100852-0

No. 834193

SUPREME COURT

OF THE STATE OF WASHINGTON

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Pamela K. Scott, Petitioner
V
Louise Love, DOC, Colin Hayes, et al Respondents

# PETITION FOR REVIEW

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Pamela K. Scott
Petitioner Filing *Pro-se*

131 McGeary Rd.
Kelso, WA 98626
360-487-6950
pjfeever@gmail.com

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A. IDENTITY OF PETITIONER

Pamela K. Scott, appellant, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals Decision No. 83419-3-I/2, filed 3/14/2022, in Pamela K. Scott v Louise Love, et al., and the 4/21/2022 order denying the Motion for Reconsideration . A copy of the decision is at A-2 through A-14. A copy of the Motion for Reconsideration is at A-15 through A-45. A copy of the order denying Motion to Reconsider is at A-46

C. GENUINE ISSUES OF MATERIAL FACT PRESENTED FOR REVIEW

1. Regarding Respondents Louise Love and DOC, the decision of the Court of Appeals is in conflict with RCW 9.94A.585(7), evidence that was before the trial court, and a published decision of the Court of Appeals; Dress v. STATE DEPT. OF CORRECTIONS, 279 P.3d 875, 168 Wash. App. 319 (Ct. App. 2012).
2. Regarding Respondents DPA Colin Hayes and Clark County, the decision of the Court of Appeals is in conflict with evidence that was before the trial court, and a decision of the Supreme Court,, 522 U.S. 118, 118 S. Ct. 502, 139 L. Ed. 2d 471 (1997).
3. Regarding the joinder of Judge Stahnke, the lower court dismissed Petitioner's complaint using an argument she did not make regarding jurisdiction. Does Petitioner's issue on judicial immunity present a significant question of law?

D. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

Pamela Scott pleaded guilty to three counts of first degree possession of depictions of a

minor engaged in sexually explicit conduct. The standard sentencing range for Scott's offenses was 46 to 61 months of confinement. Pursuant to the plea agreement, the State asked the trial court to impose a SSOSA, 61 months in total duration, with 12 months of confinement and a 49 month suspended prison sentence. At the sentencing hearing on December 21, 2011, the court sentenced Scott to a 49-month suspended SSOSA, with the condition that she serve 366 days in confinement and 49 months on community custody. At that moment, Scott's sentence was accurate and according to statute.

"Ambiguous" boilerplate language on the SSOSA judgment and sentence form could be misconstrued to indicate that the community custody portion of the sentence was to be calculated by subtracting the period of confinement from the total suspended sentence. Thus, the following day, the parties returned to court to modify the judgment and sentence by striking the 49 month sentence and writing in 61 months. It was made clear in the record that the intended result was a sentence consisting of 366 days of confinement plus 49 months of community custody. However, because now Scott's ordered term of community custody (49 months) did not match the length of her suspended sentence (61 months), the revised judgment and sentence did not comply with RCW 9.94A.670(5). However, the judge's intent was clear in the record in both back-to-back sentencing hearings, and Scott's plea bargained SSOSA sentence, that her sentence was always 366 days of confinement, followed by 49 months of community custody.

In early 2016, DOC developed and disseminated to the Records Techs the attached "SSOSA Supervision Length Review Process," which clearly states that the audit was undertaken in order to change the SSOSA prison files to match any erroneous Judgments and Sentences they found during the audit.

SSOSA Supervision Length Review Process:

1. Review J&S to see if it includes the following boilerplate language or if the Court has subtracted the confinement time from the supervision length.

(c) ***Suspension of Sentence.*** The court imposes _____ months (up to 12 months of actual confinement or the maximum term of the standard range, whichever is less) and suspends the remainder for the duration of the special sex offender sentencing alternative program.

NOTE: The language should read:

RCW 9.94A.670(5) states, "As conditions of the suspended sentence, the 3/22/2017 10:04 AMcourt must impose the following: (a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3)…
(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703."

2. If the SSOSA sentence is a CCB sentence with a supervision length of Life or if the J&S has the language from the RCW of "equal to" nothing will need to be changed. Chrono "SSOSA suspended sentence length review has been completed and no changes required."

3. If they have the boilerplate language or the Court orders a supervision length that reduces the suspended sentence length, subtract the original confinement time length from the suspended sentence length and this will become the new suspended sentence. Example: Court orders a suspended sentence of 131 months, in addition they order 6 months of original confinement. Subtract the 6 months of original confinement from the suspended sentence length and enter 125 months as the supervision length and the suspended confinement length will remain 131 months.

4. Chrono the changes and the new SED.

5. Email the CCO of the SED change.

6. Send an email to the Prosecutor and the Defense attorney using our normal Problem J&S process. Template has been added to our Problem J&S Process.

7. When reviewing the sentences, ensure the sentence structure is entered consistently. Laura has examples of how it should be entered.

8. First sort the list by the intake date with the newest intakes being recalculated first as there still may to time to file Post Sentence if the Court does not fix the error. Go back three months.

9. Next sort would be by the upcoming SRD's in case anyone should be off of supervision.

10. Once you have completed a few of the reviews if you could give me an expected timeline for completion I would appreciate it.

Louise Love, who was reviewing SSOSA sentences for possible errors, and who flagged Scott's sentence as incorrect, was supposed to use the alternate remedy contained within Exhibit 4 in Scott's original complaint and attached herein for your consideration.

Instead of using the audit process, on January 26, 2016, DOC records technician Louise Love apparently took the first step of initiating an appeal under RCW 9.94A.585(7), which authorizes DOC to petition for review of a sentence for errors of law, but requires any such petition to be filed no later than 90 days after DOC has actual knowledge of the terms of the sentence.

On February 17, 2016, Clark County deputy prosecutor Colin Hayes filed a CrR 7.8(a) motion in superior court for an order to correct Scott's J&S. Scott objected, asking the court to pull the court recordings, noting the crossed out 49, replaced with 61, pointing out this was no clerical error, it was beyond 90 days, and it was beyond a year for even a collateral attack. On March 23, 2016, the trial court granted the motion and entered an order amending the J&S by adding 12 months of community custody to Scott's substantially completed sentence.

During the pendency of Scott's appeal, at a regularly scheduled SSOSA treatment review, on August 2, 2016, Judge Stahnke ruled there would be no action on Hayes' baseless accusations that Scott had violated the terms of her SSOSA sentence. The documents on the following pages are evidence that Hayes walked out of Judge Stahnke's courtroom on August 2nd and engaged in a series of *ultra vires* acts with the stated intent of forcing Scott to drop her appeal or face revocation. The charging documents, signed by DPA Hayes under penalty of perjury, are false in every detail, from the judge, to the sentencing date, to treatment deficiencies. No CCO had ever issued Scott a violation of conditions of her community custody, so none was attached. A-48 through A-52.

EXHIBIT 7

08/02/16

BEGIN AUDIO 01:35:38 PM (video time display)

**Prosecutor:** Your Honor, number one...Scott, SSOSA review.

I see Miss Scott coming up; she was ordered to complete a mental health evaluation and a victim's impact class. She has not completed those conditions.

DOC has given her 31 days to complete those conditions before we revoke her or move to revoke. So we're just asking right now...no action today. But, of course, admonish the defendant that she needs to complete her sentence conditions and set it over for about 45 days for another review.

**Ms. Scott:** May I speak?

**Judge Stahnke:** Sure.

**Ms. Scott:** I was up here five years ago and we've seen each other just recently. I completed more than two years of SSOSA treatment.

**Judge Stahnke:** This case is on appeal.

**Ms. Scott:** Yes.

**Judge Stahnke:** So, no action today.

**Prosecutor:** We're just asking that it be set for another 45 days.

**Judge Stahnke:** Well, I think the issue on the appeal...can I speak?

**Ms Scott:** Your Honor, I'm sorry.

**Judge Stahnke:** No, that's alright. I think the issue on appeal is the duration of community custody that would make her comply with SSOSA and so until this Court of Appeals resolves the duration of her community custody, there's nothing I can do on the SSOSA issue. And it was perfected...I've got a July 26th filing from the Court of Appeals, Division 2.

**Prosecutor:** That's what I was going to say, your honor. We (???) this case, however, it did sound like a different issue than the one we have before us today.

**Judge Stahnke:** Okay, so no action today.

LAW OFFICES OF
NIELSEN, BROMAN & KOCH P.L.L.C.

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JAMILA BAKER

OF COUNSEL
K. CAROLYN RAMAMURTI

August 4, 2016

Ms. Patricia Scott
3701 1/2 E 18th St
Apt 13
Vancouver 98661

RE: Court of Appeals No. 49311-0-I

Dear Ms. Scott:

Our office was appointed to represent you in the above appeal. You are appealing the court's order clarifying your sentence and extending the terms and conditions of your SSOSA sentence for an additional year. We do not have the record of the hearing so we do not know yet if your appeal has any merit or if it will be successful.

The prosecuting attorney, however, contacted me on Wednesday. He informed me that the State would likely ask the trial court in your case to revoke your SOSSA sentence, which will result in you having to serve your prison time, on the grounds you have failed to comply with all the things you were required to do. He told me the State would not ask the court to revoke your sentence if you withdraw your appeal. If you decide to do that you will still need to complete the requirements of your SSOSA sentence and will be under the terms of that sentence for the additional year.

I tried to call you to discuss the State's offer with your but I am unable to leave a message on your phone (360-980-7413). I need to speak to you soon. It may be in your interest to withdraw your appeal to avoid the possibility that your SSOSA sentence will be revoked. The prosecutor indicated to me that he will make the decision to ask the court to revoke your SOSSA sentence in the next few days.

Please call me so we can discuss your options. the prosecutor's offer and what you wish to do. You can call me collect at the above number.

Sincerely,

Eric Nielsen

This crossed in the mail.

PROSECUTING ATTORNEY | ANTHONY F. GOLIK

SCOTT D. JACKSON, Chief Deputy | CAMARA L. J. BANFIELD, Chief Criminal Deputy | CHRISTOPHER HORNE, Chief Civil Deputy | SHARI JENSEN, Administrator

August 5, 2016

Lisa I. Toth
1104 Main Street, Suite 400
Vancouver WA 98660

Re: State v. PAMELA KAY SCOTT
Cause No. 11-1-01315-4

Dear Counsel:

Enclosed please find a Citation, bringing the above matter before the Court for the purpose of: MOTION TO REVOKE SSOSA.

Should you have questions regarding the above, please do not hesitate to contact me.

Sincerely,

Colin P. Hayes
Deputy Prosecuting Attorney

/PMW

Enclosure

Pamela Scott
3701½ E 18th Apt 13
Vancouver, Wa 98661

1013 Franklin St | PO Box 5000 | Vancouver WA 98666-5000 Telephone 360-397-2261 | Fax 360-397-2230
Relay Service 711 or 800-833-6388

STATE OF WASHINGTON )
: ss
COUNTY OF CLARK )

The undersigned Deputy Prosecuting Attorney certifies and declares as follows:

Your declarant is the Deputy Prosecuting Attorney who is handling Clark County Superior Court Cause No. 11-1-01315-4, State of Washington v. PAMELA KAY SCOTT.

PAMELA KAY SCOTT was sentenced before the JOHN P. WULLE , Judge of the Superior Court, on 11/28/2011, and the defendant was granted RCW 9.94A.670(4) and (5) (SSOSA) and probation on certain terms and conditions.

Since the time of the granting of the sentence under RCW 9.94A.670(4) and (5) (SSOSA), Bethany clemons, Community Corrections Officer for the Department of Corrections, State of Washington, has filed a violation of the conditions of Community Supervision in regard to the defendant, a copy of which is attached hereto and by such reference incorporated herein as if set forth in full.

Based upon the violation report, there is good and sufficient reason to impose sanctions based on violations of the terms and conditions of the sentence entered on 11/28/2011.

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

Executed at Vancouver, Washington on this 5 day of August, 2016.

Colin P. Hayes, WSBA# 35387
Deputy Prosecuting Attorney



CLARK COUNTY PROSECUTING ATTORNEY
CHILDREN'S JUSTICE CENTER
PO BOX 61992
VANCOUVER, WASHINGTON 98666
(360) 397-6002 (OFFICE)
(360) 397-6016 (FAX)

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**E-FILED**

**08-08-2016, 08:18**

**Scott G. Weber, Clerk**
**Clark County**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br>PAMELA KAY SCOTT,<br>Defendant. | CITATION<br>No. 11-1-01315-4 |

TO: The above-named defendant and your attorney:
Lisa I. Toth

YOU ARE HEREBY NOTIFIED to appear in the Superior Court of the State of Washington, before the Honorable David E. Gregerson, Judge of the Superior Court, in the assigned courtroom, at 9:00 AM on Tuesday, August 16, 2016, for a hearing re: MOTION TO REVOKE SSOSA.

DATED this 5 day of August, 2016.

STATE OF WASHINGTON, PLAINTIFF

BY: _____
Colin P. Hayes, WSBA #35387
Deputy Prosecuting Attorney

**CERTIFICATE OF MAILING**

STATE OF WASHINGTON )
:ss
COUNTY OF CLARK )

On August 8, 2016, I caused to be deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Lisa I. Toth at 1104 Main Street, Suite 400 Vancouver WA 98660 and Pamela Scott at 3701½ E 18th Apt 13, Vancouver, WA 98661 containing a copy of the document to which this certificate is attached. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

_____ Date: August 8, 2016.
Place: Vancouver, Washington

CITATION - 1

PMW

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
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67

LF

# EXHIBIT 9

PROSECUTING ATTORNEY | ANTHONY F. GOLIK

SCOTT D. JACKSON
Chief Deputy

CAMARA L. J. BANFIELD
Chief Criminal Deputy

CHRISTOPHER HORNE
Chief Civil Deputy

SHARI JENSEN
Administrator

August 12, 2016

**RE: State v. Pamela Scott, 11-1-01315-4**

Dear Mr. Neilsen:

I am writing to propose a mutually beneficial resolution regarding your client's remaining SSOSA obligations. Even under your client's current appellate theory about the period of community custody, a limited amount of community custody time remains. Due to the fact that a SSOSA may only be revoked during the community custody period and that your client has not completed all requirements of the suspended sentence, the State has filed a petition to revoke the SSOSA. But, the State is willing to withdraw this petition if your client agrees to withdraw her appeal of the Court's recent order clarifying the period of community custody. In essence, a withdrawal of the appeal would ensure that your client has the opportunity to complete the remaining requirements before the expiration of community custody.

If the State agrees to withdraw its current petition to revoke pursuant to this agreement, the State will expect Ms. Scott to continue making diligent efforts to complete the victim awareness class and obtain and comply with a mental health evaluation within a reasonable period of time. But, if she ceases to make reasonable and timely efforts at any point during the pendency of the community custody period, the State reserves the right to file a future petition to revoke. The State cited the initial appearance on the petition to revoke on the criminal docket beginning at 9:00 a.m. on August 16, 2016. At that hearing, if your client does not agree to the State's proposal, the State will ask the Court to set a contested hearing before the end of August 2016. Please contact me with any questions.

Sincerely,

Colin Hayes

Colin Hayes
Deputy Prosecuting Attorney

1013 Franklin St | PO Box 5000 | Vancouver WA 98666-5000 Telephone 360-397-2261 | Fax 360-397-2230
Relay Service 711 or 800-833-6388

**08/16/2016 Case No. 11-1-01215-4 Motion to revoke GREGERSON**

**Baliff**: Number one, Your Honor, on the criminal docket is Pamela Scott. Please come forward Ms. Scott.

**Prosecutor Hayes**: Your Honor, we're here on first appearance on the State's petition to revoke. I know Ms. Toth was the attorney last time on these proceedings, I would suggest that the court re-appoint (???)

**Judge Gregerson**: Okay, Ms. Scott, do you understand what's going on here? The State is apparently seeking to revoke your SOSSA disposition of your case.

**Ms. Scott**: Yes. And I also know that under SOSSA revocation I do not have a right to an attorney, however, I do have a right to be heard. And I do have a right to show you these…

**Judge Gregerson**: Okay, well hold on. He's suggesting that the court re-appoint Ms. Toth on your case.

**Ms. Scott**: I don't need her. I don't need her. He has threatened my appeal attorney.

**Judge Gregerson**: Hold on, hold on.

**Ms. Scott**: Judge Stahnke heard this on the 2nd and he wouldn't hear him. He has misrepresented every name, every person in here. I have zero violations, five years…

**Judge Gregerson**: Okay, ma'am, we're not getting into the substance of it. The question is, right now, just what to do. I think we're going to set it for a hearing…

**Ms. Scott**: Okay, well then how do I stop him from harassing me?

**Judge Gregerson**: Well, you should probably have an attorney represent you because they have the education, the skill, the experience and the training to be able to effectively speak for your interests during this proceeding. Ms. Toth was representing you before, it's probably a good idea to have her on board again.

**Ms. Scott**: I'm ready to go now, sir.

**Judge Gregerson**: Well, we're not having the hearing this morning. It's just to set a hearing for this. Okay, do you want Ms. Toth appointed on your case?

**Ms. Scott**: If she must be. She's been…

**Judge Gregerson**: It's not that she must be, but I certainly recommend it.

**Ms. Scott**: That's fine.

Page 1 of 4

EXHIBIT 10

In a desperate effort to stop DPA Colin Hayes before he managed to get CCO Bethany Clemons to violate her into prison, in September 2016 Scott filed a tort claim form with the Office of Risk Management, alleging that DOC and the Clark County prosecutors' actions and omissions caused her to be wrongfully sentenced to an additional year of community custody. The Attorney General's Office (AGO) immediately notified DOC of Scott's claim.

An investigation was launched, which netted Petitioner a few of the above-referenced documents and 700 redacted pages of work product, some of which were accidentally released to Petitioner in many records requests. According to this evidence, DOC had developed a specific plan of action to deal with SSOSA sentences that had this "ambiguous" language error.

EXHIBIT 15

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Torts Division
7141 Cleanwater Dr SW • PO Box 40126 • Olympia WA 98504-0126

September 26, 2016

Anmarie Aylward, Assistant Secretary
Department of Corrections
7345 Linderson Way SW
PO Box 41126
Olympia, WA 98504-1126

Monica Distefano, Executive Assistant
Department of Corrections
7345 Linderson Way SW
PO Box 41126
Olympia, WA 98504-1126

RE: **New Tort Claim**
**Claim of** Scott, Pamela Kay DOC# 353595
**ORM No.** 31084243

Dear Ms. Aylward and Ms. Distefano:

The above-referenced tort claim has been filed against your agency and assigned to the Torts Division of the Attorney General's Office (AGO). This claim will be assigned to one of our investigators who will be contacting your agency shortly to begin an investigation, including gathering records relevant to the claim.

A copy of the tort claim has been enclosed for your information. In summary, the claimant (DOC# 353595), who is currently on community supervision for three counts of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct, alleges she was sentenced to an extra year of community custody because there was an error in the SSOSA J&S form being used by courts statewide. The claimant alleges DOC Correctional Records Technician, Louise Love, submitted a time-barred request to the Clark County Prosecutor's Office to have her sentence amended due to the state's error. The claimant alleges that based on the letter received, Deputy Prosecutor Colin Hayes filed an erroneous motion with the court to amend her sentence, adding an additional year of community supervision. The claimant alleges she appealed the time-barred amended sentence after the court denied her motion for reconsideration. The claimant alleges damages of emotional distress.

Once you have had an opportunity to review the claim, it would be helpful if you could provide the name or names of persons who could best provide assistance to our office and help coordinate contact with your agency.

Now that a tort claim has been filed, and a lawsuit based on the claim may follow, your agency is under an obligation to retain ***all*** records in its possession which could reasonably be considered relevant to the matter. Please refer to the attached *"Tort Claim Hold Notice"* for additional details.

As part of this process, please separately identify all communications between you and the AGO. These documents may be protected by the attorney-client privilege and should not be disclosed or distributed to anyone outside the agency or the AGO, or even to agency staff who are not

directly involved in this matter, without first consulting with me or the assigned investigator. Please prominently flag these documents as "**Attorney-Client Privileged**" and mark future communications directed to me or the assigned investigator as "**Attorney-Client Privileged.**" Be careful not to share these communications with those who do not have a need to know so that the privilege is not waived. Following these procedures will help ensure that privileged communications are not inadvertently disclosed in response to a public records request.

Any individual, including the parties bringing this claim against the State, may submit a public disclosure request addressed directly to your agency under the Public Disclosure Act (RCW 42.56), seeking documents related to the claim. **Please inform our office right away if this happens**, because we may not otherwise be notified about the request. We need to ensure that the request is answered fully and consistently—failure to do so could significantly compromise our defense of the claim.

Once assigned, the preliminary investigation of the claim takes approximately 60 – 80 days. If a lawsuit is filed prior to the completion of our preliminary investigation, the assigned assistant attorney general will be in contact with you.

If you have any questions regarding the progress of the investigation, or the attached *Tort Claim Hold Notice*, please feel free to contact me at any time.

Sincerely,

LEIGH J. SWANSON
Chief Torts Investigator
(360)586-6400

Enclosures

cc: Allan Soper, via email (w/encl)
Debbie Kendall, via email (w/encl)
Dianne Ashlock, via email (w/encl)
Kathy Gastreich, via email (w/encl)
Denise Vaughan, via email (w/encl)
Erica Green, via email (w/encl)
Tim Lang, via email (w/encl)

## E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court of Appeals Decision No. 83419-3-I/2, filed 3/14/2022, is not based on the evidence in the trial record or admissible evidence in the petitioner's appeal brief, which provide genuine issues of material fact sufficient to survive a motion to dismiss, according to US Supreme Court precedent, "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to `state a claim to relief that is plausible on its face.'"*Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Judge Evans dismissed all respondents, with prejudice, without any reference to the evidence contained in Petitioner's complaint. He dismissed Petitioner's Joinder with an argument on judicial immunity that Scott did not make.

When presented with this same evidence, the Court of Appeal seems to have adopted the respondents' unsupported arguments without looking at the evidence available in the record. For instance, in relation to the DOC defendants, the Court of Appeals ruled, in part:

> Love, however, did not petition the court to review Scott's sentence under RCW 9.94A.585(7). Although Love apparently believed that the faulty language in the form judgment and sentence fell within the definition of a clerical error, the act of notifying the prosecutors of the apparent error in Scott's judgment and sentence was not wrongful. Neither Love nor any other DOC defendant filed the CrR 7.8 motion to amend Scott's judgment and sentence, or granted that motion. The DOC defendants did not cause Scott to serve additional time on community custody.

The Court of Appeals must know that sending an email to the prosecutor is the first step of reviewing a sentence under RCW 9.94A.585(7). The documents and evidence in Petitioner's complaint and presented here show clearly that it was never DOC's intent to disturb sentences older than 90 days, because there is no authority for that. DOC was changing their internal computer records to match the flawed Judgment and Sentences. Louise Love had only two tools

to deal with the stack of problematic SSOSA sentences on her desk; follow the express instructions in the DOC SSOSA Supervision Length Review Process; or follow the express instructions of RCW 9.94A.585(7). When Louise Love failed to do either, and when DOC as an agency refused to take action to correct Love's error, they robbed Scott of the due processes and protections contained in both RCW 9.94A.585(7), and in the SSOSA Supervision Length Review.

"Line 1. Review J&S to see if it includes the following boilerplate language or if the Court has subtracted the confinement time from the supervision length."

"Line 3. If they have the boilerplate language or the Court orders a supervision length that reduces the suspended sentence length, subtract the original confinement time length from the suspended sentence length and this will become the new suspended sentence. Example: Court orders a suspended sentence of 131 months, in addition they order 6 months of original confinement. Subtract the 6 months of original confinement from the suspended sentence length and enter 125 months as the supervision length and the suspended confinement length will remain 131 months."

Because Scott's file contained BOTH the boilerplate language AND the Court ordered supervision length that reduced the suspended sentence length, Ms. Love was clearly instructed to change Scott's sentence in her file and then take the following steps:

"Line 4. Chrono the changes and the new SED."

"Line 5. Email the CCO of the SED change."

"Line 6. Send an email to the Prosecutor and the Defense attorney using our normal Problem J&S process. Template has been added to our Problem J&S Process."

"Line 8. First sort the list by the intake date with the newest Intakes being recalculated first as there still may be time to file Post Sentence if the Court does not fix the error. Go back three months."

Petitioner has offered voluminous proof in her original complaint, appeal, and in her Motion to Reconsider that Louise Love petitioned the court to review Scott's sentence under RCW 9.94A.585(7). The following underlined passages from published and unpublished

Appeals Court cases show that DOC routinely asks for an “amended” judgment and sentence when it wants to appeal a trial court’s order. In Dress v. STATE DEPT. OF CORRECTIONS, 279 P.3d 875, 168 Wash. App. 319 (Ct. App. 2012):

“¶ 4 DOC requested that the court amend its judgment and sentence to have the April 2006 sentences run consecutively to the King County DOSA sentence. It appears that there was no response to this letter.¶ 5 Despite the provisions of RCW 9.94A.585(7), which provides for relief where DOC claims that there is an error of law in a judgment and sentence, the Department never petitioned the court of appeals for review of the April 19, 2006, sentence.” statutory remedy.”

IN THE MATTER OF POST-SENTENCE PETITION OF LUCIO, No. 35065-7-III (Wash. Ct. App. Dec. 14, 2017).“As is its custom, DOC reviewed the judgment and sentence imposed on Lucio. DOC concluded that the trial court committed error, when imposing a community custody term on Lucio, because the crime of criminal mischief does not qualify for community custody. In December of 2016, DOC staff e-mailed the deputy prosecuting attorney handling the prosecution and asked him to request the trial court to amend the sentence.”

IN THE MATTER OF POSTSENTENCE REVIEW OF RADY, No. 33816-9-III (Wash. Ct. App. Sept. 20, 2016).The Department determined in August 2015 that the sentence violated RCW 9.94A.589(1)(c)'s requirement that consecutive sentences be imposed for each conviction for unlawful possession of a firearm in the first or second degree and for each theft of a firearm conviction. It sought to have the Garfield County prosecutor request amendment of the sentence. When its efforts proved unsuccessful, it filed a petition with this court for review pursuant to RCW 9.94A.585(7).

IN THE MATTER OF POSTSENTENCE REVIEW OF JEAKINS, No. 36494-1-III (Wash. Ct. App. Oct. 17, 2019).When the DOC identifies a legal error in a judgment and sentence, it has 90 days from the date in which it receives the judgment and sentence to file a petition for review of the sentence with this court. RCW 9.94A.585(7); RAP 16.18(a)-(b). Prior to filing its petition, the DOC must certify that "all reasonable efforts to resolve the dispute at the superior court level have been exhausted." RCW 9.94A.585(7). In the present case, on October 15, 2018, approximately one month following sentencing, the DOC sent an e-mail to the deputy prosecutor with its concerns as to the lack of a community custody term in the judgment and sentence. From the record before this court, it appears the prosecutor received the e-mail, but otherwise failed to respond. Then on December 17, approximately one week prior to the expiration of the petition filing deadline, the DOC sent a follow-up e-mail to the prosecutor. This second e-mail was also sent to Ms. Jeakins's former trial counsel and the superior court's judicial assistant.[1] The DOC then filed the present petition in this court on December 18.

In re Childers, 143 P.3d 831, 135 Wash. App. 37 (Ct. App. 2006).The court sentenced Nicholas Childers to 9-18 months community custody for residential burglary. The Department of Corrections (DOC) contacted all parties asking that the sentence be amended because Mr.

Childers was not eligible for community custody. DOC filed this petition when the parties failed to act.

**REGARDING SECTION 1983 CIVIL RIGHTS ACTION AGAINST LOUISE LOVE**

We don't know why Louise Love asked for an amended J&S in Scott's case, because no one has asked her or her lawyers, but it appears as if she requested an amended sentence under RCW 9.94A.585(7). Defendant Love's request for a modified judgment resulted in the foreseeable continued detention that deprived Scott of her rightful liberty. A "continued detention, which is the result of deliberate indifference by records officers, constitutes cruel and unusual punishment under the Eighth Amendment (Haygood v. Younger, 769 F.2d 1350, 1359 (9th Cir. 1985) (en banc). See also Sample v. Diecks, 885 F2d 1099 (3d Cir. 1989). CP 102-103. Defendant Love does not enjoy immunity from suit for acts of "A continued detention, which is the result of deliberate indifference by records officers, constitutes cruel and unusual punishment under the Eighth Amendment (Hutto v. Finney, 437 U.S. 678, 685, 98 S.Ct. 2565, 2570, 57 L.Ed 2d 522 (1978); Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc), cert. denied, 478 U.S. 1020, 106 S.Ct 3333, 92 L.Ed 2d 739 (1986))." CP 107.

**REGARDING DOC LIABILITY FOR THE TORT OF FALSE IMPRISONMENT**

The Department of Corrections is not a person for purposes of suit under 42 U.S.C. § 1983, but can be held liable for the tort of false imprisonment or excessive detainment under RCW 4.92.090, which states "The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation."

In Matter of Sentence of Hilborn, 816 P. 2d 1247 - Wash: Court of Appeals, 2nd Div. 1991, "The legislative scheme set forth in RCW 9.94A.210(7) (Recodified as RCW 9.94A.585 in

2010) is premised on the responsible decision maker at DOC being informed of each possibly illegal sentence far enough in advance of the expiration of the 90-day filing period so that he or she can make reasonable efforts to resolve the problem at the superior court level. DOC has both the ability and the responsibility to design and implement procedures to see that this occurs. Its failure to do so is what caused the time crunch in this case, and that failure cannot be argued as an excuse for not complying with the statute." CP 108

Finally, DOC implemented changes in Policy 280.500 to "per DOC Policy 280.500, "Offenders have the right to challenge the accuracy of their file, however the offender must contact the author of the challenged document to request information be corrected in the file. And if it is not possible to contact the author, the offender must contact the author's supervisor or an employee with authority to correct any information l) in the document." CP EX 14

**REGARDING THE CCPAO AND DPA HAYES**

As to the Clark County defendants, the Court of Appeals ruled, in part: "Kalina is distinguishable because Hayes did not personally attest to the veracity of facts in a charging document." That is just mystifying, considering there is proof of every claim Petitioner makes against DPA Colin Hayes. He signed every charging document in Petitioner's case under penalty of perjury. CP EX 6 The string of outrageous *ultra vires* acts he performed against Petitioner were documented in the record, with his signature, on letterhead, or on video.

Colin Hayes subjected, or caused Plaintiff to be subjected to, deprivation of Scott's Fourth, Fifth and Eighth Amendment rights guaranteed by the US Constitution and WA Const. art. I, & 3, 7, 9 and 14. These rights against double jeopardy, unreasonable search and seizure, due process violations, and cruel and unusual punishment were ignored throughout this case.

**THE AMENDED JUDGMENT AND SENTENCE WAS ILLEGAL**

The Court of Appeals ruled, in part, "Scott's claim that the amended judgment and sentence was illegal, a contention rejected by a superior court, does not change this result." It is not Scott's "claim" that her J&S was illegally amended, it is a fact, one that was accurately disposed of in the appeal of her sentence amendment. That information was in the evidence, complaint, appeal, and motion for reconsideration. The State's position on Scott's null amended sentence is at A .

**REGARDING THE JOINDER OF THE HONORABLE JUDGE STAHNKE**

Regarding the joinder of Judge Stahnke, Judge Evans disposed of the CR 15(c) motion using an argument on jurisdiction, so we are left to argue the CR 15(c) and the jurisdictional issue at the same time. There is no doubt that the superior court lacked the subject matter jurisdiction to increase Scott's sentence. The Washington State Constitution, Article IV, The Judiciary states clearly "the superior court does not have jurisdiction in areas where jurisdiction, by law, is vested exclusively in some other court." CP 97. To reprise Petitioner's complaint: "Our laws and precedents are clear on how jurisdiction, and therefore immunity, are established. Examples include: (a) A sentence imposed under the SRA may be modified only if it meets statutory requirements relating directly to the modification of sentences. In Matter of the Postsentence (sic) Review of Finch, 201l. (b) Absent explicit authorization, the superior court lacks jurisdiction to modify an offender's sentence. In State v. Petterson, 409 P.3d 187, 190 Wash. 2d 92 (2018) the Superior Court is limited by SSOSA legislation for amending sentence length, but for the August 2, 2016 treatment review, Judge Stahnke would "retain jurisdiction after imposing a SSOSA and may modify discretionary community custody conditions even after treatment is terminated."

The Supreme Court has held, “We hold that relation back under Rule 15(c)(1)(C) depends on what the party to be added knew or should have known, not on the amending party’s knowledge or its timeliness in seeking to amend the pleading.” Krupski v. Costa Crociere S. p. A., 560 U.S. 538 (2010). CP 95.

Accidentally or mistakenly ruling on an illegal appeal masquerading as a clerical mistake does not relieve Judge Stahnke of his responsibility to act within his subject matter jurisdiction. See State v. Davis, 160 Wn.App. 471,478, 248 P.3d 121 (2011) (citing State v. Priest, 100 Wn.App. 451, 456, 24 997 P.2d 452 (2000)); State v. Morales, 196 Wn.App. 106, 383 P.3d 539, rev. denied, 539 P.3d 539 (2016).

## F. CONCLUSION

For a court system that claims to operate on the “plain language” interpretation of things, and the “letter of the law, ” Petitioner has not been able to count on one court so far to actually refer to the evidence in the record. All of these constitutional abuses happened in court, in DOC offices, in triplicate, recorded for posterity, on official letterhead, and often signed by hand. A – A . Petitioner has not referred here to every single genuine issue of material fact between her view of the case and the respondents’ claims of immunity, because there are simply too many and the state’s attorneys are not being forthcoming or responsive, anyway. They’ve seen all this evidence, from the first complaint, and have not remarked on it, objected to it, or argued against it.

DOC’s attorneys say there was an error in Scott’s J&S, and it was perfectly reasonable for Love to ask for an amended J&S on a 4-year-old sentence. Clark County’s attorney says the malicious prosecution and *ultra vires* acts aren’t actionable because of prosecutorial immunity and that Hayes dropped the revocation motion. That defense fails because the US Supreme Court

in Kalina says, “Respondent was arrested and spent a day in jail. About a month later, the charges against him were dismissed on the prosecutor’s motion.” And as far as Clark County Prosecuting Attorney’s Office (CCPAO) supervisory liability, Petitioner has 700 pages of redacted interviews from DOC, and if we get to discovery, all of the evidence indicates that Defendant Hayes was not sufficiently trained or adequately supervised in statute of limitation law, due process procedures, how to avoid perjury, or prosecutorial vindictiveness doctrine vis-à-vis Blackledge v. Perry 1974.

Were other CCPAO prosecutors acting as their own complaining witnesses? This would establish a custom, which could make CCPAO liable to Plaintiff under Monell v. Department of Social Services of the City of New York. Furthermore, March 22, 2016, Plaintiff was in Judge Gregerson's court when he approved a CrR 7.8 "correction” on another offender's time barred SSOSA sentence. All of these errors, played out in at least 2 different courtrooms by at least 2 different prosecutors, shows CCPAO may have established a custom or practice of doing whatever DOC asked without performing their own due diligence, using undue processes to correct a Washington State Administrators of the Court error, and ignoring time bars.

These are, verbatim, the grounds for relief and argument contained in Petitioner’s Motion to Reconsider, which the Court of Appeals denied.

Judge Michael Evans erred when he dismissed DOC employee Louise Love from Scott’s 42 U.S.C. §1983 complaint with prejudice without taking into account the specific facts and evidence Scott offered as support for her argument that Louise Love is not entitled to qualified immunity in a case which resulted in a clearly established liberty right being violated. NOA 5.

Judge Michael Evans erred when he denied Scott’s CR 15(c) motion to add The Honorable Judge Stahnke as a defendant, with prejudice and without taking into account the specific

facts and evidence Scott offered as support for her argument that Judge Daniel Stahnke is not entitled to judicial immunity for damages that arose from an illegal sentence increase over which he presided without the subject matter jurisdiction to do so. And, further, on August 2, 2016, Scott brought the court sentencing CDs to his attention, but he refused to look at them. NOA 7-8.

Judge Michael Evans erred when he dismissed DOC as a party in Scott's tort claim, with prejudice and without addressing the specific facts Scott argues regarding the department's liability for their inaction when faced with proof of Scott's over-incarceration. NOA 6.

Judge Michael Evans erred when he dismissed DPA Colin Hayes from this case, with prejudice and without taking into account the specific facts and evidence showing that Hayes does not enjoy prosecutorial immunity for *ultra vires* acts designed to avoid judicial oversight and the due processes of Washington State, which resulted in clearly established liberty rights being violated. NOA 3-4.

Judge Evans erred when he dismissed, with prejudice, all of the remaining defendants named in Pamela Scott's May 31, 2019 tort claims and Civil Rights complaint under 42 U.S.C. §1983 in Cowlitz County Superior Court cause #19-2-00514-08. "If dismissal of the complaint is warranted, it is generally without prejudice, unless it is clear that the complaint cannot be saved by any amendment." See Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir. 2005), cert. denied, 126 S. Ct. 1335 (2006); Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002). Cousins v. Lockyer, No. C 07-1165 SBA, 3 (N.D. Cal. Oct. 31, 2007).

Judge Evans erred when he didn't include written findings of fact and conclusions of law on any of the dismissals of Louise Love (NOA 5), Colin Hayes and CCPAO (NOA 3-4), and DOC (NOA 6). CR 56(h) says, in part, "The order granting or denying the motion for summary

judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered."

Further, Judge Evans' written findings of fact and conclusions of law on the joinder of Judge Stahnke (NOA 7-8) did not address the arguments on jurisdiction that Scott made, and ruled instead on an argument she did not make.

In conclusion, neither the superior court, nor this court have written responsive decisions to the actual facts presented in this case. The superior court did not give near enough information to the Court of Appeals for them to rule that Judge Evans was unconvinced of this, or that, because he wrote no notes. And the one single note he did write, he wrote a decision based on an argument the plaintiff did not make. Please undertake to review the decision of the superior court in this case with an eye on the actual proofs and evidence the plaintiff has provided.

Petitioner begs the court to remand her suit back to the lower court with instructions to re-evaluate all the remaining defendants' immunity with the actual evidence and arguments contained in her complaint, and to record findings of fact and conclusions of law with a level of care commensurate with the gravity of the injury Petitioner suffered at the hands of the state of Washington.

May 23, 2022

Respectfully submitted,

Pamela K. Scott

Signature
*Pro Se* Petitioner

APPENDIX

FILED
3/14/2022
Court of Appeals
Division I
State of Washington

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

PAMELA K. SCOTT,

Appellant,

v.

LOUISE LOVE, WENDY STIGALL, TINA BURGESS, DENISE HINRICHSEN, MAC PEVEY, ELISABETH RASLER, LAURA AMBROSCH, ANNMARIE AYLWARD, MONICA DISTEFANO, ALLAN SOPER, DEBBIE KENDALL, DIANNE ASHLOCK, KATHY GASTREICH, DENISE VAUGHAN, ERICA GREEN, and TIM LANG, in their individual and professional capacities; WASHINGTON STATE DEPARTMENT OF CORRECTIONS; ANNA KLEIN and COLIN HAYES in their individual and professional capacities; and CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE,

Respondents.

No. 83419-3-I

DIVISION ONE

UNPUBLISHED OPINION

ANDRUS, A.C.J. — Pamela Scott appeals the dismissal of her lawsuit against the Department of Corrections (DOC), the Clark County Prosecuting Attorney's Office

(CCPAO), and several individuals employed by those agencies.[1] Scott's lawsuit alleged negligent and intentional misconduct related to actions taken to amend her special sex offender sentencing alternative (SSOSA) sentence. Although we acknowledge that Scott remained under custodial supervision for approximately 10 months past her original sentence end date, she has not stated a claim upon which relief can be granted. We therefore affirm.

## FACTS

On November 2, 2011, Scott pleaded guilty to three counts of first degree possession of depictions of a minor engaged in sexually explicit conduct. The standard sentencing range for Scott's offenses was 46 to 61 months of confinement. Pursuant to the plea agreement, the State asked the trial court to impose a SSOSA, 61 months in total duration, with 12 months of confinement and a 49 month suspended prison sentence. Under SSOSA, the court is authorized to suspend an offender's sentence, but it must also impose a term of confinement of up to twelve months and a "term of community custody equal to the length of the suspended sentence." RCW 9.94A.670(5)(a) and (b).

At the sentencing hearing on December 21, 2011, the court sentenced Scott to a 49-month suspended SSOSA, with the condition that she serve 366 days in confinement and remain on community custody for the length of the suspended sentence. At that time, boilerplate language on the SSOSA judgment and sentence form incorrectly indicated that the community custody portion of the sentence was to be calculated by subtracting

[1] On March 1, 2022, Scott filed a motion to "perfect the record," claiming that she could not confirm that this court received all briefs submitted in her appeal, particularly her reply brief to DOC. Because we have confirmed that this court received all briefs, the motion is denied.

the period of confinement from the total suspended sentence. Thus, the following day, the parties returned to court to modify the judgment and sentence by striking the 49 month sentence and writing in 61 months. The intended result was a total sentence of 61 months, consisting of 366 days of confinement plus 49 months of community custody. However, because Scott's ordered term of community custody (49 months) did not match the length of her suspended sentence (61 months), the revised judgment and sentence did not comply with RCW 9.94A.670(5).

In January 2016, after the Administrative Office of the Courts addressed the faulty language on the judgment and sentence form, DOC directed its records staff to review SSOSA sentences for possible errors. On January 26, 2016, DOC records technician Louise Love notified Clark County prosecutor Anna Klein that a "clerical error" in Scott's judgment and sentence form required DOC to reduce Scott's community custody term from 61 months to 49 months, below the term required by law. Love asked the prosecutor to "provide an amended order correcting the clerical error and providing a term of community custody consistent with RCW 9.94A.670(5)."

On February 17, 2016, Clark County prosecutor Colin Hayes filed a CrR 7.8(a) motion in superior court for an order to correct Scott's judgment and sentence on the ground that the "clerical error" resulted in an impermissibly shortened period of community supervision.[2] Over Scott's objection, on March 23, 2016, the trial court granted the motion and entered an order amending the judgment and sentence by striking the flawed language in the original form and replacing it with revised language stating that "the court places the defendant on community custody under the charge of DOC for the length of

[2] CrR 7.8(a) provides that "[c]lerical mistakes in judgments . . . arising from oversight or omission may be corrected by the court at any time."

the suspended sentence." The order specified that the amended language "provides for community custody consistent with the suspended sentence not the sentence remaining. The suspended sentence was for 61 months therefore the community custody is for 61 months."

Scott appealed the amended judgment and sentence, arguing that the trial court lacked authority to modify it under CrR 7.8(a) because the alleged error was not clerical. While Scott's appeal was pending, Hayes filed a motion to revoke Scott's SSOSA. The motion was based on a report from Scott's community corrections officer (CCO) that was issued approximately one month before the end date for Scott's original term of community custody. In the report, the CCO stated "[t]here [is] currently no documentation that supports Scott has completed" a court-ordered mental health evaluation and certified victim awareness class. Hayes offered to withdraw the revocation motion if Scott agreed to withdraw her appeal, reasoning that this "would ensure that [Scott] has the opportunity to complete the remaining requirements before the expiration of community custody." Scott quickly came into compliance with her SSOSA conditions, and the State withdrew the revocation motion.

In September 2016, Scott filed a tort claim form with the Office of Risk Management, alleging that DOC and the Clark County prosecutors' actions and omissions caused her to be wrongfully sentenced to an additional year of community custody. The Attorney General's Office (AGO) immediately notified DOC of Scott's claim.

In May 2017, the State conceded that the trial court had erred by amending the judgment and sentence under CrR 7.8 because it corrected a mistake of law, not a clerical

error.[3] The State asked the appellate court to remand Scott's case to the trial court with instructions to strike the amended judgment and sentence, thereby returning Scott to the shorter period of community custody. The appellate court agreed, and remanded the case. On June 20, 2017, the trial court struck the March 2016 order amending Scott's judgment and sentence. Scott's sentence reverted to the original period of community custody, and she was released from supervision.

On May 31, 2019, Scott filed a complaint in the superior court against DOC and numerous DOC employees (collectively, the DOC defendants) as well as Clark County and prosecuting attorney Colin Hayes (collectively, the Clark County defendants).[4] Scott asserted claims of (1) false imprisonment, (2) violations under article I, sections 3, 7, 9, and 14 of the Washington Constitution, (3) civil rights violations under 42 U.S.C. § 1983, and (4) intentional infliction of emotional distress and outrage. Scott asserted that she told the defendants her amended sentence was illegal, yet they did nothing to cure the error, thus forcing her to remain on community custody 10 months past her original sentence end date in violation of her constitutional rights. Scott also alleged that Hayes's baseless, vindictive threat to revoke her SSOSA unless she dropped her appeal violated her constitutional rights and caused severe emotional distress. Scott sought monetary damages and injunctive relief.

The DOC defendants moved to dismiss Scott's complaint under CR 12(b)(6), arguing that (1) they had no authority to override or disregard the amended judgment and

[3] See State v. Morales, 196 Wn. App. 106, 118, 383 P.3d 539 (2016) ("Errors that are not clerical are characterized as judicial errors, and trial courts may not amend a judgment under CrR 7.8 for judicial errors.").

[4] Although Scott's complaint named Clark County prosecutor Anne Klein, Scott subsequently indicated that she is no longer asserting a claim against Klein.

sentence, (2) no private right of action exists under the Washington Constitution, and (3) they are entitled to qualified immunity. The Clark County defendants also moved to dismiss Scott's claims because the claims were barred by prosecutorial immunity or were not cognizable under § 1983.[5]

The trial court dismissed Smith's claims with prejudice. The court denied Scott's motion to amend her complaint to add Judge Stahnke as a defendant, stating that "such addition would be futile because of the doctrine of judicial immunity." The court awarded $200 in attorney fees and costs to the DOC defendants and the Clark County defendants.[6] Scott appeals.

ANALYSIS

Scott asserts that the trial court erred by (1) dismissing her § 1983 claim against Love, (2) dismissing her false imprisonment claim against the DOC defendants, (3) dismissing Hayes on the basis of prosecutorial immunity, (4) denying her motion to amend the complaint to add, as a defendant, the superior court judge who signed the amended judgment and sentence, (5) dismissing her claims with prejudice instead of giving her an opportunity to amend her complaint, and (6) failing to issue written findings of fact and conclusions of law.[7] Although we acknowledge that Scott remained under custodial

[5] A municipality cannot be held liable under § 1983 solely because it employs a tortfeasor. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). To establish a § 1983 claim against a municipality, a plaintiff must (1) identify a specific policy or custom, (2) demonstrate that the policy was sanctioned by the official or officials responsible for making policy in that area of the city's business, (3) demonstrate a constitutional deprivation, and (4) establish a causal connection between the custom or policy and the constitutional deprivation. Baldwin v. City of Seattle, 55 Wn. App. 241, 248, 776 P.2d 1377 (1989).

[6] Although Scott's notice of appeal stated that she was seeking review of the cost orders, her briefing does not address them. A party is deemed to have waived any issues that are not raised as assignments of error and argued by brief. State v. Sims, 171 Wn.2d 436, 441, 256 P.3d 285 (2011).

[7] Scott appears to concede that no private right of action exists under the Washington Constitution. See Blinka v. Wash. State Bar Ass'n, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001)

supervision for approximately 10 months past her original release date, we find no basis to reverse the trial court's rulings.

A. Standard of Review

Under CR 12(b)(6), a complaint can be dismissed for "failure to state a claim upon which relief can be granted." We review CR 12(b)(6) dismissals de novo. FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 180 Wn.2d 954, 962, 331 P.3d 29 (2014). "A CR 12(b)(6) motion challenges the legal sufficiency of the allegations in a complaint." McAfee v. Select Portfolio Servicing, Inc., 193 Wn. App. 220, 226, 370 P.3d 25 (2016). We view all facts alleged in the complaint as true and may consider hypothetical facts supporting the plaintiff's claim. FutureSelect, 180 Wn.2d at 962. "But the court is not required to accept the complaint's legal conclusions as true." Rodriguez v. Loudeye Corp., 144 Wn. App. 709, 717-18, 189 P.3d 168 (2008). Dismissal under CR 12(b)(6) is appropriate where the plaintiff cannot prove any set of facts consistent with the complaint that would entitle the plaintiff to relief. Bravo v. Dolsen Cos., 125 Wn.2d 745, 750, 888 P.2d 147 (1995).

B. Dismissal of DOC Defendants

Scott first argues that she stated a valid civil rights claim against DOC records technician Louise Love.[8] "42 U.S.C § 1983 'is not itself a source of substantive rights,' but rather provides 'a method of vindicating federal rights elsewhere conferred.'" Citoli v. City of Seattle, 115 Wn. App. 459, 487, 61 P.3d 1165 (2002) (quoting Graham v. Connor,

("Washington courts have consistently rejected invitations to establish a cause of action for damages based upon constitutional violations 'without the aid of augmentative legislation[.]'") (alteration in original).

[8] Although Scott expressly acknowledges that she did not bring a § 1983 claim against DOC, her arguments appear to address all of the DOC defendants.

490 U.S. 386, 393-94, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)). The plaintiff "must establish that a federally protected constitutional or statutory right has been violated by state action or persons acting under color of state law." Van Blaricom v. Kronenberg, 112 Wn. App. 501, 508, 50 P.3d 266 (2002). "In order to state an actionable claim, a § 1983 plaintiff must prove both cause in fact and legal causation." Gausvik v. Abbey, 126 Wn. App. 868, 885, 107 P.3d 98 (2005).

Scott argues that Love violated her civil rights by initiating a time-barred appeal of her judgment and sentence. She points out that RCW 9.94A.585(7) authorizes DOC to petition for review of a sentence for errors of law, but requires any such petition to be filed no later than 90 days after DOC has actual knowledge of the terms of the sentence. Scott further argues that the DOC defendants are liable for failing to properly train and supervise Love.

Love, however, did not petition the court to review Scott's sentence under RCW 9.94A.585(7). Rather, she notified the Clark County prosecutor that Scott's sentence appeared to violate RCW 9.94A.670(5)(a) and (b) because the suspended sentence and the length of community supervision were not the same. Although Love apparently believed that the faulty language in the form judgment and sentence fell within the definition of a clerical error, the act of notifying the prosecutors of the apparent error in Scott's judgment and sentence was not wrongful. Neither Love nor any other DOC defendant filed the CrR 7.8 motion to amend Scott's judgment and sentence, or granted that motion. The DOC defendants did not cause Scott to serve additional time on community custody.

Scott, relying on Haygood v. Younger, 769 F.2d 1350, 1359 (9th Cir. 1985), argues that DOC is liable for failing to end her supervision despite being on notice by September 2016 that Scott believed her amended sentence was illegal. In Haygood, prison officials tasked with computing the offender's sentence used the wrong formula, and failed to fix the error even after learning about it. Id. at 1352-53. Accordingly, the offender had a cause of action under § 1983 for denial of liberty without due process. Id. at 1359. Here, in contrast, DOC had no right to overrule, ignore, or second guess the court's amended judgment and sentence in Scott's case. See Dress v. Wash. State Dep't of Corr., 168 Wn. App. 319, 322, 279 P.3d 875 (2012) ("[DOC] is not authorized to either correct or ignore a final judgment or sentence that may be erroneous"). Scott's claim that the amended judgment and sentence was illegal, a contention rejected by a superior court, does not change this result.

Scott also asserts that the DOC defendants should be held liable for the tort of false imprisonment. "[A] jail is liable for false imprisonment if it holds an individual for an unreasonable time after it is under a duty to release the individual." Stalter v. State, 151 Wn.2d 148, 155, 86 P.3d 1159 (2004). "An imprisonment enacted pursuant to a valid legal process and court sentence is not false imprisonment." Blick v. State, 182 Wn. App. 24, 33, 328 P.3d 952 (2014). But the DOC defendants cannot be held responsible for refusing to release Scott from a lawfully imposed judgment and sentence. And no authority supports Scott's claim for civil damages based on double jeopardy.

C. Dismissal of Clark County Defendants

Scott argues that the trial court erred by dismissing her claims against Hayes and the Clark County under the doctrine of prosecutorial immunity. We disagree.

Whether a prosecutor enjoys absolute immunity for challenged conduct depends on the nature of the function performed. Kalina v. Fletcher, 522 U.S. 118, 127, 118 S. Ct. 502, 139 L. Ed. 2d 471 (1997). "It is well established that a prosecutor who acts within the scope of his or her duties in initiating and pursuing a criminal prosecution is absolutely immune from liability." Tanner v. City of Federal Way, 100 Wn. App. 1, 4, 997 P.2d 932 (2000) (citing Imbler v. Pachtman, 424 U.S. 409, 427, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976)). However, "[a]bsolute immunity means that a prosecutor is shielded from liability even when he or she engages in willful misconduct." McCarthy v. County of Clark, 193 Wn. App. 314, 337, 376 P.3d 1127 (2016). This immunity extends to both the State and the entity employing the prosecutor. Janaszak v. State, 173 Wn. App. 703, 718-19, 297 P.3d 723 (2013). "This immunity is warranted to protect the prosecutor's role as an advocate because any lesser immunity could impair the judicial process." McCarthy, 193 Wn. App. at 337.

Scott alleged damages arising from Hayes's decision (1) to file a CrR 7.8 motion to amend her judgment and sentence to correct an error of law and (2) to move to revoke her SSOSA on false pretenses in an attempt to bully her into dropping her appeal. But the filing of pleadings and motions on behalf of the State in a criminal proceeding are core prosecutorial functions entitling Hayes to absolute immunity.

Relying on Kalina, Scott argues that prosecutorial immunity does not apply in this situation because Hayes's sworn motion to revoke her SSOSA was "littered with actual lies." In Kalina, the U.S. Supreme Court held that a state prosecutor was not entitled to prosecutorial immunity in a § 1983 action when she acted outside the scope of her duties by personally vouching for the truth of facts set forth in an affidavit attached to an

information charging a man with burglary. 522 U.S. at 121-22. By vouching for the truth of the matters stated in the affidavit, the prosecutor placed herself in the position of a complaining witness, rather than an advocate. Id. at 129-31. Kalina is distinguishable because Hayes did not personally attest to the veracity of facts in a charging document. Hayes's motion to revoke the SSOSA was based on a report from Scott's CCO identifying conditions Scott had not completed.

The trial court did not err in dismissing Scott's claims against the Clark County defendants on the basis of prosecutorial immunity.[9]

D. Leave to Amend Complaint

Scott challenges the trial court's denial of her motion to amend her complaint to add Judge Stahnke as a party. "After an answer is served, CR 15(a) permits a plaintiff to amend a complaint only by leave of court, which shall be freely given when justice so requires." Rodriguez, 144 Wn. App. at 729. The court may consider whether the new claim is futile or untimely. Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 142, 937 P.2d 154 (1997). We will reverse a trial court's ruling on a request to amend only if the trial court abused its discretion. Nepstad v. Beasley, 77 Wn. App. 459, 468, 892 P.2d 110 (1995). "[T]he trial court's failure to explain its reason for denying leave to amend may amount to an abuse of discretion." Rodriguez, 144 Wn. App. at 729.

Here, after determining that the trial court had jurisdiction, it concluded that "justice does not require adding Judge Stahnke to the case as a party" because "such addition would be futile because of the doctrine of judicial immunity." This ruling was not an abuse

[9] Because we conclude that prosecutorial immunity barred Scott's claims, we need not address the Clark County defendants' argument that dismissal was also proper for failure to validly state a Monell claim. See Tanner, 100 Wn. App. at 4 ("[p]rosecutors are immune from section 1983 federal claims as well as state common law claims").

of discretion. Judges are absolutely immune from suits in tort that arise from acts performed within their judicial capacity. Lallas v. Skagit County, 167 Wn.2d 861, 864, 225 P.3d 910 (2009). "The purpose of this immunity is not to protect judges as individuals, but to ensure that judges can administer justice without fear of personal consequences." Taggart v. State, 118 Wn.2d 195, 203, 822 P.2d 243 (1992)). "Judicial immunity applies even when a judge acts in excess of his or her jurisdiction, as long as there is not a clear absence of jurisdiction." Lallas, 167 Wn.2d at 864.

Scott argues that Judge Stahnke is not entitled to judicial immunity because the court lacked jurisdiction to amend her sentence.[10] This is so, she contends, because her original sentence was correct, the trial court was misinformed that her sentence contained a clerical error, and the prosecutor filed its motion well after the 90-day period under which DOC may challenge legal errors under RCW 9.94A.585(7).

Here, the State filed a CrR 7.8(a) motion before Judge Stahnke to correct what it believed was a clerical error in Scott's judgment and sentence. CrR 7.8 grants the court jurisdiction to correct a clerical error in one of its orders "at any time." Although the State later conceded that the error was not clerical, the judge's ruling, even if erroneous, did not constitute a clear absence of jurisdiction. See Stump v. Sparkman, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978) (unless acting in the clear absence of all jurisdiction, a judge will not be deprived of immunity even if the action was erroneous, malicious, or in excess of authority). The trial court did not abuse its discretion by denying Scott leave to amend her complaint.

[10] Although Scott frames this issue as a challenge to subject matter jurisdiction, her argument appears to address jurisdiction more broadly.

Scott also assigns error to the trial court's decision to dismiss her claims with prejudice. She contends that "[d]ismissal without leave to amend is improper unless it is clear, upon de novo review, the complaint could not be saved by any amendment." In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005). Because we conclude that no set of facts would entitle Scott to relief under these circumstances, dismissal with prejudice was appropriate.

E. Findings of Fact and Conclusions of Law

Citing CR 56(h), Scott argues that the trial court erred in failing to enter written findings of fact or conclusions of law regarding any of its orders. Scott is incorrect. CR 56(h) provides that "[t]he order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered." Here, the parties did not move for summary judgment dismissal of Scott's claims under CR 56. Rather, they moved for dismissal under CR 12(b)(6). As such, "[t]he court need not find that any support for the alleged facts exists or would be admissible in trial as would be its duty on a motion for summary judgment." Contreras v. Crown Zellerbach Corp., 88 Wn.2d 735, 742, 565 P.2d 1173 (1977).

Affirmed.

Andrus, A.C.J.

WE CONCUR:

Coburn, J.

Brown, J.

# MOTION TO RECONSIDER

No. 83419-3-I

COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

| | | |
|---|---|---|
| Pamela K. Scott, | ) | |
| Appellant | ) | Motion to Reconsider |
| v. | ) | |
| | ) | |
| Louise Love, et al, | ) | |
| Appellees | ) | |

1. Identity of Moving Party

   Pamela K. Scott, Appellant, asks for the relief designated in Part 2.

2. Statement of Relief Sought

   Because it is clear that this court, too, has not seen the evidence, the appellant respectfully requests the Court reconsider terminating review of her suit and revisit the facts contained in Part 3.

3. Facts Relevant to Motion

   I. This court ruled, in part, that Scott's amended judgment and sentence was set aside because of an improper use of CrR 7.8. stating:

   Scott's claim that the amended judgment and sentence was illegal, a contention rejected by a superior court, does not change this result."

   This ruling does not follow the law, or the facts of the case as follows:

   Scott's original sentence the result of a rigorous plea bargain (SSOSA), valid on its face, reflecting the court's intent, and substantially served, as conceded by the state on May 26, 2017 (CP 17-24)?

   This refusal of the superior court to look at the actual evidence is the reason for this appeal. It is not Scott's "claim" that the amended judgment and sentence was illegal, it is a fact, not a contention, and one that cannot be rejected by either the superior court, nor this court. Res judicata covered the question of the

illegality of Scott's amended sentence once and for all, in Washington State Court of Appeals case no. 493110.

Please refer to the State's Brief Conceding, which is attached herein for your consideration. EXH 2:

"November 2, 2011, Scott entered a guilty plea….CP 22 If Scott was granted SSOSA, the parties stipulated that they would recommend a suspended sentence of 49 months. CP 31.

At the sentencing hearing, Scott was granted a suspended sentence under SSOSA. CP 36 - 45. The state asked the sentencing court to impose 12 months of confinement and enter a 49 month suspended sentence. RP 5. The trial court sentenced Scott to 49 months, suspended, with the condition of serving 366 days in confinement, and community custody for the term of the suspended sentence. RP 13. CP 39. The judgment and sentence initially reflected this sentence, with 49 months written in as the sentence, with conditions of 366 days in confinement, and "community custody under the charge of DOC for the length of the suspended sentence…." CP 38 - 39.

The following day all parties returned to court to correct the judgment and sentence to do what the parties believed would accurately reflect the court's sentencing intent. RP 40 - 42. It was made clear on the record that the parties and the court understood that by reflecting a 61 months sentence and imposing 12 months time in custody, the result would be a 49 month suspended sentence. RP 40 - 41. The provision for community custody to last for the length of the suspended sentence remained unchanged during this hearing. CP 39."

II. This court ruled, in part, "And no authority supports Scott's claim for civil damages based on double jeopardy."

Once again, relying upon the same arguments and evidence Scott presented to the superior court, and the Sixth Amendment's protection against being sentenced for the same offense twice, Scott directs the court's attention, again, to the State's Brief Conceding:

"The State agrees with Scott that the trial court did not correct a clerical mistake in the judgment and sentence in order to clarify its original sentencing intent. Though this seems to have been the trial court's intent in entering the March 23, 2016 order, its action was in fact an attempt a mistake of law, **which thus resulted in the trial court effectively resentencing Scott.**

III. In relation to the DOC defendants, this court ruled, in part:

> Love, however, did not petition the court to review Scott's sentence under RCW 9.94A.585(7). Although Love apparently believed that the faulty language in the form judgment and sentence fell within the definition of a clerical error, the act of notifying the prosecutors of the apparent error in Scott's judgment and sentence was not wrongful. Neither Love nor any other DOC defendant filed the CrR 7.8 motion to amend Scott's judgment and sentence, or granted that motion. The DOC defendants did not cause Scott to serve additional time on community custody.

This ruling does not follow the law, or the facts of the case as follows:

This court cannot know why Ms. Love contacted the court to request an amended sentence. Nobody has asked Louise Love, in her position as Records Tech, and the DOC attorneys have never refuted or addressed any of Scott's claims or evidence that Love did take the first step to petition the court to review Scott's sentence under RCW 9.94A.585(7). Neither have they pointed to why Ms. Love was working on 4 year old SSOSA sentences, and under what authority.

As Scott has repeatedly shown, through many pieces of evidence, that DOC was engaged in a system-wide SSOSA Audit, going back 10 years. DOC developed and disseminated to the Records Techs the attached "SSOSA Supervision Length Review Process," which clearly states that the audit was undertaken in order to change the SSOSA prison files to match any erroneous Judgments and Sentences they found during the audit.

Louise Love had only two tools in her box to deal with the stack of SSOSA sentences on her desk during this SSOSA Supervision Length Review. 1) Follow the express instructions in the review process, or, 2) Follow the express conditions in RCW 9.94A.585(7). When Louise Love failed to do either, and when DOC as an agency refused to take action to correct Love's error, they robbed Scott of the due processes and protections contained in both RCW 9.94A.585(7), and in the SSOSA Supervision Length Review.

Louise Love, who was reviewing SSOSA sentences for possible errors, and who flagged Scott's sentence as incorrect, was supposed to use the alternate remedy contained within Exhibit 4 in Scott's original complaint and attached herein for

your consideration.

Line 1. Review J&S to see if it includes the following boilerplate language or if the Court has subtracted the confinement time from the supervision length.

Line 3. **If** they have the boilerplate language **or** the Court orders a supervision length that reduces the suspended sentence length, subtract the original confinement time length from the suspended sentence length and this will become the new suspended sentence. Example: Court orders a suspended sentence of 131 months, in addition they order 6 months of original confinement. Subtract the 6 months of original confinement from the suspended sentence length and enter 125 months as the supervision length and the suspended confinement length will remain 131 months.

Because Scott's file contained **BOTH** the boilerplate language **AND** the Court ordered supervision length that reduced the suspended sentence length, Ms. Love was clearly instructed to change Scott's sentence in her file and then take the following steps:

Line 4. Chrono the changes and the new SED.

Line 5. Email the CCO of the SED change.

Line 6. Send an email to the Prosecutor and the Defense attorney using our normal Problem J&S process. Template has been added to our Problem J&S Process.

**Line 8. First sort the list by the intake date with the newest Intakes being recalculated first as there still may be time to file Post Sentence if the Court does not fix the error. Go back three months.**

The State's attorney's are not being truthful or forthcoming with the court. This 8th provision is clearly a reference to filing an appeal under RCW 9.94A.585(7), which means they weren't supposed to go back and ask for amended sentences more than 90 days old.

This court is correct that neither DOC, nor any of its employees filed the erroneous CrR 7.8 motion to amend Scott's judgment and sentence. But the act of asking for a corrected J&S, instead of emailing the Prosecutor and the Defense attorney using the normal Problem J&S process, whatever that is, with the Template that had been added to their Problem J&S Process is what lead to the Prosecutor and Sentencing Judge turning

themselves inside out to comply with what they thought DOC was asking them to do. But Ms. Love and DOC have never had to answer any of these questions.

IV. In regards to Clark County Deputy Prosecuting Attorney Colin Hayes, this court ruled, in part:

> Relying on Kalina, Scott argues that prosecutorial immunity does not apply in this situation because Hayes's sworn motion to revoke her SSOSA was "littered with actual lies." In Kalina, the U.S. Supreme Court held that a state prosecutor was not entitled to prosecutorial immunity in a § 1983 action when she acted outside the scope of her duties by personally vouching for the truth of facts set forth in an affidavit attached to an information charging a man with burglary. 522 U.S. at 121-22. By vouching for the truth of the matters stated in the affidavit, the prosecutor placed herself in the position of a complaining witness, rather than an advocate. Id. at 129-31. Kalina is distinguishable because Hayes did not personally attest to the veracity of facts in a charging document. Hayes's motion to revoke the SSOSA was based on a report from Scott's CCO identifying conditions Scott had not completed. The trial court did not err in dismissing Scott's claims against the Clark County defendants on the basis of prosecutorial immunity.[9]

This ruling does not follow the law, or the facts of the case as follows:

First, you must understand that on August 2, 2016, Scott appeared before Judge Stahnke for what was to be her final yearly treatment review. CCO Bethany Clemons had prepared the regular yearly August 2, 2016 document entitled Court Special, that, in spite of much pressure from DPA Hayes, and finding out that there is no such thing as a Certified Sex Offender Victim Impact Program, and that she had been assured by my therapist that all of my treatment goals had been met, CCO Clemons said she could find no proof of completion in my chart. But we never got to the treatment review, because Judge Stahnke had just seen me over and over again, since February, in his court fighting this sentence amendment.

Please refer to Exhibit 7 before the superior court of this appeal, the transcript from August 2, 2016, when Judge Stahnke informed the DPAs, including Colin Hayes, that the case was in appeal and the length of sentence was the issue, so no action.

Exhibit 8 before the superior court of this appeal, the first threat letter sent from my appeal lawyer, indicating Colin Hayes had walked out of that courtroom and threatened me through my lawyer.

Exhibit 9 before the superior court of this appeal, the threat letter that I asked my appeal lawyer to get in writing.

And, re Kalina, Scott has personally shown the charging document Exhibit 11 before the superior court of this appeal, whereby Hayes filed to revoke Scott's SSOSA, before judge Gregerson on 08/16/2016, while twice personally attesting to the veracity of his statements under penalty of perjury under the laws of the State of Washington to the facts in the charging document. Every Single "fact" he swore to was a lie. He got the sentencing date, the judge, and the fact that I had ever received a violation all wrong for **the expressly stated purpose to force me to drop my appeal.**

4. Grounds for Relief and Argument

The grounds for relief and argument remain the same as in my initial complaint, because, as this court will see from looking at the attached evidence, Judge Michael Evans did not take into account any of the proof.

Judge Michael Evans erred when he dismissed DOC employee Louise Love from Scott's 42 U.S.C. §1983 complaint with prejudice without taking into account the specific facts and evidence Scott offered as support for her argument that Louise Love is not entitled to qualified immunity in a case which resulted in a clearly established liberty right being violated. NOA 5.

Judge Michael Evans erred when he denied Scott's CR 15(c) motion to add The Honorable Judge Stahnke as a defendant, with prejudice and without taking into account the specific facts and evidence Scott offered as support for her argument that Judge Daniel Stahnke is not entitled to judicial immunity for damages that arose from an illegal sentence increase over which he presided without the subject matter jurisdiction to do so. And, further, on August 2, 2016, Scott brought the court sentencing CDs to his attention, but he refused to look at them. NOA 7-8.

Judge Michael Evans erred when he dismissed DOC as a party in Scott's tort claim, with prejudice and without addressing the specific facts Scott argues regarding the department's liability for their inaction when faced with proof of Scott's over-incarceration. NOA 6.

Judge Michael Evans erred when he dismissed DPA Colin Hayes from this case, with prejudice and without taking into account the specific facts and evidence showing that Hayes does not enjoy prosecutorial immunity for ultra vires acts designed to avoid judicial oversight and the due processes of Washington State, which resulted in clearly established liberty rights being violated. NOA 3-4.

Judge Evans erred when he dismissed, with prejudice, all of the remaining defendants named in Pamela Scott's May 31, 2019 tort claims and Civil Rights complaint under 42 U.S.C. §1983 in Cowlitz County Superior Court cause #19-2-00514-08. "If dismissal of the complaint is warranted, it is generally without prejudice, unless it is clear that the complaint cannot be saved by any amendment." See Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir. 2005), cert. denied, 126 S. Ct. 1335 (2006); Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002). Cousins v. Lockyer, No. C 07-1165 SBA, 3 (N.D. Cal. Oct. 31, 2007).

Judge Evans erred when he didn't include written findings of fact and conclusions of law on any of the dismissals of Louise Love (NOA 5), Colin Hayes and CCPAO (NOA 3-4), and DOC (NOA 6). CR 56(h) says, in part, "The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered."

Further, Judge Evans' written findings of fact and conclusions of law on the joinder of Judge Stahnke (NOA 7-8) did not address the arguments on jurisdiction that Scott made, and ruled instead on an argument she did not make.

In conclusion, neither the superior court, nor this court have written responsive decisions to the actual facts presented in this case. The superior court did not give near enough information to the Court of Appeals for them to rule that Judge Evans was unconvinced of this, or that, because he wrote no notes. And the one single note he did write, he wrote a decision based on an argument the plaintiff did not make.

Please undertake to review the decision of the superior court in this case with an eye on the actual proofs and evidence the plaintiff has provided.

April 5, 2022

Respectfully submitted,

Pamela K. Scott

Signature

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# EXHIBIT 2



NO. 49311-0-II

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

---

STATE OF WASHINGTON, Respondent

v.

PAMELA KAY SCOTT, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.11-1-01315-4

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BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

### I. The State agrees and concedes the superior court improperly entered an order amending Scott's sentence.

## STATEMENT OF THE CASE

The State charged Pamela Scott (hereafter 'Scott') with multiple counts of possession of depictions of a minor engaged in sexually explicit conduct in the first degree. CP 4-9. On November 2, 2011, Scott entered a guilty plea to three counts of possession of depictions of a minor engaged in sexually explicit conduct. CP 22. The State dismissed two counts from the information in exchange for Scott's entry of a guilty plea to the remaining three counts. CP 29-32. As terms of the plea agreement, the State remained free to recommend any sentence within the standard range of 46-61 months for each count, and Scott was free to request a sentence under SSOSA, RCW 9.94A.510. *Id.* If Scott was granted SSOSA, the parties stipulated that they would recommend a suspended sentence of 49 months. CP 31.

At the sentencing hearing, Scott was granted a suspended sentence under SSOSA. CP 36-45. The State asked the sentencing court to impose 12 months of confinement and enter a 49 month suspended sentence. RP 5. The trial court sentenced Scott to 49 months, suspended, with the condition of serving 366 days in confinement, and community custody for

the term of the suspended sentence. RP 13, CP 39. The judgment and sentence initially reflected this sentence, with 49 months written in as the sentence, to be suspended, with conditions of 366 days in confinement and "community custody under the charge of DOC for the length of the suspended sentence...." CP 38-39.

The following day all parties returned to court to correct the judgment and sentence to do what the parties believed would accurately reflect the court's sentencing intent. RP 40-42. The parties struck the 49 month sentence imposition in the judgment and sentence and wrote in 61 months. CP 38. It was made clear on the record that the parties and the court understood that by reflecting a 61 months sentence and imposing 12 months of time in custody, the result would be a 49 month suspended sentence. RP 40-41. The provision for community custody to last for the length of the suspended sentence remained unchanged during this amendment hearing. CP 39.

In early 2016, the State was contacted by DOC, and DOC explained they believed Scott's judgment contained a clerical error, and explained her community custody, by law, was the sentence term the court imposed, 61 months. CP 89. The State filed a motion to correct the judgment and sentence with the superior court in February 2016. CP 87-91. On March 23, 2016, the trial court granted the State's motion and

entered an order correcting and amending the judgment and sentence. CP 55-56. Scott objected to the entry of the order. RP 45-58.

Scott then moved for the superior court to reconsider its order to correct the judgment and sentence on April 1, 2016. CP 57-62. On April 29, 2016, the superior court held a hearing on Scott's motion to reconsider. RP 19-35. The court denied Scott's motion to reconsider. CP 73. This appeal followed.

## ARGUMENT

### I. The State agrees and concedes the superior court improperly entered an order amending Scott's sentence.

Scott alleges the trial court erred in entering its March 23, 2016 "Order Correcting Judgment and Sentence." The State agrees and concedes the trial court erred in entering this order. This matter should be remanded to the trial court to strike the order entered on March 23, 2016.

CrR 7.8 allows for relief from judgments to include corrections of clerical mistakes, and relief from the judgment due to other mistakes, inadvertence, neglect, etc, and for other reasons including newly discovered evidence, fraud, etc. CrR 7.8(a), (b). Under CrR 7.8(b), a motion for relief or correction of the judgment must be made within one year of the judgment being entered for reasons such as mutual mistake, inadvertence, surprise, excusable neglect or irregularity.

A clerical mistake on a judgment and sentence is when the written version of the judgment does not convey the sentencing court's intent as expressed in the trial record. *See State v. Davis*, 160 Wn.App. 471, 478, 248 P.3d 121 (2011) (citing *State v. Priest*, 100 Wn.App. 451, 456, 997 P.2d 452 (2000)); *State v. Morales*, 196 Wn.App. 106, 383 P.3d 539, *rev. denied*, 539 P.3d 539 (2016). Clerical mistakes may be corrected at any time. CrR 7.8(a). The State agrees with Scott that the trial court did not correct a clerical mistake in the judgment and sentence in order to clarify its original sentencing intent. Though this seems to have been the trial court's intent in entering the March 23, 2016 order, its action was in fact an attempt to correct a mistake of law, which thus resulted in the trial court effectively resentencing Scott. Though mistakes of law may be corrected, the appropriate vehicle is a direct appeal, not a CrR 7.8 motion.

When a mistake is not a "clerical" mistake as that term is meant under CrR 7.8, it's considered a judicial error. *Morales*, 196 Wn.App. at 118 (citing *Davis*, 160 Wn.App. at 478). Trial courts may not amend a judgment and sentence for a judicial error. *Id.* This is precisely what the trial court in Scott's case did: the sentencing court initially made an error in its calculation of the suspended sentence and community custody term, and it then believed DOC misinterpreted the original judgment and sentence, and the court chose to correct that error via CrR 7.8 in its March

23, 2016 order. This correction/amendment is contrary to the law discussed above, and as such, the trial court's March 23, 2016 order should be stricken.

## CONCLUSION

The State agrees with Scott that the trial court erroneously entered an order amending or correcting her judgment and sentence. This case should be remanded to strike the order.

DATED this 26 day of May, 2017.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: _____
RACHAEL R. PROBSTFELD, WSBA #37878
Senior Deputy Prosecuting Attorney
OID# 91127

The Seattle Times

EXHIBIT 1

By
Joseph O'Sullivan
*Seattle Times Olympia bureau*

# Concerns about sex-offender sentences years before problem fixed

Originally published September 10, 2016 at 7:12 pm
Updated September 11, 2016 at 6:57 pm

**OLYMPIA** — State officials early this year moved to fix incorrect language on a court sentencing form that since 2008 improperly reduced community supervision and treatment time for some Washington sex offenders.

But newly released documents reveal the problem was brought to the attention of some in the courts and corrections systems in 2010 — and they did nothing to correct it.

The documents include an email between state workers raising the possibility of a problem, as well as a meeting agenda where questions about the sentencing form were scheduled to be raised.

The felony judgment and sentencing form was used in some counties for the Special Sex Offender Sentencing Alternative (SSOSA), a program designed to lessen the chance for a repeat crime by certain first-time felony sex offenders considered a low risk to the community.

Incorrect language on the court form improperly subtracted the length of jail time given to SSOSA offenders from the length of their suspended sentence. That affected how officials then calculated the amount of community supervision the offenders were to receive.

Court officials fixed the form in January, and the state Department of Corrections (DOC) reviewed the sentences of offenders currently in SSOSA. The review found that the incorrect forms had shortened community supervision and treatment time for at least 73 sex offenders.

The review found 32 other offenders who were supervised for too long because of the error. After the discovery, monitoring for them was ended.

Since the review covered only offenders in the program at the time, it's unclear whether any offenders were actually released early from supervision.

The newly released documents show that some were concerned about the problem back in 2010.

That summer, then-Assistant Attorney General Ronda Larson wrote an email to Merrie Gough, a senior legal analyst with the Administrative Office of the Courts (AOC). It was titled "SSOSA J & S form confusion re. length of community custody" and two DOC staffers were copied on it.

SSOSA Supervision Length Review Process:

1. Review J&S to see if it includes the following boilerplate language or if the Court has subtracted the confinement time from the supervision length.

(c) ***Suspension of Sentence.*** The court imposes _____ months (up to 12 months of actual confinement or the maximum term of the standard range, whichever is less) and suspends the [redacted] for the duration of the special sex offender sentencing alternative program.

NOTE: The language should read:

RCW 9.94A.670(5) states, "As conditions of the suspended sentence, the 3/22/2017 10:04 AMcourt must impose the following: (a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3)...
(b) A term of community custody [redacted] to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703."

2. If the SSOSA sentence is a CCB sentence with a supervision length of Life or if the J&S has the language from the RCW of "equal to" nothing will need to be changed. Chrono "SSOSA suspended sentence length review has been completed and no changes required."

3. If they have the boilerplate language or the Court orders a supervision length that reduces the suspended sentence length, subtract the original confinement time length from the suspended sentence length and this will become the new suspended sentence. Example: Court orders a suspended sentence of 131 months, in addition they order 6 months of original confinement. Subtract the 6 months of original confinement from the suspended sentence length and enter 125 months as the supervision length and the suspended confinement length will remain 131 months.

4. Chrono the changes and the new SED.

5. Email the CCO of the SED change.

6. Send an email to the Prosecutor and the Defense attorney using our normal Problem J&S process. Template has been added to our Problem J&S Process.

7. When reviewing the sentences, ensure the sentence structure is entered consistently. Laura has examples of how it should be entered.

8. First sort the list by the intake date with the newest intakes being recalculated first as there still may to time to file Post Sentence if the Court does not fix the error. Go back three months.

9. Next sort would be by the upcoming SRD's in case anyone should be off of supervision.

10. Once you have completed a few of the reviews if you could give me an expected timeline for completion I would appreciate it.

# EXHIBIT 4

EXHIBIT 7

08/02/16

BEGIN AUDIO 01:35:38 PM (video time display)

**Prosecutor:** Your Honor, number one...Scott, SSOSA review.

I see Miss Scott coming up; she was ordered to complete a mental health evaluation and a victim's impact class. She has not completed those conditions.

DOC has given her 31 days to complete those conditions before we revoke her or move to revoke. So we're just asking right now...no action today. But, of course, admonish the defendant that she needs to complete her sentence conditions and set it over for about 45 days for another review.

**Ms. Scott:** May I speak?

**Judge Stahnke:** Sure.

**Ms. Scott:** I was up here five years ago and we've seen each other just recently. I completed more than two years of SSOSA treatment.

**Judge Stahnke:** This case is on appeal.

**Ms. Scott:** Yes.

**Judge Stahnke:** So, no action today.

**Prosecutor:** We're just asking that it be set for another 45 days.

**Judge Stahnke:** Well, I think the issue on the appeal...can I speak?

**Ms Scott:** Your Honor, I'm sorry.

**Judge Stahnke:** No, that's alright. I think the issue on appeal is the duration of community custody that would make her comply with SSOSA and so until this Court of Appeals resolves the duration of her community custody, there's nothing I can do on the SSOSA issue. And it was perfected...I've got a July 26th filing from the Court of Appeals, Division 2.

**Prosecutor:** That's what I was going to say, your honor. We (???) this case, however, it did sound like a different issue than the one we have before us today.

**Judge Stahnke:** Okay, so no action today.

**Ms. Scott:** I did get the transcripts and the tapes that you said I could read to you, proving that it were a 49 month sentence. And I shared those with Mr. Connelly and Mr. Hayes.

**Judge Stahnke:** So what is it that you're asking me to do? It's on appeal; I've already made a ruling

**Ms. Scott:** It doesn't have to be on appeal if...

**Judge Stahnke:** If I see it your way?

**Ms. Scott:** I'm sorry; I'm not asking you to see it my way. I'm just asking you to see it.

**Judge Stahnke:** I already made a decision on it and that decision is on appeal.

**Ms. Scott:** But you invited me to bring the tapes and I have them and I have proof of that right now. I have it on computer, I have it on discs, I have it on transcripts as well.

**Judge Stahnke:** Did you share that with your appellate attorney? Did you share that with your appellate attorney?

**Ms. Scott:** It's a slow process. Yesterday was August 1st and I was hoping that this would be my last month and I got a new PO. And she called me and immediately got extremely adversarial because she said I'm not meeting my conditions.

And I have done everything...I have come to every court date, I have passed every UA. Now, I do have my conditions in here, but we can't talk about conditions at all?

**Judge Stahnke:** I'm not going to talk about anything; I'm not making any decisions today.

**Ms. Scott:** So do I have to do that?

**Judge Stahnke:** I'm taking no action today, you're going to have to talk to your attorney about what you need to do going forward.

**Ms. Scott:** But this woman is directing me to do it, she's actually kind of threatening me.

**Judge Stahnke:** Well, we're not here for me to decide anything. The case is on appeal on the amount of community custody. Good luck with that, I don't know how it will turn out, but they'll tell me one way or the other...whether it's 61 or 49, right? That was the issue. So, there's just nothing to do today.

**Ms. Scott:** But what am I going to tell my P.O.?

**Ms. Scott:** I did get the transcripts and the tapes that you said I could read to you, proving that it were a 49 month sentence. And I shared those with Mr. Connelly and Mr. Hayes.

**Judge Stahnke:** So what is it that you're asking me to do? It's on appeal; I've already made a ruling

**Ms. Scott:** It doesn't have to be on appeal if...

**Judge Stahnke:** If I see it your way?

**Ms. Scott:** I'm sorry; I'm not asking you to see it my way. I'm just asking you to see it.

**Judge Stahnke:** I already made a decision on it and that decision is on appeal.

**Ms. Scott:** But you invited me to bring the tapes and I have them and I have proof of that right now. I have it on computer, I have it on discs, I have it on transcripts as well.

**Judge Stahnke:** Did you share that with your appellate attorney? Did you share that with your appellate attorney?

**Ms. Scott:** It's a slow process. Yesterday was August 1st and I was hoping that this would be my last month and I got a new PO. And she called me and immediately got extremely adversarial because she said I'm not meeting my conditions.

And I have done everything...I have come to every court date, I have passed every UA. Now, I do have my conditions in here, but we can't talk about conditions at all?

**Judge Stahnke:** I'm not going to talk about anything; I'm not making any decisions today.

**Ms. Scott:** So do I have to do that?

**Judge Stahnke:** I'm taking no action today, you're going to have to talk to your attorney about what you need to do going forward.

**Ms. Scott:** But this woman is directing me to do it, she's actually kind of threatening me.

**Judge Stahnke:** Well, we're not here for me to decide anything. The case is on appeal on the amount of community custody. Good luck with that, I don't know how it will turn out, but they'll tell me one way or the other...whether it's 61 or 49, right? That was the issue. So, there's just nothing to do today.

**Ms. Scott:** But what am I going to tell my P.O.?

**Judge Stahnke:** I don't know, I'm not going to get involved in that either. Your P.O. is going to have to talk to the prosecutor. But you can talk to your attorney. The prosecutor probably won't even talk to you now, either, because it's on appeal and you have an attorney.

**Ms. Scott:** I don't have an attorney here. And I don't want an attorney.

**Judge Stahnke:** Erik Nielsen is your attorney.

**Ms. Scott:** Who?

**Judge Stahnke:** Erik Nielsen.

**Ms. Scott:** I have an attorney for my appeal now?

**Judge Stahnke:** I think so.

**Ms. Scott:** Erik Nielsen, is he like pro bono or something?

**Judge Stahnke:** See, I don't know.

**Ms. Scott:** I didn't think...(unintelligible)

**Judge Stahnke:** Well, I'm just looking at this thing that came from the Division 2, Court of Appeals. It's got Erik Nielsen; it's got Ann Lowry Cruiser in the Clark County prosecutor's office. So Mr. Hayes isn't handling the appeal; it's going to be Miss Cruiser, so go talk to them.

**Prosecutor:** Just for the record, so that we understand you decision. We just show that D.O.C is asking her to complete one class, that's the only thing that stands between her and the SSOSA revocation issue, but that's all she has to do is complete one class.

**Judge Stahnke:** Okay, thanks a lot. That's it for today.

END AUDIO 01:42:09 PM

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

**COURT - SPECIAL**

| | | | |
|---|---|---|---|
| **REPORT TO:** | THE HONORABLE Daniel Stahnke<br>Clark COUNTY SUPERIOR COURT | **DATE:** | 8/2/2016 |
| **OFFENDER NAME:** | SCOTT, Pamela K. | **DOC NUMBER:** | 353595 |
| | | **DOB:** | 1/22/1958 |
| **CRIME:** | Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (3) | **COUNTY CAUSE #:** | 11-1-01315-4(AA) |
| **SENTENCE:** | 61 months Sex Offender Community Custody | **DATE OF SENTENCE:** | 12/21/2011 |
| **LAST KNOWN ADDRESS** | 3701 1/2 E 18th, apt 13<br>Vancouver, WA 98661 | **TERMINATION DATE:** | 9/1/2017 |
| **MAILING ADDRESS:** | 3701 1/2 E 18th, apt 13<br>Vancouver, WA 98661 | **STATUS:**<br>**CLASSIFICATION:** | Field<br>LOW |

Pamela Scott is Level 1 LOW risk registered Sex Offender and currently being supervised by the Washington State Department of Corrections for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1. Scott has only recently just been transferred to my caseload. With the exception of a few bumps in the road Scott has mostly been compliant. However, the Judgement and Sentence for Cause number 11-1-01315-4 (AA) ordered Scott to complete a Mental Health evaluation by a certified provider and to complete a certified Victim Awareness program. There are currently no documentation that supports Scott has completed these programs.

*I certify or declare under penalty of perjury of the laws of the state of Washington that the following statements are true and correct to the best of my knowledge and belief based on the information available to me as of the date this report is submitted.*

Exhibit 6

LAW OFFICES OF
NIELSEN, BROMAN & KOCH PLLC
1908 E. MADISON STREET
SEATTLE, WASHINGTON 98122
Voice (206) 623-2373 Fax (206) 623-2488
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ERIC J. NIELSEN
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DAVID B. KOCH
CHRISTOPHER H. GIBSON
DANA M. NELSON

JENNIFER M. WINKLER
CASEY GRANNIS
JENNIFER J. SWEIGERT
JARED B. STEED
KEVIN A. MARCH
MARY SWIFT

OFFICE MANAGER
JOHN SLOANE

LEGAL ASSISTANT
JAMILA BAKER

OF COUNSEL
K. CAROLYN RAMAMURTI

August 4, 2016

Ms. Patricia Scott
3701 1/2 E 18th St
Apt 13
Vancouver 98661

RE: Court of Appeals No. 49311-0-I

Dear Ms. Scott:

Our office was appointed to represent you in the above appeal. You are appealing the court's order clarifying your sentence and extending the terms and conditions of your SSOSA sentence for an additional year. We do not have the record of the hearing so we do not know yet if your appeal has any merit or if it will be successful.

The prosecuting attorney, however, contacted me on Wednesday. He informed me that the State would likely ask the trial court in your case to revoke your SOSSA sentence, which will result in you having to serve your prison time, on the grounds you have failed to comply with all the things you were required to do. He told me the State would not ask the court to revoke your sentence if you withdraw your appeal. If you decide to do that you will still need to complete the requirements of your SSOSA sentence and will be under the terms of that sentence for the additional year.

I tried to call you to discuss the State's offer with your but I am unable to leave a message on your phone (360-980-7413). I need to speak to you soon. It may be in your interest to withdraw your appeal to avoid the possibility that your SSOSA sentence will be revoked. The prosecutor indicated to me that he will make the decision to ask the court to revoke your SOSSA sentence in the next few days.

Please call me so we can discuss your options, the prosecutor's offer and what you wish to do. You can call me collect at the above number.

Sincerely,

Eric Nielsen

EXHIBIT 8

# EXHIBIT 9

PROSECUTING ATTORNEY | ANTHONY F. GOLIK

SCOTT D. JACKSON
Chief Deputy

CAMARA L. J. BANFIELD
Chief Criminal Deputy

CHRISTOPHER HORNE
Chief Civil Deputy

SHARI JENSEN
Administrator

August 12, 2016

**RE: State v. Pamela Scott, 11-1-01315-4**

Dear Mr. Neilsen:

I am writing to propose a mutually beneficial resolution regarding your client's remaining SSOSA obligations. Even under your client's current appellate theory about the period of community custody, a limited amount of community custody time remains. Due to the fact that a SSOSA may only be revoked during the community custody period and that your client has not completed all requirements of the suspended sentence, the State has filed a petition to revoke the SSOSA. But, the State is willing to withdraw this petition if your client agrees to withdraw her appeal of the Court's recent order clarifying the period of community custody. In essence, a withdrawal of the appeal would ensure that your client has the opportunity to complete the remaining requirements before the expiration of community custody.

If the State agrees to withdraw its current petition to revoke pursuant to this agreement, the State will expect Ms. Scott to continue making diligent efforts to complete the victim awareness class and obtain and comply with a mental health evaluation within a reasonable period of time. But, if she ceases to make reasonable and timely efforts at any point during the pendency of the community custody period, the State reserves the right to file a future petition to revoke. The State cited the initial appearance on the petition to revoke on the criminal docket beginning at 9:00 a.m. on August 16, 2016. At that hearing, if your client does not agree to the State's proposal, the State will ask the Court to set a contested hearing before the end of August 2016. Please contact me with any questions.

Sincerely,

Colin Hayes

Colin Hayes
Deputy Prosecuting Attorney



1013 Franklin St | PO Box 5000 | Vancouver WA 98666-5000 Telephone 360-397-2261 | Fax 360-397-2230
Relay Service 711 or 800-833-6388

**08/16/2016 Case No. 11-1-01215-4 Motion to revoke GREGERSON**

**Baliff**: Number one, Your Honor, on the criminal docket is Pamela Scott. Please come forward Ms. Scott.

**Prosecutor Hayes**: Your Honor, we're here on first appearance on the State's petition to revoke. I know Ms. Toth was the attorney last time on these proceedings, I would suggest that the court re-appoint (???)

**Judge Gregerson**: Okay, Ms. Scott, do you understand what's going on here? The State is apparently seeking to revoke your SOSSA disposition of your case.

**Ms. Scott**: Yes. And I also know that under SOSSA revocation I do not have a right to an attorney, however, I do have a right to be heard. And I do have a right to show you these…

**Judge Gregerson**: Okay, well hold on. He's suggesting that the court re-appoint Ms. Toth on your case.

**Ms. Scott**: I don't need her. I don't need her. He has threatened my appeal attorney.

**Judge Gregerson**: Hold on, hold on.

**Ms. Scott**: Judge Stahnke heard this on the 2nd and he wouldn't hear him. He has misrepresented every name, every person in here. I have zero violations, five years…

**Judge Gregerson**: Okay, ma'am, we're not getting into the substance of it. The question is, right now, just what to do. I think we're going to set it for a hearing…

**Ms. Scott**: Okay, well then how do I stop him from harassing me?

**Judge Gregerson**: Well, you should probably have an attorney represent you because they have the education, the skill, the experience and the training to be able to effectively speak for your interests during this proceeding. Ms. Toth was representing you before, it's probably a good idea to have her on board again.

**Ms. Scott**: I'm ready to go now, sir.

**Judge Gregerson**: Well, we're not having the hearing this morning. It's just to set a hearing for this. Okay, do you want Ms. Toth appointed on your case?

**Ms. Scott**: If she must be. She's been…

**Judge Gregerson**: It's not that she must be, but I certainly recommend it.

**Ms. Scott**: That's fine.



EXHIBIT 10

**Judge Gregerson**: Okay, so we're going to appoint her and then do you just wish to have a date set today then, Mr. Hayes?

**Prosecutor Hayes**: Yes, so I would ask for a review/admit deny in the next week

**Judge Gregerson**: Okay, when Ms. Toth can be on board?

**Prosecutor Hayes**: Yes.

**Ms. Scott**: I can prove everything right now.

**Judge Gregerson**: Ma'am, we're not situated to do that, this is a docket.

**Ms. Scott**: So you know that I am ill and that he…we have been in court since February. He is doing this in retaliation for me filing an appeal. I have a letter from my attorney. I have a letter from my attorney.

**Judge Gregerson**: What you're not understanding is that we're not hearing that this morning. It's just a matter of procedure, okay? You're going to get a chance to say your peace and have your attorney represent you while doing that. Why don't I suggest that we have you come back next…what is that, the 23rd? Next Tuesday morning?

**Prosecutor Hayes**: (unintelligible)

**Ms. Scott**: Can we pull the witnesses?

**Clerk**: (unintelligible)

**Judge Gregerson**: This is in group five, it's part of department nine.

**Ms. Scott**: Can we be seen in front of Stahnke, please?

**Clerk**: (unintelligible)

**Judge Gregerson**: Perfect.

**Ms. Scott**: Stahnke is the…

**Judge Gregerson**: Perfect. Tuesday at 1:30.

**Ms. Scott**: …the attorney on my case since 2011. He's going to want to hear this.

**Judge Gregerson**: Well ma'am, this is a department two case and I'm the department two judge, so you may be mistaken about that, but we'll find out. So Ms. Toth is scheduled to be in court anyway, probably Tuesday afternoon so it will make it convenient for her. And for the court, we're going to set it on the 23rd at 1:30. You'll be required to come back. At that time we'll notify Ms. Toth…

**Ms. Scott**: I'll be here, like I have for five solid years.

**Judge Gregerson**: And you may want to get in touch with her beforehand, okay?

**Prosecutor Hayes**: Do you have something before the 29th potential invite?

**Judge Gregerson**: 23rd, Tuesday afternoon.

Prosecutor Hayes: Oh, the 23rd.

Ms. Scott: There's a potential I might do what? I'm not signing that.

**Judge Gregerson**: Okay, well you don't have to sign it ma'am, but it's still a court order.

**Ms. Scott**: That's fine.

**Judge Gregerson**: We'll note, refused to sign.

**Ms. Scott**: Yes, you may write that…refused to sign.

**Judge Gregerson**: Just add it to convene for in case Ms. Toth is…

Clerk: Just to confirm…

Judge: It's not Stahnke, I think it's Lewis next Tuesday.

**Prosecutor Hayes**: Stahnke was the sentencing Judge on this case. Stahnke heard the last…

**Ms. Scott**: On the 2nd, when he said, "No."

**Prosecutor Hayes**: …he heard the last issues.

**Judge Gregerson**: Well, you can figure out which…I'm sure this is a department two case, but you can bring that up on Tuesday with your attorney, okay?

**Ms. Scott**: Where is the deputy…the district attorney's office?

**Judge Gregerson**: The prosecuting attorney office?

**Ms. Scott**: Yes.

**Judge Gregerson**: Across the street.

**Ms. Scott**: Thank you. Next step.

**Judge Gregerson**: If you're represented by an attorney, they may not talk to you because they're supposed to…the rules require them to speak attorney to attorney, okay?

**Ms. Scott**: Mm-hmm.

5

# EXHIBIT 11

E-FILED

08-08-2016, 08:18

Scott G. Weber, Clerk

Clark County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>v.<br>PAMELA KAY SCOTT,<br>Defendant. | No. 11-1-01315-4<br>MOTION AND DECLARATION FOR ORDER REVOKING SSOSA PURSUANT TO RCW 9.94a.670(4) and (5) |

COMES NOW the State of Washington, Plaintiff, by and through Colin P. Hayes, Deputy Prosecuting Attorney, and moves the Court for an Order Revoking the Suspended Sentence pursuant to defendant's violation of the terms and conditions of his/her Suspended Sentence under RCW 9.94a.670(4) and (5) (SSOSA) in said cause on the charge(s) of:

| COUNT | CRIME | DATE OF CRIME |
|---|---|---|
| 01 | POSSESSION OF DEPICTIONS OF A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT IN THE FIRST DEGREE | 1/25/2011 to 3/7/2011 |
| 02 | POSSESSION OF DEPICTIONS OF A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT IN THE FIRST DEGREE | 1/25/2011 to 3/7/2011 |
| 03 | POSSESSION OF DEPICTIONS OF A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT IN THE FIRST DEGREE | 1/25/2011 to 3/7/2011 |

Defendant has violated the terms and conditions of his/her sentence as follows:

1 Failed to completed a Mental Health Evaluation.

2. Failed to complete a certified Victim Awareness Program.



CLARK COUNTY PROSECUTING ATTORNEY
CHILDREN'S JUSTICE CENTER
PO BOX 61992
VANCOUVER, WASHINGTON 98666
(360) 397-6002 (OFFICE)
(360) 397-6016 (FAX)

This Motion is based on the pleadings and papers filed herein, and upon the following Declaration.

DATED at Vancouver, Clark County, Washington, on August 5, 2016.

Colin P. Hayes, WSBA #35387
Deputy Prosecuting Attorney



CLARK COUNTY PROSECUTING ATTORNEY
CHILDREN'S JUSTICE CENTER
PO BOX 61992
VANCOUVER, WASHINGTON 98666
(360) 397-6002 (OFFICE)
(360) 397-6016 (FAX)

STATE OF WASHINGTON )
: ss
COUNTY OF CLARK )

The undersigned Deputy Prosecuting Attorney certifies and declares as follows:

Your declarant is the Deputy Prosecuting Attorney who is handling Clark County Superior Court Cause No. 11-1-01315-4, State of Washington v. PAMELA KAY SCOTT.

PAMELA KAY SCOTT was sentenced before the JOHN P. WULLE , Judge of the Superior Court, on 11/28/2011, and the defendant was granted RCW 9.94A.670(4) and (5) (SSOSA) and probation on certain terms and conditions.

Since the time of the granting of the sentence under RCW 9.94A.670(4) and (5) (SSOSA), Bethany clemons, Community Corrections Officer for the Department of Corrections, State of Washington, has filed a violation of the conditions of Community Supervision in regard to the defendant, a copy of which is attached hereto and by such reference incorporated herein as if set forth in full.

Based upon the violation report, there is good and sufficient reason to impose sanctions based on violations of the terms and conditions of the sentence entered on 11/28/2011.

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

Executed at Vancouver, Washington on this 5 day of August, 2016.

Colin P. Hayes, WSBA# 35387
Deputy Prosecuting Attorney



CLARK COUNTY PROSECUTING ATTORNEY
CHILDREN'S JUSTICE CENTER
PO BOX 61992
VANCOUVER, WASHINGTON 98666
(360) 397-6002 (OFFICE)
(360) 397-6016 (FAX)

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
# DIVISION ONE

PAMELA K. SCOTT,

Appellant,

v.

LOUISE LOVE, WENDY STIGALL, TINA BURGESS, DENISE HINRICHSEN, MAC PEVEY, ELISABETH RASLER, LAURA AMBROSCH, ANNMARIE AYLWARD, MONICA DISTEFANO, ALLAN SOPER, DEBBIE KENDALL, DIANNE ASHLOCK, KATHY GASTREICH, DENISE VAUGHAN, ERICA GREEN, and TIM LANG, in their individual and professional capacities; WASHINGTON STATE DEPARTMENT OF CORRECTIONS; ANNA KLEIN and COLIN HAYES in their individual and professional capacities; and CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE,

Respondents.

No. 83419-3-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Pamela Scott, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Andrus, C.J.
Judge

**THIS IS JUST GROUNDS AND ARGUMENT OF STATES MOTION**

Scott appealed the trial court's entry of this order. After reviewing the full record and the law, the State agrees with Scott and has conceded, in its brief filed with this Court today, that the trial court erred in entering its order amending/correcting the judgment and sentence.

## IV. GROUNDS FOR RELIEF AND ARGUMENT:

The trial court's March 23, 2016 order should be stricken and its results nullified. The actual change effectuated by the court's March 23, 2016 order had an impact on Scott by extending the term of her community custody. The State requests this Court grant the authority to the superior court to act, to the extent to strike its March 23, 2016 order, in order to relieve Scott of the additional impact that order imposed on her. This Court has the authority pursuant to RAP 8.3 to enter any order it sees fit to insure effective and equitable review. As there is a time component in this situation, equity would necessitate speedy removal of the trial court's erroneous order.

The State respectfully requests this Court issue an order granting the trial court the authority to enter an order striking its March 23, 2016 order.

DATED this 26th day of May, 2017.

Respectfully Submitted,

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: _____
Rachael R. Probstfeld, WSBA #37878
Senior Deputy Prosecuting Attorney



CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

# COURT - SPECIAL SUPERVISION CLOSURE

| | | | |
|---|---|---|---|
| **REPORT TO:** | **THE HONORABLE** Daniel Stahnke<br>Clark **COUNTY SUPERIOR COURT** | **DATE:**<br>**DOC NUMBER:** | 7/6/2017<br>353595 |
| **OFFENDER NAME:** | SCOTT, Pamela K. | **DOB:** | 1/22/1958 |
| **CRIME:** | Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (3) | **COUNTY CAUSE # :** | 11-1-01315-4(AA) |
| **CONVICTION:** | Felony | | |
| **SENTENCE:** | 61 months Sex Offender Community Custody | **DATE OF SENTENCE:** | 12/21/2011 |
| **LAST KNOWN ADDRESS** | 3701 1/2 E 18th, apt 13<br>Vancouver, WA 98661 | **TERMINATION DATE:** | 6/20/2017 |
| **MAILING ADDRESS:** | 3701 1/2 E 18th, apt 13<br>Vancouver, WA 98661 | **STATUS:**<br>**CLASSIFICATION:** | Closed<br>LOW |

**Check Only One Box:**

☒ **Community Custody Recalculation:** The Department of Corrections (DOC) has recalculated the offender's community custody range and his/her term of community custody has now expired. Therefore, DOC has closed supervision interest in this cause.

☐ **Supervision Eligibility:** The above cause has been screened and is not eligible for supervision by DOC. Therefore, DOC has closed supervision interest in this cause.

☐ **Sentence End Date:** The offender has finished the above cause's period of supervision. Therefore, DOC has closed supervision interest in this cause. The following information reflects the offender's compliance with the indicated Court ordered requirements.

If notified by the Court, a Community Corrections Officer will be present to testify as to the reported violations..

| I. FINANCIAL | Amount Ordered | Amount Paid | Date of Last Payment | Amount Owed |
|---|---|---|---|---|
| **Court Costs** | $300.00 | | | |
| **Victim Compensation** | $500.00 | | | |
| **Restitution** | $0.00 | | | |
| **Fine** | $500.00 | | | |
| **Attorney Fees** | $1,500.00 | | | |
| **Other** | $0.00 | | | |
| **Modified** | $0.00 | | | |
| **Interest** | | | | $1,856.92 |
| **Total** | $2,800.00 | $0.00 | | $4,656.92 |

Department-initiated Wage Garnishment, Notice of Payroll Deduction, or Order to Withhold and Deliver?
☐ Yes ☐ No

**Comments:** DOC will discontinue sending financial billing statements to the above listed offender. The County Clerk will assume all collection responsibilities.

**II. COMMUNITY SERVICE HOURS**

1. Number of Hours Ordered 0
2. Satisfactory Completion Date _____
   Date of Last Contribution
3. Number of Hours Completed

**Comments:** DOC will no longer be providing industrial insurance coverage through the Department of Labor and Industries at the community service worksite for the above listed offender.

**III. TREATMENT TRACKING**

| Treatment | Start Date | End Date | Completion |
|---|---|---|---|
| Complete mental health evaluation as directed and sign necessary release of information | 8/22/2016 12:00:00 AM | 9/7/2016 12:00:00 AM | SATISFACTORY COMPLETION |
| Treatment Progress | 8/22/2016 12:00:00 AM | 9/17/2016 12:00:00 AM | NOT ORDERED BY CCO |
| Enter into and successfully complete a sex offender treatment program | 8/15/2012 12:00:00 AM | 9/23/2014 12:00:00 AM | SATISFACTORY COMPLETION |
| | | | |

**IV. SUPERVISION VIOLATION PROCESSES**

| |
|---|
| |

| None |
|---|

## V. COURT ORDERED CONDITIONS

| Order Type | Condition | Effective Date | End Date |
|---|---|---|---|
| Court Ordered | Maintain Educational | 12/23/2011 | |
| Court Ordered | Maintain lawful employment & provide proof of employment to DOC staff as directed | 12/23/2011 | |
| Court Ordered | Shall reside at a location and under living arrangement as approved by CCO | 12/23/2011 | |
| Court Ordered | Perform affirmative acts as ordered by court and/or Department of Corrections | 12/23/2011 | |
| Court Ordered | Pay all court ordered legal financial obligations and/or restitution as directed by CCO | 12/23/2011 | |
| Court Ordered | Pay cost of supervision fees to Department of Corrections as directed by CCO | 12/23/2011 | |
| Court Ordered | Notify CCO of any change in employment | 12/23/2011 | |
| Court Ordered | Obey and comply with instruction | 12/23/2011 | |
| Court Ordered | Submit to plethysmograph examination as directed | 12/23/2011 | |
| Court Ordered | Do not work at or be in places frequented by minors | 12/23/2011 | |
| Court Ordered | Do not enter parks playgrounds or schools | 12/23/2011 | |
| Court Ordered | Do not consume controlled substance except pursuant to lawfully issued prescriptions | 12/23/2011 | |
| Court Ordered | Do not have direct or indirect contact with any victim | 12/23/2011 | |
| Court Ordered | Have no contact with minors | 12/23/2011 | |
| Court Ordered | Do not possess or peruse pornographic materials unless authorized | 12/23/2011 | |
| Court Ordered | Do not purchase own have in your possession or under your control any firearm or deadly weapon | 12/23/2011 | |
| Court Ordered | Submit to polygraph examination as directed | 12/23/2011 | |
| Court Ordered | Remain within or outside of geographical boundaries as specified | 12/23/2011 | |

| | | | |
|---|---|---|---|
| Court Ordered | Do not use/possess/consume any controlled substances without a lawfully issued prescription | 12/23/2011 | |
| Court Ordered | Do not access the internet or email by electronic devices | 12/23/2011 | |
| Court Ordered | Home Visit | 12/23/2011 | |
| Court Ordered | Do not purchase own have in your possession or under your control any firearm | 12/23/2011 | |
| Court Ordered | OTHER (see narrative) | 12/23/2011 | |
| Court Ordered | Obey all municipal County State Tribal and Federal laws | 12/23/2011 | |
| Court Ordered | Submit to HIV testing and pre/post test counseling as directed | 12/23/2011 | |
| Court Ordered | Submit to DNA blood draw and testing as directed | 12/23/2011 | |
| Court Ordered | Register with sheriffs office in the county of residence as required | 12/23/2011 | |
| Court Ordered | Report to and be available for contact with assigned community corrections officer as directed | 12/23/2011 | |
| Court Ordered | Submit to a search of your person residence vehicle and possessions whenever requested by CCO | 12/23/2011 | |
| Court Ordered | Enter into and successfully participate in the victim awareness education program as directed | 12/23/2011 | |
| Court Ordered | Do not change treatment provider without prior approval | 12/23/2011 | |
| | | | |

**VI. CURRENT VIOLATIONS**

Violation 1:

**VII. COMMENTS**

*I certify or declare under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.*

7/6/17

Amy Baddgor
Community Corrections Officer 2
9105B Hwy 99, Ms:S-20
Vancouver WA 98665
Telephone (360) 571-4309

DATE

***The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.***

Distribution: **ORIGINAL** - Court **COPY** -
- ☐ Prosecuting Attorney
- ☐ Clerk's Office
- ☐ DOC Regional Correctional Records Manager for Imaging
- ☐ Central File/Field File

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on Monday, May 23, 2022 I e-mailed and/or hand-delivered service to the following parties who have appeared in this action:

| | |
|---|---|
| Clark Co. General Delivery<br>Clark County Prosecuting Attorney<br>Civil Division<br>1300 Franklin St., Suite 380<br>PO BOX 5000<br>Vancouver, Washington 98666-5000<br>(564) 397-2478<br>Email:<br>CntyPA.GeneralDelivery@clark.wa.gov<br><br>☒ E-mailed<br>☐ Mailed<br>☐ Hand-delivered | Michelle Young<br>Washington Attorney General's Office<br>1125 Washington St SE<br>Olympia, WA 98504-0116<br>Main: (360) 586-1445<br>Email: michelle.young@atg.wa.gov<br>Cc: CORreader@atg.wa.gov<br>Cc: corolylaef@atg.wa.gov<br>Cc: Katherine.VanDeWalker@atg.wa.gov<br>Attorney for Defendant Washington State Department of Corrections<br>☒ E-mailed<br>☐ Mailed<br>☐ Hand-delivered |
| Spencer W. Coates<br>Washington Attorney General<br>Complex Litigation Division<br>800 5th Avenue, Suite 2000<br>Seattle, WA 98104-3188<br>(206) 474-7744<br>Email: Spencer.Coates@atg.wa.gov<br><br>Attorney for The Honorable Daniel L. Stahnke<br>☒ E-mailed<br>☐ Mailed<br>☐ Hand-delivered | Amanda Migchelbrink, WSBA #34223<br>Deputy Prosecuting Attorney<br>Clark County Prosecuting Attorney's Office<br>Civil Division<br>PO Box 5000<br>Vancouver, WA 98666-5000<br>Email: amanda.migchelbrink@clark.wa.gov<br><br>☒ E-mailed<br>☐ Mailed<br>☐ Hand-delivered |

Respectfully sworn, under penalty of perjury, on August 22, 2021,

Pamela K. Scott

Pamela K Scott
131 McGeary Rd.
Kelso, WA 98626

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131 McGeary Rd.
Kelso, WA 98626
360-487-6950
pjfeever@gmail.com

## PAMELA SCOTT - FILING PRO SE

## May 23, 2022 - 3:02 PM

## Transmittal Information

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| **Filed with Court:** | Court of Appeals Division I |
| **Appellate Court Case Number:** | 83419-3 |
| **Appellate Court Case Title:** | Pamela K. Scott, Appellant v. Louise Love, et al, Respondents |
| **Superior Court Case Number:** | 19-2-00514-0 |

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