COURT OF APPEALS
DIVISION II
11 SEP -9 PM 12:51
STATE OF WASHINGTON
BY_____
DEPUTY

NO. 41401-5-II
Cowlitz Co. Cause NO. 00-1-00414-9

COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent

v.

WILLIAN SCHENCK, III,

Appellant.

BRIEF OF RESPONDENT

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11-9-7 AM

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I. ISSUES

1. Is the application of RCW 72.09.270(8)'s "county of origin" requirement upon the Appellant retroactive?

2. If the RCW 72.09.270(8)'s "county of origin" requirement has a retroactive effect, does it's imposition upon the Appellant violate the constitutional prohibition against ex post facto laws?

3. Has the Appellant's alleged constitutional violations previously been litigated?

II. SHORT ANSWERS

1. No, the "county of origin" requirement does not have a retroactive effect upon the Appellant.

2. No, even if the court determines that the application of the "county of origin" requirement upon the Appellant was retroactive, the Department of Corrections correctly applied it because it does not increase the quantum of punishment.

3. Yes, an order denying review of the Appellant's alleged constitutional violations had been entered; thus the merits of the Appellant's arguments should not be address.

III. FACTS

The State generally agrees with the Appellant's recitation of the facts, but with a few exceptions.

First, after the Washington Supreme Court Commissioner entered an order denying review of the Appellant's personal restraint petition (PRP), Department I of the Washington Supreme Court entered an order

denying the Appellant's Motion to Modify the Commissioner's Ruling. Appendix D

Second, at the violation hearing that took place on October 28, 2010, Department of Corrections (DOC) Officer Boone testified that one of the conditions of the Appellant's community placement listed in the Appellant's Judgment and Sentence was pre-approval of residence location and living arrangements. 2RP 26, 27; Appendix A, at ¶4.6(6). Officer Boone testified that the Appellant did not have approval to reside in Cowlitz County. 2RP 27.

IV. ARGUMENTS

A. THE DEPARTMENT OF CORRECTIONS PROPERLY APPLIED THE COUNTY OF ORIGIN REQUIREMENT AGAINST THE APPELLANT.

The Appellant argues that RCW 72.09.270(8)'s "county of origin" operates prospectively; therefore, the DOC improperly applied it against the Appellant. This argument fails for two reasons. The State acknowledges that RCW 72.09.270(8) was enacted after the Appellant's underlying criminal conviction. However, that alone does not make the application of this statute against the appellant retroactive. Also, for argument's sake, even if the "county of origin" requirement has a retroactive effect, applying it to the Appellant does not violate state law.

1. **The DOC'S Application of RCW 72.09.270(8) Against the Appellant Is Not Retroactive.**

The Appellant argues that because his underlying criminal offense occurred before the enactment of RCW 72.09.270(8), the application of the "county of origin" requirement is thereby retroactive. "A statute is not retroactive merely because it applies to conduct that predated its effective date." State v. Pillatos, 159 Wn.2d 459, 471, 150 P.3d 1130 (2007). "If the precipitating event contemplated by the statute does not predate the enactment of the statute, then the statute does not operate retroactively." Id.

In making his assertion, the Appellant relies upon State v. Madsen, 153 Wn. App. 471, 228 P.3d 24 (2009); however, that case is distinguishable from the present matter. The Madsen court's holding was in regards to a statute that dictated how a probationer was to be punished pursuant to a violation of supervision. Madsen, 153 Wn. App. at 474. Here, RCW 72.09.270(8) is not a statute dictating penalties, nor is it a statute instructing the DOC how to proceed in the event of a violation. Rather, it directly deals with conditions of supervision – it instructs the DOC where to place certain types of probationers after they are released. Therefore, the "county of origin" requirement is not used to exact

punishment; it instead dictates to the probationer a specific supervision requirement.

RCW 72.09.270(8) was enacted in 2007, which predated the Appellant's release from prison. When applying this fact to the Pillatos Court's conclusion, since the Appellant had not been released from prison, (the precipitating event), when the "county of origin" statute was enacted, the application of that requirement was not retroactive.

2. Even Assuming Application of RCW 72.09.270(8) To The Appellant Is Retroactive; Such Application Does Not Violate State Law.

Retroactive application of a statute is generally disfavored. However, a statute does apply retroactively if:

> (1) the legislature intended to apply the amendment retroactively, (2) the amendment is curative and "clarifies or technically corrects ambiguous statutory language," or (3) the amendment is remedial in nature.

In re Detention of Elmore, 162 Wn.2d 27, 35-6, 168 P.3d 1285 (2007) (following Barstad v. Stewart Title Guar. Co., 145 Wn.2d 528, 536-37, 39 P.3d 984 (2002)). "[I]f the legislature intends that a statute apply retroactively, it will be applied retroactively unless it impairs a constitutional or vested right." Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 158 Wn.2d 603, 617, 146 P.3d 914 (2006). "Courts may examine the legislative purpose, history, language, and final bill

report to determine whether an amendment is retroactive." Elmore, 162 Wn.2d at 36, (following Barstad, 145 Wn.2d at 537).

In examining the plain language of the RCW 72.09.270, it is clear that the Legislature intended for it to apply all offenders released from confinement, even those who were convicted before the enactment date. The statute does not specifically state that its application is limited to convictions after the effective date. Instead, its various subsections contain language signifying its intended retroactive effect. "[T]he department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for *every offender who is committed to the jurisdiction of the department...*" RCW 72.09.270(1) (emphasis added). "In developing individual reentry plans, *the department shall assess all offenders...*" RCW 72.09.270(3) (emphasis added). The statute further dictates that *"[p]rior to discharge of any offender*, the department shall..." RCW 72.09.270(6) (a) (emphasis added).

In examining the legislative history of RCW 72.09.270, it is clear that the statute is remedial, is intended to reduce recidivism, and cut costs to the State; therefore, the Legislature intended subsection (8) to apply all offenders, even those confined prior to the effective date. The Final Bill Report does not include any statements or conclusions limiting the application RCW 72.09.270 to offenders who committed their offenses

after the effective date. Rather, RCW 72.09.270 applies to "every offender committed to the jurisdiction of the department." Appendix B, at 2.

Furthermore, RCW 72.09.270 also applies to all offenders, as well as the Appellant, because it is remedial. "A statute is remedial when it relates to the practice, procedure, or remedies, and does not affect a substantive or vested right." Miebach v. Colasurdo, 102 Wn.2d 170, 181, 685 P.2d 1074 (1984). "'[I]f a statute is remedial in nature and retroactive application would further its remedial purpose,' it will be enforced retroactively." Pillatos, 159 Wn.2d at 473 (quoting Macumber v. Shafer, 96 Wn.2d 568, 570, 637 P.2d 645 (1981)).

RCW 72.09.270 was passed in part to reduce recidivism. Appendix B, at 1. The "county of origin" requirement is a provision of the statute designed to achieve this goal. The statute does not create an addition restraint upon the Appellant because the DOC already possessed the authority to restrict the Appellant's residence and living arrangements. The pre-approved address requirement has always been a condition of the Appellant's release into community placement. Appendix A, at ¶ 4.6(6); See former RCW 9.94A.700, recodified as RCW 9.94B.050(3)(e) ("The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.")

Since the application of RCW 72.09.270 to all offenders, including the Appellant, would further the statutory goals, the statute does in fact apply to all offenders, even where there are instances of retroactive effect. Pillatos, 159 Wn.2d at 472-73.

B. RCW 72.09.270 DOES NOT VIOLATE THE EX POST FACTO CLAUSE BECAUSE IT DOES NOT INCREASE THE QUANTAM OF PUNISHMENT.

Both the Washington Constitution and United States Constitution prohibit ex post facto laws. Wash. Const. art. I, §23; U.S. Const. art. I, § 10. The Ex Post Facto Clause prohibits laws that increase the quantum of punishment for a crime after its commission. Lynce v. Mathis, 519 U.S. 433, 441 (1997). However, the Ex Post Facto Clause is not violated in every instance in which a convicted person's situation has been affected. Rise v. State of Oregon, 59 F.3d 1556, 1562 (9th Cir. 1995).

The ex post facto inquiry focuses on whether the new statute "increases the penalty by which a crime is punishable." Calif. Dept. of Corrections v. Morales, 514 U.S. 499, 506 n. 3 (1995). For the new law to violate the Ex Post Facto Clause, it must retroactively increase the punishment beyond that proscribed at the time when the crime was committed. Collins v. Youngblood, 497 U.S. 37, 41-3 (1990). On the other hand, a law that imposes new requirements upon an offender, such as requiring participation in a new created treatment program, does not

violate the Ex Post Facto Clause. See In re Forbis, 150 Wn.2d 91, 99-101, 74 P.3d 1189 (2003); Neal v. Shimoda, 131 F.3d 818, 827 (9th Cir. 1997).

Here, by applying RCW 72.09.270(8) to the Appellant, the quantum of punishment has not been increased. As stated above, the DOC has had the authority to pre-approve the Appellant's residence address since the day his Judgment and Sentence was signed. Even if the "county of origin" requirement had not been specifically applied to the Appellant in this case, the Appellant would not have been allowed to reside in Cowlitz County without prior approval from his supervising officer. This language is contained in his Judgment and Sentence. Appendix A, at ¶4.6(6).

The Appellant argues that the "county of origin" requirement punishes the Appellant because it prevents him from accessing housing and other resources in the county where those resources exist. However, the Appellant either fails to recognize or simply ignores the fact that he refused to work with the DOC in setting up his housing and basic resources. Prior to his release from prison, the DOC met with the Appellant numerous times to explain his community placement conditions and to discuss his reentry plan. 2RP 14, 15, 28, 29, 31, 32, 60, 61, 62. The record plainly shows that it was through the Appellant's own actions, his own decisions, that this lack of housing and resources was created. In other words, RCW 72.09.270 did not punish the Appellant; rather, the

Appellant increased his own punishment by not cooperating with his supervising officer.

Plain and simple, the "county of origin" requirement did nothing more than give direction to the DOC in determining the Appellant's pre-approved housing arrangements. The Appellant refused to work with the DOC. He was told numerous times that residing within Cowlitz County would not be permitted, but he chose to ignore that. He was offered assistance in acquiring housing and services within an approved location, but he refused to cooperate. The Appellant has failed to show how application of RCW 72.09.270 increased his quantum of punishment. He has shown that it was his actions that resulted in further consequences.

C. THE APPLICATION OF THE "COUNTY OF ORIGIN" REQUIREMENT TO THE APPELLANT HAS PREVIOUSLY BEEN REVIEWED; THEREFORE, THIS COURT SHOULD NOT ADDRESS THE MERITS OF THIS ARGUMENT.

The Appellant argues that collateral estoppel does not apply in this case because a final judgment was not entered in a prior adjudication. He asserts this by arguing that the Court of Appeals declined to review the Appellant's claims and the Washington Supreme Court Commissioner's ruling denying review is not binding. The State acknowledges that the Appellant's previous personal restraint petition was concluded prior to his release from prison. The State also acknowledges that the Court of

Appeals declined to review the Appellant's alleged constitutional violations because they were not ripe.

The Appellant's argument that the Washington Supreme Court Commissioner's ruling is not a decision on its merit ignores the simple fact that four months after the Commissioner's ruling was made, the Washington Supreme Court denied the Appellant's Motion to Modify the Commissioner's Ruling. Appendix D. The Commissioner rejected the Appellant's argument that RCW 72.09.270(8) violated the Ex Post Facto Clause. Appendix C. Department I of the Washington Supreme Court looked at the Commissioner's ruling and denied to review the Appellant's arguments. The order is a final order.

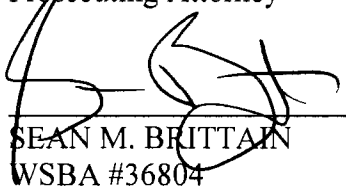
V. CONCLUSION

Appellant's alleged errors are without basis in law or fact. The "county of origin" requirement is not applied retroactively because its enactment occurred prior to the precipitating event – the Appellant's release from prison. Even if the Court determines the "county of origin" requirement has been applied retroactively, RCW 72.09.270 was intended to apply retroactively and does not violate the prohibition against ex post

facto laws. As these claims are without merit, the Court should dismiss this appeal.

Respectfully submitted this 7 day of September, 2011

SUSAN I. BAUR
Prosecuting Attorney

By 

SEAN M. BRITTAIN
WSBA #36804
Deputy Prosecuting Attorney
Representing Respondent

FILED
SUPERIOR COURT

2002 MAY -2 P 12:03

COWLITZ COUNTY
TERI A. NIELSEN, CLERK

BY_____

SUPERIOR COURT OF WASHINGTON
COUNTY OF COWLITZ

STATE OF WASHINGTON, Plaintiff, v. WILLIAM NELSON SCHENCK, III, Defendant. SID: WA15290805 If no SID, use DOB: 06/16/43	**No. 00-1-00414-9** **JUDGMENT AND SENTENCE (JS)** [x] Prison [ ] Jail One Year or Less [ ] First-Time Offender [ ] Special Sexual Offender Sentencing Alternative [ ] Special Drug Offender Sentencing Alternative [ ] Clerk's Action Required [ ] Clerk's Action Required, firearms revoked 5.6

I. HEARING

1.1 A sentencing hearing was held on April 30, 2002, and the defendant, WILLIAM NELSON SCHENCK, III, the defendant's lawyer, THAD SCUDDER and the (deputy) prosecuting attorney were present.

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 April 17, 2002 by [ ] plea [x] jury-verdict [ ] bench trial [ ] Stipulated Facts of:

COUNT	CRIME	RCW	DATE OF CRIME
I	SOLICITATION TO COMMIT MURDER, FIRST DEGREE - DV	9A.28.030; 9A.32.020(1)(a) 10.99.020	Between 4/20/00 & 05/04/00

as charged in the Information.

[ ] Additional current offenses are attached in Appendix2.1.

[ ] The Burglary in Count # _____ involved a theft or intent of theft.

[ ] A special verdict/finding for use of **firearm** was returned on Count(s) _____. RCW 9.94A.125, .310.

[ ] A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____. RCW 9.94A.125, .310.

[ ] A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A.127.

[ ] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or

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APPENDIX "A"

public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.

[ ] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.

[ ] This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.

[X] The crime charged in Count(s) ___X___ involve(s) domestic violence.

[ ] The offense in Count(s) _____ was committed in a county jail or state correctional facility. RCW 9.94A.310(5).

[ ] A special verdict/findings determining aggravating circumstances was returned on Count(s) _____, as follows: _____ RCW 10.95.020.

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME V, SV,SO
1	CHILD MOLEST 1°	09/04/91	THURSTON, WA	02/21/91	A	
2	MAL. MISCH. 2°	08/18/97	COWLITZ, WA	03/16/97	A	
3	FELONY STALKING	08/18/97	COWLITZ, WA	03/16/97	A	
4	RES. BURG.	08/18/97	COWLITZ, WA	03/16/97	A	
5						

[ ] Additional criminal history is attached in Appendix 2.2.

[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360.

* The court finds that these prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360)(6)(a)(ii) and (iii) (Juvenile Offenses and offenses committed prior to July 1, 1986)

[ ] The Court finds pursuant to the "same criminal conduct" analysis that the same lettered offenses (as indicated above) count as one offense. RCW 9.94A.360(6)(a)(I)

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS *	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	5	XV	218.25 – 291 MOS.	—	218.25 – 291 mos.	CLASS A

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence

[ ] above [ ] within [✓] below the standard range for Count(s) I . Findings of fact and conclusions of law are attached in Appendix 2.4.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein.. RCW 9.94A.142.

[ ]The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows_____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The Court DISMISSES Counts _____ [ ] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

[ ] Based upon the motion of the defendant, the interest of the above financial obligation is waived through the period of incarceration pertaining to this Judgment and Sentence, but will start accruing thereafter.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by Cowlitz County Clerk, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ 25.00 per month. RCW 9.94A.145.

[X] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

JASS CODE			
RTN/RJN	$ Ø	Restitution to:..... (Name and Address—address may be withheld and provided confidentially to Clerk's Office).	
PCV	$ 500.00	Victim assessment	RCW 7.68.035
CRC	$ 440.00	Court costs, including	RCW 9.94A.030, 9.94A.120, 9.94A.145, 10.01.160,
10.46.190		Criminal filing fee $ 110.00 FRC	
		Witness costs $ _____ WFR	
		Sheriff service fees $ _____ SFR/SFS/SFW/WRF	
		Jury demand fee $ 100.00 JFR	
		Collection Fee $ 100.00 RCC	
		Incarceration fee $ 150.00 JLR (NOT LESS THAN 3 DAYS @ $50 PER DAY)	
PUB	$ 639.00	Fees for court appointed attorney	RCW 9.94A.030
WFR	$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.030
FCM/MTH	$ _____	Fine RCW 9A.20.021; [ ] VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/FCD NTF/SAD/SDI	$ _____	Prosecutor's Drug fund of COWLITZ COUNTY	RCW 9.94A.030
CLF	$ _____	Crime lab fee [ ] deferred due to indigency	RCW 43.43.690
EXT	$ _____	Extradition costs	RCW 9.94A.120
	$ _____	Emergency response costs (Veh Assault, Veh Homicide only, $1000 max.)	RCW 38.52.430
MTH	$ _____	Meth/Amphetamine Clean up fine, $3,000. RCW 69.50.440, 69.50.401(a)(1)(ii)	
	$ *	Urinalysis cost	
	$ _____	Other costs for: _____	
	$ 1599.00	TOTAL	RCW 9.94A.145

[ ] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
[ ] shall be set by the prosecutor

[ ] is scheduled for _____

[ ] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Amount-$)

RJN

[ ] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.

[ ] Based upon the motion of the defendant, the interest of the above financial obligation is waived through the period of incarceration pertaining to this Judgment and Sentence, but will start accruing thereafter.

[ ] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____ per month commencing _____. RCW 9.94A.145.

[ ] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.

[ ] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

[X] The financial obligations imposed in this judgment shall ~~bear~~ not interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

[x] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.3 The defendant shall not use, own or possess firearms or ammunition while under the supervision of the Department of Corrections RCW 9.94A.120.

[ ] The Firearm, to wit: _____ is forfeited to _____, a law enforcement agency.

4.4 The defendant shall not have contact with (name, DOB) DIANA HAWLEY dob: 08/20/60, a.k. Diana Mille including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 34 years (not to exceed the maximum statutory sentence).

[X] Domestic Violence Protection Order ~~or Antiharassment Order~~ is filed with this Judgment and Sentence.

The Prosecutor's recommendation was as follows: _____

The Prosecutor's agreement upon plea of guilty was as follows: _____

OTHER:

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

120 months on Count	I	____ months on Count	____
____ months on Count	____	____ months on Count	____
____ months on Count	____	____ months on Count	____

Actual number of months of total confinement ordered is: 120
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: ____

The sentence herein shall run consecutively with the sentence in cause number(s) ____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: ____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: ____

4.6 [X] COMMUNITY PLACEMENT is ordered as follows: Count I for 24 months;
Count ____ for ____ months; Count ____ for ____ months;

[X] COMMUNITY CUSTODY is ordered as follows:
Count I for a range from 24 to 48 months;
Count ____ for a range from ____ to ____ months;
Count ____ for a range from ____ to ____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses – serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense – RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[X] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: Diana Hawley, a.k.a. Diana Miller.

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: ____

[ ] The defendant shall participate in the following crime-related treatment or counseling services:..... ____

[ ] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment. ____

[ ] The defendant shall comply with the following crime-related prohibitions: ____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:_____

4.7 [ ] **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:_____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retains jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. **You are required to contact the Cowlitz County Collections Deputy, 312 SW First Avenue, Kelso, WA 98626 (360) 414-5532 with any change in address and employment or as directed. Failure to make the required payments or advise of any change in circumstances is a violation of the sentence imposed by the Court and may result in the issuance of a warrant and a penalty of up to 60 days in jail.** RCW 9.94A.145 and RCW 9.94A.120(13). Pursuant to RCW 9.94A.142(3), if the crime involves Rape of a Child in the first, second or third degree, and a pregnancy results, the court can impose child support and costs of birth as restitution, The court's jurisdiction extends for up to 25 years.

[ ] This crime involves a Rape of a Child in which the victim became pregnant. The defendant shall remain under the court"s jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is longer.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Cowlitz County Clerk and/or Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

5.4 **RESTITUTION HEARING.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

5.7 **Cross off if not applicable:**

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days

after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5.8 **IF AN APPEAL IS PROPERLY FILED AND APPEAL BOND POSTED, THE DEFENDANT WILL/WILL NOT REPORT TO THE DEPARTMENT OF CORRECTIONS WHO WILL MONITOR THE DEFENDANT DURING THE PENDENCY OF THE APPEAL.**

DONE in Open Court and in the presence of the defendant this date: ~~April 30~~ May 2, 2002.

JUDGE Print name: JAMES E. WARME

Deputy Prosecuting Attorney	Attorney for Defendant	Defendant
WSBA # 29869	WSBA # 20170	
Print name: Shaffer	Print name: THAD SCUDDER	Print name: WILLIAM NELSON SCHENCK, III

Interpreter signature/Print name:_____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 00-1-00414-9

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA15290805 (If no SID take fingerprint card for State Patrol)

Date of Birth: 06/16/43

FBI No. 345345Y6

Local ID No. 64135

PCN No.

ORI # WA0080200

Alias name, SSN, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/African-American	[x] Caucasian	[ ] Hispanic	[x] Male
[ ] Native American	[ ] Other: _____		[x] Non-Hispanic	[ ] Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court:, Deputy Clerk. Karen A Hoop

Dated: 4-30-02

DEFENDANT'S SIGNATURE: X

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously

ADDITIONAL CONDITIONS - APPENDIX 5B

ADDITIONAL CONDITIONS: Referred to in 4.6

[ ] Submit to, and at your expense, a polygraph examination and a plethsymograph as directed by Corrections Officer or treatment provider.

[ ] Participate in any therapy deemed necessary by your Corrections Officer.

[ ] Have no contact with male/female children under the age of sixteen.

[ ] The defendant shall not prequent parks or playgrounds or any location where minor children congregate.

[ ] The defendant shall not live or stay in the residence where (minor child/females) are present unless granted specific permission by your community corrections officer or the court.

[x] Do not own, use, or possess firearms or ammunition.

SENATE BILL REPORT
ESSB 6157

As Amended by House, April 21, 2007

Title: An act relating to reducing offender recidivism by increasing access and coordination of offender services in communities through inventories of services and community transition coordination network pilot programs.

Brief Description: Changing provisions affecting offenders who are leaving confinement.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Prentice).

Brief History:
Committee Activity: Ways & Means: 4/18/07 [DPS].

Brief Summary of Proposed Substitute Bill

- The Department of Corrections and local governments are encouraged to collaborate in establishing networks and providing services to offenders returning to the community.
- DOC is required to address offender risks and deficits through assessment and the provision of programming such as education, employment services and treatment.
- Offenders are provided greater opportunities for employment and housing to assist in their transition from prison to the community.

Passed Senate: 4/20/07, 43-4.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6157 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Ways & Means Committee Staff: Richard Ramsey (786-7412)
Human Services and Corrections Committee Staff: Shani Bauer (786-7468)

Background: According to the Department of Corrections (DOC), approximately 8,500 offenders return to the community from Washington prisons each year after completing their sentences and over 25,900 offenders are currently on active supervision in the community.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

APPENDIX "B"

Research from the Washington State Institute of Public Policy (WSIPP) shows that approximately 54 percent of these offenders will commit a new felony within 13 years. Further, the Washington Caseload Forecast Council estimates that under existing policies, Washington's incarceration rate will increase 23 percent by the year 2019.

In 2005, the Legislature directed the WSIPP to report, by October 2006, whether evidence-based and cost-beneficial policy options exist to alleviate the need to build more prisons. WSIPP concluded that several programs directed to adult offenders can have a positive impact on recidivism and produce significant cost savings for the state of Washington (see Steve Aos, Marna Miller, and Elizabeth Drake (2006). Evidence-Based Public Policy Options to Reduce Future Prison Constructions, Criminal Justice Costs, and Crime Rates. Olympia: Washington State Institute for Public Policy).

The 2006 Legislature created the Joint Task Force on Offenders Programs, Sentencing, and Supervision (SSB 6308). The legislation required the Task Force to review offender programs, sentencing, and supervision of offenders upon reentry into the community with the stated goals of increasing public safety, maximizing rehabilitation of offenders, and lowering recidivism. The Task Force made many recommendations, several of which are incorporated in this bill.

Summary of Bill: The bill as referred to committee not considered.

SUMMARY OF RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Ways & Means): PART I - Community Transition Coordination Networks: Each county or group of counties are required to conduct an evaluation of the services available in the county or region to assist offenders in reentering the community and present its assessment to the policy advisory committee no later than January 1, 2008.

A community transition coordination network program (CTCN) is created within the Department of Community, Trade and Economic Development (CTED). The CTCN program is a pilot project to be conducted in up to four counties for a period of four years and is limited to offenders under county or city misdemeanant probation.

CTED must invite counties or groups of counties to apply for grant funds to facilitate partnerships between supervision and service providers. Among other components, it is anticipated that a county or group of counties wishing to implement a network will collaborate with DOC, address methods to identify offenders' needs, and connect the offender with needed resources and services that support successful transition to the community.

Counties receiving grant funds must work with WSIPP to establish data tracking mechanisms and conduct an evaluation at the completion of the pilot program. CTED must convene a policy advisory group to receive status reports on the implementation of the networks and review annual evaluations. The grant program expires June 30, 2013.

The purview of Local Law and Justice Councils is expanded to include issues related to mechanisms for communication of information about offenders and partnerships between the department and local community policing and supervision programs.

PART II - Individual Reentry Plan: DOC is required to develop an individual reentry plan for every offender committed to the jurisdiction of the department.

An individual reentry plan is the result of a comprehensive assessment of an offender initiated at the time the offender is committed to the jurisdiction of the department. The plan should address both the risks and needs of the offender and describe actions needed to prepare an individual for release, define terms and conditions of release, and address the supervision and services needed in the community.

In determining the county of discharge for an offender on community supervision, community custody, or community placement, the offender must be returned to his or her county of origin unless it is determined that returning the offender to that county would be inappropriate. County of origin is defined as the county of the offender's first felony conviction in Washington. If the department returns the offender to a location other than the county of origin, the department must notify the Local Law and Justice Council in writing.

PART III - Partial Confinement and Supervision: WSIPP is required to conduct an analysis of reentry and work release programs to identify evidence-based practices for the state of Washington. The institute should identify optimal services or combination of services to be provided to offenders reentering the community through work release programs. DOC is, in turn, required to review its policies to transform its work release facilities into effective residential reentry centers.

DOC must continue to establish Community Justice Centers (CJC) throughout the state. In addition to the six existing facilities, three more facilities must be added by December 1, 2011. DOC must notify the county and/or city prior to locating a new CJC in the community. DOC must make efforts to enter into memoranda of understanding or agreements with the local community policing and supervision programs to address efficiencies in sharing space or resources, mechanisms of communication, and partnerships between police and corrections' officers in conducting supervision.

DOC must prepare a list of counties in which work release facilities, CJCs, and other community-based correctional facilities are anticipated to be located within the next three years and transmit the list to OFM and the counties on the list. In preparing the list, the county must make substantial efforts to provide for the equitable distribution of facilities among counties. Equitable distribution is defined.

In order to qualify for 50 percent earned release an offender must participate in programming and must not have committed a new felony while under supervision. If DOC denies transfer to community custody in lieu of earned early release, DOC may transfer an offender to partial confinement in lieu of earned early release for up to three months.

If an offender has not completed his or her maximum term of total confinement and is found to have committed a violation of his or her community custody at a third violation hearing, DOC must return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence. DOC may choose not to return the offender to confinement if it determines that returning the offender would interfere with the offender's rehabilitation and reintegration into the community.

An offender who is arrested while on community custody for a new felony offense must be held in total confinement until a DOC hearing on the violation or until being formally charged by the prosecutor, whichever is earlier.

A legislative Task Force is created to review current law and policy related to community custody and community supervision. The Task Force must convene by August 1, 2007 and report to the Governor and the legislature by November 1, 2007.

DOC must conduct an updated community corrections workload study and report the results of the study to the Governor and the Legislature on or before November 1, 2007.

PART IV - Education: DOC is to fund basic academic skills through obtaining a high school diploma or its equivalent; achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release; and additional work and education programs necessary for compliance with an offender's individual reentry plan (except post-secondary education).

Other appropriate vocational, work or education programming that does not meet the above requirements must be paid by the inmate according to a sliding scale formula.

A third party may pay all or a portion of the costs and tuition for any programming. Payments for this purpose must not be subject to any of the deductions as provided in Chapter 72.09 RCW.
A postsecondary education degree program is created. An inmate must pay for the program by paying for the program themselves, receiving funding from a third party, or by obtaining a loan from the department. The loan program may only be used to pay for associate or two year degree programs to prepare an offender for employment. DOC must establish a process for awarding loans to the extent that funds are appropriated or donated for that purpose. The inmate must repay the loan beginning two years after release. The loan will accrue interest at a rate set by DOC. Money collected is reinvested in the loan program.

DOC and the State Board for Community and Technical Colleges must investigate and review methods to optimize educational and vocational programming opportunities for offenders. DOC and the State Board must report to the Governor and the Legislature no later than July 1, 2008.

WSIPP must conduct a comprehensive analysis and evaluation of evidence-based correctional education programs and the extent to which Washington's programs are in accord with these practices. The Institute must report to the Governor and the Legislature no later than November 1, 2007.

PART V - Employment Barriers: The Department of Licensing (DOL) and DOC must enter into an agreement to assist offenders in obtaining drivers' licenses. The DOL is also required to convene a work group to review and recommend changes to occupational licensing laws and policies to encourage the employment of individuals with criminal convictions while ensuring the safety of the public.

PART VI - Housing: A landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant if the landlord discloses to residents that he or she has a policy of renting to offenders and takes steps to repeat or halt known criminal activity on the landlord's premises. Housing authorities are encouraged to formulate policies that are not unduly burdensome to previously incarcerated individuals.

CTED must establish a pilot program in a minimum of two counties to provide grants to eligible organizations to provide housing assistance to offenders reentering the community who are in need of housing. The pilot program must be operated in collaboration with a CJC, offer transitional supportive housing, and provide housing assistance for a period of time not to exceed twelve months. DOC is required to cooperate with organizations receiving grant funds to identify appropriate housing solutions, facilitate an offender's application for housing and assist the offender in accessing appropriate services. The state and local entities providing housing assistance to offenders are not liable for civil damages arising from the criminal conduct of an offender solely due to the placement of the offender in housing.

An offender may obtain the release of funds from his or her personal inmate savings account prior to discharge for the purpose of securing appropriate housing.

Amounts are appropriated for: a community corrections workload study; additional conditions placed on offenders to earn 50 percent earned early release; offenders on community custody arrested for a new felony offense who must be held in total confinement until a hearing on the violation or until being formally charged by the prosecutor; and for an offender under community custody, who, upon the third violation hearing, is returned to confinement.

Appropriation: $2.6 million.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: None.

Persons Testifying: No one.

House Amendment(s): The post-secondary education loan program and all references to the loan program are removed.

RECEIVED
NOV 04 2009
ATTORNEY GENERAL'S OFFICE
CORRECTIONS DIVISION

FILED
SUPREME COURT
STATE OF WASHINGTON
09 NOV -3 PM 1:45
BY RONALD R. CARPENTER
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of WILLIAM N. SCHENCK, Petitioner.	NO. 83313-3 RULING DENYING REVIEW

William Schenck is currently incarcerated on a 2002 conviction for solicitation to commit first degree murder. In September 2008 Mr. Schenck filed a motion in superior court to strike the community placement term from his judgment and sentence or waive the requirement that he have a preapproved residence address before being released into community placement. The court transferred the motion to Division Two of the Court of Appeals for treatment as a personal restraint petition, and the acting chief judge of that court dismissed the petition. Mr. Schenck now seeks this court's discretionary review. RAP 16.14(c).

To obtain this court's review, Mr. Schenck must show that the acting chief judge's decision conflicts with a decision of this court or with another Court of Appeals decision, or that he is raising a significant constitutional question or an issue of substantial public interest. RAP 13.4(b); RAP 13.5A(a)(1), (b). He does not make this showing. He mainly challenges the application to him of a 2007 statute that requires his preapproved residence address to be located in his "county of origin" except in specified circumstances. RCW 72.09.270(8)(a). Mr. Schenck argues that this statute does not apply "retroactively" to him, and that if it does it violates

571/13

constitutional ex post facto principles. Although Mr. Schenck purportedly remains in prison beyond his earned early release date, the acting chief judge found this claim unripe because Mr. Schenck has not submitted a proposed residence address to the Department of Corrections. In disputing this determination, Mr. Schenk claims that prison officials have told him that he is not eligible for any exception to the requirement that he be released to his county of origin (Thurston County). But Mr. Schenck does not dispute that he has yet to submit a proposed residence address in any county. He evidently wishes to be released in Cowlitz County, but having proposed no specific residence, and having received no rejection of a specific residence, he has not been adversely affected by application of RCW 72.09.270(8).

And in any event, Mr. Schenck does not show that applying the statute to him would violate ex post facto principles. Those principles prohibit increasing the punishment for a crime after its commission. *In re Pers. Restraint of Forbis*, 150 Wn.2d 91, 96, 74 P.3d 1189 (2003). As a serious violent offender, Mr. Schenck has never been entitled to early release into community custody, but could only become eligible for early release according to a program developed by the Department of Corrections. Former RCW 9.94A.150(2) (1999). *See In re Pers. Restraint of Mattson*, __ Wn.2d __, 214 P.3d 141, 146 (2009) (current codification of statute creates no expectation of release into community custody and establishes no liberty interest in community custody). And preapproval of Mr. Schenck's residence address has always been a condition of his release into community placement. Former RCW 9.94A.120(9)(b)(v) (1999). Requiring the residence to be in a particular county does not increase the quantum of punishment for the crime.

Mr. Schenck also appears to continue to argue, as he did below, that his crime did not require community placement. But his crime was a "serious violent offense." Former RCW 9.94A.030(34)(a)(i), (ix) (1999) (solicitation to commit first

degree murder). It therefore required community placement. Former RCW 9.94A.120(9)(b) (1999).

In sum, Mr. Schenck fails to show that the acting chief judge's decision merits this court's review. The motion for discretionary review is denied.

COMMISSIONER

November 3, 2009

J
Mi

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint Petition of	)	NO. 83313-3
WILLIAM N. SCHENCK,	)	**ORDER**
Petitioner.	)	C/A No. 38438-8-II

Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Sanders, Owens and J. Johnson, considered this matter at its March 2, 2010, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 3rd day of March, 2010.

For the Court

Madsen, C.J.
CHIEF JUSTICE

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APPENDIX "D"

COURT OF APPEALS
DIVISION II
11 SEP -9 PM 12:51
STATE OF WASHINGTON
BY_____
DEPUTY

COURT OF APPEALS, STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	)	**NO. 41401-5-II**
	)	**Cowlitz County No.**
Respondent,	)	**00-1-00414-9**
	)	
vs.	)	**CERTIFICATE OF**
	)	**MAILING**
WILLIAM SCHENCK, III,	)	
	)	
Appellant.	)	
	)	

I, Michelle Sasser, certify and declare:

That on the 7th day of September, 2011, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Brief of the Respondent to the following parties:

Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402

Casey Grannis
Nielsen, Broman & Koch, PLLC
1908 East Madison
Seattle, WA 98122

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

Dated this 7th day of September, 2011.

Michelle Sasser
MICHELLE SASSER