

71801-1

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NO. 71801-1-I

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

STATE OF WASHINGTON

Respondent

v.

CASEY PORTER,

Appellant

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. ISSUES 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 2

 A. THE COURT PROPERLY DETERMINED THE EFFECTIVE
 DATE OF DISCHARGE AS THE DATE THAT THE DEFENDANT
 COMPLETED ALL OF THE CONDITIONS OF HIS SENTENCE.... 2

IV. CONCLUSION 7

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Armendariz, 160 Wn.2d 106, 156 P.3d 201 (2007) 4
State v. Johnson, 148 Wn. App. 33, 197 P.3d 1221 (2008), review denied, 168 Wn.2d 1017 (2009).....2, 3
State v. Miniken, 100 Wn. App. 925, 999 P.2d 1289 review denied, 142 Wn.2d 1009 (2000).....2, 4

WASHINGTON STATUTES

Laws of Washington 2009, Ch. 288, §2.....4
RCW 9.94A.505(8) 4
RCW 9.94A.6372, 4
RCW 9.94A.637(1) 5
RCW 9.94A.637(1)(b)(ii)..... 3
RCW 9.94A.637(1)(c).....3
RCW 9.94A.637(2) 3, 5, 6, 7
RCW 9.94A.637(2)(a).....6, 7
RCW 9.94A.637(2)(b).....6

I. ISSUES

1. Did the court properly set the effective date of discharge when it issued the defendant a certificate of discharge?

II. STATEMENT OF THE CASE

The defendant, Casey Porter, was found guilty of Domestic Violence Court Order Violation on December 11 2006. 1 CP 14. He was sentenced on January 23, 2007. 1 CP 23. The court ordered that the defendant serve 6 months confinement, pay legal financial obligations, serve at term of 12 months community custody, and it ordered that the defendant have no contact with Ranae Porter for a period of 5 years. 1 CP 17-19. The court also entered a domestic violence no contact order restricting the defendant's contact with Ms. Porter with the exception of contact approved by the parenting plan in the dissolution. 2 CP __ (sub 31). The order specifically stated that it expired on January 23, 2012. Id.

The defendant completed the confinement time by July 1, 2007. 2 CP __ (sub 40). The Department of Corrections closed supervision of the defendant on March 24, 2008. 1 CP 8-11. At the time the defendant still owed legal financial obligations. 1 CP 9. The clerk of the court recorded the defendant's final payment of legal financial obligations on December 18, 2008. 1 CP 3, 7. The

no contact order expired January 23, 2012, five years after the judgment and sentence entered. 1 CP 18, 2 CP __ (sub 31).

On February 28, 2014 the defendant, through counsel, petitioned the court for a certificate and order of discharge. 1 CP 28. He argued that the effective date of discharge should be either March 24 2008 or December 18, 2008. 1 CP 6; RP 2. The defendant reasoned that he completed the conditions of his sentence at the very latest when he paid the legal financial obligations. Id. The court disagreed. It found the effective date of discharge was January 23, 2012, the date on which the no contact order expired. 1 CP 1; RP 4-5.

III. ARGUMENT

A. THE COURT PROPERLY DETERMINED THE EFFECTIVE DATE OF DISCHARGE AS THE DATE THAT THE DEFENDANT COMPLETED ALL OF THE CONDITIONS OF HIS SENTENCE.

A certificate of discharge restores an offender's civil rights lost as a result of a conviction. State v. Miniken, 100 Wn. App. 925, 927, 999 P.2d 1289, review denied, 142 Wn.2d 1009 (2000). A court has a duty to issue a certificate of discharge once it has received notice that the offender has completed all of the conditions of his sentence. RCW 9.94A.637, State v. Johnson, 148 Wn. App. 33, 38, 197 P.3d 1221 (2008), review denied, 168 Wn.2d 1017

(2009). The effective date of discharge is the date on which the court received notice that the terms of the sentence were satisfied. Id. at 39.

When an offender's term of supervision by the Department of Corrections terminates before the offender has completed paying the legal financial obligations the Clerk of the Court is responsible for notifying the Court when the legal financial obligations have been paid in full. RCW 9.94A.637(1)(b)(ii). If in addition to legal financial obligations an offender has other sentence conditions while not on community custody it is the offender who bears the responsibility to provide the court with verification once he has completed those non-financial conditions. RCW 9.94A.637(1)(c).

The defendant argues that he was entitled to a certificate of discharge with an effective date of December 2008, the date on which he completed payment of his legal financial obligations. He argues that under RCW 9.94A.637(2) the no contact order was not a condition of his sentence. He argues that since he completed all other conditions of the sentence by December 18, 2008 when he completed paying his legal financial obligations the court was notified that he had completed the conditions of his sentence on that date and therefore that should be the effective date of

discharge. The court should reject this argument because the defendant had not completed all of his sentence conditions until January 23, 2012, the date on which the no contact order expired.

Pursuant to RCW 9.94A.505(8) the trial court had the authority to impose a no contact order for the statutory maximum of the offense as condition of the defendant's sentence. State v. Armendariz, 160 Wn.2d 106, 156 P.3d 201 (2007). Before the 2009 amendment to RCW 9.94A.637 the court lost jurisdiction to enforce a no contact order entered as a sentence condition once a certificate of discharge was granted. Miniken, 100 Wn. App. at 927. It was therefore proper to deny a request for a certificate of discharge when that sentence condition was still in effect Miniken at 929.

In 2009 the legislature amended RCW 9.94A.637 to provide an offender with the opportunity to obtain a certificate of discharge even if a no contact order was still in existence. Laws of Washington 2009, Ch. 288, §2. The amendment states:

(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 order separate from the judgment and sentence.

(i)(A) The court shall issue a certificate of discharge and a separate no-contact order under this subsection (2) if the court determines that the offender has completed all requirements of the sentence, including all legal financial obligations. The court shall reissue the no-contact order separately under a new civil cause number for the remaining term and under the same conditions as contained in the judgment and sentence. . .

(iv) A separate no-contact order issued under this subsection (2) is not a modification of the offender's sentence.

RCW 9.94A.637(2).

This amendment resulted in providing an offender whose sentence included a no contact order, and who had completed all other conditions of his sentence, two options in order to obtain a certificate of discharge. Under RCW 9.94A.637(1) the offender could wait until the no contact order expired to request a certificate

of discharge. The effective date would be the date the no contact order expired. That is the situation presented in this case.

Alternatively, pursuant to RCW 9.94A.637(2) a defendant could come to court before the expiration of the no contact order and have a civil no contact order substitute for the no contact order entered as part of the sentence. The duration of the civil no contact order is limited to the remaining term of the no contact order originally ordered as part of the defendant's sentence. Because the defendant did not seek a substitute civil no contact order before the no contact order in his sentence expired, RCW 9.94A.637(2) does not apply.

The defendant argues that RCW 9.94A.637(2)(a) and RCW 9.94A.637(2)(b) should be read separately when applied to situations where the offender seeks a certificate of discharge after the no-contact order has expired. He argues subsection (a) applies to him, so that the no-contact order was not a sentence condition that was an impediment to a certificate of discharge. At the same time subsection (b) does not apply to him because his no-contact order had already expired.

Nothing in the statute suggests that subsections (a) and (b) should be read separately depending on whether a no contact

order remains in existence or not. On the contrary, a plain reading of the statute demonstrates that the two provisions are to be read together. Because the legislature did not separate subsection (a) from subsection (b) the statute indicates a legislative intent that those subsections be read together. Under subsection (a) a no contact order is not a condition of the sentence only if the offender can also meet the requirements set out in subsection (b). If an offender cannot meet the requirements of subsection (b) because his no contact order has already expired, then subsection (a) likewise does not apply to his case.

The court should reject the defendant's interpretation of the statute as well because by its terms RCW 9.94A.637(2)(a) only applies when a no contact order still exists at the time the offender petitions the court for a certificate of discharge. Since the defendant's no contact order expired when he petitioned the court for a certificate of discharge, RCW 9.94A.637(2) could not have applied to his case.

IV. CONCLUSION

For the foregoing reasons the State asks the Court to affirm the decision of the trial court determining the effective date of

discharge was January 23, 2012, the date on which the court's no-contact order expired.

Respectfully submitted on January 26, 2015.

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