Can An Out of State Conviction Count As A Strike Under California's Three Strike Law?

Cortez Washington was convicted in Illinois in 1998 of aggravated battery with a firearm, a felony, and in the same state, in 1993, of aggravated battery, also a felony. In each Illinois case, the crime is defined as involving personal infliction of "great bodily harm."

In 2012, Mr. Washington faced prosecution in California for assault by means of force likely to produce great bodily injury (Penal Code § 245(a)(1)) and battery causing serious bodily injury (Penal Code § 243(d)). The jury convicted him of such charges and found true three sentencing enhancements for personal infliction of "great bodily injury" as a serious felony under Penal Code § 1192.7(c)(8).

The issue at sentencing of Washington was whether the Illinois convictions, which were defined by Illinois statutes as involving the personal infliction of "great bodily harm" qualified as serious felonies and thus prior striker as sentencing enhancements under California's Three Strikes Law (Penal Code §§ 667(b) to (j) and § 1170.12).

The issue distilled down to whether "great bodily harm" under Illinois law qualified as "great bodily injury" Under California law. If it did, the Illinois convictions were considered strike offenses.

The San Diego County judge hearing the case at the trial court level decided that the Illinois convictions did count as two prior strikes under California's Three Striker Law. He then sentenced Washington to prison for an indeterminate term of 41 years to life.

Mr. Washington then appealed to the Fourth Appellate District. The Fourth Appellate District, in *People v. Cortez Lamon Washington* (2012 DJDAR 15100), considered Washington's appeal and denied it. The appellate court noted that the record of his convictions clearly established that Washington was the direct cause of his victim's injury. Further, the court found that the elements of aggravated battery in Illinois disclosed the element of "great bodily harm" is synonymous with "great bodily injury" under California law.

California law defines a serious felony as "any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice…" (Penal Code § 1192.7(c)(8)). To "personally inflict" an injury, the defendant must directly cause the injury and not just proximately cause it. *People v. Rodriquez* (1999) 69 Cal.App. 4th 341, 347.

Here, the appellate court noted that the Illinois complaint on which he was convicted alleged he "stuck Shara Price in the face." This qualified as "personally inflicting" and thus was a serious felony and strike under California law.

Washington further argued that "great bodily harm" (as defined by Illinois law) involved lesser injuries than "great bodily harm" as defined by California Law. The appeals court noted that "great bodily harm" in Illinois referred to greater injuries than mere lacerations, bruises or abrasions. In California, "great bodily harm" is defined as "a significant or substantial bodily injury." Such injuries, under California law, can be lacerations, bruises or abrasions if in

sufficient severity or quantity. In other words, the standard in Illinois is higher, so a conviction for "great bodily harm" in Illinois necessarily satisfies California's standard of "great bodily injury." In other words, Washington was wrong.

As such, the Forth Appellate District affirmed the trial court. The forty-one years to life prison sentence was not reversed.

This short article was written by Greg Hill. He is an experienced criminal defense attorney in Torrance, California. He is a U.S. Naval Academy graduate (B.S., 1987), Boston University graduate (M.B.A., 1994) and Loyola Law School graduate (J.D., 1998). Greg Hill & Associates represents clients in Torrance, Long Beach and the surrounding areas in DUI, as well as other crimes such as domestic violence, drug offenses, theft offenses, sex offenses and restraining orders, among other crimes. Visit the firm's website at http://www.greghillassociates.com or the firm's Facebook page at http://www.facebook.com/pages/greg-hill-associates/198954460153651.