

No. 58505-7-II

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

POST SENTENCE REVIEW OF
CHRISTOPHER STEINMEYER, Respondent

POST SENTENCE REVIEW
FROM THE SUPERIOR COURT
OF THURSTON COUNTY
THE HONORABLE JUDGE SHARONDA D. AMAMILO

RESPONSE OF RESPONDENT

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I. ISSUES PRESENTED

- A. Should this Court remand for correction of the judgment and sentence, which incorrectly designated attempted robbery in the first degree as a Class A felony with a lifetime maximum sentence?
- B. Should this Court remand for correction of Mr. Steinmeyer's offender score?
- C. On remand, should the trial court strike the victim penalty assessment of \$500?

II. STATEMENT OF FACTS

The Department of Corrections petitioned this Court pursuant to RCW 9.94A.585(7) for review of the sentence imposed in *State v. Steinmeyer*, Thurston County Superior Court, Cause No. 18-1-02169-34.

The Department noted the crime of attempted robbery in the first degree had been incorrectly designated a Class A felony, with a maximum of a lifetime

sentence, on the judgment and sentence. The DOC requested this Court to remand to the superior court to correct the judgment and sentence: attempted robbery in the first degree is a Class B felony, and the maximum term is ten years. The State responded, conceding the error. This Court appointed counsel to represent Mr. Steinmeyer.

III. ARGUMENT

A. Should This Court Remand With Instructions To Correct The Judgment And Sentence To Accurately Reflect The Attempted Robbery Conviction As A Class B Felony?

Yes. For the reasons stated in the memo by DOC and the State.

Additionally, the warrant of commitment attached to the judgment and sentence incorrectly listed a *second* conviction for attempted robbery first degree, which had been dismissed by the court. The warrant must be

corrected by deleting the crime which had been dismissed. (See Appendix).

B. Should This Court Remand With Instruction for Correction of Mr. Steinmeyer's Offender Score And Resentencing Within The Statutory Term Of Confinement?

Yes.

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. *State v. Kilgore*, 67 Wn.2d 28, 41, 216 P.3d 393 (2009). And where an error in the offender score affects the standard sentencing range, resentencing is required. *Id.* at 41. Here there are significant errors in Mr. Steinmeyer's sentence.

Mr. Steinmeyer's criminal history per RCW 9.94A.525 includes 3 nonviolent felony convictions:

(1) one count of unlawful possession of a firearm second degree (King County No. 17-1-02610-3),
(2) one count of taking a motor vehicle without permission in the second degree (King County No. 17-1-06049-2)
(3) one count of taking a motor vehicle without permission in the second degree (King County No. 18-1-03777-4).
(See Judgment and Sentence p. 3). Thus, the criminal history is calculated as 3 points.

The current convictions are listed as:

(1) attempted robbery in the first degree,
(2) one count of assault in the second degree,
(4) one count of *attempted* unlawful possession of a firearm in the second degree, and
(5) one count of bail jumping. (See Judgment and Sentence p. 1)

The judgment and sentence lists Mr. Steinmeyer's offender score and standard ranges as follows:

2.3 Sentencing Data:

Count	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
1	8		81-108	1 YEAR	93-170	LIFE 50K
2	8		53-70			10yrs 20K
3						
4	N/A		0-364 DAYS			367 SK
5	6		22-29			5y 10K

The court sentenced Mr. Steinmeyer as follows:

108 months on Count 1
70 months on Count 2
364 DAYS months on Count 4
29 months on Count 5

- The confinement time on count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement on count(s) 1 includes 12 months as enhancement for
- Firearm
 - Deadly Weapon
 - VUCSA in a protected zone
 - Manufacture of methamphetamine with a juvenile present.
 - Impaired driving

Actual number of months of total confinement ordered is: 120 MONTHS

RCW 9.94A.525 establishes how to calculate an offender score. Criminal history is added to other current offenses to determine the offender score.

Here, the current attempted first-degree robbery should be scored as a '6':

A criminal history of '3' added to 1 violent current offense and 1 non-violent current offenses yields a score of '6'. For *attempted* robbery first degree robbery, a Class B felony, with a seriousness level of IX, the standard range is 75% of a completed robbery range. RCW 9.94A.030(55); RCW 9.94A.533(2). The standard range, for this conviction is 57.75 to 76.5 months. There is a 12-month deadly weapon enhancement to be included. The maximum sentence for this conviction is 120 months.

Similarly, the count of assault in the second degree should also be scored as a '6'. A criminal history of three, added to 1 violent current offense, and 1 non-violent current offense is '6'. Assault in the second degree is a class B felony with a seriousness level of IV. RCW 9.94A.030(55); RCW 9A.36.021. The standard sentencing

range 33-43 months exclusive of community custody.

RCW 9.94A.510.¹

The bail jumping conviction was based on a Class B felony and should be scored as a '5'. The three prior convictions, added to the two current convictions renders a score of '5'. RCW 9A.76.170(3)(c). With a seriousness level of III and a score of '5' the standard range is 17-22 months. RCW 9.94A.510.

This Court should remand with instructions for resentencing within the correct standard ranges.

C. On Remand, Should The 500 Dollar Victim Penalty Assessment Should Be Stricken?

Yes.

¹ The unlawful possession of a firearm conviction is a Class C felony. However, when the crime is an attempt crime, as labeled here on the judgment and sentence, it becomes a gross misdemeanor. RCW 9A.28.020(3)(d). It is correctly listed as a gross misdemeanor and not included in the offender score. RCW 9.41.040(2).

On July 1, 2023, the Washington State Legislature eliminated the 500-dollar victim assessment for indigent people. RCW 7.68.035(4). The amended statute requires the Court to waive any VPA imposed prior to the effective date of the amendment if the offender is indigent or on the offender's motion. RCW 7.68.035(5)(b). A person does not have the ability to pay if he is indigent as defined in RCW 10.01.160(3).

Here, the trial court found Mr. Steinmeyer indigent in § 2.5, page 4 of Judgment and Sentence. Because the matter will be remanded to the superior court, Mr. Steinmeyer respectfully requests the superior court be instructed to strike the fee.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Steinmeyer respectfully asks the Court to remand for all

corrections and resentencing and to strike the 500-dollar
VPA fee.

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the document exempted from the word count by RAP
18.17; this document is in 14 point Arial.

Respectfully submitted this 30th day of October 2023.

A handwritten signature in black ink that reads "Marie Trombley". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

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