

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

NO. 301150

FILED  
July 16, 2012  
Court of Appeals  
Division III  
State of Washington

STATE OF WASHINGTON ,

Plaintiff/Respondent,

vs.

TROY DEAN STUBBS,

Defendant/Appellant.

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STATE'S BRIEF (RESPONDENT)

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**TABLE OF CONTENTS**

A. ISSUE REGARDING ASSIGNMENTS OF ERROR .....1

B. STATEMENT OF THE CASE.....1

C. ARGUMENT .....1

    1. INTERRUPTION .....1

    2. AMBIGUITY.....3

D. CONCLUSIONS.....5

**TABLE OF AUTHORITIES**

**CASES**

*State v. Ervin*, 169 Wn.2d 815, 239 P.3d 354 (2012) .....1

*State v. Ervin*, 169 Wn.2d at 819 (2012) .....2

*State v. Ervin*, 169 Wn.2d at 821 (2012) .....2

*State v. Codiga*, 169 Wn.2d 912, 920, 175 P.3d 1082 (2008) .....2

*State v. Codiga*, 162 Wn.2d at 921 (2008).....2

*State v. Codiga*, 162 Wn.2d 921 (2008) .....3

*State v. Codiga*, 162 Wn.2d 93 (2008).....3

*State v. Reding*, 119 Wn.2d 685, 690, 835 P.2d 1019 (1992).....4

*State v. Radan*, 143 Wn.2d 323, 21 P.3d 255 (2001).....4

*State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997) .....4

*State v. Radan*, 143 Wn.2d at 330 (2001).....4

*State v. Keller*, 143 Wn.2d 267, 19 P.3d 1030 (2001).....4

*State v. Chester*, 133 Wn.2d at 21 (1997).....4

*Re the Personal Restraint of William Joseph Nichols*, 120 Wn.App.  
425 85 P.3d 955 (2004).....4

**STATUTES**

RCW 99.4A.525(2).....	1
RCW 9.94A.525(2).....	1
RCW 9.94A.525 .....	2
RCW 9.94A.525 .....	3
RCW 9.94A.525 .....	5
RCW 9.94A.525(2)(c) .....	5

**A. ISSUE REGARDING ASSIGNMENTS OF ERROR**

The Appellant argues that misdemeanor and gross misdemeanor convictions do not interrupt washout pursuant to RCW 99.4A.525(2), the State disagrees.

**B. STATEMENT OF THE CASE**

The Respondent, State, adopts the Appellants version of the facts. With the correction that the juvenile conviction, Arson in the Second Degree, should have been a Taking a Motor Vehicle Without Owner's Permission. (See CP 92). This however does not change the offender score since both are felonies. Based on an offender score of six the Defendant was re-sentenced to 240 months in prison after the Washington Supreme Court reversed an exceptional sentence. CP 117-118. (See CP 52-78. Decision by Washington Supreme Court) If the Appellant is correct in his argument. Appellant argues his score should be one however the State contends if he is correct it would be zero.

**C. ARGUMENT**

**INTERRUPTION**

The Defendant argues that RCW 9.94A.525(2), for washout to apply, that only felonies and not misdemeanor level crimes interrupt washout periods. He cites to State v. Ervin, 169 Wn.2d 815, 239 P.3d 354 (2012) to support his argument. Ervin, does not support this argument. Ervin was

concerned with jail time on probation violations. Ervin, 169 Wn.2d at 819. Both sides in Ervin agreed that Ervin did not commit any crime between the relevant washout period. The sole point of contention was whether the phrase, “in the community” included time in jail on a probation violation stemming from a misdemeanor conviction interrupted the requisite five consecutive years for class C felonies to washout. Ervin, 169 Wn.2d at 821. In fact, Ervin recognized that any crime would interrupt a felony washout period. Ervin, 169 Wn.2d at 821. Clearly they stated that a stated misdemeanor trespass conviction implicated RCW 9.94A.525 continuity/interruption chose Ervin, 169 Wn.2d at 821.

Gross Misdemeanor and Misdemeanor convictions interrupt washout periods for all felonies. See State v. Codiga, 162 Wn.2d 912, 920, 175 P.3d 1082 (2008). There the court specifically addressed a similar issue to the one at hand, the Defendant had pled guilty to three counts of child molestation. The prosecutor agreed with the defense that he had one point for a prior class B. felony. However, the Defendant had another class C felony which predated the B felony by approximately one year. The Defendant proceeded with his guilty plea after having been fully advised that the discovery of additional criminal history may increase the standard range. The Defendant was expecting a special sex offender alternative (SSOSA) sentence. Codiga, 162 at 921.

The presentence investigation (PSI) report included the Defendant's lengthy criminal history, including the class B and C felonies. However, three misdemeanor offenses were also listed, that occurred after the class C felony but within five years. The trial court concluded that the Defendant's class C felony did not washout. Codiga, 162 Wn.2d at 921.

The judge sentenced the Defendant to a standard range sentence and not SOSSA. The Defendant attempted to withdraw his plea under a manifest injustice theory. The sentence was upheld by the Supreme Court of Washington. Codiga, 162 Wn.2d at 93.

The holding in Codiga is directly relevant to this case in that it clearly illustrates that all crimes may interrupt washout periods.

### AMBIGUITY

RCW 9.94A.525 (Offender score), provides in pertinent part;

(2) (a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender

had spent ten consecutive years in the community without committing “any crime” that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to 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. (*Emphasis added*)

To ascertain legislative intent, a court will first turn to the plain language of the statute. *State v. Reding*, 119 Wn.2d 685, 690, 835 P.2d 1019 (1992). The court's primary objective is to ascertain and give effect to the intent of the legislature. *State v. Radan*, 143 Wn.2d 323, 21 P.3d 255 (2001). If a statute is unambiguous (as it is here) it is not subject to judicial interpretation and its meaning is derived from the statute alone and the court is to assume the legislature meant exactly as it says. *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997), *Radan*, 143 Wn.2d at 330, *State v. Keller*, 143 Wn.2d 267, 19 P.3d 1030 (2001). Courts may not add language to a clear statute even if the court(s) believe the legislature intended something else but failed to express it adequately. *Chester*, 133 Wn.2d at 21.

In 2000 the legislature enacted RCW 9.94A.345. It provides that a sentence shall be determined in accordance with the law in effect at the time the current offense was committed. In *Re the Personal Restraint of William Joseph Nichols*, 120 Wn. App. 425 85 P.3d 955 (2004)

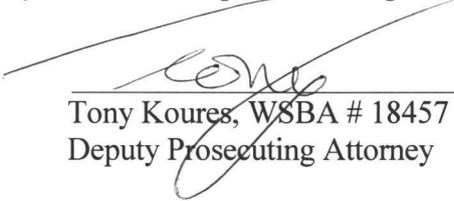
In 2005, the date of the Appellant's current offense, RCW 9.94A.525, provided that washout shall be interrupted by any crime. The any crime provision was substituted for felonies in 1995. See Law 1995, ch. 316, 1.

RCW 9.94A.525(2)(c) should be interpreted on its face. Clearly, the legislature intended that all crimes may interrupt a washout period.

#### CONCLUSION

The Appellant's argument should be rejected and motion for remand (of sentencing) should be denied.

Signed this 16<sup>th</sup> day of July, 2012, at Newport, Washington.

  
Tony Koures, WSBA # 18457  
Deputy Prosecuting Attorney

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON, )  
 )  
 ) Plaintiff, ) No. 301150  
 )  
 ) CERTIFICATION OF  
 vs. ) MAILING  
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 )  
 TROY DEAN STUBBS, )  
 )  
 )  
 )  
 ) Defendant.)

I, Tony D. Koures, Deputy Prosecuting Attorney for Pend Oreille County, certify under penalty of perjury of the laws of the state of Washington, that I served the defense counsel on the 16<sup>th</sup> day of July, 2012, with a copy of the States Brief, by depositing a true and correct copies to Troy Dean Stubbs of the same in the U.S. Mails, postage prepaid, and to Tanesha Canzater via e-mail to:

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CERTIFICATE OF MAILING

SIGNED at Newport, WA this 16 day of July, 2012.



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