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A. ASSIGNMENT OF ERROR

The trial court erred in denying credit for confinement time served. CP __ (sub nos. 85 and 87, orders attached as appendices A and B).¹

Issue Related to Assignment of Error

After appellant's conviction, the trial court imposed a Drug Offender Sentencing Alternative (DOSA). During the supervision period, the trial court found a violation of treatment conditions and imposed 60 days of confinement. A few months later the trial court revoked the DOSA for admitted violations. When a DOSA is revoked, RCW 9.94A.660(7)(d) is unambiguous and requires a sentencing court to grant credit for previous confinement time served. Where the defense requested the court to grant credit and cited the controlling statute, did the trial court err by entering orders denying credit?

B. STATEMENT OF THE CASE

In an amended information filed September 19, 2011, the King County prosecutor charged appellant Robert Dean with residential burglary, with the aggravated circumstance that the victim was

¹ This brief was filed to support a motion for accelerated review, and the clerk's papers were not indexed at the time of filing. Important documents are attached as appendices.

present in the dwelling at the time of the offense. CP ___ (sub no. 36, Amended Information). On September 20, 2011, after a bench trial, the court found Dean guilty and found the aggravating factor to be proved. CP ___ (sub no. 51, Judgment and Sentence, attached as appendix C); CP ___ (sub no. 54, findings of Fact and Conclusions of Law).

The standard range was 12+ to 14 months. App. C, at 2. The state requested an exceptional sentence of 24 months, based on the aggravating factor. RP (10/26/11) 3-6.² Dean requested a residential treatment-based DOSA. Id., at 10-25. The court rejected the exceptional sentence and imposed the DOSA. Id., at 26-40.

The DOSA required 3-6 months of residential treatment and 24 months of community custody. The sentence was entered October 26, 2011. App. C, at 5.

On January 27, 2012, the court found Dean had violated treatment conditions of the DOSA and directed him to serve 60 days of total confinement in the King County Jail. CP ___ (sub no. 67, Order, attached as appendix D).

² The sentencing transcript was prepared for a prior appeal, No. 67869-8-1, which Dean withdrew.

On May 17, 2012, the court issued a bench warrant based on a notice of violation from the Department of Corrections (DOC). CP __ (sub no. 77, Order for Bench Warrant). At a violation hearing held August 7, the court terminated the residential DOSA and imposed a 14-month term of total confinement in DOC custody. The court's order includes the handwritten notation "[t]he court does not intend that Mr. Dean should receive credit for the 60-day sanction." App. A, at 3. The court then solicited briefing on whether the law allowed the court to deny Dean credit for the confinement time he served. CP __ (sub no. 86, Defense Motion to Grant Credit at 3, attached as appendix E).

On August 13, 2012, Dean's counsel filed a motion to grant credit for the time previously served. The motion cited unambiguous language from the controlling statute, RCW 9.94A.660(7)(d), and argued that credit for time served was required. App. E. The state filed no response. Nonetheless, by order dated August 14, 2012, the trial court ruled that "Dean is not entitled to credit for the 60 day sanction." App B.

This timely appeal follows.

C. ARGUMENT

CREDIT FOR TIME SERVED IS STATUTORILY REQUIRED.

A trial court's authority to impose sentence is limited to statutory authority in effect at the time the offense was committed. In re Restraint of Carrier, 173 Wn.2d 791, 798, 809, 272 P.3d 209 (2012); RCW 9.94A.345. An appellate court owes no deference to a trial court's construction of a statute. Lowy v. PeaceHealth, 174 Wn.2d 769, 778-79, 280 P.3d 1078 (2012) (citing State v. Wentz, 149 Wn.2d 342, 346, 68 P.3d 282 (2003)).

Dean's offense was committed on May 13, 2011. App. C, at 1.

The relevant DOSA statute in effect then provided:

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

RCW 9.94A.660 (2011) (emphasis added).³

The statute is unambiguous.⁴ It also requires credit for time served. Under subsection (7)(c), when an offender violates the terms of the sentence, or fails to make satisfactory progress in treatment, the sentencing court “may order the offender to serve a term of total confinement within the standard range of the offender's current offense.”

³ A copy of the complete statute is attached as appendix F.

⁴ A court should not construe unambiguous statutes. Lowy, 174 Wn.2d at 779.

The top of the standard range for this offense is 14 months. App. C. the trial court therefore had authority to impose a 14-month term in custody.⁵

The court previously ordered Dean to serve 60 days in total confinement. App. D. Under the plain language of subsection (7)(d), the court was required to credit Dean for the confinement time he served.

In the unlikely event that subsection (7)(d) is not facially clear, subsection (8) makes any misunderstanding impossible. Unlike subsection (7)(d) – which requires credit – subsection (8) expressly precludes credit for time served on community custody prior to termination of the DOSA. This difference in language, in one statute, shows a clear difference in legislative intent. Guillen v. Contreras, 169 Wn.2d 769, 776, 238 P.3d 1168 (2010) (“[I]t is an ‘elementary rule that where the Legislature uses certain statutory language in one

⁵ The court imposed a DOSA and rejected the state's request for an exceptional sentence. That sentence was final. A court cannot use a DOSA revocation hearing to modify a previously-imposed and final DOSA to impose an exceptional sentence. See, e.g., State v. Shove, 113 Wn.2d 83, 89, 776 P.2d 132 (1989) (authority to modify SRA sentences is narrowly limited); State v. Harkness, 145 Wn. App. 678, 186 P.3d 1182 (2008) (court could not modify prior standard range sentence to impose a DOSA after the judgment and sentence were final).

instance, and different language in another, there is a difference in legislative intent.”) (quoting State v. Jackson, 137 Wash.2d 712, 724, 976 P.2d 1229 (1999) and United Parcel Serv., Inc. v. Dep't of Revenue, 102 Wn.2d 355, 362, 687 P.2d 186 (1984)).

Subsection (8) shows the Legislature knew how to write a statute that would allow a sentencing court to deny credit for time served. Subsection (8) was amended to change prior law and to deny credit for community custody served prior to a DOSA revocation.⁶ But the Legislature did not similarly amend subsection (7)(d), which instead has consistently required sentencing courts to award credit for confinement time served.

The trial court's order also conflicts with subsection (7)(c), which limits the court's authority to impose confinement to a term “within the standard range.” The trial court's analysis could render this language superfluous in situations where a previous violation was found. Such a reading should be avoided. In re Restraint of Pierce, 173 Wn.2d 372, 378, 268 P.3d 907 (2011) (“Statutes must be

⁶ Subsection (8) apparently was the legislature's response to In re Restraint of Albritton, 143 Wn. App. 584, 594, 180 P.3d 790 (2008), which required credit for time spent in compliance with community custody conditions upon later DOSA revocation. See Laws of 2008, ch. 231, § 30 (originally codified as RCW 9.94A.660(10)); State v. Davis, 160 Wn. App. 471, 477 n.4, 248 P.3d 121 (2011).

interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous”) (internal quotations omitted).

An example should illustrate the problem. The trial court’s rewriting of the statute would allow a court to impose a two-month confinement term for a violation of DOSA conditions, then another two-month term upon finding of a later violation, then another two-month term for another violation. If the DOSA were later revoked, the court could impose another 14-month term at the top of the standard range and decline to give credit for the six months already served in confinement. In that example the total confinement time would be 20 months, well beyond the top of the standard range. An unambiguous statute permits no construction, but to the extent construction is allowed, this statute should not be rewritten to allow this absurd result. Lowy, 174 Wn.2d at 779 (“It is fundamental that in construing any statute we avoid absurd results”).

Finally, if there is any ambiguity in RCW 9.94A.660, the rule of lenity requires the statute to be construed in Dean’s favor. State v. Davis, 160 Wn. App. 471, 477, 248 P.3d 121 (2011).

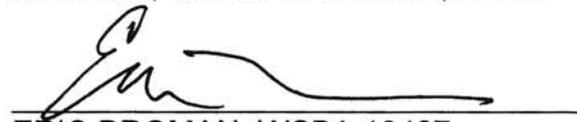
D. CONCLUSION

For all of these reasons, the trial court's order denying credit is clear error. This Court should vacate the order denying credit and remand with directions to enter an order granting credit for the confinement time previously served.

DATED this 22^d day of October, 2012.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

A handwritten signature in black ink, appearing to read 'Eric Broman', is written over a horizontal line.

ERIC BROMAN, WSBA 18487

OID No. 91051

Attorneys for Appellant

APPENDIX A

No. 69249-6-I

FILED
KING COUNTY, WASHINGTON

AUG 07 2012

COMMITMENT ISSUED **AUG - 8 2012**
SUPERIOR COURT CLERK
GARY POVICK
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Robert E. Dean III

Defendant.

No. *11-1-03148-5-SEA*
**ORDER MODIFYING OR
TERMINATING
RESIDENTIAL DOSA**

HEARING

The defendant, having previously received a residential Drug Offender Sentencing Alternative (DOSA) in this cause, appeared before the court on this date:
[] for a progress hearing
[] for a treatment termination hearing
 for the court's consideration of a recommendation for termination of the residential Drug Offender Sentencing Alternative imposed.

Present were the defendant and:
Defendant's attorney: *Rebecca Lederer*
Deputy Prosecuting Attorney: *Margaret Nave*
Community Corrections Officer: _____
Other: _____

The standard range sentence was *12+ - 14* months on Count(s) *I* and _____ months on Count(s) _____.

ORDER MODIFYING OR TERMINATING
RESIDENTIAL DOSA - 1
5/08

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

The court considered:

- violations listed on the Department of Corrections' report dated _____, 20____.
- the treatment provider's report dated _____, 20____.
- other: _____

MODIFICATION OF RESIDENTIAL DOSA (Violation Not Required)

It is hereby ordered that, pursuant to RCW 9.94A.660, the DOSA originally imposed is still in effect but modified as follows:

- This hearing is continued to _____, 20____, a date before the expiration of community custody; or
- The defendant shall serve a term of confinement equal to one-half the midpoint of the standard range followed by a term of community custody, specified in commitment order below; or
- The Department of Corrections is authorized to terminate the defendant's community custody status on completion of the community custody term;
- The following conditions of community custody are modified:

TERMINATION OF RESIDENTIAL DOSA (Violation Required)

The court finds that the defendant has violated the requirements or conditions of the residential Drug Offender Sentence Alternative as follows:

- Failing to make satisfactory progress or to complete treatment as ordered;
- Ingesting a controlled substance without prescription;
- Ingesting alcohol;
- Failing to comply with urinalysis or other drug testing as required;
- Failing to report to the Department of Corrections as instructed; + provide valid address
- Failing to pay legal financial obligations as required;
- Failing to appear at progress hearing;
- Failing to appear at treatment termination hearing;
- Failure to appear for Random ~~with~~ drug testing
- Absconding from Residential treatment

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Based on the finding of violation(s) of the sentence imposed, the court terminates the DOSA sentence previously imposed and commits the defendant for a term within the standard range, specified in commitment order below, including community custody. The defendant shall comply with the terms of community custody specified in the Judgment and Sentence section, "Conditions of Community Custody Imposed After Termination of DOSA".

COMMITMENT ORDER

The defendant shall serve 14 months of total **confinement** in the custody of the Department of Corrections.

Credit is given for [] _____ days served days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

[] The defendant shall serve a term of **community custody** of [] 9-18 months (for "crime against person"); [] 9-12 months (for violation of RCW 69.50-.52); or the entire period of earned early release, whichever is longer.

DONE IN OPEN COURT this 7 day of August, 2012.

Lincoln Hye
JUDGE

Presented by:
Maryann E. Mann

Deputy Prosecuting Attorney WSBA # 19004

Approved as to form:
[Signature]

Attorney for Defendant WSBA # 38828

* The court does not intend that Mr. Dean should receive credit for the 60 day sanction.
ark

APPENDIX B

No. 69249-6-1

FILED
KING COUNTY, WASHINGTON

AUG 14 2012

**SUPERIOR COURT CLERK
GARY POVICK
DEPUTY**

**IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

v.

ROBERT DEAN

Defendant.

Case No. 11-1-03148-5
SEA

**ORDER DENYING CREDIT FOR TIME
PREVIOUSLY SERVED**

THIS MATTER having come before the Court by written motion of defense counsel
Rebecca Lederer dated August 10, 2012

IT IS HEREBY ORDERED, that Mr. Robert Dean is not entitled to credit for the 60 day
sanction.

DATED this 14th day of August, 2012.



The Honorable Michael Hayden

APPENDIX C

No. 69249-6-I

FILED
2011 OCT 26 PM 2: 56
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

COPY TO COUNTY JAIL OCT 26 2011

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 11-1-03148-5 SEA
Plaintiff,)	
)	
Vs.)	JUDGMENT AND SENTENCE
)	FELONY (FJS)
ROBERT EUGENE DEAN, III)	
)	
Defendant,)	

I. HEARING

1.1 The defendant, the defendant's lawyer, JOHN EWERS, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Robin Campbell

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 09/20/2011 by bench trial of:

Count No.: <u>I</u>	Crime: <u>RESIDENTIAL BURGLARY</u>
RCW <u>9A.52.025</u>	Crime Code: <u>02310</u>
Date of Crime: <u>05/13/2011</u>	Incident No. _____
Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____
Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____
Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____

[] Additional current offenses are attached in Appendix A

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SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.533(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.533(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.
- (h) Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).
- (j) Aggravating circumstances as to count(s) I : VICTIM IN RESIDENCE AT TIME OF BURGLARY - RCW 9.94A.535(3)(u)

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	2	IV	12+ TO 14		12+ TO 14 MONTHS	10 YEARS AND/OR \$20,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE

- Findings of Fact and Conclusions of Law as to sentence above the standard range:
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) _____.
Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) _____. The court would impose the same sentence on the basis of any one of the aggravating circumstances.

An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.

An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State did did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs (RCW 9.94A.030, RCW 10.01.160); Court costs are waived;
- (b) \$100 DNA collection fee (RCW 43.43.7541)(mandatory for crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); Recoupment is waived;
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA \$2,000, Fine for subsequent VUCSA (RCW 69.50.430); VUCSA fine waived;
- (e) \$ _____, King County Interlocal Drug Fund (RCW 9.94A.030); Drug Fund payment is waived;
- (f) \$ _____, \$100 State Crime Laboratory Fee (RCW 43.43.690); Laboratory fee waived;
- (g) \$ _____, Incarceration costs (RCW 9.94A.760(2)); Incarceration costs waived;
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 600-. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 (a) **PRISON-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) : The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant as follows:

The defendant is sentenced to the following term(s) of confinement in the custody of the Dept. of Corrections (DOC) to commence immediately; by _____ at _____ a.m./p.m.:
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____;
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____;
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____;

The above term(s) of confinement represents one-half of the midpoint of the standard range or, if the crime occurred after 6-6-06, twelve months if that is greater than one-half of the midpoint.

The terms imposed herein shall be served concurrently.
The term(s) imposed herein shall run CONSECUTIVE CONCURRENT to cause No(s) _____

The term(s) imposed herein shall run CONSECUTIVE CONCURRENT to any previously imposed commitment not referred to in this judgment.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): _____ day(s) or days determined by the King County Jail.
 Credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.
 The court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).
 Jail term is satisfied; defendant shall be released under this cause.

While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive substance abuse assessment and receive, within available resources, appropriate treatment services.

COMMUNITY CUSTODY: The court further imposes _____ months, one-half of the midpoint of the standard range, as a term of community custody during which time the defendant shall comply with the instructions, rules and regulations promulgated by the Department for conduct of the defendant during community custody; shall perform affirmative acts necessary to monitor compliance, shall obey all laws and comply with the following mandatory statutory requirements:

- (1) The defendant shall undergo and successfully complete a substance abuse program approved by the Division of Alcohol and Substance Abuse of the Dept. of Social and Health Services;
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

NON-COMPLIANCE. RCW 9.94A.660(5): If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program, he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

The court further imposes an additional term of Community Custody of 12 months upon failure to complete or administrative termination from DOSA program if any of these offenses is a crime against a person (RCW 9.94A.411) or a felony violation of RCW 69.50/52. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.7 herein.

4.4 (b) RESIDENTIAL TREATMENT-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)(for sentences imposed after 10-1-05) (available if the midpoint of the standard range is 24 months or less): The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant on Count(s) 1 as follows:

The defendant shall serve 24 months in community custody under the supervision of the DOC, on the condition that the defendant enters and remains in residential chemical dependency treatment certified under RCW Ch. 70.96 for 3-6 months between 3 and 6) months. The DOC shall make chemical dependency assessment and treatment services available during the term of community custody, within available resources.

Pending DOC placement in residential chemical dependency treatment, the defendant is ordered to attend a DOC day reporting center and follow all applicable rules. The defendant shall report to DOC to begin the DOC day reporting program within 24 hours of release.

The defendant shall comply with the treatment and other conditions proposed in the examination report, as mandated by RCW 9.94A.665(2)(a). Frequency and length of treatment and monitoring plan are specified in the EXAMINATION REPORT ATTACHED AS APPENDIX 1.

A progress hearing is set in this court, during the residential treatment, for 1/26/12 8:30am (90 days from sentencing date). Additional progress hearings may be set.

A treatment termination hearing is set in this court three months before the expiration of the community custody term, for 10/23/2013 8:30am (date).

Before the progress hearing and the treatment termination hearing, the treatment provider and the DOC shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, including recommendations regarding termination from treatment.

NON-COMPLIANCE. RCW 9.94A.665(4): At the progress hearing or treatment termination hearing, the court may modify the conditions of community custody, authorize termination of community custody status on expiration of the community custody term, or impose a term of total confinement equal to one-half the midpoint of the standard range, along with a term of community custody.

4.5 ADDITIONAL COMMUNITY CUSTODY CONDITIONS OF DOSA SENTENCE: The court further imposes the following non-mandatory conditions of Community Custody (if checked):

- The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.
- The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.
- Devote time to a specific employment or training.
- Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.
- Report as directed to a community corrections officer.
- Pay all court ordered legal financial obligations.
- Perform _____ community restitution hours on a schedule set by DOC.
- Stay out of designated areas as follows: _____
- Other conditions as set forth in APPENDIX F.

4.6 ADDITIONAL CONFINEMENT: The court may order the defendant to serve a term of total confinement within the standard range at any time during the period of community custody if the defendant violates the conditions of sentence or if the defendant is failing to make satisfactory progress in treatment.

4.7 CONDITIONS OF COMMUNITY CUSTODY IMPOSED AFTER TERMINATION OF DOSA:

- The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.
- The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.
- Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.
- Report as directed to a community corrections officer.
- Pay all court ordered legal financial obligations.
- Stay out of designated areas as follows: _____

Other conditions: continue with treatment recommendations

4.8 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.9 OFF-LIMITS ORDER: The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in APPENDIX I during the term of community supervision. APPENDIX I is attached and incorporated by reference into this Judgment and Sentence.

5.0 NO CONTACT: For the maximum term of 10 years, defendant shall have no contact with Sherryl Beitzel, Robin Campbell, 3035 28th Ave W. Seattle

Date: 10/27/11

Michael Hays
JUDGE
Print Name: _____

Presented by:

[Signature]
Deputy Prosecuting Attorney, WSBA # 33543
Print Name: Hyacinthina Williams

Approved as to form:

[Signature]
Attorney for Defendant, WSBA # 31245
Print Name: John EWEIS

FINGERPRINTS

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: X Robert Dean
DEFENDANT'S ADDRESS: DOC

ROBERT EUGENE DEAN

DATED: 10/26/74
Robert Dean
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: Barbara Miner
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

OFFENDER IDENTIFICATION

S.I.D. NO. WA25860553
DOB: SEPTEMBER 21, 1974
SEX: M
RACE: B

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ROBERT EUGENE DEAN, III

Defendant,

No. 11-1-03148-5 SEA

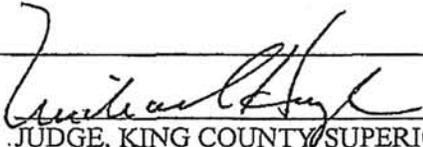
JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ATTEPMTED RESIDENTIAL-BURGLARY	12/10/2010	ADULT	101088675	KING CO

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 10/26/11


 JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT EUGENE DEAN, III)
)
 Defendant,)
)

No. 11-1-03148-5 SEA
 APPENDIX G
 ORDER FOR BIOLOGICAL TESTING
 AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

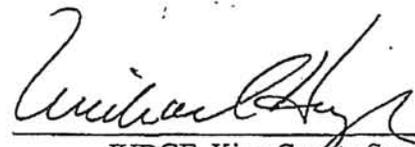
(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 10/26/11



 JUDGE, King County Superior Court

APPENDIX D

No. 69249-6-1

FILED

2012 FEB -1 PM 2: 39

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Review -
MAY 24, 2012
8:30

COPY TO COUNTY JAIL FEB - 1 2012

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Robert Dean III

Defendant.

No. 11-1-03148-5 SEA
ORDER MODIFYING SENTENCE
AND WARRANT OF COMMITMENT
(RCW 9.94A.200)

HEARING

On 1/27, 2012, the Court considered the Plaintiff's motion for an order modifying the sentence imposed on the Defendant. Present were the Defendant and:

Defendant's Attorney: LEONA THOMAS
Deputy Prosecuting Attorney: JENN MILLER
Community Corrections Officer: _____
Other: _____

The Court considered:

the violations listed on the Department of Corrections' Violation Report dated _____, 20____.
 other: _____

62

FINDINGS

The Court finds that the Defendant has

willfully not willfully

violated the requirements or conditions of sentence as follows:

- Failing to pay legal financial obligations as required;
- Failing to report to the Department of Corrections (DOC) as instructed;
- Failing to complete court-ordered community service hours;
- Changing residence without permission of or notice to DOC;
- Ingesting a controlled substance: _____;
- Violating a no-contact order;
- Failing to complete treatment as ordered;
- Failing to serve jail commitment of _____;
- Failing to appear at a violation hearing on _____;
- Failing to maintain employment, attend school, or perform community service as required under community placement;
- Failing to submit to urinalysis;
- not doing UA / doing drug treatment*

ORDER AND WARRANT OF COMMITMENT

It is hereby ordered, adjudged and decreed that:

I.

The sentence entered on 10/27/11 is still in effect but modified as follows: _____

Supervision by the Department of Corrections is continued and shall be tolled for all periods of time the Defendant has absented him/herself from supervision, or been in confinement for any reason.

Supervision by the Department of Corrections, including financial monitoring, is terminated.

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II.

Confinement is is not imposed.

The Defendant shall serve 60 days of total partial confinement

- in the King County Jail
- in King County Work/ Education Release
- in King County Electronic Home Detention,

or, if applicable under RCW 9.94A.190(3), in the Department of Corrections. This commitment shall begin not later than _____

- Credit is given for 13 days served.
- This is a conversion of _____ community service hours.
- Incomplete jail commitment of _____ days included above.

The King County Department of Adult Detention shall receive the Defendant for classification, confinement and placement.

DONE IN OPEN COURT this 27 day of January, 2012.

[Signature]
JUDGE

Presented by:

[Signature]

Deputy Prosecuting Attorney, WSBA # 31600

Approved as to form:

[Signature]

Attorney for Defendant, WSBA # 16449

defendant shall be taken directly to treatment after sanction term served

APPENDIX E

No. 69249-6-I

FILED

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KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-1-03148-5 SEA

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

STATE OF WASHINGTON,

Plaintiff.

v.

ROBERT DEAN,

Defendant.

NO. 11-1-03148-5 SEA

DEFENSE MOTION TO GRANT
CREDIT FOR TIME PREVIOUSLY
SERVED

MOTION

Comes now, the defendant, Robert Dean, by and through his attorney, Rebecca Lederer, and moves this court for an order granting Mr. Dean credit for the sixty day sanction imposed on January 27, 2012.



Rebecca Lederer, WSBA #38568
Attorney for Robert Dean

DEFENSE MOTION TO GRANT.
CREDIT FOR TIME PREVIOUSLY
SERVED -- 1

THE DEFENDER ASSOCIATION
810 THIRD AVENUE, SUITE 800
SEATTLE, WA 98104
TEL: 206-447-3900
FAX: 206-447-2349



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PROCEDURAL HISTORY

Robert Dean was found guilty after bench trial to one count of Residential Burglary with the aggravating circumstance of a victim in the residence at the time of the burglary. His standard sentence range on the Residential Burglary was 12+ to 14 months. On October 26, 2011 Mr. Dean was sentenced under the Drug Offender Sentencing Alternative (DOSA) statute. He was ordered to complete three to six months inpatient treatment followed by twenty-four months community custody, otherwise known as a Residential DOSA.

On November 15, 2011 a bench warrant was issued for Mr. Dean's arrest because he did not report for inpatient treatment. Two months later on January 13, 2012 Mr. Dean was booked into the King County Jail on the warrant. At a review hearing on January 27, 2012 the Court found that Mr. Dean had willfully violated the terms of his sentence and sanctioned him to sixty days in the King County Jail. The Court allowed Mr. Dean another opportunity to comply with the terms of the Residential DOSA.

On May 17, 2012 a bench warrant was issued for Mr. Dean's arrest because he absconded from inpatient treatment. Mr. Dean was subsequently booked into the King County Jail on July 22, 2012 on the warrant and a new criminal charge of Assault in the Second Degree. The assault charge is still pending.

**DEFENSE MOTION TO GRANT.
CREDIT FOR TIME PREVIOUSLY
SERVED --- 2**

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The August 2, 2012 Department of Corrections violation report alleged five violations of Mr. Dean’s Residential DOSA: (1) aborting treatment on 5/11/12; (2) failing to report to DOC on 5/11/12, (3) failing to make himself available for a drug test on 5/11/12; (4) failing to provide DOC with a valid address on 5/11/12; and (5) committing a new pending assault charge. At the August 2, 2012 review hearing, Mr. Dean admitted to violations 1-4 and consented to a revocation of his DOSA sentence.

For sentencing the State recommended a sentence of fourteen months and defense counsel recommended a sentence of twelve months and a day. After hearing from Mr. Dean the Court imposed a sentence within the standard range of fourteen months. The Court then indicated that it would explicitly deny credit for the sixty day sanction previously imposed. The Court admitted that it was unsure whether the law allowed this denial of credit and welcomed briefing since neither State’s counsel nor defense counsel knew the answer to this question at the time of the hearing.

ARGUMENT

RCW 9.94A.660(7) provides the procedure by which a court may sanction an offender for violating the terms of his sentence under the DOSA statute. Subsection (7)(b) provides that a court “may modify the conditions of community custody or impose sanction under (c).” Subsection (c) allows a court to “impose a term of total confinement within the standard range of the offender’s current offense at any time during the period

**DEFENSE MOTION TO GRANT.
CREDIT FOR TIME PREVIOUSLY
SERVED — 3**

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of community custody if the offender violates the conditions of requirements of the sentence." When this occurs the offender "shall receive credit for any time previously served under this section." RCW 9.94A.660 (7)(d) (emphasis added).

When construing a statute, courts must ascertain and carryout the intent of the legislature. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005); *Dep't of Ecology v. Campbell &Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell &Gwinn L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Criminal statutes must be given literal and strict interpretation. *State v. Wilson*, 125 Wn.2d 212.217, 883 P.2d 320 (1994). Courts cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language. *Id.* at 220. Courts must assume that the legislature "means exactly what it says". *Davis v. Dep't of Licensing*, 137 wn.2d 957, 964, 977 P.2d 554 (1999). When the plain language of a statute is unambiguous, the legislative intent is apparent. *State v. C.A.E.*, 148 Wn.App. 720, 725, 201 P.3d 361 (2009) (citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)).

The language of RCW 9.94A.660(7)(d) is unambiguous. If a court revokes a sentence originally granted under the Drug Offender Sentencing Alternative statute and

**DEFENSE MOTION TO GRANT.
CREDIT FOR TIME PREVIOUSLY
SERVED --- 4**

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imposes a term of total confinement within the standard range, the court shall give credit for any time previously served.

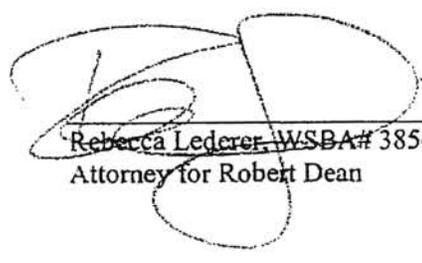
When the Court revoked Mr. Dean's Residential DOSA and imposed a sentence of fourteen months, the Court was required by the plain language of RCW 9.94A.660(7)(c) and (d) to give Mr. Dean credit for all time he had previously served on this case, including the sixty day sanction the court had imposed on January 27, 2012.

CONCLUSION

Defense respectfully requests the Court to order that Mr. Dean receive credit for all time previously served in this matter, including the sixty day sanction previously imposed on January 27, 2012.

Dated this 10th day of August, 2012.

Respectfully submitted,


~~Rebecca Lederer, WSBA # 38568~~
Attorney for Robert Dean

**DEFENSE MOTION TO GRANT.
CREDIT FOR TIME PREVIOUSLY
SERVED — 5**

THE DEFENDER ASSOCIATION
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SEATTLE, WA 98104
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**THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,

Plaintiff.

v.

ROBERT DEAN,

Defendant.

NO. 11-1-03148-5 SEA

**ORDER GRANTING CREDIT FOR
TIME PREVIOUSLY SERVED**

THIS MATTER having come before the Court by written motion of defense counsel Rebecca Lederer dated August 10, 2012,

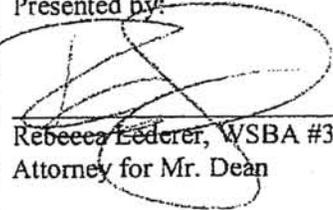
IT IS HEREBY ORDERED, that Mr. Dean is entitled to credit for all jail time previously served on this cause number.

Done this ___ of _____, 2012.

The Honorable Michael Hayden

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Presented by:



Rebecca Lederer, WSBA #38568
Attorney for Mr. Dean

Approved for entry:

King County Deputy Prosecuting Attorney

**COURT ORDER GRANTING CREDIT
FOR TIME PREVIOUSLY SERVED — 2**

APPENDIX F

No. 69249-6-1

West's RCWA 9.94A.660

West's Revised Code of Washington Annotated Currentness

Title 9. Crimes and Punishments (Refs & Annos)

Chapter 9.94A. Sentencing Reform Act of 1981 (Refs & Annos)

9.94A.660. Drug offender sentencing alternative—Prison-based or residential alternative

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533(3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a min-

imum, address the following issues:

- (i) Whether the offender suffers from drug addiction;
 - (ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;
 - (iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and
 - (iv) Whether the offender and the community will benefit from the use of the alternative.
- (b) The examination report must contain:
- (i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and
 - (ii) Recommended crime-related prohibitions and affirmative conditions.
- (6) When a court imposes a sentence of community custody under this section:
- (a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.
 - (b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and RCW 9.94A.737.
- (7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.
- (b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.
- (c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.
- (d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.
- (8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.
- (9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.
- (10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be

paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

CREDIT(S)

[2009 c 389 § 3, eff. Aug. 1, 2009; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30, eff. Aug. 1, 2009; 2006 c 339 § 302, eff. June 7, 2006; 2006 c 73 § 10, eff. July 1, 2007; 2005 c 460 § 1, eff. Oct. 1, 2005. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

HISTORICAL AND STATUTORY NOTES

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

Effective date—2009 c 389 § 2: “Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009].” [2009 c 389 § 7.]

Expiration date—2009 c 389 § 2: “Section 2 of this act expires August 1, 2009.” [2009 c 389 § 9.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2006 c 73: See note following RCW 46.61.502.

Application—2005 c 460: “This act applies to sentences imposed on or after October 1, 2005.” [2005 c 460 § 2.]

Effective date—2005 c 460: “This act takes effect October 1, 2005.” [2005 c 460 § 3.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Laws 2001, ch. 10, § 4, in subsec. (1)(d), inserted “and does not become subject to a deportation order during the period of the sentence”; in subsec. (2), in the second paragraph, inserted subd. (d); and, in subsec. (3), in the first paragraph, inserted “or is found by the United States attorney general to be subject to a deportation order”, inserted the subdivision designations, and added subd. (b).

Laws 2002, ch. 175, § 10 substituted “community restitution” for “community service”.

Laws 2002, ch. 290, § 20, in subsec. (1)(a), changed citations to refer to sections added by Laws 2002, ch. 290.

Laws 2003, ch. 379, § 9 amended Laws 2002, ch. 290, § 30 to provide that section 2 of that act expires July 1, 2003, and Laws 2003, ch. 379, § 10 amended Laws 2003, ch. 290, § 31 to provide that sections 7-11 and 14-23 of that act take effect July 1, 2003.

Laws 2005, ch. 460, § 1 rewrote the section, which formerly read:

“(1) An offender is eligible for the special drug offender sentencing alternative if:

“(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533(3) or (4);

“(b) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

“(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

“(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

“(2) If the standard sentence range is greater than one year and the sentencing court determines that the offender is eligible for this alternative and that the offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

“The court shall also impose:

“(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

“(b) Crime-related prohibitions including a condition not to use illegal controlled substances;

“(c) A requirement to submit to urinalysis or other testing to monitor that status; and

“(d) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

“The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a

comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

“(i) Devote time to a specific employment or training;

“(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

“(iii) Report as directed to a community corrections officer;

“(iv) Pay all court-ordered legal financial obligations;

“(v) Perform community restitution work;

“(vi) Stay out of areas designated by the sentencing court;

“(vii) Such other conditions as the court may require such as affirmative conditions.

“(3) If the offender violates any of the sentence conditions in subsection (2) of this section or is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department unless waived by the offender.

“(a) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

“(b) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

“(4) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

“(5) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing court. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned release time.”

Laws 2006, ch. 73, § 10 inserted subsec. (1)(b) and made conforming changes.

Laws 2006, ch. 339, § 302, in subsec. (5)(a), in the first sentence, added “or twelve months, whichever is greater”.

Laws 2008, ch. 231, § 30 rewrote the section, which formerly read:

“(1) An offender is eligible for the special drug offender sentencing alternative if:

“(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

“(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

“(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

“(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

“(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

“(f) The standard sentence range for the current offense is greater than one year; and

“(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

“(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

“(a) Whether the offender suffers from drug addiction;

“(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

“(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

“(d) Whether the offender and the community will benefit from the use of the alternative.

“(3) The examination report must contain:

“(a) Information on the issues required to be addressed in subsection (2) of this section; and

“(b) A proposed treatment plan that must, at a minimum, contain:

“(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

“(ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment

and treatment in the community;

“(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

“(iv) Recommended crime-related prohibitions and affirmative conditions.

“(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

“(5) The prison-based alternative shall include:

“(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months, whichever is greater. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

“(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

“(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

“(d) A requirement to submit to urinalysis or other testing to monitor that status; and

“(e) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

“(6) The residential chemical dependency treatment-based alternative shall include:

“(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. The department may impose conditions and sanctions as authorized in RCW 9.94A.715(2), (3), (6), and (7), 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

“(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall

submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

“(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

“(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

“(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715;

“(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

“(7) If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court may impose any of the following conditions:

“(a) Devote time to a specific employment or training;

“(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

“(c) Report as directed to a community corrections officer;

“(d) Pay all court-ordered legal financial obligations;

“(e) Perform community restitution work;

“(f) Stay out of areas designated by the sentencing court;

“(g) Such other conditions as the court may require such as affirmative conditions.

“(8)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

“(b) If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions under (c) of this subsection.

“(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence or if the offender is failing to make satisfactory progress in treatment.

“(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any

time previously served under this section.

“(9) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

“(10) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

“(11) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.”

Laws 2009, ch. 389, § 3, rewrote the section, which formerly read:

“(1) An offender is eligible for the special drug offender sentencing alternative if:

“(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

“(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61. 502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

“(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

“(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

“(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

“(f) The standard sentence range for the current offense is greater than one year; and

“(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

“(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

“(a) Whether the offender suffers from drug addiction;

“(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

“(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

“(d) Whether the offender and the community will benefit from the use of the alternative.

“(3) The examination report must contain:

“(a) Information on the issues required to be addressed in subsection (2) of this section; and

“(b) A proposed treatment plan that must, at a minimum, contain:

“(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

“(ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;

“(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

“(iv) Recommended crime-related prohibitions and affirmative conditions.

“(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

“(5) The prison-based alternative shall include:

“(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months, whichever is greater. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

“(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

“(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

“(d) A requirement to submit to urinalysis or other testing to monitor that status; and

“(e) A term of community custody pursuant to section 7 of this act to be imposed upon failure to complete or ad-

ministrative termination from the special drug offender sentencing alternative program.

“(6) The residential chemical dependency treatment-based alternative shall include:

“(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

“(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

“(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

“(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

“(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under section 7 of this act;

“(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

“(7) The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

“(8) The court may impose any of the following conditions:

“(a) Pay all court-ordered legal financial obligations; or

“(b) Perform community restitution work.

“(9)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

“(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

“(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or re-

quirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

“(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

“(10) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

“(11) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

“(12) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

“(13) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.”

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