

ORIGINAL

NO. 282279

THE COURT OF APPEALS, DIVISION III  
OF THE  
STATE OF WASHINGTON

FILED

AUG 24 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

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IN THE MATTER OF THE PERSONAL RESTRAINT OF

JAMES B. SCHLOSSER,

Petitioner

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APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY  
SUPERIOR COURT NO. 98-1-00350-6

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**SUPPLEMENTAL RESPONSE TO  
PERSONAL RESTRAINT PETITION**

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**ANDY MILLER**

Prosecuting Attorney  
for Benton County

**CHRISTINE M. BENNETT**, Deputy

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In response to the Court's August 9, 2010, request to provide supplemental written comment on the applicability of *In re Pers. Restraint of Spires*, 151 Wn. App. 236, 211 P.3d 437 (2009), the State submits the following supplemental brief.

#### **ARGUMENT**

Regarding *In re Pers. Restraint of Spires*, the Court of Appeals-Division I held that the ten-year statute of limitations on the trial court's authority to enforce payment of legal financial obligations<sup>1</sup> on a 1992 case had expired in 2002, and its authority was not tolled by the following circumstances: (1) the existence of an outstanding bench warrant for the defendant, nor (2) the defendant's incarceration for matters unrelated to the 1992 conviction. (The defendant's incarceration for probation violations of the 1992 conviction were considered "unrelated.") *Spires*, 151 Wn. App. at 244. In

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<sup>1</sup> Legal financial obligations hereinafter referred to as "LFOs."

this case, an order extending jurisdiction was entered approximately ten years and nine months after the defendant plead guilty. (02/11/10, Response to PRP, App. C). Nonetheless, the nine-month period should be considered tolled because the defendant was on bench-warrant status and was incarcerated for subsequent criminal convictions for at least approximately three years.

RCW 9.94A.171 reveals the legislative intent behind the rules regarding the trial court's ability to impose sentences against a criminal defendant, and when time should be tolled:

(2) Any term of community custody shall be tolled by 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.

(3) Any period of community custody shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not to have violated a condition or requirement of community custody, time spent in confinement due to such detention shall not toll the period of community custody.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

RCW 9.94A.171

RCW 9.94A.030(5) defines "community custody" as "that portion of an offender's sentence ... imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department." RCW 9.94A.760 specifically authorizes the Department or County Clerk to have supervision over a defendant for the purpose of ensuring repayment of LFOs for a ten-year period as part of any criminal sentence. Based on the plain language of Chapter 9.94A, the ten-year period of supervision by the clerks should be considered part of, or at least analogous to, a defendant's period of confinement to community custody. As such, the ten-year statute of limitations should be tolled in accordance with the terms of RCW 9.94.171(2), (3), and (4).

A warrant was issued for Mr. Schosser when he failed to appear at the request of the County Clerk on multiple occasions. On one of those occasions, he was absent from the State for approximately two and one-half years.<sup>2</sup> As such, the Defendant absented himself from supervision without prior approval of the entity under whose supervision he was placed. Following legislative intent revealed by RCW 9.94A.171(2) and (4), when Schlosser absented himself from supervision of the clerks, this should toll the statute of limitations. Similarly, under RCW 9.94A.171(3), when Mr. Schlosser was in confinement for any reason, time spent in confinement should toll the statute of limitations as well.<sup>3</sup>

The Supreme Court of Washington has not yet specifically given guidance on the issues raised

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<sup>2</sup> See Petitioner's Reply to Response of Prosecuting Attorney, page 1.

<sup>3</sup> Please see 02/11/10, Response to PRP, App. E. (Defendant received a 17-month sentence on Benton County Cause No. 00-1-00090-5).

by Mr. Schlosser's Personal Restraint Petition. In *State v. Adams*, the Supreme Court of Washington was presented with the question of whether this statute is tolled for the purpose of LFO enforcement when a defendant is out of State or subject to a warrant, and did not address that issue when the case was decided in favor of the State on other grounds. *State v. Adams*, 153 Wn.2d 746, 108 P.3d 130 (2005) (FN1)).

Relying on RCW 9.94A.171, the Court should find that the ten-year statute of limitations on the trial court's ability to enforce LFOs should be tolled during those periods that the defendant absented himself from the clerk's supervision and when he was incarcerated on subsequent criminal charges.

#### **CONCLUSION**

Based on the foregoing, the Personal Restraint Petition should be dismissed.

**RESPECTFULLY SUBMITTED** this 23rd day of  
August 2010.

ANDY MILLER  
Prosecutor

*Tracy J. Bennett* for:

CHRISTINE M. BENNETT, Deputy  
Prosecuting Attorney  
Bar No. 41305  
Office ID No. 91004

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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

In the Matter of the Personal  
Restraint of:

NO. 282279

DECLARATION OF SERVICE

JAMES B. SCHLOSSER,

Petitioner.

I, PAMELA BRADSHAW, declare as follows:

That I am over the age of 18 years, not a party to this action,  
and competent to be a witness herein. That I, as a legal assistant in  
the office of the Benton County Prosecuting Attorney, served in the  
manner indicated below, a true and correct copy of the *Supplemental  
Response to Personal Restraint Petition* on this day, August 23, 2010.

James B. Schlosser  
414 6<sup>th</sup> Avenue W.  
Dickinson, ND 58601

- U.S. Regular Mail, Postage  
Prepaid
- Legal Messenger
- Overnight Express

I declare under penalty of perjury under the laws of the State  
of Washington that the foregoing is true and correct.

EXECUTED at Kennewick, Washington, on this day, August 23, 2010.



PAMELA BRADSHAW

ORIGINAL

**PROSECUTING ATTORNEY  
BENTON COUNTY, WASHINGTON**

**ANDY MILLER**  
PROSECUTING ATTORNEY

**RYAN K. BROWN**  
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August 23, 2010

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MEGAN A. WHITMIRE

**ATTN: Ms. Renee S. Townsley**  
**CLERK OF THE COURT OF APPEALS III**  
500 North Cedar Street  
Spokane, WA 99201

**RE: Personal Restraint of JAMES B. SCHLOSSER**  
Court of Appeals No. 282779

28227-9

Dear Ms. Townsley:

Enclosed for filing please find the original and one copy of the **Supplemental Response to Personal Restraint Petition** and a Declaration of Service.

Thank you for your assistance.

Very Truly Yours,

**ANDY MILLER**  
Prosecuting Attorney



**PAMELA BRADSHAW**  
Legal Assistant

Enclosures

cc: James B. Schlosser

**FILED**

**AUG 24 2010**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_