

69922-9

69922-9

NO. 69922-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

STACY DOCKINS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LEROY MCCULLOUGH

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

1. The sentencing court shall give an offender credit for time served in confinement. Dockins was not credited for his out-of-custody, voluntary participation in substance abuse treatment at an institution chosen by Dockins that was not affiliated with the government. Did the court properly deny Dockins' request for credit against his prison sentence for time spent while he was released from custody for treatment?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Stacy Dockins was charged by Information with two counts of felony driving under the influence (DUI) and one count of attempting to elude a pursuing police vehicle. CP 1-2. The DUI counts were elevated to felonies due to Dockins' prior conviction for vehicular assault while under the influence. CP 1-2. Dockins pleaded guilty to all counts. CP 19; 1RP¹ 10. The sentencing court imposed an agreed-upon exceptional sentence

¹ There are 3 volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (Oct. 10, 2012); 2RP (Dec. 14, 2012); and 3RP (Jan. 11, 2013).

below the standard range of 36 months of incarceration. CP 37;
3RP 16.

2. SUBSTANTIVE FACTS.

The Certification for Determination of Probable Cause and Prosecutor's Case Summary described the underlying facts of the charges.² CP 3-6. On Wednesday morning, August 10, 2011, Dockins lost control of his Cadillac while driving along Washington State Route 18 (SR18). CP 3. Dockins drove over a grassy area; his car came to a rest as it stuck out onto the off ramp of Interstate 5. CP 3. A passerby found Dockins passed out inside his car and called 911. CP 3. The Washington State Trooper who arrived at the scene observed that Dockins was impaired. CP 3. Dockins admitted that, before he drove, he smoked "sherm" (cigarette dipped in PCP, Phencyclidine, a hallucinogenic drug). CP 3, 5. Results from a blood draw confirmed that Dockins had used PCP. CP 3. Dockins was taken to a hospital, but released later that day. CP 3.

² Dockins stipulated that the court could consider the facts set forth in the certification for determination of probable cause and prosecutor's summary for purposes of the sentencing hearing. CP 27.

The following evening, August 11, 2011, a trooper observed Dockins driving along Interstate 5 while speeding, weaving, and following vehicles too closely. CP 3. When the trooper signaled Dockins to stop, Dockins reacted by accelerating his speed to 90 miles per hour and continued to weave through traffic. CP 3. With a passenger in his car, Dockins led multiple law enforcement officers on a sixteen-mile chase. CP 3. The pursuit ended after Dockins drove over a spike strip and continued to drive until the tire rims disintegrated. CP 3. Dockins' blood was again drawn and tested. CP 3. The results showed that Dockins had used PCP after he was released from the hospital the previous day. CP 3.

Dockins was charged with two counts of felony DUI and one count of attempting to elude a pursuing police vehicle. CP 1-2. The predicate offense for the felony DUI charges was vehicular assault while driving under the influence. CP 1-2. In that incident, Dockins was driving while impaired from smoking PCP. CP 3. Dockins rammed a car causing it to lose control; the car's driver suffered serious fractures. CP 3. Dockins' vehicle also crashed, however his passenger, his unrestrained two year-old daughter, was not injured. CP 3.

While in custody in the King County Jail, Dockins petitioned the court asking to be released to participate in substance abuse treatment. CP 52-53, 56-57. The court “eventually” allowed Dockins to be released from custody to Thunderbird, the in-patient facility chosen by Dockins. CP 56-57; 3RP 4. As a condition of his release from custody, Dockins was required to be in compliance with the Thunderbird treatment program. CP 56-57. If he failed, he was informed that his release would be revoked and a bench warrant would be issued to return him to custody. CP 56-57. Dockins was originally released to participate in an intensive month-long in-patient program. Sub 27; 3RP 4. Dockins then entered into “Long-Term” treatment at Thunderbird and requested that the court allow his continued “temporary release” through the following months. CP 59, 61, 65, 66, 67. During long-term treatment, Dockins was allowed to leave the treatment facility three times per week and was required to obtain employment or a volunteer position. CP 65. After Dockins completed treatment at Thunderbird, he was ordered by the court to participate in King County’s Community Center for Alternative Programs – Enhanced (CCAP – Enhanced). CP 68-70.

Dockins and the State entered into a plea agreement wherein the State agreed to request that Dockins be sentenced to an exceptional sentence below the standard range and agreed not to file an additional uncharged felony DUI charge. CP 27. The parties understood that the recommendation for leniency was premised on Dockins' completion of substance abuse treatment. 3RP 5, 14.

At sentencing, Dockins requested that he be awarded credit for time served (CFTS) for the time he spent in the King County Jail, in CCAP, and at Thunderbird. 3RP 7. Dockins' counsel acknowledged that Thunderbird was not a government-run institution, but analogized it to "partial confinement." 3RP 8-9. The State opposed Dockins' request to be awarded CFTS for his treatment at Thunderbird noting that the request was not part of the plea agreement and that Dockins already received a benefit through a reduction in the period of incarceration through the State's agreement to seek an exceptional sentence below the standard range based on his completion of treatment. 3RP 14.

The court ordered CFTS for the time Dockins spent in the King County Jail and in CCAP – Enhanced and imposed the agreed-upon exceptional sentence below the standard range.

3RP 16-17. The court denied Dockins' request for CFTS for the time he spent in treatment. 3RP 17. The court stated that Thunderbird did not qualify as either total or partial confinement under RCW 9.94A.030. 3RP 17. Additionally, the court noted:

This was your decision [that] you made to go to treatment. It's something that's going to benefit you. And you were not under direct Court supervision at that time, even though they were monitoring you and reporting to the Court.

3RP 17-18.

C. ARGUMENT

1. DOCKINS IS NOT ENTITLED TO CREDIT FOR TIME SERVED WHILE RELEASED FROM CUSTODY TO PARTICIPATE IN VOLUNTARY SUBSTANCE ABUSE TREATMENT THAT WAS NOT AFFILIATED WITH THE GOVERNMENT OR ORDERED BY THE COURT.

Dockins claims that he is entitled to credit against his prison sentence for the time he spent released from custody to participate in substance abuse treatment. This claim should be rejected. Dockins asked the court to release him from custody to allow him to enter into an in-patient treatment program chosen by Dockins. Dockins is not entitled to credit against his prison sentence because he was not in custody during treatment and was

voluntarily participating in a program that was not ordered by the court.

An offender sentenced to a term of confinement has both a constitutional and a statutory right to receive credit for time served in confinement. RCW 9.94A.505(6); State v. Speaks, 119 Wn.2d 204, 206, 829 P.2d 1096 (1992). The failure to provide credit for time served in confinement violates due process, equal protection, and the double jeopardy prohibition against multiple punishments. In re Costello, 131 Wn. App. 828, 832, 129 P.3d 827 (2006).

Under the SRA, "confinement" is defined as "total or partial confinement." RCW 9.94A.030(8). "Total confinement" means "confinement inside the physical boundaries of a *facility or institution operated or utilized under contract by the state or any other unit of government* for twenty-four hours a day[.]" RCW 9.94A.030(51) (emphasis added). In relevant part, the term "partial confinement" means "confinement for no more than one year in a *facility or institution operated or utilized under contract by the state or any other unit of government*." RCW 9.94A.030(35) (emphasis added). The critical component of these definitions is that the facility is either operated by the state or a unit of

government, or is “utilized under contract” by the state or unit of government to “confine” a person.

A sentencing court has “discretion in sentencing only where the SRA so authorize[s.]” State v. Shove, 113 Wn.2d 83, 89, 776 P.2d 132 (1989). Reviewing courts “generally do not imply authority where it is not necessary to carry out powers expressly granted[,]” especially where the “the general structure and purpose of the SRA limits the trial court’s sentencing discretion and requires determinate sentences.” State v. DeBello, 92 Wn. App. 723, 728, 964 P.2d 1192 (1998). The SRA does not grant trial courts authority to credit drug treatment against confinement time. State v. Hale, 94 Wn. App. 46, 55, 971 P.2d 88 (1999).

The SRA definition of confinement, either total or partial, does not apply to the time Dockins spent checked into the Thunderbird treatment facility. Thunderbird is not operated by the government nor was it “utilized under contract” in this instance by any government agency.³ CP 56-57; 3RP 18. Importantly, the government did not compel Dockins to attend treatment nor was the government using Thunderbird as a facility of confinement. CP 52-53, 56-57. Rather, Dockins requested his *release from*

³ Dockins’ substance abuse treatment was not paid for by the government; Dockins arranged for the funding of his treatment. CP 56.

custody so that he could participate in substance abuse treatment. CP 56-57. The court then granted his request to be released so he could pursue treatment. CP 58-59, 61, 66-67. Accordingly, Dockins was not in custody, and, under the SRA, Thunderbird was not a place of total or partial confinement.

Dockins argues that the term “partial confinement” is flexible and is defined under Washington law to include work release facilities, home detention, and other alternative programs. He is correct.⁴ However, treatment and medical facilities are not among the alternatives included within the definition.

RCW 9.94A.030(35). Additionally, the Legislature has not included voluntary or involuntary treatment programs within its definition of “confinement.” RCW 9.94A.030(8), (35), (51).

Dockins analogizes the conditions of his voluntary in-patient treatment at Thunderbird as “akin” to CCAP and home detention. This analogy is misplaced. The SRA specifically recognizes home detention and “facilities operated or utilized under contract by a unit

⁴ Included in the definition of “partial confinement” is home detention or work crew “if home detention or work crew has been *ordered by the court* or home detention has been *ordered by the department* as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement *includes work release, home detention, work crew, and a combination of work crew and home detention.*” RCW 9.94A.030(35) (emphasis added).

of government[,]" such as CCAP – Enhanced, as confinement. RCW 9.94A.030(35). The SRA does not recognize self-imposed drug treatment as confinement. The confinement time which qualifies for credit is clear and, therefore, leaves no room for judicial interpretation.

Moreover, Division Three of this Court rejected granting CFTS for circumstances akin to those enumerated by statute. State v. Vasquez, 75 Wn. App. 896, 881 P.2d 1058 (1994). In Vasquez, the defendant requested CFTS during his home release, which included court-ordered conditions that were similar to home detention but was not electronically monitored.⁵ Id. at 897. The court found that, because the definition of home detention states that a defendant must be electronically monitored, there is no room for judicial interpretation and the defendant's home release did not qualify as "partial detention." Id. at 898-99.

Dockins wisely sought substance abuse treatment to address his addiction to PCP that contributed to several felony DUI convictions. However, the time he spent released from custody pursuing voluntary treatment at Thunderbird, a non-government

⁵ "Home detention" is defined as "a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance." RCW 9.94A.030(28).

facility, does not qualify as total or partial confinement under the SRA. Dockins is not entitled to CFTS against his prison term for his treatment.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Dockins' convictions and sentence.

DATED this 9 day of October, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory Link, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. STACY DOCKINS, Cause No. 69922-9 -I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 9 day of October, 2013

A handwritten signature in black ink, appearing to be "Gregory Link", written over a horizontal line.

Name
Done in Seattle, Washington