

No. 47391-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ANDREW CHRISTOPHER WATKINS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 87-1-02347-0
The Honorable Vicky Hogan, Judge

AMENDED OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
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I. ASSIGNMENTS OF ERROR

1. The Superior Court erred when it denied Appellant's motion to correct the effective date of his Certificate and Order of Discharge.
2. The Superior Court erred when it refused to correct the effective date of Appellant's December 17, 1990 Certificate and Order of Discharge, where the record shows that the Department of Corrections failed to fulfill its statutory obligation to notify the court that Appellant had completed all of the requirements of his sentence as of October 13, 1989.
3. The Superior Court erred when it refused to correct the effective date of Appellant's December 17, 1990 Certificate and Order of Discharge, where the record shows that the Superior Court failed to fulfill its statutory obligation to verify whether Appellant had completed all of the requirements of his sentence, thereby entitling him to a Certificate of Discharge.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the Superior Court err when it refused to correct the effective date of Appellant's Certificate and Order of Discharge, where the record shows that Appellant completed

payment of his legal financial obligations on October 13, 1989; that Appellant had satisfied all of the remaining obligations of his sentence by November 21, 1989; that the Department of Corrections incorrectly notified the Court on November 21, 1989 that Appellant had made no payments toward his legal financial obligations but also notified the Court that Appellant would be entitled to a Certificate of Discharge once he made the payments; and that the Superior Court did not file a Certificate of Discharge until over a year later? (Assignments of Error 1, 2, & 3)

III. STATEMENT OF THE CASE

On January 25, 1988, Andrew Christopher Watkins pleaded guilty before Judge Bruce Cohoe to one count of third degree rape. (CP 233, 306-11) On February 10, 1989, Judge Cohoe sentenced Watkins to serve 9 months in confinement and to pay \$505.00 in legal costs and fees (LFOs). (CP 244, 288, 290, 291)

Watkins served his term of confinement and, with time off for good behavior, was released on June 27, 1988. (CP 384, 458; see Attachment A and Attachment B) A memorandum notifying Judge Cohoe of Watkins' pending release was filed in the Superior Court on June 23, 1988. (CP 384; Attachment A)

On November 21, 1989, the Department of Corrections (DOC) sent a notice to Judge Cohoe regarding Watkins' status. (CP 458; see Attachment B) According to that report, which was filed in the Superior Court on November 29, 1989, Watkins had failed to make any payments toward his LFO obligation. (CP 458, Attachment B) The report recommended that Watkins be arrested and held on bail, set at the amount of his outstanding LFOs. Then, once Watkins paid his LFOs, "the Court can authorize the preparation of an Order of Discharge." (CP 458, Attachment B)

Over a year later, on December 13, 1990, Judge Cohoe signed a Certificate and Order of Discharge, certifying that Watkins had completed all of the requirements of his sentence, ordering his be discharge from DOC supervision, and ordering that his civil rights be restored. (CP 489, Attachment C) That Certificate was filed in the Superior Court on December 17, 1990. (CP 489, Attachment C)

On May 15, 2014, Watkins filed a motion in the Superior Court asking for a Certificate of Discharge with an effective date of October 13, 1989. (CP 580-94) Watkins attached a payment record from the Pierce County Superior Court Clerk's Office, showing all the LFO payments he had made. (CP 591; see

Attachment D) According to that record, Watkins made \$505.00 in LFO payments. (CP 591; Attachment D) He made his first payment on September 25, 1989 and made his final payment on October 13, 1989. (CP 591; Attachment D)

Judge Vicki Hogan signed and entered an order for a Certificate of Discharge on June 3, 2014, but crossed out language that would have made the order effective as of October 13, 1989. (CP 595) Watkins subsequently filed another motion seeking clarification of Judge Hogan's order, and requesting information as to why she declined his requested effective date. (CP 596-600)

At a hearing held on June 20, 2014, Judge Hogan agreed with the State's argument that a Certificate of Discharge should be effective as of the date that the Superior Court received notice that Watkins was eligible for discharge. (06/20/14 RP 9-10, 14, 16-17) Because there was nothing before the court at that time showing when the sentencing court received such notice, Judge Hogan set the matter over so that she could review the file and find the notification date. (06/20/14 RP 17) Then, on July 1, 2014, Judge Hogan entered an order vacating her June 3, 2014 order, because a Certificate and Order of Discharge had already been filed on December 17, 1990. (CP 601)

Watkins again requested an order making October 13, 1989 the effective date of the Certificate of Discharge. (CP 602-10; 08/15/14 RP 4-8) Judge Nevin denied that request. (CP 611-12; 08/15/14 RP 8) Watkins timely filed a Notice of Appeal. (CP 613)

IV. ARGUMENT & AUTHORITIES

RCW 9.94A.637(1)(a) governs the process of discharging an offender from the custody and supervision of DOC. That statute provides:

When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

RCW 9.94A.637(1)(a)¹

¹ Former RCW 9.94A.220, the statute in effect in 1989, is the same in all relevant respects:

(1) When an offender has completed the requirements of the sentence, the secretary of the department or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge.

....

(3) The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state.

RCW 9.94A.637(1)(a) has been interpreted as “mandate[ing] that a court issue a certificate of discharge when it receives notice that the offender has completed all of the requirements of his or her sentence.” State v. Johnson, 148 Wn. App. 33, 38-39, 197 P.3d 1221 (2008).² The statute is silent as to the effective date of the certificate, but the Johnson court addressed this issue and held:

RCW 9.94A.637(1)(a) directs the court to issue a certificate of discharge when it receives notice that the offender has completed the terms of his or her sentence. The court might not consider the notice or make the necessary factual findings on the day on which it received the notice, and might not issue a certificate until a later date. Nonetheless, an offender is reasonably entitled to and eligible for the issuance of the certificate of discharge as of the date the court received the notice. The effective date of the certificate of discharge must be the date the court received notice that the terms of the sentence were satisfied.

Johnson, 148 Wn. App. at 39. However, this assumes that DOC has fulfilled its obligation to provide notice to the court when the offender has completed the terms of his or her sentence, and that it did so within a reasonable amount of time.³

² Review denied, 166 Wn.2d 1017 (2009).

³ The statute specifically directs that the DOC “**shall** notify the sentencing court” when an offender has completed all requirements of the sentence, including LFOs. RCW 9.94A.637(1)(a) (emphasis added). “The use of the word ‘shall’ creates an imperative obligation[.]” State v. Q.D., 102 Wn.2d 19, 29, 685 P.2d 557 (1984) (citing State v. Bryan, 93 Wn.2d 177, 606 P.2d 1228 (1980)).

In Watkins' case, the record shows that DOC did not properly inform Judge Cohoe when Watkins completed the terms of his sentence. First, the report sent by DOC and filed on November 29, 1989, notified Judge Cohoe that Watkins would be entitled to an order of discharge once his LFOs had been paid. (CP 458, Attachment B) The letter incorrectly asserted that Watkins had not made any LFO payments, even though the Clerk's office record shows that Watkins had fully paid his LFOs by October 13, 1989. (CP 591; Attachments D) No subsequent reports were submitted by DOC to clarify that Watkins had paid his LFOs or to notify the Superior Court that Watkins had completed the terms of his sentence.⁴

Furthermore, the Superior Court has an obligation under the statute to determine whether the offender has completed the terms of his sentence. "Upon receiving notification from the DOC, the court must determine if the statutory conditions are met and make a factual determination about whether or not an offender has complied with the terms of the sentence." Johnson, 148 Wn. App. at 39.

⁴ Notably, such reports were provided to the Superior Court in relation to Watkins' codefendants. (See CP 438, 463, 467, 469, 475, 485)

In this case, the DOC report's author qualifies his statement by saying that Watkins "has not, **to my knowledge**, made any payments[.]" (CP 458, Attachment B; emphasis added) The report also urges Judge Cohoe to take action to resolve the matter. (CP 458, Attachment B) Because the report indicates that Watkins is entitled to a Certificate of Discharge if his LFOs are paid, the Superior Court had an obligation to determine, in a timely manner, whether Watkins had in fact complied or failed to comply with the LFO conditions. But more than a year passed before Judge Cohoe finally entered a Certificate of Discharge. (CP 489, Attachment C)

RCW 9.94A.637(1)(a) puts the burden on DOC and the trial court to ensure that an offender who is entitled to a Certificate of Discharge receives that order in a timely manner. Both DOC and the trial court failed to meet their burdens in this case. DOC misinformed the trial court regarding Watkins' status as of November 21, 1989. And the trial court failed, for over a year, to make a factual determination about whether or not Watkins had satisfied the terms of his sentence. During that time, Watkins remained on DOC supervision and was denied the civil rights he had lost as a result of his conviction. (See CP 489, Attachment C)

Because Watkins had complied with the terms of his sentence by October 13, 1989, and because the Superior Court received notice on November 29, 1989, that there was at least a possibility that Watkins had complied with the terms of his sentence, then Watkins is entitled to have the effective date of his Certificate of Discharge corrected.

Because DOC failed to properly and timely notify the Superior Court that Watkins had completed the terms of his sentence, the effective date should be the date that Watkins satisfied the terms of his sentence: October 13, 1989.

Alternatively, the Superior Court received notice as of November 29, 1989, that Watkins had fulfilled all the obligations of his sentence except payment of LFOs. Because his LFOs had actually been paid by that time, November 29, 1989 should be considered the date that the Superior Court received notice, and Watkins should be entitled to a Certificate of Discharge with that effective date.

V. CONCLUSION

Watkins should not have had to wait over a year for a notice to be provided to the Superior Court, and for the court to issue a Certificate of Discharge ending his DOC supervision and restoring

his civil rights. DOC and the Superior Court both failed in their obligations to insure that Watkins received a Certificate of Discharge in a timely manner after satisfying the terms of his sentence. The lower court therefore erred when it denied Watkins' motion requesting an earlier effective date and when it allowed the December 17, 1990 Certificate and Order of Discharge to stand.

DATED: June 23, 2015



STEPHANIE C. CUNNINGHAM
WSB #26436
Attorney for Andrew C. Watkins

CERTIFICATE OF MAILING

I certify that on 06/23/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Andrew C. Watkins, 425 South Tacoma Way, Tacoma, WA 98402.



STEPHANIE C. CUNNINGHAM, WSBA #26436

ATTACHMENT A

PIERCE COUNTY SHERIFF'S DEPARTMENT MEMORANDUM

D#14



PIERCE COUNTY

SHERIFF'S DEPARTMENT

CORRECTIONS BUREAU
910 Tacoma Avenue South
Tacoma, Washington 98402

JUN 23 1988

Date June 21, 1988

MEMORANDUM

TO: Judge COHOE
From: Carol Clark *Carol Clark*
Corrections Administrator
SUBJ: GOOD BEHAVIOR RELEASE (FELON)



Prisoner WATKINS, ANDREW CHRISTOPHER
Last First MI

was sentenced by you on 2-1-88 to serve 216
Date of Sentence Length of Sentence

days in the Pierce County Sheriff's Detention & Corrections Center
for the following offense(s):

RAPE 3 #87-1-02347-0
Offense and Cause Number

Offense and Cause Number

The prisoner has been in custody since 2-1-88 and meets
Date

all requirements for a Good Behavior Release. The prisoner will be
released on 6-27-88 with credit for a total of 69 days
Date Amount

earned as [X] Prisoner Worker [X] Unit Worker [X] Gen. Pop.

cc
Prosecutor's Office (Cindy Merrival)
Probation & Parole Office (Jake Parker)
Prisoner File

MK

8224 2/26/2007 10107

ATTACHMENT B
DEPARTMENT OF CORRECTIONS REPORT



DEPARTMENT OF CORRECTIONS
CHASE RIVLAND SECRETARY
DIVISION OF COMMUNITY CORRECTIONS

NOV 29 1989
NOV 29 1989

REPORT TO The Honorable Bruce Cohoe
NAME Watkins, Andrew Christopher
CRIME Rape in the Third Degree
DATE OF SENTENCE ~~03/01/88~~ 01/25/88
PRESENT LOCATION Unknown

DATE 11/21/89
NUMBER DOC #937949
Pierce Co. 87-1-02347-0
SENTENCE 10 Years LFO
TERMINATION DATE 01/24/98
STATUS Absconder
CLASSIFICATION

TYPE OF REPORT **SPECIAL**

On 03/01/88, Watkins was interviewed at the Pierce County Jail and instructed as to the conditions of his legal financial obligation only sentence, as imposed by the Court on 01/25/88. Watkins was advised that he was required, upon his release from jail, to submit a monthly written report; notify his Community Corrections Officer of any change in his residence; and abide by the legal financial conditions and other conditions imposed by the Court. According to the Pierce County Jail records, Watkins began serving the 9 month jail sentence imposed by the Court on 02/01/88 and completed that sentence, with good time credits, on 06/27/88. Since the date of his release he has not contacted his assigned Community Corrections Officer; has not submitted a monthly report; and has not, to my knowledge, made any payments to the Pierce County Clerk toward satisfaction of his legal financial obligation (\$505.00).

According to information from the Pierce County Jail, Watkins has been back twice since 06/27/88. He was arrested on 03/07/89 on a charge of Reckless Endangerment and bailed out the same day. He was again arrested 04/13/89 on a charge of No Valid Operator's License and again bailed out the same day. While this information does not affect his legal financial obligation status, it does suggest that he can come up with the necessary money to get out of jail. Although SHB 1542 prevents any action being taken at this time for failure to comply with the monetary conditions of his legal financial obligation status, I think other avenues are open. Consider the fact that Watkins has not reported to his Community Corrections Officer or submitted the required monthly report, or provided a local address. These failures are without question, violations of the Order of the Court. It would seem, therefore, that the appropriate action by the Court would be the issuance of a bench Warrant with a bail of \$505.00, so that Watkins can be brought before the Court to discuss his failures. If he bails out, the Court can authorize the preparation of an Order of Discharge.

Approved by:

Stuart K. Forsythe
Supervisor

CS:smg

Orig: Court

cc: PA and Agency File

Submitted by:

Calvin Sneed, Jr.
Community Corrections Officer
6422 Montclair Road S.W.
Tacoma, Washington 98499(206) 964-9389

ATTACHMENT C
1990 CERTIFICATE AND ORDER OF DISCHARGE

STATE OF WASHINGTON,

Plaintiff

vs.

Andrew C. Watkins

Defendant.

NO. 87-1-02347-0

DOC #937949

CERTIFICATE AND ORDER OF DISCHARGE

This matter having come on regularly before the above entitled court pursuant to RCW 9.94A.220, the court having been notified by the Secretary of the Department of Corrections or his designee that the above named defendant has completed the requirements of his/her sentence, and there appearing to be no reason why the defendant should not be discharged, and the court having reviewed the records and file herein, and being fully advised in the premises, Now, Therefore,

IT IS HEREBY CERTIFIED that the defendant has completed the requirements of the sentence imposed.

IT IS HEREBY ORDERED that the defendant be DISCHARGED from the confinement and supervision of the Secretary of the Department of Corrections.

IT IS FURTHER ORDERED that the defendant's civil rights lost by operation of law upon conviction be HEREBY RESTORED.

DONE IN OPEN COURT this 13 day of Dec, 1990

[Signature]
JUDGE

DEC 17 1990

Presented by:

[Signature]
Deputy Prosecuting Attorney

CERTIFICATE AND ORDER OF DISCHARGE

FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 17 1990 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY *[Signature]* DEPUTY

8224 2/26/2007 10212

ATTACHMENT D
PIERCE COUNTY CLERK'S OFFICE PAYMENT RECORD

COURT COSTS (COSTS) \$ 70.00
 CRIME VICTIM PENALTY (PACV) \$ 70.00
 DAC RECOUPMENT (DAC) \$
 FINE \$ 365.00
 RESTITUTION \$
 OTHER \$
 TOTAL AMOUNT DUE \$

Page _____
 CASE NO. 87-1-02347-0
 DEFENDANT ANDREW C MATKINS
 ADDRESS _____
 RSF - CLERK'S REGISTRY SERVICE FEE

DEFENDANT'S PAYMENT RECORD

DATE	AMOUNT	DATE	AMOUNT	DISBURSED TO:	COSTS	PACV	DAC	FINE	RESTITUTION	RSF	OTHER
9-25-89	205.00	FROM J & S	100.00					205.00			
10-2-89	100.00	10-2-89	110.00			50.00		100.00			
10-10-89	110.00	10-10-89	90.00		70.00PD	20.00PD		60.00PD			
10-13-89	90.00	10-13-89									

POINT-IN-TIME CERTIFICATION
 I, KEVIN STOCK, Clerk of the Superior Court of the State of Washington, for the County of Pierce, do hereby certify that I have compared the foregoing copy with the original record as the same appears in my office, and that the same is a true and perfect transcript of said original as of the date indicated below. This is an electronic record and it may change over time. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court on this date 3-5-14

By 
 KEVIN STOCK, Superior Court Clerk
 Deputy Clerk

4110 2901 4102/91/5

8224 2/26/2882 18816

Z-1152

CUNNINGHAM LAW OFFICE

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

STATE OF WASHINGTON,
Respondent,

vs.

ANDREW CHRISTOPHER WATKINS,
Appellant.

No. 47391-7-II

CERTIFICATE OF SERVICE

I, Stephanie C. Cunningham, court-appointed counsel for Appellant Andrew C. Watkins, certify that on this day I caused to be placed in the mails of the United States, first class postage pre-paid, a true and correct copy of the VERBATIM REPORT OF PROCEEDINGS of AUGUST 15, 2014, and this CERTIFICATE OF SERVICE, addressed to:

Andrew C. Watkins
425 South Tacoma Way
Tacoma, WA 98402

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: June 23, 2015



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Andrew C. Watkins

CUNNINGHAM LAW OFFICE

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