

May 9, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint Petition of

WENDEL WAYNE JOHNSON,

Petitioner.

No. 49621-6-II

UNPUBLISHED OPINION

MELNICK, J. — Wendel Johnson seeks relief from personal restraint imposed following his 2008 convictions for two counts of first degree rape of a child.¹ The trial court sentenced him to 136 months of confinement, based on a standard sentence range of 120 to 160 months. He argues that the trial court used an incorrect standard sentence range, in that at the time of his crimes in 1996, the standard sentence range was 102 to 136 months.² The State concedes that the trial court used the wrong standard sentence range and that Johnson is entitled to be resentenced under the correct standard sentence range.

¹ Johnson filed a motion to modify his judgment and sentence in the trial court. That court transferred his motion to us under CrR 7.8(c) to be considered as a personal restraint petition. Because Johnson shows that his judgment and sentence is facially invalid, his petition is not subject to the time bar contained in RCW 10.73.090(1).

² Former RCW 9.94A.310 (1995); former RCW 9.94A.320 (1995).

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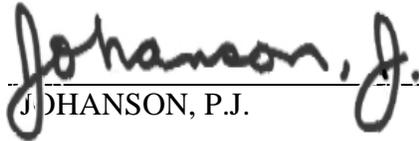
We accept the State's concession and remand Johnson's judgment and sentence to the trial court for resentencing.

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.



MELNICK, J.

We concur:



JOHANSON, P.J.



SUTTON, J.