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DIVISION II

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STATE OF WASHINGTON

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No. 38873-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

James Dockens,

Appellant.

Clallam County Superior Court Cause No. 06-1-00418-2

The Honorable Judges Kenneth Williams,

George Wood, and S. Brooke Taylor

Appellant's Reply Brief

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REPLY TO RESPONDENT'S STATEMENT OF FACTS

Respondent makes a number of irrelevant and unwarranted statements that are not supported by the record. Not all of these statements are prejudicial; accordingly, Mr. Dockens will reply only to some of them in this section.

First, Respondent asserts that Evergreen estimated it suffered a loss of \$900,000, and that actual losses approached \$1.5 million. Brief of Respondent, p. 2. Mr. Dockens did not agree to these figures, and the court did not rule that these amounts had been established.

Second, Respondent asserts that a civil suit and bankruptcy action “frustrated Dockens’s ability to review certain computer files,” resulting in delay to the case. Brief of Respondent, p. 4. This is incorrect. According to the record, the victim’s civil attorney reviewed the computer hard drives (which had been in police custody) and failed to provide the information to defense counsel. RP (9/11/08) 2-3; RP (10/9/08) 2-3. Furthermore, this problem did not contribute to the majority of the continuances.

Third, Respondent implies that Mr. Dockens and his attorney repeatedly delayed the case. Brief of Respondent, p. 4. In fact, although the record doesn’t always reflect the reason sentencing was reset, it appears that the majority of delays were caused (at least in part) by the

court's unavailability, the prosecutor's unavailability, the prosecutor's need for additional time, or the prosecutor's medical condition. *See, e.g.*, RP (3/15/07) 5-6; RP (7/26/07) 2; RP (9/19/07) 5; RP (2/21/09) 6; RP (5/9/08) 5; RP (7/10/08) 2; RP (10/30/08) 6-7.

Fourth, Respondent insinuates that the crime "may have been due to Dockens's cocaine addiction." Brief of Respondent, p. 3, n. 3. This suggestion is not relevant to Mr. Dockens's appeal, which addresses only the appropriate amount of credit for time served. *See* Appellant's Opening Brief.

ARGUMENT

THE TRIAL JUDGE INFRINGED MR. DOCKENS'S FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION BY DENYING CREDIT FOR TIME SPENT ON COURT-ORDERED HOUSE ARREST.

The Fourteenth Amendment's Equal Protection Clause ensures that similarly situated people are treated in a similar fashion. U.S. Const. Amend. XIV; *State v. Berrier*, 110 Wn.App. 639, 648, 41 P.3d 1198 (2002). At a minimum, state action must be rationally related to a legitimate state objective. *Berrier*, at 649.

In Washington, offenders are entitled to credit for time served on electronic home monitoring. *State v. Swiger*, 159 Wn.2d 224, 149 P.3d 372 (2006); *State v. Speaks*, 119 Wn.2d 204, 829 P.2d 1096 (1992). Equal

protection guarantees this credit to all similarly situated offenders. *See, e.g., State v. Anderson*, 132 Wn.2d 203, 937 P.2d 581 (1997). This includes offenders confined on house arrest, if the conditions of house arrest are sufficiently similar to electronic home monitoring. *See, e.g., People v. Lapaille*, 19 Cal.Rptr.2d 390 (1993).

Mr. Dockens must be granted credit for time spent on house arrest, because the court imposed restraints equivalent to electronic home monitoring. Order of Conditions and/or for Release, Sept. 1, 2006; Order Modifying Conditions of Release, Sept. 6, 2006, CP 62. The mere fact that his compliance was monitored by different means is not a legitimate basis for treating him differently than those on EHM. *Lapaille*, at 397.

Without citation to the record, Respondent asserts that EHM is more onerous than Mr. Dockens's house arrest, requiring offenders to submit to electronic tracking (presumably via GPS). Brief of Respondent, p. 14. But traditional EHM makes use of an offender's land-based telephone line, has no tracking device, and is incapable of monitoring whether or not offenders actually go to work, school, or treatment when away from their homes.¹ To the extent there is any real dispute about the

¹ In fact, Mr. Dockens says he was told that his house arrest was more restrictive than most EHM programs.

difference between Mr. Dockens's house arrest and the least restrictive kinds of EHM available to offenders, the case should be remanded for a hearing to establish the difference.

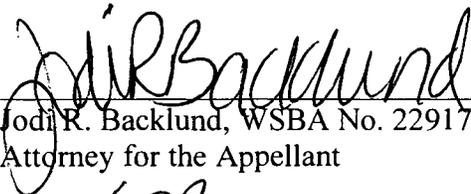
Respondent's reliance on *State v. Vasquez* is misplaced. Brief of Respondent, pp. 8-10; 19 (citing *State v. Vasquez*, 75 Wn.App. 896, 881 P.2d 1058 (1994)). The defendant in *Vasquez* did not raise an equal protection challenge. *Vasquez*, at 898 n. 3.

CONCLUSION

Mr. Dockens's case must be remanded with instructions to the trial court to credit the time he spent on house arrest. In the alternative, the case must be remanded for a hearing to determine whether there was any difference between Mr. Dockens's house arrest and the least restrictive EHM programs that qualify for credit.

Respectfully submitted on July 17, 2009.

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CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Reply Brief to:

James Dockens, DOC #917158
Olympic Corrections Center
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and to:

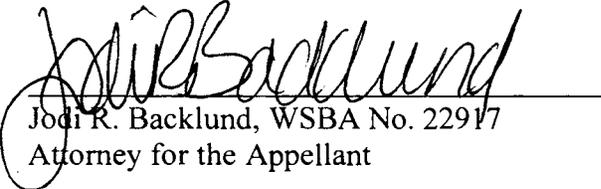
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And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on July 17, 2009.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 17, 2009.



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