

FILED
Court of Appeals
Division III
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III
No. 34763-0-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

ERIC ALLEN HAGGIN,

Defendant/Appellant

Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. Because the record was corrected on stay while appeal was pending, defense's argument is moot.
- b. The trial court properly sentenced the defendant with an offender score of "9+" when none of his juvenile criminal history "washed out," the court specifically rejected that the two drug crimes and the two unlawful possession crimes were the same criminal conduct and remand is unnecessary.

B. ISSUES PRESENTED

- a. When an issue regarding sentencing is raised on appeal is clarified by the sentencing court while appeal is on stay, is the appeal moot?
- b. Did the court properly sentence the defendant based on its understanding of his criminal history and his offender score when he was "9+" and rejected an argument that the possession of controlled substances counts and the unlawful possession counts counted as the same criminal conduct?

C. STATEMENT OF THE CASE

The state agrees with the statement of facts as presented in the petitioner's brief with the following additions.

When the petitioner's brief was filed with the court of appeals, the state requested to stay the appeal correct the record below based on the allegations made in the state's brief (RP at 4). The stay was granted and while on stay the Superior Court judge reviewed documents regarding the defendant's criminal history that had not been made part of the original record at sentencing. (RP at 4). Based on his review and arguments from the parties, the court entered an order affirming the offender score, the sentence imposed, and the specifically rejected the argument that the possession of controlled substances offenses and the unlawful possession of firearms counts were the same course and conduct (CP at 186).

D. ARGUMENT

A case is moot if a court can no longer provide effective relief. State v. Turner, 98 Wn.2d 731, 658 P.2d 658 (1983). Even where a case is moot, however, we may nonetheless decide it if it involves "matters of continuing and substantial public interest". Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). The criteria to be considered in determining whether a

sufficient public interest is involved are: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur. Sorenson, at 558.

Here, the issues raised on appeal concerned the accuracy of the defendant's criminal history, alleging the court counted a crime that had "washed," pursuant to RCW 9.94A.525. The record was unclear on that issue but on stay the record was supplemented with the certified copies of the judgment and sentence showing Mr. Haggin's juvenile history had not "washed," thus that issue previously raised has been resolved. The court affirmed the defendant's criminal history score of "9+," ruled his juvenile convictions did not "wash," and rejected the argument regarding the same criminal conduct, therefore this appeal is moot, indicating also he had made this finding at the original sentencing and nothing in the appellate process had changed his opinion on that fact. There is no public nature presented in the defendant's criminal history or any other factor arguing in favor of the court reviewing this issue, therefore the court should decline to review the case as moot.

E. CONCLUSION

For the reasons stated, the appeal should be dismissed.

Dated this 1st day of December, 2017,

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PROOF OF SERVICE

I, Jodi M. Hammond, do hereby certify under penalty of perjury that on 16th day of November, 2017, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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