

April 30, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint of

PRASOEUTH CHANTHA,

Petitioner.

No. 52857-6-II

UNPUBLISHED OPINION

SUTTON, J. — Prasoeuth Chantha seeks relief from personal restraint resulting from his 2002 plea of guilty to first degree murder with a firearm enhancement.¹ The trial court calculated his offender score as 2 based on a prior adult conviction for second degree possession of stolen property, worth 1 point, and on two prior juvenile convictions for taking a motor vehicle without permission, worth 1/2 point each. Those juvenile convictions were for crimes he committed when he was 14 and 15, respectively. He argues that the trial court erred by including the first juvenile conviction in his offender score because it had washed out. The State concedes that under former RCW 9.94A.030(12)(b) (1996) and *State v. Smith*, 144 Wn.2d 665, 674, 30 P.3d 1245, 39 P.3d 294 (2001), Chantha's first juvenile conviction had washed out because he committed the crime before he turned 15 and should not have been included in his offender score. We accept the State's concession.

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

We grant Chantha's petition and remand his judgment and sentence for resentencing with an offender score of 1 under the rounding down rule of former RCW 9.94A.360 (1999).

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.

Autton, J.

SUTTON, J.

We concur:

Worswick, J.

WORSWICK, J.

J. E. A.C.J.

LEE, A.C.J.