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NO. 66262-7-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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CHRISTINA DRESS aka CHRISTINA LARCOM,

Respondent,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Appellant.

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**REPLY OF THE DEPARTMENT OF CORRECTIONS**

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ROBERT M. MCKENNA  
Attorney General

RONDA D. LARSON, WSBA #31833  
Assistant Attorney General  
Corrections Division  
P.O. Box 40116  
Olympia, WA 98504  
(360) 586-1445

FILED  
COURT OF APPEALS  
DIVISION I  
WASHINGTON  
2011 MAY 31 AM 10:46

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## I. ARGUMENT

### A. The Legislature Did Not Amend The Constitution By Omitting A Comma

In discussing the corollary to the last antecedent rule, Dress quotes RCW 2.08.010, which is almost identical to article IV, § 6 of the Washington Constitution. Response of Dress, at 9. That is the provision that prohibits a court from granting writs to persons who are not in actual custody in the court's county. Dress claims that because the statute omits the comma after the words "habeas corpus," this sufficiently grants statutory authority to a superior court to issue a writ to someone who is not in custody in that court's county. But a statute cannot expand a court's authority beyond what the Constitution has already given. A statute that recites a constitutional provision acts merely as a descriptor of what is already in the Constitution. It does nothing more. It adds nothing and it takes away nothing. It cannot be used as a substitute for a constitutional amendment.

Because a superior court lacks authority under the Constitution to grant a writ to someone not in actual custody in that county, the trial court in Dress's case lacked jurisdiction to grant her the writ.

**B. A Different Constitutional Provision Applies To Non-Prisoners Seeking Writs Of Mandamus**

Dress claims that if the DOC were correct in how it reads the placement of the comma in article IV, § 6, this would mean that nobody but prisoners could seek a writ of mandamus, and such an absurd result is clearly not what the authors of the Constitution had intended. Response of Dress, at 11-12.

In fact, the DOC's interpretation of the language at issue in this case does not in any way circumscribe the jurisdiction of a court to grant a writ to non-prisoners. Rather, it is other provisions of the Constitution that provide such jurisdiction. Article IV, § 4, states "The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and *mandamus* as to all state officers . . . ." (Emphasis added). Additionally, article IV, § 6, states, "The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court . . . ." Nothing has vested original jurisdiction to issue non-prisoner writs of mandamus exclusively in the Washington Supreme Court. The original jurisdiction of the Washington Supreme Court is limited and where it exists, it is discretionary. *Staples v. Benton Cy. ex rel. Bd. of Comm'rs*, 151 Wn.2d 460, 464, 89 P.3d 706 (2004). Therefore, superior courts have

original jurisdiction to issue writs of mandamus to non-prisoners, and this is perfectly consistent with the provision that limits superior courts' jurisdiction to issue writs of mandamus only to prisoners in actual custody in the same county.<sup>1</sup>

**C. Mandamus Is Not Available To Compel The DOC To Interpret An Ambiguity In A Way That Is Contrary To Statute**

Dress argues that because there was no ambiguity in her sentence, the DOC's interpretation of her sentence was not discretionary and thus mandamus was proper. Response of Dress, at 22. However, Dress's judgment and sentence contradicted itself. It cited the statute that required consecutiveness and simultaneously used the word "concurrent." As such, it required the exercise of judgment by DOC records staff.

For mandamus to be proper, the mandate must define the duty with such particularity "as to leave nothing to the exercise of discretion or judgment." *Freeman v. Gregoire*, \_\_ Wn.2d \_\_, \_\_ P.3d \_\_, 2011 WL 1499895, \*3, ¶ 10 (2011) (internal quotation marks omitted). In Dress's case, the judgment and sentence was self-contradictory. Thus, it did not define the DOC's duty with such particularity as to leave nothing to the exercise of discretion.

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<sup>1</sup> Superior courts also have jurisdiction to issue a variety of other types of writs to non-prisoners, including writs of certiorari and of quo warranto. *See* Const. art. IV, §§ 4, 6 (listing, e.g., writs of review, prohibition, certiorari, "and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction").

Furthermore, mandamus cannot be used to compel an official to perform an act that violates the law. By statute, concurrency is not allowed. The DOC used its discretion to interpret an ambiguity in a way that was consistent with the law. “Mandamus is an extraordinary remedy appropriate only where a state official is under a mandatory ministerial duty to perform an act *required by law* . . . .” *Id.* (emphasis added). In Dress’s case, the law required consecutiveness. Dress cannot use mandamus to compel the DOC to perform an act *contrary to law*, that is, to run the sentences concurrently.

**D. DOC Interpreted An Ambiguous Sentence In The Way That Is Most Consistent With The Law**

Dress at one point in her response claims that DOC modified her sentence (Response of Dress, at 21) and at another point claims the DOC ignored the judgment and sentence. Response of Dress, at 25. Neither is true. The judgment and sentence expressly incorporates the applicable statute. Under the applicable statute, the two sentences are consecutive. The DOC interpreted the ambiguity in the way that was most consistent with the statute that was cited in the judgment and sentence.

But the more important point is that this Court should not reach the merits of this case, because the jurisdictional issue is a threshold issue. *State v. Epler*, 93 Wn. App. 520, 523, 969 P.2d 498 (1999) (“The

threshold, and dispositive, question is whether the superior court had authority to issue the writ of review”). The threshold question for a discretionary writ is not whether the court committed an error of law, but whether the court had jurisdiction to decide the petition. *Commanda v. Cary*, 143 Wn.2d 651, 655, 23 P.3d 1086 (2001) (citing *State v. Epler*, 93 Wn. App. at 524). Dress’s claim fails because the superior court was without jurisdiction to issue the writ of mandamus.

**E. Dress Has A Plain, Speedy And Adequate Remedy At Law**

Dress has a speedy and adequate remedy: a personal restraint petition. Dress claims the DOC argued that although the proper method for challenging the DOC’s actions is a personal restraint petition, the time for filing a petition has expired. Response of Dress, at 4-5; 16 n.3. The DOC never made such a statement, and such a statement is also false.<sup>2</sup> Dress appears to have confused the rules governing collateral attacks of the underlying sentence or conviction (either by way of a superior court proceeding or by way of a personal restraint petition) with the rules governing personal restraint petitions challenging the DOC’s administration of a sentence. The one-year time bar applies only to collateral attacks of the underlying sentence or conviction, not to petitions

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<sup>2</sup> DOC’s time-bar argument went to the issue of a motion in the superior court challenging the judgment and sentence. CP 11. It was not regarding a PRP challenging DOC’s administration of the sentence.

challenging DOC's administration of the sentence. *See* RCW 10.73.090 and RAP 16.4(d). Thus, Dress still has a remedy for challenging the DOC's actions. Because she already has an adequate remedy at law for her claim, she cannot receive relief by way of a petition for writ of mandamus.

Dress also argues that a personal restraint petition would not result in relief in a timely manner and thus would not be adequate. This is also incorrect. The Rules of Appellate Procedure have a process for accelerated review of claims, including claims in personal restraint petitions. *See* RAP 18.12. In fact, such a process was utilized by the DOC in this case. The DOC filed an accelerated motion for stay of the superior court's order and the Court made a decision on that motion merely ten days later. Had Dress gone the route of an accelerated personal restraint petition, she would have avoided the jurisdiction problems she faced in her original motion under the criminal cause and that she now faces in her petition for a writ of mandamus. And she would have received timely relief, assuming she is entitled to it.<sup>3</sup>

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<sup>3</sup> Even if Dress were correct that this Court could not rule on a personal restraint petition quickly, she should have filed her writ of mandamus in the superior court in the county in which she was incarcerated. It is true that any court can reach a speedy resolution by violating jurisdictional rules. But a competent judicial system is not possible if everyone operates on the notion that the end justifies the means.

Dress also claims a personal restraint petition is inadequate because there is no right to counsel in such a proceeding. Response of Dress, at 17. But she had no right to counsel for her petition for writ of mandamus, either, yet she was represented by counsel. So that could not have made a difference.

The court “will not grant a writ of mandamus if there is a plain, speedy, and adequate remedy at law.” *Council of County & City Employees v. Hahn*, 151 Wn.2d 163, 167, 86 P.3d 774 (2004). The existence of an adequate remedy merely requires that there be a process by which the plaintiff may seek redress for the allegedly unlawful action. *Id.* at 170.

Because Dress has a plain, speedy, and adequate remedy at law, the superior court erred by granting her petition for writ of mandamus.

**F. The Trial Court And Both Parties Had Notice Immediately After Sentencing That Consecutiveness Was Required**

Dress relates how the trial court, in granting Dress’s petition, opined that it might have given Dress a reduced sentence if it had run the sentences consecutively. Response of Dress, at 7. This statement by the trial court is not supported by the record. The DOC records staff wrote to the court and all parties soon after sentencing to inform them that the statute required consecutiveness. The court did not respond. If the court

was inclined to do anything in response to the consecutiveness requirement, it would have done so at that time.

Dress also relates how the trial court stated that DOC's current attempt to challenge the sentence was untimely. *Id.* This statement by the court also is not supported by the record. The DOC was not challenging anything. It was Dress who was challenging the DOC's administration of an ambiguous sentence.

Likewise, Dress quotes the trial court as essentially saying that the DOC's administration of Dress's sentence does not have "a good odor" to it and that it "just does not seem right." Response of Dress, at 8. To the contrary, what does not seem right is the trial court's inaction in the face of DOC's timely notification to the court that the statute required consecutiveness. And also what does not seem right is the trial court's casting of blame on the DOC for a problem that the trial court itself created. It is true that the trial court certainly created the problem unintentionally. But then the trial court decided not to take action when the problem was immediately brought to its attention. That does not seem right, especially given the large number of crimes that Dress has committed in her past. If anyone should have consecutive sentences, it is she.

**G. The DOC Is Obligated To Consider Public Safety In Its Decisions**

Dress criticizes the DOC for waiting 30 days to file its notice of appeal. Response of Dress, at 8, 18-19. But it is *her* duty to do the utmost to ensure her immediate release. In contrast, the DOC's duty is to ensure community safety and to correctly administer sentences. The DOC does not agree with Dress that she should have been released. The safety of the community required that the DOC not release her any earlier than necessary, given that she is at high risk to reoffend. *See* CP 33 (showing risk assessment classification as HNV, which means high risk to reoffend nonviolently). Her criminal history is full of convictions for crimes generally relating to identity theft. CP 83. That is certainly not a victimless crime.

Also, if Dress had gone the proper route of filing a personal restraint petition, she would have controlled the filing timeline, rather than the DOC controlling it. She cannot now complain that the DOC delayed its filing to her disadvantage.

**II. CONCLUSION**

The superior court was without jurisdiction to grant a writ of mandamus to Dress. The DOC requests that the Court vacate the superior court's order releasing Dress from prison. The DOC also requests,

consistent with Dress's earlier concession in the DOC's motion for stay, that Dress not receive credit toward her prison term for the time she spent out of prison.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of May, 2011.

ROBERT M. MCKENNA  
Attorney General

  
RONDA D. LARSON, WSBA #31833  
Assistant Attorney General  
Corrections Division  
PO Box 40116  
Olympia WA 98504-0116  
(360) 586-1445

**CERTIFICATE OF SERVICE**

I certify that on the date below I served a copy of the REPLY OF THE DEPARTMENT OF CORRECTIONS on all parties or their counsel of record as follows:

Via U.S. Mail Postage Prepaid

TO:

DAVID B. KOCH  
ATTORNEY AT LAW  
1908 E. MADISON ST.  
SEATTLE, WA 98122

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 27<sup>th</sup> day of May, 2011 at Olympia, Washington.



\_\_\_\_\_  
KATRINA TOAL  
Legal Assistant