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SUPREME COURT NO. \_\_\_\_\_  
NO. 37008-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re Detention of Sam Donaghe,

STATE OF WASHINGTON,

Respondent,

v.

SAM DONAGHE,

Petitioner.

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2009 OCT -5 PM 3:47

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OCT 15 2009  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

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

The Honorable Chris Wickham, Judge

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
DEPT. OF

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Samuel Donaghe asks this Court to review the decision of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the published court of appeals decision in State v. Samuel Donaghe, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_ (2009), attached as an appendix to this petition.

C. ISSUES PRESENTED FOR REVIEW

Petitioner seeks restoration of his voting rights. Although the department of corrections considers his cases “terminated,” the court refused to issue the final certificate of discharge,<sup>1</sup> reasoning that the community placement portion of petitioner’s sentence has tolled the last 13 years and will continue to toll until petitioner is released from the Special Commitment Center (SCC).

1. Where the Legislature has vested exclusive authority in the department to determine sentence tolling, did the trial court act outside its authority in refusing to issue the certificate of discharge?

2. RCW 9.94A.715(1) states that “community custody ... begins[s]: (a) Upon completion of the term of confinement; [or] (b)

at such time as the offender is transferred to community custody in lieu of earned release.” Emphasis added. Where petitioner completed the confinement portion of his sentence and was transferred to SCC, did he complete his community custody while in civil commitment?

3. Whether the rule of lenity applies in petitioner’s favor?

D. STATEMENT OF THE CASE<sup>2</sup>

Donaghe seeks restoration of his voting rights. Standing in his way is the lower court’s refusal to issue the certificate of discharge to which he is entitled. Brief of Appellant (BOA) at 8-14. According to statute, the court “shall discharge the offender and provide the offender with a certificate of discharge” upon receiving notice from DOC that the offender has completed all requirements of the sentence. RCW 9.94A.637(1)<sup>3</sup> (emphasis added). In

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<sup>1</sup> Under RCW 9.94A.637(4), “the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction[.]”

<sup>2</sup> Citations to the record are set forth in appellant’s opening and reply brief at 1-7 and 1-3, respectively.

<sup>3</sup> When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary’s designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender’s last known address.

RCW 9.94A.637(1)

support of his motion for a certificate of discharge for the 1991 offenses, Donaghe tendered a letter from DOC indicating he was released on April 25, 1996, after serving his incarceration time, and was on supervision with the Department of Corrections from 4/25/96 until 11/24/04 when his cases were terminated.<sup>4</sup> CP 41.

Despite DOC's letter indicating Donaghe has completed the terms of his sentence, the court refused to issue the certificate of discharge, reasoning that Donaghe's one-year period of community custody tolled, and has continued tolling the last 12+ years, since his transfer to, and involuntary commitment at, the Special

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<sup>4</sup> The letter was written by DOC Correctional Records Specialist Virginia Shamberg in January 2006 and stated:

Dear Mr. Donaghe

This letter is in response to your request for conviction information and the dates of incarceration of the above named.

Mr. Donaghe was convicted out of Thurston County (cause #901001516) on 10/30/91 for Rape 2nd and sentenced to a maximum term of 3 years & 6 months. He was convicted out of Thurston County (cause #901001516) on 10/30/91 for Rape 3 and was sentenced to a maximum term of 1 year & 5 months. Mr. Donaghe was received at the Washington Corrections Center on 6/8/94 and released on 4/25/96.

Mr. Donaghe was also convicted out of Thurston County (cause #911003894) on 10/30/91 for Assault 2nd and sentenced to a maximum term of 1 year & 1 month.

He was on supervision with the Department of Corrections from 4/25/96 until 11/24/04 when these cases were terminated.

CP 41 (punctuation added).

Commitment Center (SCC). 2RP 9-10; see also CP 44-46; RCW 9.94A.625(3).<sup>5</sup>

In his opening brief, Donaghe argued the court acted outside its authority in refusing to issue the certificate of discharge, relying on RCW 9.94A.625(4),<sup>6</sup> which grants DOC exclusive authority to determine tolling. Although the Legislature vested exclusive authority to determine tolling in the department in 1993, after Donaghe committed his offenses, Donaghe argued the amendment is clearly remedial and therefore applied retroactively. BOA at 8-12; Reply Brief of Appellant (RB) at 3-10.

Donaghe also argued that application of the tolling statute in his case did not serve its purpose. BOA at 13 (citing State v.

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<sup>5</sup> Any period of community custody, community placement, or community supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not to have violated a condition or requirement of community custody, community placement or community supervision, time spent in confinement due to such detention shall not toll the period of community custody, community placement, or community supervision.

RCW 9.94A.625(3).

<sup>6</sup> That statute provides:

For terms of confinement or community custody, community placement, or community supervision, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

RCW 9.94A.625(4).

Flores-Serpas, 89 Wn. App. 521, 524, 949 P.2d 843 (1998) (in interpreting a different subsection of the tolling statute, court recognized Legislature intended tolling only where individual *voluntarily* absented himself not where he was deported against his will)).

In his reply brief, Donaghe argued his community custody sentence began as soon as he finished the confinement portion of his sentence – despite his transfer to the SCC – and therefore ended one year thereafter. RB at 10-13 (relying on In re Knippling, 144 Wn. App. 639, 183 P.3d 365 (2008)).

Finally, Donaghe argued that providing for community custody tolling here would render SCC commitment punitive and unconstitutional. The United States Supreme Court has recognized that a civil commitment statute could be applied in a punitive fashion and consequently violate the double jeopardy clause. Kansas v. Hendricks, 521 U.S. 346, 361-63, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997). Disenfranchisement is punitive. State v. Schmidt, 143 Wn.2d 658, 23 P.3d 462 (2001) (C. Johnson, J., dissenting) (“Loss of liberty, property, the right to vote, and the right to possess a firearm collectively encompass the punishment the state imposes on a convicted felon.”) Providing for tolling in

Donaghe's circumstance could lead to the disenfranchisement of numerous SCC residents for the remainder of their lives, although their commitment is supposedly not punishment.

The Court of Appeals majority disagreed and held:

(1) by virtue of Donaghe's subsequent and ongoing SCC confinement, his community placement period has not yet begun; (2) therefore, he has not completed the community placement portion of his rape sentences; and (3) the trial court did not err in refusing to issue a certificate of discharge under RCW 9.94A.637(1).

Appendix at 1.

The court also impliedly disagreed the trial court was without authority to decide tolling, despite Donaghe's argument to the contrary, and that regardless, the DOC letter was not sufficient under RCW 9.94A.637(1) to constitute "notification."<sup>7</sup> Appendix at 12-13. The court also disagreed that disenfranchisement – due to

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<sup>7</sup> 9.94A.637(1) provides:

When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge[.]

tolling while civilly committed – rendered civil commitment punitive and unconstitutional. Appendix at 13-15.

The dissent would have held otherwise, however:

Donaghe's continuing disenfranchisement while confined as a sexually violent predator at the Special Commitment Center (SCC) is patently unfair and unlawful.

Appendix at 16.

Nevertheless, the dissent stated that the Legislature had ameliorated the unfairness due to recent legislative amendments:

The legislature has addressed this untenable situation in its recent amendments to RCWS 29A.08.520. LAWS of 2009, ch. 325, § 1. These amendments provisionally restore the right to vote to persons who have not fully satisfied their felony sentences as long as they are not under DOC authority. RCW 29A.08.520(1). Under the revised statute, a person is under DOC authority if he is serving a sentence of confinement or is subject to community custody as defined in RCW 9.94A.030.

Appendix at 17.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

DIVISION TWO'S PUBLISHED DECISION CONFLICTS WITH DIVISION THREE'S DECISION IN KNIPPLING AND INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

For the reasons stated in petitioner's opening and reply briefs, the court had no authority to determine the issue of tolling.

Moreover, DOC considered the conditions of Donaghe's sentence complete. He was therefore entitled to a certificate of discharge. BOA at 8-14, RB at 3-10.

The trial court's and Division Two's decision that Donaghe's community custody tolled pending his transfer to SCC conflicts with Division Three's decision in In re Personal Restraint of Knippling, 144 Wn. App. 639, 183 P.3d 365 (2008). This Court should accept review to resolve this split of authority among the divisions of the court of appeals. RAP 13.4(b)(2).

Despite the dissent's opinion in Donaghe's case, whether he is entitled to restoration of his voting rights under RCW 29A.08.520(1) remains undetermined. According to Division Two's decision, he has yet to serve the community custody portion of his sentence. Accordingly, it is arguable whether he remains "subject to" community custody, which – under the revised statute – would render him ineligible to vote. As a result, it is still possible that involuntary commitment under RCW 71.09 no longer qualifies as civil commitment and is therefore unconstitutional. Because scores of individuals involuntarily committed remain disenfranchised as a result of Division Two's decision, this case involves an issue of

substantial public interest this Court should resolve. RAP 13.4(b)(2), (4).

This Court reviews issues of statutory interpretation de novo. State v. Alvarado, 164 Wn.2d 556, 561, 192 P.3d 345 (2008). The Court's purpose when interpreting a statute is to determine and enforce legislative intent. Alvarado, 164 Wn.2d at 561-62. Where the meaning of statutory language is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. Alvarado, 164 Wn.2d at 562. In discerning the plain meaning of a provision, we consider the entire statute in which the provision is found, as well as related statutes or other provisions in the same act that disclose legislative intent. Alvarado, 164 Wn.2d at 562.

A statute is ambiguous if it can reasonably be interpreted in two or more ways. State v. Keller, 143 Wn.2d 267, 276-77, 19 P.3d 1030 (2001). If the statute is ambiguous, it must be construed in the defendant's favor. In re Restraint of Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999); State v. Adel, 136 Wn.2d 629, 634-35, 965 P.2d 1072 (1998).

In this case, Donaghe argued the community custody portion of his sentence was complete, because he finished the incarceration period of his sentence and was transferred to SCC

long ago. Division Three's decision in Knippling wholeheartedly supports his decision. Knippling was convicted of two counts of second degree assault and one count of animal cruelty and given an exceptional sentence. The appellate court reversed and remanded his exceptional sentence, based on Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (any fact that increases punishment beyond the standard range must be pled and proved to a jury beyond a reasonable doubt). On remand, Knippling was resentenced to 17-month concurrent sentences. Because he had already served 41 months of the original exceptional sentence, he was released immediately to community custody. Knippling, 144 Wn. App. at 641-42.

In his personal restraint petition, Knippling argued he should be given credit against his 18 to 36 months of community custody for the extra 24 months he was incarcerated beyond his standard range sentence. The state countered that RCW 9.94A.625(3) disallowed such credit because it requires community custody to toll during any period of time the offender is in confinement for any reason. Knippling, 144 Wn. App. at 642.

The majority opinion, recognizing the only exception contained in RCW 9.94A.625(3) was inapplicable, nonetheless refused to apply the incarceration for any reason tolling provision:

RCW 9.94A.625(3) is not controlling here. This statute must be read in the context of the entire sentencing scheme. See State v. Stratton, 130 Wn. App. 760, 764, 124 P.3d 660 (2005). Under RCW 9.94A.715(1), “community custody ... begin[s]: (a) Upon completion of the term of confinement; [or] (b) at such time as the offender is transferred to community custody in lieu of earned release.” (Emphasis added.) Mr. Knippling completed his term of confinement 24 months before he was actually released from prison. Under RCW 9.94A.715(1), his community custody thus began 24 months before he was released.

Our interpretation of RCW 9.94A.715(1) is consistent with RCW 9.94A.625(3). The latter statute deals with tolling of the term of community custody after the term of community custody has started. It provides that the community custody term does not run during time in confinement for new crimes or for community custody violations. In contrast, RCW 9.94A.715(1) addresses the point in time at which the term of community custody begins. And, the statute is clear that the term of community custody begins when the offender completes his confinement time.

Knippling, 144 Wn. App. at 642-43 (emphasis in original, footnote omitted).

Division Two’s decision in this case directly conflicts with Division Three’s decision in Knippling. If anything, the decisions from Division Two and Three show a statutory ambiguity. And

Division Two's decision results in the disenfranchisement of hundreds of people who would be otherwise eligible to vote if it were not for state action seeking their involuntary commitment.

F. CONCLUSION

Because Division Two's published decision in this case conflicts Division Three's decision in Knippling and involves an issue of substantial public interest, Court should accept review.

RAP 13.4(b)(2), (4).

Dated this 5<sup>TH</sup> day of October, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

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FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL W. DONAGHE,

Appellant.

RECEIVED  
No. 37008-5-II  
SEP 04 2009  
Nielsen, Broman & Koch, P.L.L.C.

PUBLISHED OPINION

HUNT, J. — Samuel Donaghe appeals the trial court’s denial of his motion to issue a RCW 9.94A.637(1) certificate of discharge for his rape convictions and sentences.<sup>1</sup> Donaghe argues that the trial court acted outside its authority when it (1) determined that the community placement period of his sentence tolled during his confinement as a sexually violent predator (SVP) at the Special Commitment Center (SCC); and (2) refused to issue a certificate of discharge, despite a letter from the Washington Department of Corrections to Donaghe (DOC letter), which he claims demonstrates that he has completed all requirements of his sentence, thus making him eligible for RCW 9.94A.637(1) discharge. We hold that (1) by virtue of Donaghe’s subsequent and ongoing SCC confinement, his community placement period has not yet begun; (2) therefore, he has not completed the community placement portion of his rape sentences; and (3) the trial court did not err in refusing to issue a certificate of discharge under RCW 9.94A.637(1). We affirm.

<sup>1</sup> A certificate of discharge generally restores to an offender all civil rights lost by operation of law upon conviction and not provisionally restored. RCW 9.94A.637(5).

## FACTS

### I. RAPE SENTENCES, WITH COMMUNITY CUSTODY COMPONENT

On March 9, 1990, the State charged Donaghe with six counts of second degree rape of AT, a foreign exchange student living with Donaghe. On June 15, Donaghe entered an *Alford*<sup>2</sup> plea to one count of second degree rape and one count of third degree rape.<sup>3</sup>

On October 30, 1991, the trial court sentenced Donaghe to concurrent sentences of 42 months confinement for the second degree rape and 17 months for the third degree rape. The trial court also sentenced Donaghe to one year of community placement for these two rape convictions.<sup>4</sup> The trial court credited Donaghe with 19 months and 16 days for time served.<sup>5</sup> The trial court also ordered these rape conviction sentences to run concurrently with Donaghe's 13-month sentence for an apparently separate solicitation to commit assault conviction.<sup>6</sup> On

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<sup>2</sup> *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 276 L. Ed. 2d 162 (1970).

<sup>3</sup> The record before us on appeal does not show whether the State dismissed the other originally charged counts.

<sup>4</sup> Both Donaghe and the State consistently refer to this portion of Donaghe's sentence as "community custody" in their briefing. But the sentencing document refers to the period as "community placement," for which RCW 9.94A.030 provides a different definition.

<sup>5</sup> The record does not reflect where Donaghe served this time. Federal authorities arrested Donaghe in February 1990, for violating probation for a 1988 conviction (making a false statement in a passport application). When Donaghe pleaded guilty to the instant rape charges, the federal court had not yet revoked his probation. Given that federal authorities took Donaghe into custody before the State charged Donaghe with these rapes, Donaghe may have remained in federal custody during the Thurston County proceedings.

<sup>6</sup> No further information about this solicitation offense appears in the record before us on appeal.

June 8, 1994, after completing a sentence for an unrelated 1988 federal conviction,<sup>7</sup> Donaghe was transferred to Washington State custody to serve his sentences for the rape and solicitation convictions.

## II. INVOLUNTARY COMMITMENT PETITION

While Donaghe was in confinement for his rape convictions, however, the State filed a petition to have him classified as an SVP under RCW 71.09.010. Before he was released, the State transferred him to the SCC for involuntary commitment proceedings, where he apparently remains today.

## III. REQUEST FOR CERTIFICATE OF DISCHARGE

On March 31, 2000, while still awaiting his civil SVP commitment trial, Donaghe moved the Thurston County Superior Court for certificates of discharge for his rape and solicitation convictions. In his reply to the State's response to his motion, Donaghe argued that the tolling statute in effect at the time of his 1991 sentencing required the court to determine tolling.<sup>8</sup> The State agreed that the 1991 statute applied because it was in effect when Donaghe committed the 1989 rapes.

The State also agreed that the trial court should issue a certificate of discharge for Donaghe's solicitation conviction. But the State argued against discharge of the judgment and

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<sup>7</sup> See n.5.

<sup>8</sup> The statute formerly provided:

For confinement sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement. For sentences involving supervision, *the date for the tolling of the sentence shall be established by the court*, based on reports from the entity responsible for the supervision.

Former RCW 9.94A.170(4) (1991) (emphasis added).

sentence for his rape offenses on grounds that Donaghe had not fulfilled the community custody portion of his sentence, which had tolled while Donaghe resided at the SCC.

On May 19, the trial court denied Donaghe's motion with respect to the rape offenses.

The clerk's minutes for this hearing indicate:

Court reviewed the Judgment and Sentence. Court ruled that Mr. Donaghe has not served his community placement, so he is not entitled to a discharge. If there is to be a tolling of time, the Court is to make that decision. Court signed the "Certificate and Order of Discharge Pursuant to RCW 9.94A.220" in 91-1-00389-4 cause.

Clerk's Papers (CP) at 77.

On November 2, 2007, the trial court heard Donaghe's renewed motion for a certificate of discharge for the two rape judgments and sentences. Adhering to its May 19, 2000 ruling, the trial court stated: "The defendant's custodial detention tolls the running of the community placement requirement, and, thus, all aspects of the sentence have not yet been completed." Report of Proceedings (RP) (Nov. 2, 2007) at 6-7.

After the trial court issued its ruling, Donaghe asserted that he had received a DOC letter stating that his "community corrections situation" had been terminated. The trial court (1) stated that its present and previous rulings "may need to be reconsidered" if such a letter existed; (2) stated that it would authorize a further hearing if Donaghe produced such a letter; and (3) instructed Donaghe to provide the letter to the trial court.

On November 7, Donaghe filed a motion for reconsideration, to which he attached the DOC letter. The DOC letter, dated January 23, 2006, and written by DOC Correctional Records Specialist Virginia Shamberg, stated:

Dear Mr. Donaghe:

This letter is in response to your request for conviction information and the dates of incarcerations of the above named.

Mr. Donaghe was convicted out of Thurston County (cause #901001516) on 10/30/91 for Rape 2nd and sentenced to a maximum term of 3 years & 6 months. He was convicted out of Thurston County (cause #901001516) on 10/30/91 for Rape 3 and sentenced to a maximum term of 1 year & 5 months. Mr. Donaghe was received at Washington Corrections Center on 6/8/94 and released on 4/25/96.<sup>9</sup>

Mr. Donaghe was also convicted out of Thurston County (cause #911003894) on 10/30/91 for Assault 2nd and sentenced to a maximum term of 1 year & 1 month. He was on supervision with the Department of Corrections from 4/25/96 until 11/24/04 when these cases were terminated.

CP at 41.

On November 19, the trial court reheard Donaghe's motion for discharge. Citing RCW 9.94A.637(1),<sup>10</sup> Donaghe argued that the DOC letter constituted notification that he had completed the terms of his sentence and, thus, the statute required the court to issue a certificate of discharge.

While recognizing that the DOC letter might constitute evidence that the DOC considered Donaghe's sentence complete, the trial court declined to issue the certificate of discharge on the grounds that (1) Donaghe had not fulfilled the community custody portion of his sentence as

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<sup>9</sup> The record sheds no light on the discrepancy between the release date stated in this letter and the May 10, 1995 release date the State referenced in its memorandum opposing Donaghe's discharge.

<sup>10</sup> Donaghe quoted language from RCW 9.94A.637(1)(a), which provides:

When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

defined by the relevant statutes; (2) Donaghe's SVP civil commitment at SCC tolled the onset of the community custody portion of Donaghe's rape sentences; and (3) the court had previously decided essentially the same motion.

Donaghe appeals.

#### ANALYSIS

Donaghe argues that the trial court erred by refusing to issue him a certificate of discharge for his two rape convictions because (1) his community placement sentence began when he was transferred to the SCC; (2) the trial court did not have authority to toll his community placement because the applicable version of RCW 9.94A.625(4) vests that authority in the DOC not the court; and (3) the DOC letter, stating that Donaghe's "cases were terminated," supports DOC's position that he has completed the community placement portion of his sentence.<sup>11</sup> We disagree.

##### I. DONAGHE'S COMMUNITY PLACEMENT HAS NOT YET STARTED

The trial court determined that Donaghe was not entitled to a certificate of discharge because his term of community placement tolled while he was at the SCC as a SVP; accordingly, the parties' briefs focus on the tolling issue. We agree with the trial court that Donaghe is not

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<sup>11</sup> Donaghe also argues that, under the SVP civil commitment scheme, the State has authority to release him to a supervised period in the community under RCW 71.09.092 (conditional release to a less restrictive alternative). The implication is that this could substitute for community placement, because the purposes are arguably similar. But such an argument raises ripeness issues: Nothing in the record indicates that Donaghe has been released from his SVP commitment to a less restrictive alternative; thus even if Donaghe could fulfill the community placement portion of sentence under such a conditional release, he would not be entitled to a certificate of discharge because the State has not yet released him into the community under RCW 71.09.092.

entitled to a certificate of discharge because he has not completed his community placement term. But we rely on alternative grounds to support this conclusion. We hold that Donaghe's community placement term for his rape sentences did not commence because he was never "in the community"; and because he has not yet begun any community placement, he cannot have completed that term.<sup>12</sup>

#### A. Standard of Review

A statutory provision is not ambiguous unless it is subject to more than one reasonable interpretation. *State v. Jacobs*, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005). We review questions of statutory interpretation de novo. *Id.* at 600. When interpreting a statute, we seek to ascertain the legislature's intent. *Id.* "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)) (alteration in original). We discern the "plain meaning" of a statutory provision from the ordinary meaning of its language, as well as the general context of the statute, related provisions, and the statutory scheme as a whole. *Jacobs*, 154 Wn.2d at 600.

We view the provisions of an act in relation to each other and, if possible, harmonize the provisions to effect the act's overall purpose. *State v. Bays*, 90 Wn. App. 731, 735, 954 P.2d 301 (1998). We interpret statutes to give effect to all language in the statute and to render no portion meaningless or superfluous. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)). We will avoid a

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<sup>12</sup> *State v. Carroll*, 81 Wn.2d 95, 101, 500 P.2d 115 (1972) (appellate court may sustain a trial court on any correct ground, even though that ground was not stated by the trial court).

reading that produces absurd results because we “will not . . . presume[] that the legislature intended absurd results.” *J.P.*, 149 Wn.2d at 450 (quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003) (Madsen, J., dissenting)).

### B. Community Placement

Former RCW 9.94A.030(4) (1989)<sup>13</sup> defined “community placement” as the

one-year period during which the offender is subject to the conditions of community custody and/or postrelease supervision, *which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody* in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(Emphasis added.) Former RCW 9.94A.030(4) provides that community placement begins “either upon completion of the term of confinement (*postrelease supervision*) or at such time as the offender is transferred to *community custody* in lieu of earned release.” (Emphasis added). “Community custody” is the “portion of an offender’s sentence of confinement in lieu of earned release time . . . served in the community subject to controls placed on the offender’s movement and activities by the department.” RCW 9.94A.030(5) (emphasis added).<sup>14</sup>

Reading RCW 9.94A.030(5) and former 9.94A.030(4) together persuades us that community placement must be served “in the community.” The legislature has provided that

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<sup>13</sup> The legislature recodified this definition as RCW 9.94A.030(7) without materially changing the language. Two session laws recently amended RCW 9.94A.030’s definitions. Laws 2009, ch. 28, § 4; Laws 2009, ch. 375, §§ 3 and 4. Because we apply the sentencing statutes in effect at the time Donaghe committed his crimes, *State v. Varga*, 151 Wn.2d 179, 191, 86 P.3d 139 (2004), none of the amendments affect our analysis so we do not address them.

<sup>14</sup> When Donaghe committed his offenses in 1989, this language was codified as former RCW 9.94A.030(3) (1989). Because the material language remains the same, we refer to the current version of the statute, codified as RCW 9.94A.030(5).

community placement begins either (1) when the offender is transferred to “community custody,” which RCW 9.94A.030(5) explicitly states must be served “in the community”; or (2) “upon completion of the term of confinement,” which the parenthetical “*postrelease* supervision” modifies.<sup>15</sup> Former RCW 9.94A.030(4) (emphasis added). The prefix “post-” means “after,” “subsequent,” or “later.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1771 (2002). The “postrelease supervision” parenthetical makes it clear that “completion of the term of confinement” refers to actual release into the community, as opposed to the end of the offender’s sentence. Thus, under the plain, unambiguous language of former RCW 9.94A.030(4), community placement cannot begin until after the State releases an offender into the community.

Accordingly, Donaghe’s community placement cannot begin until the State releases him from confinement to supervision *in the community*. This has not yet happened because, instead of releasing Donaghe from confinement at the end of the prison term portion of his rape sentences, the State transferred him to confinement at the SCC. We hold, therefore, that Donaghe has not begun, and thus not fulfilled, the one-year community placement portion of his sentences for two counts of rape.

### C. *In re Knippling*

Donaghe argues that Division Three’s decision in *In re Pers. Restraint of Knippling*, 144 Wn. App. 639, 183 P.3d 365 (2008), demonstrates that his community custody began to run

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<sup>15</sup> Currently, RCW 9.94A.030(38) defines “postrelease supervision” as “that portion of an offender’s community placement that is not community custody.” That provision was not in effect at the time Donaghe committed these rapes.

when he was transferred to SCC. *Knippling* is not binding on us; nor do we find the majority's reasoning persuasive.<sup>16</sup> Instead, we find Judge Sweeney's reasoning compelling and adopt his dissent—that community custody must be served *in the community*.<sup>17</sup> *Id.* at 644 (Sweeney, J., dissenting).

In *Knippling*, Division Three of our court upheld Knippling's convictions but remanded for resentencing consistent with *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). *Knippling*, 144 Wn. App. at 641.<sup>18</sup> On remand, the trial court sentenced Knippling to concurrent standard-range sentences, the longest of which was 17 months confinement. *Id.* Since he had already served 41 months of his original exceptional sentence, Knippling was released immediately into community custody. *Id.*

Knippling appealed again, this time arguing that he should have received credit against his 18 to 36 months of community custody for the extra 24 months he was incarcerated beyond his standard range sentence. *Id.* at 641-42. The Division Three majority agreed. It relied on RCW 9.94A.715(1),<sup>19</sup> which provides in part that “community custody [shall] begin: (a) [*u*]pon

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<sup>16</sup> We also recently declined to follow the *Knippling* majority in *State v. Jones*, \_\_\_ Wn. App. \_\_\_, 210 P.3d 1068, 1072 (2009).

<sup>17</sup> We note that the trial court here sentenced Donaghe to “community placement,” not “community custody.” Nevertheless, we find Judge Sweeney's *Knippling* dissent persuasive.

<sup>18</sup> *In re Knippling* contains no further facts about how or why Knippling was resentenced consistent with *Blakely*.

<sup>19</sup> The legislature enacted the language in this provision in 2000. Thus, this statute would not govern Donaghe's case even if we found the *Knippling* majority analysis compelling. Laws 2000 c. 28, § 25. But, the pertinent language in RCW 9.94A.715(1) is almost identical to RCW former 9.94A.030(4)'s definition of “community placement.”

*completion of the term of confinement; [or] (b) at such time as the offender is transferred to community custody in lieu of earned release.”* *Id.* at 642. (Emphasis added.) Focusing on the legislature’s use of completion of confinement rather than release, the majority reasoned that “[t]he ordinary meaning of ‘completion’ is different from the ordinary meaning of ‘release’ because an offender can complete a term of confinement without being released.”<sup>20</sup> *Id.* at 642, n.3. The majority then concluded that, because Knippling had “completed his term of confinement” 24 months before his release from prison, his community custody began to run 24 months before he was released. *Id.* at 642.

Judge Sweeney dissented, concluding that Knippling’s “term of community custody began only when the State released him from confinement into the community.” *Id.* at 643-44 (Sweeney, J., dissenting). In reaching this conclusion, Judge Sweeney cited RCW 9.94A.030(5)’s definition of “community custody”:

“Community custody” means that portion of an offender’s sentence . . . *served in the community* subject to controls placed on the offender’s movement and activities by the department.

*Knippling*, 144 Wn. App. at 643. (Emphasis added). In ignoring this language, the *Knippling* majority departs from a well-settled rule of statutory construction—to give effect to all language

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<sup>20</sup> We agree with the *Knippling* majority that “an offender can complete a term of confinement without being released.” *Knippling*, 144 Wn. App. at 642, n.3. For example, an offender may complete the confinement portion of his sentence for one crime, but he may remain in confinement by virtue of holds placed on him for other crimes or other matters, such as SVP commitment proceedings. In our view, however, it does not follow that an offender’s completion of the confinement term of his sentence necessarily coincides with beginning a term of community custody or placement, for which actual release into the community is necessary.

and to render no portion meaningless.<sup>21</sup> See also our recent decision in *Jones*, 210 P.3d at 1071 (“*Knippling* court’s conclusion that an offender’s community custody term may begin before the offender is released into the community conflicts with the statute’s definition of ‘community custody.’”)

We agree with Judge Sweeney that (1) “[t]he term community custody . . . clearly contemplates time spent in the community”; and (2) the legislature intended “continued control for a period of time after a defendant is released.” *Knippling*, 144 Wn. App. at 643 (Sweeney, J., dissenting). Further, in our view, this reasoning applies equally to community placement: The statutory scheme clearly contemplates that a term of “community placement” will be served in the community, under continued DOC control, in order to ensure the offender’s smooth and safe transition back into the community.<sup>22</sup>

## II. CERTIFICATE OF DISCHARGE REQUIREMENTS

Donaghe argues that the DOC letter constitutes notice from the DOC that he has completed all requirements of his sentence.<sup>23</sup> Again, we disagree.

An offender is not entitled to a certificate of discharge until he has completed the requirements of his sentence and DOC has notified the sentencing court of the offender’s

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<sup>21</sup> *J.P.*, 149 Wn.2d at 450 (quoting *Davis*, 137 Wn.2d at 963).

<sup>22</sup> Because we hold that Donaghe’s community placement term have not yet begun, we do not reach his argument that the trial court lacked authority to determine tolling.

<sup>23</sup> Donaghe also argues, without citation, that the DOC letter meets the requirements for discharge under RCW 9.94A.637(1)(c) and that RCW 9.94A.637(1)(c) is remedial. Reply Br. of Appellant at 13-14. RAP 10.3(a)(6) requires citation to legal authorities. We do not review issues inadequately briefed or mentioned in passing. *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) (citing *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)).

completion of his sentence. RCW 9.94A.637(1)(a).<sup>24</sup> Donaghe fails to meet the requirements for issuance of a certificate of discharge because he has not completed the requirements of his sentence. Further, the DOC letter stated that he had been on supervision with DOC until DOC “terminated” his cases, not that Donaghe had completed the requirements of his rape sentences. Disagreeing with Donaghe, we do not read this vague DOC letter language to mean that Donaghe has fulfilled his community placement requirement so as to trigger discharge, RCW 9.94A.637(1), especially because Donaghe has not yet been released into the community or served any portion of his community placement sentence. We therefore hold that the trial court did not err by refusing to issue a certificate of discharge.

III. REFUSAL TO ISSUE DISCHARGE CERTIFICATE  
DOES NOT RENDER CIVIL SVP COMMITMENT UNCONSTITUTIONAL

Finally, Donaghe argues that if he is unable to complete his community placement and to obtain a discharge while confined at the SCC, then the sexually violent predator civil commitment procedure punitively and unconstitutionally disenfranchises him and other SCC residents, possibly for the rest of their lives.

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<sup>24</sup> The legislature has recodified the discharge statute since Donaghe committed his crimes in 1989. The pertinent portion of the applicable 1989 discharge statute, former RCW 9.94A.220, provided:

*When an offender has completed the requirements of the sentence, the secretary of the department or his designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge.*

(Emphasis added.) The material language remains the same, however, so we refer to the current version, RCW 9.94A.637(1)(a).

The State counters that the Article VI, section 3 of the Washington Constitution specifically disenfranchises convicted felons.<sup>25</sup> The State argues that Donaghe's disenfranchisement arises from his failure to complete his felony sentence, not from his SVP commitment at the SCC. We agree with the State.

Donaghe's disenfranchisement arises from his commission of a felony, not from his civil commitment as a SVP.<sup>26</sup> As a convicted felon, Donaghe possesses no fundamental right to vote until he fulfills the requirements for discharge, thus restoring his civil rights. *See* RCW 9.94A.637(5); *Madison v. State*, 161 Wn.2d 85, 100-01, 163 P.3d 757 (2007). As our Supreme Court has noted, "[A] state may permanently disenfranchise a felon without violating his or her constitutional rights." *Id.* at 106. Because Donaghe has not completed the community placement portion of his sentence, he is not eligible for a discharge under RCW 9.94A.637(1).<sup>27</sup>

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<sup>25</sup> "All persons convicted of infamous crime unless restored to their civil rights and all persons while they are judicially declared mentally incompetent are excluded from the elective franchise." CONST. art. VI, § 3.

<sup>26</sup> We note that our SVP civil commitment procedure and similar ones have withstood various constitutional challenges. *See, e. g., Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997); *In re Det. of Stout*, 159 Wn.2d 357, 150 P.3d 86 (2007); *In re Det. of Petersen*, 138 Wn.2d 70, 980 P.2d 1204 (1999).

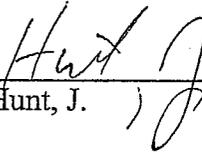
<sup>27</sup> Furthermore, it is for the legislature, not the courts, to change the discharge requirements under RCW 9.94A.637(1) if it wishes to allow SVP's to receive some sort of community placement credit while confined at the SCC, even though they have not yet been released into the community. Although we take judicial notice that our legislature has recently made it easier for felons to restore their voting rights provisionally, a convicted offender is not eligible for provisional restoration of his voting rights if he is under DOC authority, including where he is still subject to community custody. Laws, of 2009, ch. 325 §§ 1 and 5.

In spite of the governor's having signed this bill and its having become effective July 27, 2009, during the pendency of this appeal, Donaghe, if eligible, should petition to restore his voting rights under the new law, which is not before us in this appeal.

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Therefore, the trial court's refusal to issue a certificate of discharge does not unconstitutionally disenfranchise him.

We affirm.

  
Hunt, J.

I concur:

  
Bridgewater, P.J.

ARMSTRONG, J., (Dissenting) — Donaghe's continuing disenfranchisement while confined as a sexually violent predator at the Special Commitment Center (SCC) is patently unfair and unlawful. I respectfully dissent.

The majority reasons that Donaghe's disenfranchisement arises from his failure to complete his felony sentence and not from his commitment at the SCC. I disagree. Although the reason for Donaghe's initial disenfranchisement was his felony conviction, the sole reason for his continuing disenfranchisement is his SCC commitment. Donaghe would have regained his voting rights long ago had it not been for his confinement as a sexually violent predator.

Donaghe's civil commitment therefore perpetuates a sentence condition that does not serve its purposes. SCC commitments are civil in nature. *In re Det. of Petersen*, 138 Wn.2d 70, 78, 980 P.2d 1204 (1999). "[T]he goals of civil and criminal confinement are quite different; the former is concerned with incapacitation and treatment, while the latter is directed to retribution and deterrence." *In re Pers. Restraint of Young*, 122 Wn.2d 1, 21, 857 P.2d 989 (1993). Disenfranchisement has a punitive purpose. *See State v. Schmidt*, 143 Wn.2d 658, 683, 23 P.3d 462 (2001) (loss of liberty, property, the right to vote, and the right to possess a firearm collectively encompass the punishment the State imposes on a convicted felon) (Johnson, J., dissenting). The civil commitment goals of incapacitation and treatment are intended to be distinct from punishment; disenfranchisement does nothing but continue to punish a sexually violent predator. *See Young*, 122 Wn.2d at 21-22 (civil commitment goals are distinct from punishment and have been so regarded historically).

Furthermore, SCC commitments are of indefinite duration, persisting until the person no longer meets the definition of a sexually violent predator or until conditional release to a less

restrictive alternative is appropriate. RCW 71.09.060(1). Unconditional discharge is a rarity among SCC residents. Jonathan Martin, *Violent Predator's Freedom Would be a First*, THE SEATTLE TIMES, Jan. 9, 2008. More likely is conditional release to a less restrictive alternative, which requires a preliminary court finding that the person is willing to comply with supervision requirements imposed by the Department of Corrections (DOC). RCW 71.09.092.

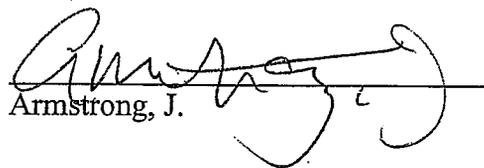
Donaghe's continuing disenfranchisement is inconsistent with the goals of his current commitment. Furthermore, that disenfranchisement is of indefinite duration, as there is no way of knowing when or if Donaghe will be released from the SCC. If he is released to a less restrictive alternative, Donaghe will be subject to DOC supervision under conditions far more stringent than any imposed as part of his one-year term of community placement. See Martin, *Violent Predator's Freedom* (upon release to a less restrictive alternative, former SCC resident had to comply with 48 conditions); RCW 71.09.092. And, because such release would be of indefinite duration as well, Donaghe may never be in a position to fulfill his one year of community placement obligation and regain the right to vote.

The legislature has addressed this untenable situation in its recent amendments to RCW 29A.08.520. LAWS OF 2009, ch. 325, § 1. These amendments provisionally restore the right to vote to persons who have not fully satisfied their felony sentences as long as they are not under DOC authority. RCW 29A.08.520(1). Under the revised statute, a person is under DOC authority if he is serving a sentence of confinement in DOC custody or is subject to community custody as defined in RCW 9.94A.030. RCW 29A.08.520(7).

Donaghe is not currently under DOC authority or subject to community custody. See RCW 71.09.060(1) (SCC residents are in the custody of the Department of Social and Health

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Services). Consequently, Donaghe should be entitled to vote at least as of the effective date of the 2009 amendments to RCW 29A.08.520.

  
Armstrong, J.

