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SUPREME COURT NO. 99101-4

NO. 39190-0-III
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUAN ENRIQUEZ-MARTINEZ,

Petitioner.

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

The Honorable Randall C. Krog, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Juan Enriquez-Martinez asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Mr. Enriquez-Martinez seeks review of the Court of Appeals' published decision in State v. Enriquez-Martinez, filed August 18, 2020 ("Op."), which is appended to this petition. See State v. Enriquez-Martinez, ___ Wn. App. 2d ___, ___ P.3d ___, 2020 WL 4778774 WL 1675786 (August 18, 2020).

C. ISSUES PRESENTED FOR REVIEW

Was petitioner entitled to receive credit against his Washington sentence for the presentence time he was in-custody in Oregon waiting resolution of his Oregon criminal charges while simultaneously under arrest pursuant to a warrant issued by the Klickitat County Superior Court pending resolution of his Washington criminal charges?

Did the court's failure to grant petitioner credit against his Washington sentence for the presentence time he was in-custody in Oregon while simultaneously under arrest on Oregon and the Washington criminal

charges deny petitioner his state and federal constitutional rights to due process¹ and equal protection²?

D. STATEMENT OF THE CASE³

Mr. Enriquez-Martinez was arrested in Oregon on April 21, 2014, on charges involving sex offenses against a minor. CP 34. Approximately a month later, on May 27, 2014, the Klickitat County prosecuting attorney charged Mr. Enriquez-Martinez with an information filed in Klickitat County Superior Court with sex offenses against the same minor that were alleged to have occurred in Klickitat County, Washington. CP 1–2.

On June 11, 2014, while still in-custody on the Oregon charges, Mr. Enriquez-Martinez was served with a no bail arrest warrant on the Klickitat County charges. CP 34; CP 55.

Mr. Enriquez-Martinez remained in-custody in Oregon on both the Oregon charges and Washington arrest warrant.³ On June 17, 2015, approximately a year after he was served with the Washington arrest warrant, Mr. Enriquez-Martinez accepted a global resolution for both the Oregon and Washington charges. In exchange for guilty pleas he agreed to recommendations of a 75 month sentence on both the Oregon and

¹ U.S. Const. Amend. XIV; Wash. Const. Art. I, § 3.

² U.S. Const. Amend. XIV; Wash. Const. Art. I, § 12.

³ Mr. Enriquez-Martinez has been in custody since April 21, 2014. Op. at 1.

Washington offenses with the sentences to be served concurrent in Oregon.
CP 34.

On June 23, 2015, Mr. Enriquez-Martinez, through Oregon counsel, submitted a petition to enter a plea of guilty in Oregon's Wasco County Circuit Court on the Oregon charges. The court did not act on the petition.
CP 38.

On January 18, 2016 Mr. Enriquez-Martinez waived extradition and was transferred from Oregon to Klickitat County. CP 38; RP 9. The following day, January 19, 2016, he pleaded guilty in Klickitat County to first degree child molestation as charged in Count II of the information. Count I of the information was dismissed. (1/19/2016) RP 41; CP 34.

On February 16, 2016, Judge Brian Altman sentenced Mr. Enriquez-Martinez pursuant to his plea. (2/16/2016) RP 8–13. He was given a minimum term sentence of 68 months and maximum term of life. CP 20. In boilerplate language, the judgment and sentence states in section 4.1(c), "Credit for Time Served. The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served." CP 21.

Following sentencing, Mr. Enriquez-Martinez was remanded to the Washington Department of Corrections. CP 34. He was then returned to

Oregon and on November 16, 2016, Oregon's Wasco County Circuit Court accepted the plea he had submitted nearly 15 months earlier. CP 39.

On November 28, 2016, after Mr. Enriquez-Martinez entered his Oregon plea but before the Oregon court sentenced him, he filed a CrR 7.8 motion seeking to amend his February 16, 2016, Washington judgement and sentence to include credit for time he was in-custody from the date he was served with the Washington's court no-bail arrest warrant (June 11, 2014) up to the date he was sentenced. CP 33-36; (12/5/2016) RP 15, 20-21; (2/6/2017) RP 29.

Judge Altman held a hearing on the motion on December 5, 2017. Because Mr. Enriquez-Martinez was not present for the hearing because he was still in-custody in Oregon awaiting sentencing on his Oregon plea, the hearing was continued. (12/5/2016) RP 23-24.

Mr. Enriquez-Martinez was ultimately sentenced on the Oregon charges on December 8, 2016. He was ordered to serve a total of 70 months concurrent with the Washington sentence. The time he served in-custody in Oregon pending his sentencing was credited against his sentence. He was then returned to the Washington State Department of Corrections to serve his sentence. CP 39-40; (2/6/17) RP 33.

On February 6, 2017, a hearing on Mr. Enriquez-Martinez's CrR 7.8 motion was finally heard. Judge Altman had retired, and Judge Randall

Krog heard the motion. Judge Krog admitted he did not know what Judge Altman intended with respect to crediting Mr. Enriquez-Martinez with the time he was in-custody on the Washington warrant in Oregon. (2/6/2017) RP 33. Nonetheless, Judge Krog denied the motion but ordered that Mr. Enriquez-Martinez be awarded credit for the time he was in-custody only from the date he was returned to Washington (January 18, 2016) to the date sentenced. (2/6/2017) RP 34-35; CP 68.

On appeal Mr. Enriquez-Martinez argued that under RCW 9.94A.505(6) as interpreted by this Court in State v. Lewis, 184 Wn.2d 201, 355 P.3d 1148 (2015), and the due process and equal protection provisions of the Washington State and United States Constitutions, he was entitled to credit for the time he was in-custody in Oregon from the date he was served with the Washington warrant up to the date his judgment and sentence was entered. Brief of Appellant at 8-11; Statement of Additional Grounds for Review at 2-5.

In Lewis, 184 Wn.2d at 203–05, this Court held that a strict construction of RCW 9.94A.505(6), which specifies: “[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,” would violate due process and equal protection. This Court ruled despite the language in RCW 9.94A.505(6),

Lewis was entitled to credit for the time he was held in custody on multiple charges prior to sentencing on those charges against each of the sentences on those charges. Id. at 205-206.

The Court of Appeals ruled that RCW 9.94A.505(6) and the Lewis holding interpreting that statute did not apply to Mr. Enriquez-Martinez's case for two reasons. First, it reasoned because the Washington court issued a no bail arrest warrant Mr. Enriquez-Martinez could not have been released pending resolution of his Washington case. Op. at 7. Second, it reasoned that because the Oregon court had not sentenced Enriquez-Martinez at the time he was sentenced for the Washington charge Mr. Judge Altman could not have imposed a sentence concurrent with the Oregon sentence. Thus, it concluded RCW 9.94A.505(6) did not apply to the Washington sentence and this Court's Lewis decision was "irrelevant." Id.

It also reasoned that because the Oregon court credited Mr. Enriquez-Martinez with the time her served in-custody pending resolution of the Oregon charges, his Washington sentence did not violate due process. Id.

The Court's reasoning is premised on a misinterpretation of this Court's rulings in Lewis. As such it conflicts with that ruling. Further, it contravenes the due process and equal protection requirements that presentence detention must be credited to offender's sentence.

Enriquez-Martinez is entitled to receive credit in Washington for all his presentence jail time served while he was in-custody in Oregon under arrest for both the Oregon and Washington charges.

E. ARGUMENT AND REASONS WHY REVIEW SHOULD BE ACCEPTED

A defendant sentenced to a term of confinement has both a constitutional and statutory right to receive credit for all confinement time served prior to sentencing. State v. Speaks, 119 Wn.2d 204, 206, 829 P.2d 1096 (1992); RCW 9.94A.505(6). "Failure to allow credit [for time served] violates due process, equal protection, and the prohibition against multiple punishments." State v. Cook, 37 Wn. App. 269, 271, 679 P.2d 413 (1984). RCW 9.94A.505(6) codifies the constitutional requirement that an offender is entitled to credit for time served prior to sentencing. State v. Williams, 59 Wn. App. 379, 382, 796 P.2d 1301 (1990). The statute provides:

The 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. On its face, this language would appear to deny Mr. Enriquez-Martinez credit for time served while awaiting trial on multiple separate Oregon and Washington charges. However, notwithstanding the limiting language of RCW 9.94A.505(6), this Court has held that offenders are constitutionally

entitled to credit for time served even where presentence detention time is served pursuant to multiple separate charges. See State v. Lewis, 184 Wn.2d at 204-205 (defendant entitled to credit for time served on assault and burglary sentences for the time he was detained awaiting trials on charges for assault, burglary and failure to register as a sex offender).

In Lewis, this Court held that strict construction of RCW 9.94A.505(6) would violate due process and equal protection. Lewis, 184 Wn.2d at 203-05. Lewis was charged with nine crimes, mostly burglary and assault, under two cause numbers. Id. at 202. Unable to make bail, he remained incarcerated awaiting trial on those charges for more than a year. Id. While awaiting trial, the State charged Lewis with the additional crime of failure to register as a sex offender. Id. For the next 387 days, Lewis was confined awaiting trial on all three sets of charges. Id.

The Lewis court accepted the State's concession that Lewis was “constitutionally entitled to credit for time served on his assault and burglary sentences for the 387 days that he was incarcerated awaiting trials on the assault, burglary, and failure to register as a sex offender charges.” Id. at 205. Denying Lewis credit for those 387 days would result in him serving a longer sentence than if he had been able to make bail on the various charges. Id. Such a result violates due process and equal protection because “a person unable to obtain pretrial release may not be confined for

a longer period of time than a person able to obtain pretrial release.” Id. (citing In re Habeas Corpus of Reanier v. Smith, 83 Wn.2d 342, 346, 517 P.2d 949 (1974)).

A person who is not allowed or cannot raise bail is deprived of liberty. Thus, in Reanier this Court ruled that fundamental fairness and the avoidance of discrimination and possible multiple punishment dictate that an accused person, unable to or *precluded* from posting bail or otherwise procuring his release from confinement prior to trial should, upon conviction and commitment to a state penal facility, be credited as against a maximum and a mandatory minimum term with all time served in detention prior to trial and sentence. Reanier v. Smith, 83 Wn.2d at 349.

Mr. Enriquez-Martinez was precluded from making bail because of the Klickitat County Superior Court’s no bail arrest warrant. The Court of Appeals reasoned that because that no bail warrant, the holding in Lewis was inapplicable. It is wrong. Under the Reanier Court’s ruling, cited by the Lewis Court in support of its holding, whether Mr. Enriquez-Martinez was unable to or precluded from posting bail is a distinction without a difference.

Additionally, the Court of Appeals reasoned that RCW 9.94A.505(6) and Lewis Court’s holding that the statute cannot be used to restrict awarding a defendant credit for time served presentence on each

charge when the defendant is being held on multiple charges was inapplicable because Judge Altman could not impose a concurrent sentence with the Oregon offenses because Mr. Enriquez-Martinez had not yet been sentenced on those offenses. That reasoning is also wrong.

When Judge Altman sentenced Mr. Enriquez-Martinez neither he nor the parties knew what sentence the Oregon court was going to impose. What was known was that Mr. Enriquez-Martinez had been held in-custody for months on the Washington warrant before the Washington judgement and sentence was entered. Under the Lewis Court's interpretation of RCW 9.94A.505(6) Mr. Enriquez-Martinez was entitled to credit for the time he served in-custody pending resolution of his Washington case because he was being held pursuant to the Washington arrest warrant. See 13B SETH A. FINE, WASHINGTON PRACTICE: CRIMINAL LAW § 3603, at 195 (2d ed. & Supp. 2018), cited by the Court of Appeals, Op. at 6, ("If the offender has not yet been sentenced on any charge, he or she is entitled to have all time served on multiple charges credited towards confinement on each charge." (emphasis added)). Mr. Enriquez-Martinez was serving time on multiple charges (Oregon and Washington charges) and he had not been sentenced on the Oregon charges when he was sentenced on the Washington charge. Thus, he was entitled to have all time served credited against his confinement on the Washington charge.).

When the Washington court served Mr. Enriquez-Martinez with the arrest warrant he was then being held to answer for both the Oregon and Washington charges. Like the defendant in Lewis, Mr. Enriquez-Martinez was held in-custody on multiple charges (the Oregon and Washington charges) because he is unable to make bail. He was unable to make bail on the Washington charges because the Klickitat County Superior Court's no bail arrest warrant precluded him from doing so. Under the Washington and United States constitutional due process and equal protection provisions and this Court's Lewis decision, Mr. Enriquez-Martinez was entitled credit for the time he served in-custody from when he was served with the Klickitat County Superior Court's arrest warrant to the date that court's judgement and sentence was entered. Judge Krog's failure to credit Mr. Enriquez-Martinez with that time against his sentence violated his rights due process and equal protection rights and conflicts with this Court's decision in Lewis.

F. CONCLUSION

The Court of Appeals' decision conflicts with this Court's holding in Lewis. This case also presents a significant question of law implicating the due process and equal protection provisions under the Washington State and the United States Constitutions. RAP 13.4(b)(1) and (3). This Court should accept review, reverse the Court of Appeals, and remand with instructions that the sentencing court award petitioner credit for the time he served in-custody from the date he was served with the Klickitat County Superior Court's arrest warrant to the date that court's judgement and sentence was entered.

DATED this 11th day of September 2020.

Respectfully submitted,

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

STATE OF WASHINGTON,)	
)	No. 36190-0-III
Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
JUAN ENRIQUEZ-MARTINEZ,)	
)	
Appellant.)	

KORSMO, A.C.J. — Juan Enriquez-Martinez appeals from a decision of the Klickitat County Superior Court declining to grant additional credit for time served in Oregon against his Washington sentence. We affirm.

PROCEDURAL HISTORY

Mr. Enriquez-Martinez was arrested in Oregon April 21, 2014, for several sexual offenses against a minor. He has remained in custody since that day. The Klickitat County Prosecuting Attorney filed one count of first degree child rape and one count of first degree child molestation, both involving the same victim as the Oregon offenses, against Mr. Enriquez-Martinez the following month. The crimes were alleged to have been committed between 2009 and 2013.

The Klickitat County Superior Court issued an arrest warrant for Mr. Enriquez-Martinez with no bail. It was served on him in Oregon on June 11, 2014. The parties

eventually negotiated a joint resolution of both cases that called for concurrent sentences of approximately the same length. Oregon released Mr. Enriquez-Martinez to Klickitat County. He arrived there January 18, 2016. The rape charge was dismissed the following day in exchange for a guilty plea to the child molestation count. With no prior convictions, he faced a minimum term of 51 to 68 months' confinement and a maximum term of life in prison. Judge Brian Altman imposed a minimum term sentence of 68 months and the mandatory maximum term of life in prison on February 16, 2016. The court directed that the jail award credit for time served solely on the Washington cause number.

Mr. Enriquez-Martinez began serving his sentence in Washington. He was returned to Oregon where he entered guilty pleas to one count of attempted child sexual abuse in the first degree and one count of attempted unlawful sexual penetration of a child in the first degree; five other charges were dismissed on November 16, 2016. By the agreement of the parties, the court on December 8, 2016, imposed an upward durational departure sentence by running terms of 14 months and 56 months consecutively to each other. Both counts were ordered to be served concurrently with the Washington sentence. The Oregon court also credited Mr. Enriquez-Martinez with time served from his arrest on April 21, 2014.

Mr. Enriquez-Martinez returned to Washington to continue serving his sentence. At that point, he was serving a 70 month Oregon sentence that began (due to credit) in

April 2014, concurrently with a 68 month minimum term Washington sentence that began (due to credit) in January 2016. He filed a motion with Klickitat County seeking to obtain credit for the time period after the service of the Washington charges upon him in Oregon in June 2014.

Due to the retirement of Judge Altman, the matter was assigned to the Honorable Randall Krog. The court reviewed the briefing of the parties and heard argument of the motion. Judge Krog denied relief. Mr. Enriquez-Martinez then appealed to this court.

Counsel was appointed for Mr. Enriquez-Martinez. Counsel initially filed an *Anders*¹ brief, but subsequently sought to withdraw the brief in light of *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015). Our commissioner granted the request and a new brief was filed arguing that *Lewis* required that credit be awarded. A panel subsequently considered the appeal without hearing oral argument.

ANALYSIS

The sole issue presented by the appeal is whether *Lewis* requires backdating the credit in Washington to include the time period spent in custody in Oregon after Washington charges were filed.² We conclude that it does not.

¹ *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

² Mr. Enriquez-Martinez also filed a statement of additional grounds that likewise challenges the credit for time served calculation. Since it is repetitive of counsel's brief, we decline to address it. RAP 10.10(a).

As Mr. Enriquez-Martinez notes, this court typically reviews a trial court's CrR 7.8 ruling for abuse of discretion. *In re Pers. Restraint of Cadwallader*, 155 Wn.2d 867, 879-80, 123 P.3d 456 (2005). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Discretion also is abused when a court acts on an incorrect legal standard. *State v. Quismondo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, requires that a sentencing court "give the offender credit for all confinement time served before sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced." RCW 9.94A.505(6). This reflects the constitutional requirement that an offender be credited for each day of confinement served prior to sentencing. *Reanier v. Smith*, 83 Wn.2d 342, 352-53, 517 P.2d 949 (1974); *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006).³ However, the constitutional requirement that each day of preconviction detention be credited to the offender does not apply to multiple sentences. *In re Pers. Restraint of Phelan*, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982); *Costello*, 131 Wn. App. at 833.

³ Offenders, who are subject to both minimum and maximum sentence terms, such as Mr. Enriquez-Martinez, are entitled to credit against both the minimum sentence and the maximum sentence. *Reanier*, 83 Wn.2d at 352.

At issue in *Lewis* was the allocation of time served in a county jail awaiting trial on multiple criminal cases. There the defendant had been arrested on multiple charges that were grouped into three cause numbers. Unable to make bail, the defendant remained in jail pending resolution of the cases. *Lewis*, 184 Wn.2d at 202-03. The first charge to resolve was sentenced August 31, 2012; the sentencing judge gave Mr. Lewis credit for the 387 days spent in jail to that point. *Id.* at 203. The remaining cause numbers were resolved by guilty pleas in October and November 2012. They were jointly sentenced on December 14, 2012. *Id.* At that hearing, the trial court gave credit for the 387 days spent in custody prior to the first sentencing, and also gave credit for the subsequent days of detention that overlapped with the first sentence. *Id.*

The State appealed to Division Two, arguing that the trial court could not also credit the December sentence with the same 387 days already given to the August sentence. *Id.* at 203-04. Construing RCW 9.94A.505(6), Division Two reversed the 387 days credit given in December as well as the credit for time served after the August sentencing. *Id.* at 204. Mr. Lewis successfully petitioned for review of both rulings. *Id.*

The State conceded error on the 387 day credit and the court accepted that concession. *Id.* at 205. Since the court imposed concurrent sentences, using the statute to pick and choose which crimes would get pretrial detention credit and which would not amounted to a violation of equal protection. *Id.* However, it was error for the trial court

to grant credit in December for the time served after the August sentencing. *Id.* at 205-06. An offender who is serving his sentence is not in the same position as a person who was denied bail pending trial. *Id.* at 206. The constitution does not require that time served following sentencing be credited to other offenses awaiting disposition. *Id.*

A distinguished commentator summed up this area of law after *Lewis*:

Credit is not allowed for time served on other charges, even if the sentence is concurrent with the sentence on those charges. If an offender is confined on multiple charges simultaneously, the computation depends on whether the offender has been sentenced. If the offender has not yet been sentenced on any charge, he or she is entitled to have all time served on multiple charges credited towards confinement on each charge. After sentencing on any charge, a different rule applies: time credited on a charge for which the offender has been sentenced cannot be credited towards other crimes for which sentencing has not yet occurred.

13B SETH A. FINE, WASHINGTON PRACTICE: CRIMINAL LAW § 3603, at 195 (2d ed. & Supp. 2018) (footnotes omitted).

Mr. Enriquez-Martinez argues that *Lewis* requires he be credited with the time he spent in Oregon after service of the Washington arrest warrant and prior to his return to Washington. It does not. His argument fails on multiple grounds.

The most obvious problem is that Judge Altman did not, and could not, impose a concurrent sentence. There was only one count before him for sentencing and the Oregon offenses had not yet been sentenced, so there was no possibility of ordering a

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concurrent sentence.⁴ RCW 9.94A.505(6) had no application at all, and *Lewis*'s interpretation of the statute likewise was irrelevant to the case.

There is another reason that *Lewis* is not implicated in this case. The Washington court issued a *no bail* warrant. Whether Mr. Enriquez-Martinez was rich or poor would have made no difference concerning his ability to have achieved pretrial release on the Washington offense. The equal protection concerns at the heart of the *Lewis* opinion were not of concern here.

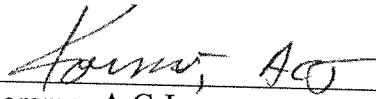
In addition, the record does not establish a constitutional violation. Oregon credited him for every day spent in custody, including any time that overlapped with the Washington detention and the Washington sentence. Thus, the dictates of the constitution have been satisfied. *Phelan*, 97 Wn.2d at 594 (citing *Reanier*, 83 Wn.2d at 346).

Judge Krog did not err by denying the motion for additional credit.

⁴ If Oregon had already imposed sentence, it would have significantly (and very negatively) impacted Mr. Enriquez-Martinez. In addition to raising the offender score by six points, RCW 9.94A.525(17) (prior sex offenses count three points in scoring current sex offenses) greatly increased the minimum term for this offense, and the trial court would have had complete discretion to impose either concurrent or consecutive sentences with Oregon. RCW 9.94A.589(3). Whatever additional credit may have been available would have been swamped by the increase in range and possible consecutive sentencing.

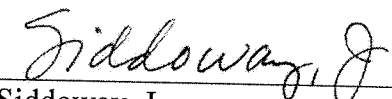
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Affirmed.

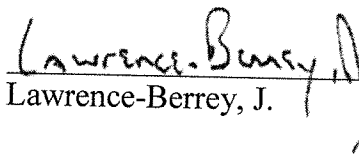


Korsmo, A.C.J.

WE CONCUR:



Siddoway, J.



Lawrence-Berrey, J.

NIELSEN KOCH P.L.L.C.

September 11, 2020 - 10:07 AM

Transmittal Information

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