

No. 471795

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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IN RE PERSONAL RESTRAINT PETITION OF  
**ISAIAH E. PRESTON,**  
PETITIONER.

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**REPLY IN SUPPORT OF  
PERSONAL RESTRAINT PETITION**

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A. ARGUMENT

RCW 9.94A.730 (1) provides that “any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving *no less than twenty years of total confinement.*”

Mr. Preston argues that the statute is ambiguous and that this Court should order the ISRB to apply earned early release towards the twenty year term. The ISRB argues that the statute is clear and prohibits applying any earned early release time toward the twenty year term.

Nearly identical language is found in RCW 9.94A.540 (1) (a)-(e), which requires the imposition of “mandatory minimum terms” for several crimes. Each requires a certain minimum terms of “not less than” a specified number of years.

However, that statute did not stop there. Instead, in addition to the phrase “no less than,” the statute explicitly adds that “no offender subject to the provisions of this section” is eligible for “earned release time.” RCW 9.94A.540 (2).

No similar or corresponding language is contained in .730.

“[I]t is an ‘elementary rule that where the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent.’ ” *State v. Jackson*, 137 Wash.2d 712,

724, 976 P.2d 1229 (1999) (quoting *United Parcel Serv., Inc. v. Dep't of Revenue*, 102 Wash.2d 355, 362, 687 P.2d 186 (1984)).

The language in .540 is not redundant. Earned early release does not result in a sentence “less than” the term imposed by a court. In other words, a defendant who earns good time on a 20 year sentence does not serve “less than” 20 years. Instead, that time is additional “earned” time that is applied toward the specified term of incarceration.

Alternatively, this Court can look to RCW 9.94A.729 (6), which states that an offender serving a sentence pursuant to RCW 9.94A.670(5)(a) is not eligible for earned release credits. But, the Legislature did not do that, either.

Because the law is ambiguous at best, the rule of lenity controls. The rule of lenity applies to the SRA and it requires that, where a statutory provision remains ambiguous after exhausting all means of attempting to ascertain the legislature's intent, a reviewing court interprets the statute in the manner favorable to the defendant. *State v. Roberts*, 117 Wash.2d 576, 586, 817 P.2d 855 (1991).

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B. CONCLUSION

Based on the above, this Court should grant the PRP and order appropriate relief.

DATED this 27<sup>th</sup> day of April, 2015

Respectfully Submitted:

/s/Jeffrey E. Ellis

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**CERTIFICATE OF SERVICE**

I, Jeffrey Ellis, certify that on April 27, 2015, I served opposing counsel with a copy of the attached Reply Brief by electronically filing it and causing a copy to be sent to: Ronda Larson at ronda.larson@atg.wa.gov.

April 27, 2015//Portland, OR

/s/Jeffrey Ellis

**ALSEPT & ELLIS LAW OFFICE**

**April 27, 2015 - 3:34 PM**

**Transmittal Letter**

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Court of Appeals Case Number: 47179-5

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