process of law").

4. Here, according to the Washington State Adult Sentencing Guideline Manual (2012 ed.), 1-point is added to the criminal history score for non RCW 9A.44 prior offenses. Thus, Turner's

prior VUCSA offense, a violation of RCW 69.50, only adds 1-point to Turner's offender score calculation.

5. According to that same manual, other-current violations of RCW 9A.44 add 3-points to Turner's offender score calculation. Thus, the combination of Turner's prior VUCSA offense and "other" current offense, equates to an offender score of 4 for sentencing purposes for each of Turner's current offenses. At seriousness level VII, the standard range for Turner's current convictions should have been 36-48 months, rather than 41-54 months as found by the trial judge.

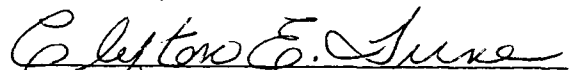
C. CONCLUSION

6. Because the trial court imposed sentences on Turner contrary to the laws of the State of Washington and in violation of Turner's due process rights, the Court should REMAND this matter to the trial court for resentencing before a different judge.

It Should be so Ordered.

DATED this 22nd day of September, 2016.

Respectfully submitted,
BY THE APPELLANT:



CLIFTON EUGENE TURNER
DOC No. 965380, D-B-2-1L
Coyote Ridge Corrections Center
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DECLARATION OF MAILING

Under penalty of perjury of the State of Washington, I declare that on the date designated below I deposited in the legal mail system of the Coyote Ridge Corrections Center a true and correct copy of APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, postage pre-paid and properly addressed to the following sources:


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DONE this 22nd day of September, 2016.

BY THE APPELLANT:


CLIFTON EUGENE TURNER
COA No. 73904-2-I