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STATE OF WASHINGTON  
BY \_\_\_\_\_

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

STATE OF WASHINGTON,

Respondent,

vs.

CLIFF ALAN JONES.

Appellant.

NO. 37002-6-II

REPLY BRIEF OF APPELLANT

**I. STATEMENT OF THE CASE**

Appellant, Cliff Jones, incorporates by reference the Statements of the Case set forth in his Opening Brief of Appellant under this cause number.

**II. ARGUMENT AND AUTHORITIES**

**1. Reply to the State's argument that the excess time that Jones served tolled his community custody under RCW 9.94A.625(3).**

In its Brief of Respondent, the State argues that crediting time Jones served in excess of his legal sentence is contrary to the plain language of RCW 9.94A.625(3).<sup>1</sup> To support its argument, the State cites RCW 9.94A.710 which states: "...the court shall, in addition to other terms of the sentence, sentence the offender to community custody for

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<sup>1</sup> Brief of Respondent, page 5-6.

three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer.”<sup>2</sup> Mr. Jones respectfully disagrees with this assertion.

The State also argues, that while not on point, Gartrell, Division One addressed a similar issue.<sup>3</sup> State v. Gartrell, 138 Wn. App. 787, 158 P.3d 636 (2007). However, Gartrell addressed community custody imposed as part of a Special Sex Offender Sentencing Alternative (SSOSA), under a totally different statute. See RCW 9.94A.670(10). The SSOSA statute says that upon revocation of the suspended sentence under the statute, [a]ll confinement time served during the period of community custody shall be credited to the offender.... There the court held that the community custody portion of the sentence was not confinement. Gartrell, 138 Wn. App. at 790. The Court went on to explain how the SSOSA statute itself differentiates between confinement and community custody. Id. Gartrell is not on point.

However, Division One did address the language of former RCW 9.94A.170(3) which has since been recodified as RCW 9.94A.625(3). See, State v. Cameron, 71 Wn. App. 653, 861 P.2d 1069 (1993). In Cameron, the trial court sentenced Cameron to concurrent terms of 14 months for a burglary and 4 months for TMVWOP. The trial court also sentenced Cameron to 12 months’ community supervision on the taking and riding charge. Both sentences were within the standard ranges for the offenses. Cameron, 71 Wn. App. at 654. Cameron argued that his community supervision should start at the completion of his sentence for the crime in which it was imposed. Id. at 656. The State

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<sup>2</sup> Brief of Respondent, page 6

<sup>3</sup> Id. at 8

originally conceded the issue, and then on motion for reconsideration cited former RCW 9.94A.170(3), arguing that the community supervision on the shorter term is tolled during the time Cameron remains incarcerated on the other conviction. Id. The Court held that the plain meaning of the provision is controlling *in the circumstances of this case.* (emphasis mine). Id. The Court held that the “for any reason” language applied to the circumstances where, at the end of the sentence on which community supervision was imposed, the defendant remained incarcerated for a different crime. Id. at 657. The Court went on to say that RCW 9.94A.170(3) resolves the issue of multiple sentences and community supervision in the instant case. Id.

RCW 9.94A.625(3) is identical in language to that of former RCW 9.94A.170(3). Division One’s interpretation that the language solved issues relating to multiple sentences is instructive. Here, Jones was not serving multiple sentences. He served one sentence for one crime. On remand the trial court sentenced Jones to 51 months of incarceration and the required 36 months of community custody. Under RCW 9.94A.715(1) a term of community custody begins upon the offenders *completion* of the term of confinement. Therefore, Jones community custody commenced after he had served 51 months in custody. The fact that he served 30 additional months, based on an illegal sentence is not grounds for tolling the community custody. He was not serving a sentence on a different crime. Therefore, Jones should receive credit for community custody during the time of his confinement in excess of his 51 month appropriate sentence.

**2. Reply to the State's argument that this Court should not follow the majority opinion in State v. Knippling, but adopt the reasoning of the Knippling dissent.**

In its Brief of Respondent, the State urges this Court to find that Division Three wrongly decided this issue and follow the dissent's reasoning. See, State v. Knippling, 144 Wn. App. 639; 183 P.3d 365 (2008).<sup>4</sup> However, the dissent and the State urge this court to consider the plain language of RCW 9.94A.625(3) without consideration of RCW 9.94A.715(1) which governs when community custody begins.

State v. Knippling is exactly on point with Jones' case. Knippling's conviction was affirmed on direct appeal, but the case was 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 639. He was resentenced to concurrent sentences with the longest period being 17 months. He had already served 41 months. Id. Knippling asked the court to give him 24 months of credit towards his 18-36 months of community custody. Id. Division Three held that RCW 9.94A.625(3) was not controlling and must be read in the context of the entire sentencing scheme. Id. The court focused on the term 'completion' and distinguished from 'released' and held that Knippling's community custody began at the completion of his sentence and 24 months before he was released.

Knippling held that RCW 9.94A.625(3) deals with the tolling of community custody after the community custody began. Community custody does not run during the time in confinement for new crimes or for community custody violations. Id. This interpretation is consistent with Cameron. RCW 9.94A.715(1) addresses the point in time

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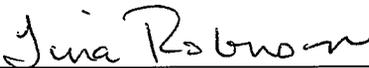
<sup>4</sup> Brief of Respondent, page 9

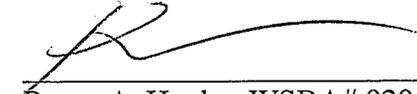
at which the term of community custody begins, and the statute is clear that the term of community custody begins when the offender completes his confinement time. Id. Here, Mr. Jones completed his confinement time 30 months before he was released. Therefore, Jones should be credited 30 months of community custody time towards his 36 months of community custody.

### III. CONCLUSION

Because this court interprets the statutes in context of the entire sentencing scheme, RCW 9.9A.625(3) and RCW 9.94A.715(1) read together are consistent with the interpretation that community custody begins at the time the sentence was completed, and unless Jones was serving time on another crime or for violating conditions of community custody, excess time served in custody should be credited toward his community custody. Therefore, because Jones completed his term of confinement 30 months before he was actually released; his community custody commenced 30 months before he was released. This court should follow Knippling and credit Mr. Jones with 30 months of community custody for time served prior to his actual release. .

Respectfully submitted this 16 day of September, 2008.

  
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Tina R. Robinson, WSBA# 37965  
Associate Attorney

  
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Roger A. Hunko, WSBA# 9295  
Attorney for Appellant

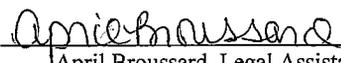
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CERTIFICATE OF SERVICE

I certify that on the 17<sup>th</sup> day of September, 2008, I caused a true and correct copy of this Reply Brief of Appellant to be served on the following in the manner indicated: the original to David Ponzoha, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA 98402, via facsimile and U.S. Mail; Jeremy A. Morris, Kitsap County Prosecutor's Office, 614 Division Street, MS-35, Port Orchard, WA 98366, via hand-delivery; Cliff Alan Jones, 9118 Hipkins Road SW, Lakewood, WA 98498 via U.S. Mail.

By:   
April Broussard, Legal Assistant