

67325-4

67325-4

NO. 67325-4-1

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

STATE OF WASHINGTON,

Respondent,

v.

NEIL DAVIS,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 DEC 30 PM 4:20

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

The Honorable Ira Uhrig, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The judgment and sentence erroneously identifies the dates of the offenses. CP 17.

2. The judgment and sentence erroneously authorizes the Department of Corrections (DOC) to direct appellant to submit to electronic monitoring. CP 22.

Issues Related to Assignments of Error

1. The information identifies the dates of two offenses as a one-year charging period, and the dates of two other offenses as a two-year charging period. Appellant's guilty plea adopted the elements charged in the information to establish the offenses. The judgment and sentence nonetheless finds each of the offenses to have been committed on a single day, rather than the charging period. Where this is clear error and may have present or future consequences, should this Court direct its correction?

2. As a condition of community custody the trial court directed appellant to "submit to electronic monitoring if imposed by DOC." CP 22. Where no statute authorizes this as a condition of community custody, should this Court direct that the condition be stricken from the judgment and sentence?

B. STATEMENT OF THE CASE

1. Charge and Plea

On January 29, 2008, the Whatcom County prosecutor charged appellant Neil Davis with fourteen counts for offenses committed against K.A.M., a juvenile. CP 72-76. On June 16, 2009, in resolving the case by plea agreement, the state filed an amended information charging 16 counts. CP 67-71. Counts 8-9 alleged second degree child molestation, occurring between February 22, 2003 and February 22, 2004. CP 69 (RCW 9A.44.086). Counts 15-16 alleged third degree child rape, occurring between February 22, 2004 and February 22, 2006. CP 70 (RCW 9A.44.079).

Davis pled guilty to the elements of counts 8, 9, 15, and 16 as charged. Supp. CP ___ (sub no. 53, Statement on Plea of Guilty, 6/16/09).¹ Davis was initially sentenced to a 90-month term on October 8, 2009. CP 53-66.

¹ A copy of the plea form is attached as appendix A.

2. First Appeal²

Davis appealed the initial sentence, raising two claims. First, the sentencing court erred in applying the wrong version of the SSOSA (Special Sex Offender Sentencing Alternative) eligibility statute. Second, the lifetime sexual assault protection order exceeded the trial court's authority.

The state conceded error on both claims. By opinion dated October 18, 2010, this Court accepted the concessions and remanded to the trial court for proceedings consistent with the opinion. Appendix B.

3. Remand Proceedings

On May 31, 2011, the court entered an agreed order directing a supplemental presentence investigation. The order specifically directed the Department of Corrections to include a recommendation on whether inpatient or community-based treatment would serve the best interests of Davis and the community. CP 31-33.

At the sentencing hearing Davis and his attorney requested the court to impose a SSOSA. Counsel relied in large part on a SSOSA

² The facts in this section are supported by this Court's file and decision in cause number 64447-5-I. A copy of the decision is attached as appendix B.

evaluation and psychological evaluation prepared to support the defense request. RP 4-20, 43-47.³

Relying in large part on the DOC presentence investigation, the state opposed a SSOSA and ultimately asked the court to again impose the 90-month sentence. 3RP 22-42.

The court said it would deny the defense request for a SSOSA. The court then stated it would impose a 102-month sentence. RP 56-57. This was a mid-range sentence within the standard range. CP 18, 21.

Defense counsel quickly asked the court not to increase the sentence from the 90-month sentence previously ordered. The court responded that it would impose the additional 12 months based on previously unknown information about other sexual contact that was now included in the SSOSA evaluation. RP 57-58; CP 21. Other conditions of the judgment and sentence are discussed in the argument section, infra.

This appeal timely follows.

³ Because this brief does not challenge the court's denial of the SSOSA, those evaluations have not been designated as parts of the appellate record.

C. ARGUMENT

1. THE DATE OF EACH OFFENSE IS A CHARGING PERIOD, NOT A SINGLE DAY.

The amended information charged Davis with four counts committed during two charging periods. Counts 8-9 were alleged to be committed “on or about the timeframe between February 22, 2003 and February 22, 2004.” CP 69. Counts 15-16 were alleged to be committed “on or about the timeframe between February 22, 2004, and February 22, 2006.” CP 70. Davis pled guilty to these elements of the charge. Appendix A, at 1-2.⁴

The judgment and sentence finds that counts 8-9 were committed on February 22, 2003, and counts 15-16 were committed on February 22, 2004. CP 17. These dates were the beginning of the respective charging periods, but not the entire period. CP 69-70.

No evidence or admission of facts supports the trial court’s limitation of the offense date to a single day rather than the charging period. Accordingly, this finding is erroneous and should be corrected. State v. Casarez, 64 Wn. App. 910, 915, 826 P.2d 1102

⁴ The plea statement also referenced the affidavit of probable cause as the factual basis for the plea. Appendix A, at 7. A copy of that affidavit is attached as appendix C. Supp. CP __ (sub no. 8, Affidavit of Probable Cause, 1/29/08).

(1992) (erroneous offense date should be corrected), aff'd on other grounds sub nom. State v. Garza-Villarreal, 123 Wn.2d 42, 864 P.2d 1378 (1993); In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701-02, 117 P.3d 353 (2005) (clerical mistakes in judgment and sentence may be corrected at any time); State v. Moten, 95 Wn. App. 927, 928-29, 976 P. 2d 1286 (1999) (scrivener's error in judgment and sentence should be corrected); see also, State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997) (court has the authority to correct an erroneous sentence).

The state may respond this error makes no difference. Such a response should be rejected.

When imposing a sentence under Washington's Sentencing Reform Act (SRA), the court's authority is limited to that granted by statutes in effect at the time the offense was committed. RCW 9.94A.345; In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Smith, 144 Wn.2d 665, 673-75, 30 P.3d 1245, 39 P.3d 294 (2001). Because this is a question of law, a reviewing court owes no deference to the trial court's decision. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Although the SRA does not expressly instruct a trial court to correctly identify the offense date, this is a prerequisite to every lawful

sentence. A court must impose sentence as provided in the SRA. RCW 9.94A.505(1). The offense date determines the applicable sentencing provisions. RCW 9.94A.345.⁵ The offense date also allows the calculation of criminal history by including only “prior” offenses and determining which offenses “wash out.” RCW 9.94A.525. Accurately identifying the offense date prevents violations of the state and federal ex post facto clauses. U.S. Const. art. I § 10; Wash. Const. art. I, § 23; see e.g., State v. Madsen, 153 Wn. App. 471, 228 P.3d 24 (2009) (application of statute enacted after the date of offense was prohibited by ex post facto clauses where statute increased punishment to offender’s disadvantage), rev. denied, 168 Wn.2d 1034 (2010); State v. Parker, 132 Wn.2d 182, 191, 937 P.2d 575 (1997) (discussing the effect of statutory amendments during a charging period).

⁵ This matters because the Legislature often amends the SRA. See, e.g., In re Restraint of LaChapelle, 153 Wn.2d 1, 7 n.4, 100 P. 3d 805 (2004) (recognizing the Legislature’s congenital inability to avoid near-constant tinkering with the SRA, noting 181 amendments through the 2004 legislative session).

For these reasons, this Court should remand to direct the trial court to correct the erroneous offense date in the judgment and sentence.⁶

2. THE COURT LACKED AUTHORITY TO AUTHORIZE DOC TO IMPOSE ELECTRONIC MONITORING AS A CONDITION OF COMMUNITY CUSTODY.

The judgment and sentence includes a condition of community custody directing Davis to “submit to electronic monitoring if imposed by DOC.” CP 22. This exceeds the trial court’s sentencing authority and is erroneous.

As discussed above, a trial court’s sentencing authority is limited to that granted by statutes in effect at the time the offense was committed. RCW 9.94A.345; Leach, 161 Wn.2d at 184; Smith, 144 Wn.2d at 673-75. This question of law is reviewed de novo. Armendariz, 160 Wn.2d at 110.

⁶ Davis’s counsel is familiar with Division Three’s suggestion that some errors in a judgment and sentence might be more efficiently corrected by motion in the trial court. State v. Rowland, 97 Wn. App. 301, 305-06, 983 P.2d 696 (1999). However, counsel is also familiar with Anders v. California, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967) and State v. Hairston, 133 Wn.2d 534, 946 P.2d 397 (1997). Counsel was appointed to represent the appellant in this Court, not the trial court, and is obliged to raise potentially meritorious issues on appeal.

Under versions of the SRA in effect in 2003-2006, a trial court has authority to impose certain conditions of community custody. RCW 9.94A.700(4), (5).⁷ Electronic monitoring by DOC is not included. The condition therefore exceeds the court's statutory authority and should be stricken.⁸ State v. Jones, 118 Wn. App. 199, 212, 76 P.3d 258 (2003) (striking condition is proper remedy when condition is not statutorily authorized).

Although Davis has not yet been released and DOC has not yet imposed the condition, this pre-enforcement challenge is ripe for review. State v. Bahl, 164 Wn.2d 739, 751, 193 P.3d 678 (2008) (claim is mature for review when (1) the issues raised are primarily legal, (2) the issues do not require further factual development, and (3) the challenged action is final); accord, State v. Sanchez Valencia, 169 Wn.2d 782, 787-89, 239 P.3d 1059 (2010). The trial court's statutory authority to impose electronic monitoring is a purely legal question that requires no factual development. Furthermore, the order is final. Sanchez Valencia, 169 Wn.2d at 789 ("The third prong

⁷ Copies of the 2003 and 2004 versions of RCW 9.94A.700 are attached as appendix D.

⁸ The term "electronic monitoring" also is undefined and vague, but where the condition is not statutorily authorized a separate vagueness challenge need not be raised or reached.

of the ripeness test, whether the challenged action is final, is indisputably met here. The petitioners have been sentenced under the condition at issue.”).

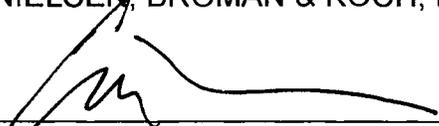
D. CONCLUSION

For the above-stated reasons, the offense dates should be amended and the community placement condition stricken.

DATED this 30th day of December, 2011.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



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OID No. 91051
Attorneys for Appellant

APPENDIX A

No. 67325-4-1

SCANNED 10

FILED IN OPEN COURT
6-16 2009
WHATCOM COUNTY CLERK
By [Signature]
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,

vs.

NEIL DUANE DAVIS, Defendant.

No. 08-1-00133-7

STATEMENT OF DEFENDANT ON PLEA OF
GUILTY TO SEX OFFENSE (STTDFG)
(FELONY)

DOB: April 24, 1970

- 1. My true name is: Neil Duane Davis
- 2. My age is: 39
- 3. The last level of education I completed was 11th + 64D

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

- (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is STARCK FOLLIS.
- (b) I am charged with: **RAPE OF A CHILD IN THE SECOND DEGREE, Count I, RAPE OF A CHILD IN THE SECOND DEGREE, Count II, RAPE OF A CHILD IN THE SECOND DEGREE, Count III, RAPE OF A CHILD IN THE SECOND DEGREE, Count IV, RAPE OF A CHILD IN THE THIRD DEGREE, Count V, RAPE OF A CHILD IN THE THIRD DEGREE, Count VI, RAPE OF A CHILD IN THE THIRD DEGREE, Count VII, CHILD MOLESTATION IN THE SECOND DEGREE, Count VIII, CHILD MOLESTATION IN THE SECOND DEGREE, Count IX, CHILD MOLESTATION IN THE SECOND DEGREE, Count X, CHILD MOLESTATION IN THE SECOND DEGREE, Count XI, CHILD MOLESTATION IN THE THIRD DEGREE, Count XII, CHILD MOLESTATION IN THE THIRD DEGREE, Count XIII, CHILD MOLESTATION IN THE THIRD DEGREE, Count XIV, RAPE OF A CHILD IN THE THIRD DEGREE, Count XV and RAPE OF A CHILD IN THE THIRD DEGREE, Count XVI.**
- (c) I am pleading guilty to: **CHILD MOLESTATION IN THE SECOND DEGREE, Count VIII, CHILD MOLESTATION IN THE SECOND DEGREE, Count IX and RAPE OF A CHILD IN THE THIRD DEGREE, Count XV and RAPE OF A CHILD IN THE THIRD DEGREE, Count XVI.**

The elements of the crime(s) are:

CHILD MOLESTATION IN THE SECOND DEGREE, COUNT VIII

That on or about the timeframe between February 22, 2003 and February 22, 2004, the said defendant, NEIL DUANE DAVIS, then and there being in said county and state, being at least thirty six (36) months older

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than K.A.M., had sexual contact with K.A.M., who was at least twelve (12) years old, but less than fourteen (14) years old and not married to the defendant; contrary to Revised Code of Washington 9A.44.086, which violation is a Class B Felony;

CHILD MOLESTATION IN THE SECOND DEGREE, COUNT IX

That on or about the timeframe between February 22, 2003 and February 22, 2004, the said defendant, NEIL DUANE DAVIS, then and there being in said county and state, being at least thirty six (36) months older than K.A.M., had sexual contact with K.A.M., who was at least twelve (12) years old, but less than fourteen (14) years old and not married to the defendant; contrary to Revised Code of Washington 9A.44.086, which violation is a Class B Felony;

RAPE OF A CHILD IN THE THIRD DEGREE, COUNT XV

That on or about the timeframe between February 22, 2004 and February 22, 2006, the said defendant, NEIL DUANE DAVIS, then and there being in said county and state, did have sexual intercourse with K.A.M., who was at least fourteen (14) years old, but less than sixteen (16) years old and not married to the defendant and the defendant was at least forty eight (48) months older than K.A.M.; contrary to Revised Code of Washington 9A.44.079, which violation is a Class C Felony;

RAPE OF A CHILD IN THE THIRD DEGREE, COUNT XVI

That on or about the timeframe between February 22, 2004 and February 22, 2006, the said defendant, NEIL DUANE DAVIS, then and there being in said county and state, did have sexual intercourse with K.A.M., who was at least fourteen (14) years old, but less than sixteen (16) years old and not married to the defendant and the defendant was at least forty eight (48) months older than K.A.M.; contrary to Revised Code of Washington 9A.44.079, which violation is a Class C Felony;

5. **I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL STANDARD RANGE (standard range including enhancements)	MAXIMUM TERM
VIII	10	VII	87 to 116 Months		87 to 116 Months	Class B Felony
IX	10	VII	87 to 116 Months		87 to 116 Months	Class B Felony
XV	10	VI	60 to 60 Months		60 to 60 Months	Class C Felony
XVI	10	VI	60 to 60 Months		60 to 60 Months	Class C Felony

* (F) Firearm, (D) other deadly weapon, (V) VUSCA in protected zone, (VH) Veh. Hom. see RCW 46.61.520, (JP) Juvenile Present, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) Criminal Street Gang involving minor, (AE) endangerment while attempting to elude 9.94A.533(10)

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, **I am obligated to tell the sentencing judge about those convictions.**
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For sex offenses committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on me.

For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on me.

For sex offenses committed on or after September 1, 2001:

(i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions and requirements placed upon me which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the First Degree	Rape in the Second Degree
Rape of a Child in the First Degree committed when I was at least 18 years old.	Rape of a Child in the Second Degree when I was at least 18 years old.
Child Molestation in the First Degree committed when I was at least 18 years old.	Indecent Liberties by Forcible Compulsion
Any of the following offenses with a finding of sexual motivation:	

Murder in the First Degree	Murder in the Second Degree
Homicide by Abuse	Kidnapping in the First Degree
Kidnapping in the Second Degree	Assault in the First Degree
Assault in the Second Degree	Assault of a Child in the First Degree
Burglary in the First Degree	Assault of a Child in the Second Degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the First Degree	Rape in the Second Degree
Rape of a Child in the First Degree	Rape of a Child in the Second Degree
Child Molestation in the First Degree	Indecent Liberties by Forcible Compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the First Degree	Murder in the Second Degree
Homicide by Abuse	Kidnapping in the First Degree
Kidnapping in the Second Degree	Assault in the First Degree
Assault in the Second Degree	Assault of a Child in the First Degree
Burglary in the First Degree	Assault of a Child in the Second Degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned early release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006:

For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

Community Custody Violation:

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days of confinement per violation and/or revoke my earned early release or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) I have entered into a plea agreement with the State. In exchange for my pleading guilty as stated herein, the state makes the following recommendation to the judge:

The State recommends dismissal of Counts I, II, III, IV, V, VI, VII, X, XI, XII, XIII AND XIV; The defendant shall serve 90 MONTHS for Count VIII, 90 MONTHS for Count IX, 60 MONTHS for Count XV, 60 MONTHS for

Count XVI, confinement in the custody of the Department Of Corrections; COMMUNITY SUPERVISION/COMMUNITY CUSTODY, as determined by DOC, for 36 TO 48 MONTHS for COUNT VIII, 36 TO 48 MONTHS for COUNT IX, 36 TO 48 MONTHS for COUNT XV, 36 TO 48 MONTHS for COUNT XVI; This plea agreement is conditioned on the defendant agreeing to pay restitution on charged and uncharged counts or dismissed cause numbers (if applicable); THE DEFENDANT WILL PLEAD GUILTY TO COUNTS 8 AND 9- CHILD MOLESTATION IN THE SECOND DEGREE AND COUNTS 15 AND 16- RAPE OF A CHILD IN THE THIRD DEGREE. HE WILL THEN HAVE AN OFFENDER SCORE OF "10" WITH A RANGE OF 87-116 MONTHS ON COUNTS 8 AND 9 AND 60 MONTHS ON COUNTS 15 AND 16. AGREED 90 MONTH DOC SENTENCE ON COUNTS 8 AND 9 AND 60 MONTHS ON COUNTS 15 AND 16 TO RUN CONCURRENT. DEFENDANT TO UNDERGO SEXUAL DEVIANCY TREATMENT WHILE AT DOC. LFO'S/NCO/NO CONTACT WITH MINORS/RESTITUTION/36 TO 48 MONTHS COMMUNITY CUSTODY/NO SSOSA/NO ALTERNATIVE SENTENCING/NO TRO; Work Ethic Camp IS NOT recommended; SEXUAL DEVIANCY TREATMENT; NO CONTACT WITH MINORS UNDER 18 YEARS OLD; The defendant shall have no contact with KAHLYN A. MARTIN (DOB 2/22/90), 4183 WEST LAKE SAMMAMISH PARKWAY B103, BELLEVUE, WA 98008; The defendant shall fully cooperate in mandatory DNA testing; Legal Financial Obligations as follows: ; Restitution is To Be Determined and/or only partial restitution is listed; Jury Verdict Fee \$0; Criminal Filing Fee \$200.00; Victim Fund Assessment - \$500.00; Mandatory DNA test Crime Lab cost - \$100.00; The court will set the defendant's monthly payment amount at \$100.00 towards his Legal Financial Obligations, which will remain in effect until such time as the defendant executes a payment plan negotiated with the Collection Deputy. The first payment of \$100.00 is due immediately after imposition of sentence or release from confinement, whichever event occurs last; The defendant shall pay the costs of services to collect unpaid legal financial obligations.

Defendant agrees and stipulates as a condition of this plea agreement that his/her criminal history and sentencing range is accurately set forth in this pleading.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so.
- (i) The Judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interest of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence then no one may appeal the sentence. If the court imposes an exceptional sentence after a contested hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm unless my right to do so is restored by a Superior Court in Washington State, and by a Federal Court if required. I must immediately surrender any concealed pistol license. RCW 9.41.040.

- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. Art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Public assistance will be suspended during any period of imprisonment.
- (m) I will be required to register where I reside, study or work. The specific registration requirements are described in "Offender Registration" Attachment.
- (n) I will be required to provide a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100 DNA collection fee.
- (o) I will be required to undergo testing for human immunodeficiency (AIDS) virus.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE

- (p) This offense is a most serious offense as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

- (q) Special sex offender sentencing alternative:
For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

For offenses committed on or after September 1, 2001: The judge may suspended execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement or, for offenses committed on or after July 1, 2005, I will be ordered to serve up to 12 months of total confinement; I will be ordered to participate in sex offense treatment; I will have restriction and requirements placed upon me which may include electronic monitoring, and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- (r) If this is a crime of domestic violence I may be ordered to pay a domestic violence assessment of up to \$1000. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- (s) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (t) If this offense involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.
- (u) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(o).
- (v) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts ____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- (w) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm or sexual motivation enhancements are mandatory, they must be served in total confinement and they must run consecutively to any other sentence and to any other deadly weapon, firearm or sexual motivation enhancements.
- (x) For crimes committed on or after July 22, 2007: If the offense(s) I am pleading guilty to are rape of a child in the first, second or third degree or child molestation in the first, second or third degree, and I engaged, agreed, or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense the one-year enhancement must be added to the total period of total confinement for all offense, regardless of which underlying offense is subject to the enhancement.

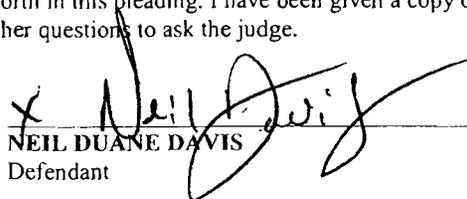
AD

- 7. I plead guilty to the crime(s) of **CHILD MOLESTATION IN THE SECOND DEGREE, CHILD MOLESTATION IN THE SECOND DEGREE, RAPE OF A CHILD IN THE THIRD DEGREE and RAPE OF A CHILD IN THE THIRD DEGREE** charged in the Information. I have received a copy of that information.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

- 12. My lawyer has explained to me, and we have fully discussed all of the above paragraphs and "Offender Registration" Attachment, if applicable. I understand them all. Further I agree and stipulate that my criminal

history and sentencing range is accurately set forth in this pleading. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.


 NEIL DUANE DAVIS
 Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.


 DONA BRAAKE, #29753
 Deputy Prosecuting Attorney


 STARCK FOLLIS, # 15677
 Attorney for Defendant

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full; or
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 16th day of June, 2009.


 Judge

CRIMINAL HISTORY

CRIME	DATE OF SENTENCE	A or J	TYPE OF CRIME
ASSAULT IN THE FOURTH DEGREE		Adult	Gross Misdemeanor
ASSAULT IN THE FOURTH DEGREE		Adult	Gross Misdemeanor
DRIVING UNDER THE INFLUENCE		Adult	Gross Misdemeanor
DWLS - SECOND DEGREE		Adult	Misdemeanor
DWLS- THIRD DEGREE		Adult	Misdemeanor
DWLS- THIRD DEGREE	02/08/06	Adult	Misdemeanor
NEGLIGENT DRIVING IN THE FIRST DEGREE	09/10/01	Adult	Misdemeanor
POSSESSION OF MARIJUANA	09/10/01	Adult	Misdemeanor
DRIVING UNDER THE INFLUENCE	07/15/96	Adult	Gross Misdemeanor
VUCSA- MANUFACTUR/DELIVERY	10/06/92	Adult	Class B Felony

“OFFENDER REGISTRATION” ATTACHMENT: sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130

1) General Applicability Requirements: Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington, but I am a student in Washington, or I am employed in Washington, or I carry out a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

2) Offenders Who Leave the State and Return: If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 3 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 3 days after attending school in this state, or becoming employed, or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

3) Change of Residence Within State and Leaving the State: If I change my residence within a county, I must send signed written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send signed written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence, I must register with the sheriff of the new county within 24 hours of moving. I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

4) Additional Requirements Upon Moving to Another State: If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

5) Notification Requirement when Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution. If I become employed at a public or private institution of higher education, I am required to notify the sheriff for the county of my residence of my employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If my enrollment or employment at a public or private institution of higher education is terminated, I am required to notify the sheriff for the county of my residence of my termination of enrollment within 10 days of such termination. If I attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, I am required to notify the sheriff of the county of my residence of my intent to attend the school. I must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

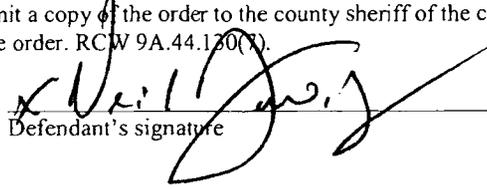
6) Registration by a Person Who Does Not Have a Fixed Residence: Even if I do not have a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody. Within 48 hours, excluding weekends and holidays, after losing my fixed residence, I must send signed written notice to the Sheriff of the County where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I may be required to provide a list of the locations where I have stayed during the last 7 days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

7) Reporting Requirements for Persons Who Are Risk Level II or III: If I have a fixed residence and I am designated as a risk level II or III, I must report, in person, every 90 days to the sheriff of the county where I am registered. Reporting shall

be on a day specified by the county sheriff's office, and shall occur during normal business hours. If I comply with the 90-day reporting requirement with no violations for at least five years in the community, I may petition the superior court to be relieved of the duty to report every 90 days.

8) Application for a Name Change: If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol not fewer than five days before entry of an order granting the name change. If I receive an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol within 5 days of the entry of the order. RCW 9A.44.130(X).

DATE: 6-16-09


Defendant's signature

APPENDIX B

No. 67325-4-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 64447-5-1
)
 v.) DIVISION ONE
)
 NEIL DUANE DAVIS,) UNPUBLISHED OPINION
)
 Appellant.) FILED: OCT 18 2010

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 OCT 18 AM 8:54

PER CURIAM. Neil Davis appeals the sentence imposed following his guilty plea to two counts of second degree child molestation and two counts of third degree rape of a child. He contends the sentencing court erred in denying his request for a SSOSA alternative because it relied on the wrong version of the eligibility statute. He also contends the court erred in imposing a lifetime sexual assault protection order. The State concedes, and we agree, that the sentencing court applied the wrong version of the eligibility statute and that the matter must be remanded for the court to exercise its discretion under the applicable statutes. We also agree with the State's contention that nothing in the record or the law supports Davis' claim that this matter must be remanded for resentencing before a different judge. Finally, the State concedes, and we again concur that the court exceeded its authority in imposing a lifetime sexual assault protection order and that the length of the protection order must be reduced.

No. 64447-5-1/2

Remanded for proceedings consistent with this opinion.

For the Court:

Appelwick, J.
COX, J.
Spencer, J.

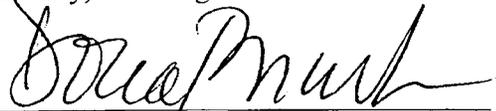
APPENDIX C

No. 67325-4-1

1
3 The first time when sexual contact occurred was when K.A.M. was thirteen (13) years
5 old. One night she spent the night with the defendant and slept in his bed. She was wearing a t-
7 shirt, boxer shorts and underpants. The next morning after she woke up, the defendant started
9 kissing her wanted her to kiss him back. He was touching her chest and then he placed his hand
11 inside her underpants and inserted his fingers into her vagina. Later that day, the defendant
13 talked to K.A.M. about wanting her to have sex with him and K.A.M. told him she wasn't ready
15 for sex. K.A.M. also told him she was a virgin. The defendant told her that when she was ready
17 to have sex, that he wanted to be the first person to have sex with her. K.A.M. said that the
19 sexual touching, kissing and touching of her chest and digital vaginal penetration continued
several times when she stayed overnight at the defendant's house. She indicated that vaginal
penetration occurred between ten (10) and twenty (20) times at the defendant's house in
Ferndale. K.A.M. said that approximately two (2) to three (3) years ago, the defendant moved to
an apartment in Bellingham and she spent the night with him several times beginning when she
was fourteen (14) to fifteen (15) years old. Soon after the defendant moved into the apartment,
the defendant and K.A.M. performed oral sex on each other about three (3) times prior to her
turning sixteen (16). K.A.M. said that the defendant made her promise not to tell anyone and
that she was afraid to tell her mom, because her mom was a good friend of the defendants.

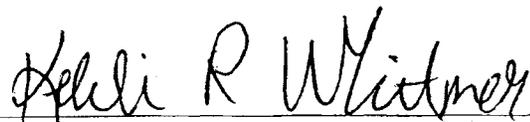
21 K.A.M.'s mother became aware that the defendant had been having sex with K.A.M. and
23 molesting her. She met up with the defendant and confronted him about it. The defendant
admitted to the allegations when he was confronted.

25 All of the above events occurred in Whatcom County, Washington.

27 

29 Dona Bracke, #29753
Deputy Prosecuting Attorney

31 SUBSCRIBED AND SWORN to before me this 29 day of January, 2008.

33 

35 NOTARY PUBLIC in and for the State of
37 Washington. My commission expires:
39 July 15, 2009

APPENDIX D

No. 67325-4-1

West's RCWA 9.94A.700

WEST'S REVISED CODE OF WASHINGTON ANNOTATED
TITLE 9. CRIMES AND PUNISHMENTS
CHAPTER 9.94A. SENTENCING REFORM ACT OF 1981
RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS
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9.94A.700. Community placement

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section.

(1) The court shall order a one-year term of community placement for the following:

- (a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or
- (b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

- (i) Assault in the second degree;
- (ii) Assault of a child in the second degree;
- (iii) A crime against persons where it is determined in accordance with * RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or
- (iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to *RCW 9.94A.728, whichever is longer, for:

- (a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;
- (b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or
- (c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

- (a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
- (b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;
- (c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- (d) The offender shall pay supervision fees as determined by the department; and
- (e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

- (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
- (c) The offender shall participate in crime-related treatment or counseling services;

- (d) The offender shall not consume alcohol; or
- (e) The offender shall comply with any crime-related prohibitions.
- (6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.
- (7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

CREDIT(S)

2003 Electronic Pocket Part Update

[2002 c 175 § 13; 2000 c 28 § 22.]

HISTORICAL AND STATUTORY NOTES

2003 Electronic Pocket Part Update

***Reviser's note:** This RCW reference has been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

Effective date—2002 c 175: See note following RCW 7.80.130.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

2002 Legislation

Laws 2002, ch. 175, § 13 substituted “community restitution” for “community service”.

West's RCWA 9.94A.700

West's Revised Code of Washington Annotated Currentness

Title 9. Crimes and Punishments (Refs & Annos)

Recommended Prosecuting Standards for Charging and Plea Dispositions

9.94A.700. Community placement

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall

include the following conditions:

- (a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
 - (b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;
 - (c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
 - (d) The offender shall pay supervision fees as determined by the department; and
 - (e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.
- (5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:
- (a) The offender shall remain within, or outside of, a specified geographical boundary;
 - (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
 - (c) The offender shall participate in crime-related treatment or counseling services;
 - (d) The offender shall not consume alcohol; or
 - (e) The offender shall comply with any crime-related prohibitions.
- (6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.
- (7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

CREDIT(S)

[2003 c 379 § 4, eff. July 1, 2003; 2002 c 175 § 13; 2000 c 28 § 22.]

HISTORICAL AND STATUTORY NOTES

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 175: See note following RCW 7.80.130.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Laws 2002, ch. 175, § 13 substituted “community restitution” for “community service”.

2003 Legislation

Laws 2003, ch. 379, § 4, in the first paragraph, added the second sentence.

LAW REVIEW AND JOURNAL COMMENTARIES

Beggars can't be voters: why Washington's felon re-enfranchisement law violates the equal protection clause. Jill E. Simmons, 78 Wash.L.Rev. 297 (2003).

LIBRARY REFERENCES

2003 Main Volume

Sentencing and Punishment  2058.
Westlaw Topic No. 350H.

RESEARCH REFERENCES

2003 Electronic Update

Treatises and Practice Aids

13B Wash. Prac. Series § 3607, Community Custody.

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 67325-4-1
)	
NEIL DAVIS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF DECEMBER, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **RIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DONA BRACKE
WHATCOM COUNTY PROSECUTOR'S OFFICE
311 GRAND AVENUE
BELLINGHAM, WA 98227

[X] NEIL DAVIS
DOC NO. 700139
AIRWAY HEGIHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF DECEMBER, 2011.

x *Patrick Mayovsky*