

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Sep 03, 2014, 3:54 pm  
BY RONALD R. CARPENTER  
CLERK

*E*

*bjh*

RECEIVED BY E-MAIL

No. 90021-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW BRUCH,

Petitioner.

---

PETITIONER'S ANSWER TO BRIEF OF AMICUS CURIAE  
WASHINGTON DEPARTMENT OF CORRECTIONS

---

ELAINE L. WINTERS  
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

ORIGINAL

TABLE OF CONTENTS

A. ARGUMENT IN RESPONSE ..... 1

**Mr. Bruch’s case should be remanded for the imposition of  
the four-month term of community custody mandated by  
RCW 9.94A.701..... 1**

    1. DOC’s argument that the court may impose community  
    custody for four months and/or the term of earned early release  
    ignores the plain language of RCW 9.94A.701, its legislative  
    history, and this Court’s opinions interpreting the statute ..... 2

    2. This Court does not need to harmonize RCW 9.94A.701  
    and RCW 9.94A.729 ..... 6

    3. This Court should remand Mr. Bruch’s case for the superior  
    court to order the four-month term of community custody  
    required by RCW 9.94A.701 ..... 8

B. CONCLUSION..... 9

**TABLE OF AUTHORITIES**

**Washington Supreme Court Decisions**

In re Detention of Hawkins, 169 Wn.2d 796, 238 P.3d 1175  
(2010)..... 2, 5

In re Detention of Martin, 163 Wn.2d 501, 182 P.3d 951 (2008)..... 5

In re Personal Restraint of Brooks, 166 Wn.2d 664, 211 P.3d 1203  
(2009)..... 3

In re Personal Restraint of Franklin, 172 Wn.2d 831, 263 P.3d 585  
(2011)..... 4

State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012)..... 4, 9

State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997)..... 8, 9

State v. Delgado, 118 Wn.2d 723, 63 P.3d 792 (2003)..... 5

State v. Jacobs, 154 Wn.2d 596, 115 P.3d 218 (2005)..... 2, 5

State v. Roberts, 117 Wn.2d 576, 817 P.2d 855 (1991)..... 5

**Washington Statutes**

RCW 9.94A.505 ..... 7

RCW 9.94A.510 ..... 7

RCW 9.94A.701 ..... passim

RCW 9.94A.729 ..... 6, 8

RCW 9A.20.021 ..... 7

**Former Statutes and Sessions Laws**

Former RCW 9.94A.120 ..... 3

Former RCW 9.94A.715 ..... 3

Laws of 2009, ch. 28 ..... 3

Laws of 2009, ch. 375 ..... 4

A. ARGUMENT IN RESPONSE

**Mr. Bruch's case should be remanded for the imposition of the four-month term of community custody mandated by RCW 9.94A.701.**

Matthew Burch's maximum term was 120 months, and he was sentenced to 116 months of incarceration followed by community custody for "at least 4 months, plus all accrued earned early release time at the time of release." CP 7. Amicus Curiae Washington Department of Corrections (DOC) agrees with Mr. Bruch that the sentence is improper because the term of community custody may exceed the three-year term authorized by RCW 9.94A.701(9). DOC, however, argues that this Court should remand Mr. Bruch's case for the imposition of community custody for four months and/or the term of earned early release with the proviso that the term of community custody may not exceed three years. This Court should reject DOC's argument because it is contrary to RCW 9.94A.701's plain language, its legislative history, and its interpretation by this Court.

1. DOC's argument that the court may impose community custody for four months and/or the term of earned early release ignores the plain language of RCW 9.94A.701, its legislative history, and this Court's opinions interpreting the statute.

DOC asks this court to remand for the superior court to correct the term of community custody to state “four months plus the term of earned early release, not to exceed three years” or “four months or the term of earned early release, whichever is greater, not to exceed three years.” Amicus Curiae Brief of the Washington Department of Corrections at 9-10 (hereafter DOC Brief). DOC provides this Court with no guidance on how RCW 9.94A.701 may be interpreted to authorize such sentences, and its argument ignores the plain language of the statute, its legislative history, and this Court's interpretation of the statute.

This Court interprets statutes with the goal of determining the intent of the legislature, starting with the statute's plain language and ordinary meaning. In re Detention of Hawkins, 169 Wn.2d 796, 801, 238 P.3d 1175 (2010); State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 218 (2005). The plain language of RCW 9.94A.701 requires the sentencing court to impose a three-year term of community custody, but to reduce the term to avoid imposing a sentence that exceeds the statutory maximum term. RCW 9.94A.701(1), (9). RCW 9.94A.701 does not

authorize the sentencing court to impose a term of community custody for the term of earned early release. Id. The legislative history of the statute supports Mr. Bruch's interpretation.

For a number of years, the Sentencing Reform Act (SRA) required the court to sentence offenders to community custody for "the community custody range established under RCW 9.94A.850 or up to the period of earned early release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer." Former RCW 9.94A.715 (emphasis added) (repealed by Laws of 2009, ch. 28, §42, effective 6/26/09); Former RCW 9.94A.120(8)(b) (1994). This Court therefore upheld a sentence that conformed to the statute because it was amended to include the provision that the total sentence not exceed the maximum term. In re Personal Restraint of Brooks, 166 Wn.2d 664, 672-73, 211 P.3d 1203 (2009).

The legislature changed this provision in 2009, repealing Former RCW 9.94A.715 and enacting RCW 9.94A.701. Under the current statute, the superior court is authorized to impose a fixed term of community supervision of 12, 18, or 36 months, and the court must reduce the community custody term whenever necessary to ensure that the total sentence does not exceed the statutory maximum term. RCW

9.94A.701(1)-(3), (9); Laws of 2009, ch. 375 § 5. The new statute thus requires the sentencing court “to determine the precise length of community custody at the time of sentencing.” In re Personal Restraint of Franklin, 172 Wn.2d 831, 836, 263 P.3d 585 (2011). Under RCW 9.94A.701, the court may not order a term of community custody that includes the term of early release as proposed by DOC.

In addition, this Court has interpreted RCW 9.94A.701 to require the trial court, and not DOC, to ensure that an offender’s sentence does not exceed the statute maximum term by reducing the term of community custody. State v. Boyd, 174 Wn.2d 470, 473, 275 P.3d 321 (2012). DOC’s suggested outcome makes DOC responsible for ensuring that Mr. Bruch’s term of community custody does not exceed three years in conflict with both the statutory language and this Court’s reasoning in Boyd.

By arguing that Mr. Bruch’s community custody term should include the period of earned early release, DOC is asking this Court to reinterpret RCW 9.94A.701(9) to add language addressing earned early release – language that was repealed by the legislature in enacting the current statute. This Court, however, does not add language to unambiguous statutes. In re Detention of Martin, 163 Wn.2d 501, 509,

182 P.3d 951 (2008); State v. Delgado, 118 Wn.2d 723, 727, 63 P.3d 792 (2003). Moreover, statutes are interpreted to effectuate the legislature's intent. Hawkins, 169 Wn.2d at 801; Jacobs, 154 Wn.2d at 600. The legislature clearly knows how to create a statute that permits the sentence DOC proposes, but instead it opted for new language calling for a definite term of community custody. The legislative history shows the legislature's intent. See Hawkins, 169 Wn.2d at 803-04 (express language in one section of statute permitting use of polygraph examinations demonstrates that the lack of such statutory language in the section addressing pretrial evaluation means that polygraph evaluations may not be ordered at that stage of the proceedings); Jacobs, 154 Wn.2d at 603 (“[W]here the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent.”) (quoting State v. Roberts, 117 Wn.2d 576, 586, 817 P.2d 855 (1991)).

Moreover, even if this Court determines RCW 9.94A.701 is ambiguous, the rule of lenity applies to ambiguities in the SRA. Jacobs, 154 Wn.2d at 601; Roberts, 117 Wn.2d at 585. Under the rule of lenity, Mr. Bruch is best served by a specific term of community

supervision without added language concerning earned early release time.

This Court should decline DOC's invitation to construe RCW 9.94A.701 to add language that was repealed when the statute was adopted. RCW 9.94A.701(1) and (9) require the sentencing court to set a definite term of community custody without reference to the possibility of earned early release.

2. This Court does not need to harmonize RCW 9.94A.701 and RCW 9.94A.729.

DOC asks this Court to "harmonize" RCW 9.94A.701 and RCW 9.94A.729 to permit the sentencing court to order community custody for the period of earned early release in addition to or as an alternative to the definite four-month term required by RCW 9.94A.701. DOC Brief at 3, 6-9. DOC asserts that 2011 amendments to RCW 9.94A.729 prohibit it from supervising Mr. Bruch for more than the period ordered by the court, and thus the court order must include earned early release in lieu of custody in order to maximize the period of supervision.<sup>1</sup> Id.

---

<sup>1</sup> DOC supports its argument by citing RCW 9.94A.501(5). DOC Brief at 7. That subsection, however, applies only to defendants sentenced for misdemeanor and gross misdemeanor offenses. RCW 9.94A.501. Mr. Bruch is subject to supervision pursuant to a different subsection, RCW 9.94A.501(4)(a) ("Notwithstanding any provisions of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender: Has a current

at 7. DOC, however, does not assert that the statutes are in conflict or address the rules of statutory construction relevant to conflicting statutes. RCW 9.94A.701 and RCW 9.94A.729 do not conflict, and there is no need for this Court to harmonize them.

DOC apparently believes that Mr. Bruch would benefit from a lengthy period of supervision when he reenters the community. The SRA, however, already provides the trial court with the discretion to create a longer term of community custody.

Mr. Bruch's standard sentence range was 87 to 116 months of confinement, and the superior court had the discretion to set his term of confinement anywhere within that range. CP 5; RCW 9.94A.505; RCW 9.94A.510. The superior court chose to sentence Mr. Bruch to 116 months of confinement, thereby limiting community custody to four months in light of the 120-month maximum term. RCW 9.94A.701(9); RCW 9A.20.021(1)(b). The court had the power to set a shorter term of confinement and a longer term of community custody without exceeding the maximum term of 120 months but chose not to. The trial court, not DOC, had the power to make that choice.

---

conviction for a sex offense and was sentenced to term of community custody pursuant to RCW 9.94A.701, RCW 9.94A.702, or RCW 9.94A.507.”)

DOC's desire to supervise Mr. Bruch for the longest possible term up to three years is not a sufficient rationale to ignore the plain wording of RCW 9.94A.701. RCW 9.94A.701 and RCW 9.94A.729 are not in conflict, and RCW 9.94A.701 controls the court's imposition of a term of community custody.

3. This Court should remand Mr. Bruch's case for the superior court to order the four-month term of community custody required by RCW 9.94A.701.

RCW 9.94A.701 requires the sentencing court to set a definite term of community custody of three years or less so that the combined term of custody and community supervision does not exceed the statutory maximum term. Setting a specific term of community custody assists the trial court in assessing the overall sentence and permits the defendant to appeal an erroneous community custody term before serving his term of incarceration. State v. Broadaway, 133 Wn.2d 118, 135, 942 P.2d 363 (1997).

The superior court incorrectly sentenced Mr. Bruch to a community custody term of "at least 4 months, plus all accrued earned early release time at the time of release." CP 7. This Court should reverse the Court of Appeals and remand for the imposition of a four-

month term of community custody. Boyd, 174 Wn.2d at 473;

Broadaway, 133 Wn.2d at 136.

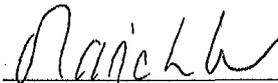
B. CONCLUSION

DOC acknowledges that Mr. Bruch's case must be remanded to correct the term of community custody because it may exceed the three-year term authorized by RCW 9.94A.701.

The plain language of RCW 9.94A.701, its legislative history, and this Court's prior interpretation of the statute support Mr. Bruch's position that his sentence must be remanded for the imposition of a four-month term of community custody. DOC's arguments to the contrary are not persuasive and should not be adopted by his Court.

DATED this 3rd day of September 2014.

Respectfully submitted,



---

Elaine L. Winters – WSBA # 7780  
Washington Appellate Project  
Attorneys for Petitioner

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 ) NO. 90021-3  
 v. )  
 )  
 MATTHEW BRUCH, )  
 )  
 )  
 Petitioner. )

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3<sup>RD</sup> DAY OF SEPTEMBER, 2014, I CAUSED THE ORIGINAL **ANSWER TO BRIEF OF AMICUS CURIAE** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] SETH FINE, DPA ( ) U.S. MAIL  
 SNOHOMISH COUNTY PROSECUTOR'S OFFICE ( ) HAND DELIVERY  
 3000 ROCKEFELLER (X) E-MAIL  
 EVERETT, WA 98201  
 E-MAIL: [sfine@snoco.org](mailto:sfine@snoco.org)

[X] RONDA LARSON, AAG ( ) U.S. MAIL  
 OFFICE OF THE ATTORNEY GENERAL ( ) HAND DELIVERY  
 PO BOX 40116 (X) E-MAIL  
 OLYMPIA, WA 98504-0116  
 E-MAIL: [ronda.larson@atg.wa.gov](mailto:ronda.larson@atg.wa.gov); [correader@atg.wa.gov](mailto:correader@atg.wa.gov)

[X] MATTHEW BRUCH (X) U.S. MAIL  
 359424 ( ) HAND DELIVERY  
 MONROE CORRECTIONAL COMPLEX-WSR ( ) \_\_\_\_\_  
 PO BOX 777  
 MONROE, WA 98272-0777

**SIGNED** IN SEATTLE, WASHINGTON THIS 3<sup>RD</sup> DAY SEPTEMBER, 2014.



X \_\_\_\_\_

**Washington Appellate Project**  
 701 Melbourne Tower  
 1511 Third Avenue  
 Seattle, WA 98101  
 Phone (206) 587-2711  
 Fax (206) 587-2710

## OFFICE RECEPTIONIST, CLERK

---

**To:** Maria Riley  
**Cc:** sfine@snoco.org; ronda.larson@atg.wa.gov; correader@atg.wa.gov; Elaine Winters  
**Subject:** RE: 900213-BRUCH-ANSWER

Received 9/3/14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Maria Riley [mailto:maria@washapp.org]  
**Sent:** Wednesday, September 03, 2014 3:51 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** sfine@snoco.org; ronda.larson@atg.wa.gov; correader@atg.wa.gov; Elaine Winters  
**Subject:** 900213-BRUCH-ANSWER

To the Clerk of the Court:

Please accept the attached document for filing in the above-subject case:

**Petitioner's Answer to Brief of Amicus Curiae**

Elaine L. Winters- WSBA #7780  
Attorney for Petitioner  
Phone: (206) 587-2711  
E-mail: [Elaine@washapp.org](mailto:Elaine@washapp.org)

By

*Maria Arranza Riley*

**Staff Paralegal**  
**Washington Appellate Project**  
**Phone: (206) 587-2711**  
**Fax: (206) 587-2710**  
**E-mail: [maria@washapp.org](mailto:maria@washapp.org)**  
**Website: [www.washapp.org](http://www.washapp.org)**

CONFIDENTIALITY NOTICE: This email, including any attachments, may contain confidential, privileged and/or proprietary information which is solely for the use of the intended recipient(s). Any review, use, disclosure, or retention by others is strictly prohibited. If you are not an intended recipient, please contact the sender and delete this email, any attachments and all copies.