

Received
Washington State Supreme Court

AUG 24 2015

Ronald R. Carpenter
Clerk

No. 02/25-3

SUPREME COURT OF THE STATE OF WASHINGTON

In the matter of the]
 Personal Restraint] MOTION FOR DISCRETIONARY
 of:] REVIEW
 JOHN WESTLEY JACKSON, JR]
 Petitioner.]

** ** * * * * * * * * * *

I - IDENTITY OF PETITIONER

JOHN WESTLEY JACKSON, Jr., asks the Supreme Court to grant review of the decision designated in Part 2.

II - DECISION

The decision of the Acting Chief Judge, Division One, dismissing the personal restraint petition filed in matter 73980-8-I [a copy of which is attached as Appendix-A].

III - STATEMENT OF THE CASE

Jackson was sentenced to 120-months on the count of Attempt: Assault in the First Degree; and 60-months

1 on one count of felony harassment. Each of these
2 counts were to be served consecutively. [Slip-op
3 at 1].

4
5 The judgment includes credit for time served as de-
6 termined by the King County Jail. Id.

7 Jackson also provided a jail certification indicating
8 that he served 438 days in jail, for which he is
9 eligible for 219 days of earned release credit. Id.

10
11 In 2013, the legislature enacted Second Engrossed
12 Substitute Senate Bill 5892 -- AN Act Relating to
13 reducing corrections costs. [Laws of 2013, 2nd Sp.
14 Sess., Ch. 14].

15 Section 4 of the Act amends RCW 9.94A.729(1)(b),
16 and requires DOC to "adjust an offenders rate of
17 early release listed on the certification to be con-
18 sistent with the rate applicable to offenders in
19 [DOC] facilities." [Slip-op at 2].

20
21 Section 4 further provides that, "for offenders whose
22 offense was committed prior to the effective date
23 of this section, the recalculation SHALL NOT extend
24 a term of incarceration beyond that to which an of-
25 fender is currently subject." [Appendix - B, SESSB
26 5892, Laws of 2013, 2d Sp. Sess., Ch 14, ¶ 4 - my
27 emphasis].
28

1 As a direct consequence of the Department's recalcu-
2 lation of Petitioner's earned release credits pursuant
3 to the authority of RCW 9.94A.729, Jackson's release
4 date was extended from 8 August 2023, to 5 January
5 2025.

6
7 Under the explicit terms of the statute, this exten-
8 sion is not authorized.

9
10 REASONS WHY REVIEW SHOULD BE ACCEPTED

11 (a) THE DECISION OF THE COURT OF APPEALS
12 IGNORES THE PLAIN LANGUAGE OF THE
13 STATUTORY MANDATE, AND THE RULES
14 ESTABLISHED BY THIS COURT REGARDING
15 THE INTERPRETATION AND APPLICATION
16 OF STATUTES.

17 The interpretation of a statute is a matter of law
18 requiring de novo review. Nevers v. Fireside, Inc.,
19 133 Wn 2d 804, 806 (1997).

20 Where the language of a statute is plain, unambiguous,
21 and well understood according to its natural and
22 ordinary meaning, the statute itself furnishes a
23 rule of construction beyond which the court cannot
24 go. City of Seattle v. Ross, 54 Wn 2d 655, 658,
25 344 P2d 216 (1959).

26 In accord with the plain and ordinary meaning of
27 the words defining the mandates of the Act, the De-
28 partment was without legal authority to extend the

1 "term of incarceration beyond that to which the of-
2 fender is currently subject." Under the facts of
3 this present case, that means the Department was
4 specifically and explicitly prohibited from extending
5 Jackson's release date from 8 August 2023, to 5 Jan-
6 uary 2025.

7
8 The decision of the Court of Appeals ignores all
9 of this court's precedent with regard to the inter-
10 pretation and application of unambiguous statutes.
11 See, Dep't of Ecology v. Campbell & Gwinn, LLC, 146
12 Wn 2d 1, 9-10, 43 P3d 4 (2002)(requiring a court
13 to give effect to a statute's plain meaning); and
14 also Crab Ass'n v. State, 174 Wn App 572, 580, ¶
15 13 (2013)(the word "shall" imposes a mandatory duty
16 unless a contrary legislative intent is apparent).

17
18 In the matter presently being presented to this court,
19 there is no contrary legislative intent. The statute
20 plainly and explicitly states ". . . the recalculation
21 shall not extend a term of incarceration"

22 [My emphasis].

23
24 The Act "itself furnishes a rule of construction
25 beyond which" the Court of Appeals could not go [see
26 Ross, supra].

1 Under the mandatory terms of the statutory provision,
2 the Department is without the legal authority to
3 extend Jackson's release date from 8 August 2023
4 to 5 January 2025.

5
6 The decision of the Court of Appeals to the contrary
7 has so far departed from the usual and accepted course
8 of proceedings so as to call for revision by the
9 Supreme Court. The Court of Appeals has ignored
10 the rules established by this court with regard to
11 the interpretation and application of statutes, and
12 has further sanctioned the conduct of the Department
13 in ignoring the legislative mandate established in
14 Laws of 2013, 2nd Sp. Sess., Ch 14, § 4.

15
16 CONCLUSIONS

17 Based upon the foregoing facts and arguments, and
18 the record and file to date, Petitioner asks the
19 Supreme Court to **grant discretionary** review of the
20 of the order dismissing the petition, and to grant
21 the relief requested in the personal restraint pet-
22 ition.

23
24 Date: 8-20-15

25 John Jackson
26 John Westley Jackson, Jr.
27 Petitioner, Pro se
28 979212
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APPENDIX - A -

ORDER OF DISMISSAL

COA No. 73980-8-I

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

In the Matter of the Personal)	
Restraint of:)	No. 73980-8-1
)	
JOHN WESLEY JACKSON, JR.,)	
)	ORDER OF DISMISSAL
Petitioner.)	
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John Jackson challenges the authority of the Department of Corrections (DOC) to reduce the number of days of early release time certified by the King County Jail for his presentence confinement in King County Superior Court No. 11-1-07884-8 SEA. To obtain relief by means of a personal restraint petition, Jackson must demonstrate that he is under restraint and that the restraint is unlawful. RAP 16.4; see also In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

Jackson has provided a copy of his judgment and sentence, filed December 12, 2012, showing convictions for attempted assault in the first degree and felony harassment, committed on October 4, 2011. The court imposed an exceptional consecutive sentence of 120 months on the assault and 60 months on the harassment. The judgment includes credit for time served as determined by the King County Jail. Jackson has also provided a jail certification indicating that he served 438 days in jail for which he "is eligible for earned early release credit" of 219 days based on a rate of "[o]ne-half." According to Jackson, DOC recalculated his earned early release dates and changed his early release date from August 8, 2023, to January 5, 2024, in violation of statutory language providing that such a

"recalculation shall not extend a term of incarceration beyond that to which an offender is currently subject." Laws of 2013 2nd Sp. Sess., ch 14, § 4.

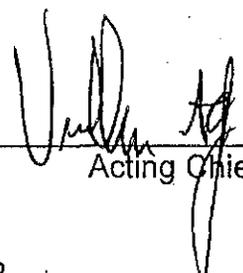
RCW 9.94A.729(1)(b) requires DOC to "adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to offenders in [DOC] facilities." According to RCW 9.94A.729(1)(c), for an offender convicted of a serious violent offense after July 1, 2003, "the aggregate earned release time may not exceed ten percent of the sentence." Attempted assault in the first degree is a "serious violent offense." RCW 9.94A.030(45)(a)(v), (ix).

Jackson does not contend or establish that he was entitled to earned early release credit on his jail time at a rate of more than 10%. And he fails to identify any authority or cogent explanation for his claim that DOC's recalculation of his earned early release date extended his incarceration beyond the term of 180 months to which he is currently subject. His bare assertions and conclusory allegations do not warrant relief in a personal restraint petition. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d (1086) (1992). Because Jackson fails to identify grounds for relief, his petition must be dismissed.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 29th day of July, 2015.



Acting Chief Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 JUL 29 AM 9:44

APPENDIX -- B --

Second Engrossed Substitute Senate Bill 5892

An Act Related to Reducing Corrections Costs

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CHAPTER 14

[Second Engrossed Substitute Senate Bill 5892] CORRECTIONS COSTS—REDUCTION .AN ACT Relating to reducing corrections costs; amending RCW 9.94A.517, 9.94A.729, and 9.92.151; creating new sections; providing an effective date; providing an expiration date; and declaring an emergency. Be it enacted by the Legislature of the State of Washington: **Sec. 1.** RCW 9.94A.517 and 2002 c 290 s 8 are each amended to read as follows: (1) TABLE 3 DRUG OFFENSE SENTENCING GRID References to months represent the standard sentence ranges. 12_+ equals one year and one day. (2) The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under RCW 2.28.170. (3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment. **Sec. 2.** RCW 9.94A.729 and 2011 1st sp.s. c 40 s 4 are each amended to read as follows: (1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. (b) Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the ((amount)) number of days of ((earned)) early release ((time)) **Seriousness Level Offender Score 0 to 2 Offender Score 3 to 5 Offender Score 6 to 9 or more III 51 to 68 months 68+ to 100 months 100+ to 120 months II 12+ to 20 months 20+ to 60 months 60+ to 120 months 10 to 6 months 6+ to ((18)) 12 months 12+ to 24 months** WASHINGTON LAWS, 2013 2nd Sp. Sess. Ch. 14 [2543] credits lost or not earned. The department may approve a jail certification from a correctional agency that calculates ((earned)) early release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. The department must adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to offenders in the department's facilities. However, the department is not authorized to adjust the number of presentence early release days that the jail has certified as lost or not earned. (2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements. (3) An offender may earn early release time as follows: (a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. (b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence. (c) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she: (i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section; (ii) Is not confined pursuant to a sentence for: (A) A sex offense; (B) A violent offense; (C) A crime against persons as defined in RCW 9.94A.411; (D) A felony that is domestic violence as defined in RCW 10.99.020; (E) A violation of RCW 9A.52.025 (residential burglary); (F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or (G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (iii) Has no prior conviction for the offenses listed in (c)(ii) of this subsection; (iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and (v) Has not committed a new felony after July 22, 2007, while under community custody. (d) In no other case shall the aggregate earned release time exceed one-third of the total sentence. (4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(c) of this section utilizing the risk assessment tool recommended by the Washington state institute **Ch. 14 WASHINGTON LAWS, 2013 2nd Sp. Sess. [2544]** for public policy. Subsection (3)(c) of this section does not apply to offenders convicted after July 1, 2010. (5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time; (b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community; (c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody; (d) If the department is unable to approve the offender's release plan, the department may do one or more of the following: (i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5); (ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance

will result in an approved release plan. The voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming; (e) For each offender who is the recipient of a rental voucher, the department shall include, concurrent with the data that the department otherwise obtains and records, the housing status of the offender for the duration of the offender's supervision. (6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. **Sec. 3.** RCW 9.92.151 and 2009 c 28 s 3 are each amended to read as follows: (1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits **WASHINGTON LAWS, 2013 2nd Sp. Sess. Ch. 14 [2545]** in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence. (2) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. (3) If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. **NEW SECTION. Sec. 4.** Pursuant to RCW 9.94A.729, the department shall recalculate the earned release date for any offender currently serving a term in a facility or institution either operated by the state or utilized under contract. The earned release date shall be recalculated whether the offender is currently incarcerated or is sentenced after the effective date of this section, and regardless of the offender's date of offense. For offenders whose offense was committed prior to the effective date of this section, the recalculation shall not extend a term of incarceration beyond that to which an offender is currently subject. **NEW SECTION. Sec. 5.** (1)(a) The department must, in consultation with the caseload forecast council, compile the following information in summary form for the two years prior to and after the effective date of this section: For offenders sentenced under RCW 9.94A.517 for a seriousness level I offense where the offender score is three to five: (A) The total number of sentences and the average length of sentence imposed, sorted by sentences served in state versus local correctional facilities; (B) the number of current and prior felony convictions for each offender; (C) the estimated cost or cost savings, total and per offender, to the state and local governments from the change to the maximum sentence pursuant to RCW 9.94A.517(1); and (D) the number of offenders who were sentenced to community custody, the number of violations committed on community custody, and any sanctions imposed for such violations. (b) The department must submit a report with its findings to the office of financial management and the appropriate fiscal and policy committees of the house of representatives and the senate by January 1, 2015, and January 1, 2018. (2) For purposes of this section, "department" means the department of corrections. **NEW SECTION. Sec. 6.** The legislature declares that section 4 of this act does not create any liberty interest. The department is authorized to take the time reasonably necessary to complete the recalculations of section 4 of this act after the effective date of this section. **NEW SECTION. Sec. 7.** Section 1 of this act applies to sentences imposed on or after July 1, 2013, regardless of the date of offense. **NEW SECTION. Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. **Ch. 14 WASHINGTON LAWS, 2013 2nd Sp. Sess. [2546]** **NEW SECTION. Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013. **NEW SECTION. Sec. 10.** Sections 1 and 5 of this act expire July 1, 2018. Passed by the Senate June 28, 2013. Passed by the House June 27, 2013. Approved by the Governor June 30, 2013. Filed in Office of Secretary of State July 1, 2013. .

Tracy, Mary

From: Tracy, Mary
Sent: Tuesday, August 25, 2015 8:40 AM
To: Wise, Laurel
Subject: 73980-8-1 (John Wesley Jackson, Jr.) (SC# 92125-3)

Petitioner filed a motion for discretionary review of PRP. Please forward physical pouch to us.

Thank you,

Mary Tracy

Docket Specialist/Capital Case Manager

Washington State Supreme Court

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