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Nov 07, 2016
Court of Appeals
Division I
State of Washington

NO. 75149-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MANUEL RAMIREZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

At a resentencing hearing on March 17, 2016, the trial court admitted and reviewed certified conviction documents establishing that the defendant's offender score was 7. Did the trial court properly calculate the offender score?

B. STATEMENT OF THE CASE

Manuel Ramirez was convicted of Felony Violation of a Court Order (FVNCO). At his initial sentencing hearing in July 2014, the trial court found that Mr. Ramirez's offender score was 7 and sentenced him. *State v. Ramirez*, 190 Wn. App 731, 733, 359 P.3d 929 (2015). On appeal, Ramirez argued that he had not conceded his offender score was 7 and that the documents provided by the State were insufficient to justify such a finding. The State conceded that the proof was insufficient. This Court remanded for resentencing. CP 34-35.

At resentencing in March 2016, the State provided the trial court an updated criminal history, a memorandum on the issue of the calculation of Mr. Ramirez's score, and prior conviction documents giving rise to an offender score of 7. CP 30, 45-50. The trial court admitted the exhibits and found that they established an

offender score of 7. RP 6. The court then re-sentenced Mr. Ramirez. RP 7. Mr. Ramirez again challenges his offender score.

C. ARGUMENT

THE TRIAL COURT CORRECTLY CALCULATED MR. RAMIREZ'S OFFENDER SCORE

In calculating an offender score, the trial court takes three steps: (1) identify all prior convictions; (2) eliminate those that wash out; (3) "count" the prior convictions that remain in order to arrive at an offender score. RCW 9.94A.525; *State v. Moeum*, 170 Wn.2d 169, 175, 240 P.3d 1158 (2010). Absent a stipulation by the defendant to his offender score, the State bears the burden of establishing a defendant's criminal history. *State v. Ford*, 137 Wn.2d 472, 480-81, 973 P.2d 452 (1999).

At the resentencing hearing on March 17, 2016, because Ramirez declined to stipulate to his score, the State provided the court with certified documents related to Ramirez's prior convictions. RP 4-5; CP 45-46. Specifically, the State offered documents related to King County Superior Court cause 12-1-05058-5, King County Superior Court cause 07-1-09412-8,

King County Superior Court cause 07-1-09414-4, SeaTac Municipal Court cause Y1319560KC, and SeaTac Municipal Court cause Y11223062KC. *Id.* The documents were admitted as Exhibits 1-5 and reviewed by the court. *Id.* The State also provided to the trial court a memorandum regarding the calculation of the offender score. CP 47-50. After reviewing the documents, the court made a finding that, based on the newly admitted exhibits, the defendant's offender score was 7. RP 6.

Of note, an updated Appendix B submitted on March 17, 2016 also listed a 1996 juvenile adjudication for Taking a Motor Vehicle Without Permission in the Second Degree under King County Superior Court cause 95-8-07790-2. CP 30. The State concedes that the inclusion of the juvenile adjudication in the updated Appendix B was error because that adjudication had "washed out," but it is harmless error because the record makes clear that the trial court did not consider that juvenile adjudication in arriving at its finding that the defendant's offender score was 7. The court reached its conclusion after review of the documents admitted as Exhibits 1-5. RP 6.

The documents admitted and reviewed by the trial court regarding King County Superior Court cause 12-1-05058-5

establish that the FVNCO conviction was a felony domestic violence offense pleaded and proven after August 1, 2011. That is, the Information alleged domestic violence and it was filed on August 22, 2012. The Judgment and Sentence makes clear that the conviction remained a domestic violence offense at the time of sentencing on December 7, 2012. Sentencing Ex. 1. As a result, this conviction counts as two (2) points. RCW 9.94A.525(21)(a).

The documents admitted and reviewed by the trial court regarding King County Superior Court cause 07-1-09412-8 establish that the unlawful possession of a firearm (UPFA2) conviction was a felony, non-domestic violence offense. Sentencing Ex. 2. As a result, this conviction counts as one (1) point. RCW 9.94A.525(7).

The documents admitted and reviewed by the trial court regarding King County Superior Court cause 07-1-09414-4 establish that the FVNCO was a felony domestic violence offense, but it was not pleaded and proven after August 1, 2011. That is, the Information alleged domestic violence but it was filed on May 31, 2007. Sentencing Ex. 3. As a result, this conviction counts as one (1) point. RCW 9.94A.525(7).

The documents admitted and reviewed by the trial court regarding SeaTac Municipal Court cause Y13195603 establish that the misdemeanor violation of a no contact order (MVNCO) conviction was a repetitive domestic violence offense pleaded and proven after August 1, 2011. The docket entry for August 23, 2013 indicates that the charge was "DV-related," and the docket entry for August 26, 2013 indicates that the defendant pled guilty without any amendment to the charge. Sentencing Ex. 4. As a result, this conviction counts as one (1) point. RCW 9.94A.525(21)(c).

The documents admitted and reviewed by the trial court regarding SeaTac Municipal Court cause Y11223062 establish that the two assault in the fourth degree- domestic violence convictions were repetitive domestic violence offenses pleaded and proven after August 1, 2011. The docket entry for October 12, 2011 indicated that both charges were "DV-related," and the docket entry for March 8, 2012 indicates that the defendant pled guilty to both counts without any amendments to the charges. Sentencing Ex. 5. As a result, each counts as one point, for a total of two (2) points. RCW 9.94A.525(21)(c).

The record is clear, then, that the trial court correctly found on March 17, 2016 that the defendant's offender score was 7.

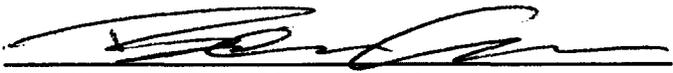
D. CONCLUSION

For the reasons set forth herein, this Court should affirm the trial court's finding that the defendant's offender score was 7.

DATED this 7th day of November, 2016.

Respectfully submitted,

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