

FILED
Jan 18, 2012
Court of Appeals
Division III
State of Washington

NO. 30230-0-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

TASHA ANN HANSON,

Defendant/Appellant.

APPELLANT'S BRIEF

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TABLE OF AUTHORITIES

CASES

Personal Restraint of Johnson, 131 Wn. 2d 558, 933 P. 2d 1019 (1997)...3

STATUTES

RCW 9.94A.525(2)(c) 3

RULES AND REGULATIONS

CrR 7.4(a)(3).....1

ASSIGNMENT OF ERROR

1. The trial court miscalculated Tasha Ann Hanson's offender score in the Judgment and Sentence entered on September 6, 2011. (CP 10).

ISSUE RELATING TO ASSIGNMENT OF ERROR

1. Does Ms. Hanson's juvenile conviction for taking a motor vehicle without permission washout for purposes of calculating her offender score?

STATEMENT OF CASE

Ms. Hanson was found guilty of second degree theft on July 2, 2009. (CP 71).

The trial court arrested judgment and the State appealed. *See*: CrR 7.4(a)(3) The Court of Appeals reversed the trial court and issued its Mandate on December 14, 2010. (CP 60).

Ms. Hanson was resentenced on September 6, 2011. She requested a mitigated sentence which the trial court denied. The trial court also denied a stay of sentence pending appeal. (CP 7).

The trial court calculated Ms. Hanson's offender score as a five (5). It included two juvenile convictions as follows:

	<u>Date committed</u>	<u>Date of offense</u>
Residential Burglary	10/22/92	10/08/92
Taking Motor Vehicle Without Permission	05/10/95	03/08/95

Ms. Hanson's next convictions occurred on December 1, 2005. They included offenses of bail jumping (committed on October 31, 2005) and two counts of unlawful possession of a control substance (committed on December 15, 2004).

Ms. Hanson filed her Notice of Appeal on September 14, 2011. (CP 5).

SUMMARY OF ARGUMENT

Ms. Hanson's May 10, 1995 conviction for taking a motor vehicle without permission washes out. Her offender score should be recalculated as a four (4) instead of a five (5).

ARGUMENT

Ms. Hanson contends that the taking a motor vehicle without permission conviction should not have been included in the calculation of her offender score. If she is correct, then her offender score is reduced by one (1).

A sentencing court acts without statutory authority under the Sentencing Reform Act of 1981 when it imposes a sentence based on a miscalculated offender score.

Personal Restraint of Johnson, 131 Wn. 2d 558, 568, 933 P. 2d 1019 (1997).

Ms. Hanson's conviction for taking a motor vehicle without permission is a class C felony. RCW 9.94A.525(2)(c) states, in part:

...[C]lass C prior felony convictions...shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

Ms. Hanson's taking a motor vehicle conviction occurred on May 10, 1995. Her next arrest, based upon the record, is December 15, 2004. It is obvious that more than five years elapsed between conviction and arrest.

Removal of the taking a motor vehicle without permission conviction reduces Ms. Hanson's offender score to four (4). An offender score of (4) carries a standard range sentence of 3 to 8 months. (See Appendix "A").

CONCLUSION

Ms. Hanson is entitled to be resentenced with a correct offender score.

DATED this 18th day of January, 2012.

Respectfully submitted,

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APPENDIX "A"

THEFT, SECOND DEGREE

(Excluding Motor Vehicle Theft)

(RCW 9A.56.040)

CLASS C - NONVIOLENT

I. OFFENDER SCORING (RCW 9.94A.525(7))

ADULT HISTORY:

Enter number of felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions _____ x 1 = _____

Enter number of nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL I)	0 - 60 days	0 - 90 days	2 - 5 months	2 - 6 months	3 - 8 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months

- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- C. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, see page III-10 Sexual Motivation Enhancement – Form C.
- D. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).
 - *Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(c))*

III. SENTENCING OPTIONS

- I. First-Time Offender Waiver; for eligibility and sentencing rules see RCW 9.94A.650
- II. Alternative to Total Confinement; for eligibility and sentencing rules see RCW 9.94A.680.
- III. Community Restitution Hours; for eligibility and sentencing rules see RCW 9.94A.680(2).
- IV. Work Ethic Camp; for eligibility and sentencing rules see RCW 9.94A.690.
- V. Drug Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.660.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

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