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Court of Appeals No. 71801-1-<sup>1</sup>~~11~~

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON

Plaintiff/Respondent,

v.

CASEY PORTER,

Defendant/Appellant.

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BRIEF OF APPELLANT

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Appeal from the Superior Court of Snohomish County,  
Cause No. 06-1-01859-6  
The Honorable George Bowden, Presiding Judge

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**I. ASSIGNMENT OF ERROR**

The trial court erred in finding that RCW 9.94A.637(2)(b) prohibited Mr. Porter from obtaining a certificate of discharge retroactive to December 2008 when the no-contact order was no longer in effect at the time Mr. Porter filed his motion for a certificate of discharge.

**II. ISSUE PRESENTED**

Did the trial court err in applying RCW 9.94A.637(2)(b) to Mr. Porter where the no-contact order had expired prior to Mr. Porter applying for a certificate of discharge?

**III. STATEMENT OF THE CASE**

*Factual and Procedural Background*

On December 11, 2006, Mr. Casey Porter pled guilty to one count of violation of a domestic violence court order. CP 3.

On January 23, 2007, Mr. Porter was sentenced to 6 months confinement, legal financial obligations, 12 months of community custody, and an order prohibiting Mr. Porter from having contact with Ranae Porter for five years from the date the judgment and sentence was entered. CP 3.

Snohomish County Corrections notified the court that Mr. Porter had completed the term of his confinement on July 1, 2007. CP 3. The Department of Corrections notified the court that Mr. Porter's term of community custody expired on March 24, 2008. CP 3.

In December of 2008, the Snohomish County Superior Court

received notice that Mr. Porter had completed all the conditions and terms of his sentence. RP 2. Mr. Porter was also subject to a protection order that did not expire until January of 2012. RP 2-3. The no contact order expired on January 23, 2012. CP 3.

On April 13, 2013, Mr. Porter filed a motion for an order vacating his record of conviction. CP 4. Mr. Porter erroneously stated in his affidavit accompanying this motion that he had been discharged at that time. CP 4. The State filed a response and informed the court that Mr. Porter had not yet met the requirements for an order vacating his conviction pursuant to RCW 9.94A.640. CP 4. The State agreed that Mr. Porter was entitled to a certificate of discharge in April of 2013, and informed the court that the effective date of the discharge should be January 23, 2009. CP 4. No further action was taken in 2013 on the motion to vacate the conviction. CP 4.

On February 14, 2014, Mr. Porter filed a motion for a certificate of discharge. CP 28-29.

On March 5, 2014, the State filed a response to Mr. Porter's motion. CP 3-5. The State agreed that Mr. Porter was entitled to a certificate of discharge because he had completed all of the conditions of his sentence. CP 4. The State then argued that its prior statement that Mr. Porter's effective date of discharge should be January 23, 2009 was

erroneous. CP 4. In the March 5, 2014 response, the State argued that Mr. Porter did not complete the conditions of his sentence until the no-contact order expired on January 23, 2012. CP 4.

On March 12, 2014, a hearing was held regarding Mr. Porter's motion for a certificate of discharge. RP 1-6. Mr. Porter argued that he was entitled to a discharge date of December 2008, when he had completed paying his legal financial obligations. RP 2. Mr. Porter argued that under RCW 9.94A.637(2)(a), for purposes of issuance of a certificate of discharge, a no-contact order is not a requirement of an offender's sentence. RP 3. The State responded that if Mr. Porter had wished to have a certificate of discharge entered prior to January 23, 2012, Mr. Porter should have proceeded under RCW 9.94A.637(2)(b) and petitioned the court to issue a certificate of discharge and a separate no-contact order by filing a petition in the sentencing court and paying the filing fee for a no-contact order. RP 3-4. The trial court agreed with the State and entered a certificate of discharge retroactive to January 23, 2012. RP 4-6.

#### IV. ARGUMENT

**The trial court misinterpreted RCW 9.94A.637(2)(b) when it held that RCW 9.94A.637(2)(b) applied to Mr. Porter's motion for a certificate of discharge and ruled that the certificate of discharge was retroactive to January 23, 2012.**

A trial court's interpretation of a statute is reviewed de novo. *In re*

*Det. of Williams*, 147 Wn.2d 476, 486, 55 P.3d 597 (2002). Statutes are interpreted so as to give effect to legislative intent. *In re Pers. Restraint of Nichols*, 120 Wn.App. 425, 431, 85 P.3d 955 (2004). If a statute's meaning is plain on its face, courts give effect to that plain meaning. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If a statute is susceptible to more than one reasonable interpretation, it is deemed ambiguous and courts “may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.” *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

When construing a rule or a statute, a reviewing court reads it in its entirety, giving effect to all language so that no portion is rendered meaningless or superfluous. *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001). Courts should avoid construing a statute in a manner which results in unlikely, strange, or absurd consequences. *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994).

RCW 9.94A.637 provides, in pertinent part,

(1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person

or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

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(2)(a) For purposes of this subsection (2), a no-contact order is not a requirement of the offender's sentence. An offender who has completed all requirements of the sentence, including any and all legal financial obligations, is eligible for a certificate of discharge even if the offender has an existing no-contact order that excludes or prohibits the offender from having contact with a specified person or business or coming within a set distance of any specified location.

(b) In the case of an eligible offender who has a no-contact order as part of the judgment and sentence, the offender may petition the court to issue a certificate of discharge and a separate no-contact order by filing a petition in the sentencing court and paying the appropriate filing fee associated with the petition for the separate no-contact order. This filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact



contact order separate from the judgment and sentence.

RCW 9.94A.637(2)(a) clearly indicates that an individual who has completed all terms of his sentence save for a no-contact order is still eligible for a certificate of discharge since the no-contact order is not considered part of the sentence for purposes of issuance of a certificate of discharge.

RCW 9.94A.637(2)(b) clearly indicates that where a defendant has completed the terms of his sentence but still has an outstanding no-contact order, that defendant may still obtain a certificate of discharge but must also file for a civil no-contact order.

Reading the plain language of RCW 9.94A.637(2)(a) and (b), had Mr. Porter sought a certificate of discharge while the no-contact order was in effect, Mr. Porter clearly would have had to move for a civil no-contact order as suggested by the State and found by the trial court. RP 3-6. However, Mr. Porter's case does not fall squarely within the circumstances contemplated by RCW 9.94A.637(2)(a) and (b).

It is undisputed that Mr. Porter had completed all terms of his sentence but for the no-contact order as of December, 2008. RP 2. Mr. Porter did have a no-contact order as part of his sentence, but he did not file for a certificate of discharge until after the no-contact order had expired.

RCW 9.94A.637(2)(b) does not address situations such as Mr. Porter's where the defendant *had* a no-contact order as a term of his or her sentence but waited to seek a certificate of discharge until *after* the no-contact order expired. However, the language of RCW 9.94A.637(2)(b) makes clear that it was intended to apply to situations where the no-contact order *was still in effect*, not to situations where the certificate of discharge was applied for *after* the no-contact order *expired*. Any contrary interpretation would lead to the absurd result that defendants who had completed all terms of their sentence including the expiration of the no-contact order would still have to apply for a civil no-contact order to obtain a certificate of discharge.

A proper interpretation of RCW 9.94A.637(2)(a) and (b) in situations such as Mr. Porter's must harmonize section (2)(a)'s mandate that "a no-contact order is not a requirement of the offender's sentence" with the clear intent that section (2)(b) only applies in circumstances where the defendant seeks a certificate of discharge during the active period of a no-contact order. Because Mr. Porter did not apply for a certificate of discharge until the no-contact order had expired, section (2)(b) did not apply to him, and, even if it did, it would be absurd to require Mr. Porter to apply for a civil no-contact order for a period of time already past. Since Mr. Porter had no active no-contact order and because the no-contact order

the no-contact order is not considered to be part of his sentence under section (2)(a), the trial court should have found that Mr. Porter had completed all terms of his sentence as of December of 2008 and made December, 2008 the effective date of the certificate of discharge.

## **VI. CONCLUSION**

The trial court erred when it found that Mr. Porter became eligible for a certificate of discharge in January of 2013 when the no-contact order expired. Because the no-contact order had already expired when Mr. Porter sought a certificate of discharge, and because under RCW 9.94A.637(2)(a) a certificate of discharge is not a considered term of a sentence, the trial court should have found that Mr. Porter's certificate of discharge should have been retroactive back to December of 2008 when the trial court was informed that Mr. Porter had completed all terms of his sentence.

DATED this 21<sup>st</sup> day of November, 2014.

Respectfully submitted,



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Steve Karimi, WSBA No. 29205  
Attorney for Appellant

I certify under penalty of perjury under the laws of the State of Washington that I mailed a copy of this motion to the Snohomish County Prosecutor's address located 3000 Rockefeller Ave, Everett, WA 98201-4060, postage prepaid, on November 21, 2014.