

NO. 46897-2-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

CHRISTOPHER S. CROCKER,

Appellant.

RESPONDENT'S BRIEF

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A. REPLY TO ASSIGNMENTS OF ERROR

1. The sentencing court did not err in finding that the defendant's littering conviction prevented his 2000 VUCSA conviction from "washing out."
2. The sentencing court did not err by ordering the defendant to pay all legal financial obligations within 24 months.

B. STATEMENT OF THE CASE

Christopher Crocker pleaded guilty to one count of Attempting to Elude a Police Officer and one count of Theft in the third degree. CP 5–14. At sentencing, the parties contested the defendant's offender score; the State argued his score was six while the defense thought it was five. RP 6–18. The point at issue involves a conviction for possession of heroin dating from March of 2000. CP 2.

After being convicted of possessing heroin in 2000, the defendant was convicted of Theft in 2004 and Offensive Littering in 2009. CP 2. The defense argued that, since littering is not necessarily a criminal offense in Washington, the conviction does not prevent the defendant's 2000 convictions from washing out. However, the sentencing court ruled that the 2009 littering conviction prevents the prior heroin conviction from "washing out." RP 12–13.

The defendant was sentenced to twelve months plus one day on Count I, and 364 suspended days on Count II. RP 17. Community custody

was not imposed. CP 19–30; RP 17. However, as a condition of probation on Count II, the defendant was ordered to pay his legal financial obligations within 24 months. CP 27.

C. ARGUMENT

1. **The sentencing court did not err in finding that the defendant’s 2009 littering conviction prevented his 2000 VUCSA conviction from “washing out.”**

A sentencing court’s calculation of a defendant’s offender score is reviewed de novo. *State v. Cross*, 156 Wn. App. 568, 587, 234 P.3d 288 (2010). The Sentencing Reform Act (SRA), RCW 9.94A, governs how a defendant’s criminal history is to be calculated for sentencing purposes. Under the SRA, prior adult convictions should be counted as criminal history unless those offenses “wash out.” RCW 9.94A.525(2). Section 2(c) of 9.94A.525 governs when class C felony convictions may be included in a person’s offender score and when they wash out. That section states:

[C]lass C prior felony convictions...shall not be included in the offender score if, since the last date of release from confinement...pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

Therefore, if the defendant remains in the community for five years without committing a crime, the prior felony does not count as a point on his

criminal history. The issue in this case is whether the defendant's 1999 littering conviction falls within the definition of "any crime."

The Court in this case must determine what the legislature meant by "any crime." Statutory interpretation is a question of law, which appellate courts review de novo. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). When construing a statute, the Court's objective is "to determine the legislature's intent." *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010), citing *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). A reviewing Court must start its analysis with the language of the statute itself. "The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, we give effect to that plain meaning." *Id.* A clear and unambiguous statute is not subject to judicial construction. *State v. Coria*, 146 Wn.2d 631, 636, 48 P.3d 980 (2002). The Court looks to the text of the statute in question, the context of the statute, related provisions, and the statutory scheme as a whole. *Ervin*, 169 Wn.2d at 820. Undefined terms are given their plain and ordinary meaning, and the Court may consult a dictionary to ascertain the term's meaning. *Id.*; *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008). The Court may resort to statutory construction, legislative history, and case law only after examining the plain meaning of the statute and only if the statute is susceptible to more than one reasonable interpretation. *Id.*

Furthermore, the rule of lenity is applicable only after tools of statutory interpretation are used. *State v. Coria*, 146 Wn.2d at 639.

The meaning of RCW 9.9A.525(2)(c) is clear on its face. That section states that class C prior felony convictions are not to be included in the offender score if the offender had spent five years in the community without committing any crime that subsequently results in a conviction. The word “any” is not defined in the statute, and neither is the phrase “any crime.” Therefore, those words must be given their plain and ordinary meaning. Webster’s Third New International Dictionary defines “any” as “one or some indiscriminately of whatever kind. In this case, then, the statute means “one crime of whatever kind.” That definition would include crimes from other jurisdictions. Therefore, if littering is a crime in Oregon, it would fall under the definition of “any crime” in RCW 9.9A.525.

The fact that littering is not necessarily a criminal offense in Washington does not mean that it is never a “crime” for purposes of RCW 9.94A.525. The question at issue in this case is not one of comparability – that is, whether an out-of-state conviction would be considered a felony in Washington for purposes of calculating a person’s offender score. The only issue here is whether “any crime” includes an out-of-state misdemeanor conviction. The plain language and dictionary definition dictate that the

answer is yes. Because RCW 9.94A.525 is clear on its face, the rule of lenity does not apply.

The trial court did not err in finding that the defendant's offender score was six, as his 2009 Littering conviction prevented the "wash out" of his 2000 VUCSA conviction. The defendant's sentence should be affirmed.

2. The sentencing court did not err by ordering the defendant to pay all legal financial obligations within 24 months as a condition of his misdemeanor probation.

Sentencing conditions are reviewed for abuse of discretion. *State v. Deskins*, 180 Wn.2d 68, 77, 322 P.3d 780 (2014); *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). An abuse of discretion occurs when a trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). A discretionary decision is based on untenable grounds if it rests on facts that are not supported by the record, was reached by applying the wrong legal standard, or was based on an erroneous view of the law. *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009). In this case, the sentence was not erroneous and the trial court did not abuse its discretion in ordering the defendant to pay all LFOs within 24 months.

The defendant relies on RCW 9.94A.703 as the basis for his argument that the trial court acted outside its authority in this case. However, the Sentencing Reform Act, RCW 9.94A, only applies to

felonies. RCW 9.94A.010; *State v. Marks*, 95 Wn.App. 537, 539, 977 P.2d 606 (1999); *State v. Williams*, 87 Wn. App. 257, 263, 983 P.2d 687 (1999). The condition that the defendant pay his LFOs within 24 months is connected to his conviction for Theft 3, a gross misdemeanor. *See* CP 27. More specifically, the requirement that the defendant pay his LFOs within 24 months is a condition of his sentence being suspended.

A superior court may suspend the imposition or execution of a sentence contingent upon such conditions and for such time as it chooses, within the statutory maximum or two years. RCW 9.92.060; RCW 9.95.210. The court may require a convicted person to “make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary...to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case.” RCW 9.92.060(2).

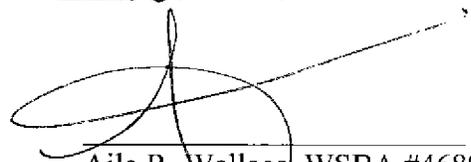
In this case, 364 days of the defendant’s sentence on the Theft charge were suspended. RP 17; CP 27. The time was suspended only so long as the defendant complied with the terms of his probation, one of which was paying his LFOs within 24 months. CP 27. Because RCW 9.92.060 and RCW 9.95.210 allows for the suspension of sentences contingent upon such conditions as the court determines and for such time as the court designates, within two years, the sentencing court in this case was within its

discretion when it ordered the defendant to pay his LFOs within 24 months. There was no abuse of discretion and the defendant's sentence should be affirmed.

D. CONCLUSION

The sentencing court properly calculated the defendant's offender score pursuant to RCW 9.9A.525(2), and did not err by requiring the defendant to pay his legal financial obligations within 24 months. This Court should affirm the defendant's sentence.

Respectfully submitted this 28th day of May, 2015.

A handwritten signature in black ink, appearing to read 'Aila R. Wallace', written over a horizontal line.

Aila R. Wallace, WSBA #46898
Attorney for the Respondent

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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

Signed at Kelso, Washington on May 28th, 2015.

Michelle Sasser

Michelle Sasser

COWLITZ COUNTY PROSECUTOR

May 28, 2015 - 12:22 PM

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