IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 63341-4-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
STEVIE GOLDEN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: February 16, 2010
	)	

PER CURIAM. Stevie Golden appeals the judgment and sentence imposed following his conviction by a jury of one count of attempted first degree robbery. Golden contends that the trial court miscalculated his offender score and that we must reverse and remand for resentencing.

At issue is whether a 2001 Missouri prior conviction for stealing is comparable to a Washington felony. At sentencing the State argued that it was, and Golden disagreed. The trial court determined that the 2001 conviction was comparable to a Washington felony and included it in calculating Golden's offender score.

On appeal Golden challenges this determination and argues that where he raised the specific objection below, as here, the State may not present additional evidence at resentencing (citing In re Personal Restraint of

Cadwallader, 155 Wn.2d 867, 123 P.3d 456 (2005); State v. Lopez, 147 Wn.2d 515, 55 P.3d 609 (2002); State v. Ford, 137 Wn.2d 472, 973 P.2d 452 (1999); and State v. McCorkle, 137 Wn.2d 490, 973 P.2d 461 (1999)).

The State concedes that the record does not support the trial court's finding that the 2001 Missouri conviction is comparable to a Washington felony. The State also argues that despite the case law to the contrary, under 2008 amendments to chapter 9.94A RCW, including RCW 9.94A.525(21), upon resentencing both parties may present, and the trial court may consider, all relevant evidence regarding criminal history, including evidence the State did not present at sentencing. In response Golden asserts that this court should accept the concession of error on the condition that he may raise new issues at resentencing, including whether or not the State may present additional evidence regarding the 2001 Missouri conviction.

We accept the State's concession of error and reverse and remand for resentencing, deferring the issue of new evidence to the trial court to decide.

For the Court:

Becker, J.

Cox, J.

Schindler, CJ