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

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

JUAN ENRIQUEZ-MARTINEZ,
Defendant/Appellant.

APPEAL FROM THE KLINKITAT COUNTY SUPERIOR COURT
Honorable Brian Altman, Judge
Honorable Randall C. Krog, Motions Judge

SUPPLEMENTAL BRIEF OF APPELLANT

SUSAN MARIE GASCH
WSBA No. 16485
P. O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
Attorney for Appellant

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A. ASSIGNMENT OF ERROR

The Klickitat County, Washington trial court erred in denying Enriquez-Martinez' November 28, 2016, motion to modify the judgment and sentence, under CrR 7.8.

Issues Pertaining to Assignment of Error

1. Whether Enriquez-Martinez is entitled to receive credit in Washington for all of his pretrial jail time served when in-custody in Oregon while simultaneously under arrest on Oregon and Washington charges.

2. Whether trial counsel was ineffective for not directing the Washington court's attention to *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015).

B. STATEMENT OF THE CASE

1. Background.

On September 6, 2018, counsel was appointed to represent Juan Enriquez-Martinez on his appeal from the Klickitat County Superior Court's May 7, 2018, Order denying Defendant's CrR 7.8 Motion that was filed by Appellant's trial counsel on November 28, 2018. Counsel on appeal initially filed an *Anders* brief, but subsequently moved to withdraw her *Anders* brief and to file a supplemental brief based on *State v. Lewis*,

184 Wn.2d 201, 355 P.3d 1148 (2015). Counsel's motion was granted.

Commissioner's Ruling, filed September 10, 2019 (on file).

2. Statement of the Case.

On April 21, 2014, the defendant, Juan Enriquez-Martinez, was arrested and held in-custody in Oregon on charges involving sex offenses for allegedly having sexual contact and/or penetration with a minor, L.P., in Wasco County, Oregon. CP 34 lines 3–5.

On May 27, 2014, Enriquez-Martinez was charged, while in-custody in Oregon, via information in the Klickitat County cause number that is involved in this current appeal, with one count of first degree rape of a child and one count of first degree child molestation for conduct allegedly occurring with L.P. while she and the defendant were in Bingen, Klickitat County, Washington. CP 1–2.

On June 11, 2014, Enriquez-Martinez, while in-custody in Oregon, was served with the no bail arrest warrant in this Washington matter. CP 34 lines 11–12; CP 55.

Approximately one year later, on June 17, 2015, Enriquez-Martinez, while still in-custody in Oregon, accepted a global resolution for both matters, wherein he would receive 75 months in prison concurrent with each other count and to be served in Oregon. CP 34 lines 13–14.

On June 23, 2015, Enriquez-Martinez, through Oregon counsel, submitted a petition to enter a plea of guilty to the Wasco County Circuit Court. No immediate action was taken by the Oregon Court. CP 38 paragraph 5.

On January 18, 2016—more than 20 months after he was arrested on the Washington charges—Enriquez-Martinez waived extradition and was transferred from Oregon to Klickitat County, Washington. CP 38 paragraph 9; 2/16/2016 RP 9.

The following day, January 19, 2016, Enriquez-Martinez pleaded guilty in Klickitat County to count II, first degree child molestation. 1/19/2016 RP 4¹; CP 34 lines 15–16.

On February 16, 2016, Enriquez-Martinez was sentenced on the Klickitat matter, with the Honorable Brian Altman presiding. 2/16/2016 RP 8–13. In boilerplate language, the judgment and sentence states in section 4.1(c), “**Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.” CP 20; CP 19: Klickitat County, WA Cause #14-1-00084-9.

¹ Count I was dismissed at sentencing. CP 20 at paragraph 3.2.

Defense counsel made no mention of *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015).

Following sentencing, Enriquez-Martinez was remanded to Washington Department of Corrections, wherein he remained until June 2016. CP 34 lines 23–25. Thereafter, Enriquez-Martinez was transferred back to Oregon and on November 16, 2016, Wasco County accepted the plea he had submitted nearly 15 months earlier. CP 39 paragraphs 15 and 16. He was sentenced in the Oregon matter on December 08 or 14, 2016; then was returned back to DOC’s custody and prison. CP 39–40 paragraphs 18, 19, 20, 22; 2/6/17 RP 33 lines 19–25.

On November 28, 2016, after Enriquez-Martinez entered his Oregon plea but before he was sentenced on the Oregon matter, his Washington counsel filed a CrR 7.8 motion seeking to amend his February 16, 2016, Washington judgement and sentence to include approximately 18 [*sic*]² months credit for time served in Oregon beginning June 11, 2014 (date Enriquez-Martinez was served while in-custody in Oregon with the Washington arrest warrant) and ending/including the January 18, 2016,

² From June 11, 2014, to January 18, 2016, is slightly over 20 months. Thus 20 months should be the approximate credit for time served between these dates. There are 587 days beginning on June 11, 2014 and ending/including January 18, 2016. GIGA CALCULATOR.com.

date when Enriquez-Martinez was transported to Klickitat County to enter his plea to the Washington charges the following day, January 19, 2016. CP 36 lines 7–11; 12/5/2016 RP 15, 20–21; 2/6/2017 RP 29. Counsel asserted that “[t]o date, Washington Department of Corrections is refusing to give the defendant any credit for time served while the defendant was in Oregon and before transport to Washington in early 2016.” CP 35 lines 1–3.³

Enriquez-Martinez was not present when the CrR 7.8 motion was first addressed on December 5, 2016, with the original sentencing judge, the Honorable Brian Altman, presiding. Enriquez-Martinez was still in Oregon awaiting a December 8, 2016 sentencing on the Oregon matter. 12/5/2016 RP 14. The matter was continued in order to secure the defendant’s presence. 12/5/2016 RP *passim*.

On February 6, 2017, the defendant was present and the Honorable Randall Krog heard argument on the CrR 7.8 motion. 2/6/2017 RP 27–34.

³ Although the verbatim report of proceedings notes a number of “inaudible” portions, it appears the State and defense counsel agree Enriquez-Martinez received credit from DOC for 29 days credit for time served from January 19, 2016 (date he entered his plea in Washington) through February 16, 2016 (date he was sentenced on the Washington charge). CP 35 lines 1–3; 12/5/2016 RP 16 lines 17–18; 12/5/2016 RP 17 lines 18–19, 22–24; 12/5/2016 RP 18 lines 8–9; 2/6/2017 RP 31 line 25 through RP 32 lines 1–6.

Among other things, the State represented that the global plea agreement concerned “credit for concurrent [sentence] time, but not credit for time he wasn’t . . . serving solely on this cause number.” 2/6/2017 RP 30. The State computed the credit served “solely on this [Washington] cause number” as beginning on “[January 18, 2016] when he came in[to] the state of Washington.” 2/6/2017 RP 32.

The court asked, “So what authority do I have to go back before that, Mr. Lantz?” Defense counsel responded, “Other than the fact that this is the court that sentenced him, there’s no extra, I guess, statutory or rule authority. . . .” 2/6/2017 RP 32. Defense counsel again made no mention of *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015), and was therefore ineffective.

After hearing further argument, the court orally denied the CrR 7.8 motion. It stated,

At this point in time I’m going to go ahead and deny the request to [] give Mr. Enriquez-Martinez credit for any time before the sentence that was imposed in this matter – from his plea date of January 19, 2016. The [State’s] recommendation appears that it will be 68 months in – prison to run concurrently with [the] sentence imposed in the defendant’s case in Wasco County, Oregon.

Th[is] court had sentenced Mr. Enriquez-Martinez previously, had that information beforehand, could have given credit for time prior to that. It doesn’t appear that that was what the

bargain was that was reached between the parties, at least from the written documentation that we have here.

And so I'm going to go ahead and deny the request for – additional time. He'll get credit from the time ... he was actually brought [] in[to] Washington. He should get credit not only from January 19th[, 2016,] but [also from January 18, 2016] the time that he was ... brought into the state of Washington ... to deal with this charge.

2/6/2017 RP 34–35.

On December 14, 2016, Enriquez-Martinez had been sentenced on the Oregon charges. CP 39 paragraphs 18 and 19. The Washington prosecutor acknowledged that the parties, aware that DOC wanted him back in Washington to serve his time, had entered into a new agreement to give Enriquez-Martinez concurrent time, i.e., that the Oregon sentences shall be concurrent with the Klickitat County, Washington sentence.

2/6/2017 RP 34 lines1–4. The Oregon Judgement states that the “[d]efendant shall receive credit for time served from 04/21/2014.” CP 39, paragraph 18. The Oregon sentencing hearing had not yet taken place at the time of the first Washington hearing on the CrR 7.8 motion on December 5, 2016, which was continued to secure the defendant's presence. The December 14, 2016, Oregon Judgment and its contents were not brought to the attention of the court at the time of the second Washington hearing on the CrR 7.8 motion on February 6, 2017, when sentence was imposed.

On May 7, 2018, the Washington trial court entered a written order denying the CrR 7.8 motion filed by defense counsel on November 28, 2016. CP 67. Enriquez-Martinez thereafter filed his Notice of Appeal. CP 70.

C. ARGUMENT

A decision on a CrR 7.8 motion is reviewable for abuse of discretion. *In re Pers. Restraint of Cadwallader*, 155 Wn.2d 867, 879–80, 123 P.3d 456 (2005). A trial court abuses its discretion when it exercises its discretion in a manifestly unreasonable manner, or when the exercise of discretion is based on untenable grounds or reasons. *State v. Smith*, 159 Wn. App. 694, 699–700, 247 P.3d 775 (2011). An abuse of discretion occurs where the court bases its decision on an incorrect legal standard. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

Enriquez-Martinez is entitled to receive credit in Washington for all of his pretrial jail time served when in-custody in Oregon while simultaneously under arrest on Oregon and Washington charges.

A defendant sentenced to a term of confinement has both a constitutional and statutory right to receive credit for all confinement time served prior to sentencing. *State v. Speaks*, 119 Wn.2d 204, 206, 829 P.2d 1096 (1992); RCW 9.94A.505(6). "Failure to allow credit [for time served] violates due process, equal protection, and the prohibition against

multiple punishments." *State v. Cook*, 37 Wn. App. 269, 271, 679 P.2d 413 (1984). RCW 9.94A.505(6)⁴ provides:

The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

On its face, this language would appear to deny Enriquez-Martinez credit for time served while awaiting trial on multiple separate charges.

However, the Washington Supreme Court has held that strict construction of RCW 9.94A.505(6) would violate due process and equal protection. *State v. Lewis*, 184 Wn.2d 201, 203–05, 355 P.3d 1148 (2015). Lewis was charged with nine crimes, mostly burglary and assault, under two cause numbers. *Id.* at 202. Unable to make bail, he remained incarcerated awaiting trial on those charges for more than a year. *Id.* While awaiting trial, the State charged Lewis with the additional crime of failure to register as a sex offender. *Id.* For the next 387 days, Lewis was confined awaiting trial on all three sets of charges. *Id.*

The Supreme Court accepted the State's concession that Lewis was "constitutionally entitled to credit for time served on his assault and burglary sentences for the 387 days that he was incarcerated awaiting trials

⁴ The statute has been held to reflect the constitutional mandate. *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006) (citing former RCW 9.94A.120(17), now renumbered as RCW 9.94A.505(6)).

on the assault, burglary, and failure to register as a sex offender charges.” *Id.* at 205. Denying Lewis credit for those 387 days would result in him serving a longer sentence than if he had been able to make bail on the various charges. *Id.* Such a result violates due process and equal protection because “a person unable to obtain pretrial release may not be confined for a longer period of time than a person able to obtain pretrial release.” *Id.* (citing *In re Habeas Corpus of Reanier v. Smith*, 83 Wn.2d 342, 346, 517 P.2d 949 (1974)).

Similar to *Lewis*, Enriquez-Martinez was arrested in Oregon and held there in custody for multiple crimes committed in Oregon. While awaiting trial in Oregon, he was arrested on a no bail basis for alleged crimes committed in Washington. Unable to make bail, he remained confined in Oregon—now awaiting trial on both sets of charges—for the next 586 days. On the 588th day, he pled guilty in the Washington matter and was sentenced about a month later.

Denial of the credit would have the same impact on Enriquez-Martinez of denial of equal protection. It makes no difference that unlike in *Lewis*, this appeal involves pre-trial confinement in another state, while Enriquez-Martinez was being held there simultaneously on the Oregon and Washington charges. As the first sentencing court, RCW 9.94A.505(6)

required the Washington sentencing court to give him credit for all confinement time served on the Washington charges before the Washington sentencing and *State v. Lewis* clarified that when the offender is confined on multiple causes and serving presentence time on all causes at the *same* time, he or she is entitled to presentence time towards each cause for the overlapping time. *Lewis*, 184 Wn.2d at 205.

In summary, the equal protection principles set forth in *State v. Lewis* apply to this appeal, thus entitling Enriquez-Martinez to credit for pre-time served regarding his Klickitat County, WA child molestation charges for the 586 days that he was incarcerated in Oregon awaiting trials on that and a second Washington charge⁵ both involving a minor child, LP, and alleged acts taking place in Bingen, Klickitat County, WA, as well as on Oregon sex offense charges involving the same child and alleged acts taking place in Wasco County, Oregon. That is, Enriquez-Martinez was confined on multiple charges simultaneously having not yet been sentenced on any charge and is entitled to have all time served on multiple charges credited towards confinement on each charge. § 3603. Confinement—Credit for time served, 13B Wash. Prac., Criminal Law § 3603 (2018-2019 ed.) (*citing State v. Lewis* at footnote 12).

⁵ That charge, “count II,” was dismissed at sentencing. *See* footnote 1 *supra*.

D. CONCLUSION

For the reasons stated, the trial court's denial of Enriquez-Martinez' November 28, 2016, CrR 7.8 motion should be vacated, and an order be entered directing the Klickitat County trial court to give Enriquez-Martinez credit of 586 days (beginning on June 11, 2014 and ending on/including January 17, 2016) for pretrial detention served when in-custody in Oregon while simultaneously under arrest on Oregon and Washington charges.

Respectfully submitted on October 28, 2019.

s/Susan Marie Gasch, WSBA #16485
Gasch Law Office, P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
FAX: None
gaschlaw@msn.com

PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on October 28, 2019, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of supplemental brief of appellant:

Juan Enriquez-Martinez (#388286)
Airway Heights Corrections Center
PO Box 2049
Airway Heights WA 99001

E-mail: davidq@klickitatcounty.org
E-mail: rebeccas@klickitatcounty.org
David Quesnel/Rebecca Nelson Sells
Klickitat County Prosecutor's Office

s/Susan Marie Gasch, WSBA #16485

GASCH LAW OFFICE

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- paapeals@klickitatcounty.org
- rebeccas@klickitatcounty.org

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Sender Name: Susan Gasch - Email: gaschlaw@msn.com

Address:

PO BOX 30339

SPOKANE, WA, 99223-3005

Phone: 509-443-9149

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