

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DOUGLAS ALEXANDER RICHARDS,

Appellant.

No. 77647-9-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: SEP 10 2018

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2018 SEP 10 AM 8:45

PER CURIAM — Douglas Richards appeals from the judgment and sentence entered after he pleaded guilty to felony murder in the second degree based on assault. See RCW 9A.32.050(1)(b). Our Supreme Court has held that at the time of the charged crime in April 1980, felony murder could not be predicated on assault. In re Pers. Restraint of Andress, 147 Wn. 2d 602, 616, 56 P.3d 981 (2002). The holding in Andress is retroactive. In re Pers. Restraint of Hinton, 152 Wn. 2d 853, 861, 100 P.3d 801 (2004). The State of Washington concedes that in light of the date of the charged crime, the trial court lacked authority to accept Richards plea or impose sentence. See Hinton, 152 Wn.2d at 861 (defendant cannot agree to plead guilty to nonexistent crime).

We accept the State's concession. Accordingly, the judgment and sentence is vacated and the matter remanded for further proceedings. See Andress, 147 Wn.2d at 616.

Vacated and remanded for further proceedings.

FOR THE COURT:

Delipella, J.
Andress, Jr.
Dryden, J.