

No. 44639-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JOSEPH EMMANUEL ROWLEY, III,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 12-1-00570-4
The Honorable Linda CJ Lee, Judge

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in allowing Rowley to plead guilty where there was a mistake in the calculation of his offender score and standard range.
2. The trial court exceeded its statutory sentencing authority when it sentenced Rowley using an incorrectly high offender score and standard range.
3. Rowley's guilty plea was involuntary because he was misinformed about a major and direct consequence of his guilty plea.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where, under the sentencing statute rules for calculating offender scores, Rowley has an offender score of one for each current offense, but where his plea agreement lists his offender score as two points for each offense, and where there is nothing in the record indicating Rowley or any party to the plea was aware of this mistake, was Rowley misinformed of the consequences of his guilty plea, thus rendering his plea involuntary? (Assignments of Error 1 & 3)
2. Where, under the sentencing statute rules for calculating offender scores, Rowley has an offender score of one for each

current offense, but where his plea agreement lists his offender score as two points for each offense, and where the trial court accepted Rowley's plea and sentenced Rowley using this incorrect offender score, did the trial court exceed its statutory sentencing authority? (Assignments of Error 1 & 2)

3. Can Rowley challenge the validity of his guilty plea for the first time on appeal where he was never informed that he was pleading guilty to and being sentenced using an incorrectly high offender score and standard range? (Assignments of Error 1, 2 & 3)

III. STATEMENT OF THE CASE

The State charged Joseph Emmanuel Rowley by Information with two counts of first degree rape of a child (counts I and II), two counts of second degree rape of a child (counts III and IV), two counts of third degree rape of a child (counts V and VI) (RCW 9A.44.073, .076, .079). (CP 1-3) The alleged victim was the same for all counts. (CP 1-3) The State also charged Rowley with one count of unlawful delivery of a controlled substance to a minor (RCW 69.50.401, .406) (count VII) and one count of possessing an explosive device (RCW 70.74.180) (count VIII). (CP 3-4) The State

subsequently amended the Information to add two counts of sexual exploitation of a minor (counts IX and XI) and two counts of possessing depictions of a minor engaged in sexually explicit conduct (counts X and XII) (RCW 9.68A.040, .070), one count of tampering with a witness (count XIII) (RCW 9A.72.120), and one count of attempted violation of a protection order (count XIV) (RCW 26.50.110). (CP 20-24, 55-60)

As the case progressed, Rowley became increasingly frustrated with his counsel's representation, in particular with counsel's failure to obtain evidence that Rowley believed would aid in his defense. (10/05/12 RP 4-11)¹ Rowley asked permission to represent himself *pro se*, and the court granted his request. (10/05/12 RP 4, 12) Rowley was unsuccessful in his subsequent attempts to obtain the evidence he needed, or to have his motions heard by the court, in part because he was being held in solitary confinement without telephone and letter writing privileges. (04/13/12 RP 3-4, 10/19/12 RP 3-5, 11-21, 28-29, 37-40) So he eventually asked that counsel be reappointed, and the trial court complied. (11/16/12 RP 5-6)

¹ The transcripts in this case will be referred to by the date of the proceeding contained therein.

Plea negotiations between the State and Rowley's counsel resulted in an agreement to drop all but two charges in exchange for a guilty plea. (CP 70-71, 72; 01/09/13 RP 2-3) Rowley agreed to plead guilty to one count of second degree rape of a child (count III) and one count of unlawful delivery of a controlled substance to a minor (count VII), both domestic violence incidents. (CP 70-71, 73-74; 01/09/13 RP 3, 6, 7)

Rowley stipulated to his criminal history, which consisted of adult misdemeanors only. (CP 83-85) The State represented that Rowley's offender score was two for both of his current offenses, and Rowley did not object. (01/09/13 RP 6; CP 74) At the plea hearing, trial counsel explained that he had reviewed with Rowley the Statement of Defendant on Plea of Guilty, and that Rowley understood the nature of the charge, the factual basis, and the "range and other conditions" that the court could impose as a result of his plea. (01/09/13 RP 4)

When questioned by the trial court, Rowley acknowledged that, with an offender score of two, his standard range sentence is 95-125 months to life for count III, and 51-68 months for count VII. (01/09/13 RP 6, 8) Rowley also acknowledged that the State had agreed to recommend a sentence of 123 months to life on count III,

and 68 months on count VII, to be served concurrently, as well as other standard conditions and costs. (CP 77; 01/09/13 RP 8-9)

The trial court accepted Rowley's guilty plea. (01/09/13 RP 17) The court adopted the State's sentencing recommendation, and imposed 123 months to life for count III and 68 months concurrent for count VII. (02/11/13 RP 7; CP 96) This appeal timely follows. (CP 108-09)

IV. ARGUMENT & AUTHORITIES

A. ROWLEY WAS SENTENCED USING AN INCORRECTLY CALCULATED OFFENDER SCORE

Under the Sentencing Reform Act (SRA), "whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score[.]" RCW 9.94A.589(1)(a). In this case, Rowley was sentenced for two current offenses, second degree rape of a child and unlawful delivery of a controlled substance to a minor. (CP 92)

Both offenses were alleged and pleaded as domestic violence incidents. (CP 70-71, 73-74, 81) Therefore, special scoring rules set forth in RCW 9.94A.525(21) apply. That section states, in relevant

part:

If the present conviction is for a felony domestic violence offense where domestic violence . . . was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense[.]

(A copy of RCW 9.94A.525 is attached in the Appendix.)

Neither of Rowley's current offenses are included in RCW 9.94A.525(21)(a)'s list of offenses, and therefore neither are subject to the two point multiplier required by that subsection. So we must look to subsections (7) through (20) to determine scoring for Rowley's offenses.

Sections (9) through (16) and (18) through (20) of RCW 9.94A.525 apply to crimes that are not at issue in this case.

Subsection (7) applies when a current conviction is for a “nonviolent offense,” so this section applies to Rowley’s conviction for unlawful delivery of a controlled substance. RCW 9.94A.525(7).² Under subsection (7), a sentencing court must count “one point for each adult prior felony conviction[.]” Accordingly, Rowley’s other current conviction, second degree rape of a child, should have been counted as only one point when calculating the unlawful delivery of a controlled substance offender score. Rowley’s total offender score for this offense is, therefore, one point.

Subsection (17) applies when scoring a current conviction that is a “sex offense.” RCW 9.94A.525(17). This subsection requires any prior or other current sex offenses to count as three points. However, none of Rowley’s prior or other current offenses are sex offenses. See RCW 9.94A.030(46). Subsection (17) then refers back to the other scoring sections contained in RCW 9.94A.525 for scoring prior or current convictions that are not a sex offense.

Subsection (8) applies when scoring a “violent offense,” such as second degree rape of a child. RCW 9.94A.525(8); RCW 9.94A.030(54)(a)(i); RCW 9A.44.076. Under this subsection, a

² Unlawful delivery of a controlled substance to a minor is not included in the SRA definitions of serious violent or violent offenses. RCW 9.94A.030(45), .030(54).

sentencing court must count “two points for each prior adult and juvenile violent felony conviction [and] one point for each prior adult nonviolent felony conviction[.]” RCW 9.94A.525(8). Because Rowley’s other current conviction, unlawful delivery of a controlled substance, is not a violent felony, it is counted as just one point. RCW 9.94A.525(8). Rowley’s offender score for second degree rape of a child is, therefore, one point. That would give Rowley a standard range sentence of 86-114 months for that offense. RCW 9.94A.510; RCW 9.94A.515.

Rowley was sentenced using an incorrect offender score of two points for each current offense, when his offender score for each current offense is only one point. This resulted in a sentence above his standard range on the second degree rape of a child offense (123 months where the maximum is 114 months).³

B. ROWLEY’S GUILTY PLEA WAS INVOLUNTARY BECAUSE HE WAS MISINFORMED ABOUT A MAJOR AND DIRECT CONSEQUENCE OF HIS GUILTY PLEA

A sentencing court acts without statutory authority under the SRA when it imposes a sentence based on a miscalculated offender score. In re Pers. Restraint of Johnson, 131 Wn.2d 558, 568, 933

³ The standard range for Rowley’s unlawful delivery of a controlled substance to a minor conviction does not change; the standard range is the same when the offender score is one point and two points. See RCW 9.94A.517, .518.

P.2d 1019 (1997). “A sentence based on a miscalculated upward offender score is in excess of statutory authority and generally may be challenged at any time.” In re Pers. Restraint of Cadwallader, 155 Wn.2d 867, 874, 123 P.3d 456 (2005) (citing In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002)). And “[a] defendant cannot agree to a sentence in excess of that which is statutorily authorized.” Cadwallader, 155 Wn.2d at 874 (citing Goodwin, 146 Wn.2d at 876).

Furthermore, “[d]ue process requires that a defendant's guilty plea be knowing, voluntary, and intelligent.” In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004) (citing Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969)); U.S. Const. Amend. 14. If a defendant is not apprised of a direct consequence of his plea, the plea is considered involuntary. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

A direct consequence is one that has a “definite, immediate and largely automatic effect on the range of the defendant's punishment.” Ross, 129 Wn.2d at 284. The length of a sentence is a direct consequence of a guilty plea. State v. Mendoza, 157 Wn.2d 582, 590, 141 P.3d 49 (2006); State v. Moon, 108 Wn. App. 59, 63, 29 P.3d 734 (2001). Therefore, misinformation about the length of a

sentence renders a plea involuntary, even where the correct sentence may be less than the erroneous sentence included in the plea. Mendoza, 157 Wn.2d at 591; In re Pers. Restraint of Bradley, 165 Wn.2d 934, 939, 205 P.3d 123, 126 (2009).

In this case, the parties and the court were operating under the mistaken belief that Rowley's offender score was two points for each offense. There was no mention in the plea documents or at the plea hearing that Rowley was knowingly agreeing and pleading guilty to an incorrectly high offender score and standard range. There is no record that Rowley, or anyone else involved in the plea, knew that his offender score is one point and not two points for each offense.

Thus, Rowley was not properly apprised of a direct consequence of his plea, and he pleaded guilty based on misinformation about his offender score. When a guilty plea is based on misinformation, including a miscalculated offender score that resulted in an incorrect higher standard range, then the plea is involuntary. Mendoza, 157 Wn.2d at 592; Bradley, 165 Wn.2d at 944. Where a plea is entered into involuntarily, a defendant may choose to specifically enforce the agreement or withdraw the plea. State v. Miller, 110 Wn.2d 528, 536, 756 P.2d 122 (1988).

C. ROWLEY HAS NOT WAIVED THE RIGHT TO CHALLENGE THE VALIDITY OF HIS GUILTY PLEA FOR THE FIRST TIME ON APPEAL

Rowley may raise this error, and challenge the validity of his guilty plea, for the first time on appeal even though he did not raise this argument or object below. An invalid guilty plea based on misinformation of sentencing consequences may be raised for the first time on appeal because it is a manifest error affecting a constitutional right under RAP 2.5(a)(3). Mendoza, 157 Wn.2d at 589 (citing State v. Walsh, 143 Wn.2d 1, 7-8, 17 P.3d 591 (2001)).

Furthermore, Rowley did not waive the error by failing to object at the plea or sentencing hearing because no one brought the misinformation to his attention. When a defendant “is informed of the less onerous standard range before he is sentenced and given the opportunity to withdraw the plea, the defendant may waive the right to challenge the validity of the plea.” Mendoza, 157 Wn.2d at 591.

In Mendoza, the defendant waived the right to challenge the validity of his guilty plea because he was “clearly informed before sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant [did] not object or move to withdraw the plea on that basis before he [was] sentenced.” Mendoza, 157

Wn.2d at 592. The Court distinguished Mendoza's situation from circumstances in which a defendant may not be deemed to have waived the right to challenge a plea, such as where the defendant was not informed of the mistake until after sentencing. Mendoza, 157 Wn.2d at 591 (citing Walsh, 143 Wn.2d at 7).

Rowley was apparently never informed before, during or after the plea and sentencing hearings that, contrary to the plea agreement, he did not have an offender score of two points for each offense and his standard range for count III was not 95-125 months, but rather 86-114 months. Rowley was not informed that he was subject to a less onerous sentence. Therefore, under Mendoza, he has not waived his right to challenge his plea for the first time on appeal.

V. CONCLUSION

Under the SRA's scoring rules, Rowley's offender score for each of his current offenses is one point. But Rowley pleaded guilty believing incorrectly that his offender score is two points for each offense. Because Rowley was misinformed about a major consequence of his plea, his plea is involuntary. This case should be remanded to give Rowley the opportunity to either withdraw his plea, or to enforce it with a full understanding of the consequences

of pleading guilty to the current agreement.

DATED: October 14, 2013



STEPHANIE C. CUNNINGHAM

WSB #26436

Attorney for Joseph E. Rowley, III

CERTIFICATE OF MAILING

I certify that on 10/14/2013, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Joseph E. Rowley #293155 B-A-57, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326-0769.



STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX

RCW 9.94A.525

West's Revised Code of Washington Annotated
Title 9. Crimes and Punishments (Refs & Annots)
Chapter 9.94A. Sentencing Reform Act of 1981 (Refs & Annots)
Sentencing

West's RCWA 9.94A.525

9.94A.525. Offender score

Effective: September 28, 2013
Currentness

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense;

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

CUNNINGHAM LAW OFFICE

October 14, 2013 - 10:16 AM

Transmittal Letter

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