SUPREME COURT OF THE STATE OF WASHINGTON

Supreme Court Case No. 101120-2

Court of Appeals Division II, Case no. 55721-5-II

CORY TAYLOR PRATT,

Appellant,

v.

STATE OF WASHINGTON,

Respondent,

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY
CAUSE NO. 16-1-02135-2

PETITION FOR DISCRETIONARY REVIEW

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A. REQUEST FOR REVIEW

Defendant / Petitioner, Cory Taylor Pratt, through counsel, John C. Terry, petitions this Court to grant discretionary review of the decision by The Court of Appeals of the State of Washington – Division II filed in State of Washington v. Cory Taylor Pratt, Case no. 55721-5-II, filed June 28, 2022.

B. ISSUES

I. Does the Court of Appeals decision referenced above regarding Pratt's eligibility for the special sex offender sentencing alternative (hereinafter SSOSA) conflict with an opinion of the Supreme Court? Yes. The Court of Appeals did not properly apply the new facts presented at re-sentencing to the Supreme Court's analysis of SSOSA eligibility in *State v. Pratt*[1].

II. Does the Court of Appeals decision involve a significant question of law under the United States Constitution, to wit: Equal Protection? Yes. The issue is in regards to equal protection and the Court of

[1] *State v. Pratt*, 196 Wash.2d 849, 479 P.3d 680 (Wash. 2021).

Appeals incorrectly applied rational basis scrutiny to the entire SSOSA statute rather than to the limited portion of the statute that actually denies equal protection.

III. Does the Court of Appeals decision regarding Pratt's argument that he is entitled to credit for time served on community custody while pending appeal without bail conflict with another Court of Appeals opinion? Yes. Mr. Pratt was denied bail pending appeal, and his time on community custody constitutes "imprisonment" under RCW 9.95.062(3) and *State v. Slattum*[2]. The Court of Appeals' citation to *State v. Miller*[3] in an attempt to "distinguish" Pratt's situation from *Slattum* is misplaced because *Miller* deals with SSOSA revocation, whereas Pratt was never revoked from SSOSA, rendering *Miller* inapplicable.

[2] *State v. Slattum*, 173 Wn.App. 640, 295 P.3d 788 (Div. 1 2013).

[3] *State v. Miller*, 159 Wn.App. 911, 925-26, 247 P.3d 457 (2011).

C. STATEMENT OF CASE

This case has previously been appealed to both the Court of Appeals – Division II, and to the Washington Supreme Court. This is an appeal of the resentencing. For consistency, the summary of the facts from this Supreme Court's first opinion in this pair of cases are quoted as follows for factual consistency (with cites to the prior appeal's VRP omitted):

> In July 2016, Pratt and his daughter attended his cousin's birthday party. Several young girls spent the night after the party, including M.B., the 10-year-old daughter of Pratt's aunt's stepsister. Pratt slept in a backyard tent with the girls. The next day, M.B. told her grandmother and parents that Pratt had touched her in the tent. M.B. testified that Pratt touched her arm, her lower back, and rubbed her crotch. M.B.'s mother contacted police. In October 2016, Pratt was charged with one count of child molestation in the first degree. After a two-day bench trial, Pratt was found guilty of the charge.
>
> Pratt requested a SSOSA sentence pursuant to RCW 9.94A.670. The State objected, arguing that Pratt was ineligible because he did not have an "established relationship" with M.B. as required by the statute:
>
> > Here, [Pratt] had only met this victim a few hours before the actual crime took place ... maybe just over 12 hours after he had met her. So there clearly is not an established relationship.
>
> Pratt countered that he was eligible for SSOSA because his connection with M.B. was "easily established" through "familial ties." Pratt elaborated:

> [T]his is not a situation where he just showed up at a bus stop to grab the kid or abducted the kid, and that's the sole connection. I would argue that the sleepover itself is sufficient to satisfy the statute in that he was there as, you know, a helping adult at this party with his own daughter there, so there's additional connection to this child other than the crime.

The [trial] court agreed with Pratt:

> [I]t's very close, tenuous, but there is some connection. They may not have really met, but there is a connection. They knew—he knew of the child. He knew of the parents. There is some time there spent. This was not brought together where he sought out the victim for the purposes of committing the act.

The court sentenced Pratt according to SSOSA, reducing his sentence from 57 months of confinement to 12 months.

The State appealed Pratt's sentence. In a published split opinion, the Court of Appeals reversed the trial court, concluding that Pratt was ineligible for SSOSA. *State v. Pratt*, 11 Wash. App. 2d 450, 454 P.3d 875 (2019). Pratt filed a petition for review, which [The Supreme Court] granted. *State v. Pratt*, 195 Wash.2d 1023, 464 P.3d 231 (2020).

State v. Pratt, 196 Wash.2d at 851-852.

On remand, the Court held a resentencing hearing and further permitted an evidentiary hearing where additional testimony was taken regarding Pratt's relationship with, or

connection to the victim M.B. The appellant's brief summarized said additional testimony as follows:

Testimony of Troy Howington

Pratt's cousin Troy Howington testified that he was Pratt's uncle, that he and Pratt were close in age (approx. 3 years) and that they had a close relationship. VRP from hearing 04-06-2021, page 8-9. Howington testified that "[y]ou know, he was just always by my side a lot of the time." VRP from hearing 04-06-2021 at 8-9. He further testified that M.B. was his wife's niece, that he had three children from that marriage, some of which were close in age to M.B. VRP from hearing 04-06-2021 at 9-10. He testified that Pratt had a good relationship with his children, and that Pratt's daughter was also close with his three children. VRP from hearing 04-06-2021 at 10-11. Troy Howington also testified that Pratt had attended several family functions where M.B. and M.B.'s family were present, as far back as 2006 or 2007. VRP from hearing 04-06-2021 at 11. Said functions included a "get-together" at M.B.'s grandparents' home, a Fourth of July celebration, Thanksgiving, spring break, and birthday parties for kids. He testified that Pratt was social with all in attendance, including the children. VRP from hearing 04-06-2021 at 10-14. He further testified that when M.B. was very young, Pratt accompanied Howington to M.B.'s parents' home in 2008 or 2009. VRP from hearing 04-06-2021 at 13. VRP from hearing 04-06-2021 at 12. He recalled Pratt playing volleyball at a celebration at Frenchman's Bar beach park with M.B.'s father. VRP from hearing 04-06-2021 at 14-15. He also testified that Pratt also attended his wedding in 2014, and that M.B. and her family were there. VRP from hearing 04-06-2021 at 15. He testified that a series of photographs, which we admitted as evidence, showed Pratt holding his daughter and standing next to M.B. in the food line of his wedding. VRP from hearing 04-06-2021 at 14-19.

Testimony of Pamela Howington

Pratt's grandmother Pamela Howington also testified. VRP from hearing 04-06-2021 at 23. She testified that she was

Pratt's grandmother, through her husband's daughter (Pratt's mother). VRP from hearing 04-06-2021 at 23-24. She also testified that she was Troy Howington's mother, and thus related by marriage to M.B.'s family. VRP from hearing 04-06-2021 at 23-24. She testified that she had hosted events at her home, other than the sleepover in question, where Pratt was in attendance and so was M.B. and her family, including birthdays and a Thanksgiving. VRP from hearing 04-06-2021 at 24-26. She also testified about a function at Frenchman's Bar beach park where Pratt and M.B. and M.B.'s family were present. VRP from hearing 04-06-2021 at 25. She also confirmed that all were present at Troy Howington's wedding, where M.B. and her family were also present. VRP from hearing 04-06-2021 at 26.

Testimony of Cory Pratt

Cory Pratt testified that he knew M.B.'s parents by first name. VRP from hearing 04-06-2021 at 29. He said that if he saw them out in public, he would definitely say hello. VRP from hearing 04-06-2021 at 29. He said that he wasn't super close with M.B. and her family but that he had met her on previous occasions, including going to her home to accompany Troy Howington to visit with M.B.'s family to show them Troy Howington's newborn, as well as all the above-mentioned family gatherings. VRP from hearing 04-06-2021 at 29-36. Pratt testified knowing M.B.'s grandfather fairly well, and having attended various family functions at his home, where he believes that M.B. attended some of those functions. VRP from hearing 04-06-2021 at 32. He further clarified that his statement at trial about having no prior interactions with M.B; Pratt was asked to clarify his testimony from the trial:

> Question: "Prior to the girls going to sleep on the first day of the sleepover you had practically no interaction with M.B.?"
>
> Pratt's testimony from trial: "Right, right."

Pratt clarified, testifying,

> So I'm thinking I was more referring to like the party itself. M.B. was one of the older girls at the party. I was helping some of the older -- or younger children with the party things going on, roasting marshmallows and everything else that we are doing.
>
> M.B. was kind of self-sufficient and didn't really need much help roasting a marshmallow or getting something to eat from the kitchen or whatever. So in reference to the party, there wasn't a whole lot of interaction because she didn't really -- she didn't need help from anybody. She was doing her own thing.
>
> VRP from hearing 04-06-2021 at 30-31.[4]

Trial Court's Findings and Resentencing

At resentencing, the trial court found Pratt was statutorily ineligible for SSOSA based on the Supreme Court's opinion in *State v. Pratt*, 196 Wash.2d 849, 479 P.3d 680 (Wash. 2021). Pratt was then sentenced to 57 months.

Pratt further argued that the portion of the SSOSA that excludes offenders who do not fit the narrow criteria of the statute violates the equal protection clause. The trial court rejected the argument. VRP from hearing 04-06-2021 at 61-62.

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[4]It should be noted that the prosecution sought an aggravator against Pratt for abusing his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime. *See* VRP from 04-06-2021 at 49.

Lastly, immediately following trial and verdict, Pratt was taken into custody and served one year in jail, followed by community custody, up until sentencing, when he argued that if the court resentenced him to a non-SSOSA sentence, that he should receive credit for all "imprisonment", which included both the jail and the community custody supervision, pursuant to RCW 9.95.062(3) and *State v. Slattum*, 173 Wn.App. 640, 295 P.3d 788 (Div. 1 2013). VRP from hearing 04-06-2021 at 68-69. Specifically, Pratt argued that he should not only receive credit for the time he spent in jail, which was 2 days prior to trial, and the balance of 365 days (one year) he spent after trial, but that he should also receive credit for the time he spent on community custody pending appeal. VRP from hearing 04-06-2021 at 68-69. The trial court also rejected this argument. VRP from hearing 04-06-2021 at 70.

Pratt appealed to the Court of Appeals – Division II. Pratt's appeal was denied on all grounds. A copy of the Court of Appeal's opinion on Pratt's appeal following re-sentencing is attached hereto as Appendix A. *State v. Pratt*, case no. 55721-5-II (Court of Appeals – Div. II; 2022).

Pratt now petitions this Supreme Court for discretionary review.

D. ARGUMENT FOR REVIEW

I. Eligibility for SSOSA

The Court of Appeals opinion is in conflict with this Court's January 28, 2021, decision filed as to the same facts. *State v. Pratt*, 196 Wash.2d 849, 479 P.3d 680 (Wash. 2021). This Supreme Court therein concluded that:

> The legislature intended SSOSA's purpose to be a narrow tool in circumstances where a victim would be reluctant to report abuse and unwilling to participate in prosecution without the promise of a shortened sentence and treatment for an offender. The ongoing involvement of a victim in his or her abuser's supervision and treatment makes sense only where the legislature believed a victim would be personally invested in their abuser's confinement and rehabilitation. The legislature seems to have used the word "connection" in RCW 9.94A.670(2)(e) to mean two people who have a direct connection between one another, rather than mere acquaintances who happen to share any number of overlapping colleagues, friends, or relatives. SSOSA is limited to circumstances in which abuse is likely to go underreported, such as where an abuser has a protective, caretaking, or intimate association with their victim.

Pratt, 196 Wash.2d at 857-858. At resentencing, additional evidence was presented, without any rebuttal, that Mr. Pratt indeed had a relationship with M.B. that long predated the

molestation event, that Pratt and M.B. Pratt and M.B. were relatives by marriage and had had an extended family relationship (through Pratt's uncle Troy Howington) as well as multiple instances of association and family functions. Troy Howington was M.B.'s uncle, and Pratt was his close nephew. In fact, Pratt would have first met M.B when she was a much younger child. They continued to mutually participate in various family functions, including birthday parties, Thanksgiving, family get-togethers at Frenchman's Bar (a local beach), and a wedding. Clearly, Pratt and M.B. were not strangers. Clearly, Pratt and M.B. had an established relationship beyond being connected by the facts and surrounding circumstances of this crime. In fact, Pratt was even charged of having violated his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime. The facts of Pratt's case clearly fall into a category of cases where the crime could go unreported due to the established relationship between Pratt and M.B.

The Court of Appeals did not use the proper test set forth by the Supreme Court.

> SSOSA is limited to circumstances in which abuse is likely to go underreported, such as where an abuser has a protective, caretaking, or intimate association with their victim.

Pratt, 196 Wash.2d at 858.

The examples following the phrase "such as where" is a non-exhaustive list. Those examples include "protective, caretaking, or intimate association". *Id.* Those examples are not the test. Those are merely examples of what would constitute a qualifying relationship. The test is *whether the established relationship is the type of relationship where abuse could go underreported*. Clearly, a molestation event involving a relative through marriage with whom a victim has spent multiple holidays and special occasions, and was currently spending a special occasion, is the type of circumstance where the abuse is indeed likely to go "underreported".

The Court of Appeals decision does not seem to reference the new evidence, and instead summarily states the new evidence does not change the conclusion without further analysis. *Pratt*, case no. 55721-5-II at 5 (see Appendix A). The Court of Appeals further denies the appeal without doing the proper analysis set forth by this Supreme Court's opinion

outlined above, which is whether the established relationship is the type of relationship where abuse could go underreported. *Id.* Defendant therefore requests that this Court accept review on this issue because the Court of Appeals opinion conflicts with this Court's opinion in applying the additional facts presented at re-sentencing to this Supreme Court's decision in *Pratt*, 196 Wash.2d 849.

II. Equal Protection

The Court of Appeals opinion herein misapplies and incorrectly interprets constitutional law regarding equal protection and rational basis scrutiny. *Pratt*, case no. 55721-5-II at 6-8 (see Appendix A). Mr. Pratt argues that the denial of a sentencing alternative to some individuals while granting it to other individuals violates equal protection under the Fourteenth Amendment, and under Article I, section 12 of the Washington Constitution. Because there is no suspect class in such denial of equal protection, the standard is rational basis scrutiny. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006), cited by the Court of Appeals in *Pratt,* case no. 55721-5-II at 6. Pratt argues that the law allowing SSOSA only to abusers who commit

sexual abuse in circumstances in which abuse is likely to go underreported, such as where an abuser has a protective, caretaking, or intimate association with their victim, has no rational basis, and in fact leads to an absurd result, which is the unwarranted leniency of objectively worse criminals; criminals who abuse persons with whom they are essentially in a position of trust or confidence (which is generally speaking an aggravating circumstance).

Legislation withstands rational basis if the law is rationally related to a legitimate govermnent interest. *Seeley v. State*, 132 Wn.2d 776, 795, 940 P.2d 604 (1997), cited in *Pratt,* case no. 55721-5-II at 7.

United States Department of Agriculture v. Moreno, 413 US 528 (1973) is instructive. In that case, the Food Stamp Act of 1964 denied food stamp benefits to any household containing an individual who is unrelated to any other household member. *Id*. at 529. Because no suspect class was identified, the test was under rational basis scrutiny. While the program as a whole advanced the legislative agenda of alleviating hunger, the limited provision of excluding households with unrelated

persons did not, and thus that portion of the act was deemed to not pass rational basis scrutiny.

Likewise in the current case, it is a type of relationship that is being used to deny a governmental benefit. The SSOSA program was created to encourage the reporting of abuse in situations where abuse could go underreported. The exclusion of certain defendants from the program only serves to deny equal protection and it does not serve to further said governmental interest. The provision actually leads to an absurd result (the lenient prosecution of objectively worse criminals; criminals who exploit those to whom they are close or to whom they are a fiduciary). Further, should this absurd provision be removed, it is likely that even more abuse would be reported because any victim's hesitancy to report because of feelings of mercy, fear of trial, guilt, shame, or the plethora of other reasons persons do not report crimes could be overcome if such a victim (regardless of their relationship to the defendant) were to be educated as to the SSOSA program.

The Court of Appeals, by applying rational basis scrutiny to the program as a whole, fails to see the absurdness of the

exclusion. The Court of Appeals should have applied rational basis scrutiny to the exclusion, as the *Moreno* court did. Such exclusion is what is unconstitutional, not the program as a whole. Mr. Pratt requests that this Court grant review so that this constitutional issue may be fully briefed and argued to the Court.

III. Credit for Time Served

The Court of Appeals opinion herein is conflict *State v. Slattum, 173 Wn.App. 640, 651, 295 P.3d 788 (2013)*, a Division 1 case addressing the term "imprisonment", when not accompanied by "in the county jail" or "in the state penitentiary". Mr. Pratt argues that RCW 9.95.062(3) grants him credit for the time he served "imprisoned" while in community custody following the year of imprisonment at the county jail. RCW 9.95.062(3) states:

> In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed.

The word "imprisoned" or "imprisonment" requires definition and is not defined in said statute. In *State v. Slattum*, 173 Wn.App. 640, 295 P.3d 788 (Div. 1 2013), the court was tasked with determining the meaning of "imprisonment". Slattum was serving an indeterminate sentence. The Court made certain observations regarding indeterminate sentences.

> We also note that offenders serving indeterminate sentences, like Slattum, are subject to the provisions in chapter 9.95 RCW that govern indeterminate sentences. These provisions demonstrate the restrictive nature of community custody. They define "community custody" as "that portion of an offender's sentence subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to community safety, that is served under supervision in the community, and which may be modified or revoked for violations of release conditions." RCW 9.95.0001(2). Under an indeterminate sentence, any violation of community custody conditions subjects the offender to arrest, detention, and further sanctions, including possible revocation of community custody and return to jail. RCW 9.94A.507(6)(b); RCW 9.95.435(1)-(2); RCW 9.95.425(1). The ISRB may "transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody...." RCW 9.95.435(1).

Slattum, at 795.

Further, the *Slattum* Court found that the word "imprisonment" as used in RCW 10.73.170 did not include a

particular location, such as commonplace in other statutes, where the word “imprisonment” is accompanied by a peculiar location such as jail or prison. *Slattum*, at 795-796.[5] The *Slattum* Court further reasoned that the word was ambiguous, and the rule of lenity applied, which dictates a statutory construction most favorable to the defendant. *Slattum*, 173 Wn.App. at 790. The Court therefore found that the word "imprisonment" in that statute included community custody. *Id* at 790, 797-800.

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[5] RCW 3.66.060, which provides for imprisonment … "*in the county or city jail*" or as in RCW 9.92.090, where the word is accompanied by "*in a state correctional facility*" [emphasis added]. By further example, RCW 74.08.331(1) states that persons convicted of welfare fraud "shall be punished by imprisonment *in a state correctional facility* for not more than fifteen years" [emphasis added]. RCW 29A.04.079 states that "infamous crimes" are crimes that are punishable by "death *in the state penitentiary* or imprisonment *in a state correctional facility*” [emphasis added]. RCW 9.98.010(1), which provides for the right to request disposition of other pending charges, states "[w]henever a person has entered upon a term of imprisonment *in a penal or correctional institution of this state* ...." [emphasis added]. Further, RCW 9.100.010, art. III(a), which is the Interstate Agreement on Detainers, states that a person who "has entered upon a term of imprisonment *in a penal or correctional institution* of a party state" may request final disposition of criminal charges [emphasis added]. *Slattum*, at 795-796.

Here, the word "imprisoned" in RCW 9.95.062(3) is at issue. The statute ordering credit for time served to defendants imprisoned while awaiting their appeal and then subsequently resentenced, also does not specify the peculiar location for said imprisonment for which Defendant should receive credit. Moreover, RCW 10.73, the very statute *Slattum* discussed, governs criminal appeals, which is applicable here because Pratt has been serving his sentence pending an appeal. Pratt's request for bail pending appeal under RCW 10.73.040 was denied because of RCW 9.95.062 (the indeterminate sentence statute) mandates no bail pending appeal. Thus, Pratt's time in community custody was pursuant to an executed sentence and he has indeed been "imprisoned" ever since the verdict herein, including his time in community custody.

Under the reasoning of *Slattum*, Pratt has been subject to the provisions in chapter 9.95 RCW that govern indeterminate sentences; has been subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to community safety, that is served under supervision in the

community, and which may be modified or revoked for violations of release conditions; has been subject to any violation of his community custody conditions subjecting him to arrest, detention, and further sanctions, including possible revocation of community custody and return to jail. Pratt's situation is indistinguishable from *Slattum*.

The Court of Appeals applying *Miller* was erroneous. *Miller* does not deal with situations of remand following appeal, but rather with revocation of the SSOSA, which is an entirely different analysis with totally different legislative intent. See *State v. Miller*, supra. "Where a defendant violates the conditions of his suspended sentence granted pursuant to the special sex offender sentencing alternative, . . . a trial court may properly revoke the SSOSA, reinstate the original sentence, and include an additional term of community custody." *Miller* at 913. As outlined above, Pratt was not revoked from SSOSA and thus *Miller* is inapplicable.

E. CONCLUSION

Pratt requests that this Court grant review, finding that 1) the Court of Appeals opinion does not correctly apply the new

evidence to this Supreme Court's opinion in the earlier *Pratt*; 2) that the Court of Appeals opinion does not properly apply rational basis scrutiny; and 3) that the Court of Appeals incorrectly relies on *Miller* over *Slattum* and thereby deprives Pratt of credit for the time he served pending appeal in community custody.

Therefore, Pratt requests this Court grant discretionary review on the issues presented.

CERTIFICATE OF COMPLIANCE - RAP 18.17(b)

I hereby certify that this document contains 4082 words, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images, which is less than the maximum allowed under RAP 18.17(c).

Respectfully certified and submitted this 27 day of July, 2022:

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APPENDIX A

Court of Appeals Decision

State v. Pratt, Case no. *55721-5-II*

Filed
Washington State
Court of Appeals
Division Two

June 28, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CORY TAYLOR PRATT, Appellant.	No. 55721-5-II UNPUBLISHED OPINION

WORSWICK, J. — Cory Pratt appeals his sentence, arguing (1) the trial court erred in finding him ineligible for Special Sex Offender Sentencing Alternative (SSOSA), (2) the SSOSA requirement that the defendant must have a close relationship with the victim violates the equal protection clause, and (3) the trial court erred in denying Pratt credit toward confinement for time served in community custody.

We disagree with all of Pratt's arguments and affirm the trial court.

FACTS

I. BACKGROUND AND FIRST SENTENCING

Pratt was found guilty of child molestation in the first degree after a bench trial, and the court sentenced him to a SSOSA. The State appealed Pratt's SSOSA sentence arguing that he did not have the required statutory connection with the victim. *State v. Pratt*, 11 Wn. App. 2d 450, 452, 454 P.3d 875 (2019). We reversed the sentence, and our Supreme Court agreed. *Pratt*, 11 Wn. App. 2d at 453; *State v. Pratt*, 196 Wn.2d 849, 858-59, 479 P.3d 680 (2021). The Supreme Court summarized the facts as follows:

> In July 2016, Pratt and his daughter attended his cousin's birthday party. Several young girls spent the night after the party, including M.B., the 10-year-old daughter of Pratt's aunt's stepsister. Pratt slept in a backyard tent with the girls. The next day, M.B. told her grandmother and parents that Pratt had touched her in the tent. M.B. testified that Pratt touched her arm, her lower back, and rubbed her crotch. M.B.'s mother contacted police. In October 2016, Pratt was charged with one count of child molestation in the first degree. After a two-day bench trial, Pratt was found guilty of the charge.
>
> Pratt requested a SSOSA sentence pursuant to RCW 9.94A.670.[1] The State objected, arguing that Pratt was ineligible because he did not have an "established relationship" with M.B. as required by the statute:
>
> > Here, [Pratt] had only met this victim a few hours before the actual crime took place . . . maybe just over 12 hours after he had met her.
> >
> > So there clearly is not an established relationship.

Pratt, 196 Wn.2d at 851 (alterations in original) (citations omitted).

At trial, the State introduced evidence that MB told an investigator that she had never met Pratt or Pratt's daughter until the party. The State also introduced evidence that Pratt told the investigator that he may have met MB's family years ago because his aunt and uncle have had "get-togethers" that included MB's parents, but he could not say with certainty if their children had also attended. 1 Verbatim Report of Proceedings (VRP) (Oct. 2, 2017) at 37. Pratt explained that he did not interact with MB at the party and that the most interaction he had with MB was to hand her a skewer with marshmallows on it. When asked if he had any conversations with MB, Pratt replied "[n]ot really" but on the day after the party, she sat near him and he thinks he asked her name. 1 VRP (Oct. 2, 2017) at 37.

[1] An offender is eligible for SSOSA if he can show "an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime." RCW 9.94A.670(2)(e).

Several witnesses also testified to the relationship between MB and Pratt. Pratt's aunt said MB met Pratt but she did not know when. She added that she saw Pratt often because he always received invitations to parties. However, she did not know if Pratt and MB had "really talked to each other ever." 1 VRP (Oct. 2 2017) at 54. Pratt's aunt told the court that MB's parents may have said "hi and bye" to Pratt but otherwise she did not think they ever had a conversation with each other. 1 VRP (Oct. 2 2017) at 54.

MB's mother testified that she did not know Pratt, never interacted with him, never had a conversation with him, and never met him. And, she further stated that they had never been at a gathering at the same time, and that Pratt had never met her husband. MB's father also testified that he had never had any interaction with Pratt and that neither he nor MB had ever met or spoken to Pratt.

Pratt testified that he remembered meeting MB's parents at a specific party before the alleged incident, although he did not remember meeting MB before the sleepover. He also testified that he knew MB's first name but not her last.

The trial court concluded that Pratt established a relationship with MB sufficient to satisfy the statute and sentenced Pratt to a SSOSA. The State appealed Pratt's sentence.

We reversed the trial court, concluding that Pratt was ineligible for SSOSA because he did not have an established relationship with, or connection to, MB. *Pratt*, 11 Wn. App. 2d at 462. Our Supreme Court affirmed our decision and remanded to the trial court for resentencing. *Pratt*, 196 Wn.2d at 851.

II. RESENTENCING, ADDITIONAL EVIDENCE, AND CONFINEMENT

The trial court held a resentencing hearing and took evidence to determine whether Pratt had a connection or relationship with MB. At the hearing, Pratt presented testimony from three witnesses to establish his relationship with MB: Troy Howington, Pamela Howington, and himself.

Troy Howington, Pratt's uncle, testified that Pratt and MB had both been present at family functions around 2006 and 2007.[2] He testified that Pratt had been to MB's parents' house at least twice for family events. He also recalled that Pratt and MB were both present during family events, weddings, Fourth of July celebrations, spring break, Thanksgiving, and birthday parties. Some of these events took place at MB's grandmother's house.

Pamela Howington, MB's grandmother and Troy Howington's mother, testified that Pratt, MB, and MB's parents attended many family gatherings together on at least three occasions. And Pratt testified that he knew MB's grandmother and her parents. None of the witnesses testified as to conversations between Pratt and MB, or any other interaction between the two prior to the incident.

The trial court did not enter written findings of fact, but stated that the relationship between MB and Pratt was that of "mere acquaintance[s]," and that they have had "brief passings." 1 VRP (Apr. 6, 2021) at 53. Thus, it concluded that Pratt was ineligible for SSOSA, and it imposed an indeterminate life sentence with a standard range minimum sentence of 57 months.

[2] MB was one year old in 2006.

Prior to the verdict in 2016, Pratt was in jail for 2 days before posting bail. After the verdict in 2017, Pratt was taken into custody and his request for bail pending appeal was denied. Pratt served one year in jail, then remained on community custody up until his resentencing hearing. At the resentencing hearing, Pratt argued that he should receive credit for time served to include not only the time he spent in jail, but the time he spent on community custody, for a total of 1,276 days.

Although the trial court stated that Pratt should not receive credit for time served on community custody, the court did not calculate credit for time served on the judgment and sentence. The court ultimately asked the prosecutor if he wanted the court to strike the 361 days credit for times served and "just have [Department of corrections] calculate?" 1 VRP (Apr. 6, 2021) at 82. Both the prosecutor and Pratt's counsel agreed. The judgment and sentence reads:

> (d) ***Credit for Time Served:*** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

Clerk's Papers (Mar. 28, 2018) at 104.

Pratt appeals his sentence.

ANALYSIS

I. SSOSA ELIGIBILITY

Pratt argues that the trial court erred in finding him ineligible for SSOSA. We disagree.

Once a defendant has been convicted of a sex offense, the trial court has the discretion to impose a SSOSA sentence if he meets the statutory criteria. *Pratt*, 196 Wn.2d at 862; RCW 9.94A.670. A defendant is eligible for SSOSA if he can show "an established relationship with, or connection to, the victim such that the sole connection with the victim was not the

commission of the crime." RCW 9.94A.670(2)(e). An established relationship or connection requires that the defendant and victim have "a direct connection between one another, rather than mere acquaintances who happen to share any number of overlapping colleagues, friends, or relatives." *Pratt*, 196 Wn.2d at 858.

This is because SSOSA's purpose is to apply in "circumstances where a victim would be reluctant to report abuse and unwilling to participate in prosecution without the promise of a shortened sentence and treatment for an offender." *Pratt*, 196 Wn.2d at 857-58. Thus, "SSOSA is limited to circumstances in which abuse is likely to go underreported, such as where an abuser has a protective, caretaking, or intimate association with their victim." *Pratt*, 196 Wn.2d at 858. SSOSA eligibility is a question of law we review de novo. *State v. Landsiedel*, 165 Wn. App. 886, 889, 269 P.3d 347 (2012).

Here, our Supreme Court concluded that Pratt did not have the required relationship or connection with MB so as to make him eligible for SSOSA. *Pratt*, 196 Wn.2d at 858-59. Nothing in the additional evidence adduced at the resentencing hearing changes this conclusion. MB told an investigator that she had never met Pratt or his daughter until the day of the incident nor has she ever had a conversation with him. Witnesses testified that Pratt and MB attended multiple events and gatherings together, but none of them testified as to any sort of relationship or direct connection between MB and Pratt. Pratt knew MB's parents and had been to MB's grandmother's house on a few occasions. None of the testimony established that MB and Pratt were more than acquaintances who happen to share overlapping friends and relatives. The evidence introduced simply reaffirmed that Pratt and MB have nothing more than family in

common and brief passings.[3] Thus, Pratt is ineligible for a SSOSA sentence because he failed to establish a connection or relationship with MB.

II. EQUAL PROTECTION

Pratt argues that the SSOSA eligibility requirement for an "established relationship with, or connection to," the victim violates the equal protection clause. Br. of Appellant at 13. We /s disagree.

Under the Fourteenth Amendment, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Article I, section 12 of the Washington Constitution states: "[n]o law shall be passed granting to any citizen, class of citizens . . . privileges or immunities which upon the same terms shall not equally belong to all citizens."

The first step to an equal protection analysis requires the party challenging the legislation to identify that he is a member of a cognizable class, and that he received disparate treatment because of his membership in that class. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006).

The second step is determining which standard of review applies. *Osman*, 157 Wn.2d at 484. The standard of review depends on the type of classification or right implicated. *State v. Smith*, 117 Wn.2d 263, 277, 814 P.2d 652 (1991). If the state action does not threaten a

[3] Pratt misinterprets the requirement of a relationship or connection with the victim to include only "protective, caretaking, or intimate associations" relationships with the victim. Br. of Appellant at 12. He argues that the requirement may deprive an extended family member from the benefits of SSOSA. Yet, our Supreme Court provided such relationships as examples of typically close relationships where abuse may go unreported, not as an exhaustive list of which relationships qualify. *Pratt*, 196 Wn.2d at 858. Instead, our Supreme Court's analysis relied on whether the victim had a direct relationship with the abuser. *Pratt*, 196 Wn.2d at 858.

fundamental right, or if the individual is not a member of a suspect or quasi-suspect class,[4] courts apply a rational basis test. *Osman*, 157 Wn.2d at 484.

Legislation withstands rational basis if the law is rationally related to a legitimate government interest. *Seeley v. State*, 132 Wn.2d 776, 795, 940 P.2d 604 (1997). Legislative acts are presumed constitutional and we will not find otherwise unless the defendant proves so beyond a reasonable doubt. *Seeley*, 132 Wn.2d at 795. "The rational basis test requires only that the means employed by the statute be rationally related to legitimate state goals, and not that the means be the best way of achieving that goal." *Seeley*, 132 Wn.2d at 795.

Although Pratt fails to establish a cognizable class, he belongs to the class of persons convicted of a sexual offense without having an established relationship or connection to the victim. Because this is neither a suspect nor quasi-suspect class, and the legislation does not implicate a fundamental right, we apply rational basis review. *Seeley*, 132 Wn.2d at 795.

Here, RCW 9.94A.670(2)(e) excludes defendants without an established relationship to the victim because the purpose of SSOSA is to encourage victims who would be reluctant to report abuse and unwilling to participate without the promise of a lenient sentence and treatment for the offender. *Pratt*, 196 Wn.2d at 857-58. Thus, SSOSA was designed to incentivize the reporting of abusers despite these close relationships. H.B. REP. ON ENGROSSED SUBSTITUTE H.B. 2400, at 8, 58th Leg., Reg. Sess. (Wash. 2004).

[4] Suspect classifications are race, alienage, and national origin. *Am. Legion Post #149 v. Dep't of Health*, 164 Wn.2d 570, 608, 192 P.3d 306 (2008). And, quasi-suspect classifications are those based on gender or illegitimacy. *City of Richland v. Michel*, 89 Wn. App. 764, 771, 950 P.2d 10 (1998).

The legislation's requirement that the defendant have an established relationship with the victim is rationally related to a legitimate governmental interest—prosecuting and properly treating those who commit sex crimes. Without such a requirement, many sex crimes may go unreported. Thus, the legislation is constitutional because it is rationally related to a legitimate governmental interest.[5]

III. CREDIT FOR TIME SERVED

Pratt argues that under RCW 9.95.062(3), he is entitled to credit toward confinement for time served on community custody. He argues that the term "imprisoned" in RCW 9.95.062(3) is ambiguous and, under the rule of lenity, must include lesser forms of restraint, including community custody. We disagree.

This case presents a unique question: Whether a defendant who was on community custody under a SSOSA while his case was on appeal is entitled to credit for time served on community custody after his SSOSA sentence is reversed. The parties dispute the meaning of the term "imprisonment," which is not defined in the relevant statute. Resolution of this issue is a matter of statutory interpretation.

We review questions of statutory interpretation de novo. *State v. Gray*, 174 Wn.2d 920, 926, 280 P.3d 1110 (2012). The fundamental objective of statutory interpretation is to ascertain and carry out the legislature's intent. *Gray*, 174 Wn.2d at 926. Statutory interpretation begins

[5] This conclusion is further bolstered by our unpublished cases holding that RCW 9.94A.670(2)(e) does not violate equal protection. *See e.g., In re Pers. Restraint of Sickels*, 14 Wn. App. 2d 51, 74, 469 P.3d 322 (2020) (unpublished portion) (holding that the legislature had a rational basis for enacting RCW 9.94A.670(2)(e)); *State v. Vance*, 9 Wn. App. 2d 357, 367, 444 P.3d 1214 (2019) (unpublished portion) (holding that RCW 9.94A.670(2)(e) survives rational basis review).

with the statute's plain meaning. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). We discern plain meaning "from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009).

If a statute's meaning is plain on its face, we give effect to that plain meaning. *State v.* Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). Only if statutory language is ambiguous do we resort to aids of construction, including legislative history. *State v. Armendariz*, 160 Wn.2d 106, 110-11, 156 P.3d 201 (2007). A provision is ambiguous if it is subject to more than one reasonable interpretation. *Engel*, 166 Wn.2d at 579. If the statute is ambiguous, the rule of lenity requires courts to interpret the statute in favor of the defendant absent legislative intent to the contrary. *State v. Jacobs*, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005).

The statute Pratt relies on, RCW 9.95.062(3), provides

> In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, *the time the defendant has been imprisoned* pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed.

(Emphasis added).

And, RCW 9.94A.505(6) provides "[t]he sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced."

Our courts have interpreted the SSOSA statutes to determine that the legislature did not intend a defendant to receive credit for time served on SSOSA community custody against a later imposed prison sentence.

In *State v. Gartrell*, 138 Wn. App. 787, 791, 158 P.3d 636 (2007), Division I of this court held that the SSOSA statute does not provide that community custody time must be credited where a suspended sentence is revoked. *Gartrell* noted that the SSOSA statute itself, RCW 9.94A.670(5), differentiates between "confinement" and "community custody," noting that courts are required to impose a "term of confinement" as well as "community custody." *Gartrell*, 138 Wn. App. at 790-91.

In *State v. Miller*, 159 Wn. App. 911, 925-26, 247 P.3d 457 (2011), Division I of this court determined that community custody served during a SSOSA has a different purpose than community custody served after incarceration. After considering the policy purposes behind the two forms of community custody, the court held that "it is apparent that the legislature did not intend for the two to be comingled." *Miller*, 159 Wn. App. at 927. Moreover, the express language of the SSOSA statute, RCW 9.94A.670(11),[6] shows that the legislature did not intend for a defendant to be credited for time served in community custody as part of a suspended sentence. *Miller*, 159 Wn. App. at 927.

In *State v. Pannell*, 173 Wn.2d 222, 232, 267 P.3d 349 (2011), our Supreme Court followed the rationale of *Miller* to hold that the legislature did not intent the period a defendant serves on SSOSA community custody to be considered in calculating his maximum sentence. And, in *State v. Anderson*, 132 Wn.2d 203, 208, 937 P.2d 581 (1997), our Supreme Court considered an argument similar to Pratt's to conclude that "imprisoned" was not interchangeable with "confinement" as defined in RCW 9.94A.030(8). It determined that because Anderson had

[6] RCW 9.94A.670(11) provides: "All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked."

been released on bond and was subject to electronic home monitoring, he was not statutorily entitled to jail time credit. *Anderson*, 132 Wn.2d at 208.

Thus, a plain reading of the statute and related provisions reveals legislative intent not to credit a defendant for his time in community custody during SSOSA, and we hold that Pratt is not entitled to credit for time served on community custody.

/

Pratt cites to *State v. Slattum*, 173 Wn. App. 640, 651, 295 P.3d 788 (2013) to support his argument that "imprisoned" as defined in RCW 9.95.062(3), is ambiguous and that, under the rule of lenity, it must include SSOSA community custody. But *Slattum* is distinguishable.

In *Slattum*, Division I of this court interpreted RCW 10.73.170, the statute regarding post-conviction DNA analysis, to determine whether a defendant who was on community custody after serving a sentence of incarceration could petition for post-conviction DNA analysis. 173 Wn. App. at 643. RCW 10.73.170(1) states, "[a] person convicted of a felony in a Washington state court who currently is serving a *term of imprisonment* may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing." (emphasis added). The *Slattum* court held that "imprisonment," as used in RCW 10.73.170, was ambiguous and applied the rule of lenity to allow Slattum to petition for post-conviction DNA analysis. *Slattum*, 173 Wn. App. at 657-58. The court held that "term of imprisonment" included community custody that was being served after a defendant was released from prison. *Slattum*, 173 Wn. App. at 658.

Slattum is distinguishable for two reasons. First, as explained in *Miller*, the purpose of the SSOSA community custody and community custody after release by the Indeterminate Sentence Review Board differ, and there is no reason why the two statutes should be interpreted

in the same way. The legislature had different goals in creating the type of community custody under SSOSA and the type of community custody that would follow incarceration. *Miller*, 159 Wn. App. at 926.

Second, the *Slattum* court distinguished the term "imprisonment" as contained in RCW 9.95.062(3) because that statute contained "qualifying language," which RCW 10.73.170 did not. *Slattum*, 173 Wn. App. at 652. The statutes serve different purposes, and the language of both statutes differs. Thus, *Slattum* is distinguishable and does not inform our interpretation of RCW 9.95.062(3).

Pratt argues that because the term "imprisoned" is ambiguous, the rule of lenity mandates he be given credit for time served on community custody. However, even if RCW 9.95.062(3) is ambiguous, the rule of lenity requires courts to interpret the statute in favor of the defendant only if there is no legislative intent to the contrary. *Jacobs*, 154 Wn.2d at 600-01. Here, the legislative intent is to the contrary. The legislature clearly intended the community custody served on SSOSA to not be credited for time served against a sentence if the SSOSA is revoked for any purpose. *See e.g., Pannell*, 173 Wn.2d at 232; *Miller*, 159 Wn. App. at 927. Thus, Pratt's argument fails.[7]

[7] The State argues that Pratt is not entitled to credit for time served under RCW 9.94A.505(6) which states, "[t]he sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced." But RCW 9.94A.505(6) does not resolve this issue. RCW 9.94A.505(6) should be read in conjunction with RCW 9.95.062(3), and a trial court should give credit for time served according to the time he was "in confinement" under RCW 9.94A.505(6), and the time he was "imprisoned" pending appeal under RCW 9.95.062(3). *See Engel*, 166 Wn.2d at 578 (a court may examine related provisions and the statutory scheme as part of its plain meaning analysis). Therefore, this argument is not dispositive.

Pratt is not entitled to credit for time served in community custody because the SSOSA statute and related provisions show that the legislature did not intend to credit a defendant for his time in community custody during SSOSA.

CONCLUSION

In conclusion, Pratt is not subject to SSOSA because he failed to establish a relationship or connection with MB, and the statutory requirement of a relationship or connection with the victim does not violate equal protection. Pratt is not entitled to credit for time served in community custody. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Glasgow, C.J.

Price, J.

CERTIFICATE OF SERVICE

I hereby certify that I served this document PETITION FOR DISCRETIONARY REVIEW including any appendix and table upon the attorney(s) / party(s) as set forth below.

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/s/ Camelia Micu

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