

NO. 34835-1-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

CHRISTINO SHAWN RENION, Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY THE ASSIGNMENTS OF ERROR

1. Whether the trial court correctly included Renion's predicate misdemeanor convictions for violation of a protection order in his offender score calculation pursuant to RCW 9.94A.525(21)?
2. Whether the trial court adequately inquired into Renion's ability to pay discretionary legal financial obligations?
3. Whether substantial evidence supports the trial court's finding that Renion had the ability to pay discretionary legal financial obligations?

B. ANSWERS TO THE ISSUES PRESENTED BY THE ASSIGNMENTS OF ERROR

1. The trial court correctly included Renion's predicate misdemeanor convictions for violation of a protection order in his offender score calculation pursuant to RCW 9.94A.525(21).
2. The trial court adequately inquired into Renion's ability to pay discretionary legal financial obligations.
2. Substantial evidence supports the trial court's finding that Renion had the ability to pay discretionary legal financial obligations.

II. STATEMENT OF THE CASE

The Appellant, Christino Shawn Renion, was convicted of three counts of felony violation of a protection order. Clerk's Papers (CP) at 248-50. The convictions stemmed from three text messages Renion sent his ex-

girlfriend Rachel Nelson in violation of a no contact order. Verbatim Report of Proceeding (VRP) at 44, 49-52.

Testimony at trial revealed that Renion called Nelson Aye-Aye-Ron after the Comedy Central skit as a pet name. VRP at 38. Nelson testified that Renion used the moniker CR\$-1 after the hip hop artist Krs-1 and frequently signed text messages with the moniker. *Id.* at 39. Officer Goss also testified that Renion told him his moniker was CR\$-1. *Id.* at 65.

Evidence admitted at trial showed that in April 2016, Renion sent Nelson three text messages in violation of a no contact order. SE 2, 3, 4, and 7. On April 20, 2016 at 11:33 p.m., Renion sent a text message to Nelson that used Nelson's pet name Aye-Aye-Ron and asked her to contact him. SE 2. On April 23, 2016 at 11:13 a.m., Renion texted Nelson, told her they needed to talk, and signed the message CR\$-1. SE 3. Then on April 26, 2016 at 12:01 a.m., 12:06 a.m., and 12:53 a.m., Renion texted Nelson again. SE 4. Some of the text messages contained colorful language.

Nelson testified that she resided in Tieton, Washington and had the phone number of 509-388-3525 at the time she received the text messages from Renion.

A number of certified documents were also admitted at trial. These documents included certified documents from Renion's prior convictions for violation of a protection order, a certified photo of Renion from the

Washington Department of Licensing, a certified copy of a no contact order, and Renion's certified booking fingerprints. SE 1, 5-9.

A jury convicted Renion of three counts of felony violation of a protection order. CP at 248-50. The jury also found that Renion and Nelson were family or household members. *Id.* at 251-53.

On October 21, 2016, Renion was sentenced. *Id.* at 270. Counsel for Renion contended that the predicate convictions did not count toward his offender score. VRP 158-59. Counsel for Renion further argued that Renion had an offender score of four for each count. *See id.* at 159-60. Respondent argued that the predicate convictions counted. *Id.* at 160. The trial court declined to count Renion's predicate convictions and calculated Renion's offender score as four for each count. *Id.* at 178. Renion faced a standard range sentence of 21 to 29 months for each count. *Id.* The court sentenced Renion to 29 months of confinement and 12 months of community custody on each count with the time to run concurrently. CP at 271. The \$1,650 in legal financial obligations were also imposed, which included the following: \$500 crime penalty assessment, \$200 criminal filing fee, \$400 court appointed attorney recoupment, \$100 DNA collection fee, \$100 domestic violence assessment, \$100 warrant fee, and \$250 jury fee. *Id.* at 271. The costs of incarceration were capped at \$500. *Id.*

On November 1, 2016, Respondent filed a motion to reconsider the trial court's calculation of Renion's offender score. *Id.* at 301-07. Renion was transported back from prison for the hearing. The hearing was held on December 9, 2016. *Id.* at 319. The trial court agreed with the State's calculation of Renion's offender score and ruled that:

. . . we're using the offender's [sic] score that I had decided under the law after my review was appropriate and that offender's [sic] score of seven triggers a standard range from 51 to 60 months.

. . . .

What I am going to do is I'm going to set it at – there's a reason for me to set it at 48 months, with 12 months of supervision. It reduces the sentence three months below the minimum on the standard range, but in combination then with the supervision, secures what the state [sic] had wanted in one regard, which was that you would be under somebody's eye for the five year total.

So under the 2.6 language, if somebody could write in – just handwrite in that the court found the multiple offense policy was warranted to reduce it to 48 months, with 12 months of community supervision, that's the sentence I'll impose.

VRP 12/09/2016 at 21-22. The court ordered that the 48 months of confinement imposed on each count was to be served concurrently. CP at 321.

This timely appeal then followed.

III. ARGUMENT

A. THE TRIAL COURT PROPERLY INCLUDED RENION'S PREDICATE CONVICTIONS FOR VIOLATION OF A PROTECTION ORDER IN HIS OFFENDER SCORE CALCULATION.

Renion alleges that the trial court erred when it included his three predicate convictions for violation of a protection order in his offender score calculation. *See* Br. of Appellant at 1, 6-7. This argument lacks merit because it contradicts the plain language of RCW 9.94A.525(21).

A sentencing court acts outside the scope of its authority when it imposes a sentence based on a miscalculated offender score. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 868, 50 P.3d 618 (2002). A sentencing court's offender score calculation is reviewed de novo. *State v. Moeurn*, 170 Wn. 2d 169, 172, 240 P.3d 1158 (2010). In cases where a sentencing court miscalculates a defendant's offender score, the error may be remedied by resentencing the defendant using the correct offender score. *State v. Ross*, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004). A resentencing hearing is not necessary here because the trial court properly calculated Renion's offender score as seven for each count.

Felony domestic violence offender scoring as in this case is guided by RCW 9.94A.525(21). The statute provides that:

(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 [pleaded] 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 [pleaded] 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.

RCW 9.94A.525(21) (emphasis added). Each of Renion's prior adult convictions for repetitive domestic violence offenses pled and proven after August 1, 2011 count toward his offender score if certain requirements are met. First, each of the prior convictions must constitute a "prior conviction" under RCW 9.94A.525(1). Second, each conviction also must satisfy the definition of "repetitive domestic violence offense" under RCW 9.94A.030(42).

A "prior conviction" is defined as

a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed 'other current offenses' within the meaning of RCW 9.94A.589.

RCW 9.94A.525(1). With respect to Renion's prior convictions, in case number 22082, he pled guilty to two counts of gross misdemeanor violation of a protection order domestic violence on February 18, 2016. *See* SE 8. The certified conviction documents demonstrate that each count included a different date of incident. *Id.* One incident occurred on January 19, 2016 while the other occurred on January 20, 2016. *Id.* Renion also pled guilty in case number 22052 to one count of gross misdemeanor violation of a

protection order domestic violence on February 3, 2016. *See* SE 9. These convictions occurred before Renion was convicted by a jury in the instant case. The three convictions, therefore, satisfy the definition of a “prior conviction” under RCW 9.94A.525(1).

What then remains to address is whether the convictions constitute a “repetitive domestic violence offense” under RCW 9.94A.030(42). The statute provides that a “repetitive domestic violence offense” includes [d]omestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense.” RCW 9.94A.030(40)(a)(iii). The exhibits admitted at trial demonstrate that Renion pled guilty to three counts of gross misdemeanor violation of a protection domestic violence order under RCW 26.50.110. *See* SE 8, 9. These exhibits establish that each conviction constitutes a “repetitive domestic violence offense” under RCW 9.94A.030(42). Accordingly, the convictions count as three points toward Renion’s offender score.

- 1. The plain language of RCW 9.94A.525 reveals that the legislature intended to treat domestic violence cases differently from felony driving under the influence or physical control cases.**

Renion argues that because the legislature failed to mention predicate domestic violence offenses in RCW 9.94A.525 whereas it mentioned predicate traffic offenses, it meant to exclude them from counting toward his offender score under the maxim *expressio unius est*

exclusio alterius. See Br. of Appellant at 6-8. This argument misses the mark because it misconstrues the legislature's intent. Reading the statute as a whole reveals that the legislature provided in section (2) the type of offenses that count and do not count toward the offender score based on washout provisions and the current conviction. RCW 9.94A.525. There are no exceptions to the washout provisions in section (2)(f) pertaining to repetitive domestic violence convictions. *Id.* In contrast, there are exceptions in section (2)(d) to the washout provisions for serious traffic convictions. *Id.*

The interpretation of a statute is a question of law that is reviewed *de novo*. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The primary responsibility of courts in interpreting statutes is to discern and implement the legislature's intent. *Id.* at 450 (citing *Nat'l Electrical Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). Washington courts have consistently recognized that "[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)). Moreover, the plain meaning of a statute is gleaned "from all that the [l]egislature has said in the statute and related statutes which disclose

legislative intention about the provision in question.” *Dep’t of Ecology v. Campbell & Guinn L.L.C. (Campbell & Guinn)*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). “[T]he only permissible interpretation is that which gives effect to the plain language” when the meaning of the statute is plain. *State v. Linssen*, 131 Wn. App. 292, 296, 126 P.3d 1287 (2006) (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)). If, after conducting a plain meaning analysis, the statute is ambiguous, the court is then permitted to resort to the canons of statutory construction or legislative history. *State v. Hodgins*, 190 Wn. App. 437, 443, 360 P.3d 850 (2015) (citing *Campbell & Guinn*, 146 Wn.2d at 12).

Renion misconstrues the intent of the legislature in RCW 9.94A.525. The intent of the legislature is clear. This, in turn, defeats the need to rely on the canons of statutory construction such as *expressio unius est exclusio alterius* or legislative history to determine what the legislature intended. The statute provides in part:

(d) Except as provided in (e) of this subsection, serious traffic convictions 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 conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without

committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement 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.

. . . .

(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.

.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead [pleaded] 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 [pleaded] 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 [pleaded] 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 [pleaded] and proven after August 1, 2011.

RCW 9.94A.525(2)(d)-(f), (11), (21).

Renion's argument is based on a strained reading of RCW 9.94A.525. Section (2)(e) modifies section (2)(d) as it pertains to predicate offenses that may also be classified as serious traffic offenses. RCW 9.94A.525. A serious traffic offense is a "[n]onfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5))." RCW

9.94A.030(45). Section (2)(d) provides that serious traffic offenses are not included in the offender score calculation if an offender has spent five years in the community without a new conviction. RCW 9.94A.525. Section (2)(d) does not apply if the current conviction is for felony driving under the influence (DUI) or felony physical control. *Id.* The last sentence of section (2)(e) is instructive. The legislature expressly provided that “[a]ll other convictions of the defendant shall be scored according to this section.” *Id.* at (2)(e).

Repetitive domestic violence offenses, on the other hand, are treated differently. These offenses do not count toward the offender score if an offender has spent ten years in the community without a new conviction. *Id.* at (2)(f). This is distinguishable from (2)(e) because washout applies regardless of the current conviction. *Id.* As explained above, a repetitive domestic violence offense is defined in RCW 9.94A.030(42), which includes violation of a protection order under RCW 26.50.

The legislature intended for section (2) to modify offender scoring elsewhere in the statute. *Id.* Sections (2)(d) and (2)(e) guide the scoring of felony traffic offenses in section (11). *Id.* Section (2)(f) guides the scoring of felony domestic violence offenses in section (21). *Id.*

This demonstrates that the legislature intended to treat some predicate offenses differently with respect to washout provisions only in

certain cases. It does not mean that predicate domestic violence offenses do not count toward the offender score as Renion suggests. Rather, the plain meaning analysis supports that Renion's prior convictions for violation of a protection order count as three points toward his offender score under RCW 9.94A.525(21). These convictions are not eligible for washout under RCW 9.94A.525(2)(f) because they occurred in 2016. *See* SE 8, 9.

Legislative History

Assuming arguendo that the plain meaning analysis is not dispositive of the statutory interpretation issue, it will then be necessary to consider extrinsic evidence to determine what the legislature intended. *State v. Pittman*, 185 Wn. App. 614, 620-21, 341 P.3d 1024 (2015) (citing *Campbell & Guinn*, 146 Wn.2d at 12). Extrinsic evidence can be found in the form of legislative history, common law precedent, or the canons of construction. *Id.*

Beginning with legislative history, the legislature amended a number of statutes in 2010 including both RCW 9.94A.525 and RCW 9.94A.030. LAWS OF 2010, ch. 274; *see also* Substitute H. B. 2777, 61st Reg. Sess. (Wash. 2010). Through these amendments, a new sentencing scheme was created for the scoring of domestic violence offenses. Substitute H. B. 2777. The legislature also defined the term repetitive domestic violence offense. *Id.* Then, in 2011, the legislature amended

RCW 9.94A.525(2) to include section (f) which created a ten-year washout period for repetitive domestic violence offenses. LAWS OF 2011, ch. 166; *see also* Substitute H. B. 1188, 62nd Reg. Sess. (Wash. 2011).

Two years later, the legislature amended RCW 9.94A.525(2)(e). The amendment provided that predicate crimes would count toward the offender score when the current conviction is for felony DUI or physical control irrespective of whether the crimes were eligible for washout. LAWS OF 2013, ch. 35; *see also* Engrossed Second Substitute S.B. 5912, 63rd Reg. Sess. (Wash. 2013).

What can be gleaned from these amendments is that the legislature created a sentencing scheme for domestic violence offenses and scaled back the washout provisions for certain serious traffic offenses. These amendments do not show that the legislature sought to remove predicate domestic violence offenses from the offender score calculation. To the contrary, the legislature imposed harsher sentencing for domestic violence offenses based upon both felony and non-felony repetitive domestic violence convictions. A review of the legislative history is consistent with the plain meaning analysis in that the legislature intended to treat domestic violence offenses differently than serious traffic offenses.

This is especially evident in two respects. First, there are different washout provisions in RCW 9.94A.525(2) for each type of crime.

Repetitive domestic violence offenses are subject to a ten-year washout period while serious traffic offenses are subject to a five-year washout period unless the current conviction is for felony DUI or physical control. *Cf.* RCW 9.94A.525(2)(f) *with* RCW 9.94A.525(2)(d)-(e). Second, the amendments adjusted the offender score calculation under the Sentencing Reform Act, which created harsher sentencing for domestic violence offenders in RCW 9.94A.525(21). Specifically, one of the amendments added section (21) to RCW 9.94A.525, which provided that each adult felony repetitive domestic violence conviction counts as two points toward the offender score while each gross misdemeanor repetitive domestic violence conviction counts as one point. *See* LAWS OF 2010, ch. 274 § 403, 43-44.

Case Law

Turning now to case law, Washington courts have addressed the scoring of domestic violence offenses under RCW 9.94A.525(21). For example, this Court has held that an offender score is increased under RCW 9.94A.525(21) when the present conviction satisfies the definition of domestic violence in either RCW 10.99.020 or RCW 26.50.010. *Hodgins*, 190 Wn. App. at 445-46. Prior to *Hodgins*, courts wrestled with choosing between either the “intersection” or “union” of two statutory definitions of

domestic violence in calculating the offender score in domestic violence offenses. *Id.*

Courts have also held that a gross misdemeanor violation of a no contact domestic violence conviction counts as one point toward the offender score when the conviction constitutes both a “prior conviction” and “repetitive domestic violence offense.” RCW 9.94A.525(1) (defining prior conviction); RCW 9.94A.030 (defining repetitive domestic violence offense); *see also State v. Rodriguez*, 183 Wn. App. 947, 958, 335 P.3d 448 (2014). In *Rodriguez*, the defendant committed one count of felony violation of a no contact order and one count of gross misdemeanor violation of a no contact order against different victims on the same day. 183 Wn. App. at 950. The defendant pled guilty to both charges on the same day and was later sentenced. *Id.* at 951. The primary issue centered upon whether the gross misdemeanor conviction counted toward the defendant’s offender score in the felony charge. *Id.* On review, the court found that the misdemeanor counted as one point toward the defendant’s offender score because it was a “prior conviction” and a “repetitive domestic violence offense.” *Id.* at 958-59.

Extending the reasoning of *Rodriguez* to the case at bar, Renion’s three prior convictions for violation of a protection order domestic violence satisfy the definition of “prior conviction” and “repetitive domestic violence

offense.” Therefore, each conviction counts as one point toward his offender score pursuant to RCW 9.94A.525(21).

Canons of Statutory Construction

Resorting to the canons of statutory construction is not necessary because the plain language of RCW 9.94A.525 is unambiguous. *See J.P.*, 149 Wn.2d at 450 (recognizing that when the plain language of a statute is unambiguous, the court’s inquiry ends). Entertaining the argument that the plain language is ambiguous, three of the canons of statutory construction apply here.

The first canon requires courts to “interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous.” *Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010). The language in RCW 9.94A.525(2)(d) provides that serious traffic convictions are not included in the offender score if the offender has spent five years in the community without a conviction except as provided in (2)(e). The legislature carved out an exception in section (2)(e) for current convictions involving felony DUI or physical control by mandating that predicate offenses would always count toward the offender score in these cases even if the washout period is satisfied. RCW 9.94A.525. Significantly, the legislature declined to make any exceptions to the washout provisions governing repetitive domestic violence offenses in section (2)(f). *Id.*

Effectuating all of the language in RCW 9.94A.525 supports that DUI and physical control cases are treated differently from repetitive domestic violence cases. The legislature crafted a narrow exception to the washout provisions in RCW 9.94A.525(2). Through this exception, predicate convictions will count toward the offender score if the current conviction is driving under the influence or physical control. RCW 9.94A.525(2)(e). This is true even if the predicate offense satisfies the five-year washout period. No such exception exists for repetitive domestic violence offenses. Had the legislature intended predicate domestic violence offenses not to count toward the offender score, it would have provided for that in the 2011 amendment when it added section (2)(f) to RCW 9.94A.525.

The second canon requires ambiguity in the statute. Lower courts look to the rules of construction for guidance and consider the reasonableness of proposed interpretations only when the language is ambiguous. *Bellevue Firefighters Local 1604 v. City of Bellevue*, 100 Wn.2d 748, 751, 675 P.2d 592 (1984), *cert. denied*, 471 U.S. 1015, 85 L. Ed. 2d 299, 105 S. Ct. 2017 (1985). The language of RCW 9.94A.525 is unambiguous. The legislature created an exception to the washout provisions in section (2)(d) for felony DUI and physical control cases only. That exception does not apply in domestic violence cases.

Meanwhile, under the third canon courts are asked to apply common sense to avoid “absurd results in statutory interpretation.” *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008) (citing *Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007)). To interpret RCW 9.94A.525 as Renion suggests results in an absurd reading of the statute. Employing a natural, common sense reading of the statute reveals that the legislature did not intend to treat felony DUI and physical control cases the same as domestic violence cases. Repetitive domestic violence offenses are included in the offender score if they are not subject to the ten-year washout period in section (2)(f). RCW 9.94A.525. The washout period for serious traffic offenses is five years. *Id.* at (2)(d). The legislature intended for all predicate offenses to count toward the offender score in felony DUI and physical control cases irrespective of the washout provisions. *Id.* at (2)(e). It did not evince the same intent for domestic violence cases. This difference means that one type of crime should not be treated the same as the other. This is not what the statute provides for nor is it what the legislature intended

Lastly, the canon that Renion relies upon is *expressio unius est exclusio alterius*. This canon of construction provides that when a statute specially designates a thing or classes of things, an inference arises in law that all things or classes of things omitted from it were intentionally omitted

by the legislature. *State v. Flores*, 194 Wn. App. 29, 36-36, 374 P.3d 222 (2016) (citing *State v. Swanson*, 116 Wn. App. 67, 75, 65 P.3d 343 (2003)). Renion argues that the legislature's silence about predicate domestic violence offenses means that it intended to exclude these offenses from the offender score calculation. *See* Br. of Appellant at 8-9.

Renion's reliance on this canon is misplaced because repetitive domestic violence offenses and/or predicate offenses are not in the same class of things as serious traffic offenses or their predicate offenses. The legislature addressed these two types of crimes in separate parts of the same statute. It should not be inferred that the legislature intended to treat these two very different types of crimes the same with respect to offender scoring. Such an inference directly contradicts the bulk of legislative history behind the amendments to RCW 9.94A.525 and 9.94A.030 that enhance domestic violence offender scoring.

Accordingly, the extrinsic evidence analysis discussed above comports with the results of the plain meaning analysis. It is clear that the legislature did not intend to treat domestic violence offenses the same as felony DUI and physical control cases under RCW 9.94A.525.

B. THE TRIAL COURT PROPERLY IMPOSED DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS.

Renion alleges that the trial court violated *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) when it conducted only a “nominal inquiry” of his ability to pay discretionary legal financial obligations (LFOs). *See* Br. of Appellant at 11-12. Both *Blazina* and RCW 10.01.160(3) require trial courts to assess a defendant’s present and future ability to pay discretionary LFOs at sentencing. The extent of what is required in the trial court’s “individualized inquiry” is disputed. *Blazina*, 182 Wn.2d at 838.

The *Blazina* Court recognized that “[a] defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review.” 182 Wn.2d at 832. Renion did not challenge LFOs below, and he should not be allowed to do so now. *See* VRP 172-73, 179; *see also* VRP 12/09/2016 at 23-24. In the event that this Court exercises discretionary review, the record demonstrates that the trial court properly assessed Renion’s current and future ability to pay discretionary LFOs.

Here, the trial court inquired into Renion’s ability to pay fairly extensively before imposing LFOs. For example, the court inquired as to Renion’s employment history, whether he anticipated obtaining work after

he was released from prison, whether he had any assets, whether he owned any real property or vehicles, and if he had any money in the bank. VRP at 178-79.

After inquiring into Renion's ability to pay LFOs, the trial court imposed the following discretionary LFOs: \$400 court appointed attorney fee; \$100 domestic violence assessment; \$100 warrant fee; and \$250 jury fee. CP at 323 (resentencing hearing); *see also id.* at 274 (sentencing hearing). The court also capped the costs of incarceration at \$500. *Id.*

While not conceding this issue, Respondent agrees to strike discretionary LFOs in order to avoid the continued costs of litigation in the event that the Court grants discretionary review.

IV. CONCLUSION

The trial court properly calculated Renion's offender score as a seven for each offense at the resentencing hearing. The legislature's intent in RCW 9.94A.525 is clear under a plain meaning analysis. Repetitive domestic violence offenses and serious traffic offenses are subjected to different washout provisions. This affects how predicate offenses are counted in the offender score calculation. The trial court correctly applied RCW 9.94A.525(21). Its calculation of Renion's offender score should be affirmed. Lastly, although not conceding the issue, if the Court grants

DECLARATION OF SERVICE

I, Codee L. McDaniel, state that on June 21, 2017, by agreement of the parties, I emailed a copy of BRIEF OF RESPONDENT to Ms. Andrea Burkhart at andrea@burkhartandburkhart.com.

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

DATED this 21st day of June, 2017 at Yakima, Washington.

/s
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June 21, 2017 - 12:04 PM

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Appellate Court Case Title: State of Washington v. Christino Shawn Renion
Superior Court Case Number: 16-1-00825-4

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