71701-4

71701-4

NO. 71701-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

SALLYEA McCLINTON,

Appellant.

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

The Honorable Palmer Robinson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court acted outside its authority in sanctioning appellant for failing to be fitted for global positioning system (GPS) monitoring, as it was not a condition of appellant's judgment and sentence.

2. The state failed to prove appellant did not provide his community corrections officer with a current address.

Issues Pertaining to Assignments of Error

1. Appellant was convicted of offenses allegedly occurring in 1995. At that time, the department of corrections ("DOC" or the "department") did not have authority to modify or add conditions of community placement. Did the court err in sanctioning appellant for failing to be fitted for GPS tracking, where it was not a condition imposed by the court, but rather, by DOC?

2. Where appellant told his community corrections officer he was staying at the Union Gospel Mission, provided proof he was staying there, and was arrested for the currently alleged violations at the Union Gospel Mission – and where the state presented no evidence to rebut this residence location – did the state fail to prove appellant did not provide the department with his current address?

B. STATEMENT OF THE CASE

Following a jury trial in July 1997, appellant Sallyea McClinton was convicted of first degree rape while armed with a deadly weapon, attempted rape in the first degree and first degree burglary. CP 12-19. Count one allegedly occurred on September 18, 1995; counts two and three allegedly occurred on October 17, 1995. CP 23.

Sentencing occurred on August 18, 1997. The court imposed 134 months on count one, 68 months on count two and 42 months on count three. The sentences imposed for counts one and two were ordered to run consecutively, and the 24-month deadly weapon enhancement was ordered to run consecutively to that, for a total sentence of 226 months (approximately 19 years). CP 14.

The court imposed community placement for the maximum period of time authorized by law. CP 14. In 1995, the date of McClinton's offenses, the applicable community placement provision provided:

> (b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the

period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150(1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150(1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the

department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

RCW 9.94A.120(8); Laws 1995, ch. 108, § 3, eff. April 19, 1995.

The judgment and sentence incorrectly cites to former RCW 9.94A.120(9).[1] CP 14. At the time of sentencing, RCW 9.94A.120 had been amended and the applicable community placement provision was contained in subsection nine. Laws 1996, ch. 199, §1; Laws 1996, ch. 215, § 5; Laws 1996, ch. 275, § 2. The substance of that provision did not change, however. RCW 9.94A.120(9)(b)(1996).

The court imposed the mandatory conditions authorized by statute. CP 17. As additional conditions, the court ordered inter alia that McClinton: have no contact with the alleged victims; complete a sexual deviancy evaluation within 30 days of release; not possess or use controlled substances or alcohol and submit to testing to monitor compliance; not peruse or possess pornography, as defined by his community corrections officer (CCO) or therapist; and not change residences without his CCO's prior approval. CP 19.

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[1] In 1995, that statute provided:

> If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

RCW 9.94A.120(1995).

McClinton was also ordered to register as a sex offender. CP 14, 18. The court did not impose any geographic restrictions. CP 17, 19.

On June 25, 2013, McClinton was released from custody to serve his period of community placement. CP 39. He met with his community corrections officer Jeffrey Brown the date of release and provided his address as the Boylston Hotel in Seattle. CP 39. He also registered with the King county sheriff's office the same day. RP 10-11.[2]

On September 6, 2013, the court sanctioned McClinton for violating the conditions of community placement by ingesting Tetrahydrocannabinol (THC) and possessing pornography on August 21, 2013. CP 35-36. The court imposed 60 days per violation. CP 35-36.

On November 14, 2013, McClinton's new CCO Kathy Casey filed a violation report alleging the following five violations and evidence it would rely on as support:

> **Violation 1:**
> As stated above, Mr. McClinton was ordered to comply with the conditions of supervision, which include report when directed to do so. Mr. McClinton reported to DOC on 11/12/13. Because the GPS equipment was not available on that date, he was

[2] "RP" refers to the violation hearing held February 12, 2014.

instructed by CCO Brown (in my presence) to report back the following day, 11/13/13 and he would be enrolled in GPS. Mr. McClinton failed to report (or call) on 11/13/13.

Violation 2:
The court ordered Mr. McClinton to comply with the conditions of DOC supervision. Mr. McClinton was instructed by CCO Jeff Brown on 11/12/13 to return to the Northgate office on 11/13/13 to be enrolled in GPS (the equipment was not available on 11/21/13). Mr. McClinton failed to report to either CCO Brown or CCO Casey on 11/13/13 (nor did he call).

Violation 3:
As a convicted sex offender, Mr. McClinton is mandated by law to register with the Sheriff's Office. When he reported to DOC on 11/12/13, CCO Jeff Brown instructed him to immediately register with the Sheriff's Office that day. Mr. McClinton was instructed to bring verification of that registration when he returned on 11/13/13. Since Mr. McClinton did not return to the Northgate DOC office on 11/13/13, he failed to provide proof. On 11/14/15, I called the King Co. Sheriff's Office, Sex Offender Registration Unit and spoke with Ms. Dallas Dusek. She confirmed he failed to register on 11/12/13. She added that he has not registered since 6/25/13. They are in the process of filing a Failing to Register charge on him (case #13-268855).

Violation 4:
Mr. McClinton was ordered to follow the conditions of DOC supervision. Not only did Mr. McClinton sign the Standard Conditions of Supervision, but he also signed the Consent for Drug/Alcohol testing, on 6/25/13. The document specifically states he must be able to be contacted by DOC/CCO to report for UA testing, as directed. Since Mr. McClinton does not have a phone and since it cannot be confirmed he is living at the Union Gospel Mission (where he said he

was staying), he is not available for UA testing at this time.

Violation 5:
A Standard Condition of Supervision requires Mr. McClinton to notify DOC of a change of address (or employment). When Mr. McClinton reported to DOC on 11/12/13, he stated he was currently staying at the Union Gospel Mission in downtown Seattle. However, on 11/14/13, CCO Jeff Brown contacted Mr. David Swaty, a counselor at the Union Gospel Mission. Mr. Swaty said he could not find Mr. McClinton in their system. Thus, there is no verification that Mr. McClinton is residing there.

CP 49-50.

The court held a hearing on February 12, 2014. CCO Brown testified he went over the conditions of McClinton's judgment and sentence at his initial intake on June 25, 2013, including his reporting requirements, which Brown directed would be weekly on Mondays. RP 15-18, 16. Brown also provided registration instructions. RP 16, 18.

Brown testified he went over reporting requirements with McClinton again on November 7, 2013, before his release for the prior violations. RP 19.

McClinton reported as directed on November 12, 2013. RP 14, 20, 22. Brown testified he was turning supervision over to Casey, so he included her in the meeting. RP 14, 20, 34-35.

Brown testified McClinton said he was staying at the Union Gospel Mission and showed him a piece of paper with "UGM" stamped on it, which Brown testified is "commonly known to be provided to people that stay there." RP 25; see also RP 36. Indeed, McClinton was at the Union Gospel Mission when he was arrested for the current alleged violations. RP 29, 42.

At the meeting on November 12, McClinton also provided a urine sample, as he had done once a week in the past on his report date. RP 23-24, 29.

Brown testified he informed McClinton he needed to return the following day on November 13, to have GPS tracking set up. RP 20-21. McClinton had been placed on GPS tracking previously on August 9, 2013, as "a requirement of DOC." RP 21.

According to Brown's own case notes, however, he initially did not believe he had authority to require GPS tracking:

> [McClinton] is a PRS case. Therefore I am limited to the conditions that are listed on the judgment and sentence with the inability to impose conditions to include GPS.

RP 31.

But Brown later changed his position, based on the attorney general's opinion:

> It was determined by the attorney general's office that it was an acceptable means of monitoring his compliance with the no contact with the victim or geographical restrictions applied to the case.

RP 32.

At the November 12th meeting, Brown also reportedly reminded McClinton he needed to update his registration information at the King county sheriff's office. RP 20-21. Brown testified he told McClinton to return with proof of registration the following day when he came back for the GPS fitting. RP 21-22, 29.

Casey testified she gave McClinton her card and also a "homeless verification sheet, which is something typically we do when somebody doesn't have a permanent address." RP 35. Casey directed McClinton "to bring that back with him, and I would do that each time I would see him." RP 36.

McClinton did not return the following day. RP 20. McClinton testified he did not believe he was required to submit to GPS tracking, as it was not court-ordered. RP 40, 42-43. Nor did McClinton recall Brown directing him to re-register with the sheriff's office and return with proof the following day. RP 40.

By failing to return on the 13th, Brown alleged McClinton committed violations 1, 2, 4 and 5: (1) failing to report as directed; (2) failing to enroll in GPS monitoring; (4) failing to be available for urinalysis testing; and failing to provide a current address. RP 19-21, 24.

Regarding alleged violation (4), Brown acknowledged he did not inform McClinton a urinalysis would be required of him on the 13th. RP 30-31. At the close of the evidence, the state withdrew the failure-to-be-available-for-urinalysis allegation. RP 52. The state also noted that there was no longer a register case pending against McClinton. RP 38.

Dallas Dusek, who is employed by the King county sheriff's sex offender registration office, testified McClinton registered on June 25, 2013, as living at the Boylston Hotel. RP 10-11. Dusek testified the sheriff's office had no further records for McClinton after that date. RP 11-12.

Defense counsel argued the department had no authority to require GPS monitoring, as it was not court ordered. RP 54. The defense also argued that McClinton had in fact provided his current address to DOC. RP 56.

The court found the violations proven. CP 55-56. Regarding the GPS requirement, the court found DOC's authority to impose a GPS condition was inherent in his supervisory authority:

> With respect to whether or not the State could, or the CCO could impose a requirement of the GPS, I think that that is part of the and inherent in the requirement of community placement that is part of the judgment and sentence that Mr. McClinton was to report to and be available for contact with the assigned corrections officer as directed, and the discretion of the CCO to impose reasonable conditions – reasonable conditions related to the charges for which Mr. McClinton was being supervised.

RP 58.

The court also noted the condition was authorized under RCW 9.94A.704,[3] which provides:

> 5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may:
> . . . (b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

[3] This statute was not enacted until 2008. Laws 2008, Ch. 231, § 10.

Regarding the failure-to-provide-a-current-address allegation, the court noted: "there isn't any allegation that the address that he gave on the 12th wasn't accurate, but that:

> [H]e was required to come back and directed to come back on the 13th, in part to give his address so that both the failure to register but also the UA – both the current registration and current – not failure to register by both the current address could be monitored and also the UAs, so I do find that that has also been established.

RP 59.

The court imposed 60 days for each of the violations, for a total of 240 days incarceration. McClinton timely appeals. CP 60-61.

C. ARGUMENT

1. THE COURT WAS WITHOUT AUTHORITY TO SANCTION McCLINTON FOR FAILING TO SUBMIT TO GPS MONITORING AS DOC WAS WITHOUT AUTHORITY TO ORDER IT.

Interpretation of the Sentencing Reform Act is a question of law this Court reviews de novo. In re Post Sentencing Review of Charles, 135 Wn.2d 239, 245, 955 P.2d 798 (1998). Courts review sentencing issues under the law in effect at the time of the offense. State v. Bader, 125 Wn. App. 501, 105 P.3d 439 (2005) (applying community custody statute in effect at time of the offense to

determine when period of community custody began); State v. Jones, 118 Wn. App. 199, 203, 76 P.3d 258 (2003) (the validity of the conditions of community custody are determined according to the law in effect at the time of the offense).

McClinton's offenses occurred in 1995. In 1995, the applicable community placement statute provided:

> Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:
>
> (i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
>
> (ii) The offender shall work at department of corrections-approved education, employment, and/or community service;
>
> (iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;
>
> (iv) An offender in community custody shall not unlawfully possess controlled substances;
>
> (v) The offender shall pay supervision fees as determined by the department of corrections; and
>
> (vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

RCW 9.94A.120(8); Laws 1995, ch. 108, § 3, eff. April 19, 1995.

In 1996, the legislature amended Former RCW 9.94A.120 to grant DOC the authority to modify or impose additional conditions of community placement, for crimes committed *after* June 6, 1996:

(14) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections.

(a) The instructions shall include, at a minimum, reporting as directed to a community corrections

officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(b) For sex offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. The conditions authorized under this subsection (14)(b) may be imposed by the department prior to or during a sex offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10)[4] of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of a sex offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) of this section.

. . .

Laws 1996, ch. 199, §; Laws 1996, ch. 215, § 5; Laws 1996, ch. 275, § 2; RCW 9.94A.120(1996).

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[4] For offenses committed after June 6, 1996, the Legislature also increased the minimum period of community supervision to three years. RCW 9.94A.120(10)(1996).

The amendment amounted to a significant change in the law. As this Court explained:

> The final legislative report for Substitute Senate Bill 6274 states that "[u]nder current law, all conditions of supervision must be imposed at the time of sentencing by the court and may not be altered later except to make them less restrictive. The department does not have the statutory authority to impose additional supervision conditions based on information it may learn about an individual's history or deviancy cycle during incarceration." Substitute Senate Bill 6274 amended RCW 9.94A.120 by authorizing DOC to "impose any appropriate conditions on sex offenders during their community custody terms[.]" But DOC's new authority to impose conditions under this act is specifically limited to those offenders sentenced after the effective date of the 1996 amendment. DOC had no authority to impose additional, more restrictive terms of community placement until the Legislature amended the SRA in 1996.

In re Capello, 106 Wn. App. 576, 584-85, 24 P.3d 1074 (2001), superseded by statute, as stated in In re Stewart, 115 Wn. App. 319, 341-42, 75 P.3d 521 (2003).

Thus, the statutory framework of former RCW 9.94A.120(8) – as it existed at the time of McClinton's offenses – evinced legislative intent that the trial court, not DOC, had exclusive discretion regarding community custody conditions. Capello, 106 Wn. App. at 583-84. The circumstances of Capello are analogous to those here.

At the time of Capello's offenses in 1991, the requirement that an offender submit to a pre-approved residence and living arrangement was a condition of community placement the court had discretion to impose. The trial court did not impose this condition on Capello, despite the department's urging. Capello, 106 Wn. App. at 579.

Nonetheless, the department subsequently informed Capello it would not allow his transfer to community custody in lieu of earned early release time without a pre-approved residence. When Capello complained administratively, DOC initially relied on the 1992 amended version of Former RCW 9.94A.120, which made the pre-approved residence requirement a standard condition unless waived by the court. Capello, 106 Wn. App. at 580. In response to Capello's personal restraint petition, however, the department asserted its authority to require a pre-approved residence location was inherently authorized as part of its overall community custody policy. Capello, 106 Wn. App. at 580.

This Court rejected the existence of such inherent authority:

> DOC cannot avoid RCW 9.94A.120 by attempting to redefine the pre-approved residence requirement as part of its program rather than a condition of community placement. It is a fundamental tenet of statutory construction that every

> provision of a statute must be read in conjunction with its related provisions to determine legislative intent and to achieve a harmonious and unified statutory scheme. There is no meaningful distinction between a pre-approved residence requirement imposed as a condition of community placement by the trial court under RCW 9.94A.120, and the same requirement imposed by DOC as part of its policy for administering the community custody program under RCW 9.94A.150.

Capello, 106 Wn. App. at 584.

Just as the court did not impose the residence location requirement in Capello, the court did not impose the GPS tracking requirement here. Just as the law in Capello's instance did not authorize the department to impose additional conditions of community placement, the law in McClinton's instance likewise did not authorize the department to impose additional conditions. The department therefore was correct in the first instance, when it concluded it did not have authority to require McClintock to submit to GPS monitoring.

In support of its changed opinion, DOC apparently relied on the attorney general's interpretation that GPS monitoring is somehow inherent in no contact order provisions or DOC's authority to monitor geographical restrictions. RP 32.

> It was determined by the attorney general's office that it was an acceptable means of monitoring his

> compliance with the no contact with the victim or geographical restrictions applied to the case.

RP 32.

As the state may point out, under the 1995 version of former RCW 9.94A.120(12), the department had authority to issue *instructions* regarding reporting, remaining within geographical boundaries, notifying DOC of changes of address and payment of supervision fees:

> All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision assessment. ...

RCW 9.94A.120(12)(1995).

But the sentencing court here did not impose any geographic limitations. CP 17, 19. Moreover, the authority to instruct offenders regarding reporting requirements, etc., cannot be said to carry with it an inherent authority to require GPS monitoring anymore than a community custody policy carries with it inherent authority to require a pre-approved residence. The state's argument that DOC

had authority to require GPS tracking pursuant to the no contact order provisions of the judgment and sentence is likewise a giant leap in logic. It is questionable whether the concept of GPS tracking was even common knowledge in 1995.

Indeed, if DOC's authority to require GPS tracking was inherent in its overarching supervisory authority, there would have been no need for the legislature in 2008, to enact RCW 9.94A.704,[5] which specifically provides for GPS tracking of sex offenders:

> 5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may:
> . . . (b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

In short, it was the court's sole authority to impose community custody provisions. The court did not order GPS tracking. The department therefore did not have authority to require McClinton to submit to GPS tracking. The court therefore erred in sanctioning him for failing to do so. State v. Angulo, 77 Wn. App. 657, 893 P.2d 662 (1995) (defendant did not violate

condition or requirement of his sentence to authorize modification). DOC should be directed to discontinue this requirement in the future. Capello, 106 Wn. App. at 585 (directing DOC to transfer Capello to community custody when he is otherwise eligible, without the need for a pre-approved residence location and living arrangement).

2. THE COURT ERRED IN SANCTIONING APPELLANT FOR FAILING TO PROVIDE A CURRENT ADDRESS, AS THE STATE FAILED TO PROVE THE VIOLATION.

Due process requires the state to prove noncompliance with sentencing conditions by a preponderance of the evidence. State v. Marino, 100 Wn.2d 719, 725, 674 P.2d 171 (1984); State v. Cassill-Skilton, 122 Wn. App. 652, 94 P.3d 407 (2004). A preponderance of the evidence means evidence sufficient to show that the fact "is more probably true than not true." In re Sego, 82 Wn.2d 736, 739 n.2, 513 P.2d 831 (1973).

In reviewing a finding made based on the preponderance standard, this Court must determine if that finding was supported by substantial evidence. See San Juan County v. Ayer, 24 Wn. App. 852, 859-60, 604 P.2d 1304 (1979). Substantial evidence is "evidence of a sufficient quantity to persuade a fair-minded, rational

[5] Laws 2008, Ch. 231, § 10.

person of the truth of the declared premise." In re the Marriage of Lutz, 74 Wn. App. 356, 370, 873 P.2d 566 (1994).

The evidence in support of violation 5 was not of that quantity. In its violation report, the state alleged:

> **Violation 5:**
> A Standard Condition of Supervision requires Mr. McClinton to notify DOC of a change of address (or employment). When Mr. McClinton reported to DOC on 11/12/13, he stated he was currently staying at the Union Gospel Mission in downtown Seattle. However, on 11/14/13, CCO Jeff Brown contacted Mr. David Swaty, a counselor at the Union Gospel Mission. Mr. Swaty said he could not find Mr. McClinton in their system. Thus, there is no verification that Mr. McClinton is residing there.

CP 49-50.

For undisclosed reasons, however, the state did not offer testimony from Swaty or Brown about Brown's efforts at verification. In any event, there was no evidence – as the court correctly recognized – to indicate the address McClinton provided was inaccurate. RP 59.

Rather, substantial evidence supported a contrary finding. Brown testified McClinton said he was staying at the Union Gospel Mission and showed him a piece of paper with "UGM" stamped on it, which Brown testified is "commonly known to be provided to people that stay there." RP 25; see also RP 36. In fact, McClinton

was at the Union Gospel Mission when he was arrested for the current violations. RP 29, 42. In the absence of any evidence to rebut this testimony, the state failed to carry its burden of proof.

Seemingly recognizing the lack of proof, the court found the violation proven on grounds McClinton did not return the following day, as directed. However, this was the basis for violation one. Moreover, the state's allegation was not that McClinton did not return, but that it had been unable to verify McClinton was in fact staying at the Union Gospel Mission. However, it was the state's burden to prove the violation, not McClinton's burden to prove compliance. Because the state offered no evidence McClinton was not staying at the Union Gospel Mission, the state failed to prove McClinton did not provide DOC with a current address.

D. CONCLUSION

For the reasons stated above, this Court should vacate the sanctions for violations 2 and 5 as they were unproven. This Court should also direct DOC to discontinue any further GPS monitoring requirement.

Dated this 23rd day of June, 2014

Respectfully submitted

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

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 71701-4-I
	)	
SALLYEA McCLINTON,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 23RD DAY OF JUNE 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SALLYEA McCLINTON
NO. 214013422
KING COUNTY JAIL
500 5TH AVENUE
SEATTLE, WA 98104

SIGNED IN SEATTLE WASHINGTON, THIS 23RD DAY OF JUNE 2014.

X Patrick Mayovsky