

NO. 46913-8

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAMES SYLVESTER MAHONE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Ronald Culpepper

No. 95-1-01236-3

BRIEF OF RESPONDENT

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Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Did the trial court properly deny defendant’s motion to modify the community placement portion of his sentence when the trial court did not have the authority to modify the defendant’s sentence?..... 1

 2. Did the trial court properly deny the defendant’s motion for reconsideration when the defendant failed to show the trial court abused its discretion?..... 1

B. STATEMENT OF THE CASE. 1

C. ARGUMENT.....2

 1. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT’S MOTION TO MODIFY THE COMMUNITY PLACEMENT PORTION OF HIS SENTENCE.....2

 2. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT’S MOTION FOR RECONSIDERATION..... 7

D. CONCLUSION.8

Table of Authorities

State Cases

<i>City of Longview v. Wallin</i> , 174 Wn. App. 763, 301 P.3d 45 (2013).....	7
<i>In re Cage</i> , 181 Wn. App. 588, 592, 326 P.3d 805 (2014)	2, 4
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 940 P.2d 1362 (1997).....	7
<i>In re Roach</i> , 150 Wn.2d 29 74 P.3d 134 (2003).....	5, 6
<i>January v. Porter</i> , 75 Wn.2d 768, 773, 453 P.2d 876 (1969).....	4
<i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971).....	7
<i>State v. Donaghe</i> , 172 Wn.2d 253, 266, 256 P.3d 1171 (2011)	6
<i>State v. Medina</i> , 180 Wn.2d 282, 289, 324 P.3d 682 (2014).....	6

Federal and Other Jurisdictions

<i>Green v. Christiansen</i> , 732 F.2d 1397 (1984)	5, 6
<i>White v. Pearlman</i> , 42 F.2d 788 (1930).....	5, 6

Statutes

Laws 2001, ch. 10, section 6	3
RCW 9.94A.030 (17).....	3
RCW 9.94A.170	3
RCW 9.94A.170(4).....	3, 5
RCW 9.94A.625	3
RCW 9.94B.050	3

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly deny defendant's motion to modify the community placement portion of his sentence when the trial court did not have the authority to modify the defendant's sentence?

2. Did the trial court properly deny the defendant's motion for reconsideration when the defendant failed to show the trial court abused its discretion?

B. STATEMENT OF THE CASE.

On September 22, 1995, Sylvester James Mahone pleaded guilty to murder in the second degree in the Superior Court of Washington for Pierce County. CP 152-156. Mahone was sentenced on October 24, 1995, to 178 months confinement to be followed by two years of community placement.¹ CP 124-134.

Mahone was released from prison on August 2, 2009. CP 148. He finished his community custody term from an unrelated conviction, then began his community placement term related to this case on December 29, 2009, at which time he began serving the postrelease portion of his community placement. *Id.* Mahone was sanctioned to confinement multiple times for violating the terms of his community placement. CP 42-46.

¹ The two year community placement term was erroneously omitted from the original judgment and sentence which was corrected on November 18, 2005 by motion and order from the trial court. CP 135-136.

On April 8, 2013, the trial court entered an order stating that Mahone's community placement term had expired. CP 137. The department of corrections filed a petition to vacate that order arguing that the trial court did not have the authority to terminate Mahone's community placement term. The Court of Appeals of the State of Washington Division II agreed with the department of corrections and vacated the trial court's 2013 order on March 18, 2014. CP 1-2.

Mahone filed a motion in Superior Court on September 23, 2014, asking the trial court to credit his time at liberty from April 8, 2013, to March 18, 2014, against his community placement time. CP 94-96. The trial court heard and denied Mahone's motion on October 17, 2014. CP 100-101. Mahone filed a motion for reconsideration with the trial court on October 23, 2014. CP 138-146. The trial court denied Mahone's motion for reconsideration on December 31, 2014. CP 118. Mahone timely filed this appeal. CP 119-120.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO MODIFY THE COMMUNITY PLACEMENT PORTION OF HIS SENTENCE.
 - a. The trial court did not have authority to modify the community placement portion of the defendant's sentence.

The question of who has authority to modify a sentence raises an issue of statutory interpretation which is a question of law and is reviewed de novo. *In re Cage*, 181 Wn. App. 588, 592, 326 P.3d 805 (2014).

“Statutory interpretation begins with the statute’s plain meaning.” *Id.* Aids of construction are only used if the statutory language is ambiguous, otherwise the plain meaning is discerned “from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.*

The statute regarding community placement for crimes committed prior to July 1, 2000, provides “the department shall supervise any sentence of community placement.” RCW 9.94B.050. The statutory definition of “department” is department of corrections. RCW 9.94A.030 (17). The relevant statute² regarding authority to toll community placement is former RCW 9.94A.170(4)³ which provides in relevant part “[f]or confinement or supervision sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.”

The statutes regarding the community placement or postrelease supervision portions of a sentence repeatedly use the word “department,” indicating the clear expression of the legislature for authority to lie with the department of corrections. In this case, the language of Mahone’s judgment and sentence ordering community placement is consistent with the plain language of RCW 9.94B.050. CP 124-134; CP 135-136. His sentence included two years of community placement. CP 135-136. The multiple hearings and subsequent sanctions for his community placement violations were brought at the request of the department of corrections

² Mahone committed the underlying crime in October, 1995, at which time former RCW 9.94A.170 was applicable. CP 124-134.

³ Former RCW 9.94A.170 recodified as RCW 9.94A.625 by Laws 2001, ch. 10, section 6.

based on their supervision of Mahone. CP 42-46. Mahone was required to report to the field office of the department of corrections regularly and abide by regulations set forth by the department of corrections as part of the terms of the community placement portion of his sentence. CP 42-46; 7/25/14RP 36-39.

Washington case law also supports the conclusion that the department of corrections has jurisdiction after sentencing. *Cage*, 181 Wn. App. at 593. In *Cage*, the trial court granted a furlough to the defendant that was to begin six weeks prior to the department of corrections' planned release of the defendant. The department appealed the trial court's denial of the department's motion to vacate the furlough order. The appellate court in that case held that the trial court exceeded its authority; the department of corrections had the sole authority to grant furloughs. *Id.* at 594. In reaching their conclusion, the appellate court relied in part on prior case law, including a Washington Supreme Court case which stated "the judiciary's function ends with either a verdict or acquittal, or the revocation of probation, or the final entry of a judgment and sentence." *Id.* at 593 (quoting *January v. Porter*, 75 Wn.2d 768, 773, 453 P.2d 876 (1969)). Once a person is convicted of a felony and sentenced, that person falls under the jurisdiction of the department of corrections. *Cage*, 181 Wn. App. at 593.

Furthermore, this court has already decided the issue of jurisdiction over post-confinement supervision in this case when it vacated the trial court's order from 2013, terminating Mahone's community placement term. CP 1-2. As in *Cage*, the department challenged the trial court's order

arguing that only the department of corrections, not the trial court, had the authority to terminate Mahone's supervision. CP 1-2. This court agreed, relying on the plain language of former RCW 9.94.170(4) (1995) in concluding that the department of corrections, and not the trial court, had jurisdiction regarding tolling of community placement. *Id.* Because legal authority passes over to the DOC upon entry of a final judgment and sentence, this court held that the trial court "infringed on the Department's authority" in terminating Mahone's community placement. *Id.*

Like how this court has already held in 2014 that the trial court did not have the authority in this case to terminate Mahone's community placement term, the trial court also lacks the authority to toll any of Mahone's community placement time. The decision whether to toll any of Mahone's community placement time lies with the department of corrections who has authority over this issue. The trial court properly denied Mahone's motion as it did not have the authority to credit his community placement term.

- b. Even if the trial court had authority to modify the community placement portion of the defendant's sentence, the defendant cites no authority for crediting time at liberty against a term of community placement.

Mahone erroneously relies on *In re Roach*, 150 Wn.2d 29 74 P.3d 134 (2003); *Green v. Christiansen*, 732 F.2d 1397 (1984); and *White v. Pearlman*, 42 F.2d 788 (1930) in arguing that his community placement term should be credited with his time at liberty. App. Brief 8-14. However, in all three of those cases, the defendants were released from confinement. *See Roach*, 150 Wn.2d 74 (The Supreme Court of Washington credited

time at liberty under the doctrine of equity when the defendant was erroneously released from confinement). See *Green*, 732 F.2d at 1399 (The appellate court held the defendant could not be reincarcerated after being erroneously released from confinement). See *White*, 42 F.2d 788 (The defendant was erroneously released from confinement; the appellate court held that when a prisoner is erroneously released from a penal institution, his sentence continues to run at liberty).

In contrast, Mahone was not released from total confinement or partial confinement; he was erroneously released from community placement. Total confinement is “confinement inside the physical boundaries of a facility or institution operated by the state or any other unit of government for twenty-four hours a day.” *State v. Donaghe*, 172 Wn.2d 253, 266, 256 P.3d 1171 (2011). Partial confinement requires an offender to be confined in a facility or an approved residence for at least eight hours per day. *State v. Medina*, 180 Wn.2d 282, 289, 324 P.3d 682 (2014). Community placement by definition “can only begin in the community.” *Donaghe*, 172 Wn.2d at 264. The postrelease supervision portion of community placement begins upon completion of the confinement term. *Id.* at 265.

Mahone misapplies *Roach*, *Green*, and *White* in that they each involve issues of reincarceration after being erroneously released from confinement. Mahone was not in confinement. He was erroneously released from his term on community placement and this court corrected that error. Mahone has the opportunity while completing his community placement term to reestablish himself in the community absent any further

violations. None of the cases relied upon by Mahone support his contention that his community placement term should be credited with his time at liberty.

2. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR RECONSIDERATION

We review a trial court's denial of a motion for reconsideration for an abuse of discretion. *City of Longview v. Wallin*, 174 Wn. App. 763, 776, 301 P.3d 45 (2013). An abuse of discretion occurs when the decision of the court is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). "A court's decision is manifestly unreasonable, if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *In re Marriage of Littlefield*, 133 Wn.2d 39, 44, 940 P.2d 1362 (1997).

Mahone argues that the trial court abused its discretion when it denied his motion for reconsideration because it was manifestly unreasonable. Given the analysis in the preceding section, the trial court's denial was not manifestly unreasonable. The trial court's denial of the motion for reconsideration was not outside the range of acceptable choices because the trial court lacked jurisdiction to modify the community

placement portion of Mahone's sentence. Alternatively, if the trial court had jurisdiction to modify the community placement term, there is no case law giving authority to do so based on the facts in this case.

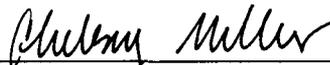
Mahone fails to show the trial court abused its discretion in denying his motion for reconsideration.

D. CONCLUSION.

For the foregoing reasons, the State asks this court to affirm the trial court's decisions below.

DATED: August 3, 2015.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8.3.15 
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