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Court of Appeals  
Division II  
State of Washington  
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No. 53408-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

Petitioner

vs.

ALEM SKROBO

Respondent

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OPENING BRIEF OF RESPONDENT

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Roger A. Bennett, WSBA 6536  
Attorney for Respondent

112 W. 11<sup>th</sup> Street, Suite 200  
Vancouver, WA 98660  
(360) 713-3523  
Rbenn21874@aol.com

Chad Marquez, Deputy Prosecuting Attorney  
Attorney for Respondent  
1013 Franklin Street  
Vancouver, WA 98660

Alem Skrobo  
Respondent  
11900 SE 7<sup>th</sup> Street  
Vancouver, WA 98683

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....page ii

I. RESPONSES TO ASSIGNMENTS OF ERROR.....page 1

1. Response to Assignment of Error Number 1.....page 1

..

2. Response to Assignment of Error Number 2.....page 1

3. Response to Assignment of Error Number 3.....page 1

II. STATEMENT OF THE CASE .....page 1

III. ARGUMENTS .....page 2

1. Argument in Response to Assignment of Error  
Number 1.....page 2

The District Court Lacked the Authority to Revoke the  
Order of Deferred Prosecution Under the Revocation  
Statutes.....page 2

2. Argument in Response to Assignment of Error  
Number 2.....page 10

The Court’s Authority to Dismiss a Charge of DUI is  
Separate and Distinct from the Authority to Revoke an  
Order of Deferred Prosecution..... page 10

3. Argument in Response to Assignment of Error  
Number 3.....page 17

The Statutory Scheme for Deferred Prosecution is  
Hopelessly Contradictory, Vague, and Ambiguous..... page 17

IV. CONCLUSION.....page 22

V. APPENDIX .....page A-1

Item # 1 Probation Department Notice Containing  
Proof of Completion of Deferred Prosecution  
Program.....page A-2

Item # 2 Final Bill Report on SSHB 3089 (1999  
Amendment).....page A-4

## TABLE OF AUTHORITIES

### TABLE OF CASES

#### I. Washington Cases

<u>Abad v. Cozza</u> , 128 Wn.2d 575, 911 P.2d 376 (1996)...	pages 9-10
<u>City of Seattle v. Winebrenner</u> , 167 Wn.2d 451, 219 P.3d 686 (2009.) .....	pages 15, 19
<u>Jenkins v. Bellingham Municipal Court</u> , 95 Wn.2d 574, 580-81, 627 P.2d 1316 (1981) .....	page 15
<u>State v. Birgen</u> , 33 Wn. App. 1, 651 P.2d 240 (1982).....	page 14
<u>State v. Mundy</u> , 7 Wn. App. 798, 502 P.2d 1226 (1972).....	page 15
<u>State v. Vinge</u> , 59 Wn.App.134, 795 P.2d 1199 (1990.)..	pages 6, 20
<u>State v. Wallin</u> , 125 Wn. App 648, 105 P.3d 1037 (2005).....	page 9
<u>State v. Wright</u> , 54 Wn. App. 638, 639-40, 774 P.2d 1265 (1989).....	pages 3,20

#### II. United States Supreme Court Cases

<u>Morgan v. Devine</u> , 237 U.S. 632, 59 L. Ed. 1153, 35 S. Ct. 712 (1915).....	page 15
--	---------

#### III. Statutes

RCW 3.50.330(1)(a).....	pages 9,10
RCW 3.66.068(1)(a).....	page 10
RCW 9.41.040(4) .....	page 14

RCW 9.94A.640 (2)(e) .....page 14

RCW 9.94A.640 (2)(f).....page 14

RCW 9.96.060(2)(e)(4) .....page 14

RCW 9.96.060(2)(f).....page 14

RCW 10.05 ..... pages 2,3,9,10,17,18,19,21

RCW 10.05.090.....pages 4,5,6,12

RCW 10.05.100..... pages 4,6,7,21

RCW 10.05.120.....pages 1,10,11,13,15,16,23

RCW 10.05.140.....pages 5,7,8,12

RCW 10.05 150.....pages 3,7,16,18

**IV. Court Rules**

RAP 3.4 .....page 2

## **I. RESPONSES TO ASSIGNMENTS OF ERROR**

### **Response to Assignment of Error Number One:**

The Superior Court was correct in concluding that the statutory scheme for Deferred Prosecution under RCW 10.05 fails to establish any authority of the District Court to revoke a Deferred Prosecution Order based on events occurring after a Petitioner has completed the two-year Deferred Prosecution Program.

### **Response to Assignment of Error Number Two:**

The Superior Court was correct in concluding that the 1999 legislative extension of time for Dismissal of a Deferred Prosecution case under RCW 10.05.120 did not extend the period of time in which a court may revoke a Deferred Prosecution Order.

### **Response to Assignment of Error Number Three:**

The Superior Court was correct in concluding that The statutory scheme for a Deferred Prosecution Program, RCW 10.05 et seq., taken as a whole is vague and ambiguous as to the duration of the Court's authority to revoke a Deferred Prosecution program, and, under the rule of lenity must be construed in favor of the Respondent, Mr. Skrobo, in this matter.

## **II. STATEMENT OF THE CASE**

Respondent does not dispute the Statement of Facts set out

in Appellant's Opening Brief, with the additional material facts:

Respondent completed the two year Deferred Prosecution Program mandated by RCW 10.05, as of November 30, 2015. Proof of this is found in the Probation Department's Notice (**CP 77, Appendix item # 1**). He was subjected to no monitoring or Court reviews subsequent to completing the Deferred Prosecution Program, and no additional conditions were imposed after he completed the program.

The revocation of the Order of Deferred Prosecution was not based upon any finding of use of alcohol, but rather upon convictions for Hit and Run and Reckless Endangerment..

### **III. ARGUMENTS**

#### **1. ARGUMENT IN RESPONSE TO ASSIGNMENT OF ERROR NUMBER ONE**

##### **The District Court Lacked Authority to Revoke the Order of Deferred Prosecution Under the Revocation Statutes**

Pursuant to RAP 3.4, Alem Skrobo, Defendant in the Trial court, will hereafter be referred to as "Respondent."

The Deferred Prosecution process is strictly a creation of the Legislature. There is no similar common law process, nor Constitutional provision, nor Court Rule provision giving rise to this

unique statutory scheme. As such, the court's authority to act is neither inherent nor expansive. The Court's authority to grant, structure, or revoke an Order of Deferred Prosecution is strictly limited to that which the Legislature expressly grants. State v. Wright, 54 Wn. App. 638, 639-40, 774 P.2d 1265 (1989).

A discerning review of the statutes included in RCW 10.05 reveals that there has arisen by common use a colloquial terminology referring to the court procedure for a statutorily designated Deferred Prosecution Program as "a Deferred Prosecution" or "a Deferred Pros." The statutes, however, address and define the term properly: Deferred Prosecution Program.

The difference is significant, because the inexact use of terminology can lead to the erroneous conclusion that something call a Deferred Prosecution exists, with different rules, independent of a Deferred Prosecution Program. "A "Deferred Prosecution" is not defined by statute, whereas "a Deferred Prosecution Program" clearly is, RCW 10.05.150. Therefore, in those few instances where the statutes reference a "Deferred Prosecution," the term must be analogous to "Deferred Prosecution Program" and not something different, as there is no other definition.

The authority of the Court to revoke a Deferred Prosecution Program is addressed in three statutes:

**“RCW 10.05.090  
Procedure upon breach of treatment plan.**

If a petitioner, who has been accepted for a Deferred Prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan or any term or condition imposed in connection with the installation of an interlock or other device under RCW 46.20.720, the facility, center, institution, or agency administering the treatment or the entity administering the use of the device, shall immediately report such breach to the Court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation.

The Court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the Deferred Prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan or device installation and the petitioner shall have the right to present evidence on his or her own behalf. The Court shall either order that the petitioner continue on the treatment plan or be removed from Deferred Prosecution. If removed from Deferred Prosecution, the Court shall enter judgment pursuant to RCW 10.05.020 and, if the charge for which the Deferred Prosecution was granted was a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the department of licensing of the removal and entry of judgment. “

and:

**“RCW 10.05.100  
Conviction of similar offense.**

If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a Deferred Prosecution program, upon notice the Court shall remove the petitioner's docket from the Deferred

Prosecution file and the Court shall enter judgment pursuant to RCW 10.05.020.”

and:

**“RCW 10.05.140  
Conditions of granting.**

As a condition of granting a Deferred Prosecution petition, the Court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the Court at not less than that established by RCW 46.29.490. As a condition of granting a Deferred Prosecution petition on any alcohol-dependency based case, the Court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(3).

As a condition of granting a Deferred Prosecution petition, the Court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the Court may order reasonable conditions **during the period of the Deferred Prosecution** including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The Court may terminate the Deferred Prosecution program upon violation of the Deferred Prosecution order.” (*Emphasis added.*)

As can be seen, under RCW 10.05.090, the Court has discretion to revoke a Deferred Prosecution Program or to continue the treatment plan, in the event that the defendant fails to comply

with, or complete the treatment plan. The Court retains the authority to revoke, even if two years have passed since entry of the Order of Deferred Prosecution, if the allegation is that treatment was not completed within the two year period. State v. Vinge, 59 Wn.App.134, 795 P.2d 1199 (1990.)

Clearly, however, RCW 10.05.090, *supra* does not apply. That statute only applies to persons who fail in their treatment regimen.

RCW 10.05.100, the second statute quoted above, provides that if a defendant is convicted of having committed a similar offense (not defined by statute, and as opposed to “similar conduct”) while “in a Deferred Prosecution Program” the Court shall enter judgment of conviction on the previously deferred case. It appears that this is the statute relied upon by the District Court for revocation.

RCW 10.05.100 does not permit the Court to exercise discretion if an appropriate similar offense occurs during the appropriate time period. “

RCW 10.05.100, however, by its express terms restricts the court’s authority to revoke for “similar offenses” to the time period

during which the Respondent was “in a Deferred Prosecution program.”

In this matter, the Clark County District Court revoked the Order of Deferred Prosecution for conduct occurring, not during the Deferred Prosecution Program, but rather more than two years after the Respondent completed his Deferred Prosecution Program.

The third revocation statute, RCW 10.05.140, *supra*, provides various bases upon which revocation may occur, however, the only one arguably involved in this case would be for not “maintaining law-abiding behavior,” whatever that means.

But again, under RCW 10.05.140, the Legislature restricted the Court’s authority to revoke a Deferred Prosecution to conduct occurring “...during the period of the Deferred Prosecution...”

The terms “...while the petitioner was in a Deferred Prosecution program...” RCW 10.05.100, and “...during the period of the Deferred Prosecution” are not defined in any of the revocation statutes, but clearly defined in RCW 10.05.150:“A Deferred Prosecution Program for alcoholism shall be for a two-year period...”

The State seeks to justify the District Court's error by relying upon language in the Order of Deferred Prosecution entered on October 13, 2013. (CP 15-19)

Paragraphs b and m of the order require the Respondent to:

“b. Maintain total abstinence from alcohol and all other non-prescribed mind-altering drugs for the duration of the Deferred Prosecution;

...

m. Remain law-abiding for the duration of the Deferred Prosecution”

These provisions of the order are drawn from RCW 10.05.140, *supra*, but cannot be interpreted as extending the statutory limitation on such conditions:

“To help ensure continued sobriety and reduce the likelihood of reoffense, the Court may order reasonable conditions **during the period of the Deferred Prosecution** including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all non-prescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior.” RCW 10.05.140.

Since the “period of the Deferred Prosecution” or the “Deferred Prosecution Program” is defined as two years, see RCW 10.05.150, (“A Deferred Prosecution Program for alcoholism shall be for a two-year period,” it is abundantly clear that the legislature

did not intend an endless period of time in which a defendant would be subject to revocation after finishing treatment.

If it is not abundantly clear, than any ambiguous or vague provision must be interpreted against the State, and in favor of the Respondent.

A Court order which goes beyond the judge's statutory authority is of no effect.

The District Court may not, by order, supersede or circumvent the statute, see State v. Wallin, 125 Wn. App 648, 105 P.3d 1037 (2005), in which the Trial Court had ordered an extension of post- conviction supervision on a felony case, in the absence of any statute so authorizing. Therefore the subsequent actions of a probation officer in searching the defendant's home were unlawful, because the extended period of supervision was unlawful.

The State may analogize the five year period referenced in RCW 10.05 for dismissal of the charge to the five year period of probation for a DUI conviction, under RCW 3.50.330(1)(a) for Municipal Courts and 3.66.068(1)(a) for District Courts, applying the concept espoused in Abad v. Cozza, 128 Wn.2d 575, 911 P.2d

376 (1996), that a Deferred Prosecution Program is a form of “pre-trial probation.”

The Cozza case did not deal with the length of a Deferred Prosecution Program, but instead addressed the issue of whether waiver of the right to jury trial and the right to object to admissibility of hearsay (the police report) could be required as a condition of Deferred Prosecution. Unlike RCW 3.50.330(1)(a) and 3.66.068(1)(a), however, which expressly permit the Court to exercise its authority for a five year period, the statutory scheme in RCW 10.05 contains no such express authority. Any suggestion that a Deferred Prosecution Program is analogous to probation for all purposes was expressly dispelled by the Vinge case, *supra*, which held that statutory periods of supervision on probation cases do not apply to Deferred Prosecution cases.

2. **ARGUMENT IN RESPONSE TO ASSIGNMENT OF ERROR NUMBER TWO**

**The Court’s Authority to Dismiss a Charge of DUI is Separate and Distinct From the Authority to Revoke an Order of Deferred Prosecution.**

As originally drafted and enacted in 1975, RCW 10.05.120 provided that upon completion of a two-year Deferred Prosecution

Program, a Defendant was entitled to receive a dismissal of the charge.

**“RCW 10.05.120  
Dismissal of charges after two years – Records removed. (Old statute)**

“Two years from the date of the Court's approval of Deferred Prosecution for an individual defendant, those dockets that remain in the special Court Deferred Prosecution file relating to such defendant shall be dismissed and the records removed. [1975 1st ex.s. c 244 § 12.]”

Subsequently, the statute was amended to add a further three year period following completion of the two year treatment program/plan, or no less than five years after entry of the Order of Deferred Prosecution, which must elapse before dismissal can occur. (In some cases, treatment is commenced before disposition, and therefore a two year treatment program could be completed sooner than two years after entry of the order of Deferred Prosecution.)

**“RCW 10.05.120  
Dismissal of Charges (New statute effective 1998)**

(1) Three years after receiving proof of successful completion of the two-year treatment program, and following proof to the Court that the petitioner has complied with the conditions imposed by the Court following successful completion of the two-year treatment program, but not before five years

following entry of the order of Deferred Prosecution pursuant to a petition brought under RCW 10.05.020(1), the Court shall dismiss the charges pending against the petitioner.

It is this additional three year period, and the nature thereof, which creates the issue and confusion addressed in this case; that is, whether or not a Deferred Prosecution Program can be revoked after completion of the two year treatment program, for alleged violations occurring after such completion.

In extending the period of time which must elapse before a Defendant is entitled to a dismissal, the legislature also included language referencing “following proof to the Court that the petitioner has complied with the conditions imposed by the Court following successful completion of the two-year treatment program...” this language is grammatically and legally confusing, as there is no authority of the Court to impose conditions after the completion of the two-year treatment plan, see RCW 10.05.140, *infra*. However, assuming that the Court can impose conditions such as abstinence, AA, etc, after completion of the two-year treatment plan, this provision is located in the dismissal statute, rather than either revocation statute, RCW 10.05.090, 10.05.100, or 10.05.140 *supra*.

The effect of this language, therefore, is that a Court can decline to grant a dismissal even after five years has passed from entry of the Order of Deferred Prosecution:

- 1) If the Court had imposed additional conditions after completion of the treatment program, and
- 2) The Respondent had violated those conditions which the Court imposed after completion.

In this case, the Court never imposed any conditions after completion of the two-year program.

Not only was the District Court's revocation of the Order of Deferred Prosecution, and entry of Judgment and Sentence erroneous, this Respondent is now entitled, upon motion in the District Court, to a dismissal of the DUI charge under the express provisions of RCW 10.05 120.

The extra three year period tacked on by the 1998 amendment to RCW 10.05.120 is best characterized as a waiting period which must elapse before a Defendant can receive the ultimate relief: dismissal of the charges. Throughout this proceeding, the District Court and the Prosecutor's Office have mistakenly confused the concepts of when revocation of an order may occur with when a defendant may seek dismissal of a charge.

By strong analogy, after the Court loses the authority to revoke a sentence or probation, a waiting period can be imposed which must elapse before further relief is granted to a Defendant. The imposition of a waiting period is a concept well documented in the law.

It is not a useless act to create a three-year waiting period for dismissal, commencing after the completion of a Deferred Prosecution Program, even if the Court has no revocation authority during that period. The three year waiting period reinforces the seriousness of the offense and the proceedings. The legislature has done the same thing in creating a waiting period for dismissal or other relief during which the Court has no enforcement authority following completion of probation:

1. RCW 9.94A.640 (2)(e) (ten year waiting period for Class B felonies,
2. RCW 9.94A.640 (2)(f) (five year waiting period for Class C felonies,
3. RCW 9.96.060(2)(e)(4), (five year waiting period on non-felony DV cases)
4. RCW 9.96.060(2)(f), (three year waiting period on all other non-felony cases) and
5. RCW 9.41.040(4), (five year waiting period for restoration of firearm rights.)

The establishment of an additional three- year waiting period for dismissal in a Deferred Prosecution case cannot be interpreted

as an extension of revocation authority, without liberally interpreting the statutory scheme against the accused, a process universally rejected by the Appellate Courts.

“The power to decide "what shall be offenses against the law" rests with the legislative branch of the government. Morgan v. Devine, 237 U.S. 632, 59 L. Ed. 1153, 35 S. Ct. 712 (1915); State v. Mundy, 7 Wn. App. 798, 502 P.2d 1226 (1972). Absent constitutional problems, the courts are required to apply penal statutes as written. Penal statutes are strictly construed against the State, and a court cannot create an offense through judicial construction or under the guise of "supplying legislative omissions or correcting legislative oversight." Jenkins v. Bellingham Municipal Court, 95 Wn.2d 574, 580-81, 627 P.2d 1316 (1981)”

State v. Birgen, 33 Wn. App. 1, 651 P.2d 240 (1982) 33

Wn. App. At 5-6.

The Washington Supreme Court has imposed a strict interpretation standard for determining what time period applies in sentencing in the context of a Deferred Prosecution revocation. City of Seattle v. Winebrenner, 167 Wn.2d 451, 219 P.3d 686 (2009.)

Most significant is the fact that the Legislature imposed the added three year period by amending only the dismissal provisions found in RCW 10.05.120, and chose not to amend the revocation provisions of RCW 10.090, 10.05.100 or 10.05.140.

The Legislature amended RCW 10.05.120 to impose the three year waiting period for dismissal in 1998.

A year later in 1999, the Legislature amended RCW 10.05.120 to prohibit more than one Deferred Prosecution Petition.

In doing so, the Legislature, in its Final Bill Report, (SSHB 3089, Appendix Item # 2) once again reaffirmed that a person must wait an additional three years after completion of the two-year Deferred Prosecution program in order to receive a dismissal of the charge and, that the court's authority to revoke a Deferred Prosecution order was limited to offenses occurring during the two-year program.

The Superior Court was correct in concluding that the 1998 legislation, which only delayed the opportunity to seek dismissal of the underlying charge, did not address nor modify the District Court's statutorily limited authority to revoke an Order of Deferred Prosecution for offenses or conduct occurring during the period of the Deferred Prosecution program.

The State relies upon a subjective, unsupported theory of "legislative intent" to ignore the fact that in 1985, RCW 10.05.150 was enacted, which unequivocally stated that "A deferred prosecution program for alcoholism shall be for a two-year period...."

Thereafter, the Legislature left this two-year definition of a deferred prosecution program in place, untouched for thirty-five years

to the present. That is the best indication of “legislative intent,” along with the Legislature’s own declaration in the 1999 Final Bill Report referenced above, Appendix Item # 2.

3. **ARGUMENT IN RESPONSE TO ASSIGNMENT OF ERROR NUMBER THREE**

**If there is any arguable support for the proposition that Deferred Prosecution is a five-year program, the morass of conflicting and contradictory statutory amendments renders the statutory scheme hopelessly vague and ambiguous.**

Since the Deferred Prosecution statutes in RCW10.05 were first enacted in 1975, one or more components of the statutory scheme have been amended in 1982, 1983, 1985, 1990, 1991, 1994, 1996, 1997, 1998, 1999, 2002, 2003, 2008, 2009, 2010, 2013, 2016, 2018, and 2019, (see Revised Code of Washington Annotated.) When this piecemeal amendment process occurs over 45 years, the inevitable result is a hodge-podge of conflicting and potentially inconsistent legislative goals and provisions.

Lost in the shuffle is the Legislature’s clearly expressed intent that revocation of an Order of Deferred Prosecution for similar offenses or prohibited conduct must be based on such conduct occurring during the two-year program, as opposed to years after completion of the program, as happened here.

Both the District Court, the Honorable Kristen Parcher, and the Superior Court, the Honorable Scott Collier, concluded that RCW 10.05, et. seq was ambiguous as to the District Court's authority to revoke an Order of Deferred Prosecution after the two-year program was successfully completed.

Despite this conclusion, the District Court erroneously revoked the Order of Deferred Prosecution, and the Superior Court correctly vacated that ruling

The District Court's manifest error is demonstrated as follows:

Respondent's attorney argued in briefing that the statutory scheme of RCW 10.05 is at best ambiguous or vague as to the Court's authority to revoke after completion of the Deferred Prosecution Program, which, by statute is two years. RCW 10.05.150.

In response to this argument the District Court, rather astonishingly stated that:

"Um...the Court's finding that the statutes around the deferred prosecution are not unambiguous." District Court **RP** (December 11, 2018) **p. 3, l. 23 - p. 4, l. 1.** (Emphasis added)

That “finding,” which actually is a Conclusion of Law, should have ended the matter right there. “Not unambiguous” equates to “ambiguous.” Ambiguous or vague provisions in criminal statutes are resolved in favor of the Defendant. City of Seattle v. Winebrenner, 167 Wn.2d 451, 219 P.3d 686 (2009).

Having failed to apply this basic rule of statutory construction, the District Court again misapprehended the source of the Court’s authority, apparently believing that she had some sort of inherent authority to revoke a Deferred Prosecution Program, independent of any express statutory authority. The Court appropriately observed that:

“...there isn’t a statute under RCW 10.05 that specifically confers authority to revoke anytime during the five year deferred prosecution.” **District Court RP** (December 11, 2018) **p. 4, l. 1-3.**

The analysis then went completely off the tracks with the Court’s noting that:

“...nowhere in RCW 10.05 does it state that no revocation may (inaudible) or completion of the two year program.” **District Court RP** (December 11, 2018) **p. 4, l. 4-6.**

This sentence is incomplete in the record, but the import is clear: The Court believed that if there is no statute granting authority to revoke after completion of the two-year Deferred Prosecution Program, and there is no statute prohibiting such

action, then the authority must exist. That analysis is exactly backwards—in the absence of statutory authority, no authority exists. Under the District Court’s analysis, a judge could sentence a Defendant to 10 years in prison for not completing a Deferred Prosecution Program, because no statute says she can’t.

There is no inherent authority in a Deferred Prosecution proceeding. State v. Wright, 54 Wn. App. 638, 639-40, 774 P.2d 1265 (1989), supra. All authority must come from the authorizing statutes, which the District Court acknowledged, do not exist.

The District Court also fell into the trap of confusing a Deferred Prosecution Program with a post-conviction probation, and analogized to the Court’s authority in a probation setting.

“Um... the Court is also noting that uh... conviction for Driving Under the Influence carries a five year probationary period and the Court finds that it would be an illogical reading to think that someone giving the benefit of the dismissal would essentially have less supervision than somebody um... who was convicted...” **District Court RP** (December 11, 2018) **p. 4, l. 22-23 –p.5, l. 1-3.**

The truly illogical thing here is that the District Court disregarded the clear ruling of State v. Vinge, 59 Wn.App.134, 795 P.2d 1199 (1990), that Deferred Prosecution is not a conviction, and is not

probation, in terms of the duration of the Court's authority to revoke.

If in fact the legislature intended to grant revocation authority following the completion of a two year Deferred Prosecution Program, the legislature failed miserably in expressing that intention. Any ambiguity must be construed in favor of the Respondent.

If, as Judge Parcher and the Prosecutor speculate, the Legislature has a secret, unexpressed intent to permit revocation after completion of the Deferred Prosecution Program, that intent could have been expressed by statutory amendment to RCW 10.05.100 in these simple, unambiguous words:

*"The Court shall retain authority to revoke a Deferred Prosecution Program even after the Deferred Prosecution Program has been completed, up until five years have elapsed since entry of the Order of Deferred Prosecution, or since entry of any Order extending such program."*

In the event that this Honorable Court concludes that the statutory scheme of RCW 10.05, et seq is ambiguous as to the duration of the Court's authority to revoke, no doubt the Prosecuting Attorney's lobby group will propose amendatory legislation. That is the proper way to deal with the issue presented

herein. Instead, the State seeks to have this Appellate Court correct flawed legislation by speculative judicial interpretation. unsupported by the express statutory terms and prior legislative history.

#### **IV. CONCLUSION**

These are suggested conclusions about the Court's authority and the nature of the Deferred Prosecution Program procedure, as created by the legislature.

1. Deferred Prosecution Program procedures are strictly defined by statute, and the Court has no inherent authority to deviate from, or modify such procedures.
2. The authority of the Courts must be based upon specific statutory grants of authority, rather than on what may appear to be the intent of the legislature.
3. The period of Deferred Prosecution commences upon entry of the Order of Deferred Prosecution, although actual commencement of treatment could be occur before or after entry of the Order.

4. A Defendant's failure to complete a Deferred Prosecution Program within the two years following entry of the Order of Deferred Prosecution can be grounds for revocation, even if the revocation takes place after the two-year period elapses, because the Defendant has not completed the Program.

5. Upon a Defendant's completion of a two-year Deferred Prosecution Program, the Court no longer has the statutory authority to revoke, subject to paragraph 6 below.

6. The Court is mandated to revoke a Deferred Prosecution Program if a Defendant commits a "similar offense" during the two-year treatment program, and is subsequently convicted thereof (even if the Defendant, prior to conviction, completes the treatment program.)

7. The Court has no authority to revoke a Deferred Prosecution Program based upon a conviction of a similar offense, if the offense is committed after the two-year Deferred Prosecution Program has been finished.

8. The three-year period referenced in RCW 10.05.120 is a "waiting period" for dismissal. It is not an extension of the length of supervision, nor of the Court's authority to revoke a Deferred

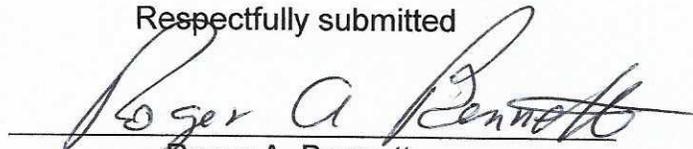
Prosecution Program after a Defendant has completed the Program.

9. If in fact the legislature intended to grant revocation authority following the completion of a two year Deferred Prosecution Program, the legislature failed miserably in expressing that intention. Any ambiguity must be construed in favor of the Defendant.

This Honorable Court should affirm the ruling of the Clark County Superior Court.

Dated the 13 day of January, 2019

Respectfully submitted

A handwritten signature in black ink that reads "Roger A. Bennett". The signature is written in a cursive style with a horizontal line underneath it.

Roger A. Bennett  
Attorney for Respondent  
WSBA # 6536

# APPENDIX

## ITEM # 1

Probation Department Notice  
Containing Proof of  
Completion of Deferred  
Prosecution Program

**NOTICE OF FAILURE TO COMPLY  
DEFERRED PROSECUTION**

**DATE:** 01/05/2018

**CASE #:** 2Z0219927 WSP CT

**DEFENDANT:** Alem Skrobo

**CHARGE:** DRVNG INTOX/UNDER INF  
DRUG  
RECKLESS DRIVING

**JUDGE:** The Honorable Kristen Parcher

**Defendant Ordered To:**

No further violations of the law

Maintain total abstinence from  
alcohol and all other non-prescribed  
mind altering drugs

**Defendant Failed How:**

Committed a new law violation

Failed to maintain total abstinence from  
alcohol and all other non-prescribed mind  
altering drugs

**SUPPLEMENTAL INFORMATION:**

The defendant entered into Deferred Prosecution on 10/28/2013. This is the first violation.

On 12/3/2017 the defendant committed the offense of Hit/Run unattended property, DUI and Reckless Endangerment #217181P CKP.

Per WSP incident report #17-036616 officers responded to a call regarding a possible drunk driver that crashed a Corvette into a ditch off I-205. The vehicle was vacant but a witness had contact with a man (later identified as the defendant) who asked him for a ride to a friend's house. The witness said the defendant smelled of alcohol. Officers located the passenger of the Corvette shortly thereafter walking down the highway. He identified the defendant as the driver of the Corvette that was involved in the accident. The defendant is the brother of the registered owner of the vehicle and it was confirmed through the owner that he did have access to the vehicle.

**\*Additional information\***

The defendant completed the required drug/alcohol treatment through Starting Point on 11/30/2015. He attended the DUI Victim's panel on 1/13/2014. All fees have been paid.

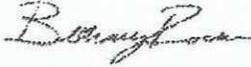
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**DECLARATION:**

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

Dated this: Friday, 5 January, 2018, in the city of Vancouver, State of Washington.

SUBMITTED BY:



---

Bethany Rocha - Digitally Signed

# APPENDIX

## ITEM # 2

Final Bill Report on SSHB  
3089 (1999 Amendment)

# FINAL BILL REPORT

## 2SHB 3089

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### PARTIAL VETO

C 208 L 98

Synopsis as Enacted

**Brief Description:** Limiting eligibility for the deferred prosecution program to once in a lifetime.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives McDonald, Sheahan, Kessler, Bush, Robertson and Boldt).

**House Committee on Law & Justice**  
**House Committee on Appropriations**  
**Senate Committee on Law & Justice**

**Background:** A person charged with a non-felony offense in district court may petition for a "deferred prosecution." Driving under the influence (DUI) is the offense for which a deferred prosecution is most often sought. To qualify for a deferred prosecution, a person must allege that the charged criminal conduct resulted from the person's alcoholism or drug addiction, that the conduct is likely to recur if the alcoholism or addiction is not treated, and that the alcoholism or addiction is in fact amenable to treatment. Among other things, the person must also acknowledge in writing that he or she waives the right to testify, to call witnesses, to have a speedy trial, or to have a jury. The person must also stipulate to the admissibility of the evidence contained in the police report.

If a person is granted a deferred prosecution and successfully completes a court-ordered, two-year treatment program, the court will dismiss the charges. Conviction for another offense during the two-year program results in judgment being entered on the deferred charge.

A person charged with an offense under the motor vehicle code is not eligible for a deferred prosecution more than once in a five-year period.

**Summary:** No person charged with a violation of the motor vehicle code is eligible for a deferred prosecution program more than once. If the person is convicted of another offense that was committed during the two-year program, the court must enter judgment on the deferred charge. The court may not dismiss the deferred charge until three years after proof of completion of the two-year treatment program.

The act is null and void unless funded in the budget.

**ROGER A. BENNETT, ATTORNEY AT LAW**

**January 13, 2020 - 2:24 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53408-8  
**Appellate Court Case Title:** State of Washington, Petitioner v. Alem Skrobo, Respondent  
**Superior Court Case Number:** 18-1-03404-3

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State of Washington  
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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON  
Petitioner

vs.

ALEM SKROBO  
Respondent

---

CERTIFICATE OF SERVICE

---

I certify that on the 13th day of January, 2020, I caused a true and correct copy of the Opening Brief of Respondent to be served on the following by e-mail and US mail, postage prepaid:

Chad Marquez  
Deputy Prosecuting Attorney  
1013 Franklin Street  
Vancouver, WA 98666  
Chad.Marquez@clark.wa.gov

Alem Skrobo, Respondent  
11900 SE 7<sup>th</sup> Street  
Vancouver, WA 98683  
Alem.Skrobo@yahoo.com

Dated the 13 day of January, 2020

  
Roger A. Bennett WSBA 6536  
Attorney for Appellant

Roger A. Bennett, WSBA 6536  
Attorney for Respondent  
112 W. 11<sup>th</sup> Street, Suite 200  
Vancouver, WA 98660  
(360) 713-3523  
Rbenn21874@aol.com

**ROGER A. BENNETT, ATTORNEY AT LAW**

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