

71939-4

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NO. 71939-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

DAVID H. THOMAS,

Appellant.



BRIEF OF RESPONDENT

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RCW 9.94A.530(2)2

I. ISSUES

Where the sentencing court failed to hold an evidentiary hearing to determine defendant's offender score, should the case be remanded for resentencing allowing opportunity for the parties to present and the court to consider all relevant evidence regarding criminal history?

II. STATEMENT OF THE CASE

David Henry Thomas, defendant, was charged with one count felony driving while under the influence of intoxicating liquor or drugs (DUI). After his pre-trial motion was denied, defendant waived jury trial and proceeded to bench trial on stipulated evidence. Defendant was found guilty as charged. CP 36-40, 41-45, 46, 61-62; 1RP 52-58; 3RP 2-10.

Defendant was sentenced on May 5, 2014. At sentencing, the State presented a certified summary of defendant's criminal history.¹ Defendant's offender score was 3 with a standard range of 15 to 20 months. Defendant did not to the criminal history. The

¹ The sentencing court commented that it appeared the State had obtained certified copies of all the Judgment and Sentences. 3RP 21. A copy of defendant's prior Judgment and Sentences for Vehicular Assault was included in the stipulated evidence. CP ___ (sub# 37, Appendix A). However, defendant's other prior Judgment and Sentences were not made part of the record.

parties agreed on a 15 ½ months recommendation. CP 32-35, 63-65; 3RP 14-22.

Based on an offender score of 3 and a standard range of 15 to 20 months, the court sentenced defendant to 15 ½ months confinement in the Work Ethic Program. CP 17-31; 3RP 22-25.

III. ARGUMENT

The State concedes that it was error to not hold an evidentiary hearing to determine defendant's offender score. State v. Jones, No. 89302-1, 2014 WL 6687186, at *4 (Nov. 26, 2014); State v. Hunley, 175 Wn.2d 901, 915, 287 P.3d 584 (2012).

The case should be remand for resentencing consistent with State v. Jones, No. 89302-1, 2014 WL 6687186, allowing the parties "the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented." RCW 9.94A.530(2); State v. Cobos, No. 89900-2, 2014 WL 6687191, at *2 (Nov. 26, 2014).

IV. CONCLUSION

For the reasons stated above, the appeal should be granted and the mater remanded for resentencing.

Respectfully submitted on December 2, 2014.

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