

NO. 43041-0-II

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


STATE OF WASHINGTON,

Respondent,

v.

CHRIS ALLEN FORTH,

Appellant.

2012 OCT 19 PM 1:25
STATE OF WASHINGTON
BY  DEPUTY

FILED
COURT OF APPEALS
DIVISION II

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Katherine M. Stolz

REPLY BRIEF OF APPELLANT

VALERIE MARUSHIGE
Attorney for Appellant

23619 55th Place South
Kent, Washington 98032
(253) 520-2637

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A. ARGUMENT IN REPLY

THE TRIAL COURT ERRED IN FAILING TO GIVE FORTH CREDIT FOR ALL THE TIME HE SERVED IN CONFINEMENT FOR THE OFFENSE FOR WHICH HE WAS SENTENCED AS STATUTORILY AND CONSTITUTIONALLY REQUIRED.

The State argues that the trial court properly denied Forth credit for time served in Idaho “as RCW 9.95.060 clearly precludes offenders that become fugitives from receiving credit for time served outside of Washington.” Brief of Respondent at 4-5. RCW 9.95.060 provides in relevant part:

When a convicted person seeks appellate review of his or her conviction and is at liberty on bond pending the determination of the proceeding by the supreme court or court of appeals, credit on his or her sentence will begin from the date such convicted person is returned to custody. . . . If such convicted person does not seek review of the conviction, but is at liberty for a period of time subsequent to the signing of the judgment and sentence, or becomes a fugitive, credit for his sentence will begin from the date such convicted person is returned to custody.

In accordance with the statute, credit for time served begins when the person is “returned to custody.” Contrary to the State’s assertion, the statute does not provide that credit for time served begins when the person is returned to custody in Washington. The State mistakenly relies on State v. Hultman, 92 Wn.2d 736, 600 P.2d 1291 (1979), which is distinguishable because the case involved credit for time served on

probation while under a suspended sentence. Furthermore, In re Pearce, 40 Cal.App.3d. 399, 115 Cal.Rptr. 222 (1974), interpreting California's Penal Code has no relevance here.

The State additionally relies on In re Schillereff, 159 Wn.2d 649, 152 P.3d 345 (2007), where Schillereff was charged with assault and harassment and released on bail. He jumped bail and fled to Texas where he committed, was convicted of, and sentenced for aggravated assault. Schillereff was subsequently extradited back to Washington on pending charges. 159 Wn.2d at 650. The Washington Supreme Court concluded that Schillereff was not entitled to credit while he was in "constructive" custody in Washington where he was not confined in Washington. 159 Wn.2d at 651.

The State's reliance on the Supreme Court's per curiam decision in Schillereff is misplaced. Unlike Schillereff who was convicted and sentenced for a crime in Texas, Forth did not commit any crime in Idaho and he was confined in the Idaho jail pursuant to his arrest on the warrant issued in Washington. Consequently, the trial court erred in refusing to give Forth credit for time served in Idaho because the record substantiates that the "confinement was solely in regard to the offense for which the offender is being sentenced." Former RCW 9.94A.120(14) recodified as RCW 9.94A.505(6).

B. CONCLUSION

For the reasons stated here and in appellant's opening brief, this Court should remand Mr. Forth's case to the trial court for resentencing.

DATED this 18th day of October, 2012.

Respectfully submitted,

A handwritten signature in cursive script that reads "Valerie Marushige". The signature is written in black ink and is positioned above the printed name.

VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant, Chris Allen Forth

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Thomas Roberts, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18th day of October, 2012 in Kent, Washington.



VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

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