

FILED
Court of Appeals
Division II
State of Washington
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NO. 53964-1-II

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

STATE OF WASHINGTON, Respondent

v.

DEPREE RAMONE SMITH, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.19-1-00512-06

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The State agrees that Smith's conviction for unlawful possession of a firearm in the second degree should be vacated.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Depee Ramone Smith was charged by second amended information with Unlawful Possession of Firearm in the First Degree and Unlawful Possession of a Firearm in the Second Degree for the possession of a single handgun on or about February 15, 2019. CP 15-16. The case proceeded to a jury trial before the Honorable Judge David Gregerson in August of 2019 and ended with the jury finding Smith guilty as charged. CP 41-42; RP 193-95. The trial court concluded that the convictions constituted the same criminal conduct and sentenced Smith to 24 months of total confinement. CP 49, 51; RP 214. Smith filed a timely notice of appeal. CP 63.

B. FACTUAL HISTORY

Pursuant to RAP 10(b), the State is satisfied with the Appellant's Statement of Facts.

ARGUMENT

I. The State agrees that Smith’s conviction for unlawful possession of a firearm in the second degree should be vacated.

The State concedes that Smith’s unit of prosecution and double jeopardy analysis is correct and compels the conclusion that Smith’s conviction for Unlawful Possession of a Firearm in the Second Degree must be vacated. Brief of Appellant at 6-10. Because Smith was only in possession of one firearm—the unit of prosecution for unlawful possession of a firearm is the number of firearms—and his conviction for Unlawful Possession of a Firearm in the First Degree is the more serious offense—when multiple convictions are entered and one violates double jeopardy the lesser offense must be vacated—Smith’s conviction for Unlawful Possession of a Firearm in the Second degree should be vacated. *Id.*; RP 124-25, 127-29; RCW 9.41.040(7); *State v. Hughes*, 166 Wn.2d 675, 686 n. 13, 212 P.3d 558 (2009); *State v. Freeman*, 153 Wn.2d 765, 770-71, 108 P.3d 753 (2005).

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CONCLUSION

For the reasons above, Smith's conviction for Unlawful Possession of a Firearm in the Second Degree should be vacated.

DATED this 1st day of June, 2020.

Respectfully submitted:

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By:



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