No. 76172-2-1

SUPREME COURT OF

THE STATE OF WASHINGTON

IKEIM VASTER, ALBERT REEVES, TRISTAN BEEMAN,

Appellants-Plaintiffs,

vs.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS, DICK MORGAN, DAN PACHOLKE and BERNIE WARNER

Respondents.

PETITION FOR REVIEW

RICHARD D. WALL, #16581
Attorney for Appellants

Richard D. Wall, P.S.
Attorney at Law
1604 W. Dean
Spokane, WA 99201
(509) 747-5646

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I. Identity of Petitioner:

Ikeim Chachar Claude Vaster, Appellant, asks this court to accept review of the decision designated in Part II.

II. Decision to be Reviewed:

The Unpublished Opinion of the Court of Appeals, Division I, filed November 20, 2017, in case number 76172-2-1, a copy of which is attached hereto.

III. Issues Presented for Review:

1. Does the Washington State Department of Corrections Violate an Offender's Due Process Rights When It Informs the Offender of the Maximum Violation that Will Be Imposed For a Violation of Custody Conditions and Then Imposes a Significantly Greater Sanction Upon Finding a Violation?

ANSWER: Yes. Misleading an offender about the maximum sanction that will be imposed for a violation and then imposing a more severe sanction when a violation occurs is manifestly unfair. Even persons who have been convicted of a crime and are serving a sentence for that crime have a fundamental due process right not to be treated by the State in a manner that is manifestly unfair or arbitrary.

IV. Statement of the Case:

On April 5, 2016, Ikeim Chachar Claude Vaster filed a Class Action Complaint for Violations of Civil Rights naming the Washington State Department of Corrections ("DOC") as defendant and alleging causes of action for violations of RCW 9.94A.737, violations of the Fourth and Fourteenth Amendment to the United States Constitution, and Unlawful Imprisonment under Washington State law. The Complaint was later amended to add Albert James Reeves, and Tristan Duane Beeman as plaintiffs, and Dick Morgan, Dan Pachoke, and Bernie Warner, who had acted as Secretary of DOC at various relevant times, as defendants.

Vaster's original Complaint alleged that DOC had unlawfully revoked his community custody status and returned him to prison for a period of 387 days as a sanction for violating his community custody conditions and set forth the following facts in support of that claim:

- On November 26, 2012, Vaster was released from prison and placed on community custody status in lieu of early release for good time credits he had earned during his incarceration.
- At the time of his release from prison, Vaster was presented with a form prepared by DOC titled "Offender Notification of Department Violation Process."
- The form was signed by Vaster and by DOC officer Jason Lerch.

- The Offender Notification form specified that the following would apply to any alleged violations of Vaster's community custody conditions:

> 1. Your first low level violation process will be addressed with a Stipulated Agreement, unless a standard in-custody hearing process is required due to aggravating circumstances.
> 2. Subsequent low level violation processes up to 5, may be addressed through a short term confinement sanction of 1-3 days in custody, unless a standard in-custody hearing process is required due to aggravating circumstances. After 5 low level violation processes, all processes will be addressed through a standard in-custody hearings process.
> 3. Any high level violations will be addressed through a standard in-custody hearings process.
> 4. An in-custody hearing process will be a hearing with a Department Hearing Officer. If you are found guilty, you will receive a **sanction of up to 30 days of confinement.** (emphasis added)

- On April 23, 2013, Mr. Lerch filed a Report of Violation alleging that Vaster had violated his conditions of community custody.
- On April 25, 2013, an in-custody hearing was conducted by DOC before Hearing Examiner Joanna Prrideaux. Vaster presented no defense and was found to have violated his conditions by failing to report to his Community Corrections Officer as directed.
- Instead of imposing a sanction of 30 days of confinement or less as prescribed in the Offender Notification, Hearing Examiner Prideaux ordered Vaster to be returned to prison to serve out the remainder of his sentence.

- Vaster was returned to prison where he served a total of 387 days before being released.
- Defendants' moved to dismiss the Amended Complaint under Civil Rule 12(b) for failure to state a claim. Defendants argued that the sanctions imposed were authorized under RCW 9.94A.633(2)(a) and that Plaintiffs lacked standing to bring suit because they had no liberty interest in remaining on community custody status.

The trial court granted Defendants' motion and dismissed all claims against all defendants with prejudice. The Order Granting Defendant's Motion to Dismiss Plaintiffs' Amended Complaint states the following reasons in support of the trial court's decision:

> The revocation sanctions imposed are authorized by RCW 9.94A.633(2)(a). Nothing in RCW 9.94A.737's "Swift and Certain" process eliminates DOC's authority to revoke community custody and to return to prison under RCW 9.94A.633. The DOC notice of the "swift and certain" program does not foreclose DOC's authority to revoke community custody under RCW 9.94A.633(2).

In an unpublished decision, the Court of Appeals affirmed the trial court, holding that even though the Offender Notification Form is misleading, the failure to inform an offender of the possible additional sanction of complete revocation of their community custody status did not amount to a due process violation. (*Vaster v. Dept. of Corrections*, No. 76172-2-1, pp. 10-11) Vaster now seeks review by this Court.

V. Argument Why Review Should Be Accepted:

This appeal presents a significant question of law of exceptional importance to the citizens of this State, in particular, those citizens who have been released from prison on community custody status and are subject to being returned to prison if they violate any condition of their release, their families and loved ones, and all other citizens who value honesty and fairness in the conduct of State officials and agencies. The Court of Appeals' ruling in this case essentially condones clearly deceptive and unfair conduct by DOC on the grounds that it is simply not egregious enough to warrant court intervention.

While acknowledging that the Offender Notification Form is misleading because offenders are given to understand that they will be subject a maximum penalty of 30 days incarceration at their first violation hearing, the Court of Appeals nevertheless concluded that DOC's actions are not sufficiently arbitrary or capricious as to violate substantive due process. Thus, according to the Court of Appeals, it matters not whether DOC knows its conduct is misleading or even that its intent is to mislead and to take advantage of offenders by reducing the offender's incentive to comply with conditions or contest an alleged violation. The fact that a state statute grants DOC authority to revoke an offender's earned early release and return the offender to prison in certain cases is sufficient, according to the Court of Appeals, to justify DOC's actions, even if those actions are misleading and detrimental to the offender.

The Court of Appeals also reasoned that, even if the Offender Notification Form is misleading, an offender is presumed to know the law. Therefore, the offender cannot complain that they understood they would be subject only to a maximum sanction of 30 days. In other words, the offender, knowing what the law really is, should assume that DOC does not mean what it says when it specifically states in writing what the maximum sanction will be.

That Court of Appeal's reasoning is nonsensical. If DOC is relying on the offender's independent knowledge of the law as the basis for understanding what sanctions may be imposed for a violation, what possible purpose could be served by the Offender Notification Form other than to mislead the offender? If the purpose is not to mislead, but to inform, then fundamental fairness requires that the information presented be accurate enough that the offender is not misled in a way that is detrimental to the offender.

The Court of Appeals avoids even addressing the issue of fairness by noting that RCW 9.94A.704(8) and 737(1) require DOC to notify an offender about the "Swift and Certain" process and sanctions specified under RCW 9.94A.737. However, nothing in those statutes prohibits DOC from also informing offenders that they may be subject to revocation of earned early release and returned to prison, if DOC chooses to exercise its claimed authority under RCW 9.94A.633. Presumably, the Court of Appeals did not mean to suggest that state law compels DOC to provide misleading

information to offenders who are placed in community custody in lieu of earned early release. Nevertheless, that the inescapable result of its reasoning and analysis.

Furthermore, it is not entirely clear that DOC retains authority to impose a sanction of return to prison and revocation of all earned good time credits in the circumstances presented here. RCW 9.94A.633(2)(a) allows DOC to transfer an offender to a "more restrictive confinement status" for the remainder of his or her sentence, when the offender was transferred to community custody in lieu of earned early release as was the case here. Citing, *In re Pers. Restraint of Price*, 157 Wn.App. 889, 909, 240 P.3d 188 (2010), the Court of Appeals interpreted that language to mean that DOC could revoke Vaster's earned early release and return him to prison to serve out the remainder of his sentence and that the authority to do so was independent of any authority granted under the "Swift and Certain" process mandated by RCW 9.94A.737.

Return to prison is clearly a form of confinement. In fact, it is the most restrictive form of confinement that can be imposed. At the same time, RCW 9.94.737(4) specifically provides that the *maximum* sanction that can be imposed by DOC even for a high level violation is "30 days confinement per hearing." By its plan language, RCW 9.94A.737 applies to all violation hearings conducted by DOC.

Here, Vaster was confined for 387 days as a sanction at his first and only violation hearing, more than 12 times the maximum sanction specified in

RCW 9.94A.737(4). Thus, there is a direct conflict between RCW 9.94A.737(4) and RCW 9.94A.633(2)(a). The Court of Appeals opinion disregards this apparent conflict in the statutes.

Vaster does not contend that DOC is required under the due process clause to inform offenders of the potential sanctions that may be imposed for a violation. Following the minimum due process standards established for parolees in *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), Washington courts require only written notice of the alleged violation, disclosure of the evidence against the offender, the opportunity to be heard before a neutral decision maker, and the right to confront witnesses and present testimony and evidence, before sanctions can be imposed. See, *In re Pers. Restraint of McNeal*, 99 Wn. App. 628-29, 994 P.2d 890 (2000). Vaster's argument is simply that, if the State does give notice, it must do so in a way that is not deceptive or misleading. If DOC specifically informs an offender that their maximum sanction for a violation will be 30 days, then due process requires that DOC not impose any greater sanction upon finding a violation. This is nothing more than common sense.

It should concern every citizen of this State that misleading or deceptive conduct by any department or agency of the State would be countenanced by the courts when such conduct disadvantages a citizen. Certainly, conduct that misleads a citizen by providing false information through an official document that the citizen is required to sign and acknowledge would not be viewed as consistent with due process in any other

context. It should not be here, simply because the persons who are deceived happen to be persons who have been convicted of a crime.

VI. Conclusion:

For the foregoing reasons, this court should accept review, reverse the decision of the Court of Appeals and remand to the trial court for further proceedings.

Respectfully submitted this 18th day of December, 2017.

Richard D. Wall, WSBA#16581
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of December, 2017, a true and correct copy of the foregoing PETITION FOR REVIEW was served on the following via email and US Mail postage prepaid:

HALEY BEACH, WSBA #44731
Assistant Attorney General
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116

Richard Wall

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IKEIM CHACHAR CLAUDE VASTER, ALBERT JAMES REEVES, and TRISTAN DUANE BEEMAN, on behalf of themselves and all others similarly situated,	No. 76172-2-I
Appellant,	DIVISION ONE
v.	
WASHINGTON STATE DEPARTMENT OF CORRECTIONS, an agency of the State of Washington; DICK MORGAN, DAN PACHOLKE, and BERNIE WARNER, in their official capacities as secretaries of the Washington State Department of Corrections,	UNPUBLISHED OPINION
Respondent.	FILED: November 20, 2017

APPELWICK, J. —The plaintiffs filed suit against the DOC, challenging the DOC's decision to return them to total confinement as a sanction following a community custody violation hearing. We affirm the trial court's dismissal of plaintiffs' suit for failure to state a claim upon which relief can be granted.

FACTS

Ikeim Vaster, James Reeves, and Tristan Beeman (collectively plaintiffs) were each convicted of criminal offenses in Washington and sentenced to a term

of confinement. Each plaintiff was transferred to community custody prior to the maximum expiration of their sentences, in lieu of earned early release credits.

Upon their release, a Department of Corrections (DOC) community corrections officer presented the plaintiffs with a standardized "Offender Notification of Department Violation Process" form. The form notified plaintiffs they had met the criteria for "swift and certain" sanctioning and specified the process and sanctions that DOC would implement in the event that the plaintiffs violated the conditions of community custody:

> 1. Your first low level violation process will be addressed with a Stipulated Agreement, unless a standard in-custody hearing process is required due to aggravating circumstances.
>
> 2. Subsequent low level violation processes up to 5, may be addressed through a short term confinement sanction of 1-3 days in custody, unless a standard in-custody hearing process is required due to aggravating circumstances. After 5 low level violation processes, all processes will be addressed through a standard in-custody hearings process.
>
> 3. Any high level violations will be addressed through a standard in-custody hearings process.
>
> 4. An in-custody hearing process will be a hearing with a Department Hearing Officer. If you are found guilty, you will receive a sanction of up to 30 days of confinement.[1]

Each of the plaintiffs violated the terms of his community custody, and each was found guilty of the violation at a full evidentiary hearing presided over by a DOC hearing officer. In each plaintiff's case, the hearing officer revoked their early

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[1] This portion of the document is quoted in the complaint, but the complete document is not part of the record before us.

release and ordered them returned to total confinement to serve the remainder of his prison term.

The plaintiffs filed suit against the DOC and three DOC officials, asserting due process claims under the United States Constitution and 42 U.S.C. § 1983 as well as a claim of false imprisonment. The DOC filed a CR 12(b)(6) motion to dismiss. The trial court granted the motion and dismissed the plaintiffs' claims with prejudice, finding that "[n]othing in RCW 9.94A.737's 'swift and certain' process eliminates DOC's authority to revoke community custody and to return to prison under RCW 9.94A.633" and that "[t]he DOC notice of the 'swift and certain' program does not foreclose DOC's authority to revoke community custody under RCW 9.94A.633(2)." The plaintiffs appeal.[2]

DISCUSSION

A dismissal under CR 12(b)(6) may be granted when the plaintiff cannot prove "any set of facts which would justify recovery." Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). The court accepts as true the allegations in the plaintiff's complaint and any reasonable inferences therefrom. Reid v. Pierce County, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). Whether dismissal was

[2] Though immaterial to our resolution of this appeal, we agree with the State that Vaster's due process claim is barred by collateral estoppel because Vaster litigated this identical issue in a personal restraint petition that was dismissed on the merits by Division Three of this court. See In re Pers. Restraint of Vaster, No. 32068-5-III. We also agree with the State that Vaster's false imprisonment claim is barred by the statute of limitations. See RCW 4.16.100(1) (statutory limitation period applicable to false imprisonment claims is two years).

appropriate under CR 12(b)(6) is a question of law that this court reviews de novo. San Juan County v. No New Gas Tax, 160 Wn.2d 141, 164, 157 P.3d 831 (2007).

We also review questions of statutory interpretation de novo. City of Spokane v. Spokane County, 1158 Wn.2d 661, 672-73, 146 P.3d 896 (2006). In order to give effect to the legislature's intent, we consider a statute as a whole and examine related statutes to help identify the legislative intent embodied in the statutory provision in question. In re Pers. Restraint of Cruz, 157 Wn.2d 83, 87-88, 134 P.3d 1166 (2006). We may not interpret a statute in a way that renders another portion of the statute meaningless or superfluous. Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

I. RCW 9.94A.633 and RCW 9.94A.737

The DOC has the discretion to reduce an offender's term of confinement by granting early release for good behavior. State v. Bruch, 182 Wn.2d 854, 868, 346 P.3d 724 (2015). Confinement is reduced by converting an offender's early release time into community custody. RCW 9.94A.729(5). "Any community custody [a defendant] earns in lieu of early release is the result of RCW 9.94A.729(5), which provides the DOC authority to transfer a portion of confinement time into community custody in lieu of early release. It is not the result of the trial court's community custody term imposed under RCW 9.94A.701." Bruch, 182 Wn. 2d at 863.

In 2012, the legislature amended RCW 9.94A.737 to require the DOC to develop "a structured violation process that includes presumptive sanctions,

aggravating and mitigating factors, and definitions for low level violations and high level violations." RCW 9.94A737(2)(a). For low level violations, the DOC may sanction an offender as follows:

> (a) For a first low level violation, the department may sanction the offender to one or more nonconfinement sanctions.
>
> (b) For a second or subsequent low level violation, the department may sanction the offender to not more than three days in total confinement.

RCW 9.94A.737(3). After an offender has committed and been sanctioned for five low level violations, all subsequent violations committed by that offender are treated as high level violations. RCW 9.94A.737(2)(b). For a high level violation, the DOC may sanction the offender to not more than 30 days in total confinement per hearing. RCW 9.94A.737(4). The DOC is required to notify all offenders in writing of this process, called "swift and certain" by the DOC. RCW 9.94A.704(8); RCW 9.94A.737(1).

Consistent with RCW 9.94A.737, RCW 9.94A.633(1)(a) provides that "[a]n offender who violates any condition or requirement of a sentence may be sanctioned . . . by the department with up to thirty days' confinement." However, RCW 9.94A.633(2) gives the DOC authority to impose alternative sanctions for offenders on specific types of community custody. Pertinent here is RCW 9.94A.633(2)(a), which provides that "[i]f the offender was transferred to community custody in lieu of earned early release in accordance with RCW

9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence."[3] (Emphasis added.)

The plaintiffs argue the sanction of return to confinement for the remainder of their sentence is unlawful because the maximum sanction permitted by RCW 9.94A.737 is 30 days in confinement. But, when the legislature adopted the "swift and certain" violation process in RCW 9.94A.737, it specifically retained the DOC's authority to terminate an offender's early release and return him or her to confinement pursuant to RCW 9.94A.633(2)(a). See, e.g., In re Pers. Restraint of Price, 157 Wn. App. 889, 909, 240 P.3d 188 (2010) (the legislature's mandate that the DOC "develop hearing procedures and a structure of graduated sanctions" for community custody violations does not impede DOC's power to revoke community custody entirely and return an offender to confinement). In other words, for offenders who have completed their term of total confinement and are serving a term of community custody imposed by the court, the DOC does not have the authority to order their return to total confinement, because that term is complete. However, the DOC does maintain this authority for offenders such as the petitioners, who are serving a portion of their term of confinement on community custody. This authority remains separate and distinct from RCW 9.94.737.[4] A

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[3] RCW 9.94A.633(2)(a) was previously codified as RCW 9.94A.737(2), which permitted the DOC to return an offender transferred to community custody in lieu of early release in the event that offender committed more than three violations. In 2008 the "third violation" rule was eliminated and the statute was recodified as RCW 9.94A.633(2)(a).

[4] The Sentencing Reform Act of 1981, chapter 9.94A RCW,) has granted the DOC this authority since at least since 1988. See former RCW 9.94A.205 (1988)

contrary interpretation would render RCW 9.94A.633(2)(a) meaningless and would defy common sense.

Plaintiffs argue that RCW 9.94A.633(2)(a) does not grant the DOC unrestricted authority to return an offender to total confinement, because the statute specifies only that offenders may be transferred to "a more restrictive confinement" status. Plaintiffs contrast this statute with RCW 9.94A.633(2)(d) and (e), which mandate a return to total confinement for offenders sentenced to a work ethic camp or to a special sex offender sentencing alternative.[5]

No statute defines "more restrictive confinement."[6] When a statutory term is undefined, the words of a statute are given their ordinary meaning. State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). "More restrictive confinement" clearly means a form of confinement that is more restrictive than community custody. RCW 9.94A.633(2)(a). "Total confinement" is clearly more restrictive than community custody and nothing indicates that it is excluded from

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("If an inmate violates any condition or requirement of community custody, the department may transfer the inmate to a more restrictive confinement status to serve the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.")

[5] RCW 9.94A.633(2)(d) provides, "If the offender was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement. RCW 9.94A.633(2)(e) provides, "If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement."

[6] In contrast, RCW 9.94A.030(52) defines "total confinement" as "confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day."

the definition of "more restrictive confinement." Id. RCW 9.94A.633(2)(a) gives the DOC authority to return an offender to total confinement following a community custody violation.

II. Due Process

In the alternative, the plaintiffs argue, the DOC's failure to inform them that they could be sanctioned with return to confinement violated both procedural and substantive due process.

The federal constitution protects individuals against the deprivation of liberty or property without due process of law. U.S. CONST. amend. XIV.[7] The due process clause confers both procedural and substantive protections. State v. Beaver, 184 Wn.2d 321, 332, 358 P.3d 385 (2015). The procedural component of the due process clause requires that government action be implemented in a fundamentally fair manner. Id. at 332. The substantive component of the due process clause bars arbitrary government conduct, notwithstanding the fairness of the implementing procedures. Id.

To state a procedural due process claim, a plaintiff must allege (1) a liberty or property interest protected by the constitution, (2) a deprivation of the interest by the government, and (3) a lack of process. Greenhalgh v. Dep't of Corr., 180

[7] The plaintiffs do not allege a violation of the due process clause of the Washington constitution. Regardless, Washington's constitutional provision is similar and does not provide broader protections than its federal counterpart. WASH. CONST. art. I, § 3; In re Pers. Restraint of Matteson, 142 Wn.2d 298, 310, 12 P.3d 585 (2000).

Wn. App. 876, 890-91, 324 P.3d 771 (2014). The minimum process to which an offender is entitled at a community custody revocation hearing includes

> "(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole."

In re Pers. Restraint of McNeal, 99 Wn. App. 617, 628-29, 994 P.2d 890 (2000) (quoting Morrissey v. Brewer, 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)); see also Grisby v. Herzog, 190 Wn. App. 786, 800, 362 P.3d 763 (2015) ("Morrissey applies when an offender in community custody faces allegations by the Department that may result in his being returned to total confinement.")

To show a denial of substantive due process, a plaintiff must show conduct that is so arbitrary and unreasonable it is "shocking to the conscience." State v. Hoisington, 123 Wn. App. 138, 146, 94 P.3d 318 (2004). "[O]nly the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" County of Sacramento v. Lewis, 523 U.S. 833, 846, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998). Something more than negligence is required. Braam v. State, 150 Wn. 2d 689, 700, 81 P.3d 851 (2003). When money damages are sought as a remedy, the conduct that violates substantive due process must be invidious or irrational. Sintra, Inc. v. City of Seattle, 119 Wn.2d 1, 23, 829 P.2d 765 (1992).

Here, plaintiffs fail to demonstrate a procedural due process violation. Plaintiffs do not dispute they received notice of the community custody violations, had a full evidentiary hearing, and received a decision by a neutral hearing officer. Plaintiffs contend only that they were unaware that the DOC could return them to total confinement as a sanction. But, RCW 9.94A.633(2) provides for such a sanction and plaintiffs are presumed to know the law. State v. Spence, 81 Wn.2d 788, 792, 506 P.2d 293 (1973), rev'd on other grounds by Spence v. Washington, 418 U. S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974). Moreover, the DOC is statutorily obligated to provide written notification to plaintiffs of the "swift and certain" violation process. See RCW 9.94A.704(8), .737(1). But, there is no corresponding requirement that DOC notify offenders on community custody in lieu of early release that they are subject to RCW 9.94A.633.

Nor do plaintiffs establish that the DOC's actions were so arbitrary and capricious as to shock the conscience. At most, the DOC's method of notifying offenders is misleading because it implies that only sanctions under RCW 9.94A.737 are available. It would undisputedly be better practice for the DOC to notify offenders on community custody in lieu of early release that they are subject to additional sanctions under RCW 9.94A.633.[8] However, we cannot say that the

[8] According to Division Three of this court, which adjudicated Vaster's prior personal restraint petition, Vaster signed a document entitled "Conditions, Requirements and Instructions" in which he acknowledged that he could be subject to revocation of community custody under the provisions of chapter 9.94A RCW. This document is not part of the record before us and it is unclear whether Reeves and Beeman were also presented with such a document.

DOC's conduct amounts to a substantive due process violation. The trial court did not err when it granted the DOC's CR 12(b)(6) motion to dismiss the petitioners' due process claim.

Though the petitioners do not specifically address their § 1983 claim, because they have failed to establish a violation of a federally protected constitutional right, their § 1983 claim fails as a matter of law. See Van Blaricom v. Kronenberg, 112 Wn. App. 501, 508, 50 P.3d 266 (2002). And, because plaintiffs acknowledge that their false imprisonment claim derives from their due process claim it necessarily fails as well.

We affirm the trial court's decision granting DOC's CR 12(b)(6) motion to dismiss.

Appelwick, J.

WE CONCUR:

Dwyer, J. Becker, J.