91180-1

NO. 44396-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ADAM CHIEF LEWIS,

Petitioner.

PETITION FOR REVIEW

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A. *IDENTITY OF PETITIONER*

Adam Chief Lewis asks this court to accept review of the decision designated in Part B of this motion.

B. *DECISION*

Petitioner seeks review of each and every part of the decision of the Court of Appeals reversing the Clark County Superior Court's grant of credit for time served in Petitioner's three cases. A copy of the Court of Appeals decision is attached.

C. *ISSUES PRESENTED FOR REVIEW*

> May a prosecutor defeat a defendant's statutory and constitutional right to credit for time served by sequentially charging and resolving different offenses that the prosecutor could have charged and resolved under a single information?

D. *STATEMENT OF THE CASE*

Between April 19, 2011 and May 13, 2011, the defendant committed the following crimes in Clark County: (1) burglary and robbery, (2) assault and unlawful possession of a firearm (UPFA), and (3) failure to register (FTR). CP 1-2, 141-156, 193-195. The defendant committed the burglary and robbery on May 2nd, the assault and UPFA on May 5th, and the failure to register between April 19th and May 13th. CP 1-2, 193-195. He was arrested and booked into jail May 13th on the first two sets of charges. *Id.* He was unable to make bail and has remained in custody from the day of his arrest to this day. *Id.*

On May 14, 2011, the Clark County Prosecutor charged the defendant with the May 2nd crimes under Clark County Cause No. 11-1-00815-1, and charged the defendant with the May 5th crimes under Clark County Cause No. 11-1-00816-9. CP 1-2, 193-195. On August 10, 2011, the Clark County Prosecutor charged the defendant with the failure to register under Clark County Cause No. 11-1-01336-7. CP 141. Thus, after August 10, 2011, the defendant was also held in the Clark County Jail on the failure to register charge. *Id.*

On August 31, 2012, the defendant pled guilty and was sentenced on the failure to register charge. CP 141-156. At the time of sentencing the court gave the defendant 387 days credit for time served. *Id.* This represented the time from service of the information upon the defendant and his arrest in jail to the time the court sentenced him. *Id.* On October 26, 2012, the defendant pled to the burglary and robbery charges from the 11-1-00815-1 cause number. CP 5-16, 168-181. On November 2, 2012, the defendant pled to the assault and unlawful possession of a firearm charges from the 11-1-00816-9 cause number. CP 199-215, 218-231. Finally, on December 14, 2012, the court sentenced the defendant on both of these matters and gave him credit for 581 days served, representing the time the defendant was held on both of these matters starting from his arrest up to the sentencing date. CP 168-181, 218-231. The following sets out all of these facts chronologically:

(1) **4/19/11 to 5/13/11**: the defendant commits the crime of failure to register;

(2) **5/2/11**: the defendant commits the crimes of burglary and robbery;

(3) **5/5/11:** the defendant commits the crimes of assault and unlawful possession of a firearm;

(4) **5/13/11:** the defendant is arrested on the 5/2/11 and 5/5/11 offenses and booked into the Clark County Jail and is continuously held on both sets of offenses until his sentencing on 12/14/12;

(5) **5/26/11:** state files an Information under Cause No. 11-1-00815-1 charging the defendant with the 5/2/11 offenses; state files a second Information under Cause No. 11-1-00816-9 charging the defendant with the 5/5/11 offenses;

(6) **8/10/11:** state files an Information under Cause No. 11-1-01336-7 charging the defendant with the 4/19/11 to 5/13/11 failure to register and has him served and arrested on it in the Clark County jail and thereafter the defendant is held on this matter as well as the other two sets of offenses;

(7) **8/31/12:** defendant pleads guilty, is sentenced within the standard range on the failure to register charge and gets 387 days credit for time served from 8/10/11 to 8/31/12;

(8) **10/26/12:** defendant pleads guilty on the 5/2/11 offenses;

(9) **11/5/12**: defendant pleads guilty on the 5/5/11 offenses; and

(10) **12/14/12**: court sentences the defendant within the standard range on the 5/2/11 and 5/5/11 offenses, giving him 581 days credit for time served from his arrest on May 13, 2011, to the date of sentencing.

Following the December 14th sentencing on the first two charges, the state appealed arguing that (1) the defendant was not entitled to credit for time served from 8/10/11 (date defendant detained in the Clark County Jail

on the FTR charge) to 8/31/12 (date defendant sentenced on the FTR charge) because he had already received credit for this time against his sentence on the FTR charge, and (2) he was not entitled to credit for the time served from 8/31/12 to 12/14/12 because during that time he was being held on his FTR conviction and not solely on the first two sets of charges. CP 189, 239; *see also* Brief of Appellant. By decision filed December 30, 2014, Division II of the Court of Appeals accepted the state's argument and ruled that the only credit for time served to which the defendant was entitled on his first two sets of charges was the time from his arrest on those charges to the time the state charged him with FTR (5/13/11 to 8/9/11). *See* Decision attached. The defendant now seeks review of this decision.

E. *ARGUMENT WHY REVIEW SHOULD BE ACCEPTED*

The case at bar presents this court with two separate bases for review: (1) under RAP 13.4(b)(3), this case presents a significant question of law under the Constitution of the State of Washington; and (2) under RAP 13.4(b)(4), this case presents a question of substantial public interest that should be determined by this court. The following sets out the arguments in support of these claims.

In RCW 9.94A.505(6) the legislature set out the following criteria for determining the application of credit for time served. This statute states:

> (6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was

solely in regard to the offense for which the offender is being sentenced. RCW 9.94A.505(6).

This legislative mandate is an embodiment of the right to equal protection guaranteed under Washington Constitution, Article 1, § 12. and United States Constitution, Fourteenth Amendment. Division I of the Court of Appeals stated the following on this issue under the predecessor statute to RCW 9.94A.505(6):

> Former RCW 9.94A.120(12) simply represents the codification of the constitutional requirement that an offender is entitled to credit for time served prior to sentencing. Sentencing Guidelines Commissioner's Implementation Manual, Comments, at II-23 (1988). The former statute therefore entitled *Williams* to nothing more than the constitution required.

State v. Williams, 59 Wn.App 379, 382, 796 P.2d 1301 (1990).

For example, in *Reanier v. Smith*, 83 Wn.2d 343, 517 P.2d 949 (1974), four defendants in prison filed applications for writs of habeas corpus after the Department of Corrections refused to give them credit against their maximum and mandatory minimum terms for pre-sentencing detention time spent at Western State Hospital undergoing treatment, or for pre-sentencing detention time spent in jail because of the inability to post bail. Specifically, the defendants argued that the failure to give them credit for this time denied them their rights to due process, equal protection, and freedom from multiple punishments under the United States Constitution, Fifth and Fourteenth Amendments. The Washington State Supreme Court agreed and granted the

relief requested. The court held:

> Fundamental fairness and the avoidance of discrimination and possible multiple punishment dictate that accused person, unable to or precluded from posting bail or otherwise procuring his release from confinement prior to trial should, upon conviction and commitment to a state penal facility, be credited as against a maximum and a mandatory minimum term with all time served in detention prior to trial and sentence. Otherwise, such a person's total time in custody would exceed that of a defendant likewise sentenced but who had been able to obtain pretrial release. Thus, two sets of maximum and mandatory minimum terms would be erected, one for those unable to procure pretrial release from confinement and another for those fortunate enough to obtain such release. Aside from the potential implications of double jeopardy in such a situation, it is clear that the principles of due process and equal protection of the law are breached without rational reason.

Reanier v. Smith, 83 Wn.2d at 346-47 (footnote omitted).

As this court clarifies in *Reanier*, the reason and purpose of pre-commitment incarceration is really irrelevant to the analysis. The defendant might be in custody because he could not make bail, he might have made bail and had it revoked, or he might be held in a mental institution for pre-disposition evaluation or treatment. In addition, the defendant might have been held in custody pending an appeal that was ultimately successful, but was followed by a retrial and new conviction. The relevant fact is that the defendant was in custody and that custody constituted a deprivation of liberty. Thus, the failure to give credit for pre-disposition time served in custody violates a defendant's right to due process and equal protection, and it constitutes a violation of the right to be free from double jeopardy.

In the case at bar the state argued and the Court of Appeals agreed that the trial court erred and violated the plain meaning of RCW 9.94A.505(6) when it gave the defendant credit for all pre-sentencing time the defendant served in these two cases because it had previously given him credit for a block of the same time when it sentenced him on the failure to register case. In essence the state argued and the Court of Appeals agreed that if the defendant was concurrently serving pre-disposition time on two or more offenses then he could only get credit for that time on one of the sentences.

This interpretation is not only too restrictive, but it violates the defendant's constitutional right to credit for time served. Indeed, under the Court of Appeals' decision, the trial court only had authority to give the defendant credit for the time he had served on the burglary charge in Clark County cause number 11-1-00815-1, and not the robbery in the same Clark County cause number nor the assault and unlawful possession of a firearm charges in Clark County cause number 11-1-00816-9 because these were other "offenses" for which the defendant was also being sentenced.

In its holding, the Court of Appeals primarily relied upon a flawed application of the decision in *State v. Williams*, *supra*. In that case the defendant was charged with second degree robbery charge and held in jail. At the same time he was being held on a parole violation on a prior conviction. At sentencing the trial court denied the defendant's request for

credit for the 70 days he had served in presentence confinement, holding that the defendant had received credit for those 70 days against his parole violation. The defendant then appealed. However, the Court of Appeals affirmed, holding that granting the defendant request would result in his receiving "twice the amount of credit for the time he or she actually served in jail while awaiting trial and sentencing." *State v. Williams*, 59 Wn.App. at 381.

In the case at bar, the flaw in the Court of Appeals' application of *Williams* was its failure to recognize that in *Williams* the defendant had been sentenced on the offense for which he was on parole prior to his commission of the current offense upon which he was later sentenced. By contrast, in the case at bar the defendant committed all three sets of offenses in less than a month, he was arrested following the commission of all three, and the only reason he was sentenced at two different times was because the state decided to charge under different informations and resolve the cases separately. Had the state decided to charge under a single information, or had the state agreed to sentence on the same date, then there would be no question about credit for time served.

In essence, what the Court of Appeals has done in this case is to allow a prosecutor to bifurcate crimes committed in a short span of time and then deny the defendant credit for time served through that bifurcation. By this

holding the court had created two similarly situated classes of persons and allowed the state to treat them disparately with no logical distinction between the two classes. Both classes involve persons who commit multiple crimes over a short period of time and then are arrested after completion of all of the crimes. In the first class, the state charges under one information and resolves all charges jointly, thereby granting the defendant credit for all time served against each sentence. In the second class, the state charges under two or more informations and resolves them separately, thereby prohibiting the defendant from receiving credit of all time served against each sentence. Petitioner argues that this result violates the right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment, and constitutes an improper interpretation of RCW 9.94A.505(6).

F. *CONCLUSION*

For the reasons set out in this motion, this court should accept review of this case, reverse the decision of the Court of Appeals and reinstate the sentences as imposed by the trial court.

Dated this 2nd day of January, 2015.

Respectfully submitted,

John A. Hays, No. 16654
Attorney for Petitioner

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 12

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

. . .

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON, **Respondent,**	**NO. 44396-1-II**
vs.	**AFFIRMATION OF OF SERVICE**
ADAM CHIEF LEWIS, **Appellant.**	

The under signed states the following under penalty of perjury under the laws of Washington State. On this day, I personally e-filed and/or placed in the United States Mail the attached document with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Tony Golik
   Clark County Prosecuting Attorney
   1013 Franklin Street
   Vancouver, WA 98666-5000
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2. Adam Chief Lewis, No. 881592
   Washington State Penitentiary
   1313 North 13th Avenue
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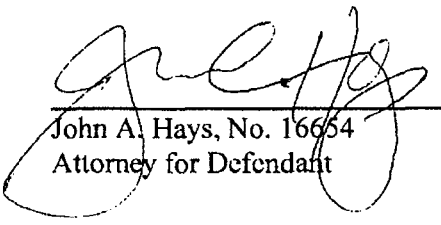
Dated this 2nd day of January, 2015 at Longview, Washington.



John A. Hays, No. 16654
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. ADAM CHIEF LEWIS, Respondent.	No. 44393-7-II Consolidated with: No. 44396-1-II PUBLISHED OPINION

LEE, J. — The State appeals Adam Chief Lewis' sentence on two separate cases, arguing that the trial court improperly calculated the amount of credit for time served. The trial court gave Lewis (1) credit for time served that he had previously received credit for in an unrelated resolved case and (2) credit for time served on an unrelated judgment and sentence. Because Lewis received credit for time served more than once, we reverse and remand to the trial court to recalculate the amount of credit for time served.

FACTS

On May 13, 2011, Lewis was arrested in Clark County for numerous crimes. On May 26, 2011, Lewis was charged with first degree burglary and first degree robbery under cause number 11-1-00815-1 (burglary charges) and first degree burglary, two counts of first degree assault, two counts of first degree kidnapping, two counts of unlawful possession of a firearm under cause number 11-1-00816-9 (assault charges). Lewis remained incarcerated in the Clark County Jail.

On August 10, 2011, while in pretrial incarceration for the burglary charges and assault charges, Lewis was charged with failure to register as a sex offender (cause number 11-1-01336-

7). Lewis pleaded guilty to the failure to register as a sex offender charge on August 31, 2012, and was sentenced to 50 months' confinement. The trial court calculated his credit for time served on the failure to register conviction starting on August 10, 2011 (387 days). Lewis began serving his sentence for the failure to register conviction on August 31, 2012.

Lewis pleaded guilty to the burglary charges on October 26, 2012, and pleaded guilty to the assault charges on November 5, 2012.[1] Lewis was sentenced on both the burglary charges and the assault charges on December 14, 2012. At sentencing for the burglary charges and assault charges, Lewis requested that his credit for time served be calculated based on the entire time he had been incarcerated since his original arrest on May 13, 2011 (581 days). The trial court agreed with Lewis and calculated his credit for time served at 581 days. The State filed a motion for reconsideration, which the trial court denied.

The State appeals the calculation of Lewis's credit for time served. The State argues that Lewis should have received credit for only the period of time from his arrest until he was charged with failure to register.

ANALYSIS

The State argues that the trial court erred because the unambiguous language of the statute governing calculation of time served, RCW 9.94A.505(6), limits credit for time served to time served on the charge for which the defendant is being sentenced. Lewis argues that the trial court properly calculated his credit for time served based on the constitutional principles of equal protection

[1] Lewis pleaded guilty to one count of first degree assault and one count unlawful possession of a firearm. It appears that the other counts with which he was charged under cause number 11-1-00816-9 were dismissed.

underlying the statute codifying the right to credit for time served. Based on both RCW 9.94A.505(6) and the constitutional principles underlying credit for time served, the trial court miscalculated Lewis' credit for time served; at the time of sentencing, Lewis was not entitled to credit for any time served after August 10, 2011.

Here, we are required to address a question of statutory interpretation and application of a constitutional principle. We review questions of statutory interpretation de novo. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131, *cert. denied*, 131 S. Ct. 318 (2010). Similarly, we review constitutional issues de novo. *State v. Vance*, 168 Wn.2d 754, 759, 230 P.3d 1055 (2010).

A defendant is entitled to credit for time served based on constitutional principles of due process and equal protection. *Reanier v. Smith*, 83 Wn.2d 342, 346, 517 P.2d 949 (1974). And RCW 9.94A.505(6) "'simply represents the codification of the constitutional requirement that an offender is entitled to credit for time served prior to sentencing.'" *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 833, 129 P.3d 827 (2006) (quoting *State v. Williams*, 59 Wn. App. 379, 382, 796 P.2d 1301 (1990)). Our Supreme Court recently explained the constitutional principles underlying credit for time served:

> In [*Reanier*, 83 Wn.2d at 346], this court held that "an accused person, unable to or precluded from posting bail or otherwise procuring his release from confinement prior to trial" was entitled to credit for time served upon sentencing. The court based its decision on "principles of due process and equal protection" and on "potential implications of double jeopardy." [*Reanier*, 83 Wn.2d at 347]. It reasoned that a contrary decision would result in two separate sets of sentencing ranges—one for "those unable to procure pretrial release from confinement and another for those fortunate enough to obtain such release"—and concluded that such a sentencing regime would not survive rational basis review. [*Reanier*, 83 Wn.2d at 346-37]. . . .

> The *Reanier* decision absolutely bars the legislature from distinguishing between rich defendants and poor defendants for the purpose of credit for time served, but the legislature remains free to draw many other distinctions.

State v. Medina, 180 Wn.2d 282, 292-93, 324 P.3d 682 (2014).

The legislature has codified the procedure for calculation of credit for time served in RCW 9.94A.505(6). RCW 9.94A.505(6) states:

> The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

Our objective in interpreting a statute is to ascertain and carry out the legislature's intent. *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013). We begin with the plain language of the statute. *Evans*, 177 Wn.2d at 192. If the plain language of the statute is unambiguous, our inquiry ends. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

The Sentencing Reform Act does not generally authorize giving credit for time served on other sentences. *State v. Watson*, 63 Wn. App. 854, 859, 822 P.2d 327 (1992). Under the plain language of the statute, credit for time served refers solely to the offense for which the offender received a sentence. *Watson*, 63 Wn. App. at 860. Our courts have been clear that statute governing credit for time served entitles a defendant to "nothing more than the constitution require[s]." *State v. Williams*, 59 Wn. App. 379, 382, 796 P.2d 1301 (1990). Neither RCW 9.94A.505(6) nor the constitution allow a defendant to receive "twice the amount of credit for the time he or she actually served in jail while awaiting trial and sentencing." *Williams*, 59 Wn. App. at 381.

In *Williams*, the defendant was charged with second degree robbery, and while awaiting trial he was detained pursuant to suspension of his parole on a previous charge. 59 Wn. App. at 380. At sentencing on the robbery, the defendant requested credit for the 70 days of presentence confinement. *Williams*, 59 Wn. App. at 381. The trial court denied the request because the 70 days of confinement would be credited toward the sentence he had received on the prior charge. *Williams*, 59 Wn. App. at 382. On appeal the defendant argued that he was entitled to credit for time served under former RCW 9.94A.120(12) (1998)[2] because "but for" the robbery charge he would not have been incarcerated. *Williams*, 59 Wn. App. at 381. The court noted that such an interpretation would lead to defendants being entitled to "twice the amount of credit for the time he or she actually served in jail while awaiting trial and sentencing," a result the court labeled absurd. *Williams*, 59 Wn. App. at 381.

With the foregoing principles in mind, we turn to the trial court's calculation of Lewis's credit for time served. As an initial matter, there are three distinct time periods that factor into the calculation of Lewis's credit for time served. The first period is from May 13, 2011 (the date Lewis was originally arrested and started serving time in pretrial confinement for the burglary charges and assault charges) until August 9, 2011. The second period is from August 10, 2011 (the date Lewis was charged with failure to register as a sex offender and began serving time in pretrial confinement for the burglary charges, assault charges, and failure to register charges) until August 31, 2012 (the date Lewis was sentenced on the failure to register charge). The third period

[2] The legislature recodified former RCW 9.94A.120 as RCW 9.94A.505 in Laws of 2001, ch. 10, § 6. The language of the statute remained the same.

is from September 1, 2012 (the date Lewis began serving time for the failure to register conviction) until December 14, 2012 (the date Lewis was sentenced on the burglary charges and assault charges).

Under the plain language of the statute, Lewis would not be entitled to credit for any of the time he served prior to his sentencing on December 14. RCW 9.94A.505(6) requires calculation of time served to be limited to confinement solely in regard to the offense for which the offender is being sentenced. Here, for example, the sentencing court would start with determining the sentence for a single offense such as the burglary charge. Then, the statute requires the sentencing court to determine how much time the offender spent incarcerated *solely* on that offense. In this case, Lewis did not spend any time incarcerated solely on any offense for which he was sentenced. Therefore, if this court were to strictly apply the statute, the sentencing court erred by giving Lewis credit for any time served.

However, applying the statute in such a manner simply does not comport with the principles of due process and equal protection that entitle an offender to credit for time served. Regardless of how many offenses an offender has been charged with, an offender serving pretrial confinement would be disadvantaged because he is serving pretrial confinement while a more affluent defendant facing the same charges may not.

This is the exact distinction the constitution prohibits the legislature from making. *Medina*, 180 Wn.2d at 292-93. Therefore, an offender is entitled to receive credit for any *pretrial* confinement he serves, provided he does not receive double credit by applying the same credit for time served on multiple sentences. *Williams*, 59 Wn. App. at 381.

For the reasons explained below, application of these principles results in Lewis receiving credit for time served for the first period of time between his arrest on May 13, 2011 and August 9, 2011. But, he does not receive credit for time served after the State charged him with the failure to register on August 10, 2011.

A. MAY 13, 2011 – AUGUST 9, 2011

As of his sentencing on the burglary and assault charges, Lewis had not received any credit for the time he spent in pretrial confinement prior to being charged with failure to register. Although he did not serve any of this time incarcerated solely on a particular offense for which he was sentenced, it would violate due process and equal protection to completely deny him any credit for this time. And, because Lewis was sentenced for all burglary and assault charges on the same date, he would not be receiving double credit for this time. Accordingly, the trial court properly gave Lewis credit for the time served between May 13, 2011 and August 9, 2011.

B. AUGUST 10, 2011 – AUGUST 31, 2012

The trial court also gave Lewis credit for time served between August 10, 2011, when he was charged with the failure to register, and August 31, 2011, when he was sentenced on the failure to register. This was improper because it resulted in Lewis receiving double credit for this period of time.

When Lewis was sentenced on the failure to register charge, the trial court gave him credit for time served from the date he was charged with the failure to register (August 10, 2011) to the date of sentencing (August 31, 2012). When the trial court gave Lewis credit for the same period of time toward his sentence on the burglary and assault charges, Lewis received credit for this time

served twice, which is improper. *Williams*, 59 Wn. App. at 381. Accordingly, the trial court erred by giving Lewis credit for time served between August 10, 2011 and August 31, 2012 toward his sentence on the burglary and assault charges.

C. SEPTEMBER 1, 2012 – DECEMBER 14, 2012

Lewis also is not entitled to credit for time served for any of the time he was incarcerated following imposition of his sentence for his failing to register as a sex offender conviction. After he was sentenced for failing to register as a sex offender, Lewis clearly was not serving time solely on the burglary and assault charges. *In re Pers. Restraint of Schillereff*, 159 Wn.2d 649, 651-52, 152 P.3d 345, *cert. denied*, 551 U.S. 1135 (2007); *Watson*, 63 Wn. App. at 859-60. Therefore, he was not entitled to credit for time served between September 1, 2012 to December 14, 2012 under the plain language of RCW 9.94A.505(6).

Furthermore, Lewis is not entitled to credit for time served under the principles of equal protection. Once Lewis was sentenced for failing to register as a sex offender, he was no longer able to be released from confinement. Therefore, the distinction here is between a person being confined as the result of a sentence and a person being confined as the result of the inability to secure bail. This distinction is unrelated to the prohibited distinction between rich and poor which would violate the constitutional principles underlying credit for time served. *Medina*, 180 Wn.2d at 292-93. The distinction between a person being confined as a result of a sentence and a person being confined pretrial as a result of an inability to secure bail is a distinction well within the legislature's authority to make. As a result, principles of equal protection do not entitle Lewis to credit for time served after he was sentenced for failing to register as a sex offender. Therefore,

the trial court erred by giving him credit for time served for the period between September 1, 2012 and December 14, 2012.

Here, the trial court incorrectly calculated the amount of credit for time served that Lewis is entitled to receive. Accordingly, we reverse and remand to the trial court for a hearing, with Lewis present, to calculate Lewis' credit for time served consistent with this opinion.

Lee, J.

We concur:

Worswick, P.J.

Maxa, J.

HAYS LAW OFFICE

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