

NOV 14 2013

BY: *[Signature]*

IN THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	COA No. 41401-5-II
	)	
Plaintiff,	)	
vs.	)	
	)	STATEMENT OF ADDITIONAL GROUNDS
	)	(RAP 10.10)
WILLIAM SCHENCK,	)	
	)	
Defendant.	)	

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I, William Schenck, have received and reviewed the opening brief by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUNDS 1

A. Postrelease Supervision.

Schenck was sentenced to 120 months incarceration for solicitation to commit first degree murder, committed on or between April 20 to May 5, 2000. The sentencing court also imposed 24 months of Community Placement. Schenck served his entire sentence, including good time,

and was released as homeless under postrelease supervision on May 5, 2010...

RCW 9.94A.345 states in full:

Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

Former RCW 9.94A.120(9)(a)(ii) (1999) states in pertinent part:

When a court sentences a person to a term of total confinement to the custody of the Department of Corrections for ... any crime against a person under RCW 9.94A.440(2) ... committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the terms of confinement or at such time as the offender is transferred to community custody in lieu of earned release time ...

Schenck was convicted of First Degree Murder, which is listed as "a crime against a person" under RCW 9.94A.440(2).

The sentencing court erred when it sentenced Schenck to 24 months of community placement. As set forth above, the court should have sentenced Schenck to 12 months of community placement. Schenck asks this court to remedy this error. (CP 148). Further, Community Corrections Supervisor Wayne Cain, Longview DOC Field Office, advised Schenck's hearing judge that the correct length of Schenck's post-release supervision is 12 months. Schenck asks that his judgment and sentence reflect that adjustment. (Attachment 1 and 2)

\* \* \*

\* \* \*

\* \* \*

ADDITIONAL GROUNDS 2

B. Postrelease Supervision.

Postrelease Supervision is defined as:

"Postrelease Supervision" is that portion of an offender's Community Placement that is not community custody.

RCW 9.94A.030(30) (1999). In this case, Schenck did not have any remaining community custody time left to serve, as he served his entire sentence in prison (including good time). Therefore, he was released as homeless under postrelease supervision. The definition of post-release supervision says only that it is "not community custody." It does not reference community placement, community custody, community supervision, or any conditions thereof. Therefore, a person is free to conclude that, as community custody no longer applies, the mandatory conditions no longer apply either, which leaves the spectrum of "crime related" prohibitions which may, or may not, be imposed by the sentencing court. (CO 148).

Criminal statutes should be strictly construed ... particularly if there appears to be an ambiguity. State v. Gore, 101 Wn.2d 481, 486, 681 P.2d 227 (1984). As the law is silent on what precisely postrelease supervision consists of, Schenck is asking this court to limit his conditions to those which were specifically listed by Judge Warne at the time of Schenck's sentencing, beyond his MRD, to wit: (1) have no contact with the listed parties; and, (2) pay legal financial obligation. (CP 147) (Judgment and Sentence).

\* \* \*

### ADDITIONAL GROUNDS 3

#### C. Geographical Restrictions.

Schenck was released as homeless on his maximum release date (MRD) of May 5, 2010. Offender's released to postrelease supervision on their MRD do not require a release address. Further, Schenck was not restricted to any geographical restriction within his judgment and sentence. (See Judgment and Sentence).

Upon release, DOC Officers Boone and Finman met Schenck at the Stafford Creek Correction Center, Aberdeen. The officers escorted Schenck to Thurston County and ordered him not to leave Thurston County. (2 RP 13-15). Officer Boone testified in court that Schenck did not have a geographical restriction on his judgment and sentence. (2 RP 21-22). Officer Boone, however, stated that in his determination to order Schenck not to leave Thurston County, was based on the "County of Origin" requirement. (2 RP 15).

Schenck advised Officers Boone and Finman that he did not have a geographical restriction, nor did the County of Origin apply to him, as the County of Origin was adopted by the legislature in 2007, codified as RCW 72.09.270(8), seven years after his crime, and was not ex post facto (retroactive). (See Attachment 3).

Schenck had no resources in Thurston County; had not been in Thurston County in over two decades; no friends in which to rely upon; no funds; and, was forced by the Department of Corrections to be "homeless." Schenck subsequently went to Cowlitz County, where he repeatedly informed DOC that he had resources.

Schenck has now been arrested and sanctioned with 20 days jail time for his "willful" violation of DOC orders to remain in Thurston County. Schenck asserts that there was nothing "willful" about traveling to Cowlitz County, where his only means to access housing, food, transportation, and resources were. Schenck further asserts that he is still being harmed, by an additional 480 days of confinement for another identical violation(s).

Schenck asks this court to vacate the County of Origin requirement, as applied to him, for the reasons set forth.

ADDITIONAL GROUNDS 4

D. Tolling.

The Department of Corrections, both the Olympia and Longview Field Offices, informed Schenck that the time between his release, May 5, 2010, to his release from his current 480 days incarceration, January 9, 2012, will be tolled because of his failure to report to the Olympia Field Office.

First, the Cowlitz County Superior Court ordered Schenck to report to the Cowlitz County Offender Services and to the Longview DOC Field Office, from May 12, 2010, to October 28, 2010, and this period should not be tolled by DOC.

Further, RCW 9.94A.171(1), and Laws of 2008, c.231,s.28, state in pertinent part:

\* \* \*

\* \* \*

For offenders ...[who complete their sentence] ... for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll.

SB 5891, c.40, sec.1.

Schenck seeks relief from this court to avoid another frivolous arrest, sanction, court costs, and loss of his liberty.

CONCLUSION

This court should accept review because the decision of ex post facto law conflicts with other decisions of this court; because there is unresolved conflict in these areas; and, there are issues of substantial importance. RAP 16.4; RAP 13.5A.

Schenck asks this court to address his issues: (1) County of Origin; (2) Postrelease Supervision; (3) Geographical Restrictions; and, (4) Tolling; on their merits, and to conclude that the relief requested should be granted.

I declare under penalty of perjury under the Laws of the State of Washington are true and correct.

DATED THIS 30<sup>th</sup> day of August, 2011, in the City of Monroe, County of Snohomish, State of Washington.



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William Schenck  
#983718, D-220  
Monroe Correctional Complex- TRU  
P.O. Box 888  
Monroe, WA 98272

**ATTACHMENT 1**

A court may, as part of community supervision, also order an offender to undergo a mental status evaluation and participate in available outpatient mental health treatment.

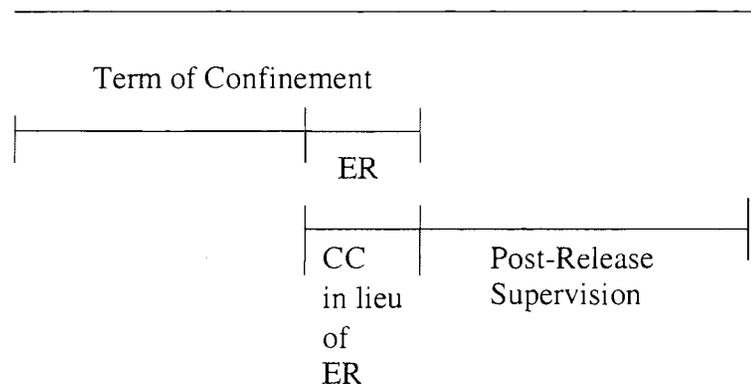
A court is permitted to require an offender to participate in a domestic violence perpetrator program if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child.

### **COMMUNITY PLACEMENT (effective until July 1, 2000)**

The 1988 Legislature established community placement, a post-confinement supervision program for certain violent offenders, drug offenders and sex offenders. Community placement consists of two components: community custody and post-release supervision. Community placement begins upon completion of the confinement term or when an offender is transferred to community custody. If the offender is sentenced to the statutory maximum period of confinement, the community placement portion of the sentence consists entirely of the community custody to which the offender may become eligible. Any period of community custody actually served is to be credited against the community placement portion of the sentence.

A court may order an offender to undergo a mental status evaluation and to participate in available outpatient mental health treatment.

Figure 3. Community Placement\*



\* Community Placement = Community Custody + Post-Release Supervision  
ER = Earned Release  
CC = Community Custody

#### Community Custody

Community custody is that period of time an offender resides in the community under Department of Corrections (DOC) supervision, either in lieu of total confinement (*e.g.*, as part of community placement) or under the terms of the sentence (*e.g.*, as required by the terms of DOSA or SSOSA, or as a result of successfully completing Work Ethic Camp).

Community custody differs from community supervision in that offenders who violate terms or conditions of their DOC supervision may be sanctioned administratively by the DOC without a formal court hearing. Violations of sentence conditions are reviewed at an inmate disciplinary hearing conducted by the DOC. Sanctions may include transfer to a more restrictive confinement level. Any detention ordered is served either in a Department of Corrections or county facility, but if served in a county facility, it is the financial responsibility of the DOC (RCW 9.94A.207(2)). Depending on the basis for community custody, sanctions may include a return to prison for the remainder of the unexpired earned early release time, or for up to 60 days for each violation.

Offenders serving a sentence that includes community placement and who have earned early release time at the time of release from prison are placed on community custody for that portion of the community placement equal to their earned release time.

A mandatory period of community custody is required for all sex offenders sentenced for a sex offense committed on or after June 6, 1996. The required period of community custody is three years or the period of earned release time, whichever is longer. Sex offenders who are released from total confinement with less than three years of earned release are still required to serve a period of three years of community custody. This requirement applies to SSOSA and non-SSOSA offenders alike.

Offenders who successfully complete the Work Ethic Camp Program are placed on community custody for the remainder of their sentence.

#### Post-release Supervision

This period of supervision for an offender released from prison who has an additional period of community placement to serve, but who is not on community custody. This could happen, for instance, if the offender received no earned release credit, or if he or she had completed the community custody portion of the sentence. Offenders are entitled to a court hearing if they violate sentence conditions during the period of post-release supervision (as compared with DOC administrative proceedings for violations during the period of community custody). Sanctions may include up to 60 days for each violation, and detention time is served in a county jail.

#### Offenses Requiring Community Placement

Community placement for 12 months is a mandatory sentence condition for offenders sentenced to prison for the following offenses committed on or after July 1, 1988:

- any sex offense (committed before July 1, 1990);
- any serious violent offense (committed before July 1, 1990);
- Second Degree Assault;

- Crime against a person with a deadly weapon finding<sup>14</sup> under RCW 9.94A.125;
- any felony offense under Chapter 69.50 (“VUCSA”) or 69.52 RCW; and
- Possession of a Machine Gun, Possession of a Stolen Firearm, Drive-by Shooting, Theft of a Firearm, Unlawful Possession of a Firearm 1<sup>o</sup> and 2<sup>o</sup>, Use of a Machine Gun in a Felony and any offense involving a deadly weapon special verdict under RCW 9.94A.125 may receive community placement at the discretion of the court<sup>15</sup>.

There is a mandatory two-year community placement sentence in addition to other terms of sentence for the following offenses if they were committed after June 30, 1990:

- any sex offense committed before June 6, 1996;
- any serious violent offense; or
- any Vehicular Homicide or Vehicular Assault committed on or after June 6, 1996.

There is a mandatory three-year community custody sentence in addition to other terms of sentence for any sex offense committed on or after June 6, 1996;

The 1999 Legislature mandated a one-year community placement sentence for the following categories of offenders:

- all violent offenders (for offenses committed on or after July 25, 1999); and
- all “crimes against persons,” defined in RCW 9.94A.440 (for offenses committed on or after July 25, 1999).

### Community Placement Conditions

Unless the conditions are waived by the court, an offender on community placement must:

- Report to and be available for contact with the assigned community corrections officer as directed;
- Receive prior approval for living arrangements and residence location;

<sup>14</sup> RCW 9.94A.125 provides: “...For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.”

<sup>15</sup> RCW 9.94A.470 provides: “Notwithstanding the current placement of listing of categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.440(2), any and all felony crimes involving any deadly weapon special verdict under any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancement shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.440(2) as crimes against a person.”

- Be involved in Department of Corrections-approved education, employment and/or community service;
- Not possess or consume controlled substances that are not legally prescribed;
- Not own, use or possess firearms or ammunition;
- Pay supervision fees as determined by the Department of Corrections; and
- Submit to affirmative acts necessary to monitor compliance, such as polygraph or drug testing.

In addition to the above, a court may impose the following special conditions. The offender must:

- Remain within or outside specified geographical boundaries;
- Have no direct or indirect contact with the victim of the crime;
- Have no direct or indirect contact with a specified class of individuals (must be specified);
- Participate in crime-related treatment or counseling services;
- Consume no alcohol; and/or
- Comply with crime-related prohibitions.

Conditions of community placement may be changed prior to transfer or during supervision, but they cannot be made more restrictive. If an offender commits a new felony while on community placement, an additional point is added to the offender score, thus increasing the sentencing range for the new felony.

### **Community Custody (effective on and after July 1, 2000)**

The Offender Accountability Act converted all community supervision and community placement to community custody, effective July 1, 2000. The changes aim at strengthening the law to hold offenders more accountable in the community and allow the Department of Corrections to intervene to prevent new offenses, supervising offenders based on their relative risk to community safety.

For offenses committed on or after July 1, 2000, “community custody” will be the only form of supervision, required for all sex offenses, all serious violent offenses, all violent offenses, all “crimes against persons” (defined in RCW 9.94A.440) and all felony drug offenses. Conditions of community custody and levels of supervision will be based on risk.

Courts will sentence offenders to a determinate period of confinement (as is the case today) and also to community custody for the period of the community custody range or for the period of earned release time, whichever is longer. Courts may impose conditions of

**ATTACHMENT 3**

## MEMORANDUM OF LAW

The Legislature passed Engrossed Substitute Senate Bill (ESSB) 6157 on April 21, 2007. This Bill went into effect on 07/22/07. Legislative Session Laws of 2007, c. 483.

Section 203(8)(a) of this Bill requires the Department of Corrections (DOC) not to approve a release residence location that is not in the defendants county of origin, defined in (8)(c) as the county that the defendant committed his very first felony in Washington State.

The Legislature also passed RCW 9.94A.345, Legislative Session 2000, c.26, section 2, which states in full: "Any sentenced imposed under this chapter shall be determined in accordance with the laws in effect when the current offense was committed."

ESSB 6157, by its own language, and its amendments and policies, are effective and apply only to offenders who have committed crimes on or after 07/22/07.

ESSB 6157, and Department of Corrections Policies DOC 350.200 and DOC 380.600 which were derived from this Bill, makes greater the punishment, more onerous and restrictive, than was allowed prior to the effective date of this Bill.

The facts relied upon to support this Memorandum, that ESSB 6157 does not apply to any offender who committed a offense prior to the effective date of this Bill, is that the application would create a Bill of Attainder or Ex post facto Law, in violation of the United States Constitution Art. 1., sec. 9, cl.3; United State Constitution Art. 1, sec. 10, cl.1; and, Washington State Constitution Art. 1, sec. 23; C.J.S. Constitutional Law, sections 429-431; *In re Forbis*, 113 Wn.App. 822, [36], 57 P.3d 630 (2002) (No Bill of Attainder or Ex post facto law shall be passed); *In re Williams*, 11 Wn.2d 353, 362-63, 759 P.2d 436 (1988) ("Ex post facto clause prohibits more severe punishment than was allowed when the crime was committed."); RCW 9.94A.345 ("Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed."); *Parks v. Christensen*, 751 F.2d 1081, [15] (9<sup>th</sup> Cir. 1985) (A statute "... must be deemed to apply prospectively only, in the absence of any showing of a contrary intent.").

Agencies, such as the Department of Corrections, do not have the authority to make rules that amend or change legislative enactments. *Bird-Johnson Corp. v. Dana Corp.*, 119 Wn.2d 423, 428, 833 P.2d 375 (1992); *In re the Personal Restraint of Marhle*, 88 Wn.App. 410, 945 P.2d 1142 (1997) (DOC incorrectly applied RCW 9.94A.150(1)); *In re Smith*, 139 Wn.2d 199, 986 P.2d 131 (1999) (DOC erroneously applied RCW 9.94A.150(1)); *In re Cappello*, 106 Wn.App. 576, 24 P.3d 1074 (2001) (Agencies, such as the DOC, does not have the power to make rule changes that amend or change legislative enactment); *In re King*, 146 Wn.2d 658, 49 P.3d 854 (2002) (DOC improperly implemented the legislative mandates of RCW 9.94A.150(1)).

The Department of Corrections does not retain the authority to place a more restrictive punishment, by their requirement that an offender can only be released in their county of origin, retroactively, by Bill of Attainder, or Ex post facto, on any person who committed a crime prior to the effective date of ESSB 6157, by and through DOC policy, clearly violates federal and state law, the United States Constitution, and the Washington State Constitution, as set forth herein.

All DOC policies retroactively applying ESSB 6157 should be stricken for the reasoning so stated herein.

DATED THIS 4<sup>th</sup> day of SEPTEMBER, 2008, in the City of Aberdeen, Grays Harbor County, State of Washington.



Signature

WILLIAM SCHEWCK

Printed Name

DOC# 983718, Unit H4-A11

191 Constantine Way

Aberdeen, WA 98520-9504

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

11 SEP -2 11 02  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

STATE OF WASHINGTON,  
PLAINTIFF

vs.

WILLIAM SCHENCK,  
DEFENDANT.

NO. 41401-5-II

DECLARATION OF MAILING

I, WILLIAM SCHENCK, do declare that I am an inmate at the Monroe Correctional Complex in Monroe, WA, and on AUGUST 30, 2011. I delivered to prison authorities, a pre-franked envelope (or disbursement voucher to affect same) to be processed by the institution's legal mail system and containing the following documents:

- (1) AMENDED STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW  
W/ ATTACHMENTS
- (2) DECLARATION OF SERVICE BY MAIL
- (3) MOTION AND DECLARATION TO AMEND PLEADING (RAP 10.10)

ADDRESSED TO:

HON. SUSAN I. BAUR  
COWLITZ COUNTY PROSECUTOR  
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KELSO, WA 98626

MR. CASEY GRANNIS, ESQ.  
ATTORNEY AT LAW  
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1908 E. MADISON STREET  
SEATTLE, WA 98122

I declare under pains and penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct to the best of my knowledge and belief, pursuant to GR 3.1 and 28 U.S.C. § 1746.

AUGUST 30, 2011  
DATE

  
\_\_\_\_\_  
Pro Se  
Monroe Correctional Complex/ TRU  
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