

FILED

JUN 29 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

NO. 29507-9-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JIMMY GEORGE BUCKMAN,

Defendant/Appellant.

REPLY BRIEF

Dennis W. Morgan WSBA #5286
Attorney for Appellant
120 West Main
Ritzville, Washington 99169
(509) 659-0600

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES	ii
ARGUMENT	1

TABLE OF AUTHORITIES

CASES

<i>State v. Harris</i> , 148 Wn. App. 22, 197 P. 3d 1206 (2009).....	1
<i>State v. Wilson</i> , 170 Wn. 2d 682, 691 (2010).....	1

ARGUMENT

Mr. Buckman relies upon his original brief plus the following authorities in response to the State's brief.

The State claims that Mr. Buckman's case is moot. Mootness depends upon whether or not relief can be granted.

A case is moot if a court can no longer provide effective relief. *State v. Ross*, 142 Wn. 2d 220, 228, 95 P. 3d 1225 (2004) (quoting *State v. Gentry*, 125 Wn. 2d 570, 616, 888 P. 2d 1105, *cert. denied*, 516 U.S. 843 (1995)). The issue of [an]...offender score calculation is moot [when]...he has been released from confinement, is not on community custody, and is not subject to another miscalculation based on this alleged error if he is convicted of another crime in the future.

State v. Harris, 148 Wn. App. 22, 26, 197 P. 3d 1206 (2009).

Mr. Buckman remains in custody. Whether or not he is placed on community custody is not at issue.

Mr. Buckman's miscalculated offender score was utilized in connection with a Yakima County case for which he is currently incarcerated.

Mr. Buckman asserts that his case is not moot and that his offender score is miscalculated.

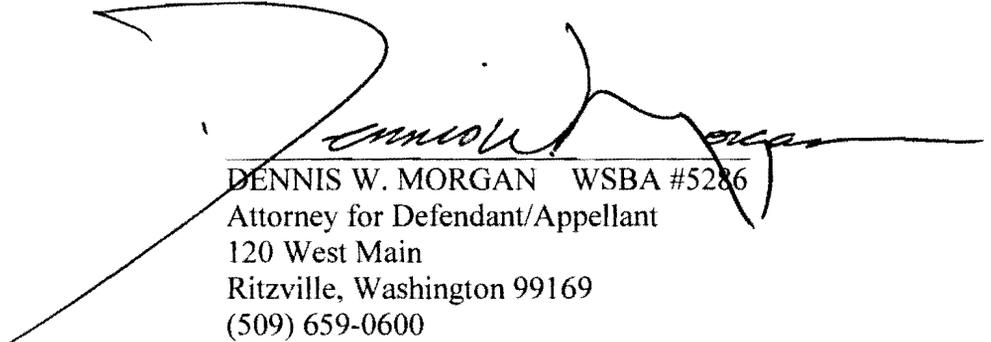
It also appears the State is arguing some type of waiver by Mr. Buckman. In *State v. Wilson*, 170 Wn. 2d 682, 691 (2010), the Court held:

...That when an offender score is calculated based on the mischaracterization of a prior conviction, a legal mistake, not a factual mistake, occurs, and therefore the offender cannot waive a challenge.

Mr. Buckman respectfully requests that his analysis of the miscalculation be accepted by the Court.

DATED this 20th day of June, 2011.

Respectfully submitted,



DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant
120 West Main
Ritzville, Washington 99169
(509) 659-0600