

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

No. 33269-1-III

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

Chelan County Superior Court  
Cause No. 14-1-00709-5

STATE OF WASHINGTON,  
Plaintiff/Respondent,

v.

TERRY BAKER,  
Defendant/Appellant.

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BRIEF OF RESPONDENT

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## I. STATEMENT OF THE CASE

The appellant, Terry Baker, was charged with escape from community custody on December 23, 2014. Baker pleaded guilty as charged on February 25, 2015. (CP 35-45; 1 RP 4). Baker was sentenced on March 18, 2015. (2 RP 4).

At sentencing, the State argued that Baker had an offender score of four points, three points for prior convictions of escape from community custody and one point for committing his current offense while on community custody. (CP 20-28; 2 RP 12-15). Baker argued that his offender score was only three points, claiming he should not be given a point for being on community custody. (CP 1-19; 2 RP 12).

The sentencing court concluded that under RCW 9.94A.525, the defendant had an offender score of four, based on three points for his prior convictions of escape from community custody and one point for being on community custody at the time of his current offense. (2 RP 14). In its decision, the court ruled that section 19 of RCW 9.94A.525 applies to all convictions if the present conviction is for an offense committed while the offender was on community custody; thus, one point is added. (2 RP 14).

The court does not believe that there is an ambiguity in the statute and the court's interpretation of the statute or reading of the statute is consistent with the language of the statute, including the introductory paragraph and harmonizes all of the sections of the statute, so for those reasons . . . , the court concludes that even an offender who is convicted of escape from community custody needs to have a point added under section 19, and so that is the court's ruling, and then Mr. Baker would be a 4 and his range would be 12 plus to 14 months.

(2 RP 14).

Baker then appealed. (CP 58-59).

## II. ISSUES AND ARGUMENT

### A. THE SENTENCING COURT CORRECTLY CALCULATED BAKER'S OFFENDER SCORE.

"Construction of a statute is a question of law." State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). "Where the language of a statute is clear, legislative intent is derived from the language of the statute alone." Id. "The 'plain meaning' of a statutory provision is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that

provision is found, related provisions, and the statutory scheme as a whole.” Id. However, Baker’s argument on appeal misapprehends RCW 9.94A.525 by focusing on subsections (14) and (19) in isolation. To do so does not accurately reflect the plain meaning of the statute. In order to discern its plain meaning, we must review the statute as a whole to determine its context and statutory scheme.

RCW 9.94A.525 consists of an introduction and 22 subsections. The introduction states, in part, “The offender rules are as follows: The offender score is the *sum of points accrued under this section* rounded down to the nearest whole number.” (Emphasis added). Each subsection specifies how those points are calculated and imposed.

Subsection (14), the subsection in question, indicates that only prior escape convictions count in the offender score. The word “only” does not refer to the sum total of points, it applies to those *prior convictions* that count in the offender score. In the present case, Baker has three prior convictions for escape from community custody. So, under subsection (14) he would have three points.

Next, one then moves down to subsection (19), where it indicates that “[i]f the present conviction is for an offense committed while the offender was under community custody, add one point.” If it applies, this addition of one point to the offender score is mandatory. “The Sentencing Reform Act requires a 1-point increase in a defendant’s offender score if the crime for which the defendant is being sentenced was committed while the defendant was ‘under community custody.’” State v. Crawford, 164 Wn. App. 617, 622, 267 P.3d 365 (2011). The court *must* add one point to the offender score. State v. Crandall, 117 Wn. App. 448, 451, 71 P.3d 701 (2003) (emphasis added). In the present case, Baker was under community custody when he committed the offense of escape from community custody, thus one point must be added to his offender score.

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

Baker claims on appeal that this court should reach the merits in this matter even if the case becomes moot. The State

agrees with his contention for the reasons set forth in the appellant's brief.

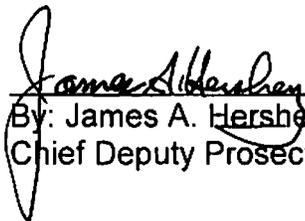
### III. CONCLUSION

For the reasons set forth above, the sentence in this matter should be affirmed as the offender score was correctly calculated by the sentencing court under RCW 9.94A.525.

DATED this 25th day of November, 2015.

Respectfully submitted,

Douglas J. Shae  
Chelan County Prosecuting Attorney

  
By: James A. Hershey WSBA #16531  
Chief Deputy Prosecuting Attorney

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

STATE OF WASHINGTON,	)	
	)	No. 33269-1-III
Plaintiff/Respondent,	)	Superior Court No. 14-1-00709-5
	)	
vs.	)	DECLARATION OF SERVICE
	)	
TERRY BAKER,	)	
	)	
Defendant/Appellant.	)	

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 25th day of November, 2015, I electronically transmitted to:

Renee S. Townsley  
Clerk/Administrator  
Court of Appeals, Div. III  
500 N. Cedar Street  
Spokane, WA 99201

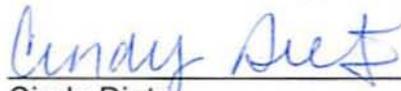
AND deposited in the United States Mail a properly stamped and addressed envelope directed to:

Erik J. Nielsen  
Jennifer Winkler  
Nielsen, Broman & Koch, PLLC  
1908 E. Madison Street  
Seattle, WA 98122

said electronic transmission and envelope containing true and correct copies of Brief of Respondent.

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Signed at Wenatchee, Washington, this 25th day of November, 2015.



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Cindy Dietz  
Legal Administrative Supervisor  
Chelan County Prosecuting Attorney's Office