

FILED
AUGUST 25, 2015
Court of Appeals
Division III
State of Washington

NO. 33269-1-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

TERRY BAKER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CHELAN COUNTY

The Honorable Lesley A. Allan, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred calculating the appellant's offender score.

Issues Pertaining to Assignment of Error

1. The appellant pleaded guilty to escape from community custody in violation of RCW 72.09.310.¹ At his sentencing, the court counted a point for each of the appellant's prior escape convictions, plus, over the appellant's objection, a point for the fact that he was on community custody at the time of the offense.

Where the applicable provision of the Sentencing Reform Act (SRA), RCW 9.94A.525(14),² provides that when calculating the offender score for escape from community custody "only" prior escape convictions are to be counted, did the sentencing court err in counting an additional point for the appellant's community custody status?

¹ Under RCW 72.09.310:

An inmate in community custody who willfully discontinues making himself or herself available to the department for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW.

² The current version of RCW 9.94A.525 is attached to this brief as Appendix A.

2. Even if the issue becomes moot while this appeal is pending, should this Court nonetheless decide the appellant's case on the merits?

B. STATEMENT OF THE CASE³

The State charged Terry Baker with escape from community custody, alleged to have occurred on September 2, 2014. CP 29-30, 33-34. He pleaded guilty as charged on February 25, 2015. CP 35-45; 1RP 4. At the time of the plea, the parties agreed there was a dispute as to whether Baker's offender score was three points, as was the defense position, or four points, as was the State's position. 1RP 4-5; CP 45.

Sentencing occurred on March 18, 2015. 2RP 4. Baker argued that under RCW 9.94A.525(14), only points for prior escape convictions should be counted in the offender score. CP 1-19 (defense memorandum); 2RP 12. The State argued that under RCW 9.94A.525(19), the court should include an additional point for Baker's community custody status, resulting in a score of four points. CP 20-28 (State's memorandum); 2RP 12-15.

The parties and court acknowledged that the issue was a recurring one and that different judges within the county had reached different results. 2RP 5-7. But the court ultimately agreed with the State's

³ This brief refers to the verbatim reports as follows: 1RP – 2/25/15 and 2RP – 3/11 and 3/18/15.

argument, and therefore sentenced Baker to a standard range sentence of 12 months plus one day based on an offender score of four. CP 48; 2RP 19.

Baker timely appeals. CP 58-59.

C. ARGUMENT

1. THE COURT MISAPPLIED THE LAW IN CALCULATING BAKER'S OFFENDER SCORE.

Statutory interpretation is a question of law reviewed de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). A court's primary goal in construing the meaning of a statute is to determine and give effect to the Legislature's intent and purpose. State v. Sullivan, 143 Wn.2d 162, 174-75, 19 P.3d 1012 (2001). The meaning of a clear and unambiguous statute is derived from its plain language alone. State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001), cert. denied, 534 U.S. 1130 (2002). Courts must assume the Legislature means exactly what it says. State v. Delgado, 148 Wn.2d 723, 727, 63 P. 3d 792 (2003) (quoting Davis v. Dep't of Licensing, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)).

When the Legislature chooses different statutory terms, courts must recognize that a different meaning was intended by each term. State v. Roggenkamp, 153 Wn.2d 614, 625-26, 106 P.3d 196 (2005). An unambiguous statute is not subject to construction, and the court may not

add language to a clear statute even if it believes the Legislature intended something else but failed to express it adequately. Vita Food Products, Inc. v. State, 91 Wn.2d 132, 587 P.2d 535 (1978).

RCW 9.94A.525 governs offender score calculations. The introductory portion of the statute provides that “[t]he offender score is the sum of points accrued under this section rounded down to the nearest whole number.” RCW 9.94A.525(19) addresses offenders on community custody and provides that “[i]f the present conviction is for an offense committed while the offender was under community custody, add one point.” Under RCW 9.94A.525(14), however, “[i]f the present conviction is for Escape from Community Custody, RCW 72.09.310, count *only* prior escape convictions in the offender score” (Emphasis added.)

RCW 9.94A.525 is not ambiguous in this respect. It directs the sentencing court to count “only” one event as a point in the offender score: That event is a prior escape conviction.

“Only” is not defined by statute. An undefined term in a statute will be given its usual and ordinary meaning, and a court may use a dictionary definition to determine the usual and ordinary meaning of the term. State v. Van Woerden, 93 Wn. App. 110, 116, 967 P.2d 14 (1998), review denied, 137 Wn.2d 1039 (1999). Common dictionary definitions of the term include, most relevant to this case, “alone in an indicated or

implied category.” Webster’s Third New International Dictionary 1577 (1993). Based on the ordinary meaning of the term “only,” the single event that adds a point to an offender score is a qualifying prior conviction. Baker’s score, under the plain language of the statute, was three points, based on three prior escape convictions.

In addition, subsection (14) represents the single use of the word “only” in RCW 9.94A.525. Thus, its use is significant. Roggenkamp, 153 Wn.2d at 625-26. The State argued below, and the court found significant, that introductory section of RCW 9.94A.525 states that points from different subsections may be added together. But if more one than section does not apply, then that introductory provision simply does not apply. See State v. Dana, 59 Wn. App. 667, 670 n. 3, 800 P.2d 836 (1990) (general statutory provisions are usually subjugated to specific provisions). Notwithstanding the general introductory provision, the specific provision of the statute addressing Baker’s situation clearly indicates that “only” points from prior escape convictions count.

Even if this Court finds the provision is ambiguous, however, Baker still prevails. A statute is ambiguous if it is susceptible to two or more reasonable interpretations. Van Woerden, 93 Wn. App. at 116. If a statute is ambiguous, courts look to other sources of legislative intent to discern the statute’s meaning. Id. (citing State v. Rhodes, 58 Wn. App.

913, 915-16, 795 P.2d 724 (1990)). For example, Washington courts frequently look to final bill reports as part of an inquiry into legislative history. State v. Bash, 130 Wn.2d 594, 601, 925 P.2d 978 (1996).

If there is no clear contrary legislative intent, however, this Court applies the rule of lenity, which resolves statutory ambiguities in favor of the accused. Van Woerden, 93 Wn. App. at 116 (citing In re Personal Restraint Petition of Sietz, 124 Wn.2d 645, 652, 880 P.2d 34 (1994)).

RCW 9.94A.525(14) derived from former RCW 9.94A.360(14),⁴ which dealt with scoring for the crimes of failure to return from furlough and work release. Laws of 1992, ch. 75, § 4 (adding escape from community custody to scoring provision dealing with “willful failure to return from furlough” and “willful failure to return from work release”); State v. Law, 110 Wn. App. 36, 42, 38 P.3d 374 (2002). The furlough provision was present when, in 1988, the Legislature added the scoring provision to “add one point” for offenders on community placement. Laws of 1988, ch. 153, § 12. This later became the community custody scoring provision at issue in this case, RCW 9.94A.525(19).

Also in 1988, the Legislature created the new crime of escape from community custody. Laws of 1988, ch. 153, § 6. However, in 1992, the

⁴ The subsection numbering has also differed over the years, as the Legislature added and then removed provisions to RCW 9.94A.360 and RCW 9.94A.525, its later codification.

Legislature made substantive changes to the crime, changed the formerly unranked crime to a level 2 offense, and, therefore, included a scoring provision within the prior codification of RCW 9.94A.525. Laws of 1992, ch 75, §§ 3, 4, and 6. In its Final Bill Report, the Legislature noted that the crime would be scored the same as “similar escape-related offenses, such as willful failure to return from furlough or work release.” House Comm. on Judiciary, House Comm. on Appropriations, Senate Comm. on Law & Justice, Final Bill Report, ESHB 2490, 52nd Legislature (1992) (attached as Appendix B). Regarding punishment for the offense, the bill report notes in part that “[t]he offender *gets points* only if the offender has previous escape offenses.” App. B (emphasis added).

This bill was enacted after the community custody scoring provision was already in place. The Legislature would have been aware such scoring was available. Abbott v. Gen. Acc. Grp., 39 Wn. App. 263, 268, 693 P.2d 130, 134 (1984) (“Legislature is presumed to be aware of its past legislation.”) Yet the legislative history indicates community custody status was not to be included to the offender score. This makes sense because the very commission of the crime already takes community custody status into account. Cf. State v. Dunaway, 109 Wn.2d 207, 218-19, 743 P.2d 1237, 749 P.2d 160 (1987) (exceptional SRA sentence

forbidden where the aggravating circumstance is inherent in the offense itself).

The legislative history supports Baker's reading of the statute. To the extent that legislative intent is unclear, however, Baker prevails under the rule of lenity. Van Woerden, 93 Wn. App. at 116.

In summary, the plain language of RCW 9.94A.525 indicates that only prior escape convictions count toward an offender score calculation for one convicted of escape from community custody. In the event that this Court finds the statute to be ambiguous, however, legislative history indicates the state Legislature did not intend for the crime to score a point for community custody status. Baker also prevails under the rule of lenity.

Accordingly, this Court should remand for resentencing based on an offender score of three.

2. EVEN IF THE CASE BECOMES MOOT, THIS COURT SHOULD REACH THE MERITS.

Baker was sentenced to 12 months plus one day of confinement. As a result, he may have served his sentence by the time this Court considers the scoring issue in his case.

As a general rule, this Court does not consider questions that are moot. State v. Hunley, 175 Wn. 2d 901, 907, 287 P.3d 584 (2012). A case is technically moot if the court can no longer provide effective relief.

Id. The expiration of Baker's sentencing term technically renders this case moot. In re Pers. Restraint of Mattson, 166 Wn.2d 730, 736, 214 P.3d 141 (2009).

This Court may retain and decide a moot appeal, however, if it involves matters of continuing and substantial public interest. Id. In determining whether a case presents issues of continuing and substantial public interest, this Court consider three factors: “[(1)] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question.” Hunley, 175 Wn. 2d at 907 (internal quotation marks omitted) (quoting Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)).

It is appropriate for this Court to reach certain legal issues under the SRA even where a case is moot. State v. Harris, 148 Wn. App. 22, 28-29, 197 P.3d 1206 (2008), as amended (Mar. 10, 2009). Indeed, Baker meets all three criteria.

First, this is an issue of substantial public interest because it involves the SRA, which applies to all convicted felons in Washington state. The issue is not unique to Baker and is, moreover, likely to arise in every prosecution for escape from community custody.

For similar reasons, the second criterion is also satisfied. It is desirable that this Court provide guidance on the SRA so that similarly situated offenders receive proportionate sentences. The SRA was enacted to bring proportionality and uniformity to what had been a “highly discretionary” sentencing scheme. State v. Hayes, 182 Wn.2d 556, 561-62, 342 P.3d 1144 (2015) (quoting RCW 9.94A.010(1), (3)). As the sentencing court pointed out, judges in the same county were reaching different decisions on the issue. This is inconsistent with one of the most important objectives of the SRA. Resolution is needed. There is, to date, no published or unpublished decision resolving the issue.

Finally, this issue is likely to recur. The record indicates the issue had arisen twice on the very day of Baker’s sentencing.

In summary, even if Baker has served his sentence by the time the case comes before this Court for consideration, this Court should reach the merits, as Baker satisfies each factor supporting consideration of moot cases.

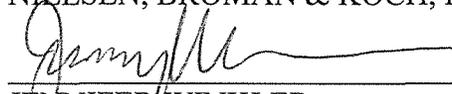
D. CONCLUSION

For the foregoing reasons, this Court should remand for resentencing based on an offender score of three. Even if this case becomes moot by the time this Court decides the issue, however, this Court should reach the merits to provide guidance on this frequently occurring issue of public importance.

DATED this 25TH day of August, 2015.

Respectfully submitted,

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APPENDIX A

9.94A.525. Offender score

West's Revised Code of Washington Annotated Title 9. Crimes and Punishments Effective: September 28, 2013 (Approx. 5 pages)

West's Revised Code of Washington Annotated
Title 9. Crimes and Punishments (Refs & Annos)
Chapter 9.94A. Sentencing Reform Act of 1981 (Refs & Annos)
Sentencing

Proposed Legislation

Effective: September 28, 2013

West's RCWA 9.94A.525

9.94A.525. Offender score

Currentness

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

- (1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed.
(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...
(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included...
(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included...
(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug...
(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included...

NOTES OF DECISIONS (451)

- Abuse of discretion
Anticipatory offenses
Burden of proof
Community custody
Comparability, out-of-state convictions
Concurrent sentences
Conduct of defendant, out-of-state convictions
"Confinement"
Construction and application
Courts-martial
Current offenses
Documents considered in calculating offender scores
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Elements, out-of-state convictions
Errors in calculating offender scores
Evidence, out-of-state convictions
Exceptional sentences
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Jury trial
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Misdemeanor convictions
Multiple offenses
Out-of-state convictions
Plea agreements
Preservation of issue, review
Prior convictions
Purpose, out-of-state convictions
Purpose of law
Reclassification of prior convictions
Related offenses
Remand, review
Repetitive domestic violence offense
Review
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Same criminal intent, multiple offenses
Sentence and punishment
Statement of reasons
Strike offenses
Subsequent convictions
Sufficiency of evidence, out-of-state convictions
Time of offenses
Validity
Validity of prior convictions
Violent offenses
Waiver of issue, review
Washed out offenses, review
Washout of prior convictions
Weight and sufficiency of evidence

consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult

or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A

violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense;

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

Credits

[2013 2nd sp.s. c 35 § 8, eff. Sept. 28, 2013; 2011 c 166 § 3, eff. July 22, 2011; 2010 c 274 § 403, eff. June 10, 2010; 2008 c 231 § 3, eff. June 12, 2008. Prior: 2007 c 199 § 8, eff. July 22, 2007; 2007 c 116 § 1, eff. July 1, 2007; prior: 2006 c 128 § 6, eff. June 7, 2006; 2006 c 73 § 7, eff. July 1, 2007; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

Notes of Decisions (451)

West's RCWA 9.94A.525, WA ST 9.94A.525

Current with all laws from the 2015 Regular and First Special Sessions that are effective on or before July 24, 2015, the general effective date for laws from the Regular Session, and available laws from the 2015 Second and Third Special Sessions

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APPENDIX B

FINAL BILL REPORT

ESHB 2490

C 75 L 92

Synopsis As Enacted

Brief Description: Making escape from community placement or supervision a class C felony.

By House Committee on Judiciary (originally sponsored by Representatives Padden, Morris, D. Sommers, Hochstatter, Forner, Brough, Broback, Silver, Fuhrman, Horn, P. Johnson, Bowman, Wynne, Morton, Carlson, Chandler, Mitchell and Tate).

House Committee on Judiciary
House Committee on Appropriations
Senate Committee on Law & Justice

Background: An offender who is released from prison may be charged with escape if the offender is in "community custody" and "wilfully fails to comply with any one or more of the controls placed on the inmate's movements by the department of corrections." The offense is a class C felony.

The crime of escaping from community custody is an "unranked" offense which means the presumptive sentencing range is up to one year in jail. The presumptive sentence for a "ranked" felony is determined by the ranking level of the crime and the number of criminal history points the offender has previously accumulated. When calculating offender points for similar escape-related offenses, such as willful failure to return from furlough or work release, the offender gets points only if the offender has previous escape offenses.

When the court sentences an offender convicted of a sex offense or a serious violent offender to the department, the court must impose a term of community placement upon release. The court must impose a variety of conditions unless the court waives those conditions. In addition, the court may impose special conditions. One special condition a court may impose on a sex offender is that the offender obtain the department's prior approval of the offender's residence location and living arrangements. The provision is not mandatory and does not apply to serious violent offenders.

Summary: The definition of escape is changed to mean that the inmate willfully discontinues making himself or herself available to the Department of Corrections for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer. The crime is ranked at seriousness level two, which carries a presumptive sentence of 0-90 days in jail for a first-time offender. Only prior escape convictions are counted as criminal history in calculating offender points for an offender's second or subsequent escape conviction. A number of technical changes are made as needed in the Sentencing Reform Act.

The court must require that sex and serious violent offenders obtain the department's approval of the offender's living arrangements and residence location during any period of community placement.

Votes on Final Passage:

House	98	0
Senate	49	0

Effective: June 11, 1992

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State v. Terry Baker

No. 33269-1-III

Certificate of Service

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 25th day of August, 2015, I caused a true and correct copy of the **Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

Douglas Shae
Chelan County Prosecuting Attorney
Prosecuting.attorney@co.chelan.wa.us

Terry Baker
Washington State Penitentiary
1313 N. 13th Avenue
Walla Walla, WA 99362

Signed in Seattle, Washington this 25th day of August, 2015.

x  _____