

FILED  
COURT OF APPEALS  
DIVISION II

NO. 35533-7-II

07 APR 18 PM 1:44

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON  
BY le ym  
DEPUTY

---

STATE OF WASHINGTON,

Respondent

vs.

VENUS R. MAHALA,

Appellant

---

APPEAL FROM THE SUPERIOR COURT  
FOR MASON COUNTY  
The Honorable Toni A. Sheldon, Judge  
Cause No. 05-1-00485-1

---

BRIEF OF APPELLANT

---

THOMAS E. DOYLE, WSBA NO. 10634  
PATRICIA A. PETHICK, WSBA 21324  
Attorneys for Appellant

P.O. Box 510  
Hansville, WA 98340-0510  
(360) 638-2106

TABLE OF CONTE

	<u>Page</u>
A. ASSIGNMENT OF ERROR.....	1
B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.....	1
C. STATEMENT OF THE CASE.....	1
D. ARGUMENT.....	4
IN DENYING MAHALA’S MOTION TO BE RELEASED FROM CUSTODY ON HER SENTENCE IN THIS CASE, THE TRIAL COURT ERRED IN MISCONSTRUING THE PLEA AGREEMENT AND SENTENCE IMPOSED THAT MAHALA WAS TO RECEIVE CREDIT FOR TIME SERVED AND BE RELEASED AT THE TIME OF SENTENCING.....	4
E. CONCLUSION .....	6

TABLE OF AUTHORITIES

Page(s)

Washington Cases

State v. Anderson, 92 Wn. App. 54, 960 P.2d 975 (1998)..... 6

Statutes

RCW 9.94A.525(7)..... 5

RCW 9A.48.080 ..... 5

RCW 9A.48.090(1)(a) ..... 1

A. ASSIGNMENT OF ERROR

The trial court erred in denying Mahala's motion to be released from custody on her sentence in this case.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether in denying Mahala's motion to be released from custody on her sentence in this case, the trial court erred in misconstruing the plea agreement and sentence imposed that Mahala was to receive credit for time served and be released at the time of sentencing?

C. STATEMENT OF THE CASE

Venus Mahala (Mahala) was charged by orally amended information in Mason County Superior Court on August 14, 2006, with malicious mischief in the third degree, a gross misdemeanor, contrary to RCW 9A.48.090(1)(a).<sup>1</sup> [RP 43-44].

On the same date, she entered a plea to the charge, setting forth the following in her "Statement of Defendant on Plea of Guilty":

On October 30, 2005, I broke my then-boyfriend's windshield on his car here in Washington State. I had no legal authority to do this and I did it on purpose. I paid approximately \$106 to have it replaced.

[CP 25-26].

---

<sup>1</sup> Mahala was originally charged by information filed on November 2, 2005, with malicious mischief in the first degree. [CP 31]. At her change-of-plea hearing, this was orally amended to the third degree charge, and the amended information reflecting this change was filed the following September 7. [CP 19-20; RP 48].

In the same document, Mahala acknowledged that she understood that the offense carried a maximum sentence of 365 days and a \$5,000 fine. [CP 24]. She also acknowledged that she was making her “plea freely and voluntarily(,)” that “(n)o person has made promises of any kind to cause me to enter this plea except as set forth in this statement [CP 25],” and that the prosecuting attorney would make the following recommendation to the judge:

365 days, CFTS as of sentencing, balance suspended on standard conditions.

[CP 24; RP 44].

The court accepted Mahala’s plea of guilty to the charge [RP 43-46], and she was sentenced on September 11, where the State, while acknowledging that “it may be a bit of a challenge to calculate how much time (Mahala) actually gets credit for(,)” made the following recommendation:

My recollection was that it was essentially gonna be time served with the balance suspended sentence as of the date of sentencing. I should have looked underneath my other file. And, yes exactly. 365 days, credit for time served as of sentencing, balance suspended on standard conditions. And that is the State’s recommendation.”

[RP 48-49]. Mahala’s counsel asked the court “to follow the recommendation.” [RP 49].

After determining that Mahala had served 72 days [RP 49-50], the court announced the following sentence:

The Court will follow the recommendation that's been made today and provide for a sentence of 365 days in jail, giving you credit for the time that you have served, suspend the balance, which is 293 days, and those days are just hanging over your head....

[RP 50-51].

The Judgment and Sentence reads:

1. The Defendant shall be confined in the Mason County Jail for a period of 365 days on each of Count I, commencing on this date, 2006, with credit for [x] 72 days served [ ] as calculated by the Mason County Jail staff, and provided further that 293 days are suspended for [ ] one year [x] two years on the following conditions.

[CP 10-11].

At a post-sentencing hearing on September 26, the court represented that it had learned that Mahala had not yet been released from custody because she

was also serving time on a District Court matter and her release date, under (the jail's) calculations for the District Court matter, is November 4<sup>th</sup>, '06, and then the release date for this matter would be calculated by the jail as December 18, '06....

[RP 57].

Further indicating that it was not aware at the time of sentencing "that there was any District Court matter that (Mahala) was serving [RP 62](,)" and that Mahala had apparently been given credit for 28 days

served on her malicious mischief conviction,<sup>2</sup> the court construed the issue as merely a request by Mahala to run “this sentence concurrent with the District Court sentence(,)” which the court refused to do: “the Court will not – and did not – intend this to run concurrent with any other sentence.” [RP 63].

Timely notice of this appeal followed. [CP 6].

D. ARGUMENT

IN DENYING MAHALA’S MOTION TO BE RELEASED FROM CUSTODY ON HER SENTENCE IN THIS CASE, THE TRIAL COURT ERRED IN MISCONSTRUING THE PLEA AGREEMENT AND SENTENCE IMPOSED THAT MAHALA WAS TO RECEIVE CREDIT FOR TIME SERVED AND BE RELEASED AT THE TIME OF SENTENCING.

Review for abuse of discretion is a deferential standard; review for misapplication of the law is not. State v. Anderson, 92 Wn. App. 54, 62, 960 P.2d 975 (1998). This matter should be reviewed to determine if the trial court, in denying Mahala’s motion to be released from custody on the sentence in this case, misconstrued the plea

---

<sup>2</sup> Calculated as follows: November 4 (release date on District Court matter) to December 18 (release date on instant matter) = 44 days yet to serve on instant matter subtracted from 72 days indicated on Judgment and Sentence = 28 days served to date. [RP 57, 63].

agreement and sentence imposed that Mahala was to receive credit for time served and be released at the time of sentencing.

The record makes obvious (1) that the State recommended that Mahala be sentenced to “365 days, credit for time served as of sentencing, (with the) balance suspended on normal conditions [RP 49](,)” (2) that Mahala’s counsel asked the court “to follow the recommendation [RP 49]” and (3) that the court pronounced at sentencing that it would “follow the recommendation that’s been made ... and provide for a sentence of 365 days in jail, giving (Mahala) credit for the time that (she had) served (and) suspend the balance....” [RP 50-51].

And while the court at sentencing did calculate that Mahala had, at that point, served 72 days [RP 49-50], this was incidental to the sentence the court imposed. The real point is that the State, in making its recommendation, gave no indication it was even aware of the exact time Mahala had been incarcerated (“a bit of a challenge”). And why should it? The offense had been reduced from a class B felony under RCW 9A.48.070 to a gross misdemeanor. [CP 19-20, 31]. As it turns out, the damage to the property at issue was approximately \$106 and had been replaced. [CP 26]. If Mahala had been sentenced to malicious mischief in the second degree, a class C felony under RCW 9A.48.080, her mid-range

sentence, even with an offender score of 1,<sup>3</sup> would be 45 days under RCW 9.94A.525(7). What is more, the court's construction of the issue as a simple choice between running the instant sentence concurrent with or consecutive to the District Court matter depends on the premise of its earlier assertion that it was unaware at the time of sentencing that there was "any District Court matter that (Mahala) was serving(,)" the truth of which Mahala had in fact disclosed less than a month before her sentence when the court, albeit a different judge, following her change of plea, cautioned her that she had better show up for sentencing: "I'll still be in custody, Your Honor. I had a driving on suspended ticket that I am setting, so I will still be in custody." [RP 47].

This court should remand with instructions that Mahala should be released from custody on the sentence in this case.

E. CONCLUSION

Based on the above, Mahala respectfully requests this court to remand for resentencing consistent with the argument presented herein.

DATED this 17<sup>th</sup> day of April 2007.

*Thomas E. Doyle*  
THOMAS E. DOYLE  
Attorney for Appellant  
WSBA NO. 10634

*Patricia A. Pethick*  
PATRICIA A. PETHICK  
Attorney for Appellant  
WSBA NO. 21324

---

<sup>3</sup> The record shows "she had a prior VUCSA...." [RP 59].

FILED  
COURT OF APPEALS  
DIVISION II

CERTIFICATE

07 APR 18 PM 1:44

STATE OF WASHINGTON

BY yan

We certify that we mailed a copy of the above brief by depositing it in the United States Mail, first class postage pre-paid, to the following people at the addresses indicated:

Monty Cobb  
Deputy Pros Atty  
P.O. Box 639  
Shelton, WA 98584-0639

Venus R. Mahala  
P.O. Box 509  
McCleary, WA 98557

DATED this 17<sup>th</sup> day of April 2007.

Thomas E. Doyle  
Thomas E. Doyle  
Attorney for Appellant  
WSBA No. 10634

Patricia A. Pethick  
Patricia A. Pethick  
Attorney for Appellant  
WSBA NO. 21324