

NO. 46240-1-II CONSOL W/46244-3-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JEFF LEROY HARP,

Appellant.

RESPONDENT'S BRIEF

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I. STATE'S RESPONSE TO ASSIGNMENT OF ERROR

Because Harp was released from prison in this matter on November 7, 2014, the issue raised by his appeal is now moot. Further, even if Harp's offender score were reduced from 12 to 10 points on his conviction for Taking a Motor Vehicle in the Second Degree, his standard range would remain unchanged.

II. ISSUES PERTAINING TO THE STATE'S RESPONSE TO THE ASSIGNMENT OF ERROR

A. Would resentencing provide Harp effective relief, when he has already been released from prison in this matter?

B. Would a reduced offender score affect Harp's standard range?

III. STATEMENT OF THE CASE

Harp was convicted of Taking a Motor Vehicle Without Permission in the Second Degree and Violation of the Uniform Controlled Substances Act ("VUCSA") in Cowlitz County Superior Court Cause No. 13-1-00418-3. Harp was also convicted of VUCSA in Cowlitz County Superior Court Cause No. 13-1-00589-9. The court ran Harp's sentences on these three felony convictions concurrent to each other. On his conviction for Taking a Motor Vehicle Without Permission in the Second Degree, the court calculated Harp's offender score as 12 with a sentencing

range of 22-29 months. This was based on his two current VUCSA convictions and eight prior felony convictions. One of these eight prior felony convictions was listed as Possession of a Stolen Vehicle in Cowlitz County Superior Court Cause No. 11-1-01032-2. Possession of a Stolen Vehicle counts as three points when scoring Taking a Motor Vehicle Without Permission in the Second Degree. RCW 9.94A.525(20). The court sentenced Harp to 24 months for his Taking a Motor Vehicle Without Permission in the Second Degree conviction.¹

Harp filed, and was granted without opposition, a motion to supplement the record with the prior judgment and sentence in 11-1-01032-2. This judgment shows that Harp's conviction in 11-1-01032-2 was not for Possession of a Stolen Vehicle, but rather an unranked felony of Illegal Transfer of Vehicle. For this reason, this felony conviction should have counted as one point rather than three when the court sentenced Harp for Taking a Motor Vehicle Without Permission in the Second Degree in 13-1-00418-3. As a result, Harp's offender score should have been calculated as 10 rather than 12 on this crime. However, although his offender score would have changed, the standard range for Taking a Motor Vehicle Without Permission in the Second Degree would

¹ Harp's sentence on each of the VUCSA convictions was 12 months plus one day concurrent with this 24-month sentence for Taking a Motor Vehicle Without Permission in the Second Degree.

have remained at 22-29 months, because Harp still had nine or more points.

According to the Department of Corrections (“DOC”), on November 7, 2014, Harp was released from prison on this matter. *See* DOC Order of Release; DOC Offender Network Information System at 1. On December 10, 2014, Harp filed an appeal of his conviction arguing he should be resentenced based on his lower offender score.

IV. ARGUMENT

A. **Because Harp has already served his prison sentence, the issue in his appeal is moot.**

Because Harp was released on his sentence in 13-1-00418-3 on November 7, 2014, he can no longer be provided effective relief; therefore the issue raised by his appeal is moot. “A case is moot when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief.” *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005) (citing *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994)). Here, Harp was released from prison on November 7, 2014. *See* DOC Order of Release; DOC Offender Management Network Information at 1. Because Harp has already

completed his prison sentence, the court cannot provide effective relieve by resentencing him.

B. Even with the change to Harp's offender score, Harp's standard range would not change.

If Harp's prior conviction for Illegal Transfer of Vehicle were used to calculate his offender score, his standard range would remain 22-29 months. Taking a Motor Vehicle Without Permission in the Second Degree is a seriousness level I felony offense. *See* RCW 9.94A.515. The sentencing range for a seriousness level I felony offense with an offender score of nine or more points is 22-29 months. *See* RCW 9.94A.510 Table 1 – Sentencing grid. Even if Harp's offender score on his conviction for Taking a Motor Vehicle Without Permission in the Second Degree is reduced from 12 to 10 points, he still would have a sentencing range of 22-29 months. Because the correction to his listed criminal history in 13-1-00418-2 would not change Harp's standard range on his conviction for Taking a Motor Vehicle in the Second Degree, a resentencing hearing is unnecessary.²

² Further, were Harp to be resentenced, the court would have the discretion to sentence him as high as 29 months. This could result in additional incarceration for Harp even though he has already served his original sentence – a result he would most likely wish to avoid.

V. CONCLUSION

For the above stated reasons, a resentencing hearing is unnecessary.

Respectfully submitted this 20th day of February, 2015.

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By:



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CERTIFICATE OF SERVICE

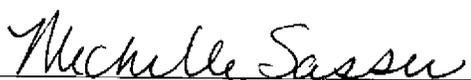
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on February 20th, 2015.



Michelle Sasser

COWLITZ COUNTY PROSECUTOR

February 20, 2015 - 2:19 PM

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