

February 13, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of
the Personal Restraint of

BRANDON C. PRIES,

Petitioner.

No. 51810-4-II

UNPUBLISHED OPINION

LEE, A.C.J. — Brandon C. Pries seeks relief from personal restraint resulting from his 2011 plea of guilty to failure to register as a sex offender - second offense under former RCW 9A.44.132(1)(b) (2010). He argues that because his prior convictions for failure to register as a sex offender were under former RCW 9A.44.130 (2010), not under former RCW 9A.44.132, the trial court erred in sentencing him to a class B felony under former RCW 9A.44.132(1)(b) and instead should have sentenced him to a class C felony under former RCW 9A.44.132(1)(a)(ii).¹ *State v. Wilcox*, 196 Wn. App. 206, 210-11, 383 P.3d 549 (2016). The State concedes that Pries is correct and that he is entitled to be resentenced. We accept the State's concession.

Because Pries's prior convictions for failure to register as a sex offender were under former RCW 9A.44.130 and not under former RCW 9A.44.132, Pries's prior convictions do not fall under the definition of a sex offense. *Wilcox*, 196 Wn. App. at 210-13. Thus, the trial court improperly

¹ Because the State concedes that Pries's judgment and sentence is facially invalid, it is not subject to RCW 10.73.090's time bar.

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sentenced Pries to a class B felony and improperly imposed a registration requirement. Therefore, we grant Pries's petition, reverse his sentence, and remand for resentencing. We deny his request for appointment of counsel.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

 , A.C.J.

LEE, A.C.J.

We concur:



WORSWICK, J.



SUTTON, J.