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**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

WASHINGTON DEPARTMENT OF CORRECTIONS; AND KING
COUNTY DEPARTMENT OF ADULT & JUVENILE DETENTION
(KING COUNTY JAIL),

Appellant,

v.

IAN FORREST STRAWN,

Appellee.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

In early 2011, Strawn was released from prison 623 days before his prison term expired under a Snohomish County cause, because he had earned early release credits. He immediately began serving his community custody term for that cause. In December 2011, while still serving early release time on community custody, Strawn committed multiple crimes in King County. After he was arrested on pending charges in King County, the DOC terminated his early release on the Snohomish County cause. It then calculated how much confinement time he had left to serve on the prison term for his Snohomish County cause (“termination time”). In making this determination, the DOC gave him credit for prior community custody successfully served and for prior sanction time served in jail on the Snohomish County cause for violations of community custody conditions. This left a balance of 367 days of termination time remaining to serve in confinement on the Snohomish County cause after the DOC terminated his early release. That time has yet to start, however, because state law requires presentence time on new charges to toll termination time.

While Strawn was awaiting trial on his King County charges, he brought a habeas petition in the King County Superior Court, claiming that he should not have any termination time remaining on the Snohomish

County cause and that he was also done with community custody on that cause. The court agreed, granting him a writ of habeas corpus. (Strawn later received a 13-year prison sentence on the King County charges, which he is now serving).

The superior court made several errors in granting Strawn's habeas petition: (1) it erroneously concluded that the DOC no longer had authority to terminate early release when an offender is released to community custody; (2) it erroneously concluded that a 2009 statutory amendment required the DOC to recalculate Strawn's community custody term length as 12 months instead of 18 months; (3) it erroneously gave Strawn credit on his Snohomish County cause for presentence time spent on the new King County cause; and (4) it erroneously concluded that a 2012 statutory amendment applied retroactively to shorten sanctions that had already been imposed. This Court should vacate the writ of habeas corpus.

II. ASSIGNMENTS OF ERROR

1. The superior court erred when it implicitly held that the legislature abolished the DOC's authority to terminate early release.

2. After the DOC terminated Strawn's early release under RCW 9.94A.633(2)(a), the superior court erred when it implicitly applied the wrong subsection to him—RCW 9.94A.633(1)(a)—and thereby

required the DOC to reduce his confinement time from 367 days to no more than 30 days.

3. The superior court erred when it implicitly held that a 2009 statutory amendment required the DOC to recalculate Strawn's community custody term length as 12 months instead of 18 months.

4. Because presentence confinement time for new charges cannot count toward both the new cause and the cause that an offender was serving when he committed the new crimes, the superior court erred when it implicitly held that Strawn's termination time under the Snohomish County cause had been served while he was in jail on presentence time under the King County cause.

5. The superior court erred when it held that Strawn's community custody term on the Snohomish County cause had expired; the mathematical calculations of tolled time and expired time do not support the court's conclusion.

6. The superior court erred when it implicitly held that the DOC was required to recalculate Strawn's community custody term and shorten previously imposed sanctions after a 2012 statutory amendment reduced DOC hearing officers' sanction authority under RCW 9.94A.737 from 60 days per violation to 30 days per hearing.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where the Laws of 2012, ch. 6, § 5, eliminated the *requirement* that the DOC terminate early release after a third violation hearing, but left intact a separate statute giving the DOC discretionary authority to terminate early release after *any* community custody violation, may the DOC terminate early release after repeated community custody violations?

2. State law requires that persons committing violent offenses serve 18 months of community custody and persons committing crimes against persons serve 12 months of community custody. If an offender commits a violent offense that is also a crime against a person, does the longer community custody term apply, where almost all violent offenses are also crimes against persons?

3. Does RCW 9.94A.171(3) require the DOC to toll Strawn's Snohomish County community custody term during the time he was in jail serving presentence time on the King County charges and during the time he spends serving his termination of early release on the Snohomish County cause?

4. State law prohibits an offender from receiving double credit for presentence time toward two separate causes. It also prohibits a court from running a new sentence concurrently to a prior sentence if the new

crime was committed while serving the prior sentence. Was Strawn prohibited from receiving credit toward his prior Snohomish County cause for presentence time on his later King County cause, where he committed the King County crime while serving the Snohomish County sentence?

5. Do the Laws of 2012, ch. 6, §§ 2, 7, which reduced the maximum DOC-imposed sanction time allowable for community custody violations from 60 days per violation to 30 days per hearing, affect only sanctions imposed after the amendment became effective, where the statute does not have language specifically authorizing the DOC to reduce previously imposed sanctions and recalculate sentences?

IV. STATEMENT OF THE CASE

In 2007, Strawn pleaded guilty to a Snohomish County conviction for vehicular homicide, attempting to elude a pursuing police vehicle, possession of a stolen motor vehicle, and possession of a controlled substance, committed on September 15, 2007. CR 220. The court imposed 61 months of confinement and 18 to 36 months of community custody. CR 225-226. The DOC later modified the community custody term to 18 months, pursuant to Laws of 2009, ch. 375, § 9. *See* CR 233 (“Supervision Length: 0Y, 18M, 0D”). Based on early release time, the DOC released Strawn from prison to his 18-month community custody term on February 1, 2011. CR 238, 240 (showing “INTAKE”).

Most offenders in prison are eligible to release early based on early release time.¹ Release prior to the maximum expiration date of a prison term is governed generally by RCW 9.94A.728, which in turn refers one to RCW 9.94A.729 for the rules specific to early release that is earned by an inmate for good behavior and good performance. See RCW 9.94A.728(1); RCW 9.94A.729(1)(a) (“The earned release time shall be for good behavior and good performance”).

Inmates who have been ordered by a court to serve a term of community custody following their release from prison can release early to community custody based on early release time. RCW 9.94A.729(5). This is called release to community custody “in lieu” of early release. RCW 9.94A.729(5)(a) (“transferred to community custody in lieu of earned release time”). In other words, it is early release to community custody instead of general early release without any supervision or restrictions.

¹ In this brief, the DOC uses the phrase “early release time” rather than “earned release time,” although both phrases appear in statute and mean the same thing. See RCW 9.94A.728(1) (“An offender may earn *early release time* as authorized by RCW 9.94A.729” (emphasis added); RCW 9.94A.729(1)(a) (“The term of the sentence . . . may be reduced by *earned release time*” (emphasis added)). The phrase “earned release time,” might be confused with the phrase “*earned time*,” which is a term of art that applies to credits offenders earn from completing tasks such as classes, in contrast to good conduct time, which offenders lose after behaving badly. The two, earned time and good conduct time, together make up the early release credits that an offender can receive to release from prison early. See RCW 9.94A.729 (“The earned release time shall be for good behavior and good performance”); see also DOC Policy 350.100, available at <http://www.doc.wa.gov/policies/Default.aspx>.

Once an inmate has been released early to community custody, he or she continues to serve the prison term, albeit while on community custody. The DOC calls such offenders CCP offenders, or “community custody prison,” because they are still serving their prison terms.² This was the case with Strawn when he was serving his Snohomish County community custody. CR 238 (showing “Supervision Type” as “CCP”).

When the DOC released Strawn from prison on early release time, it released him 623 days earlier than his prison term maximum expiration date of October 16, 2012. CR 235 (showing “MaxEx: 10/16/2012” for cause AB); CR 241 (at entry dated 12/21/2011). In other words, Strawn was released 623 days early from prison based on early release time. However, those 623 days remained part of his original sentence, and he was allowed early release only provisionally: if he violated the terms of his sentence, the DOC could return him to his original prison term. RCW 9.94A.633(2)(a).

Strawn’s 18-month community custody term is 548 days long.³ CR 240. Between his release from prison on February 1, 2011, and when

² See DOC Policy 320.160, at II.A.3.c.2 (available at <http://www.doc.wa.gov/policies/>).

³ Although Strawn’s early release time exceeded 18 months, the DOC set his community custody end date at the 18-month mark. CR 233 (showing “Count Start Date” as 02/01/2011 and showing “Count End Date” as 09/26/2012, which is 18 months later). The DOC would not have continued to supervise beyond 18 months because the court-imposed supervision was only 18 months. See RCW 9.94A.501(3), -(4) (authorizing the DOC to supervise only if offender has court-imposed supervision).

he failed to report on October 17, 2011, Strawn spent time either on community custody or in jail on sanction time for the Snohomish County sentence. CR 240. Thus, except for two days that Strawn failed to report to his community corrections officer (CCO),⁴ the DOC counted all of that time as successful community custody time, for a total of 256 days of credit. CR 240. Subtracting 256 days of credit from a 548-day community custody term results in 292 days that Strawn has remaining to serve on his Snohomish County community custody term, once he finishes the 13-year prison term that he received as a result of his robbery conviction in King County Cause No. 11-1-08453-8. CR 240, 244.

On October 17, 2011, Strawn again failed to report to his CCO. CR 238, 240. This time, Strawn absconded from supervision for almost two months. He was apprehended by a SWAT team on December 9, 2011, as a result of his arrest on new King County charges. CR 238, 242 (at entry dated 12/09/2011). From that time forward, he was held in King County Jail on charges of attempted first degree robbery with a deadly weapon, second degree assault, and unlawful possession of a firearm. CR 238, 242 (at entry dated 12/09/2012), 244.

While Strawn was in jail on the King County robbery charges, the DOC held a violation hearing on December 20, 2011, and terminated his

⁴ He failed to report on June 30, 2011, and September 6, 2011. CR 240 (showing "FTR").

early release on the Snohomish County sentence. CR 241 (at entry dated 12/20/2012). Pursuant to RCW 9.94A.633(2)(a) and RCW 9.94A.171(3), the DOC then determined how much termination time he had to serve. As noted above, his time remaining to serve in prison when he was initially allowed to release early was 623 days. CR 241 (at entry dated 12/21/2011). This represents “the remaining portion of the sentence.” *See* RCW 9.94A.633(2)(a). Also as noted above, by the time he was apprehended in December 2011, he had served 256 days of community custody, either by way of actual community custody time or by way of time in jail on sanctions for the Snohomish County sentence. CR 240, 241. That represents “credit for any period actually spent in community custody.” RCW 9.94A.633(2)(a). It also represents “sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll.” RCW 9.94A.171(3)(a). Thus, by statute, Strawn is entitled to receive credit for this period. Subtracting 256 days of credit from the 623 days of early release time results in 367 days of termination time that he is required to serve—i.e., the remainder of his prison term.⁵ CR 241 (at entry dated 12/21/2011).

⁵ When he begins serving that termination time will depend on whether this Court grants the DOC’s appeal. That time was not running while he was in jail on his robbery charges. *See* CR 240 (showing “Non-DOC Confinement” starting December 9, 2011). Thus, he still has a full 367 days to serve.

While Strawn continued to spend time in jail on his King County robbery charges, he filed a petition for writ of habeas corpus on May 30, 2012. CR 1-30. The court issued an order on June 12, 2012, granting Strawn's habeas petition. CR 192. The order states:

Petitioner is released from confinement based on the DOC hold because petitioner has served his confinement time and his earned release cannot be revoked, and he has served the maximum 30-day jail sanctions for each of his community custody violations.

CR 192. The order further provides, "If DOC claims petitioner's community custody term has not expired, DOC must set a motion hearing before this Court within 30 days from the date of this order." CR 192. The court did not provide reasons to explain why it ruled as it did. Pursuant to the court's order, the DOC filed a motion to vacate the order within 30 days of the date of the order. CR 197-280. The Court denied the motion without comment on July 27, 2012. CR 322-323. This appeal followed.

Meanwhile, Strawn bailed out of jail on his King County robbery charges and was released in mid-June. CR 241 (at entry dated 06/15/2012), 247 (showing \$250,000 bond on June 20, 2012).

V. STANDARD OF REVIEW

This Court reviews de novo the grant or denial of a habeas corpus petition. *In re Becker*, 96 Wn. App. 902, 905, 982 P.2d 639, 640 (1999), *aff'd*, 143 Wn.2d 491, 20 P.3d 409 (2001) (citing *In re Russell*, 54 Wn.2d 882, 884-85, 344 P.2d 507 (1959)).

VI. ARGUMENT

A. The DOC Had Authority To Terminate Strawn's Early Release

The superior court's June 12, 2012, order is in error because the DOC had and still has authority to "revoke" or terminate an inmate's early release upon finding a violation of a sentencing condition.⁶ RCW 9.94A.633(2)(a) provides that authority. It states:

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned [for violating a sentence condition] as follows:

(a) If 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*, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

⁶ The superior court did not provide reasons to explain why it ruled as it did. However, the application of the sentencing statutes in this case can only lead to one result, and that is that the DOC had authority to terminate Strawn's early release, and Strawn's community custody term had not expired by the time the DOC terminated his early release.

RCW 9.94A.633(2)(a) (emphasis added). This subsection applies to Strawn because he was “transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728.”

When such offenders violate their conditions of community custody, as Strawn did, the DOC can terminate their early release (“CCP Return”) and return them to total confinement to finish out their remaining prison terms. CR 241 (at entry dated 12/21/2011); RCW 9.94A.633(2)(a). The DOC must credit (i.e., shorten) their termination time, however, with any time they already spent successfully serving community custody, and any time they spent awaiting any previous violation hearings while on community custody for the same cause. RCW 9.94A.633(2)(a); *In re Bovan*, 157 Wn. App. 588, 597, 238 P.3d 528 (2010) (“DOC must credit against the offender's remaining sentence both community custody time and any time in detention awaiting disposition hearings”).

Although the legislature eliminated one of the two statutes that governed the DOC's authority to terminate early release (former RCW 9.94A.714(1)), the authority still exists in RCW 9.94A.633(2)(a). *See* Laws of 2012, ch. 6, §§ 2, 5; *see also* former RCW 9.94A.737(1) and -(2) (2007) (containing the prior codifications of RCW 9.94A.633(2)(a) and former RCW 9.94A.714(1)). Former RCW 9.94A.714(1) *required* the

DOC to terminate early release upon the third violation, unless certain exceptions were met.⁷ In contrast, RCW 9.94A.633(2)(a) allows termination of early release after *any* violation of community custody.

This is what happened in Strawn's case. The DOC had authority to terminate Strawn's early release.

B. Strawn's Community Custody Term Is 18 Months Because His Crime Is A Violent Offense

The trial court erred when it implicitly held that the legislature reduced Strawn's Snohomish County community custody term from 18 months to 12 months in Laws of 2009, ch. 375, § 9.⁸ CR 110, 123. Strawn argued in the trial court that his community custody term should be 12 months because his crime of vehicular homicide is a crime against persons, and crimes against persons receive 12 months under RCW

⁷ Former RCW 9.94A.714(1) stated,

If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing pursuant to RCW 9.94A.737 for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

⁸ The court's order granting the writ of habeas corpus did not expressly find that the 12-month term applied, but Strawn argued to the trial court that it did, and it may have been a basis for the court's erroneous determination that Strawn had completed his community custody term. CR 123-124, 192.

9.94A.701. CR 123. But his crime of vehicular homicide was also a violent offense, and violent offenses receive 18 months of community custody, not 12 months. RCW 9.94A.701(2) (providing that the court shall impose 18 months of community custody for violent offenses); RCW 9.94A.030(54)(a)(xiv) (defining as violent offense any vehicular homicide “when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner”); CR 221 (finding that Strawn’s crime is a violent offense).

Strawn argued in the trial court that because his crime is both a violent offense and a crime against persons, the rule of lenity requires that the more lenient statute apply, and therefore, the DOC should ignore the fact that his crime is a violent offense. CR 124. The rule of lenity cannot be used if it would cause an absurd result, which it surely would here. “The rule of lenity does not require us to reject an ‘available and sensible’ interpretation in favor of a ‘fanciful or perverse’ one, and we decline to do so.” *State v. McGee*, 122 Wn.2d 783, 789, 864 P.2d 912 (1993).

If the rule of lenity applied to the community custody statute in the manner Strawn advocated in the trial court, it would mean that all crimes defined as violent offenses, except for second degree arson and

drive by shooting, would receive only a 12-month community custody term, because all violent offenses except for second degree arson and drive by shooting are also on the list of crimes against persons. That is surely not what the legislature intended. The trial court erred in concluding that Strawn's community custody term had expired.

C. Strawn Cannot Receive Double Credit For Presentence Confinement

In addition to apparently believing Strawn's community custody term was 12 months instead of 18 months, the trial court erred in calculating Strawn's remaining time on his Snohomish County sentence generally. CR 192. It apparently believed that Strawn was entitled to credit for presentence jail time served on the King County robbery charges toward his Snohomish County sentence. But several statutes prohibit Strawn from receiving credit toward his Snohomish County sentence for time spent on other charges. Those statutes make clear that he cannot receive credit for time spent in jail on other charges toward either his termination time or his remaining community custody term.

When Strawn was sentenced on his King County robbery cause, he was entitled to and presumably did receive credit for the time he spent in jail awaiting sentence on that cause. However, the sentencing court in that case would have been prohibited from running that time concurrently

to the Snohomish County termination time. RCW 9.94A.505(6) provides, “The sentencing court shall give the offender credit for all confinement time served before the sentencing *if that confinement was solely in regard to the offense* for which the offender is being sentenced.” RCW 9.94A.505(6) (emphasis added). Thus, credit is not allowed for time served on other charges. *In re Costello*, 131 Wn. App. 828, 833, ¶ 13, 129 P.3d 827 (2006).

Furthermore, under RCW 9.94A.589(2)(a), Strawn also cannot receive double credit for the new King County felony toward his prior Snohomish County felony. RCW 9.94A.589(2)(a) provides, “whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.” Strawn committed his King County crimes while serving his Snohomish County community custody. Thus, his King County prison sentence must not begin until after he finishes his Snohomish County termination time.⁹ In other

⁹ Regarding the order of events in the running of a sentence, presentence time is to be distinguished from the general overall confinement term. RCW 9.94A.589(2)(a) operates such that once an offender is transferred to the DOC, the DOC must toll the offender’s new prison sentence while he serves his DOC sanction on the prior sentence. However, the DOC nevertheless credits the new prison sentence with the previous time spent as presentence time on the new cause *if the sentencing court ordered* that such time be credited toward the new cause. If the court did make such an order, presentence time on the new cause would run first, then the sanction time on the prior cause would run, then post-sentence time on the new cause would run, in that order.

words, he cannot receive double credit for jail time toward both sentences.

When he committed the violations for which the DOC terminated his early release, Strawn had 367 days of time remaining on his original prison sentence, and due to DOC's termination of early release, that time must be served in confinement. Because of RCW 9.94A.505(6) and RCW 9.94A.589(2)(a), Strawn cannot receive credit toward that termination time for any time spent on the new King County charges. Thus, if he ultimately received credit toward the King County charges for time spent in jail from December 9, 2011, to when Strawn bailed out of jail in mid-June 2012, the DOC would not be authorized to also credit that time toward his Snohomish County termination time.

D. Strawn Cannot Receive Credit Toward His Community Custody Term For Termination Time Or For Time Spent on the King County Charges

As discussed above, Strawn has 292 days of community custody time remaining to serve on the Snohomish County sentence. The trial court mistakenly believed that his community custody term expired. CR 192. It is likely, based on arguments of Strawn, that the court believed Strawn's remaining community custody term was shortened by time spent in jail on the King County charges or by time spent in jail on the Snohomish County termination sanction. But under RCW

9.94A.171(3)(a), Strawn cannot get credit for confinement time toward his Snohomish County community custody term unless that confinement time is sanction time, as opposed to termination of early release or any other confinement. The statute states in part:

[A]ny period of community custody shall be tolled during any period of time the offender is in confinement *for any reason* unless the offender is detained . . . for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the *imposition of the remaining sentence* or the original sentence will continue to toll the period of community custody.

RCW 9.94A.171(3) (emphasis added). Termination of early release constitutes imposition of the remaining sentence. See RCW 9.94A.633(2)(a). The DOC terminated Strawn's early release. Thus, while he serves his 367 days of termination time, he cannot receive credit for that time toward his Snohomish County community custody term. Likewise, time spent on his King County robbery charges is confinement time that is not sanction time. Thus, it also cannot count toward the community custody term. Consequently, Strawn has 292 days of community custody time still to serve on the 18-month community custody term for the Snohomish County sentence.

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E. The Court Applied The Wrong Statute To Strawn

The Court implicitly applied RCW 9.94A.633(1)(a) to Strawn, rather than RCW 9.94A.633(2)(a). Subsection (1)(a) does not apply to offenders whose early release is being terminated. It applies solely to sanctions that are not terminations of early release but are simply discrete sanctions. Subsection (1)(a) provides a 30-day cap on sanction length. *See* RCW 9.94A.633(2)(a).

The trial court failed to consider that offenders who are granted early release to community custody are essentially serving two sentences at once: the remaining portion of their original prison term and their community custody term. And there are two separate types of sanctions available to a DOC hearing officer when such offenders have violated their sentence conditions. The hearing officer can impose a discrete sanction of up to 30 days per hearing, or the hearing officer can terminate early release and impose the remaining prison term. *See* RCW 9.94A.633(1)(a), -(2)(a). It is within the hearing officer's discretion. RCW 9.94A.633(2)(a) ("the offender *may* be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence" (emphasis added)).

In contrast, if the offender is no longer serving early release time during community custody, or if he was released from prison after having

served his entire prison term to its maximum expiration date, the DOC hearing officer has only one type of total confinement sanction option: a sanction of up to 30 days per hearing. RCW 9.94A.633(1). Once an offender has served the remainder of his or her prison term while on community custody in lieu of general early release, the DOC obviously cannot terminate his or her early release. There is no prison term left at that point. Instead, under those circumstances the DOC can impose only discrete sanctions if the offender violates conditions of community custody. RCW 9.94A.633(1)(a); RCW 9.94A.737. Those DOC-imposed sanctions can be no more than 30 days per violation hearing. RCW 9.94A.633(1)(a); RCW 9.94A.737(4).

The 30-day cap statute, as amended by Laws of 2012, ch. 6, § 2, states:

An offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to sixty days' confinement for each violation or by the department with up to thirty days' confinement as provided in RCW 9.94A.737.

RCW 9.94A.633(1)(a). This cap is restated in RCW 9.94A.737(4): "If an offender is accused of committing a high level violation, the department may sanction the offender to not more than thirty days in total confinement per hearing."

But Strawn's violation fell under a different subsection of RCW 9.94A.633 (i.e., subsection (2)(a)), whereas subsection (1)(a) governs discrete sanctions when an offender has passed the prison maximum expiration date. The 30-day cap is inapplicable to Strawn. The DOC terminated his early release pursuant to RCW 9.94A.633(2)(a). That subsection has no 30-day limit on DOC sanctions.

F. Strawn Is Not Entitled To Have The DOC Shorten His Previously Imposed Sanctions

The trial court erred when it held that Strawn's maximum confinement time was 30 days for each community custody violation hearing. CR 192. The 2012 statutory amendment that shortened maximum confinement sanctions from 60 days per violation to 30 days per hearing did not provide explicit authority for the DOC to reduce previously imposed sanctions.

In contrast, when the legislature intends the DOC to recalculate sentences previously imposed, it expressly provides the DOC with such authority. In 2011, the legislature required the DOC to recalculate existing community custody terms after the legislature changed the tolling rules in the same bill to give non-sex offenders credit toward their

community custody terms for time spent in jail serving sanctions. The provision in the legislation regarding recalculation provided in part:

By January 1, 2012, consistent with RCW 9.94A.171, 9.94A.501, and section 3 of this act, the department of corrections shall recalculate the term of community custody for offenders currently in confinement or serving a term of community custody.

Laws of 2011, ch. 40, § 42. Similarly, in 2009, the legislature required the DOC to recalculate existing community custody terms after the legislature changed the sentencing laws in the same bill to provide for set terms rather than ranges of community custody. The provision in the legislation regarding recalculation provided:

The department of corrections shall recalculate the term of community custody and reset the date that community custody will end for each offender currently in confinement or serving a term of community custody for a crime specified in RCW 9.94A.701.

Laws of 2009, ch. 375, § 9.

In contrast, nothing in Laws of 2012, ch. 6, gives the DOC authority to recalculate sentences to conform to the new 30-day sanction maximums in sections 2 and 7 of that same bill. Therefore, even if the DOC was not authorized to terminate Strawn's early release in December

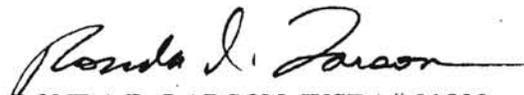
2011, the DOC certainly was not authorized to reduce Strawn's prior sanctions to no more than 30 days in response to 2012 legislation.¹⁰

VII. CONCLUSION

The DOC respectfully requests that this Court reverse the superior court's grant of the writ of habeas corpus.

RESPECTFULLY SUBMITTED this 8th day of January, 2013.

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¹⁰ The superior court's order appears to reflect a belief that the DOC must reduce *all* of Strawn's prior sanctions under the Snohomish County cause to no more than 30 days, not just the termination of early release that the DOC imposed in December 2011. This mistaken belief is reflected in the court's statements at the hearing. Verbatim Report of Proceedings at 5.

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

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I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 8th day of January, 2013 at Olympia, WA.



CHERRIE MELBY
Legal Assistant