

COA NO. 47859-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

EDWARD PINKNEY, III,

Appellant.

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

The Honorable Gary R. Tabor, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE OFFENDER SCORE WRONGLY INCLUDES A PRIOR CONVICTION.

The State claims the prior conviction for conspiracy to commit a controlled substance violation is a class B felony and so did not wash out from the offender score. Brief of Respondent at 2-4.

In State v. Wade, the Court of Appeals recognized an attempt to commit a drug crime under chapter 69.50 RCW is reduced from a class B to a class C felony under RCW 9A.28.020(3)(c). State v. Wade, 186 Wn. App. 749, 778-79, 346 P.3d 838, review denied, 184 Wn.2d 1004, 357 P.3d 665 (2015). RCW 9A.28.020(3)(c) provides "An attempt to commit a crime is a . . . Class C felony when the crime attempted is a class B felony[.]" RCW 9A.28.040(3)(c) similarly provides "Criminal conspiracy is a . . . Class C felony when an object of the conspiratorial agreement is a class B felony." The object of Pinkney's conspiracy conviction was delivery of a schedule II substance, a class B felony. CP 99; RCW 69.50.401(2)(a). Following Wade and RCW 9A.28.040(3)(c), Pinkney's conspiracy drug conviction should therefore be counted as a Class C felony. The State relies on RCW 69.50.407 for a different result. But if RCW 69.50.407 controlled, then Wade would not have relied on RCW 9A.28.020(3)(c) to determine the felony class of an attempted drug crime.

The washout period for a class C felony is five years. RCW 9.94A.525(2)(c). There is no dispute that Pinkney spent five crime-free years in the community. His drug conspiracy conviction should therefore wash out from the offender score.

B. CONCLUSION

For the reasons set forth above and in the opening brief, Pinkney requests remand for resentencing with a reduced offender score for each current offense.

DATED this 7th day of April 2016

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



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Appellant,)	
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v.)	COA NO. 47859-5-II
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EDWARD PINKNEY,)	
)	
Respondent.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7TH DAY OF APRIL 2016, I CAUSED A TRUE AND CORRECT COPY OF THE REPLY BRIEF OF APPELLAT TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] EDWARD PINKNEY
DOC NO. 925257
CEDAR CREEK CORRECTIONS CENTER
P.O. BOX 37
LITTLEROCK, WA 98556

SIGNED IN SEATTLE WASHINGTON, THIS 7TH DAY OF APRIL 2016.

x Patrick Mayovsky

NIELSEN, BROMAN & KOCH, PLLC

April 07, 2016 - 4:03 PM

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