

FILED

Sep 10, 2015

Court of Appeals

Division III

State of Washington

SUPREME COURT NO. 92245-4

COA NO. 327868

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent

v.

JAVIER SANCHEZ,

Petitioner

FILED

SEP 16 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT

OF BENTON COUNTY

THE HONORABLE VIC L. VANDERSCHOOR

PETITION FOR REVIEW

Marie J. Trombley, WSBA 41410

PO Box 829

Graham, WA

253-445-7920

TABLE OF CONTENTS

I. IDENTITY OF PETITIONER..... 1

II. COURT OF APPEALS DECISION 1

III. ISSUE PRESENTED FOR REVIEW 1

 Did the State present sufficient evidence for a second-degree conviction for escape where Mr. Sanchez was charged only with from a detention facility and not the alternative, escape from custody? 1

IV. STATEMENT OF THE CASE..... 1

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..... 4

VI. CONCLUSION..... 8

TABLE OF AUTHORITIES

Washington Cases

<i>State v. Ammons</i> , 136 Wn.2d 453, 963 P.2d 812 (1998)	7
<i>State v. Breshon</i> , 115 Wn.App. 874, 63 P.3d 871 (2003)	6
<i>State v. Danforth</i> , 97 Wn.2d 255, 643 P.2d 882 (1982)	7
<i>State v. Kent</i> , 62 Wn.App. 458, 814 P.2d 1195 (1992)	7
<i>State v. Peters</i> , 35 Wn.App. 427, 667 P.2d 136 (1983)	6
<i>State v. Yallup</i> , 25 Wn.App. 603, 608 P.2d 651 (1980)	7

Statutes

RCW 9.94A.030(26)	4
RCW 9A.76.010(2)	5
RCW 9A.76.010(3)	4
RCW 9A.76.110	5

Rules

RAP 13.4(b)(4)	5
----------------	---

I. IDENTITY OF PETITIONER

Javier Sanchez, Petitioner, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part II of this petition pursuant to RAP 13.3(a)(1) and RAP 13.4(b).

II. COURT OF APPEALS DECISION

Mr. Sanchez seeks review of the Court of Appeals unpublished decision of August 11, 2015, affirming his conviction for escape in the second degree.

III. ISSUE PRESENTED FOR REVIEW

The State charged Mr. Sanchez with second-degree escape from custody, specifically that the defendant knowingly escaped from a *detention facility* when he failed to report for work crew.

Did the State present sufficient evidence for a second-degree conviction for escape where it showed that Mr. Sanchez was assigned to and did not appear for work crew, charging only that he escaped from a detention facility and not the alternative, escape from custody?

IV. STATEMENT OF THE CASE

Mr. Sanchez entered into a contract with Benton County to serve on a work crew in lieu of jail time for an offense he pleaded guilty to in November 2013. (9/9/14 a.m. session RP 9-10). He

completed the proper paperwork on the assigned report date of December 10, 2013. (9/9/14 a.m. session RP 20). The following week, he made his second check-in as required. (9/9/14 a.m. session RP 25). From that date onward, the Work Crew officer had no record of Mr. Sanchez making his required telephone check-in calls or reporting for a work crew assignment. Id.

An application for an arrest warrant was made on January 31, 2014. (CP 3). Mr. Sanchez was arrested and Benton County prosecutors charged him by information with escape in the second degree as follows:

COMES NOW, ANDY MILLER, Prosecuting Attorney for Benton County, State of Washington, and by this his information accuses

JAVIER SANCHEZ

of the crime of ESCAPE IN THE SECOND DEGREE, RCW 9A.76.120(1)(a), committed as follows, to-wit:

COUNT 1

That the said JAVIER SANCHEZ in the County of Benton, State of Washington, during the time intervening between the 10th day of December 2013, and the 8th day of January, 2014, in violation of RCW 9A.76.120(1)(a), did knowingly escape from Benton County Jail, a detention facility, contrary to the form of the Statute in such cases made and provided,

and against the peace and dignity of the State of Washington.

(CP 1).

At the jury trial, the court gave Jury Instruction No. 6:

“A person commits the crime of escape in the second degree when he knowingly escapes from a detention facility.”

(CP 49).

The court also gave Jury Instruction No. 8:

“Detention facility means any place used for the confinement of a person arrested for, charged with, or convicted of any offense in any work release, furlough, or other such facility or program.”

(CP 51).

After a jury conviction, Mr. Sanchez made a timely appeal. (9/9/14 a.m. RP 35; CP 93-94). In his appeal, Mr. Sanchez argued that he was not detained in a place, the Benton County Jail, and therefore, under the statute he could only be guilty of escape from custody.

In its opinion affirming the conviction, the Court of Appeals noted that Mr. Sanchez was *not* charged with escape from custody, but rather, only with knowingly escaping from a detention facility. *Slip Op.* at 3. The Court relied on the definition of ‘detention facility’

to mean “in any work release, furlough, or other such facility or program.” *Id.* It reasoned that “work crew” fell within the definition of detention facility, holding that “A person who, while on *work release*, is not where he should be has escaped from a detention facility.” *Slip Op.* at 5.

In determining that Mr. Sanchez’s appeal concerns more the construction of the statute creating his crime rather than a sufficiency of the evidence, (*Slip Op.* at 3) the Court reasoned:

“The State might have charged Sanchez with first degree escape from custody, but the failure to charge the higher crime does not preclude his conviction for second degree escape. The State may have also charged him with the lower crime of third degree escape, but this failure does not preclude the charge for the higher crime.”

Slip Op. at 7.

Mr. Sanchez makes this timely request for review.

V. REASON WHY REVIEW SHOULD BE ACCEPTED

A trial court may order convicted individuals to serve on work crew in lieu of jail time. The legislature has defined “work crew” as partial confinement. RCW 9.94A.030(26). It has also defined “detention facility” as “any place used for the confinement of a person charged” including “in any work release, furlough, or other such facility or program.” RCW 9A.76.010(3). And further defines

“custody” as “restraint pursuant to a lawful arrest or an order of a court, *or any period of service on a work crew.*” RCW 9A.76.010(2). (emphasis added). Thus, the law specifically provides that any period of service on work crew is considered custody but *does not specify that it is a detention facility, or place used for confinement.*

Because the law punishes, in varying degrees, individuals who escape from custody under RCW 9A.76.110;.120;.130, the impact of a prosecutor’s charging decision and a conviction for escape can range from a gross misdemeanor to a Class B Felony. The implications for defendants can be severe in terms of the immediate incarceration sentence as well as offender points in the event of another conviction. Under RAP 13.4(b)(4), review may be accepted if a petition involves an issue of substantial public interest that should be determined by the Supreme Court.

In this case, Mr. Sanchez was charged with and convicted of escape from a detention facility. In its opinion, the Court of Appeals cited numerous cases that stand for the proposition that “work crew” is equivalent to work release, furlough, or “other comparable program.” *Slip Op.* at 4-5. Mr. Sanchez contends “other

comparable program” does not include “work crew” because “work crew” is by statute considered “custody” not a detention facility.

The Court of Appeals cited to *Peters*: In *Peters*, the defendants were juveniles being held in a juvenile detention facility. Each of them was on furlough and did not return to the facility. *State v. Peters*, 35 Wn.App. 427, 431, 667 P.2d 136 (1983). The escape charges fit the definition of “detention facility” because the juveniles were to return to a place of confinement and did not do so after their furlough.

The Court of Appeals also cited to *Breshon*: There, two defendants were sentenced to a drug treatment program and failed to report. *State v. Breshon*, 115 Wn.App. 874, 63 P.3d 871 (2003). In that case, the State conceded that the drug treatment program was *not a detention facility*. The issue was whether the individuals were in “custody” because of “restraint pursuant to an order of the court.” *Id.* at 878. The Court found that they were indeed in *custody* pursuant to a court order, and failing to report to treatment, they committed escape. *Id.* at 880. By contrast, Mr. Sanchez was not charged with escape from custody.

Similarly, in *Kent*¹, the defendants were confined and given a work release and a medical release. *State v. Kent*, 62 Wn.App. 458, 814 P.2d 1195 (1992). The Kent Court held “Clearly, these defendants departed from the limits of their custody without permission by not returning to the *facility*.” *Kent*, 62 Wn.App. at 461.

Mr. Sanchez argues that his case is also distinct from this Court’s decision in *Ammons*. *State v. Ammons*, 136 Wn.2d 453, 963 P.2d 812 (1998). In *Ammons*, the defendants were charged with first-degree escape from custody. *Id.* at 456. The Court cited the relevant statute, which provided in part: “A person is guilty of escape in the first degree if being detained pursuant to a conviction of a felony ... he escapes from custody *or* a detention facility.” *Id.*

The Court carefully went through the statute defining custody as any period of service on a work crew or restraint pursuant to an order of the court. *Id.* at 457. The conviction there was because they were in custody under the restraint of a court order as well as

¹ The Court of Appeals opinion also referred to *State v. Yallup*, 25 Wn.App. 603, 608 P.2d 651 (1980). However, *Yallup* has been overruled by *State v. Danforth*, 97 Wn.2d 255, 643 P.2d 882 (1982). In *Danforth*, this Court held that work release inmates may not be prosecuted under the general escape statute of RC 9A.76.110. *Danforth*, 97 Wn.2d at 257. This Court found that a specific statute which punishes the same conduct as a general statute preempts the general statute. *Id.* at 258

their period of service on a work crew. *Ammons* did not affirm based on escape from a detention facility. The conviction was upheld because the charge was *escape from custody*. *Id.* at 460.

Here, Mr. Sanchez argues that the Legislature did not include “work crew” as a “detention facility” rather, it included “work crew” in the alternative charge of “custody.” Mr. Sanchez was under court order to serve on a work crew. The State had the option to charge him with both alternatives, but he was charged only with escape from a “detention facility.” The State presented no evidence that Mr. Sanchez failed to return to a detention facility. His conviction cannot stand.

VI. CONCLUSION

Mr. Sanchez respectfully asks this Court to accept review and overturn his conviction for escape in the second degree. Respectfully submitted this 10th day of September 2015.

/s/ Marie Trombley WSBA 41410
PO Box 829
Graham, WA 98338
253-445-7920
marietrombley@comcast.net

CERTIFICATE OF SERVICE

I, Marie J. Trombley, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Petition for Review was sent by first class mail, postage prepaid on September 10, 2015 to:

Javier Sanchez, DOC 357172
Monroe Corrections Center
PO Box 777
Monroe, WA 98272

and by electronic service, by prior agreement between the parties to:

Julie Long
Benton County Prosecutor
prosecuting@co.benton.wa.us

/s/ Marie Trombley WSBA 41410
PO Box 829
Graham, WA 98338
253-445-7920
marietrombley@comcast.net

TROMBLEY LAW OFFICE

September 10, 2015 - 2:27 PM

Transmittal Letter

FILED

Sep 10, 2015

Court of Appeals

Division III

State of Washington

Document Uploaded: 327868-SANCHEZ PETITION.pdf

Case Name: State v. Javier Sanchez

Court of Appeals Case Number: 32786-8

Party Represented: Javier Sanchez

Is This a Personal Restraint Petition? Yes No

Trial Court County: Benton - Superior Court # 14-1-00124-3

Type of Document being Filed:

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Response/Reply to Motion: _____
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: Petition for Review

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to prosecuting@co.benton.wa.us.

Sender Name: Marie J Trombley - Email: marietrombley@comcast.net

FILED
AUG. 11, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 32786-8-III
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
JAVIER SANCHEZ,)	
)	
Appellant.)	
)	

FEARING, J. — Javier Sanchez appeals his conviction for second degree escape, after a jury found that he knowingly escaped from a detention facility by failing to report to the Benton County Jail work crew program. He challenges the sufficiency of the evidence to support the conviction by contending that the work crew program fails to meet the definition of a “detention facility” in RCW 9A.76.010(3). He also raises other issues in a Statement of Additional Grounds (SAG). We reject Mr. Sanchez’s contentions and affirm the conviction.

FACTS

Javier Sanchez pled guilty to unlawful possession of a controlled substance in Benton County Superior Court on November 27, 2013. The court imposed a ten-month jail sentence, with authorization to serve the sentence in the Benton County Jail work

crew program. Sanchez signed the work crew contract on his assigned report date of December 10, 2013. In the contract, he acknowledged that failure to call or report to the work crew would result in an arrest warrant and escape charges. Sanchez initially reported to the work crew officer Ryan Tanska on December 17, but he failed to report as directed for his first work assignment on January 2, 2014. Thereafter, he never reported. The court issued an arrest warrant, and law enforcement arrested Sanchez on February 6, 2014. His failure to report disqualified him from the work crew program, and he served the jail sentence on the charge of unlawful possession of a controlled substance.

PROCEDURE

The State of Washington charged Javier Sanchez with second degree escape. The State alleged that Sanchez knowingly escaped from a detention facility when he did not report to the work crew. A jury convicted Sanchez as charged.

ANALYSIS

Javier Sanchez challenges the sufficiency of the evidence to support his conviction for second degree escape. In turn, he contends his conviction violates the due process clause because of insufficiency of evidence. He argues that the State failed to prove he escaped from a detention facility when he was not physically confined to such a facility, but was released from jail and ordered to serve his sentence on work crew.

Evidence is sufficient if a rational trier of fact could find each element of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

This court draws all reasonable inferences in favor of the State. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). Javier Sanchez's appeal concerns more the construction of the statute creating his crime rather than the sufficiency of evidence. The facts are largely undisputed.

Washington categorizes the crime of escape into three degrees. First degree escape constitutes "knowingly escaping from custody or a detention facility while being detained pursuant to a conviction of a felony." RCW 9A.76.110(1). One is guilty of the crime of escape in the second degree when one "knowingly escapes from a detention facility," or, "having been charged with a felony," one "knowingly escapes custody." RCW 9A.76.120(1). Third degree escape is escaping "from custody."

The State charged Javier Sanchez with second degree escape. The State only alleged escape from a detention facility and not the alternate basis for the crime of escape from custody.

RCW 9A.76.010 defines many of the terms used in the three escape crimes. Critical to this appeal is the meaning of the phrase "detention facility" found in the elements of second degree escape. RCW 9A.76.010(3) delimits "detention facility" as:

(3) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, *or other such facility or*

No. 32786-8-III
State v. Sanchez

program[.]

(Emphasis added.) Javier Sanchez maintains that his work crew program was not a “place used for confinement,” and thus he was not physically in a “detention facility” from which he could escape for purposes of the second degree escape statute.

The meaning of a statutory definition is an issue of law we review *de novo*. *State v. Johnson*, 132 Wn. App. 400, 406, 132 P.3d 737 (2006). Our goal when interpreting a statute is to carry out the legislature’s intent. *See State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). We must give effect to the plain language of an unambiguous statute. *Gonzalez*, 168 Wn.2d at 263. If the plain language of a statute is unambiguous, our inquiry ends and we enforce the statute in accordance with its plain meaning. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Washington courts broadly interpret the term “place” as used in the definition of a detention facility. *State v. Gomez*, 152 Wn. App. 751, 754, 217 P.3d 391 (2009). A detention facility, under RCW 9A.76.010(3), is any place used for the confinement of a person charged. *State v. Gomez*, 152 Wn. App. at 754; *State v. Peters*, 35 Wn. App. 427, 430-31, 667 P.2d 136 (1983). A “detention facility” entails a broader meaning than a building or place where a person is confined since the term includes “any work release, furlough, or other such facility or program.” *State v. Peters*, 35 Wn. App. at 430. The term “place” thus encompasses any area in which a person is permitted to go or remain according to the terms of his work release, furlough or comparable program. *State v.*

Peters, 35 Wn. App. at 430. A person who, while on work release, is not where he should be has escaped from a “detention facility.” *State v. Peters*, 35 Wn. App. at 430.

The court in *State v. Peters*, 35 Wn. App. 427 (1983) rejected a similar claim by defendants who argued that they could not be convicted of second degree escape from a detention facility because they did not escape from a place of confinement. One defendant was released from a juvenile detention facility pursuant to a pass and did not return as directed. The other defendant served a term in a juvenile facility and absconded from an “off-campus” celebration at a pizza parlor. Both defendants were not where the courts ordered them to be.

Consistent with *Peters*, we observe that “work crew” is defined as “partial confinement” and a “program” in RCW 9.94A.030(55). This statute reads:

“Work crew” means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty five hours per week that complies with RCW 9.94A.725.

RCW 9.94A.030(55) follows the definition of “detention facility” in RCW 9A.76.010(3).

Washington courts have repeatedly rejected claims that a defendant was not confined in a detention facility or not in custody, for purposes of the crime of escape, when participating in a sentencing alternative to total confinement. In *State v. Breshon*, 115 Wn. App. 874, 63 P.3d 871 (2003), the court sentenced two defendants to a drug treatment program, but both failed to report to the program. This court affirmed convictions for first degree escape. We rejected the defendants’ argument that

participating in a drug treatment program does not constitute being in custody.

State v. Kent, 62 Wn. App. 458, 814 P.2d 1195 (1991) focused on the word “escape” rather than “detention facility.” One defendant served time at a work release facility and the other defendant was on medical furlough. Each defendant failed to return to jail as the terms of their release required. The trial court dismissed charges of second degree escape on the basis that neither defendant was physically confined and thus never escaped. This court reversed and reinstated the charges. We ruled that one need only be where he is not supposed to be in order to have escaped.

In *State v. Yallup*, 25 Wn. App. 603, 608 P.2d 651 (1980), two defendants signed out of a work release facility and failed to return. We affirmed their convictions for first degree escape. In *State v. Parker*, 76 Wn. App. 747, 888 P.2d 167 (1995), we affirmed the conviction of a defendant for first degree escape. Robert Parker moved to a new residence without notifying authorities of his new address while he was sentenced to home monitoring.

In view of the statutory definitions and case law, we hold that Javier Sanchez was in a detention facility when participating in the work crew program. The State’s evidence established that the Benton County jail work crew is a program for which Sanchez was apprised of his specific reporting requirements, including the time to report for his first assignment, but knowingly failed to comply. He thus escaped his confinement when he failed to report.

No. 32786-8-III
State v. Sanchez

Javier Sanchez further argues that he was only guilty of third degree escape because he “escaped from custody” as the word “custody” is used in RCW 9A.76.130(1), the statute creating escape in the third degree. The term “custody” is defined in RCW 9A.76.010(2) as:

[r]estraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew.

Javier Sanchez asserts that he escaped from custody by failing to be present at the time and place for his work crew assignment, where he was legally obligated to be. He cites *State v. Ammons*, 136 Wn.2d 453, 963 P.2d 812 (1998) to illustrate his point.

State v. Ammons does not help Javier Sanchez, since *Ammons* held that convicted felons were guilty of first degree escape when they failed to report to the work crew. The Supreme Court considered the defendants to be in custody during the time they were required to report for court-ordered work crew. The State might have charged Sanchez with first degree escape from custody, but the failure to charge the higher crime does not preclude his conviction for second degree escape. The State may have also charged him with the lower crime of third degree escape, but this failure does not preclude the charge for the higher crime.

SAG CONTENTIONS

In his additional ground 1, Javier Sanchez suggests he did not receive a fair trial because the trial court excused one juror after which only eleven jurors deliberated and

voted guilty. He is incorrect. The record shows that the trial court excused one juror and substituted an alternate juror.

Also in additional ground 1, Javier Sanchez states he observed that other defendants who did not report for work crew were charged with third degree, not second degree, escape. We cannot rely on this factual assertion because of the lack of any evidence before us. Also, any purported inconsistent prosecutions do not absolve Sanchez from the charge of second degree escape.

In additional ground 2, Javier Sanchez contends that the trial court miscalculated his offender score at "5" rather than "3." Sanchez is mistaken. His criminal history includes four prior felony drug possession convictions that count as one point each. RCW 9.94A.525(15). We add one additional point to his score because he committed the current offense during community placement and custody. RCW 9.94A.525(19). The offender score of "5" is correct.

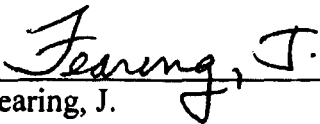
Also in ground 2, Javier Sanchez maintains that he was not home to answer the telephone when the work crew officer called to assign him work. To the extent Sanchez argues that he did not knowingly fail to show for the work crew, the jury found that, based on the State's evidence, he knew of his obligation to report and failed to comply. This appeals court does not reweigh the trial evidence.

CONCLUSION

We confirm Javier Sanchez's conviction for second degree escape.

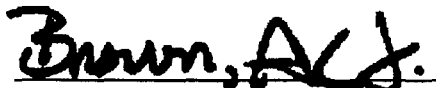
No. 32786-8-III
State v. Sanchez

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

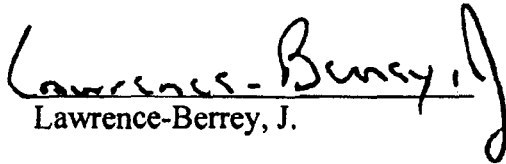


Fearing, J.

WE CONCUR:



Brown, A.C.J.



Lawrence-Berrey, J.