

FILED  
DEC 28, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 307981-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON, Respondent

v.

MIGUEL CARRILLO-DENIZ, Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 11-1-00303-9

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BRIEF OF RESPONDENT

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## I. ISSUE PRESENTED

1. **Should this Court impose a 12 month time period for community custody, where the defendant is convicted of Rape in the Third Degree?**

## II. ARGUMENT

1. **The defendant did not object at trial to 36 months of community custody and should not be allowed to raise it for the first time on appeal.**

The defendant does not address RAP 2.5(a). RAP 2.5(a) provides that “a party may raise the following claimed errors for the first time in the appellate court: . . . (3) *manifest error* affecting a *constitutional right*.” (Emphasis added.) First, if there was an error, it is not “manifest.” The defendant argues only that the statute is ambiguous, not that the trial court’s interpretation was obviously incorrect. Second, the period of community custody is determined by statute, not by either the State or federal constitutions. There is no “constitutional right” for a defendant to be given 12 months, as opposed to 36 months, of community custody.

2. **Nevertheless, the defendant’s argument is without merit.**

### A. **The statute is not ambiguous.**

The defendant plead guilty to Rape in the Third Degree, which is not a crime listed in RCW 9.94A.507. RCW 9.94A.701(1)(a) requires the

trial court to sentence a defendant convicted of a sex offense not sentenced under RCW 9.94A.507 to three years community custody. There is no ambiguity in the statute: a person convicted of a sex offense not subject to RCW 9.94A.507, including Rape in the Third Degree, will receive three years of community custody.

**B. There is no contradiction between RCW 9.94A.701(1)(a) requiring three years of community custody for sex offenses and section (3)(a), requiring one year of community custody for “crimes against persons.”**

The defendant’s argument that the statutes are contradictory fails for several reasons:

- The *plain meaning* of the statute is that sex offenders should receive a longer period of community custody than others who commit “crimes against persons.”

The plain meaning of a statute is derived from the language of the statute and related statutes which disclose legislative intent. *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Here, it seems clear that the legislature intended to provide a longer period of community custody for a defendant who commits a sex offense or a serious violent offense than Assault in the Third Degree or Identity Theft in the Second Degree, both crimes against a person as defined in RCW 9.94A.411. If the legislature had intended that sex

offenses receive the same amount of community custody as “crimes against persons,” it would have stricken RCW 9.94A.701(1)(a).

- Statutory provisions should be harmonized whenever possible. *Emwright v. King County*, 96 Wn.2d 538, 543, 637 P.2d 656 (1981).

There are good reasons some “crimes against persons” should receive a longer period of community custody than others. For example, a sex offender should receive a longer period of community custody than an identity thief. RCW 9.94A.701 is consistent with this idea

- The defendant’s argument would end with an absurd result.

Courts should avoid interpretations which result in unlikely, absurd or strained consequences. *In re Parentage of J.M.K.*, 155 Wn.2d 374, 387, 119 P.3d 840 (2005); *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). If the defendant’s interpretation is correct, any “crime against a person” listed in RCW 9.94A.411(2) should receive 12 months of community custody. So, a defendant convicted of Murder in the First Degree would be given the same amount of community custody as a defendant guilty of Assault in the Third Degree, Communication with a Minor, or Identity Theft in the Second Degree. This is an absurd result. The legislature properly provided a longer period of time for Murder in the First Degree and sex offenses, than charges such as Assault in the Third Degree, Communication with a Minor, or Identity Theft in the Second

Degree.

- The *ejusdem generis* doctrine.

Where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind of class as those specifically mentioned. *Cockle v. Department of Labor and Industries*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001). Here, the general provision regarding “crimes against a person” follows the more particular provision about “sex offenses” or “serious violent offenses.” The legislature intended the first provision, RCW 9.94A.701(1), to have effect. The more general provision of RCW 9.94A.701(3) does not contradict the specific provision in subsection (1).

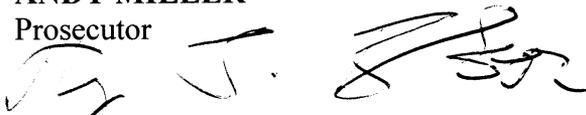
### III. CONCLUSION

The defendant did not inform the trial court that he objected to the period of community custody. The legislature explicitly provided that period should be for three (3) years for a sex offense. The defendant’s argument that all crimes listed in RCW 9.94A.411(2) should result in one year of community custody is an absurd result. The legislature properly provided for a longer period of community custody for serious violent

offenses and sex offenses than other crimes against persons. There is no ambiguity in the statute. The sentence should be affirmed.

**RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of December 2012.

**ANDY MILLER**  
Prosecutor



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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

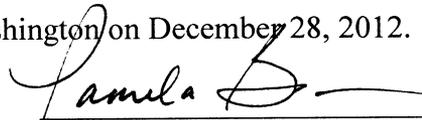
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Signed at Kennewick, Washington on December 28, 2012.



Pamela Bradshaw  
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