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Court of Appeals Cause No. 70403-6-I

THE SUPREME COURT
OF THE STATE OF WASHINGTON

RICHARD BLICK, Petitioner/Appellant;

v.

STATE OF WASHINGTON, ELDON VAIL,
BERNIE WARNER, and DOES 1-20, Respondents.

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Fray v. Spokane County, 134 Wn.2d 637, 952 P.2d 601 (1998). 11

Garrison v. Washington State Nursing Bd., 87 Wn.2d 195, 550 P.2d 7 (1976)..... 10

In re Foreclosure of Liens, 117 Wn.2d 77, 811 P.2d 945 (1991)..... 11

In re Pers. Restraint of Erickson, 146 Wn. App. 576, 191 P.3d 917 (2008)..... 5, 9, 10

Statutes

Rules and Other Authorities

A. IDENTITY OF PETITIONER

The Petitioner, Richard Blick, by and through his attorney, Michael C. Kahrs of Kahrs Law Firm, P.S., petitions this Court for review of the decisions by the Court of Appeals, Division I, attached as Appendix A and B to this Petition.

B. COURT OF APPEALS DECISION

The Court of Appeals, Division I, denied Mr. Blick's appeal of the trial courts granting summary judgment to the Defendants on June 23, 2014. Appendix A. Mr. Blick had argued that the two separate good-time statutes, RCW 9.92.151 and RCW 9.94A.729, give each agency plenary power to determine how and why an inmate under their jurisdiction both gains and loses good-time.[1] He further argued that RCW 9.94A.729(5) does not grant the Department of Corrections statutory authority to interfere with a county jail's established good-time policy.

Mr. Blick filed a motion for reconsideration challenging the June 23, 2014 ruling. On July 23, 2014, the Court of Appeals issued an order denying reconsideration. Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Does the statutory language contained in RCW 9.92.151 and RCW 9.94A.729 create two separate but equal statutory schemes by which

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[1]RCW 9.94A.729 is referenced by RCW 9.94A.728 but it is the language of 9.94A.729(5) and its reach which is at issue in this case.

each agency has plenary authority to promulgate policies granting or denying good-time for the inmates under that's agency's jurisdiction?

2. Does the Washington Department of Corrections have statutory authority pursuant to RCW 9.94A.729(5) to take away good-time earned by the inmate pursuant to the county jail policy developed pursuant to RCW 9.92.151?

D. STATEMENT OF THE CASE

Richard Blick was arrested June 1, 2000 in King County. He was held in the King County Department of Adult Detention ("King County Jail") for his trial and sentencing. Mr. Blick pled guilty. He was sentenced on March 16, 2001. CP 74-82 (Judgment and Sentence). After conviction and sentencing, Mr. Blick was transported to the Department of Corrections ("Department") on April 6, 2001. While incarcerated in the King County Jail, Mr. Blick accumulated 52 days of earned release credits ("good-time") pursuant to a procedure developed and promulgated by the King County Jail. CP 98 (Jail Certification and Authorization for Earned Early Release Credit, April 29, 2008).

The Department calculates various dates related to release for each inmate. CP 99 (Release Date Calculation). Mr. Blick's Maximum Expiration Date ("MXED") was calculated to be September 30, 2011.[2] The MXED is

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[2]This date was calculated in 2006 by the Department because Mr. Blick lost good-time for an infraction. The new earned early release date was

calculated by subtracting all jail straight-time from the total sentence length. In other words, no credit was given for good-time earned in the King County Jail or the Department of Corrections.

The Minimum Expiration Date ("MNED") is calculated by subtracting from the MXED the number of jail good-time days.[3] This date was calculated to be August 7, 2011, 52 days before Mr. Blick's MXED.[4] This is the date which Mr. Blick would have been released if the Department had not taken away the good-time he earned in the jail.

The Earned Early Release date ("ERD") is the day that an individual is first eligible for release from prison. This date is calculated by subtracting all the good-time the individual is entitled to, whether it was awarded pursuant to jail or prison good-time policies.

Due to the nature of his convictions, Mr. Blick was required to obtain an approved address before he was eligible for release. *Former* RCW 9.94A.120(10) (*citing* RCW 9.94.120(9)(b)(v)). The Department used Mr. Blick's failure to locate an approved address as justification to hold him until

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calculated to be April 17, 2010. CP 8, 97 (Release Date Calculation, September 26, 2006). The MNED and MXED stayed the same.

[3]In the Complaint, this was referred to as County Jail Maximum Release Date. However, in the Department's Release Date Calculation refers to it as the Minimum Expiration Date. CP 97. So this language is used for consistency and understanding.

[4]Which raises an interesting question – why is this date calculated by the Department when ostensibly it has no meaning?

his MXED. This resulted in the forfeiture of 52 days good-time Mr. Blick earned under the jurisdiction of and pursuant to the policies of the King County Jail.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

There are four enumerated basis upon which this Court relies when it considers whether or not to accept review. RAP 13.4(b). Mr. Blick believes three of four grounds support this Court accepting review. The first two grounds involve conflicts between the decision being challenged and existing decisions of this and the lower appellate courts. RAP 13.4 (b)(1) and (2). The fourth ground requires this Court to accept for review issues if they are of substantial public interest. RAP 13.4 (b)(4). Mr. Blick asks this Court to accept review for all three reasons.

1. THE COURT OF APPEAL'S DECISION IS IN CONFLICT WITH DECISIONS FROM ALL LEVELS OF APPELLATE REVIEW.

Mr. Blick challenged the Department's taking away all good-time he earned pursuant to a policy developed by the King County Jail while he was under its jurisdiction. The Court of Appeals claimed that Mr. Blick "fail[ed] to demonstrate how jail earned early release credit trumps DOC's authority under RCW 9.94A.729(5)(b) and (c). Appendix A, p. 7. This statement is incorrect. Our appellate courts have established that the Department of Corrections cannot cause prisoners to forfeit good-time credits earned pursuant to policies developed by the county jails.

Four distinct Washington cases prior to the decision in this case address the relationship between the two agencies with the power to imprison individuals, county jails and the Department of Corrections, establishing that each had plenary power over developing policies for good-time for those individuals who are under their jurisdiction. *See In re Pers. Restraint of Williams*, 121 Wn.2d 655, 853 P.2d 444 (1993); *State v. Donery*, 131 Wn. App. 667, 128 P.3d 1263 (2006); *In re Pers. Restraint of Erickson*, 146 Wn. App. 576, 191 P.3d 917 (2008); *In re Pers. Restraint of Talley*, 172 Wn.2d 642, 260 P.3d 868 (2011). Each case in turn reemphasized the separate but equal statutory scheme based on the jurisdictional language contained within the statutes.

In *Williams*, this Court accepted the challenge to define the relationship between the two agencies vested with the statutory authority to grant good-time to those individuals under the agency's jurisdiction. Williams had been arrested and housed at the King County Jail. He was convicted of first degree murder and sent to the Department of Corrections. In accordance with standard procedure, the King County Jail sent a certification to the Department that Williams had been incarcerated for 232 days at the jail and had earned 77 good-time credits. *Id.* at 658. His good-time was apparently miscalculated by King County. Williams filed a Personal Restraint Petition asking that Department be ordered to grant him all the good-time he had earned while in the King County Jail.

At oral arguments, the Department acknowledged that if Williams had been granted all his good-time by the jail, he would have received 116 days of good-time. *Id.* at 659. The *Williams* court acknowledged it was either an error in calculation or the jail withheld 39 days because of Williams' conduct, but the record was unclear. *Id.* at 660. Williams argued that the Department violated the good-time statute by failing to give him the maximum good-time earned in the jail. *Id.* at 661. This Court disagreed, stating that the good-time statute, the former RCW 9.94A.150(1) divides authority over the award of good-time between the two separate agencies, the King County Jail and the Department. Nothing in the statutory language required the Department to recalculate the jail's good-time award. *Id.* at 661. "Indeed, the statute appears to give the various correctional authorities, both county jails and the state correctional system, plenary authority over good-time awards for offenders under their jurisdiction." *Id.*

This Court took the position that the Department is prohibited from accepting certifications based on apparent or manifest errors of law. Even though it gave the Department authority to reject wrongful certifications, in no way did this mean the Department could render a certification null and void on its own. "Under this reading, the county jails retain plenary authority over the grant or denial of good-time to offenders within their jurisdiction." *Id.* It based this reading on the implicit language of the statute. *Id.* Once the problem has been rectified by the jail, the Department is entitled to use the

certification to calculate release dates. *Id.* at 666. This interpretation was also deemed to coincide with the purpose of good-time statutes – jail and prison discipline.

Discipline is best enforced when the agency having jurisdiction can punish or reward behavior when and where it happens.

> To effectuate this purpose, RCW 9.94A.150(1) divides authority over the grant or denial of good-time between the county jails and the Department. Under our reading of the statute, the county jail retains complete control over the good-time credits granted to offenders within its jurisdiction.

Id. at 665. *Williams* is the root from which the subsequent cases grew reemphasizing that the authority of the two agencies having jurisdiction over good-time is separate and equal.

The next case involved an inmate charged with the felony of persistent prison misbehavior. *Donery*, 131 Wn. App. at 669 (*citing* RCW 9.94.070). This crime requires the inmate to have intentionally committed a serious infraction after "losing all potential earned early release time credit." RCW 9.94.070(1). When charged, Donery had no prison good-time left due to prison misbehavior, but he had previously earned 38 days of good-time while housed in the county jail awaiting trial and sentencing. *Donery*, 131 Wn. App. at 670. Donery argued there was insufficient evidence for conviction because he still had 38 days of jail good-time. The Department argued that it "did not take away the county jail time because it believed it did not have the authority to do so." *Id.*

To address this claim, Division II first determined that the meaning of the phrase "all potential earned early release time credit" meant the time Donery could earn in the state [prison] system." *Id.* at 672. The Court concluded that "[b]ecause the state institutions do not have the authority to alter county jail good-time awards, only the possible early release time that an inmate of a state institution can earn is time granted by [the Department]." *Id.* at 673. This ruling was explicitly based on this Court's holding in *Williams*. *Id.* at 671.

Donery finally argued that the inability of Department to rescind good-time earned in county jails would inhibit the ability of the Department to control its prisoners. *Id.* at 674. The state argued against this position and the appellate court agreed, citing the public policy discussion in *Williams* where good-time is a means of maintaining jail and prison discipline. *Id.* This argument was soundly rejected because both jails and prisons need good-time for discipline and the *Donery* Court warned that there would be a subsequent loss of disciplinary power in the county jails. *Id.* (*citing Williams*, 121 Wn.2d at 661).

Subsequently, *Williams* was again the basis for a decision in Division I in *In re Erickson*, 146 Wn. App. 576. In this case, Erickson wanted credit for the good-time granted by the trial court, not the good-time granted by the county jail which had jurisdiction. He specifically wanted the Department to give him the good-time credit he was seeking. *Id.*

In making its decision, Division I confirmed the separation of the statutory schemes when it stated that "[t]he institution in which the offender is actually incarcerated retains complete control over the good-time credits granted to offenders within its jurisdiction." *Id.* at 584 (*citing Williams*, 121 Wn.2d at 665). It rejected Erickson's argument based upon the sound principals this Court established in *Williams*.

Finally, this Court addressed the power of the Department to give good-time for time spent in a county jail. *Talley*, 172 Wn.2d 642. Talley argued that both the Skamania County Jail and the Department of Corrections violated former RCW 9.92.151(1) while the Jail argued that the statutory issue was not properly before the court.[5] *Id.* at 644. Again, the Department argued it could rely on Skamania County's jail certification based on the holding in *Williams*. *Id.* at 651. This Court agreed.

In every prior case challenging the Department's claim it could not interfere with the county jail's authority to promulgate policies granting and taking away good-time, the Department took the position that the statutory schemes were separate and equal. The Department based its arguments on the jurisdictional language of the two separate statutory schemes.[6] In this

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[5]The difference between the former and the present RCW 9.92.151 is not relevant to this case. The only change recently made prohibits county jails from giving good-time to individuals serving confinement pursuant to RCW 9.94A.670(5)(a).

[6]I*n Talley*, the Department emphasized the jurisdictional requirements of the good-time statutes in its briefing:

case, the Department has reversed its position 180 degrees and is ignoring its prior arguments made in *Williams*, *Talley*, *Erickson* and *Donery*.[7]

The decision by Division I also conflicts with this Court's decisions on statutory interpretation. This Court has ruled that effect must be given, if possible, to every word, clause and sentence of a statute. *State v. Farmer*, 100 Wn.2d 334, 341, 669 P.2d 1240 (1983). It has further required that words used in a statute are to be given their usual and ordinary meaning. *Garrison v. Washington State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). Finally, it has determined that the legislature is presumed not to use nonessential words. *State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586 (2002). But this is not what the lower court had done.

First, the lower court has ignored the jurisdictional language present in both statutes. The conflict exists over whether the word "jurisdictional" is essential. Second, it ignores the language contained within RCW 9.94A.729(5)(a) that limits the statute's reach. RCW 9.94A.729(5)(a) states the following:

> The [Department] does not have jurisdiction over offenders when they are in the county jail. RCW 9.92.151 does not apply to the DOC. It applies to the jail.

Appendix C: Excerpts from the Supplemental Brief of Respondent Department of Corrections, *In re Pers. Restraint of Talley*, Supreme Court, No. 83284-6, p. 8. The Department went on to say that "[t]he county jail has jurisdiction over the determination of Talley's jail good-time." *Id.*

[7]In its Response filed in Division I, the Department mentioned *Williams* and *Donery* once and did not mention *Talley* or *Erickson* at all.

> 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.

The plain language of the statute uses the work section when referring to who is eligible for release. Mr. Blick pointed out to Division I that the word "section" has meaning within the Revised Code of Washington. RCW 1.04.010, a section being defined as part of a chapter. Both sections RCW 9.92 and RCW 9.94A are part of Title 9. But each section is separate and distinct. Thus, it should only include the good-time earned in this section.

Conflicts also exist between the decision below and this Court's pronouncement that the legislature was presumed to be aware of existing statutes when it drafts new laws and it was presumed to be aware of all prior judicial interpretation of the relevant statutes when drafting laws which may affect them. *Fray v. Spokane County*, 134 Wn.2d 637, 651, 952 P.2d 601 (1998); *In re Foreclosure of Liens*, 117 Wn.2d 77, 86, 811 P.2d 945 (1991). Division I's opinion is contrary to these well established principles of statutory interpretation because to reach the decision below, the Court had to ignore the existing statutory scheme and the cases interpreting it.

The first conflict lies is the constant interpretation of cases establishing the good-time statutes granting authority are separate and equal based upon the jurisdictional language. The second is that the decision violates well established precepts of statutory interpretation. This petition

should be accepted for review because the Court of Appeals' decision directly conflicts with the existing statutes and the decisions made interpreting the separate but equal nature of the two good-time statutory schemes.

2. THIS CASE RAISES ISSUES OF SUBSTANTIAL PUBLIC INTEREST.

The second reason this Court should accept review is because it presents an issue of substantial public interest.[8] RAP 13.4 (b)(4). At any one time, there are at least 16,000 individuals in prison under the jurisdiction of the Department of Corrections. The average length of stay for inmates under the Department's jurisdiction is 23.4 months. Appendix D (Fact Card dated June 30, 2014).[9] Most of these individuals are required to provide an address for approval before release. Many of the inmates have been convicted of sex or very violent crimes and it is harder to place these individuals within the community. According to statistics developed by the Department of Corrections, in 2013 23% of all inmates numbering 1737 individuals were not released on their ERD. Appendix E (Earned Prison Release for Fiscal

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[8]While this case was originally filed as a class action no class was certified before the motion to dismiss was filed. However, once a statute has been interpreted, that interpretation is binding on all the individuals affected by the statute. *In re Pers. Restraint of Smith*, 139 Wn.2d 199, 986 P.2d 131 (1999) (In *Smith*, the Department had violated this rule and was severely chastised by this Court for doing so.).

[9]http://www.doc.wa.gov/aboutdoc/docs/msFactCard_000.pdf.

Year 2013).[10] It must be concluded that many of these individuals, like Mr. Blick, were released past their MNED.

There are many parties with an interest in this case. First, individuals like Mr. Blick have a sincere and real interest in their release date from prison. They are entitled to rely on the statutory scheme the legislature devised to solve the problem of how to effectively manage good-time earned in the county jails that affects a release date in prison. The prisoner's families also have a real interest on when their family member will be released from prison.[11] The number of people affected clearly numbers in the thousands when one includes family and friends. The county jails also have a vested interest in affirming their plenary power to grant or deny good-time to those individuals under their jurisdiction is not compromised. Finally, the public had an interest in statutes being interpreted consistently according to rules developed by our courts. This Court should accept review because the set of diverse stakeholders with a diversity of interests all have an interest in clarifying and resolving this issue of law.

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[10]http://www.doc.wa.gov/aboutdoc/docs/ERDFactSheetFY2013.pdf. Unfortunately, the Department does not provide the statistic which shows how many individuals were released past their MNED. It does state that the average number of days held past their ERD was 60.6 and that the total number of days for all individuals past their ERD was 105,309.

[11]Mr. Blick would like to point out that if the inmate is the family provider, obtaining the proper release date can be crucial to the economic health of the family.

F. CONCLUSION

For the reasons stated above, Mr. Blick respectfully asks this Court to accept review, rule in his favor and remand this case to the trial court for further proceedings consistent with the ruling.

DATED this 21st day of August, 2014.

Respectfully submitted,

KAHRS LAW FIRM, P.S.

MICHAEL C. KAHRS, WSBA #27085
Attorney for Petitioner Richard Blick

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of the foregoing document and appendices on the Defendant in this case:

Daniel Judge, Rhonda Larson
Attorney General's Office
P.O. Box 40126
Olympia, WA 98504-0126

[X] VIA U.S. MAIL
[ ] VIA HAND DELIVERY
[ ] VIA FACSIMILE
[ ] VIA ELECTRONIC MAIL

Michael Kahrs

8/21/14
Date

APPENDICES

A.	Court of Appeals Opinion dated June 23, 2014
B.	Order denying the Motion for Reconsideration dated July 23, 2014
C.	Excerpts from the Supplemental Brief of Respondent Department of Corrections, *In re Pers. Restraint of Talley*, Supreme Court, No. 83284-6
D.	Fact Card dated June 30, 2014
E.	Earned Prison Release for Fiscal Year 2013

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX A

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

RICHARD BLICK, on behalf of himself and others similarly situated, Appellants, v. STATE OF WASHINGTON, ELDON VAIL, BERNIE WARNER, and DOES 1-20, Respondents.	)	No. 70403-6-I PUBLISHED OPINION FILED: June 23, 2014

VERELLEN, J. — The county jail determines a prisoner's earned early release (good time) credit for time served in jail. The Department of Corrections (DOC) must include that credit when computing the date when an individual becomes eligible for transfer to community custody in lieu of earned early release. But regardless of that eligibility date, DOC may deny a transfer to community custody in lieu of earned early release if the prisoner fails to satisfy other statutory prerequisites such as failure to obtain an approved release plan.

Richard Blick sued DOC for the torts of negligence and unlawful imprisonment on the theory that DOC wrongfully refused to honor his 52-day earned early release credit for time he served in jail. But because Blick failed to provide an approved address, DOC was entitled to deny Blick's transfer to community custody in lieu of earned early

release. Such a denial was neither unlawful imprisonment nor negligence. We affirm the trial court's summary judgment order dismissing Blick's lawsuit.

FACTS

Blick was arrested June 1, 2000. He was held in the King County Department of Adult Detention (jail) for 310 days. Blick accumulated 52 days of earned early release credit pursuant to the jail's procedure.

Blick pleaded guilty to two counts of second degree rape of a child. On March 16, 2001, he was sentenced to the maximum standard range term of 136 months. Blick was credited for time served as determined by the jail. The judgment and sentence also provided for community custody of 36 months or the term of earned early release, whichever was longer. Appendix H of the judgment and sentence explained that "[c]ommunity [c]ustody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to [c]ommunity [c]ustody in lieu of earned early release."[1]

Blick was transferred to DOC custody on April 6, 2001. The jail provided DOC a certification and authorization showing that Blick had earned 54 days, later corrected to 52 days, of early release credit. Including credit for time served, Blick's prison maximum expiration date was September 30, 2011.[2] His earned release date was August 9, 2011 (computed by subtracting the 52 days of jail earned early release credit

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[1] Clerk's Papers at 78.

[2] Blick's prison minimum expiration date was April 19, 2010 (computed by subtracting the 52 days of earned early release credit and the time he could potentially earn while in prison from the prison maximum expiration date). Although Blick earned 90 days of early release credit while in the custody of DOC, he later lost this credit due to an infraction.

and the 0 days of early release credit he earned while in prison from the prison maximum expiration date).

Blick was required to obtain an approved address to be eligible for community custody in lieu of earned early release in accordance with the law in effect on the date of his offense.[3] Blick was unable to obtain an approved address and was not transferred to community custody until his prison maximum expiration date, September 30, 2011.

Blick sued DOC and several of its officers on tort claims of negligence and false imprisonment. Although styled as a class action complaint, Blick has not sought to certify a class. The complaint outlines the "facts" as follows:

> Blick was required to obtain an approved address before he was eligible for release. In the event his release address was approved, he would have been required to wait 35 days for notification before release.
>
> . . . Blick was not able to obtain an approved address and was released to the community on . . . September 30, 2011.
>
> . . . As a result of [DOC's] actions, all 52 days of earned release credits earned in the county jail by Blick were forfeited by the actions of [DOC]. If [DOC] had not forfeited the 52 days of earned release credits granted by the county jail, Blick's release date would have been August 9, 2011.
>
> . . . [DOC] didn't have the statutory authority to cause the forfeiture of the earned release credits earned by Blick because they were earned while he was under the jurisdiction of the King County Jail and in accordance with procedures developed and promulgated by the King County Jail.[4]

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[3] Former RCW 9.94A.120(10) (1998) (citing former RCW 9.94.120(9)(b)(v) (1998)).

[4] Clerk's Papers at 9-10.

Blick's negligence claim is premised on allegations that DOC had a duty to ensure that the statutes governing the amount of time he would spend under DOC jurisdiction were properly interpreted and that DOC "breached this duty by ignoring the language" of those statutes.[5] His false imprisonment claim is based on allegations that DOC lacked lawful authority to restrain him until his prison maximum expiration date.

The defendants moved for judgment on the pleadings under CR 12(c). Blick moved for partial summary judgment. The trial court considered evidence attached to both plaintiff's and defendants' motions, and converted the defendants' motion to a motion for summary judgment under CR 56 "because of the evidence submitted."[6] The trial court granted the defendants' motion, denied Blick's motion, and dismissed Blick's complaint with prejudice.

Blick appeals.

DISCUSSION

This court reviews a trial court's summary judgment order de novo.[7] Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.[8]

We review questions of statutory interpretation de novo and our goal is to determine the intent of the legislature.[9] To determine the plain meaning of a sentencing

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[5] Id. at 12.

[6] Id. at 287.

[7] Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000); McKee v. Washington State Dep't of Corrections, 160 Wn. App. 437, 446, 248 P.3d 115 (2011).

[8] CR 56(c).

[9] In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 817-18, 177 P.3d 675 (2008).

statute, we look to the sentencing scheme as a whole and consider related statutes.[10]

Blick relies upon statutory provisions to claim that DOC wrongfully deprived him of 52 days of early release time he earned in jail. He argues that DOC should have transferred him to community custody 52 days before his prison sentence was due to end, even though he admits he did not have an approved release plan. His complaint alleges that if an inmate is unable to satisfy the requirement of obtaining an approved address before the prison maximum release date is reached, DOC has forfeited the inmate's early release credits earned under the jurisdiction of the county jail. He contends that this "violates the separation of the two good time statutory schemes for the different correctional facilities having jurisdiction."[11]

Washington law presumes that a prisoner will serve his or her complete sentence. RCW 9.94A.728 provides that "[n]o person serving a sentence imposed pursuant to this chapter and committed to the custody of [DOC] shall leave the confines of the correctional facility or be released prior to the expiration of the sentence" except for earned release time as provided by RCW 9.94A.729. Earned early release is an exception to the general rule that the prisoner serves the complete sentence in confinement.[12] Generally, "exceptions to statutory provisions are narrowly construed in order to give effect to legislative intent underlying the general provisions."[13]

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[10] Id. at 818.

[11] Clerk's Papers at 4.

[12] "The statute prohibits early release absent existence of one of the statutory exceptions." State v. Rogers, 112 Wn.2d 180, 183, 770 P.2d 180 (1989).

[13] R.D. Merrill Co. v. Pollution Control Hearings Bd., 137 Wn.2d 118, 140, 969 P.2d 458 (1999).

The relevant statutes divide authority between the jail and DOC over the provision of jail earned early release credit and prison earned early release credit so that each institution may make decisions about awarding good time for time served in that institution.[14] This scheme is consistent with the legislative purpose of providing incentives for good behavior while in a particular institution.[15] However, the statutes make clear that the DOC program allowing community custody in lieu of earned early release is administered by DOC when the decision is made to release an inmate from prison to community custody.

RCW 9.94A.729 authorizes DOC to transfer offenders sentenced to community custody from total confinement to community custody in lieu of earned early release on DOC's approval of each offender's release plan:

> (5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by [DOC]. . . shall be transferred to community custody in lieu of earned release time;
>
> (b) *[DOC] shall, as a part or 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) *[DOC] may deny transfer to community custody* in lieu of earned release time if [DOC] 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. *[DOC]'s authority under this section is independent of any court-ordered condition*

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[14] In re Pers. Restraint of Williams, 121 Wn.2d 655, 661, 853 P.2d 444 (1993) (citing former RCW 9.94A.150 (1989), *recodified as* RCW 9.94A.728 (LAWS OF 2001, ch. 10, § 6)).

[15] Id. at 661-62.

> *of sentence or statutory provision regarding conditions for community custody.*[16]

Our Supreme Court has held that RCW 9.94A.728 does not create a liberty interest in release from prison prior to the end of the sentence:

> The permissive terms of the early release statute, "may become eligible" and "may deny transfer," do not require DOC to grant an offender early release to community custody. The statute does not create an expectation of release and cannot establish a liberty interest.[17]

Rather, an inmate's only right under the statute is the right to have DOC consider his proposed release plan.[18]

Blick argues that prior case law establishes that DOC may not take away earned release credit from an inmate if the credit was earned while under the jurisdiction of a county jail. But one fundamental flaw in Blick's argument is that he fails to demonstrate how jail earned early release credit trumps DOC's authority under RCW 9.94A.729(5)(b) and (c). RCW 9.94A.729(5)(c) allows DOC to deny Blick's transfer to community custody in lieu of earned release for his failure to provide an approved release plan. This court has previously held that it is the inmate's obligation to propose acceptable release plans early enough before the prison maximum expiration date to allow such a transfer to community custody to occur.[19]

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[16] (Emphasis added.)

[17] In re Pers. Restraint of Mattson, 166 Wn.2d 730, 740, 214 P.3d 141 (2009).

[18] Id. at 741.

[19] In re Pers. Restraint of Crowder, 97 Wn. App. 598, 601, 985 P.2d 944 (1999).

"'Washington courts have implied only one limit on the substance of the DOC's exercise of discretion: it's reasons for denial must be legitimate.'"[20] The Ninth Circuit has noted the discretionary nature of RCW 9.94A.728:

> [T]he DOC has no "discretion to decide *whether* or *when* to consider an offender for transfer to community custody," [b]ut Washington law places no substantive limitation on *how* the DOC is to make that determination. . . . [RCW 9.94A.728(2)(d)] instructs that the DOC "may *deny* transfer to community custody if" one or more of those criteria are met. Far from setting forth "substantive predicates" under which the DOC *must* grant transfer, the statute is silent regarding even *precatory* criteria for granting transfer to community custody, specifying only when the DOC may—but need not—"deny."[21]

Blick identifies no statute exempting an offender from the requirement of obtaining an approved living arrangement under RCW 9.94A.729(5)(b). Nor does Blick identify any statute directing DOC to transfer an offender to community custody on what he refers to as his "county jail maximum release date," regardless of whether he has obtained an approved release address. Blick makes no showing of any duty on the part of DOC to release him to community custody without regard to these statutory conditions and does not contend he was denied due process.

Blick fails to establish that DOC breached "a duty to ensure that all statutes affecting the amount of time that a Class member would spend under its jurisdiction was properly interpreted," as alleged in his negligence claim.[22] Accordingly, the negligence claim was properly dismissed on summary judgment.

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[20] Mattson, 166 Wn.2d at 742 (internal quotation marks omitted) (quoting Carver v. Lehman, 558 F.3d 869, 877 (9th Cir. 2009)).

[21] Carver, 558 F.3d at 875 (quoting In re Pers. Restraint of Liptrap, 127 Wn. App. 463, 111 P.3d 1227).

[22] Clerk's Papers at 12-13.

As to his false imprisonment claim, Blick fails to demonstrate that DOC acted without lawful authority. An imprisonment enacted pursuant to a valid legal process and court sentence is not false imprisonment.[23] Based on analogous facts, the United States District Court for the Western District of Washington dismissed similar claims of false imprisonment and negligence in Dailey v. Washington:

> Mr. Dailey's negligence claim requires him to show that [DOC] had a duty to release him early. Mr. Dailey has failed to establish any such duty. Likewise, Mr. Dailey's false imprisonment claim also requires that he establish that he had a right to early release. Mr. Dailey has failed to establish any such right.[24]

Blick similarly fails to establish either DOC's duty to release him early or his right to early release. We affirm the summary judgment dismissal of his lawsuit.[25]

WE CONCUR:

[23] See Mundt v. United States, 611 F.2d 1257, 1259-60 (9th Cir. 1980).

[24] 2012 WL 380272, at *4 (W.D. Wash., 2012).

[25] Because we affirm the dismissal of Blick's claims on these grounds, we need not decide whether DOC's actions are entitled to discretionary immunity or quasi-judicial immunity, or whether Blick was required under the favorable termination doctrine to obtain a decision invalidating his restraint before bringing his tort.

APPENDIX B

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

RICHARD BLICK, on behalf of himself and others similarly situated, Appellant, v. STATE OF WASHINGTON, ELDON VAIL, BERNIE WARNER, and DOES 1-20, Respondents.	)	No. 70403-6-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Richard Blick has filed a motion for reconsideration of the court's opinion entered June 23, 2014. After consideration of the motion, the court has determined that it should be denied.

Now therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

Done this 23rd day of July, 2014.

FOR THE PANEL:

ACJ

APPENDIX C

NO. 83284-6

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of

TEDDY GLEN TALLEY,

Petitioner,

SUPPLEMENTAL BRIEF OF RESPONDENT DEPARTMENT OF CORRECTIONS

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they would be automatically credited with full good-time upon their transfer to the Department." Hence, the statute gives control over the award or denial of good time to the institution in which the offender is actually incarcerated. *Id.*

In this case, the DOC followed former RCW 9.94A.728(1) and applied the credits listed in the jail certification because there were no apparent or manifest errors of law on it. The mere absence of good time on the certification is not an apparent or manifest error because the absence of good time could just as easily have been due to the jail not having any good time policy for its inmates, or to Talley having failed to earn the good time for which he may have been eligible while in the jail.[3]

B. The DOC Has No Jurisdiction Over The Jail's Good Time Procedures

Talley argues that RCW 9.92.151[4] requires the jail to award him good time for presentence incarceration. Former RCW 9.94A.728

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[3] When the DOC believes that an error in jail time served or jail good time may exist, records staff will investigate, usually by communicating with the jail. *See, e.g., In re Erickson,* 146 Wn. App. 576, 191 P.3d 917 (2008) (DOC investigated jail good time where sentencing court had ordered much more credit for time served than jail records indicated defendant had served, and where amount of good time is dependent on amount of time served).

[4] RCW 9.92.151 states in part:

> [T]he 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. . . . Any program established pursuant to this section shall

provides that early release credits for offenders sentenced to the custody of the DOC are to be based on the policies of the agency that has jurisdiction over the facility where the offender is confined. RCW 9.94A.728(1) ("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"); *Williams*, 121 Wn.2d at 664, 666; *In re Erickson,* 146 Wn. App. 576, 585, 191 P.3d 917 (2008). The DOC does not have jurisdiction over offenders when they are in the county jail. RCW 9.92.151 does not apply to the DOC. It applies to the jail.

The county jail has jurisdiction over the determination of Talley's jail good time. Hence, the DOC is not the proper entity to respond to Talley's equal protection claim involving the jail's early release time.

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allow an offender to earn early release credits for presentence incarceration.

IV. CONCLUSION

The DOC respectfully requests that the Court find that DOC has correctly followed applicable law in relying on the jail's certification of time served and good time.

RESPECTFULLY SUBMITTED this 1st day of April, 2011.

ROBERT M. MCKENNA
Attorney General

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APPENDIX D

Department of Corrections
WASHINGTON STATE

Fact Card

June 30, 2014

Facts about Offenders in Confinement

Number of Prison Facilities		12
Number of Work Releases Facilities		16
Total Offenders in Confinement		18,121
Offenders in prison	92.6%	16,779
Offenders in work release	3.6%	656
Offenders in out-of-state rented beds	0.0%	0
Offenders in in-state rented beds	3.8%	686
Prison and Work Release Operational Capacity		17,187
Total operational capacity in prisons		16,508
Operational capacity in work release capacity		679
Percent of Population to Operational Capacity		
Total Prison Confinement Percent of Operational Capacity		101.6%
Work Release Percent of Capacity		96.6%
Gender		
Male		92.4%
Female		7.6%
Race		
White		72.1%
Black		18.1%
American Indian		4.3%
Asian		3.6%
Unknown/Other		1.9%
Hispanic Origin		12.3%
Average Age		37.9
Citizenship		
United States		95.2%
Mexico		2.6%
Other		2.2%
Length of Sentence		
Less than Two Years		14.6%
Two to Five Years		25.5%
Five to Ten Years		20.6%
Over Ten Years		24.1%
Life with the possibility of Parole or Release		11.6%
Life without Release		3.6%
Avg. Length of Stay for Offenders Released in the past year		23.4 mo

Facts about Offenders in Confinement, cont.

Offense Types	
Murder 1 and 2	12.1%
Manslaughter	1.8%
Sex Crimes	20.1%
Robbery	9.8%
Assault	24.0%
Property Crimes	19.2%
Drug Crimes	7.9%
Other/Unknown	5.1%
Return to Institutions for 2010 Releases (Three-Year Period)	28.7%

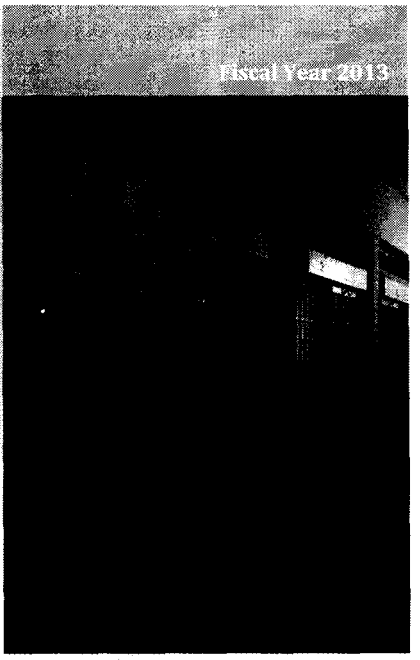
Facts about Offenders Supervised in the Community

Number of Offenders on Active Supervision		16,537
Risk Level Classification (Offender Risk to Reoffend)		
High Violent (HV)	43.1%	7,133
High Non-Violent (HNV)	26.4%	4,350
Moderate Risk to Reoffend (MOD)	14.6%	2,418
Low Risk to Reoffend (LOW)	14.6%	2,418
Unclassified	1.3%	218
Special Sentence Types		
Drug Offender Sentencing Alternative		2,228
Special Sex Offender Sentencing Alternative		654
First Time Offender Waiver		1,400
Family Offender Sentencing Alternative		39
From-Out-of-State		1,994
Offense Types		
Murder 1 and 2		1.0%
Manslaughter		0.6%
Sex Crimes		17.6%
Robbery		4.7%
Assault		22.3%
Property Crimes		17.6%
Drug Crimes		29.8%
Other/Unknown		6.4%
Offender Location Prior to Supervision		
Offenders who served time in prison prior to supervision		44.3%
Offenders who came directly from jail or the courts		55.7%

For more information visit our website at www.doc.wa.gov

APPENDIX E

Department of Corrections



Earned Prison Release

Background

The fact is that as many as 96 percent of incarcerated offenders will one day complete their sentences and be released to the community. Department of Corrections (DOC) is committed to preparing each offender for successful reentry into the community by investing available resources in an array of evidence-based and cost-effective intervention programs and services and by planning for the offender's release from prison.

Reentry programs and services are essential to help offenders learn the skills and self-control necessary to avoid future criminal behavior and to improve public safety. Family centered programs, such as our visit program, are designed to reunify and strengthen families and to create positive environments and support for successful release and community supervision.

Six months prior to earned release date (ERD) [1], a plan is created to identify options for housing, services, and transition planning, as well as to mitigate any victim or public safety concerns.

In Fiscal Year (FY) 2013, over 7,705 offenders were released from prison. Seventy-seven percent of those released on time, on their earned release date. The average number of days past ERD has fallen from 107 days in Fiscal Year 2008 to 61 days in Fiscal Year 2013.

Barriers to timely release

Many offenders releasing from prison as well as offenders under supervision face barriers to meeting their most basic needs, such as housing, employment, treatment, medical care, social services and appropriate documents (i.e., identification card or Social Security card). These barriers can often impact whether or not an offender can release from prison on time. Programs such as the housing vouchers have helped mitigate housing barriers for some offenders; however, for others these barriers, as well as concerns over public safety, may prevail over a timely release.

Governing Authority

Revised Code of Washington (RCW)

- RCW 9.94A
- RCW 9A.44.130
- RCW 71.09
- RCW 72.02.100
- RCW 72.09

Washington Administrative Code (WAC)

- WAC 137-28
- WAC 137-56

[1] Definition of ERD

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.

ERD by the numbers...

	FY 2008	FY 2010	FY 2011	FY 2012	FY 2013
Number of offenders released from prison	7,969	7,733	7,628	7,655	7,705
Percent of Offenders Released On Time	84%	76%	82%	80%	77%
Number and percent of offenders released past their ERD	1,258 16%	1,848 24%	1,396 18%	1,540 20%	1,737 23%
Total Number of Days Past ERD	135,011	177,713	104,350	89,586	105,309
Average Days Past ERD	107	96.2	74.7	58.2	60.6

The number of days past ERD for offender releases in FY 2013 releases dropped by 46 days compared to FY 2008 and the total number of days past ERD fell by over 22 percent.

Actions Taken

DOC has taken the following actions to reduce the number of offender held past their ERD:

- Streamlined internal policies and practices
- Started release planning with the offender earlier
- Implemented a housing voucher program to help offenders at risk of releasing homeless
- Minimized movement of offenders nearing releases so not to disrupt release planning processes
- Continued collaboration with DSHS and other agencies to link offenders to available resources and to assist with transition planning

For more information

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What do we know?

For the past few years, the Department of Corrections has been looking into why the majority of offenders release on time, on their earned release date, and the remaining offenders release past their release eligibility date. Forty-seven percent of those offenders releasing late were released within 30 days after their ERD.

Release planning is based on each individual offender and their needs. Some offenders chose not to participate in release planning and prefer to remain in prison until the end of their sentence. The fact is that most plans are approved and releases are timely. These plans provide for an appropriate setting conducive to successful reentry in the community, including an approved residence, opportunity for employment, support from friends and family, and treatment resources, if needed.

It is DOC's responsibility to prevent placing the offender where they may be at risk to violate their conditions of supervision or sentence, to reoffend, or present a threat to the safety of the victim(s) and community.

The type of offense is the most significant factor in whether or not a release is timely. Offenders who are serving prison time for sex crimes and assault are more likely to release later than those with other offenses. These offenders are released much later past their ERD than others, as well. Barriers to timely release for this group often relate to finding approved housing and victim/community concerns for public safety.

The transition to the community is significantly more difficult for offenders who are seriously mentally ill or assessed with a chemical dependency. These individuals need access to appropriate behavioral health services and treatment during transition and after release. Resources beyond what DOC can provide are needed in each community to address the needs of offenders while transitioning after release and while residing in the community.

Department of Corrections
WASHINGTON STATE