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STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 83797-0

Court of Appeals No. 37496-0-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON WILSON,

Petitioner.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 OCT 16 PM 4: 51

PETITION FOR REVIEW

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STATE OF WASHINGTON
BY Vanessa M. Lee
DEPUTY

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COURT OF APPEALS
DIVISION II

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TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

Petitioner Jason Wilson, Petitioner below, respectfully requests this Court accept review of the Court of Appeals' decision affirming his sentence.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4, Wilson seeks review of the unpublished decision of the Court of Appeal in State v. Wilson, 151 Wash.App. 1044, No. 37496-0-II, (Wash., August 13, 2009) (attached in appendix). A Motion to Reconsider was filed on September 2, 2009 and denied on September 17, 2009.

C. ISSUES PRESENTED FOR REVIEW

1. A sentence which is based on a miscalculated offender score lacks statutory authority, requiring remand. Mr. Wilson's offender score included a point for a gross misdemeanor conviction which the Court of Appeals found was erroneously scored as a felony. However, the Court of Appeals ruled this was not legal error and refused to find the resulting standard-range sentence erroneous itself. Was this ruling in direct conflict with this Court's decisions in *Goodwin* and *Carle* (both requiring remand of a

sentence lacking statutory authority or resulting from legal error), thereby justifying review under RAP 13.4(b)(1)?

2. RCW 9.94A.525 provides the sentencing court shall “[s]core prior convictions for felony anticipatory offenses ... the same as if they were convictions for completed offenses.” The prior conviction in question was attempted possession of a controlled substance, charged and convicted under RCW 69.50.401(d) (the possession statute) and RCW 9A.28.020(d) (the general attempt statute). Petitioner argues an offense defined by those statutes is an attempt to commit a felony, rather than an attempt classified as a felony, and therefore outside the purview of RCW 9.94A.525. Is this issue a question of first impression, requiring guidance for the trial courts, and involving an issue of substantial public interest that should be determined by this Court under RAP 13.4(b)(4)?

3. Principles of collateral estoppel and res judicata prevent the re-litigation of matters already determined by formal judgment where the same parties and issues were involved. Here a prior conviction, finalized years ago as a gross misdemeanor, was scored as a felony. Does this practice violate the principles of collateral estoppel and res judicata and come in direct conflict with

another decision of the Court of Appeals, justifying review under RAP 13.4(b)(2)?

D. STATEMENT OF THE CASE

The facts are stated in the Opening Brief at 1-2 and are incorporated by reference.

On appeal, Wilson argued that his sentence lacked authority because it was based on a miscalculated offender score of eight. Specifically, the offender score included a Violation of the Uniform Controlled Substances Act ("VUCSA") committed in March 2005 in King County. CP 39-40, 45. In fact, this offense was an attempted VUCSA, which can be charged as a felony under RCW 69.50.407, but is routinely charged as a gross misdemeanor in King County, under RCW 69.50.401(d) and 9A.28.020(d). CP 63-65.

Mr. Wilson moved for re-sentencing. On March 17, 2008, the court ruled that Mr. Wilson could withdraw his plea, but denied the motion for re-sentencing. 3/17/08RP 4-5; CP 55. Mr. Wilson did not withdraw his plea but appealed the ruling and sentence.

The Court of Appeals, Division Two, ruled that the 2005 conviction should have been classified as a gross misdemeanor in Mr. Wilson's offender score, but did not find that the error rendered the offender score incorrect. Slip op. at 4-5. The Court remanded

for correction of the “clerical error” on the judgment and sentence of the current offense, but refused to reverse Mr. Wilson sentence.

Slip op at. 5. The Court reasoned that RCW 9.94A.525(4), which requires the court to “[s]core prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses” authorized the sentencing court to count Mr. Wilson’s gross misdemeanor VUCSA attempt as a felony point.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Mr. Wilson requests this Court grant review of his case pursuant to RAP 13.4(b) because the Court of Appeals’ refusal to find the offender score incorrect and remand is in direct conflict with two decisions of the Supreme Court, *State v. Goodwin*, 146 Wn.2d 861, 868, 50 P.3d 618 (2002) (holding a sentence which lacks statutory authority cannot stand), and *In re Personal Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980) (holding “[w]hen a sentence has been imposed for which there is no authority in law, the trial court has the *power and duty to correct the erroneous sentence when the error is discovered*,” emphasis in the original).

The Court of Appeals’ ruling that the misclassification was not “legal error” also conflicts with the *Goodwin* Court’s holding that

a legal error in sentencing is “a fundamental defect that inherently results in a miscarriage of justice.” *Id.* at 860, quoting *In re Personal Restraint of Johnson*, 131 Wn.2d 558, 569, 933 P.2d 1019 (1997).

The application of RCW 9.94A.525(4) to a gross misdemeanor conviction which anticipated a felony is a question of first impression. Given the large numbers of anticipatory VUCA prosecutions in the state, and the disagreement about charging those offenses across counties, this is an issue that will likely arise again. This Court’s clarification of this issue will be critical to guiding prosecutors, defense attorneys, and trial courts in negotiating plea bargains and calculating sentence ranges, furthering the public’s interest in fair and impartial sentencing as well as judicial efficiency. This case therefore involves an issue of substantial public interest that should be determined by the Supreme Court.

The ruling is also in direct conflict with a decision of the Court of Appeals – *State v. Sherwood*, 71 Wn.App. 481, 860 P.2d 407 (1993), *review denied by* 123 Wn.2d 1022, 875 P.2d 635 (1994) (holding principles of collateral estoppel and res judicata prohibit scoring of prior gross misdemeanor VUCSA convictions as

felonies, and remanding for re-sentencing with a corrected offender score).

THIS COURT SHOULD REVIEW THE COURT OF APPEALS' RULING THAT A MISCLASSIFICATION OF A PRIOR GROSS MISDEMEANOR AS A FELONY WAS NOT LEGAL ERROR, DID NOT RENDER THE OFFENDER SCORE INCORRECT AND DID NOT REQUIRE REMAND.

1. The Court of Appeals correctly remanded for correction of a misclassification of a prior conviction, but should also remand for resentencing of the invalid sentence, based on a miscalculated offender score. The Court of Appeals correctly ruled that a prior offense included in Mr. Wilson's offender score was misclassified as a felony. Slip op. at 4-5. The offense in question was a conviction for "Attempted Violation of the Uniform Controlled Substances Act [VUCSA]: Possession of Methamphetamine," committed in March 2005 in King County. CP 47, 63-65. The Judgment and Sentence for that offense shows that Mr. Wilson was charged, convicted, and sentenced under RCW 69.50.401(d) (classifying possession of methamphetamine as a class C felony) and 9A.28.020(d) (classifying attempt to commit a class C felony as a gross misdemeanor). CP 63-65. Thus, although this offense *could* have been charged under RCW 69.50.407 (classifying VUCSA attempt as a class C felony), the King County prosecutor

legitimately chose to charge Mr. Wilson under RCW 69.50.401(d) and 9A.28.020. This court agreed that Mr. Wilson was actually convicted of a gross misdemeanor and remanded for correction of the “clerical error” on the judgment and sentence of the current offense. Slip op. at 4-5.

However, this defect was much more serious than a mere “clerical error.” The consequence of the misclassified conviction was an additional point in Mr. Wilson’s offender score, resulting in a sentence of 43 months (the high end of the standard range, with an offender score of eight). CP 46-53.

Without explaining the distinction, this Court ruled that the misclassified prior conviction did *not* result in an incorrect offender score. Slip op. at 5. The sole authority for this ruling was RCW 9.94A.525(4), which requires the court to “[s]core prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.” As discussed below, the Court misconstrued this statute, and also failed to address Mr. Wilson’s argument that his sentence was not authorized by statute, requiring reversal.

2. RCW 9.94A.525(4) does not convert the attempted VUCSA into a felony for purposes of calculating the offender score. RCW 9.94A.525 provides that the sentencing court shall “[s]core prior convictions for felony anticipatory offenses ... the same as if they were convictions for completed offenses.” This Court’s guidance is needed for the interpretation of this section, as it applies to gross misdemeanors which anticipate felonies.

As a general principle of statutory construction, words in a statute are given their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *State Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The reviewing court applies accepted principles of grammar to determine the meaning of a statute. *Burnham v. DSHS*, 115 Wn.App. 435, 443, 63 P. 3d 816 (2003).

The plain language of this statute refers to “felony anticipatory offenses,” not “anticipatory offenses of felonies.” Put another way, “felony” modifies “anticipatory offense,” not the offense which is anticipated. In the instant case, a VUCSA attempt charged under RCW 69.50.407 would be a “felony anticipatory offense” because that section classifies the anticipatory offense as a *class C felony*. But an attempt to commit VUCSA possession

under RCW 69.50.401(d) and 9A.28.020(d) is not a “felony anticipatory offense” – it is an offense which anticipates (or attempts) a felony. RCW 9.94A.525(4) does not apply to a gross misdemeanor anticipatory offense.

An unambiguous statute is applied by its plain terms, without further elaboration. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). Mr. Wilson argues RCW 9.94A.525 is not ambiguous, but susceptible to only one meaning (*State v. Bernard*, 78 Wn. App. 764, 768, 899 P.2d 21 (1995)): that it refers to anticipatory offenses which are felonies. However, if the statute is ambiguous, it must be interpreted in the manner more favorable to the criminal defendant. *State v. Roberts*, 117 Wn.2d 576, 586, 817 P.2d 855 (1991). Under the rule of lenity, the statute must be read to count the attempted VUCSA conviction as a gross misdemeanor, as it should have been classified.

This is a question of first impression, requiring review by this Court. Without this clarification, the offender score of any defendant with such a conviction on his or her record is unsettled. Defense counsel cannot properly advise their clients about the sentencing ranges they face, defendants cannot make knowing and understanding decisions about how to plead, counsel on both sides

cannot make informed sentencing recommendations, and the courts cannot confidently impose standard-range sentences. This Court can assume that the population of current and future criminal defendants who have a King County conviction for attempted VUCSA is significant. The issue is therefore sure to rise again.

3. Because the classification of the attempted VUCSA as a felony was not authorized by statute, the sentence was invalid and must be reversed.

a. A valid sentence must be authorized by statute. It is well-established that a sentence which lacks statutory authority cannot stand. *State v. Goodwin*, 146 Wn.2d 861, 868, 50 P.3d 618 (2002), citing *In re Personal Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997). “When a sentence has been imposed for which there is no authority in law, the trial court has the *power and duty to correct the erroneous sentence when the error is discovered.*” *In re Personal Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980) (italics in original), quoting *McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P.2d 848 (1955) , *overruled in part by State v. Sampson*, 82 Wn.2d 663, 513 P.2d 60 (1973). A sentence based on a miscalculated offender score not only lacks authority, but is “a fundamental defect that inherently results in a

miscarriage of justice.” *Goodwin*, 146 Wn.2d at 860, quoting *Johnson*, 131 Wn.2d at 569. The Court of Appeals’ ruling in this case contradicts both *Goodwin* and *Carle*.

b. *Mr. Wilson’s offender score lacked statutory authority.* As discussed above, the sentencing court miscalculated Mr. Wilson’s offender score by counting the attempted VUCSA as a felony instead of a misdemeanor. The Court of Appeals correctly noted that legal error should entitle Wilson to re-sentencing, but flatly stated the error here was not legal. (Slip op. at 3, Fn. 3, citing *Goodwin*, 146 Wn.2d 861). The opinion does not explain why the misclassification of a misdemeanor as a felony is not legal error.

In *Goodwin*, as in this case, the guilty plea stated that the defendant agreed to the State’s statement of petitioner’s criminal history. The sentencing court erroneously included juvenile offenses in the defendant’s offender score. Holding the defendant’s plea agreement did not waive his challenge to the “fundamentally defective” sentence, the Supreme Court clarified its prior holdings:

[W]e hold that in general a defendant cannot waive a challenge to a miscalculated offender score. There are limitations on this holding. While waiver does not apply where the alleged sentencing error is a *legal error* leading to an excessive sentence, waiver can be found where the alleged error involves an

agreement to facts, later disputed, or where the alleged error involves a matter of trial court discretion.

Id. at 874. The focus of the Court's analysis was on "considering a fundamental defect, which is not of constitutional magnitude, and whether that defect has resulted in a complete miscarriage of justice." *Id.* at 876. The Court found that it had: the erroneous inclusion of juvenile priors was legal error, and not waived.

Thus, the only question is whether this case involves a legal error or an issue of fact or trial court discretion. Here, there is no factual dispute whatsoever. Neither the State's briefing nor this Court's opinion identified any factual error. There was no opportunity for judicial discretion; the legislature, not the courts, determines the classification of criminal offenses. Therefore, the defect can only be a legal error, causing a "miscarriage of justice" which must be rectified by re-sentencing. *Id.* This Court should accept review to examine the conflict between the affirmation of this sentence and the holdings of *Goodwin* and *Carle*, and address the Court of Appeals' assertion that a misclassified prior conviction is not legal error.

3. Principles of collateral estoppel and res judicata prohibited the sentencing court from converting a prior gross misdemeanor into a felony. In *State v. Sherwood*, this Court considered an almost identical scenario. 71 Wn.App. 481, 860 P.2d 407 (1993), *review denied by* 123 Wn.2d 1022, 875 P.2d 635 (1994). There, the defendant's offender score included two prior convictions for attempted possession of cocaine. *Id.* at 486. As here, both were charged as gross misdemeanors under RCW 69.50.401(d) and 9A.28.020(d), although they could have been charged as class C felonies under RCW 69.50.407. *Id.* at 486-87. Sherwood argued that as gross misdemeanors, these prior convictions could not be included in his offender score. *Id.*

This Court agreed, holding:

We conclude that the State is not entitled to reopen the earlier judgments and sentences because they became final when they were not appealed. As noted by our opinion in *State v. Blakey*, 61 Wash.App. 595, 811 P.2d 965 (1991), the need for judicial finality is recognized by the principles of res judicata and collateral estoppel subject, however, to certain exceptions which do not apply here. Res judicata and collateral estoppel apply in criminal cases and bar relitigation of issues actually determined by a former verdict and judgment. *State v. Peele*, 75 Wn.2d 28, 30, 448 P.2d 923 (1968). The principles underlying these doctrines are to prevent relitigation of determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to

the litigants and judicial economy. *State v. Dupard*, 93 Wn.2d 268, 272, 609 P.2d 961 (1980).

Id. Although the prior convictions in question were prosecuted in other counties, the Court found that the prosecutor in each case represented the same State, all of the cases involved the same parties, and collateral estoppel applied. *Id.* at 488. Therefore, “consistent with prior opinions barring the defendant from reopening prior convictions for reclassification under the SRA,” this Court vacated the sentences and remanded for resentencing. *Id.* at 488-89, citing *State v. Jones*, 110 Wn.2d 74, 77-79, 750 P.2d 620 (1988); *State v. Ammons*, 105 Wn.2d 175, 187-89, 713 P.2d 719, 718 P.2d 796 (1986); *Blakey*, 61 Wn.App. at 599.

Nothing distinguishes *Sherwood* from the instant case. Here, as in *Sherwood*, the King County attempted VUCSA is not subject to appellate review. That conviction is final and cannot now be reviewed or changed. Converting a finalized gross misdemeanor conviction into a felony for purposes of offender score calculation amounts to relitigation of a previously determined issue, which is clearly prohibited by collateral estoppel and res judicata principles. *Id.* at 488. The sentence was therefore unlawful. This Court should grant review to address the

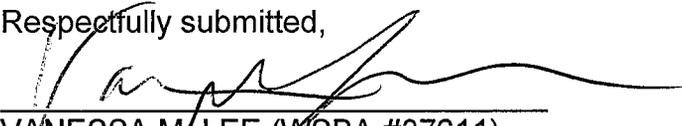
inconsistency between this case and *Sherwood*.

D. CONCLUSION

For the foregoing reasons, Mr. Wilson respectfully requests this Court grant review and vacate and remand his sentence.

DATED this 16th day of October, 2009.

Respectfully submitted,



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Attorneys for Appellant

DECLARATION OF FILING & MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 37496-0-II** (for transmittal to the Supreme Court) and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for **respondent: Kraig Newman - Grays Harbor County Prosecuting Attorney,** **appellant** and/or **other party,** at the regular office or residence as listed on ACORDS or drop-off box at the prosecutor's office.


MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: October 16, 2009

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STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

No. 37496-0-II

BY

Respondent,

v.

JASON A. WILSON,

UNPUBLISHED OPINION

Appellant.

HUNT, J. — Jason A. Wilson appeals the trial court's order denying his CrR 7.8 motion (1) to correct the offender score to which he had agreed when he pleaded guilty to two counts of second degree identity theft, and (2) to resentence him using the corrected offender score. He argues that the trial court erred when it refused to resentence him and concluded that his only options were to withdraw his guilty plea or to serve the sentence already imposed.

Although we agree with Wilson that his 2005 King County drug conviction was for a gross misdemeanor rather than a felony, we do not agree that his offender score was incorrect. Accordingly, we affirm Wilson's sentence but remand for correction of his judgment and sentence to reflect his 2005 King County drug conviction's proper classification.

FACTS

Following an investigation into a surge of financial fraud activity involving the use of "counterfeit, miniature, keychain style, credit cards," the Ocean Shores Police Department arrested Jason A. Wilson on suspicion of fraud or identity theft. Thereafter, officers found evidence that Wilson had been using numerous individuals' financial information to make counterfeit credit cards. The State charged Wilson with two counts of second degree identity theft.



I. GUILTY PLEA AND STIPULATED OFFENDER SCORE

In exchange for the State's agreement not to file additional charges based on evidence obtained in this case, Wilson pleaded guilty to the two identity theft charges. In his plea agreement with the State and in his statement on plea of guilty (plea documents), Wilson agreed that (1) the State's statement of his criminal history was correct and complete, (2) his prior offenses included a 2005 King County *felony* drug offense, (3) his offender score was eight points, and (4) the resulting standard sentencing range for the charges was 33 to 43 months confinement. A notation in the plea documents stated, "Pled Attempt," next to Wilson's 2005 drug offense, for which the document denoted one offender score point.

The Grays Harbor County Superior Court accepted Wilson's guilty plea and imposed 43-month sentences on each count, to run concurrently. Wilson did not challenge his offender score or sentencing range at the plea hearing or at sentencing. The court entered the judgment and sentence on December 10, 2007. Wilson did not file a notice of appeal or any other motion challenging the offender score or his December 10, 2007 judgment and sentence within 30 days.

II. CRR 7.8 MOTION

The next month, however, on January 23, 2008, Wilson's counsel received a facsimile (fax) from another attorney, representing Wilson in another case, advising that the 2005 King County drug conviction listed in Wilson's criminal history was a gross misdemeanor, not a felony. The August 4, 2005 "non-felony" judgment and sentence for Wilson's 2005 King County drug conviction stated that he had pleaded guilty to "ATTEMPTED VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT: POSSESSION OF



METHAMPHETAMINE. *RCW 9A.28.020, 69.50.401(D)*.”¹ Clerk’s Papers (CP) at 63 (emphasis added).

Based on this information, Wilson filed a CrR 7.8 motion asking the Grays Harbor County Superior Court to correct his offender score and to resentence him using a seven-point offender score instead of the previous eight-point score. At the motion hearing on March 17, 2008, Wilson argued that he was entitled to resentencing based on the correct offender score. The State argued that Wilson’s only options were to accept the agreed offender score and the resulting standard sentencing range or to withdraw his guilty plea and his plea bargain agreement with the State. The court denied Wilson’s motion for re-sentencing.

Wilson appeals.

ANALYSIS

Wilson argues that because his original judgment and sentence was based on an incorrect offender score derived from an error in his criminal history, the trial court erred when it concluded that he was not entitled to resentencing. Wilson is correct that his 2005 drug conviction was for a gross misdemeanor,² not a felony, as noted in the plea documents.

But he is not correct that he is entitled to resentencing.³ On the contrary, the record demonstrates that his eight-point offender score, on which his sentence was based, was correct.

¹ The reference to “RCW 69.50.401(D)” was apparently meant to be to RCW 69.50.401(2)(d).

² See *State v. Sherwood*, 71 Wn. App. 481, 488, 860 P.2d 407 (1993), *review denied*, 123 Wn.2d 1022 (1994).

³ We note that Wilson might have been entitled to resentencing if his offender score was incorrect based on a legal error. See *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002). But such is not the case.



I. CLASSIFICATION OF 2005 DRUG OFFENSE

The documentation Wilson produced in support of his CrR 7.8 motion for resentencing demonstrated that (1) in 2005, he had pleaded guilty to an *attempted* offense under RCW 9A.28.020, which classifies attempted class C felonies as gross misdemeanors⁴; and (2) the King County Superior Court had sentenced him for a gross misdemeanor, not a felony. CP 63. But Wilson's criminal history, as related in his Grays Harbor County plea documents, stated that he had been convicted of a "felony"⁵ attempted drug offense in King County in 2005.

The original King County sentencing court's characterization of this 2005 conviction required the Grays Harbor County Superior Court at Wilson's 2007 sentencing for his later conviction to treat this prior King County offense as a gross misdemeanor. *State v. Sherwood*, 71 Wn. App. 481, 488, 860 P.2d 407 (1993), *review denied*, 123 Wn.2d 1022 (1994).⁶ The documentation Wilson produced in support of his CrR 7.8 motion for resentencing clearly demonstrated that in 2005 in King County he was convicted of a gross misdemeanor, rather than a felony.

⁴ RCW 9A.28.020(3)(d). In contrast, it is RCW 69.50.407 that classifies attempted offenses defined in chapter 69.50 RCW as felonies.

⁵ If Wilson had pleaded guilty to this drug offense under RCW 69.50.407, this felony characterization would likely have been correct. RCW 69.50.407 provides:

Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

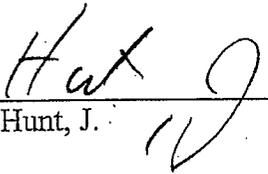
⁶ The *Sherwood* court held that when the original sentencing court characterizes an attempted possession of controlled substance crimes as a gross misdemeanor, collateral estoppel prevents the State from arguing in a subsequent sentencing proceeding that the earlier offense was actually a felony. 71 Wn. App. at 488.

II. NO SENTENCING ERROR

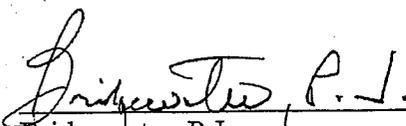
Despite this error in characterizing his 2005 King County conviction, Wilson fails to demonstrate that the Grays Harbor County Superior Court sentenced him using an incorrect offender score. RCW 9.94A.525(4)⁷ requires the trial court to “[s]core prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.” Wilson’s 2005 drug offense was an attempt to commit an offense under RCW 69.50.401(2)(d). Violations of RCW 69.50.401(2)(d) are class C felonies, which clearly count as one point in Wilson’s offender score. RCW 9.94A.525(7).

Because Wilson does not establish that the trial court sentenced him using an incorrect offender score, he is not entitled to resentencing, and we affirm his sentence. But because the judgment and sentence incorrectly states that the 2005 King County drug conviction was a felony offense, we remand for correction of this clerical error.

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 pursuant to RCW 2.06.040, it is so ordered.


Hunt, J.

We concur:


Bridgewater, P.J.


Quinn-Brintnall, J.

⁷ Neither party addresses this statute or its effect, if any, on Wilson’s offender score.

