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E2SHB 10061

I. ARGUMENT IN REPLY TO ISSUES RAISED BY BRIEF OF
RESPONDENT

A. RCW 9.94A.680(3) DID NOT AUTHORIZE THE
SENTENCE

Respondent's entire argument in defense of the trial Court's action in the present case is based on the premise that RCW 9.94A.680(3) provided the trial Court with authority to give the Defendant credit against a sentence of total confinement for time spent in in-patient treatment, out-patient treatment and residency in a half-way house.

RCW 9.94A.680(3) does not provide such authority. RCW 9.94A.680(3) was enacted by the Legislature in 1999 as part of E2SHB 1006 (Chapter 197, Laws of 1999, Section 6). The act revised sentencing options for drug offenders in a number of ways, including authorizing counties to establish drug courts, expanding the authority of courts to impose affirmative conditions including treatment and expanding the Drug Offender Sentencing Alternative (DOSA). At that time Subsection (3) was added to RCW 9.94A.380 apparently at the request of certain large counties to authorize programs by which jails could transfer defendants from jails into county supervised treatment facilities or programs. That section was later recodified as RCW 9.94A.680. and at the time of the

Defendant's crime and sentencing in this Cause, RCW 9.94A.680 read in part as follows:

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

...

(3) For offenders convicted of nonviolent and nonsex offenses, *the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.*" [Italics added]

The statute clearly contemplates programs administered by county jails which allow the jail to convert confinement with the authorization of the sentencing court. The statute also clearly contemplates that the conversion be to an alternative program supervised by the county. That the statute refers specifically to jail programs is indicated, not only by the clear language, but also by the fact that in 2009 the Legislature modified the statute to allow the jails to give defendants in such alternative programs earned early release credits "consistent with local correctional facility standards."¹ RCW 9.94A.680(3) therefore does not authorize the

¹ RCW 9.94A.680(3) was amended by the 2009 Legislature, effective July 26, 2009 to allow defendant's in such county supervised alternative programs such as in patient treatment facilities to receive earned early release credit. Chapter 227, Laws of 2009. That modification was not in effect at the time of Defendant's sentencing.

Superior Court to impose a sentence of total confinement and directly give the defendant day for day credit for time spent in a out-patient treatment program or halfway house, and in particular does not authorize any credit for time spent in facilities which are NOT supervised by the County. The statute does not authorize the trial Court to credit the Defendant Caseri with time spent in a halfway house or outpatient treatment programs not operated by or supervised by the County. State v. Breshon, 115 Wn.App. 874, 63 P.3d 871 (2003) cited by Defendant as an example, does not provide support for the Defendant's argument. In that case, the issue was not whether or how the program qualified as an alternative under RCW 9.94A.680(3). Therefore, while the case may offer support for the proposition that Pierce County has a program which is authorized under RCW 9.94A.680(3), the case does not support Defendant's argument that there is a qualifying program in Clark County, or that the in-patient or out-patient portions of Defendant's treatment, or her time in Oxford House, qualify as such a program under RCW 9.94A.680.

It is also clear, for several reasons, that the trial Court did not rely on RCW 9.94A.680(3) as authority for the sentence.

First, the Judgment and Sentence form utilized by the trial Court in this case, at page 7, contains a provision titled "CONVERSION OF JAIL CONFINEMENT" which allows the court, by checking the block, to

authorize the county jail to convert confinement to “an available county supervised community option. . .pursuant to RCW 9.94A.680(3). . .”. (CP 18) That option was NOT selected by the Court when imposing sentence on the Defendant. In fact, no reference was made to RCW 9.94A.680(3) as authority for the Court’s sentence until months later when Defendant was asking the Court to give her credit for out patient treatment and halfway house residence.

Secondly, contrary to Defendant’s argument, the trial Court did not order the Defendant to participate in the District Court substance abuse court program as a condition of the sentence. The Court merely allowed Defendant’s release to attend an inpatient treatment program which apparently had been ordered by the District Court. The Defendant’s Judgment and Sentence contains no mention of any specific program requirement as a condition of the sentence. Likewise, no mention of credit for halfway house residency or outpatient treatment was made at the time of sentencing, nor was any mention made of authorizing the jail to convert Defendant’s sentence of confinement. And although the trial Court acknowledged that Defendant was a participant in the District Court substance abuse court program, the Court did not indicate that it considered that program or any other program *except in-patient treatment* a possible alternative conversion of the 181 days of confinement.

In the present case, it is also significant in considering the trial Court's action that in Clark County there is no program for the county jail to convert confinement to an alternative "county supervised community option."

Third, Defendant in the present case had specifically rejected the option of participation in the Superior Court Drug Court program as an alternative to the sentence of confinement.

II. CONCLUSION

The trial Court did not have authority to give Defendant credit for time spent in a halfway house, or in outpatient treatment programs because (1) RCW 9.94A.680(3) only authorizes conversion of confinement by county jails, and (2) the statute authorizes conversion only to county supervised programs, and the programs to which the trial Court attempted credit in the present case are not county supervised programs.

DATED this 23 day of June, 2010.

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