No. 44808-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

EDDIE LEE TRICE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Eddie Trice's Arkansas conviction for aggravated robbery is not comparable to a Washington felony and was improperly included in the calculation of his offender score.

2. Mr. Trice's Florida conviction for sexual battery in the second degree is not comparable to a Washington felony and was improperly included in the calculation of his offender score.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

An out-of-state conviction may be included in a defendant's criminal history and computation of his offender score only if the elements of the crime are comparable to those of a Washington felony statute in effect at the time of the commission of the out-of-state crime.

1. Mr. Trice was convicted under Florida's sexual battery statute for conduct occurring in 1995. The statute criminalized sexual penetration or union with another person age 12 or older without that person's consent. No force or violence was required. The sentencing court determined that the Florida sexual battery conviction was not comparable to any Washington felony, but nonetheless counted it as one point in computing Mr. Trice's offender score. Where RCW 9.94A.525(3) does not permit the court to include an out-of-state felony

in an offender score unless it is comparable to a Washington felony, must Mr. Trice's sentence be vacated and remanded for sentencing within the correct standard sentence range?

2. Mr. Trice was convicted of aggravated robbery in Arkansas for an incident occurring in 1987. In Arkansas, a person commits robbery if he employs or threatens to immediately employ physical force with the purpose of committing a theft or in resisting apprehension; no taking of property is required. Washington's robbery statute requires the defendant take property from another person by the use or threatened use of force. The sentencing court concluded that the Arkansas aggravated robbery conviction was not comparable to Washington's first degree robbery but was comparable to attempted first degree robbery in Washington. Where the record does not demonstrate that Mr. Trice admitted the elements of attempted first degree robbery, must Mr. Trice's sentence be vacated and remanded for sentencing within the correct standard sentence range?

C. STATEMENT OF THE CASE

A jury convicted Eddie Trice of three counts of rape of a child in the first degree, one count of first degree child molestation, and one count of burglary in the first degree, arising out of a single incident on

May 8, 2006. CP 5, 54. The Honorable Beverly Grant determined that Mr. Trice's criminal history consisted of four out-of-state convictions. CP 6. The court ruled that a 1995 Florida conviction for sexual battery in the second degree was comparable to a Washington's crimes of second degree rape and indecent liberties and therefore sentenced Mr. Trice to life in prison without the possibility of parole as a persistent offender. CP 6, 10, 74.

Mr. Trice's sentence was reversed on appeal. CP 54-55. The State conceded that the Florida conviction was not legally or factually comparable to second degree rape or indecent liberties, and the Court of Appeals agreed. CP 74-78. The Court of Appeals remanded for resentencing after affirming Mr. Trice's convictions.[1] CP 83.

Upon remand Mr. Trice admitted that the four out-of-state convictions were his, but argued none of the convictions were comparable to Washington felonies. CP 86-88, 116; RP 40. The Honorable Ronald Culpepper agreed with Mr. Trice that a 1987 Arkansas conviction for theft of property and a 1996 Florida conviction

[1] This Court also ruled that that two of conditions of community custody for Mr. Trice's burglary conviction were improper, again consistent with the State's concessions of error. CP 78-80. These conditions were deleted on remand. CP 106.

for second degree burglary were not comparable to any Washington felony. RP 51-52, 56.

The court found that Mr. Trice's Florida sexual battery in the second degree conviction was not comparable to a Washington sexual offense, but that it was a felony in Florida and therefore counted as a point in computing Mr. Trice's offender score. RP 41-42. The court also determined that the 1987 Arkansas conviction for aggravated robbery was the equivalent of a Washington conviction for attempted robbery in the first degree. RP 50.

The current sexual offenses were the same criminal conduct for purposes of sentencing. CP 81. Based upon the court's determinations concerning the out-of-state convictions, Mr. Trice's offender score was 5 for each conviction. CP 103; RP 57. He was sentenced to 180 months to life in prison for the rape of a child counts and 102 months to life for child molestation. CP 107. He received a determinate sentence of 54 months incarceration and 18 months community custody for first degree burglary. CP 107.

D. ARGUMENT

Washington's Sentencing Reform Act (SRA) creates a grid of sentence ranges based upon the statutorily-established seriousness of

the current offense and the defendant's offender score. RCW 9.94A.510, .515, .525, .530; State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). To properly calculate the offender score, the court must correctly determine the defendant's criminal history, which is defined as a list of the defendant's prior criminal convictions and juvenile adjudications. State v. Ross, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004); RCW 9.94A.030(11). The sentence is determined pursuant to the law in effect at the time of the offense for which the offender is being sentenced. RCW 9.94A.345; State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004).

The State must prove the existence and nature of any prior offenses by a preponderance of the evidence. State v. Hunley, 175 Wn.2d 901, 909-10, 287 P.3d 584 (2012) ("it is inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the State either could not or chose not to prove.") (quoting In re Personal Restraint of Williams, 111 Wn.2d 353, 537, 759 P.2d 436 (1988)); Ford, 137 Wn.2d at 479-80; RCW 9.94A.500(1).

Out-of-state convictions are included in the offender score if they are for crimes that are comparable to a Washington criminal statute in effect at the time the foreign crime was committed. Ross, 152

Wn.2d at 229; RCW 9.94A.525(3). The sentencing court first determines if the out-of-state crime is legally comparable to a Washington offense, which means that "the elements of the foreign offense are substantially similar to the elements of the Washington offense." State v. Thiefault, 160 Wn.2d 409, 415, 158 P.3d 580 (2007).

If the elements of the out-of-state crime are broader than the similar Washington offense, the court must determine if the offense is factually comparable – "whether the conduct underlying the foreign offense would have violated the comparable Washington statute." Thiefault, 160 Wn.2d at 415. In making this determination, the court may rely only upon undisputed facts in the record of the out-of-state conviction "that are admitted, stipulated to, or proved beyond a reasonable doubt." Id; accord In re Personal Restraint of Lavery, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). Even if the State presents evidence of conduct beyond the judgment and sentence, however, "the elements of the charged crime must remain the cornerstone of the comparison. Facts or allegations contained in the record, if not directly related to the elements of the charged crime, may not have been sufficiently proven at trial." Lavery, 154 Wn.2d at 255 (quoting State v. Morley, 134 Wn.2d 588, 606, 952 P.2d 167 (1998)).

Moreover, the Sixth Amendment guarantees a jury determination beyond a reasonable doubt of any fact that increases the penalty for crime. Alleyne v. United States, ___ U.S. ___, 133 S. Ct. 2151, 2155, 186 L. Ed. 2d 314 (2013). Although proof of a prior conviction may be an exception to this rule, the exception does not permit courts to find facts underlying prior convictions. See Descamps v. United States, ___ U.S. ___, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013).

This Court conducts de novo review of the sentencing court's calculation of an offender score, including the existence and comparability of out-of-state convictions. State v. Bergstrom, 162 Wn.2d 87, 92, 169 P.3d 816 (2007).

1. **The 1995 Florida sexual battery conviction is not comparable to a Washington felony and should not have been counted in calculating Mr. Trice's offender score.**

This Court overturned the sentencing court's determination that a 1995 Florida sexual battery conviction was comparable to a Washington "strike" offense. CP 74-77. On remand, the superior court concluded the crime was not comparable to any Washington felony, but nevertheless counted it as one point in computing Mr. Trice's offender score because the conviction was a felony in Florida. RP 41-42, 57.

The trial court misinterpreted the applicable sentencing statute. The Florida sexual battery offense should not have been included in computing Mr. Trice's criminal history, and his sentence must be reversed.[2]

a. The sentencing court incorrectly counted the Florida conviction as one point in Mr. Trice's offender score because the crime was a felony in Florida. RCW 9.94A.525 addresses the use of out-of-state convictions in computing an offender score. The statute provides:

> Out-of-state convictions shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is not clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

RCW 9.94A.525(3)[3] (emphasis added). The sentencing court apparently looked to the last sentence of the statute to count Mr. Trice's Florida conviction as "one point" in his offender score.[4] RP 42 ("It is a

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[2] Without the Florida conviction, Mr. Trice's offender score would be 4 and his sentence ranges would be 129 to 171 months to life, 72-96 months to life, and 36-48 months. RCW 9.94A.510, .515, .525, .530 (2006).

[3] RCW 9.94A.525(3) has not been amended since 2006.

[4] The relevant offender scoring sheets from the 2006 Adult Sentencing Manual prepared by the Sentencing Guidelines Commission are attached as Appendix A.

felony in Florida and I believe it counts as one point towards his offender score."). The last sentence of RCW 9.94A.525(3), however, permits the court to count a federal felony as a class C felony even if it is not comparable to a Washington felony. It does not apply to Florida offenses.

This Court reviews the lower court's interpretation of a statute de novo. State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). The court's primary objective in interpreting statutes is to determine and carry out the Legislature's intent. Id. The first step in determining the Legislature's intent is to look at the plain meaning of the statute's terms. When a statute's meaning is clear upon its face, the courts must give effect to that plain meaning as the expression of what the Legislature intended. Id. "In judicial interpretation of statutes, the first rule is 'the court should assume that the Legislature means exactly what it says. Plain words do not require construction.'" Morgan v. Johnson, 137 Wn.2d 887, 891-92, 976 P.2d 619 (1999) (quoting State v. McCraw, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)). The "plain meaning" rule requires the court to look at "all the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Ervin, 169 Wn.2d at 820.

RCW 9.94A.525 tells the superior court how to compute an offender score. Subsection (3) unambiguously informs the court that for this purpose out-of-state convictions are classified according to Washington offense definitions and not those of the foreign jurisdiction. RCW 9.94A.525(3). The next two sentences of subsection (3) address federal convictions, which are also classified according to comparable Washington offense definitions but may also be scored as a Class C felony if there is no comparable Washington offense. Id. To interpret the last sentence of Subsection (3) to apply to convictions from other states ignores the plain language of the subsection.

Washington courts have consistently interpreted RCW 9.94A.525(3) to require comparability to a Washington felony before an out-of-state conviction may be used in computing an offender score. Ford, 137 Wn.2d at 479 (SRA requires out-of-state conviction be classified "according to the comparable offense definitions and sentences provided by Washington law") (quoting State v. Wiley, 124 Wn.2d 679, 685, 880 P.2d 983 (1994) (in turn quoting SRA)); State v. Tewee, __ Wn. App. __, 309 P.3d 791, 793 (2013); State v. Calhoun, 163 Wn. App. 153, 160, 257 P.3d 693 (2011) ("In order to include out-

of-state convictions in an offender score, the foreign offenses must be either legally or factually comparable to a Washington offense."), rev. denied, 173 Wn.2d 1018 (2012); State v. Larkins, 147 Wn. App. 858, 862-63, 199 P.3d 441, rev. denied, 163 Wn.2d 1024 (2008); see Thiefault, 160 Wn.2d at 415 ("if a court concludes that a prior, foreign conviction is neither legally nor factually comparable [to a Washington "strike" offense], it may not count the conviction as a strike under the POAA."). Accord Seth A. Fine & Douglas J. Ende, 13B Wash. Prac., Criminal Law § 3509 (2012-13 ed).

b. The 1995 Florida conviction is not comparable to a Washington felony. The resentencing court's determination that Mr. Trice's 1995 Florida conviction for sexual battery is not comparable to a Washington felony was correct. Mr. Trice was charged and pled no contest to committing sexual battery as defined in Fla. Stat. Ann. § 794.011(5).[5] CP 159-67. In 1995, that section of the sexual battery read:

> A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits

[5] Copies of Fla. Stat. Ann. §§ 794.011, 794.005 (2006) are attached as Appendix B.

> a felony of the second degree, punishable as provided in s. 775.083, or s. 775.084.

Fla. Stat. Ann. § 794.011(5) (1995) (emphasis added). No degree of force or violence is thus required. Fla. Stat. Ann. § 794.005 (1992) (legislative finding that Fla. Stat. § 794.011(5) did not require "any force or violence beyond the force and violence that is inherent in the accomplishment of 'penetration' or 'union'"). "Sexual battery" was defined as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object" unless done for medical purposes. Fla. Stat. Ann. § 794.011(1)(h) (1995).

This Court determined the Florida statute is broader than Washington's second degree rape and indecent liberty statutes, and this is the law of the case. CP 74-77; RAP 12.2; Bank of America N.A. v. Owens, __ Wn. App. __, 311 P.3d 594, 598 (2013). The Florida statute is also broader than Washington's third degree rape statute. In 1995, that statute required the defendant engage in sexual intercourse with a person he is not married to when (1) the victim did not consent and the lack of consent was clearly communicated by the victim's words or conduct or (2) the defendant threatened unlawful harm to the victim's

property rights. RCW 9A.44.060 (1995). The Florida statute does not require the lack of marriage or any of the other elements.

The prosecutor provided the court with the Florida information, Mr. Trice's "no contest" plea, and the police report. CP 159, 166-89. On appeal, however, this Court ruled that the police report could not be considered because the facts in the report were not admitted, stipulated to, or proved beyond a reasonable doubt. CP 76-77. A nolo contendere plea in Florida is an admission of guilt in that case, but it is not an admission of any facts and cannot be used against the defendant in other cases. CP 77; Vinson v. Florida, 345 So.2d 711, 715 (Fla. 1977); Peel v. Florida, 150 So.2d 281 (Fla.App. 1963), appeal dismissed, 168 So.2d 147 (1964), cert. denied, 380 U.S. 986 (1965). Nothing in the record shows that Mr. Trice admitted to the facts in the police report.

Considering the facts contained in the police report would also have raised serious concerns under the Sixth Amendment. See Descamps, 133 S. Ct. at 2288 (Sixth Amendment concerns "counsel against allowing a sentencing court to make a disputed determination about what the defendant and [out of state] judge must have understood the factual basis of the prior plea or what a jury in a prior trial must have accepted as the theory of the crime."). Thus, courts may not mine

the record to determine if defendant's conduct would have formed the basis for conviction under a narrower statute. Id. at 2285-86. Thus, the resentencing court correctly declined to review the facts in the Florida police report to make a factual comparability determination.

c. Mr. Trice's sentence must be reversed the case remanded for a sentencing based upon the offender score and sentence ranges obtained without a point for the Florida offense. Florida's sexual battery offense is most akin to a Washington misdemeanor, fourth degree assault, which criminalizes unlawful touching with criminal intent. RCW 9A.36.041 (1995); State v. Jarvis, 160 Wn. App. 111, 117, 246 P.3d 1280, rev. denied, 171 Wn.2d 1029 (2011). The sexual battery statute is not comparable to a Washington felony, and the sentencing court erred by including it in Mr. Trice's criminal history simply because it is a felony offense in Florida. Mr. Trice's sentence must be vacated and remanded for sentence within the correct standard range. Lavery, 154 Wn.2d at 26

2. **The 1987 Arkansas aggravated robbery conviction is not comparable to a Washington felony and should not have been counted in calculating Mr. Trice's offender score.**

On resentencing, the superior court determined that the Arkansas aggravated robbery statute was comparable to the crime of

attempted first degree robbery in Washington. The court therefore included Mr. Trice's 1987 Arkansas conviction in his criminal history and counted it as two points in calculating his offender score.[6] CP 103; RP 50, 57. Because Arkansas's aggravated robbery statute is not legally comparable to a Washington felony and the State did not prove Mr. Trice's conduct was factually comparable, Mr. Trice's sentence must be reversed.

a. Arkansas's aggravated robbery statute is not legally comparable to Washington's first degree robbery. In 1987, Arkansas's robbery statute provided:

> A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately thereafter, he employs or threatens to immediately employ physical force upon another.

Ark. Code § 5-12-102(a). The 1987 aggravated robbery statute required the defendant to commit robbery as defined in § 5-12-102 with the additional requirement that he:

> (1) Is armed with a deadly weapon or represents by word or conduct that he is so armed; or

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[6] Absent that conviction, Mr. Trice's offender score would have been 3 and his standard sentence ranges 120 to 160 months, 67 to 89 months, and 31 to 41 months. CP 103; Former RCW 9.94A.510, .515, .525, .530 (2006).

(2) Inflicts or attempts to inflict death or serious physical injury upon another.

Ark. Code § 5-12-103(a).[7] In Arkansas, "the offense [of robbery] is complete when physical force is threatened; no transfer of property need take place." Mitchell v. Arkansas, 281 Ark. 112, 113-14, 661 S.W.2d 390 (1983) (quoting Jarrett v. Arkansas, 265 Ark. 662, 580 S.W.2d 460 (1979)).

If the elements of an out-of-state conviction are broader than the equivalent Washington felony, the elements are not legally comparable. Thiefault, 160 Wn.2d at 415. In Washington, robbery is defined as the unlawful taking of property from another person or in her presence by the use or of threatened use of immediate force, violence, or fear of injury to that person, her property, or another person or property. RCW 9A.56.190 (2006).[8] Arkansas's robbery statute is thus significantly broader that Washington's because it permits a conviction based upon the mere intent to take property, not the actual taking, and the crimes are not legally comparable.

[7] A copy of Arkansas Code §§ 5-12-102, 5-12-103 (2006) are attached as Appendix C.

[8] RCW 9A.56.190 remains substantially the same as in 1987. The only amendment was to insert gender-neutral language. Laws of 2011, ch. 336.

b. The State did not prove that Mr. Trice's conduct constituted attempted first degree robbery in Washington. Because it determined the Arkansas aggravated robbery statue is broader than Washington's first degree robbery, the resentencing court looked at the underlying facts to determine if Mr. Trice's underlying conduct would constitute a comparable Washington crime. In making such a factual comparison, the court may rely upon facts that are admitted, stipulated to, or proven beyond a reasonable doubt. Thiefault, 160 Wn.2d at 415; RCW 9.94A.530(2).

> Any attempt to examine the underlying facts of a foreign conviction, facts that were neither admitted or stipulated to, nor proved to the finder beyond a reasonable doubt in the foreign conviction, proves problematic. Where the statutory elements of a foreign conviction are broader than those of under a similar Washington statute, the foreign conviction cannot truly be said to be comparable.

Lavery, 154 Wn.2d at 258.

The sentencing court looked at the sparse information provided by the State to conclude that Mr. Trice's conduct was comparable to an attempted first degree robbery in Washington. RP 47. The State provided the court with a copy of the one-page information charging Mr. Trice and the one-page Judgment and Commitment Order. CP 146-47. There is no guilty plea statement or affidavit of probable

cause. On the Judgment and Commitment Order, a box is checked indicating Mr. Trice pled guilty. CP 147.

Because Mr. Trice apparently pled guilty, the sentencing court assumed he admitted the elements listed in the information. RP 49-50. The Information alleges that Mr. Trice committed aggravated robbery as follows:

> The said defendant . . . did unlawfully, feloniously, employ physical force upon BETTY GRIFFIN and CLARENCE GRIFFIN, with the purpose of committing a theft while armed with a deadly weapon, to wit: a shotgun, against the peace and dignity of the State of Arkansas.

CP 146.[9]

A person commits the crime of attempted first degree robbery if he takes a substantial step towards the commission of first degree robbery with the specific intent to commit first degree robbery. RCW 9A.28.020(1); State v. DeRyke, 149 Wn.2d 906, 911-12, 73 P.3d 1000 (2003) (attempted rape includes intent to commit rape). The intent to commit first degree robbery is not found in the Arkansas charging document, only the attempt to commit theft. CP 146.

[9] The court also mentioned the facts alleged in Count 2 of the information, but did not appear to consider those in its analysis. RP 47-49.

c. Mr. Trice's sentence must be reversed and remanded for a sentence based upon the correct offender score. The Arkansas aggravated robbery conviction is not comparable to attempted first degree robbery in Washington. This Court must therefore vacate Mr. Trice's sentence and remand for sentencing within the correct offender score and sentence ranges. Lavery, 154 Wn.2d at 261.

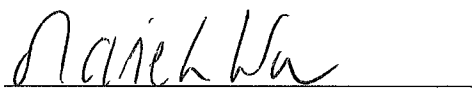
E. CONCLUSION

The resentencing court improperly counted Mr. Trice's Florida conviction as one point in computing his offender score, and also incorrectly determined his Arkansas aggravated robbery conviction was comparable to an attempted first degree robbery under Washington law.

This court must reverse his sentence and remand for sentencing under the correct offender score and sentence ranges. At resentencing the State should be held to the current record. State v. Lopez, 147 Wn.2d 515, 520, 55 P.3d 609 (2002).

DATED this 18th day of November 2013.

Respectfully submitted,



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APPENDIX A

Scoring Sheets from 2006 Adult Sentencing Manual

RAPE OF A CHILD OR ATTEMPTED RAPE OF A CHILD, FIRST DEGREE

(RCW 9A.44.073)
CLASS A FELONY
VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony convictions ..... _____ x 2 = _____

Enter number of other nonviolent felony convictions ..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony dispositions ..... _____ x 2 = _____

Enter number of other 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 sex offense convictions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony convictions ..... _____ x 2 = _____

Enter number of other nonviolent 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 XII)	93 - 123 months	102 - 136 months	111 - 147 months	120 - 160 months	129 - 171 months	138 - 184 months	162 - 216 months	178 - 236 months	209 - 277 months	240 - 318 months

B. The range for an attempt is 75% of the range for the completed crime (RCW 9.94A.595).

C. If the offender is not a persistent offender, then the minimum term for this offense* is the standard sentence range, and the maximum term is the statutory maximum for the offense. See RCW 9.94A.712.

D. When a court sentences a non-persistent offender to this offense, the court shall also sentence the offender to Community Custody under the supervision of the Dept. of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence*. See RCW 9.94A.712.

E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.

- **The offense must have been committed on or after September 1, 2001.*

III. SENTENCING OPTIONS

A. If no prior sex offense conviction and sentence is less than eleven years: Special Sex Offender Sentencing Alternative (RCW 9.94A.670).

- *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

CHILD MOLESTATION OR ATTEMPTED CHILD MOLESTATION, FIRST DEGREE

(RCW 9A.44.083)
CLASS A FELONY
VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(16))

ADULT HISTORY:

Enter number of sex offense convictions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony convictions ..... _____ x 2 = _____

Enter number of other nonviolent felony convictions ..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony dispositions ..... _____ x 2 = _____

Enter number of other 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 sex offense convictions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony convictions ..... _____ x 2 = _____

Enter number of other nonviolent 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 X)	51 - 68 months	57 - 75 months	62 - 82 months	67 - 89 months	72 - 96 months	77 - 102 months	98 - 130 months	108 - 144 months	129 - 171 months	149 - 198 months

B. The range for an attempt is 75% of the range for the completed crime (RCW 9.94A.595).

C. If the offender is not a persistent offender, then the minimum term for this offense* is the standard sentence range, and the maximum term is the statutory maximum for the offense. See RCW 9.94A.712.

D. When a court sentences a non-persistent offender to this offense, the court shall also sentence the offender to Community Custody under the supervision of the Dept. of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See RCW 9.94A.712.

E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.

- **The offense must have been committed on or after September 1, 2001 and the offender must have been over 17 years of age at the time of the offense.*

III. SENTENCING OPTIONS

A. If no prior sex offense conviction and sentence is less than eleven years, see Special Sex Offender Sentencing Alternative (RCW 9.94A.670).

- *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

BURGLARY, FIRST DEGREE

(RCW 9A.52.020)

CLASS A FELONY

BURGLARY 1 (VIOLENT)

(If sexual motivation finding/verdict for conspiracy or solicitation, use form on page III-11)

I. OFFENDER SCORING (RCW 9.94A.525(10))

ADULT HISTORY:

Enter number of serious violent and violent felony convictions	_____ x 2 =	_____
Enter number of Burglary 2 or Residential Burglary convictions	_____ x 2 =	_____
Enter number of other nonviolent felony convictions	_____ x 1 =	_____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions	_____ x 2 =	_____
Enter number of Burglary 2 or Residential Burglary dispositions	_____ x 1 =	_____
Enter number of other 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 serious violent and violent felony convictions	_____ x 2 =	_____
Enter number of Burglary 2 or Residential Burglary convictions	_____ x 2 =	_____
Enter number of other nonviolent 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 VII)	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	57 - 75 months	67 - 89 months	77 - 102 months	87 - 116 months

B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).

C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-7 or III-8 to calculate the enhanced sentence.

D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 18 to 36 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).

- *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

APPENDIX B

1995 Florida Statues

Westlaw

West's F.S.A. § 794.005

WEST'S FLORIDA STATUTES ANNOTATED
TITLE XLVI. CRIMES
CHAPTER 794. SEXUAL BATTERY

794.005. Legislative findings and intent as to basic charge of sexual battery

The Legislature finds that the least serious **sexual battery** offense, which is provided in s. 794.011(5), was intended, and remains intended, to serve as the basic charge of **sexual battery** and to be necessarily included in the offenses charged under subsections (3) and (4), within the meaning of s. 924.34; and that it was never intended that the **sexual battery** offense described in s. 794.011(5) require any **force** or violence beyond the **force** and violence that is inherent in the accomplishment of "penetration" or "union."

CR01

1995 Pocket Part Credit(s)

CR01 Added by Laws 1992, c. 92-135, § 2, eff. April 8, 1992.

<<For additional credits, if any, see Historical Note field.>>
West's F. S. A. § 794.005
FL ST § 794.005

END OF DOCUMENT

Westlaw

West's F.S.A. § 794.011

WEST'S FLORIDA STATUTES ANNOTATED
TITLE XLVI. CRIMES
CHAPTER 794. SEXUAL BATTERY

794.011. Sexual battery

(1) As used in this chapter:
(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission.
(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.
(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.
(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.
(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
(f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.
(g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.
(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.
(i) "Victim" means a person who has been the object of a sexual offense.
(j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.
(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.
(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(3) A person who commits **sexual battery** upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical **force** likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:
(a) When the victim is physically helpless to resist.
(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.
(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.
(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.
(f) When the victim is physically incapacitated.
(5) A person who commits **sexual battery** upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical **force** and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.[1]
(6) The offense described in subsection (5) is included in any sexual battery offense charged under subsection (3) or subsection (4).
(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."
(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:
(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

CR01

[1] See Reviser's Note—1993.

1995 Pocket Part Credit(s)

CR01 Amended by Laws 1992, c. 92-135, § 3, eff. April 8, 1992; Laws 1992, c. 92-310, § 1, eff. July 6, 1992; Laws 1993, c. 93-156, § 3, eff. Oct. 1, 1993.

<<For additional credits, if any, see Historical Note field.>>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1995 Pocket Part Historical and Statutory Notes

APPENDIX C

1987 Arkansas Statutes

A.C.A § 5-12-102

ARKANSAS CODE OF 1987 ANNOTATED

TITLE 5. CRIMINAL OFFENSES
SUBTITLE 2. OFFENSES AGAINST THE PERSON
CHAPTER 12. ROBBERY

5-12-102. Robbery.

(a) A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately thereafter, he employs or threatens to immediately employ physical force upon another.

(b) Robbery is a Class B felony.

History. Acts 1975, No. 280, § 2103; A.S.A. 1947, § 41-2103; Acts 1987, No. 934, § 1.

REFERENCES

RESEARCH REFERENCES

UALR L.J. Davis, Survey of Arkansas Law: Criminal Law, 2 UALR L.J. 193.

ANNOTATIONS

CASE NOTES

ANALYSIS

In general.

Purpose.

Accomplice.

Assistance of counsel.

A.C.A § 5-12-103

ARKANSAS CODE OF 1987 ANNOTATED

TITLE 5. CRIMINAL OFFENSES
SUBTITLE 2. OFFENSES AGAINST THE PERSON
CHAPTER 12. ROBBERY

5-12-103. **Aggravated robbery**.

(a) A person commits **aggravated robbery** if he commits robbery as defined in § 5-12-102, and he:

(1) Is armed with a deadly weapon or represents by word or conduct that he is so armed; or

(2) Inflicts or attempts to inflict death or serious physical injury upon another person.

(b) **Aggravated robbery** is a Class Y felony.

(c)(1) Upon pleading guilty or being found guilty the first time of **aggravated robbery** with a deadly weapon, such person shall be imprisoned for no less than six (6) years;

(2) Upon pleading guilty or being found guilty for the second time of **aggravated robbery** with a deadly weapon, such person shall be imprisoned for no less than fifteen (15) years;

(3) Upon pleading guilty or being found guilty the third time of **aggravated robbery** with a deadly weapon, such person shall be imprisoned for no less than thirty (30) years;

(4) Upon pleading guilty or being found guilty the fourth or subsequent time of **aggravated robbery** with a deadly weapon, such person shall be imprisoned for no less than fifty (50) years.

(d) The sentences provided for in subsection (c) of this section are mandatory and shall not be subject to suspension.

History. Acts 1975, No. 280, § 2102; 1979, No. 1118, § 1; 1981, No. 620, § 13; A.S.A. 1947, § 41-2102.

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

STATE OF WASHINGTON, Respondent, v. EDDIE LEE TRICE, Appellant.	)))))))))	NO. 44808-4-II

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