Washington Supreme Court limits how state can sentence immigrants previously convicted abroad

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Tim Clouser / The Center Square

The Washington Supreme Court issued a ruling Thursday that prohibits judges from increasing an offender's mandatory sentence range based on foreign convictions.

The decision stemmed from a case where an Australian court convicted a man of child sexual abuse material crimes, later deporting him back to live with his mother in Aberdeen, where he then committed similar crimes.

Grays Harbor County Superior Court must now resentence Matthew Lewis after handing him a 102-month prison sentence in 2022, followed by 36 months of community custody. The ruling reduces his offender score from 9+ to 6, lowering the maximum sentence to 68 to 100 months.

The decision raises concerns around cases where a foreign country has convicted someone of violent crimes before that person emigrates to Washington. Judges can use those convictions to levy the higher end of the mandatory range, but cannot increase the maximum of that range based on the foreign convictions.

“The offender score is based on some of the individual’s current and prior convictions, including ‘[o]ut-of-state convictions,’” the high court wrote, foreshadowing its landmark ruling. “The parties have not pointed to any helpful legislative history. Accordingly, we apply the rule of lenity.”

The principle requires the courts to interpret ambiguous criminal laws in favor of the defendant.

The Washington Supreme Court ruled that “out-of-state convictions” do not include those from a foreign country. Therefore, whether another nation convicts an American or an immigrant, local judges cannot use those crimes to raise their offender score or mandatory sentence range.

Washington state must now consider Americans and immigrants convicted abroad as first-time offenders, unless they have also been convicted in the U.S. While supporters may say that this safeguards due process, as standards can vary from country to country, critics could argue that it endangers public safety.

“Nothing prevents a defendant from arguing that their conviction should not be counted in their offender score because it was obtained through a proceeding falling well below our notions of due process, even if it complied with the constitution of the jurisdiction in which it was obtained,” Chief Justice Debra L. Stephens and Justice Barbara Madsen wrote in a dissenting opinion.

The two judges who disagreed with Thursday’s ruling say Lewis didn’t make that argument.

They also said that the majority opinion misapplied the rule of lenity. In State v. Morley, they had already ruled that “out-of-state” is “equally broad in its scope” to “elsewhere,” which is included in the Sentencing Reform Act’s definition of criminal history. In that 1998 ruling, the justices said the word “reaches all foreign convictions.” Lewis did not argue that the prior ruling was incorrect.

Regardless, the court set a new precedent for what constitutes “out-of-state convictions”. Unless the U.S. Supreme Court reviews the case or state lawmakers amend the SRA to include foreign convictions in offender score calculations, this new definition will remain the law of the land.

“Nothing in the SRA, related statutes, or Washington statutes in general clearly establishes whether the legislature meant to include only other states of the union or all

non-Washington convictions, including convictions entered by the courts of United States territories, the courts of Native American tribes, and foreign countries," according to the majority opinion.