

**FILED**  
APR 12, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 27946-4-III

**Consolidated with**  
**NO. 28637-1-III**

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

---

**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**JESSE ALAN McREYNOLDS,**

Defendant/Appellant.

---

**REPLY BRIEF**

---

Dennis W. Morgan    WSBA #5286  
Attorney for Appellant  
PO Box 1019  
Republic, Washington 99166  
(509) 775-0777

## TABLE OF CONTENTS

### TABLE OF AUTHORITIES

TABLE OF CASES . . . . .	ii
STATUTES . . . . .	ii
ARGUMENT . . . . .	1

**TABLE OF AUTHORITIES**

**TABLE OF CASES**

*Personal Restraint of Costello*, 131 Wn. App. 828, 129 P.3d 827 (2006).....3

*Personal Restraint of Erickson*, 146 Wn. App. 576, 191 P. 3d 917 (2008).....1

*State v. Bennett*, 154 Wn. App. 202, 224 P. 3d 849 (2010).....2

*State v. Bernhard*, 108 Wn. 2d 527, 741 P. 2d 1 (1987).....2

*State v. Coats*, 84 Wn. App. 623, 929 P. 2d 507 (1997).....2

**STATUTES**

RCW 9.94A190(1)..... 2

## ARGUMENT

The State's brief, as it pertains to community custody, unlawful incarceration, HIV testing and the sexual assault protection order, appears to rely upon "mootness", even though there are concessions made.

Mr. McReynolds, in his original brief, asserted that the issues are not moot. He remains in custody at the Special Commitment Center.

In *Personal Restraint of Erickson*, 146 Wn. App. 576, 582, 191 P. 3d 917 (2008), the Court held:

DOC argues that Erickson's petition is moot because he is no longer confined and, therefore, is not entitled to relief. Although this case is admittedly moot, we reach the merits because it is a matter of continuing and substantial public interest.

For this court to be able to grant relief, the petitioner must be under a present unlawful restraint. Where a petitioner is no longer in custody, **a petition should be reviewed on the merits, despite its mootness, where the issue presented is one of continuing and substantial public interest** and likely to evade review.

**[T]he proper administration of earned early release credits** awarded to inmates **is such an issue.** And the application of good time credit to an extended confinement is likely to be a recurring issue that evades review.

(Emphasis supplied.)

Mr. McReynolds' case fits squarely within the ruling in *Erickson*. Mr. McReynolds' case is one that calls out for resolution due to the fact that the likelihood of reoccurrence in other cases is significant.

Mr. McReynolds gratefully accepts the State's concessions on the community custody issue and the sexual assault protection order issue.

Insofar as the HIV issue is concerned the trial court had no statutory authority to impose an order without conducting the appropriate colloquy. *See: State v. Bennett*, 154 Wn. App. 202, 209, 224 P. 3d 849 (2010).

The thorniest issue remains the undisputed fact that Mr. McReynolds served a sentence in excess of the sentence imposed by the Court, through no fault of his own.

“For felons sentenced to more than one year, trial courts have no discretion to select the place of confinement.” *State v. Bernhard*, 108 Wn. 2d 527, 544, 741 P. 2d 1 (1987).

Mr. McReynolds agrees that RCW 9.94A.190(1) provides that sentences in excess of a year are to be served in a state correctional institution. Nevertheless, where the sentence has been fully served prior to it being imposed, then he submits the trial court does have discretion.

Mr. McReynolds also agrees that “public policy and the Sentencing Reform Act require full punishment for each offense.” *State v. Coats*, 84 Wn. App. 623, 628, 929 P. 2d 507 (1997).

Mr. McReynolds was sentenced to seventeen (17) months in a state institution. However, because he had already served 544 days in the Yakima County Jail, he had served the full sentence when he was sentenced.

The statutory requirement...that an offender receive credit for all pretrial detention time served, reflects a constitutional mandate. *State v. Speaks*, 119 Wn. 2d 204, 206, 829 P. 2d 1096 (1992). Failure to allow such credit violates due process, denies equal protection, and offends the prohibition against multiple punishments. *State v. Cook*, 37 Wn. App. 269, 271, 679 P. 2d 413 (1984). In addition, an inmate has a constitutionally protected, though limited, liberty interest in good time credits. *Dutcher [In Re Personal Restraint of Dutcher]*, 114 Wn. App. 755, 60 P. 3d 635 (2002)] at 758. Thus, a DOC action that wrongfully denies an inmate credit for time served or good time earned would result in the unlawful restraint of the inmate.

*Personal Restraint of Costello*, 131 Wn. App. 828, 129 P.3d 827 (2006).

As can be seen from the foregoing excerpt from the *Costello* case, Mr. McReynolds was unlawfully restrained from the date he was sentenced. The Yakima County Jail calculated his good time credit the day following his sentence. The matter should have been brought back to the attention of the sentencing court so that an appropriate remedy could be fashioned for Mr. McReynolds' release.

As the *Costello* Court noted at 834:

The jail's calculation of credit for time served is not independently legally binding. If the jail's calculation is correct, **it has the force of law.**

(Emphasis supplied.)

Mr. McReynolds otherwise relies upon the argument contained in his original brief.

DATED this 12th day of April, 2012.

Respectfully submitted,

s/ Dennis W. Morgan  
DENNIS W. MORGAN WSBA #5286  
Attorney for Defendant/Appellant  
PO Box 1019  
Republic, Washington 99166  
(509) 775-0777  
(509) 775-0776  
nodblspk@rcabletv.com

**NO. 27946-4-III  
Consolidated with  
NO. 28637-1-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON, )  
 ) YAKIMA COUNTY  
 Plaintiff, ) NO. 07 1 00657 1  
 Respondent, )  
 ) **CERTIFICATE OF SERVICE**  
 v. )  
 )  
 JESSE ALAN McREYNOLDS, )  
 )  
 Defendant, )  
 Appellant. )  
 \_\_\_\_\_ )

I certify under penalty of perjury under the laws of the State of Washington that on this 12th day of April, 2012, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK  
Court of Appeals, Division III  
500 North Cedar Street  
Spokane, Washington 99201

E-FILE

YAKIMA COUNTY PROSECUTOR'S OFFICE E-MAIL (per agreed)  
Attention: Kevin Eilmes  
kevin.eilmes@co.yakima.wa.us

JESSE ALAN McREYNOLDS #880482  
McNeil Island Correctional Center  
PO Box 88600  
Steilacoom, Washington 98388

U.S.MAIL

S/ Connie Hille  
Connie Hille, Administrative Assistant  
DENNIS W. MORGAN LAW OFFICE  
PO Box 1019  
Republic, WA 99166  
(509) 775-0777  
(509) 775-0776  
conniehille@gmail.com