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State of Washington  
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No. 54125-4-II

THE COURT OF APPEALS FOR THE STATE OF  
WASHINGTON DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**MATTHEW PEARSON,**

Appellant.

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Appeal from the Superior Court of Washington for Pacific  
County

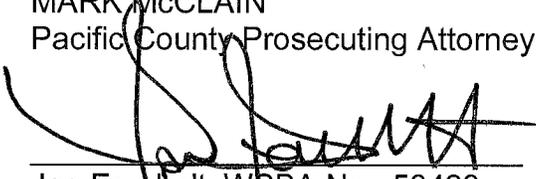
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**RESPONDENT'S BRIEF**

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## I. INTRODUCTION

The State of Washington is the Respondent in this matter. Appellant, Matthew Pearson, is appealing his sentence of the Pacific County Superior Court, Honorable Judge Donald J. Richter, under cause number 19-1-00035-25 resulting in a sentence of 18 months, followed by 12 months of community custody.

## II. ISSUE

Should Appellant's sentence on cause 19-1-00035-25 be served consecutive to or concurrent with the sentence imposed on cause 17-1-00295-25.

## III. STATEMENT OF THE CASE

Matthew M. Pearson, the Appellant herein, was found guilty of possession of a controlled substance following a bench trial and was sentenced to 18 months confinement followed by 12 months community custody. The Appellant is appealing his sentence.

## IV. ARGUMENT

### A. APPELLANT WAS "UNDER SENTENCE" WHEN HE COMMITTED CRIME OF POSSESSION METHAMPHETAMINE AND WAS SENTENCED.

Sentencing errors may be raised for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). A trial court's decision regarding concurrent or consecutive sentences is

reviewed for an abuse of discretion. *In re Pers. Restraint of Delgado*, 149 Wn.App. 223, 239, 204 P.3d 936 (2009). A trial court abuses its discretion when it relies on manifestly unreasonable grounds or reasons, or when the court refuses to exercise its discretion. *State v. Grayson*, 154 Wn.2d 333, 111 P.3d 1183 (2005); *State v. Quaale*, 182 Wn.2d 191, 196, 340 P.3d 213 (2014).

RCW 9.94A.589(2)(a) states: "...whenever a person while under sentence of a felony commits another felony and is sentenced to another terms of confinement, the latter term shall not begin until expiration of all terms." RCW 9.94A.589(2)(a). However, the statute continues:

"Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders they be served consecutively."

RCW 9.94A.589(3). "A person under community supervision is clearly 'under sentence of felony...'" *State v. Roberts*, 76 Wash.App 290, 292-3, 884 P.2d 628, 629-30 (1994). Any term of community custody is tolled during any period of time during which the offender has absented himself or herself from supervision without prior

approval of the entity under whose supervision the offender has been placed. RCW 9.94A.171(2).

On April 18, 2018, the Appellant was arrested on warrants for failure to report to DOC and was found to have methamphetamine in his possession. CP at 4-5. The Appellant had been released from the Pacific County Jail on October 29, 2017, and did not report to DOC supervision the next day as required by the conditions of his prior sentences related to convictions on cause numbers 13-1-00004-9 and 13-1-00157-6. EX. A. A warrant issued for his arrest on October 31, 2017, as a result of his failure to report. *Id.* He was also charged with possession of methamphetamine stemming from his arrest on April 18, 2018. CP at 1.

On May 4, 2018, the Appellant was sentenced to 24 months confinement for his conviction of escape from community custody and sent to prison. Ex. B. He was brought back from prison and a bench trial was held on May 30, 2019, for his charge of possession of methamphetamine. RP at 24-60. On July 12, 2019, the Appellant was sentenced to 18 months confinement followed by 12 months community custody on his possession of methamphetamine conviction. CP at 32-42.

The Appellant argues that his sentences of 24 months and 18

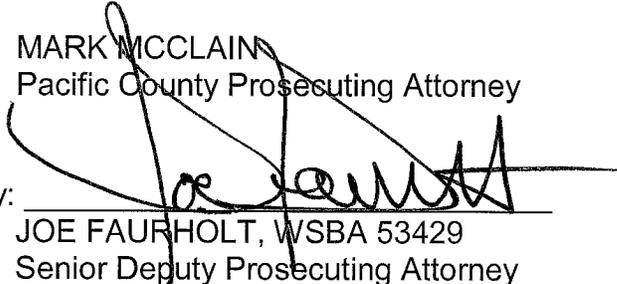
months confinement should be served concurrently rather than consecutively pursuant to RCW 9.94A.589(3). Motion at 5. However, that prong of the statute is not applicable to the Appellant's circumstances because he was still on community supervision and "under sentence" when he possessed methamphetamine and was later sentenced. Ex C. In fact, the Appellant is still currently on community custody related to cause numbers 13-1-00004-9 and 13-1-00157-6. *Id.* Therefore, the Appellant's argument fails and the sentences should be served consecutively.

**V. CONCLUSION**

The Appellant was "under sentence" when he was possessed methamphetamine and was sentenced. Therefore, the Appellant's argument that his sentences should be served concurrently should be denied.

RESPECTFULLY submitted this 14<sup>th</sup> day of July, 2020.

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**Transmittal Information**

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**Superior Court Case Number:** 19-1-00035-8

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