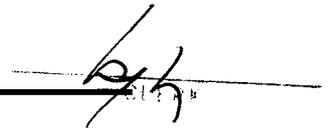


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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In Re Personal Restraint Petition of

RUSSELL JAY DEALY,

Petitioner.

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**SUPPLEMENTAL BRIEF OF RESPONDENT DEPARTMENT OF  
CORRECTIONS**

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## I. INTRODUCTION

Petitioner Russell Jay Dealy was, until February 5, 2007, an inmate in the Washington Department of Corrections (DOC) serving a sentence imposed by the Clark County Superior Court. Prior to his transfer to DOC custody in 2003, Mr. Dealy was in pretrial detention in the Clark County Jail on an intermittent basis. He spent a total of 115 days in Clark County Jail and received 20 days' earned early release credit under the Clark County Sheriff's jail policy. Under that policy pretrial detainees may earn early release credits up to a maximum of 15% for time spent in jail custody. Upon Mr. Dealy's transfer to DOC, the Clark County Sheriff certified 115 days of jail time and 20 days of earned release credits, in accordance with RCW 9.94A.728(1).

While in DOC custody Mr. Dealy filed a personal restraint petition in which he argued that he was entitled to a much higher rate of early release credits for his Clark County pretrial confinement. By his reckoning he was entitled to accrue those pretrial earned release credits at the rate of 50% (which is the rate at which he was earning credits while in DOC custody) for a total of 58 days, rather than at the 15% rate the county awarded him. The petition was ordered transferred to this Court. The Clark County Sheriff has filed a comprehensive supplemental brief addressing Mr. Dealy's petition. Respondent DOC agrees with and hereby adopts the arguments set forth in the Clark County Sheriff's supplemental brief.

## II. ISSUES PRESENTED

1. **Has Mr. Dealy demonstrated that he is entitled to additional pretrial earned release credits?**
2. **Has Mr. Dealy demonstrated that this Court should overrule In re Fogle, 128 Wn.2d 56, 904 P.2d 722 (1995)?**
3. **Does Mr. Dealy have standing to assert the equal protection rights of other offenders?**

## III. STATEMENT OF THE CASE

Mr. Dealy was, until February 5, 2007, confined in the custody of the Department of Corrections (DOC)<sup>1</sup>. He was admitted to DOC on May 23, 2003 pursuant to his 94-month confinement sentences stemming from three Clark County convictions:

- Cause No. 02-1-00692-2: three counts of Unlawful Possession of a Firearm in the Second Degree, one count of Possession of a Controlled Substance – Methamphetamine, four counts of Unlawful Issuance of Bank Checks or Drafts, and one count of Trafficking in Stolen Property in the Second Degree. Mr. Dealy was sentenced to a total of 51 months confinement under this cause.
- Cause Nos. 03-1-00631-9 and 03-1-00637-8: two separate convictions for one count each of Identity Theft in the First Degree. Mr. Dealy was sentenced to 43 months confinement on each conviction, the terms to run concurrently to each other but consecutively to the sentence under Cause No. 02-1-00692-2.

The Clark County Jail certified 115 days of jail time and 20 days of jail earned release credit<sup>2</sup> to Mr. Dealy's sentences in accordance with its 15% Good Time Policy. Exhibit 7 to Response of DOC. Because the

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<sup>1</sup> Mr. Dealy was released to his community custody term on February 5, 2007.

<sup>2</sup> The Clark County's certification refers to "early release time" rather than the statutory term of earned release time. Washington cases also refer to the term "good time."

Identity Theft convictions ran consecutively to the conviction for nine felony counts, the jail time and jail early release time was credited solely to his sentence for the nine felony counts in Cause No. 02-1-00692-2.<sup>3</sup>

#### IV. ARGUMENT

##### A. **ESSB 5990 DOES NOT APPLY TO COUNTY JAILS' EARNED TIME POLICIES.**

Mr. Dealy's sole ground for relief is that he is entitled to earned release time of up to 50% under ESSB 5990 for the time he spent in pretrial confinement in the Clark County Jail. That statute, however, applies only to the Department of Corrections' awards of earned release time.

ESSB 5990 (chapter 379, Laws of 2003) was a comprehensive statute that affected the allocation of DOC resources and activities, primarily in the area of community custody supervision and earned early release time. Among other things it authorizes DOC to supervise certain offenders (and forbids DOC from supervising certain other offenders), and it authorizes DOC to award up to 50% earned release time, all depending upon the offender's crime of commitment, prior offenses, and DOC's risk assessment of the offender. See RCW 9.94A.501 (codification of supervision provisions of ESSB 5990); RCW 9.94A.728(1) (earned release time provisions).

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<sup>3</sup> The DOC's action in crediting only one sentence with the jail time and jail earned release time is based on RCW 9.94A.505(6). Because the identical time period was credited to three different sentences under separate cause numbers, the DOC applies the jail time and jail earned release time to only one sentence. Thus, the concurrent consecutive

The earned release time provision of ESSB 5990 by its express terms applies only to DOC, and it did not affect the counties' management of county jails or their policies for earned release time, which continue to be governed by RCW 9.92.151. Nor did it affect the status of jails' certification to DOC for time spent in county confinement, which continues to be governed by RCW 9.94A.728(1). As this Court held in In re Williams, 121 Wn.2d 655, 853 P.2d 444 (1993), DOC is entitled to accord a presumption of correctness to a county jail time certification unless it contains an apparent or manifest error of law. Williams, 121 Wn.2d at 664-65. ESSB 5990 has nothing to do with jail certifications, and Mr. Dealy cannot obtain any relief under that statute.

**B. IN RE FOGLE GOVERNS THIS CASE.**

In 1995, this Court considered an issue virtually identical to that presented in Mr. Dealy's case: whether county jail policies crediting offenders with earned release time at a percentage lower than under the DOC policy are statutorily and constitutionally permissible. The Court, in In re Fogle, 128 Wn.2d 56, 904 P.2d 722 (1995), held that the Clark County and Pierce County Jails' policies were consistent with the statutory grant of authority and that, under an intermediate scrutiny standard of review, the "state's substantial interest in maintaining prisoner discipline, particularly by preventing flight from prosecution and preserving control over jails, justifies disparate treatment to overcome [the petitioner's] equal \_\_\_\_\_ sentences for Identity Theft were not credited with any jail time or jail

protection challenge.” In re Fogle, 128 Wn.2d at 63. Although it was unclear whether the petitioners in that case were even eligible for bail, this Court reviewed the facts in the light most favorable to the petitioners and used the intermediate standard of review. Id.

This Court need not revisit In re Fogle and should adhere to the principle of *stare decisis* for purposes of resolving Mr. Dealy’s case. The doctrine provides that when a court has once established a principle of law, it will adhere to that principle and apply it to all future cases where the facts are substantially the same. *Stare decisis* “promotes the evenhanded, predictable, and consistent development of legal principles, foster reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” Keene v. Edie, 131 Wn.2d 822, 831, 935 P.2d 588 (1997). *Stare decisis* also restrains the Court from overruling the Court’s precedents except in rare cases where time and events have proved the rule to be incorrect or harmful. State v. Ray, 130 Wn. 2d 673, 679, 926 P.2d 904 (1996). “*Stare decisis* is a doctrine developed by the courts to accomplish the requisite stability in court-made law, but it is not an absolute impediment to change.” In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). However, this Court will overturn a previously established rule only if there is “a clear showing that [the] rule is incorrect and harmful.” Id.

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earned release time.

This Court should determine that as applied to the instant case, the rule in In re Fogle is neither incorrect nor harmful, and the passage of ESSB 5990 does not affect the holding of that case. The Supplemental Brief of Intervenor Clark County Sheriff and the exhibits submitted by Intervenor persuasively demonstrate that Mr. Dealy was not denied equal protection and is not entitled to any relief. This Court should dismiss Mr. Dealy's case under In re Fogle.

**C. MR. DEALY LACKS STANDING TO ASSERT EQUAL PROTECTION RIGHTS OF OTHER PARTIES.**

Mr. Dealy's ability or inability to be released on bail does not implicate the Equal Protection Clause. Ordinarily, a person may not claim standing to challenge a statute in order to vindicate the constitutional rights of third parties. Singleton v. Wulff, 428 U.S. 106, 114, 96 S. Ct. 2848, 49 L. Ed. 2d 826 (1976); State v. Myers, 133 Wn. 2d 26, 31, 941 P.2d 1102 (1997). However, courts have applied the rules of third party standing to permit a party to assert the rights of others in some circumstances. Singleton, 428 U.S. at 112-116; Myers, 133 Wn. 2d at 31; State v. Burch, 65 Wash. App. 828, 837, 830 P.2d 357 (1992) (equal protection claim). The third party standing rules require a showing that: (1) the litigant has suffered an injury-in-fact, giving him a sufficiently concrete interest in the outcome of the disputed issue; (2) the litigant has a close relationship to the third party; and (3) there exists some hindrance to the third party's ability to protect his or her own interests. Burch, 65 Wn. App. at 837.

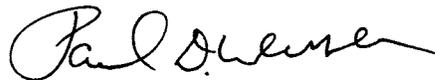
Here, Mr. Dealy cannot demonstrate a close relationship to any third party or that there exists any hindrance to a third party's ability to protect his or her own interests. Offenders who receive less earned release time from a county jail than would have been received from the DOC for the same time period may readily address and protect their own interests by filing a personal restraint petition. Nor can Mr. Dealy demonstrate a close relationship to any other third party or offender. Respondent Department of Corrections agrees with and adopts Intervenor Clark County Sheriff's argument that Mr. Dealy lacks standing to litigate the issue he presents in his personal restraint petition.

V. **CONCLUSION**

Respondent Department of Corrections respectfully requests that the Court dismiss Mr. Dealy's personal restraint petition with prejudice.

RESPECTFULLY SUBMITTED this 7th day of February, 2007.

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**CERTIFICATE OF SERVICE**

I certify that I served a copy of the **SUPPLEMENTAL BRIEF OF RESPONDENT DEPARTMENT OF CORRECTIONS** on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by \_\_\_\_\_

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I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 7th day of February, 2007 at Olympia,  
WA.

  
DAWN R. WALKER