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Court of Appeals
Division III
State of Washington
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NO. 35460-1-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

WILLIE JOE RICHARDSON,

Defendant/Appellant.

REPLY BRIEF

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STATUTES

RCW 9.94A.585 (1)1

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ARGUMENT

The State claims that Willie Joe Richardson cannot appeal a standard range sentence. It relies upon RCW 9.94A.585 (1) which states, in part, “a sentence within a standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed...”

What the State fails to recognize is that Mr. Richardson was before the Court on a resentencing hearing. The resentencing hearing occurred due to a miscalculation of his offender score.

In *State v. Davenport*, 140 Wn. App. 925, 167 P.3d 1221 (2007), which involved a resentencing hearing based upon reversal of one of the defendant’s convictions, the Court ruled at 932:

At the resentencing hearing, the trial court had the discretion to consider issues Davenport did not raise at his initial sentencing or in his first appeal. *State v. Barberio*, 121 Wn.2d 48, 51, 846 P.2d 519 (1993) (citing *State v. Sauve*, 33 Wn. App. 181, 183 n.2, 652 P.2d 967 (1982), *aff’d* 100 Wn.2d 84, 666 P.2d 894 (1983)).

State v. Harrison, 148 Wn.2d 550, 61 P.3d 1104 (2003) also involved a resentencing hearing due to miscalculation of an offender score. The State argued, in that case, that Mr. Harrison was collaterally estopped from raising any new issues. The *Harrison* Court ruled at 561:

...[C]ollateral estoppel does not apply because the original sentence no longer exists as a final judgment on the merits. ... As we have stated, the act of “an appeal does not suspend or negate ... collateral estoppel aspects of a judgment entered after trial in the superior courts,” but collateral estoppel can be defeated by later rulings on appeal. [Citations omitted.] ... His entire sentence was reversed, or vacated, since “reverse” and “vacate” have the same definition and effect in this context- the finality of the judgment is destroyed. Accordingly, Harrison’s prior sentence ceased to be a final judgment on the merits, and collateral estoppel does not apply. [Citation omitted].

The State repeatedly advised the resentencing court that it did not have any authority to consider post-conviction conduct. The State is obviously in error.

Throughout its brief, the State argues that Mr. Richardson received a low-end sentence. Again, the State is in error. Mr. Richardson received a high-end sentence.

The State relies upon two cases which predate *Davenport* and *Harrison*. Both *State v. Roberts*, 77 Wn. App. 678, 894 P.2d 1340 (1995) and *State v. Medrano*, 80 Wn. App. 108, 906 P.2d 982 (1995) involved original sentencing hearings; not resentencings.

The State’s reliance on RCW 9.94A.500 and RCW 9.94A.530, as set out at fn.4 of its brief, is misplaced.

Offender score calculations are critical to the sentence to be imposed upon a convicted defendant. Thus, if following the conviction, the conviction is vacated or reversed, and the defendant returned for resentencing, any additional crimes impact that offender score.

Likewise, even though the sentence imposed in *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed.2d 656 (1969) followed a new trial, the Court recognized that subsequent events were to be considered in connection with sentencing. Thus, the State's argument that Mr. Richardson failed to provide authority in support of his argument is also error.

Mr. Richardson otherwise relies upon the argument contained in his original brief.

Dated this 24th day of April, 2018.

Respectfully submitted,

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COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	SPOKANE COUNTY
Plaintiff,)	NO. 95 1 01950 2
Respondent,)	
)	
v.)	CERTIFICATE OF
)	SERVICE
WILLIE JOE RICHARDSON,)	
)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 24th day of April, 2018, I caused a true and corrected copy of *Reply Brief* to be served on:

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