101955-6

Supreme Court No. (to be set)
Court of Appeals No. 38866-2-III
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
DIVISION 3

State of Washington, Respondent
v.
Jeremey Douglas Pedersen, Appellant

Chelan County Superior Court
Cause No. 18-1-00732-04

The Honorable Judge Travis C. Brandt

PETITION FOR REVIEW

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INTRODUCTION AND SUMMARY OF ARGUMENT

Jeremey Pedersen was originally sentenced with an offender score that included an unconstitutional prior conviction. On remand for a new sentencing hearing, a different judge imposed the same exceptional sentence that had been imposed previously. The resentencing judge based his decision on the prior judge's sentence. This new sentence must be vacated for two reasons.

First, the sentence was inconsistent with the Supreme Court's decision in *Blake*,[1] because it revived the error that tainted the first sentencing hearing.

Second, the resentencing judge violated the appearance of fairness by making remarks showing a potential bias in favor of the prior sentence. Instead of conducting a *de novo* sentencing proceeding, the judge reimposed the same sentence,

[1] *State v. Blake,* 197 Wn.2d 170, 481 P.3d 521 (2021).

relying on the previous judge's decision, which rested on the miscalculated offender score.

Mr. Pedersen's sentence must be vacated. The case must be remanded for a new sentencing hearing.

DECISION BELOW AND ISSUES PRESENTED

Petitioner Jeremy Pedersen, the appellant below, asks the Court to review the Court of Appeals' unpublished opinion entered on April 11, 2023.[2] This case presents two issues:

1. Is Mr. Pedersen's sentence inconsistent with the Supreme Court's decision in *Blake*?
2. Did the resentencing court violate the appearance of fairness doctrine by making comments showing a potential bias in favor of the prior judge's sentencing decision rather than conducting a de novo sentencing proceeding?

STATEMENT OF THE CASE

In 2018, Jeremey Pedersen was convicted of rape of a child in the first degree. CP 4. At sentencing, the court found that he had nine points from prior felonies. CP 49-50. One of

[2] A copy of the opinion is attached.

those was a conviction for possession of methamphetamine. CP 49. Including that offense, his standard range was 240 to 318 months. CP 50.

The Honorable Judge Lesley Allan told Mr. Pedersen that aggravating factors found by the jury prompted her to "add an additional 24 months onto the range that is at 318," for a total of 342 months. RP (4/9/20) 615[3]. Mr. Pedersen appealed.

While his appeal was pending, the Supreme Court issued its *Blake* decision, declaring the law criminalizing simple possession unconstitutional. CP 21. The Court of Appeals remanded Mr. Pedersen's case, directing the trial court to remove the possession charge from his criminal history, reduce his offender score, and hold a new sentencing hearing. CP 21.

[3] The transcript for April 9, 2020 was filed in Mr. Pedersen's appeal under Court of Appeals No. 37538-2-III. Mr. Pedersen asked to have the transcript transferred to this case. Instead, the Court of Appeals Clerk ruled that the court would take judicial notice of the sentencing hearing transcript when reviewing this case.

The court held a hearing in April of 2022. A different judge, the Honorable Travis Brandt, presided. RP (4/4/22) 3.

The correct standard range for Mr. Pedersen was now 209 to 277 months. RP (4/4/22) 5; CP 25. Mr. Pedersen's attorney told Judge Brandt that the prior judge had added 24 months to the top of the standard range. Counsel suggested that Judge Brandt do the same on resentencing, adding 24 months to the top of the new, corrected sentencing range. RP (4/4/22) 6.

Instead, Judge Brandt gave Mr. Pedersen the same sentence the first judge had given: 342 months. RP (4/4/22) 8; CP 25, 52. He made several comments in imposing the same sentence. He told Mr. Pedersen that "having one less possession on your record, I don't think necessarily would have altered Judge Allan's thought process." RP (4/4/22) 9. He went on to say he did not "want to alter the trial court's decision to impose sentence in this case as an exceptional high." RP (4/4/22) 9. As a result, the court decided to "leave the sentence at 342 months,

as an exceptional-high sentence, above the standard range of 209 to 277." RP (4/4/22) 9.

Mr. Pedersen timely appealed, and the Court of Appeals affirmed his sentence. CP 33. He now seeks review of that decision.

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

I. MR. PEDERSEN'S EXCEPTIONAL SENTENCE MUST BE VACATED BECAUSE IT IS INCONSISTENT WITH THE SUPREME COURT'S DECISION IN *BLAKE*.

Mr. Pedersen's first sentence was based on an offender score that included a void conviction for simple possession. Upon resentencing, a different judge reimposed the same sentence, relying on the prior judge's decision. The new sentence is inconsistent with the Supreme Court's decision in *Blake.*

In *Blake,* the Supreme Court found that the simple possession statute "criminalize[s] innocent and passive possession, even by a defendant who does not know, and has no

reason to know, that drugs lay hidden within something that they possess." *Blake,* 197 Wn.2d at 195.

Following *Blake,* convictions for simple possession "are constitutionally invalid and cannot be considered in the offender score." *State v. Jennings*, 199 Wn.2d 53, 67, 502 P.3d 1255 (2022). Here, Mr. Pedersen's case was remanded because he was "entitled to resentencing" after his prior controlled substance conviction was determined to be void under *Blake*. CP 21.

On remand, Mr. Pedersen's offender score was reduced from nine points to eight. RP (4/4/22) 7; CP 25, 50. His standard range declined from 240-318 months to 209-277 months. CP 25, 50.

Despite this, Judge Brandt reimposed the same exceptional sentence that had been imposed by his predecessor, Judge Allan. This renewed the constitutional violation stemming from the use of the void conviction during the first sentencing proceeding.

Blake freed offenders from the consequences of conviction based on "passive and wholly innocent nonconduct." *Blake*, 197 Wn.2d at 185. These penalties included "harsh felony consequences," as well as the deprivation of "many fundamental rights" and "countless harsh collateral consequences affecting all aspects of [offenders'] lives." *Id.*

Judge Allan's inclusion of Mr. Pedersen's void conviction in his offender score violated *Blake.* Judge Brandt revived that violation by imposing the same sentence based on Judge Allan's decision.

Judge Brandt made clear that he was adopting the prior court's decision. At the resentencing hearing, he told Mr. Pedersen that "having one less possession on your record, I don't think necessarily would have altered Judge Allan's thought process." RP (4/4/22) 9. Judge Brandt went on to say he did not "want to alter the trial court's decision to impose sentence in this case as an exceptional high." RP (4/4/22) 9. As a result, the court decided to "leave the sentence at 342 months,

as an exceptional-high sentence, above the standard range of 209 to 277." RP (4/4/22) 9.

This decision to "leave the sentence at 342 months" meant that *Blake* had no impact on Mr. Pedersen's prison term. He received no benefit from the Supreme Court's decision, which was based in part on the unfair effects of a conviction for simple possession. *Blake*, 197 Wn.2d at 185.

Because Judge Brandt followed Judge Allan's decision to impose the same sentence, the 342-month term he imposed was premised on the standard range that Judge Allan considered when imposing the 342-month sentence.[4]

In other words, Mr. Pedersen's sentence continues to rest on an offender score that included the void possession conviction. Contrary to the Court of Appeals' decision, Mr. Pedersen does *not* claim that "he is *entitled* to a lower sentenced

[4] There is no indication that Judge Brandt reviewed a transcript of the prior sentencing proceeding. He acknowledged that he had not been the trial judge, and had only read the court file. *See* RP (4/4/22) 9.

because his offender score was lowered." Opinion, p. 4 (emphasis added).

Instead, he argues Judge Brandt's decision was improperly impacted by the unconstitutional conviction because he deferred to Judge Allan. The latter's sentencing decision was premised on an offender score that included an unconstitutional prior conviction.

Furthermore, it is not the mere fact that Judge Brandt deferred to Judge Allan that causes the problem. It is the combined effect of this deference *and* Judge Allan's use of the unconstitutional prior conviction in calculating the standard range. Had the prior sentence not been infected by the unconstitutional possession conviction, Judge Brandt's deference to Judge Allan would not have been an abuse of discretion.[5]

[5] However, it would have violated the appearance of fairness doctrine, as argued below.

In addition, the Court of Appeals misread the record and erroneously applied the invited error doctrine. Opinion, p. 5. It is true that defense counsel invited Judge Brandt to use the same 'formula' that Judge Allan did in imposing sentence. RP (4/4/22) 6.

However, counsel did *not* suggest that Judge Brandt impose the same 342-month sentence. RP (4/4/22) 6. Instead, counsel's argument was that Judge Brandt should impose 24 months above the *new* standard range. RP (4/4/22) 6. This would have resulted in a sentence of 301 months. CP 25. The error was not invited.

The Supreme Court should grant review, vacate the sentence, and remand for a new sentencing hearing. This case presents an issue of substantial public interest. As *Blake* continues to impact sentencing decisions, it will be important that lower courts have guidance on how to address post-*Blake* resentencing issues. Review is appropriate under RAP 13.4(b)(4).

II. MR. PEDERSEN'S NEW SENTENCE WAS IMPOSED IN VIOLATION OF THE APPEARANCE OF FAIRNESS DOCTRINE.

In order to "perform its high function in the best way, 'justice must satisfy the appearance of justice.'" *In re Murchison*, 349 U.S. 133, 36, 75 S. Ct. 623, 99 L. Ed. 942 (1955) (quoting *Offutt v. United States,* 348 U.S. 11, 14, 75 S. Ct. 11, 99 L. Ed. 11 (1954)). In other words, "[t]he law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial." *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972).

This is so because "[t]he appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice." *Id., at* 70; *Brister v. Tacoma City Council*, 27 Wn. App. 474, 486, 619 P.2d 982 (1980), *review denied*, 95 Wn.2d 1006 (1981).

The appearance of fairness doctrine can be violated without any question as to the judge's integrity. *See, e.g.,*

Dimmel v. Campbell, 68 Wn.2d 697, 414 P.2d 1022 (1966). To prevail, a claimant need only provide "some evidence of the judge's… potential bias." *State v. Dugan,* 96 Wn. App. 346, 354, 979 P.2d 85 (1999).

Under the appearance of fairness doctrine, proceedings are invalid unless "a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing." *State v. Solis-Diaz*, 187 Wn.2d 535, 540, 387 P.3d 703 (2017). The doctrine is violated upon a showing of "potential bias." *Id.*

The test is an objective one, which contemplates "a reasonable observer [who] knows and understands all the relevant facts." *Id.* Here, there is "some evidence" of potential bias as described in these cases. *Dugan,* 96 Wn.App. at 354.

Upon remand, Mr. Pedersen was entitled to an "entirely new sentencing proceeding." *State v. Toney*, 149 Wn. App. 787, 792, 205 P.3d 944 (2009). This is so because the remand order "did not limit the trial court to making a ministerial correction."

Id.

However, instead of conducting an entirely new sentencing hearing, Judge Brandt expressed potential bias in favor of the sentence previously imposed by Judge Allan. His remarks violated the appearance of fairness doctrine.

Judge Brandt's comments show potential bias in favor of Judge Allan's sentence, despite Judge Allan's inclusion of a void conviction in Mr. Pedersen's offender score. RP (4/4/22) 9. Judge Brandt announced that he wished to rely on "Judge Allan's thought process." RP (4/4/22) 9. He told the parties that the corrected standard range would not have changed Judge Allan's decision. RP (4/4/22) 9. He declared that he "[did] not want to alter the trial court's decision to impose sentence in this case as an exceptional high." RP (4/4/22) 9. Finally, he pronounced that he would "leave the sentence at 342 months." RP (4/4/22) 9.

These remarks show that Judge Brandt did not conduct a *de novo* sentencing proceeding. Instead, his words show a

potential bias in favor of the sentence imposed by Judge Allan. A reasonable person viewing the proceedings would determine that Judge Brandt was "potential[ly] bias[ed]" in favor of the previously imposed sentence. *Solis-Diaz*, 187 Wn.2d at 540. The prior sentence was based in part on the unconstitutional conviction for simple possession.

Once again, the Court of Appeals erroneously applied the invited error doctrine to avoid the issue. Opinion, p. 7. Defense counsel did not ask the court to impose the same 342-month sentence. RP (4/4/22) 6. Instead, he argued for a 301-month exceptional sentence. RP (4/4/22) 6. He suggested that Judge Brandt reach this result by applying Judge Allan's reasoning to the new standard range. RP (4/4/22) 6.

The Court of Appeals contends that Judge Brandt merely "gave weight to the previous decision." Opinion, p. 7. This is inconsistent with Judge Brandt's actual statements in his oral ruling. He relied on "Judge Allan's thought process," "[did] not want to alter the trial court's decision," and decided to "leave

the sentence at 342 months." RP (4/4/22) 9. His words show that the resentencing proceeding was infected by a "potential bias" in favor of the prior sentence. *Solis-Diaz*, 187 Wn.2d at 540.

Even if Judge Brandt's intention was to merely "g[i]ve weight to the previous decision,"[6] a reasonable person could take his words as an expression of potential bias.

The Supreme Court should grant review. Courts tasked with sentencing offenders after *Blake* need guidance on how that decision should affect resentencing proceedings. Review is appropriate under RAP 13.4(b)(4).

Mr. Pedersen's case must be remanded for an "entirely new sentencing proceeding." *Toney,* 149 Wn. App. at 792. The remanded proceeding may not rest on any preconceptions relating to the previously imposed prison term. Instead, the sentencing judge must begin the sentencing hearing without any

[6] Opinion, p. 7.

bias toward the prior sentence, given its unconstitutional foundation.

CONCLUSION

Mr. Pedersen's sentence must be vacated. It was entered in a manner inconsistent with the Supreme Court's decision in *Blake.* Furthermore, Judge Brandt violated the appearance of fairness doctrine. His comments reflect a potential bias in favor of the prior decision, despite the appellate court's remand for an entirely new sentencing proceeding.

The Supreme Court should grant review.

CERTIFICATE OF COMPLIANCE

I certify that this document complies with RAP 18.17, and that the word count (excluding materials listed in RAP 18.17(b)) is 2381 words, as calculated by our word processing software.

Respectfully submitted May 3, 2023.

BACKLUND AND MISTRY

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CERTIFICATE

I certify that on today's date, I mailed a copy of this document to:

Jeremey Pedersen DOC# 840025
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia Washington on May 3, 2023.

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CASE # 388662
State of Washington v. Jeremey Douglas Pedersen
CHELAN COUNTY SUPERIOR COURT No. 1810073204

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen
Clerk/Administrator

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

STATE OF WASHINGTON, Respondent, v. JEREMEY DOUGLAS PEDERSEN, Appellant.	)	No. 38866-2-III UNPUBLISHED OPINION

STAAB, J. — Jeremy Pedersen appeals from his resentencing. He argues that the trial court abused its discretion in imposing the same sentence despite the reduction in his offender score pursuant to *State v. Blake*[1] and that the trial court's deference to the previous sentencing court's decision violated the appearance of fairness doctrine. He also requests remand to correct a scrivener's errors in his judgment and sentence. We disagree with his arguments regarding the length of his sentence but remand for correction of scrivener's errors.

BACKGROUND

A jury found Pedersen guilty of first degree child rape and also found aggravating circumstances because the victim was particularly vulnerable and Pedersen had used his position of trust.

[1] 197 Wn.2d 170, 481 P.3d 521 (2021).

Sentencing was held in front of the same judge who had overseen Pedersen's trial, Hon. Lesley Allan. At sentencing, the trial court determined that Pedersen's offender score was 9+ and his standard range sentence was 240 to 318 months to life. This calculation was based, in part, on a prior conviction for possession of a controlled substance. However, based on the jury's finding of aggravating circumstances, the trial court added 24 months to the high end of the standard range and imposed an exceptional sentence of 342 months to life.

Pedersen appealed his sentence, and we determined that his offender score at sentencing had been enhanced by a prior conviction for possession of a controlled substance. Therefore, his case was remanded for resentencing under *Blake*. *Id*.

Pedersen's resentencing occurred in front of a different judge, Hon. Travis Brandt. At resentencing, the State read the victim's impact statement to demonstrate how Pedersen's crime continued to detrimentally affect the victim's life. The State requested that the trial court impose the same sentence, maintaining that the single possession charge that had been voided "would not have carried nearly as much weight, to Judge Allan, as the impact of what occurred on [the victim]." Rep. of Proc. (RP) at 6.

Defense counsel also argued that the trial court should follow Judge Allan's prior sentencing decision but offered a different interpretation of Judge Allan's decision. Defense counsel maintained that Judge Allan added 24 months for the aggravating factors to the high end of the standard range:

> I don't think that Judge Allan just came up with the figure of 342, out of her head. I think she thought, Okay, here's his maximum, and then she added 24 months, on top of that.
>
> I think that was her thought process, and I think that's what the Court should apply, in this case, since the Court wasn't the—the trial court judge, like Judge Allan was, so the Court didn't see everything that went on, like Judge Allan did.
>
> So I think that was her thought process. Just the high end of the standard range, and, then, add 24 months on, for the extravagant circumstances that were found by the jury in this case. I think that's what the Court should do.

RP at 8.

After hearing argument, the trial court imposed the same sentence, stating it did not think that removal of the possession conviction would have impacted Pedersen's sentence:

> The Court agrees with the State, that having one less possession on your record, I don't think necessarily would have altered Judge Allan's thought process. The Court does not want to alter the trial court's decision to impose [a] sentence in this case as an exceptional high.
>
> As [the State] indicated, the jury did make those two special findings in this case, of aggravating factors; so the Court is going to leave the sentence at 342 months, as an exceptional-high sentence, above the standard range of 209 to 277.

RP at 9.

The criminal history findings in the judgment and sentence included a prior juvenile conviction for second degree burglary in Spokane. However, the State had noted during the first sentencing hearing that it had only been able to verify the juvenile

convictions from Chelan County. The judgment and sentence also stated that Pedersen's offender score was 12 and the seriousness level of his crime was 8.

Pedersen appeals.

ANALYSIS

1. RESENTENCING UNDER BLAKE

Pedersen argues that the trial court abused its discretion in imposing the same sentence on remand despite his reduced offender score. We disagree.

We review excessive exceptional sentences for an abuse of discretion. *State v. Jeannotte*, 133 Wn.2d 847, 857-58, 947 P.2d 1192 (1997). A trial court abuses its discretion if its decision is one that no reasonable person would have taken. *Id.* at 858.

To reverse an exceptional sentence, we must find:

> (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

RCW 9.94A.585(4).

Pedersen argues that the trial court's decision to impose the same sentence on remand was inconsistent with *Blake*. He claims that, under *Blake*, he is entitled to a lower sentence because his offender score was lowered. However, "[n]othing in the SRA[2] or our case law indicates that a person's exceptional sentence must necessarily be

[2] Sentencing Reform Act of 1981, ch. 9.94A RCW.

reduced based on a recalculation of an offender score." *State v. Barberio*, 66 Wn. App. 902, 907, 833 P.2d 459 (1992). Thus, we disagree with this argument.

Pedersen also contends that the trial court did not make its own decision regarding sentencing but simply reimposed the same sentence based on Judge Allan's prior determination. This, he argues, violated *Blake* because the first sentencing included a prior conviction for possession of a controlled substance. However, review of the record reveals that defense counsel actually requested that the trial court defer to Judge Allan's decision and reimpose the same sentence of the high end of the standard range plus 24 months. Accordingly, Pedersen is precluded from raising the issue on appeal under the invited error doctrine. *See State v. Mercado*, 181 Wn. App. 624, 630, 326 P.3d 154 (2014) ("The doctrine of invited error prohibits a party from setting up an error . . . and then complaining of it on appeal.").

Moreover, even if the issue had not been waived under the invited error doctrine, the trial court did not abuse its discretion. The trial court listened to the State and Pedersen's arguments and determined that the reduction in the offender score did not warrant a reduction in his sentence. It determined that the removal of the prior possession conviction had no real impact on its sentencing decision. The trial court also considered Judge Allan's previous sentencing decision as she had overseen Pedersen's trial. Although it is evident that the trial court gave weight to Judge Allan's previous decision, the record establishes that the trial court also considered arguments from both

parties and the aggravating factors in making its own decision.[3] Accordingly, the trial court did not abuse its discretion in reimposing a sentence of 342 months.

2. APPEARANCE OF FAIRNESS DOCTRINE

Pedersen also argues that the trial court's deference to Judge Allan's prior decision violated the appearance of fairness doctrine. We disagree.

"Under the appearance of fairness doctrine, this court has required that the decisionmaking process 'not only [be] fair in substance, but fair in appearance as well.'" *Harris v. Hornbaker*, 98 Wn.2d 650, 658, 658 P.2d 1219 (1983) (quoting *Smith v. Skagit County*, 75 Wn.2d 715, 739, 453 P.2d 832 (1969)). This doctrine requires that judges recuse themselves where the facts suggest actual or potential bias. *Tatham v. Rogers*, 170 Wn. App. 76, 93, 283 P.3d 583 (2012).

"A judicial proceeding satisfies the appearance of fairness doctrine only if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing." *Id*. at 96. "'The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that a reasonable person knows and understands all the relevant facts.'" *Id.* (quoting

[3] Pedersen appears to be claiming that the trial court's simple consideration of Judge Allan's decision was an abuse of discretion. However, he fails to provide any legal authority to support this argument. Accordingly, we disregard this argument. *See* RAP 10.3(a); *Regan v. McLachlan*, 163 Wn. App. 171, 178, 257 P.3d 1122 (2011) ("We will not address issues raised without proper citation to legal authority.").

Sherman v. State, 128 Wn.2d 164, 206, 905 P.2d 355 (1995)) (internal quotation marks omitted). A party asserting bias on the part of the trial court bears the burden of producing sufficient evidence to demonstrate bias; mere speculation is insufficient. *Tatham*, 170 Wn. App. at 96.

Pedersen fails to explain how a reasonable person, knowing all the relevant facts, would determine that Judge Brandt was actually or potentially biased. Pedersen argues that Judge Brandt's consideration of Judge Allan's decision establishes bias toward that decision. Again, any error in the trial court's reliance on Judge Allan's decision was invited error and therefore waived. *See Mercado*, 181 Wn. App. at 630. Additionally, as explained above, although the trial court gave weight to the previous decision, it also considered the arguments of the parties and the aggravating factors in making its decision. Accordingly, Pedersen's appearance of fairness argument fails.

3. SCRIVENER'S ERRORS

Pedersen's judgment and sentence erroneously transposed his offender score (8) and the seriousness level of his offense (12). Additionally, the criminal history on the judgment and sentence included a prior conviction for second degree burglary, despite the State acknowledging it could not confirm the offense.[4] Pedersen requests this court

[4] Although the judgment and sentence contained these errors, the trial court based Pedersen's sentence on the correct offender score of eight and standard range of 209-277 months. *See* RP 7-10.

remand for the trial court to correct these scrivener's errors. The State maintains that a judgment and sentence filed in May 2022 corrected the error that transposed the numbers but concedes that the second degree burglary conviction should be removed.

The corrected judgment and sentence the State refers to still contains the transposition error. CP at 37. And the record clearly reflects that Pedersen's offender score was an 8 and that the State was unable to confirm the second degree burglary conviction. Accordingly, we remand for the trial court to correct both scrivener's errors.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Staab, J.

WE CONCUR:

Lawrence-Berrey, A.C.J.

Pennell, J.

BACKLUND & MISTRY

May 03, 2023 - 9:33 AM

Transmittal Information

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