

NO. 73904-2-I

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

---

STATE OF WASHINGTON,

Respondent,

v.

CLIFTON E. TURNER,

Appellant.

FILED  
Jan 18, 2017  
Court of Appeals  
Division I  
State of Washington

---

SUPPLEMENTAL  
BRIEF OF RESPONDENT

---

MARK K. ROE  
Prosecuting Attorney

SETH A FINE  
Deputy Prosecuting Attorney  
Attorney for Respondent

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

**TABLE OF CONTENTS**

I. INTRODUCTION..... 1

II. ADDITIONAL ISSUE..... 1

III. ADDITIONAL STATEMENT OF THE CASE ..... 1

IV. ADDITIONAL ARGUMENT..... 2

THE OFFENDER SCORE CORRECTLY REFLECTED THE  
DEFENDANT’S TWO PRIOR FELONY CONVICTIONS. .... 2

V. CONCLUSION..... 3

**TABLE OF AUTHORITIES**

**WASHINGTON STATUTES**

RCW 9.94A.030(47)(a)(i) .....	2
RCW 9.94A.525(7).....	2
RCW 9.94A.525(17).....	2
RCW 9.94A.589(1)(a).....	2

## **I. INTRODUCTION**

The defendant filed a Statement of Additional Grounds challenging computation of the offender score. The court has directed the State to respond to that Statement.

## **II. ADDITIONAL ISSUE**

Did the trial court correctly compute the defendant's offender score based on his two prior convictions for drug offenses?

## **III. ADDITIONAL STATEMENT OF THE CASE**

At sentencing, the State introduced certified copies of two prior convictions: a 1993 conviction for "Violation of the Uniform Controlled Substances Act" (1 CP 4-9), and a 1996 conviction for "VUCSA-Delivery of Cocaine" (1 CP 11-15). Both of these were class B felonies. The State also introduced a certified District Court case history showing a conviction for first degree criminal trespass in 2004. 1 CP 17.

Based on these documents, the prosecutor argued that both of the prior felony convictions counted towards the offender score. Sent. RP 22. The court agreed with this argument and determined that the offender score was 5. Sent. RP 22-23. The judgment and sentence, however, listed only the 1996 conviction, not the 1993 conviction. 1 CP 45.

#### **IV. ADDITIONAL ARGUMENT**

#### **THE OFFENDER SCORE CORRECTLY REFLECTED THE DEFENDANT'S TWO PRIOR FELONY CONVICTIONS.**

The defendant was convicted of two counts of second degree child molestation. That crime is classified as a non-violent sex offense. RCW 9.94A.030(47)(a)(i), The applicable scoring rule for such offenses is set out in RCW 9.94A.525(7) and (17):

(7) If the present conviction is for a nonviolent offense ... , count one point for each adult prior felony conviction...

...

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) ... of this section; however count three points for each adult ... prior sex offense conviction.

When a defendant is convicted on multiple counts, other current convictions are used as if they were prior convictions. RCW 9.94A.589(1)(a).

In the present case, the defendant's offender score for each count includes another current sex offense, which counts 3 points. The defendant also had two prior adult felony convictions, each of which counts 1 point. 1 CP 3-15. The offender score was therefore correctly computed as 5.


Despite this, there was an error in the judgment and sentence. Although the court found that there were two prior convictions, the judgment only listed one. Sent. RP 22-23; 1 CP 45. The case should be remanded to correct the judgment so that it corresponds to the court's ruling.

**V. CONCLUSION**

The judgment and sentence should be affirmed. The case should be remanded for the sole purpose of correcting the judgment to list both prior convictions that counted towards the offender score.

Respectfully submitted on January 17, 2017.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
SETH A FINE, WSBA #10937  
Deputy Prosecuting Attorney  
Attorney for Respondent

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

THE STATE OF WASHINGTON,  Respondent,  v.  CLIFTON E. TURNER,  Appellant.
---

No. 73904-2-1

DECLARATION OF DOCUMENT  
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 18<sup>th</sup> day of January, 2017, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

SUPPLEMENTAL BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to Washington Appellate Project; [wapofficemail@washapp.org](mailto:wapofficemail@washapp.org); [maureen@washapp.org](mailto:maureen@washapp.org)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 18<sup>th</sup> day of January, 2017, at the Snohomish County Office.



Diane K. Kremenich  
Legal Assistant/Appeals Unit  
Snohomish County Prosecutor's Office