

NO. 43041-0-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CHRIS FORTH, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz

No. 93-1-02523-0

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Under RCW 9.95.060, is defendant precluded from receiving credit for time served outside of Washington State custody?

B. STATEMENT OF THE CASE.

On July 17, 1993, the Pierce County Prosecuting Attorney's Office charged Chris Forth, defendant, with one count of child molestation in the first degree. CP 1. On August 17, 1994, charges were amended to include one count of bail jumping. CP 47-49, RP 6. Defendant's trial was held from October 31, 1994, through November 8, 1994, and a jury found him guilty as charged. RP 6.

The court imposed a suspended of 75 months in confinement with 142 days of credit for time served, and granted defendant the Special Sex Offender Sentencing Alternative (SSOSA). CP 2-12. Defendant filed a Notice of Appeal on April 26, 1995, which the Court of Appeals dismissed. CP 52, RP 7.

Multiple violation reports were filed between August 28, 1995, through October 30, 1998. The violations included, but were not limited to, defendant's failure to successfully participate in the sexual deviancy

treatment, recanting his admission to sexually assaulting his children, dirty UA for opiates, deceptive polygraphs, unsatisfactory performance in treatment, and failure to report to his CCO, and appear at treatment. CP 13-16, 19-24, 25-28, 31-34.

In November 1995, the State filed a petition to revoke defendant's suspended sentence. RP 9-10. Defendant fled before his hearing date, so a bench warrant was issued for his arrest. RP 10-11. Defendant absconded to Idaho, changed his name to John Conrad, and had contact with hundreds of children under his assumed identity until he was finally arrested 16 years later on December 29, 2011. CP 57.

On February 3, 2012, defendant's SSOSA revocation hearing was held. CP 35-39. The court revoked defendant's SSOSA conditions and imposed his suspended sentence of 75 months in custody. CP 35-39. Defendant was given a total of 191 days of credit for time served: 141 days of credit for time served prior to the sentencing in 1995, and 49 days credit for time served prior to this sentencing. RP 12.

On February 8, 2012, defendant timely filed a Notice of Appeal. CP 40-43.

C. ARGUMENT.

1. UNDER RCW 9.95.060, DEFENDANT IS PRECLUDED FROM RECEIVING CREDIT FOR TIME SERVED OUTSIDE OF WASHINGTON STATE CUSTODY.

The sentencing court must give credit for all time served in confinement before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced. RCW 9.94A.505(6). Credit is not allowed for time served on other charges. *In re Personal Restraint of Phelan*, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982). The trial court's decision on credit for time served is reviewed de novo. *State v. Swiger*, 159 Wn.2d 224, 227, 149 P.3d 372 (2006).

Pursuant to RCW 9.95.060, "If such convicted person does not seek review of the conviction, but... becomes a fugitive, credit on his sentence will begin from the date such convicted person is returned to custody." Therefore, credit for time served outside of Washington State will not be given to an offender who flees or escapes custody. RCW 9.95.060.

In the Matter of the Personal Restraint Petition of Schillereff, 159 Wn.2d 649, 152 P.3d 345 (2007), defendant jumped bail and fled to Texas where he was arrested for committing aggravated assault. After being extradited back to Washington, defendant entered a plea and was

denied credit for any time served prior to his sentence. *Id.* at 650. On appeal, the court held that “[t]he commissioner correctly determined that Schillereff was not entitled to credit while he was in “constructive”... custody in Washington. Between June 2003 and September 2004, Schillereff was not confined in Washington.” *Id.* at 651.

In *State v. Hultman*, 92 Wn.2d 736, 743, 600 P.2d 1291 (1979), the court analyzed RCW 9.95.060 stating that “[w]e believe the sentence refers only to those instances where the judgment and sentence has been entered and for one reason or another the convicted person remains in *local custody* for a period of time prior to delivery to the department of institutions.” (Emphasis added).

In re Pearce, 40 Cal. App.3d, 115 Cal.Rptr. 222 (1974), a California court analyzed the term “custody,” as used in California’s Penal Code 3064, which prevents any escapee or fugitive from being given credit against prison term for time during which he is an escapee or fugitive. The court explicitly stated, “[t]he statute’s phrase, “return to custody,” beyond any doubt means return to the custody of California’s prison authorities.” *Id.* at 401.

In the instant case, the trial court properly denied defendant credit for the time served in Idaho, as RCW 9.95.060 clearly precludes offenders

that become fugitives from receiving credit for time served outside of Washington.

At defendant's revocation hearing, the State correctly responded to defendant's request for credit for time served in Idaho stating, "He doesn't get credit for the out-of-state stuff. He only gets credit for the time that you were sitting in our jail." RP 11. The judge further added, "You don't get credit for the time you spent in the Idaho jail. You only get credit for the time you spent in our state and our jail... you only get credit for sitting in our jail." RP 12-13. The court properly granted defendant a total of 191 days of credit for the time he served in Washington prior to his trial in 1995 and the revocation hearing. CP 35-39.

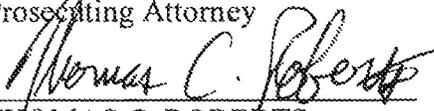
As RCW 9.95.060 precludes defendant from receiving credit for time served outside of Washington State's custody, this Court should affirm defendant's conviction.

D. CONCLUSION.

For the foregoing reasons, the State asks this Court to affirm defendant's conviction.

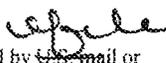
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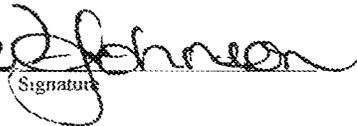
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Certificate of Service

The undersigned certifies that on this day she delivered by  mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9/18/12 
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PIERCE COUNTY PROSECUTOR

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