

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 38873-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

James Dockens,

Appellant.

Clallam County Superior Court Cause No. 06-1-00418-2

The Honorable Judges Kenneth Williams,
George Wood, and S. Brooke Taylor

Appellant's Opening Brief

CORRECTED COPY

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ASSIGNMENTS OF ERROR

1. The trial court erred by refusing to credit Mr. Dockens with time he spent on house arrest prior to his plea and pending sentencing.
2. The trial court violated Mr. Dockens's Fourteenth Amendment right to Equal Protection.

ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Equal Protection requires the state to treat similarly situated persons in a similar fashion. A person who is under court-ordered house arrest is similarly situated to a person under court-ordered electronic home monitoring. Must a person under court-ordered house arrest receive the same credit for time served as a person subject to electronic home monitoring?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

The court set bail at \$25,000 for James Dockens, who was facing charges from a series of thefts from his employer. RP (9/6/06) 11-13. The court ordered Mr. Dockens to remain inside of his home from 8 p.m. to 6 a.m. and report daily to the Electronic Home Monitoring Office. Order Modifying Conditions of Release, Sept. 6, 2006, Supp. CP. The judge further directed Mr. Dockens to reside at certain address in Port Angeles, to not leave Western Washington, to waive extradition and surrender his passport, to maintain regular contact with his attorney, and to refrain from several activities: drinking alcohol, possessing any drugs without a prescription, possessing firearms or deadly weapons, entering bars, committing any crimes. Order of Conditions and/or for Release, Sept. 1, 2006, Supp. CP.

Mr. Dockens enrolled in the Day Reporting program. WASPC Day Reporting Supervision Program Enrollment, Sept 18, 2006, Supp. CP. The release orders were amended to allow Mr. Dockens to attend specific substance abuse treatment meetings. Orders Modifying Conditions of Release: Nov. 6, 2006, Supp. CP; RP (9/29/06) 6. The contract for the agency performing the EHM supervision was canceled as of March 28,

2008. North Sound Day Reporting Center Status Report, Mar. 28, 2008, Supp. CP.

Mr. Dockens plead guilty to one count of Theft in the First Degree on October 13, 2006. RP (10/13/06) 4-10; Statement of Defendant on Plea of Guilty, Supp. CP. Sentencing was continued multiple times, and finally occurred on December 18, 2008. Having notified the defense in advance, the state sought an exceptional sentence. Notice of Intent to Seek Exceptional Sentence, Sept. 26, 2006, Supp. CP; RP (12/18/08) 3-77. The court found a basis for the exceptional sentence and sentenced Mr. Dockens to 45 months at the Department of Corrections. RP (12/18/08) 48-49; RP (12/31/08) 20; CP 25-35.

The defendant requested credit for time served for the time spent on house arrest while he waited for his case to be resolved. RP (12/31/08) 2-5; Memorandum Re: Credit for Time Served, Dec. 17, 2008, Supp. CP. The court denied the motion and credited only the 15 days that Mr. Dockens spent in the jail. RP (12/31/08) 20. He timely appealed. CP 3.

ARGUMENT

THE TRIAL JUDGE INFRINGED MR. DOCKENS'S FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION BY DENYING CREDIT FOR TIME SPENT ON COURT-ORDERED HOUSE ARREST.

The Fourteenth Amendment prohibits the states from denying “to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV. The core purpose of the Equal Protection Clause is to ensure that similarly situated persons are treated in a similar fashion. *State v. Berrier*, 110 Wn.App. 639, 648, 41 P.3d 1198 (2002). Where state action does not involve a suspect class or threaten a fundamental right, it need only be rationally related to a legitimate state objective.¹ *Berrier*, at 649.

By statute, an offender is entitled to credit for time served on electronic home monitoring. *State v. Swiger*, 159 Wn.2d 224, 149 P.3d 372 (2006) (citing RCW 9.94A.030); *State v. Speaks*, 119 Wn.2d 204, 829 P.2d 1096 (1992). Equal protection requires that this entitlement be extended to all similarly situated offenders. *See, e.g., State v. Anderson*, 132 Wn.2d 203, 937 P.2d 581 (1997).

¹ Where state action infringes an offender’s physical liberty interest but does not involve a suspect class, no fundamental right is threatened. *Berrier*, at 649.

Where the conditions of confinement on house arrest are sufficiently onerous, persons on house arrest must be credited in the same manner as offenders on electronic home monitoring. *People v. Lapaille*, 19 Cal.Rptr.2d 390 (1993).² Confinement on house arrest must be evaluated to determine if it is “as custodial, or restraining, as are those confined subject to electronic tracking.” *Lapaille*, at 396.

In this case, equal protection requires that Mr. Dockens receive credit for time spent on house arrest prior to his plea and pending sentencing, because he was restrained in the same manner as a person on electronic home monitoring. He was required to live at a particular address, was not permitted to leave Western Washington, and was prohibited from consuming or possessing drugs and alcohol. Order of Conditions and/or for Release, Sept. 1, 2006; Order Modifying Conditions of Release, Sept. 6, 2006, Supp. CP. He was also required to maintain a curfew of 8 p.m. to 6 a.m.³ and to report daily to the EHM (electronic home monitoring) office. Order Modifying Conditions of Release, Sept.

² See also *State v. Duhon*, 122 P.3d 50, 52 (NM, 2005) (defendant statutorily entitled to credit for house arrest), *State v. Tracy*, 113 P.3d 297 (MT, 2005) (same); *Crehan v. State*, 588 So.2d 56 (FL, 1991) (plea agreement and sentence entitles defendant to credit for house arrest).

³ His conditions were later modified to allow him to attend self-help meetings and functions. Order Modifying Conditions of Release, Nov. 6, 2006, Supp. CP.

6, 2006, Supp. CP. Shortly after his release, he enrolled in the Day Reporting Supervision Program. WASPC Day Reporting Supervision Program Enrollment, Sept 18, 2006, Supp. CP. Although additional requirements of the “Day Reporting Supervision Program” are not part of the record, the program reported only one violation to the court during his period of supervision. Non-compliance Report, Supp. CP.⁴

Under these circumstances, Mr. Dockens is entitled to credit for time served. *Lapaille, supra*. His participation in the day reporting program was equivalent to Electronic Home Monitoring—indeed, under the trial court’s September 6, 2006 order, Mr. Dockens was monitored by the same agency that monitored offenders on EHM.

Mr. Dockens’s house arrest differed from EHM only in that his compliance was monitored by different means. But such “procedural differences are not legitimate bases for treating [Mr. Dockens] differently from those placed in electronic home detention programs...” *Lapaille*, at 397.

⁴ Mr. Dockens’s supervision was transferred from one agency to another when the North Sound Day Reporting Center contract was canceled. He served 385 days with North Sound; the amount of time spent with the second agency is not part of the record. North Sound Day Reporting Center Status Report, Mar. 28, 2008, Supp. CP. Accordingly, the calculation for the total amount of time served should be made by the trial court on remand.

The court's refusal to grant Mr. Dockens credit for time served on house arrest violates equal protection. *Lapaille*. There is no legitimate state objective served by granting credit to those whose compliance is monitored by electronic means and those whose compliance is monitored by telephone or through other means. Accordingly, the case must be remanded with instructions to credit Mr. Dockens with the time he spent on house arrest pursuant to the court's release orders.

CONCLUSION

For the foregoing reasons, Mr. Dockens must be credited with the time he spent on house arrest. The case must be remanded with instructions to the trial court to credit Mr. Dockens with the time he spent on house arrest.

Respectfully submitted on

August 4th 19
2009 MG

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