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SUPREME COURT
STATE OF WASHINGTON

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NO. 79432-4

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Sentence of:

YULANDA LEACH, *14496*

Respondent,

**DEPARTMENT OF CORRECTIONS' MOTION FOR
DISCRETIONARY REVIEW**

ROB MCKENNA
Attorney General

RONDA D. LARSON, WSBA #31833
Assistant Attorney General

JAY D. GECK, WSBA # 17916
Deputy Solicitor General
Criminal Justice Division
PO Box 40116
Olympia, WA 98504-0116
(360) 586-1445

ORIGINAL

*State - 25104
27088*

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I. IDENTITY OF RESPONDENT

Movant is the Washington State Department of Corrections (Department or DOC).

II. DECISION

Pursuant to RAP 13.5A(a)(2), the Department asks this Court to accept review of the October 6, 2006, Order Denying Petition entered by the Washington Court of Appeals, Division II. Appendix 1.

III. ISSUE PRESENTED FOR REVIEW

RCW 9.94A.715(1) allows a trial court to impose community custody for “any crime against persons under RCW 9.94A.411(2).” *Attempted* assault of a child is not listed in RCW 9.94A.411(2). The DOC petitioned for review of a sentence because the superior court had imposed community custody under RCW 9.94A.715(1) when Yulanda Leach was convicted of attempted assault against a child. The Court of Appeals denied the DOC’s petition.

The issue presented is whether the list of “crimes against persons” in RCW 9.94A.411(2) is an exclusive list for purposes of a court’s sentencing authority under RCW 9.94A.715 and for purposes of the DOC’s administration of sentences. Hence, does the statute preclude a sentencing court from imposing community custody for crimes not

explicitly on the list, even when the court believes that the nature of the crime is equivalent to a crime against persons?

IV. STATEMENT OF THE CASE

A. BASIS OF CUSTODY

Leach pled guilty to attempted second degree child assault, committed on May 11, 2005. Appendix 2, Judgment and Sentence. The Pierce County Superior Court (the Honorable Stephanie A. Arend) sentenced Leach to 23.25 months confinement and 9 to 18 months community custody. *Id.* at 4 - 5.

B. FACTS RELEVANT TO CLAIM ON APPEAL

In November 2005, the DOC wrote a letter to the trial court, the prosecutor, and defense counsel requesting amendment of Leach's Judgment and Sentence by removing the community custody range. The letter explained that attempted second degree child assault is not an offense eligible for community custody under RCW 9.94A.715(1). Appendix 3, Letter from the DOC.

The court did not respond. The deputy prosecutor eventually spoke with the DOC by phone and stated that she would not be moving to amend. Appendix 4, Declaration of Jacqueline Riley-Noel at ¶ 3. Later, the DOC, through counsel, spoke with the prosecutor by phone again. Again, she said she would not move to amend because the conviction was

a serious offense and the defendant needs to be supervised. Id.

V. REASONS WHY THE COURT SHOULD GRANT DISCRETIONARY REVIEW

A. THE CRITERIA FOR DISCRETIONARY REVIEW OF A POST-SENTENCE-PETITION

RAP 13.4(b) sets forth the requirements that govern acceptance of discretionary review following a Court of Appeals' dismissal of post-sentence petitions. See RAP 13.5A. Under RAP 13.4(b), the Supreme Court will accept review if the Court of Appeals' decision conflicts with another decision of the Court of Appeals, if a significant question of law under the Constitution is involved, or if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

B. THE DECISION OF THE COURT OF APPEALS REFLECTS AN ONGOING CONFLICT IN THE INTERPRETATION OF RCW 9.94A.411(2)

In RCW 9.94A.411(2), the Legislature listed crimes considered "crimes against persons" for purposes of prosecutorial charging decisions. Various provisions in the Sentencing Reform Act cross-reference RCW 9.94A.411(2) when discussing whether a crime is a "crime against persons" for sentencing purposes. See RCW 9.94A.715 (community custody required for "any crime against persons under RCW 9.94A.411(2)"); RCW 9.94A.545 (community custody authorized for "a

crime against a person under RCW 9.94A.411”); RCW 9.94A.705 (community placement required for “any crime against persons under RCW 9.94A.411(2)”).

The Legislature also cross-referenced RCW 9.94A.411 in various sections to indicate how the DOC is to administer sentences. See RCW 9.94A.728(1)(b)(ii) (offenders convicted of “[a] crime against persons as defined in RCW 9.94A.411” are ineligible for fifty percent early release time); RCW 9.94A.501(2)(b) (DOC must supervise offenders with convictions of “[a] crime against persons as defined in RCW 9.94A.411”).

Additionally, the Legislature cross-referenced RCW 9.94A.411 in the statute governing dissemination of criminal records for background checks. See RCW 43.43.8321.

Four decisions of the Court of Appeals are now in conflict as to whether the references in these statutes provide the exclusive list of “crimes against persons” or whether the list is merely illustrative and may be expanded for various purposes. In addition to the decision in Leach, which affirmed the trial court’s imposition of community custody for a crime not listed as a “crime against persons” in RCW 9.94A.411(2), the other three decisions are:

- In re Post-Sentence Review of Childers, ___ Wn. App. ___, 143 P.3d 831 (Div. 3, July 27, 2006) (involving RCW 9.94A.715) (See Appendix 5);
- In re Post Sentence Review of Manier, ___ Wn. App. ___, 143 P.3d 604 (Div. III, July 27, 2006) (involving RCW 9.94A.715) (see Appendix 6);
- In re Personal Restraint Petition of Silas, ___ Wn. App. ___, ___ P.3d ___, 2006 WL 3001139 (Div. 1, October 23, 2006) (involving RCW 9.94A.728) (See Appendix 7).

In this case, the Court of Appeals denied the post sentence petition by ruling that the trial court was authorized under RCW 9.94A.715 to impose community custody for an inchoate (i.e., attempted) crime even though “RCW 9.94A.411(2) does not explicitly include attempted crimes.” Appendix 1 at 2. The court explained that attempted assault is a crime against persons because assault is a listed crime, and the “*nature of the crime* does not change simply because it was attempted.” Appendix 1 at 2 (quoting In re Post Sentence Review of Manier, ___ Wn. App. ___, 143 P.3d 604 (Div. 3, July 27, 2006)) (emphasis added).

The decision in this case, and in Division Three’s Manier, conflicts with Division Three’s decision in Childers. See Appendix 5. In Childers, the Court held that because a crime was not on the list under RCW

9.94A.411(2), it was not a crime against persons and did not trigger community custody under RCW 9.94A.715.

The lower court's decision also conflicts with Division Two's decision in Silas. See Appendix 7. That case considered whether a misdemeanor could be included under the list of crimes against persons in RCW 9.94A.411(2). The list in statute includes "Domestic Violence Court Order Violation," but that crime can be either a felony or a misdemeanor. The offender argued that a misdemeanor violation of a domestic violence no-contact order should not be considered a "crime against persons" under RCW 9.94A.411(2) for the purpose of determining eligibility for fifty percent earned release time under RCW 9.94A.728(1)(b)(ii)(C)(III). He argued that the Legislature did not intend misdemeanors to be included in the list under RCW 9.94A.411(2). The Court of Appeals disagreed, finding that RCW 9.94A.728 is unambiguous in referencing the crimes listed in RCW 9.94A.411.

The decisions in Childers and Silas rest upon the explicit or implicit assumption that the sentencing court may look no further than RCW 9.94A.411(2) in deciding what crimes constitute crimes against persons for purposes of sentencing or the administration of sentences. The lower court's decision in Leach (and in Manier) conflicts with this assumption. The Leach decision assumes that a trial court is free to look

beyond the statute and ask about the “nature” of the crime to determine whether a crime constitutes a crime against persons.

The Court should accept review because of this conflict over whether the Legislature intended an open-ended approach in the case below. This conflict implicates not only a court’s sentencing, but also the DOC’s decisions on whether to supervise offenders under RCW 9.94A.501 and whether to release offenders from prison early under RCW 9.94A.728. This conflict therefore may affect offender liberty interests. This Court should address the conflict over statutory interpretation, as RAP 13.4(b) contemplates.

C. WHETHER THE LIST OF CRIMES AGAINST PERSONS IS EXCLUSIVE IS A SIGNIFICANT QUESTION THAT THIS COURT SHOULD RESOLVE

A trial court may only impose a sentence that is authorized by statute. State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). The Legislature has not authorized the penalty of community custody for attempted second degree assault of a child. Cf. Childers, __ Wn. App. at ¶ 11 (“RCW 9.94A.715(1) specifically refers to RCW 9.94A.411(2) to define what constitutes a crime against a person. . . . Because residential burglary is not listed in RCW 9.94A.411, it does not qualify as a crime against a person, and thus it cannot be a basis for the court to impose community custody”).

The Legislature has omitted multiple crimes from the list of crimes against persons because the enhanced penalties that a listing brings are intended only for the crimes listed. For example, indecent exposure, RCW 9A.88.010, could be something that a victim would feel constitutes a crime against persons. And its definition could support that argument: “A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.” But indecent exposure is not on the list of crimes against persons.

The Court of Appeals’ rulings imply that the list in RCW 9.94.411(2) does not reflect a deliberate and complete legislative choice regarding what crimes allow community custody and what crimes are “crimes against persons” for purposes of the various statutes. However, the Legislature has demonstrated its oversight and control over the list by periodically adding to the list. For example, the crime of identity theft was not on the list, but in 2006 the Legislature amended the statute to include it as a crime against persons. See Laws of 2006, ch. 271.

The legislative amendment adding identity theft also shows how the Court of Appeals’ decision, if not corrected, allows for inconsistent decisions about what can be a “crime against persons.” For example, under the Ex Post Facto rule, anyone convicted of identity theft prior to the effective date

of the amendment would argue that he or she is not subject to the enhanced penalties that the new listing brings. See Lynce v. Mathis, 519 U.S. 433, 441 (1997) (holding that law violates Ex Post Facto Clause if law increases quantum of punishment for crime after its commission). However, a person convicted of a crime not on the list can face different sentencing; under the decision below and under Manier a court could determine that the “nature of the crime” allows the court to treat it as a crime against persons. Likewise, another person convicted of the same crime not on the list might come before a different judge who treats the list under RCW 9.94A.411(2) as exclusive and who imposes a sentence with provisions for crimes against persons.

The Court should accept review to ensure that courts use the statute predictably and fairly. The Legislature has not listed *attempted* second degree assault of a child as a crime against persons. The Court’s objective in construing statutes is to determine legislative intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). A statute’s plain meaning is considered an expression of that intent. Id. “Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other. Omissions are deemed to be exclusions.” In re Detention of Williams, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (citation omitted). In contrast, statutory language does not call

for the ruling that *attempted* assault is a crime against persons because the “nature of the crime does not change simply because it was attempted.”

See Appendix 1 at 2.

Legislative history further confirms the DOC’s reading of RCW 9.94A.715 and RCW 9.94A.411(2). Before the Legislature enacted the community custody statute RCW 9.94A.715, it enacted a community placement statute: former RCW 9.94A.120(9)(a) (currently RCW 9.94A.700 & -705). Before 1999, the community placement statute did not refer to the crimes against persons statute. (At that time, RCW 9.94A.411, the crimes against persons statute, was codified as RCW 9.94A.440). The community placement statute referred merely to “any crime against persons,” with no statutory reference:

When a court sentences a person to a term of total confinement . . . for an offense categorized as . . . any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, . . . the court shall . . . sentence the offender to a one-year term of community placement

A 1999 amendment added a reference to RCW 9.94A.440 and also expanded the category of crimes within the scope of the community placement statute.

See Laws of 1999, ch. 196, § 5. After the amendment, the statute read:

“[W]hen a court sentences a person . . . for . . . any crime against a person

under RCW 9.94A.440(2) . . . the court shall . . . sentence the offender to a one-year term of community placement . . .” RCW 9.94A.120(9)(a)(ii).

The final bill report for that legislation explained as background that “the existing structure of community supervision is very complex and the terminology that describes it is confusing.” Appendix 8, Final Bill Report, Engrossed Second Substitute Senate Bill 5421. This indicates that one purpose of the legislation was to clarify the statute. Adding a specific reference to former RCW 9.94A.440 in the community placement statute is consistent with this clarification purpose. The reference indicates that the Legislature intended the crimes against persons in the community placement statute to be the crimes listed under former RCW 9.94A.440.

Also instructive is this Court’s prior statutory interpretation of the phrase “crime against persons.” See Barnett, 139 Wn.2d at 470. In Barnett, this Court analyzed the pre-amendment version of former RCW 9.94A.120(9)(a) that did not refer to former RCW 9.94A.440 to define a “crime against persons.” Barnett, 139 Wn.2d at 463 n.1. In absence of such clarifying language, the Court resorted to a common sense definition of the phrase. Accordingly, this Court held that an armed first degree burglar who neither injures nor threatens to injure another person does not commit a crime against another person. Barnett, 139 Wn.2d at 470.

This Court's reliance in Barnett on a common sense definition was appropriate because the statute then had no reference to RCW 9.94A.440. The statute (codified currently as RCW 9.94A.715) now expresses a more specific legislative intent that the courts should follow. There is no need in each case for an independent definition of the phrase "crime against persons," for purposes of a trial court's sentencing and the DOC's administration of sentences.

VI. CONCLUSION

The DOC's motion for discretionary review meets the criteria of RAP 13.4(b). This Court should grant review and reverse the Court of Appeals.

RESPECTFULLY SUBMITTED this 6th day of November, 2006.

ROB MCKENNA
Attorney General



RONDA D. LARSON, WSBA# 31833
Assistant Attorney General

JAY D. GECK, WSBA # 17916
Deputy Solicitor General
Criminal Justice Division
PO Box 40116
Olympia, WA 98504-0116
(360) 586-1445

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RECEIVED

DIVISION II

OCT 09 2006

ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV-OLYMPIA

COURT OF APPEALS
DIVISION II
06 OCT -6 AM 8:59
STATE OF WASHINGTON
BY DEPUTY

In re the
Post-Sentence Review of

No. 34282-1-II

YULANDA LEACH,

ORDER DENYING PETITION

Petitioner.

The Department of Corrections seeks post-sentence review of Yulanda Leach's Pierce County conviction of attempted second degree assault of a child, claiming that the judgment and sentence improperly imposed 9 to 18 months of community custody. The State opposes the Department, arguing that Leach's offense is a "crime against a person" and therefore community custody is authorized under RCW 9.94A.715(1).

RCW 9.94A.715(1) requires a sentencing court to impose community custody for (1) sex offenses not sentenced under RCW 9.94A.712; (2) violent offenses, (3) "any crime against persons under RCW 9.94A.411(2);" and (4) certain felonies committed under RCW 69.50 and 69.52. The Department argues that because the statute does not include inchoate crimes, the sentencing court lacked authority to read these crimes into the statute. The Department compares RCW 9.94A.715 with RCW 9.94A.545, which explicitly includes the inchoate crimes.

In re Post Sentence Review of Manier, 2006 Wash. App. Lexis 1610 (2006) (publication ordered September 21, 2006 of previously unpublished order), Division Three of this court addressed this issue and agreed with the State's position. The court

APPENDIX 1

agreed that RCW 9.94A.411(2) does not explicitly include attempted crimes but nonetheless found that attempted assault was still a crime against a person:

The underlying crime here was second degree assault, a crime against a person. RCW 9.94A.411. The jury necessarily found he took a substantial step toward injuring another person. The State's argument that the nature of the crime does not change simply because it was attempted and not completed is persuasive. Although no anticipatory offenses are listed in RCW 9.94A.411, it is reasonable to conclude attempted second degree assault qualifies as a crime against a person. To assume otherwise would lead to absurd results.

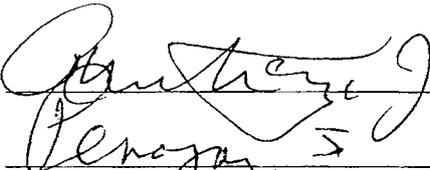
Attempted second degree assault is indeed a crime against a person. The court did not err by imposing community custody.

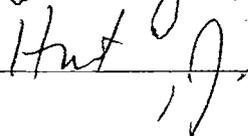
Manier, at *5. We agree.¹ Attempted second degree assault of a child is a crime against a person. The sentencing court did not err in imposing community custody.

Accordingly, it is hereby

ORDERED that this petition is denied.

DATED this 6th day of October, 2006.



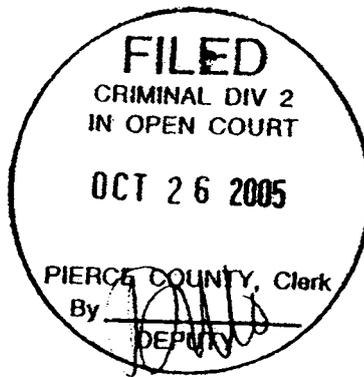
Penney, S


Hut, J.

cc: Yulanda Leach
Department Of Corrections
Pierce County Cause No(s). 05-1-02366-1
Ronda D. Larson
Mark Quigley
Michelle Luna-Green

¹ While the *Manier* opinion did not discuss what these absurd results might be, the State explains as an example that a defendant convicted of third degree assault of a child, a non-violent, seriousness level III, offense, would be placed on mandatory community custody while a defendant convicted of attempted second degree assault of a child, a violent, seriousness level IX, offense, would not. *See State's Response* at 8.

APPENDIX 2



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02366-1

OCT 26 2005

vs.

JUDGMENT AND SENTENCE (JS)

YULANDA ANNISE LEACH

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

SID: WA19017829
 DOB: 1974

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on ^{October} September 6, 2005 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	ATTEMPTED ASSAULT OF A CHILD IN THE SECOND DEGREE (152A)	9A.36.021(1)(a) 9A.36.130(1)(a) 9A.28.020 10.99.020		5/11/05	LAKWOOD PD 051310288

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Amended Information

APPENDIX 2

The crime charged in Count(s) I involve(s) domestic violence.

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	IX	23.25 - 30.75 MOS		23.25 - 30.75 MOS	5 YRS/ \$10,000

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ 153.43 Restitution to: First Recovery Group
 \$ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment
 DNA \$ 100.00 DNA Database Fee
 PUB \$ 400 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 110 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 126343 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month commencing per CCO RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] defendant waives any right to be present at any restitution hearing (defendant's initials): _____

~~X~~ RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence). *Contact with the victim*

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

shall be controlled by dependency court. (dob 1992)

<i>Appendix F</i>
<i>BV eval. and treatment per CCD</i>

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>23.25</u> months on Court	<u>1</u> months on Court	_____ months on Court
_____ months on Court	_____ months on Court	_____ months on Court
_____ months on Court	_____ months on Court	_____ months on Court

Actual number of months of total confinement ordered is: 23.25 mos.

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 25 days

4.13 COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months,

Count _____ for _____ months,

Count _____ for _____ months,

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 9 to 18 Months,

Count _____ for a range from: _____ to _____ Months,

Count _____ for a range from: _____ to _____ Months,

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: contact with _____ shall be as set

Defendant shall remain within outside of a specified geographical boundary, to wit: forth by dependency

The defendant shall participate in the following crime-related treatment or counseling services: per CCJ court

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse

mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

Appendix F

- 4.14 [] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.
- 4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____
- _____
- _____
- _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

5.7 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 10/26/05

JUDGE
Print name

Stephanie A. Arend

STEPHANIE A. AREND

Siene J. Rudlow

Deputy Prosecuting Attorney

Print name:

WSB # 25104

Attorney for Defendant

Print name:

WSB #

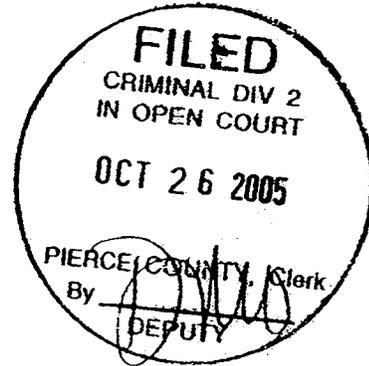
Mark Quisley
14496

v Yulonda Leach

Defendant

Print name:

Yulonda Leach



05-1-02366-1

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 05-1-02366-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

OCT 26 2005

Clerk of said County and State, by: _____

Melissa Engler

, Deputy Clerk

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary: per CEO

- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: contact with _____ shall be as set forth by dependency court

- (III) The offender shall participate in crime-related treatment or counseling services; per CEO
- (IV) The offender shall not consume alcohol; _____
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: BV eval. and treatment per CEO

IDENTIFICATION OF DEFENDANT

SID No. WA19017829
(If no SID take fingerprint card for State Patrol)

Date of Birth 74

FBI No. 97490JC2

Local ID No. PCSO#268760

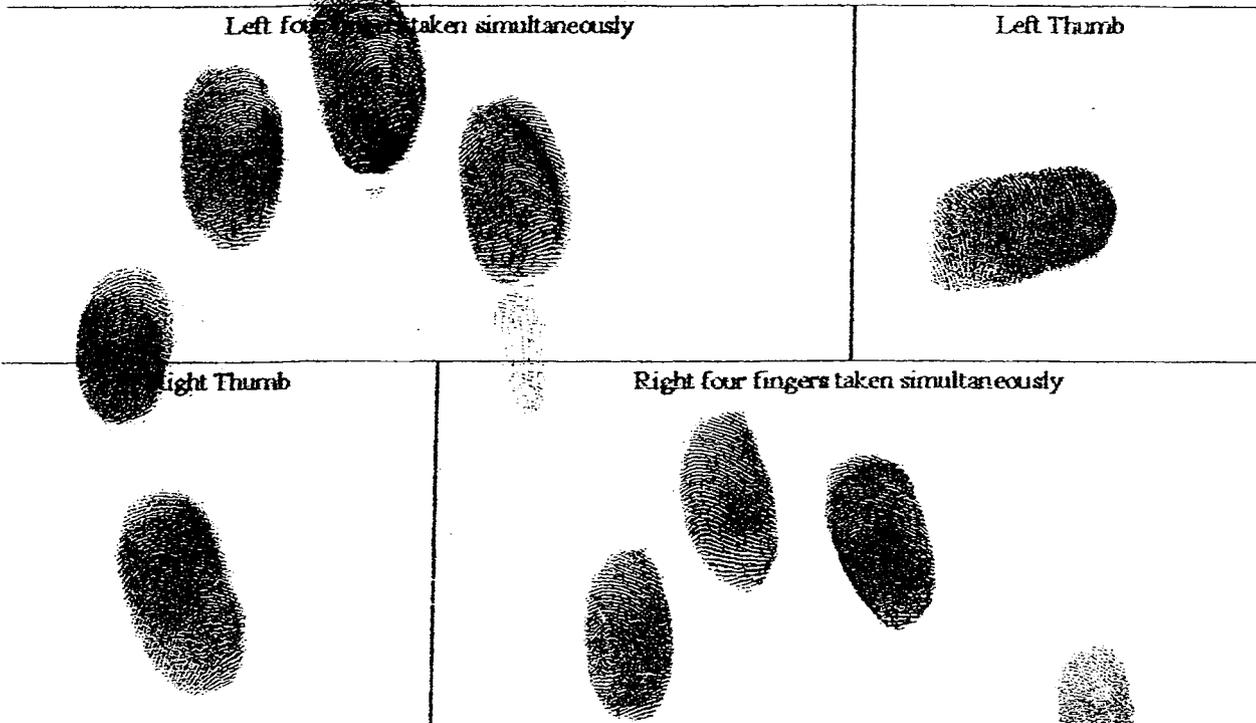
PCN No. 538426555

Other

Alias name, SSN, DOB:

Race:				Ethnicity:		Sex:	
<input type="checkbox"/>	Asian/Pacific Islander	<input checked="" type="checkbox"/>	Black/African-American	<input type="checkbox"/>	Caucasian	<input type="checkbox"/>	Hispanic
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other: :	<input checked="" type="checkbox"/>	Non-Hispanic	<input checked="" type="checkbox"/>	Female

FINGERPRINTS



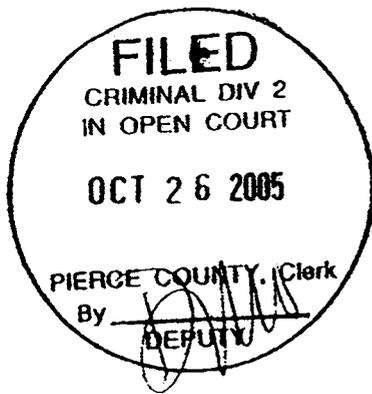
I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Muse DeKulise Dated: 10/26/05

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____



1-02386-1 23950237 ACAT 10-26-05



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

OCT 26 2005

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02366-1

vs.

YULANDA ANNISE LEACH

ADVICE OF RIGHT TO APPEAL

Defendant.

RIGHT TO APPEAL

Judgment and Sentence having been entered, you are now advised that:

1.1 You have the right to appeal:



a determination of guilt after a trial.



a sentencing determination relating to offender score, sentencing range, and/or exceptional sentence unless you have waived this right as part of a plea agreement.

[]

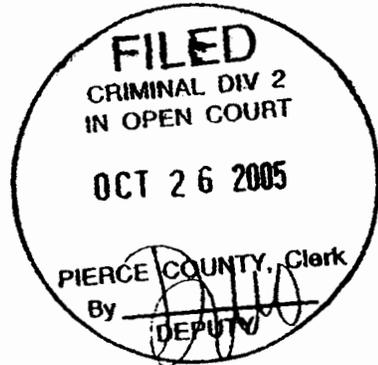
other post convictions motions listed in Rules of Appellate Procedure 2.2

1.2 Unless a notice of appeal is filed with the clerk of the court within thirty (30) days from the entry of judgment or the order appealed from, you have irrevocably waived your right of appeal.

1.3 The clerk of the Superior Court will, if requested by you, file a notice of appeal on your behalf.

1.4 If you cannot afford the cost of an appeal, you have the right to have a lawyer appointed to represent you on appeal and to have such parts of the trial record as are necessary for review of errors assigned transcribed for you, both at public expense.

ACKNOWLEDGMENT



Regarding the foregoing advice of my "Right to Appeal":

- 1. I understand these rights, and
- 2. I waive formal reading of these rights, and
- 3. I acknowledge receipt of a true copy of these rights.

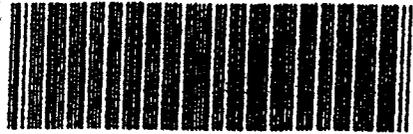
DATE: 10/26/05

DEFENDANT: [Signature]

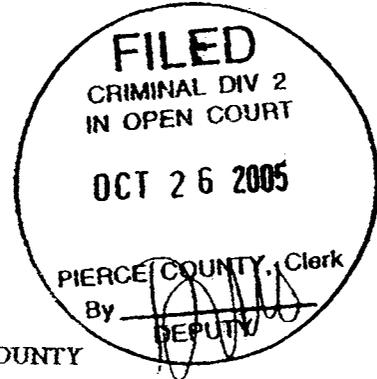
DEFENDANT'S ATTORNEY: [Signature] 14496

DATE: 10/26/05

JUDGE: [Signature]



5-1-02366-1 23950239 ORBS 10-26-05



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

OCT 26 2005

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02366-1

vs

YULANDA ANNISE LEACH

Defendant.

ORDER FOR BIOLOGICAL SAMPLE DRAW FOR DNA IDENTIFICATION ANALYSIS

THIS MATTER having come on regularly before the undersigned Judge for sentencing following defendant's conviction for:

[] A felony sex offense, which occurred after July 1, 1990, as defined by RCW 9A.030(33), to wit: _____, and/or

[] A violent offense, which occurred after July 1, 1990, as defined by RCW 9A.030(38), to wit: _____, and/or

X Any felony offense for which a conviction was obtained after July 1, 2002, to wit: ATTEMPTED ASSAULT OF A CHLD IN THE SECOND DEGREE.

Pursuant to RCW 43.43.754, therefore, it is hereby ordered that the defendant provide a biological sample

to be used for DNA identification analysis as follows:

PLACE TO BE TESTED

[] (Out-of-Custody) Report immediately to the Pierce County Sheriff's Office located on the 1st Floor of the County City Building, 930 Tacoma Ave S, Tacoma, Washington for a biological sample draw.

[] (Out-of-Custody) Contact your CCO or other DOC representative to make an appointment to submit a DNA sample. Your sample must be submitted within 60 days of today's date or the date you are released from jail, whichever comes later.

(In-Custody DOC) Submit to the biological sample draw by the Department of Corrections.

[] (In-Custody PC Jail) Submit to biological sample draw by the Pierce County Jail.

DONE IN OPEN COURT this ^{26TH}~~25TH~~ day of October, 2005.

~~John~~ Stephanie Allen
JUDGE

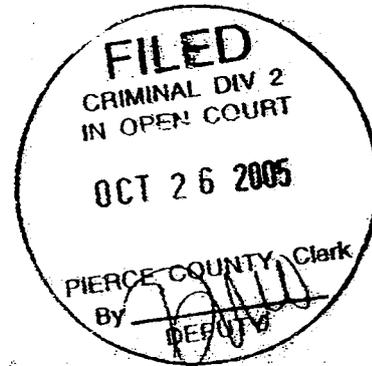
Presented by:

Brian Wasankari
BRIAN WASANKARI
Deputy Prosecuting Attorney
WSB# 28945

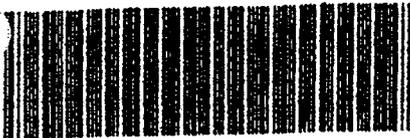
Approved as to form:

Mark T. Quigley
MARK T. QUIGLEY
Attorney for Defendant
WSB# 14496

Yulanda Annise Leach
YULANDA ANNISE LEACH
Defendant

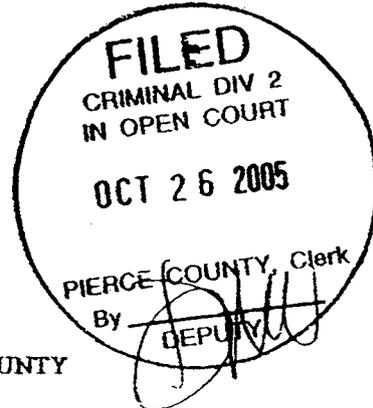


STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
day of OCT 26 2005, 20
Kevin Stock, Clerk
By Kevin Engler Deputy



-1-02366-1 23950236 JDSWCD 10-26-05

888188
EXTRA COPY



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 05-1-02366-1

vs.

YULANDA ANNISE LEACH,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

OCT 26 2005

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

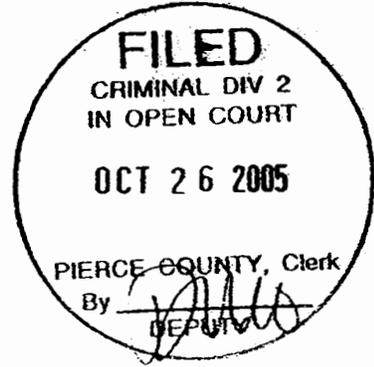
Dated: 10/26/05

By direction of the Honorable
Stephanie [Signature]
JUDGE

KEVIN STOCK
CLERK
By: Chris Hutton
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date OCT 26 2005 By Chris Hutton Deputy



STATE OF WASHINGTON

ss.

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

day of OCT 26 2005

KEVIN STOCK, Clerk

By: Melissa Engler Deputy

pas

APPENDIX 3



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
WASHINGTON CORRECTIONS CENTER FOR WOMEN
· 9601 Bujacich Rd. N.W. · Gig Harbor, WA 98332

November 1, 2005

The Honorable Stephanie A. Arend
Pierce County Superior Court
930 Tacoma Ave South RM 534
Tacoma, WA 98402-2108

Mr. Mark T. Quigley
Attorney for Defendant
949 Market Street STE 334
Tacoma, WA 98402-3696

Ms. Dione J. Ludlow, Deputy Prosecuting Attorney
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave South RM 946
Tacoma, WA 98402

RE: State v. Yulanda Annise Leach DOC 888188
Pierce County Superior Court Cause No. 05-1-02366-1

Dear Judge Arend, Ms. Ludlow, and Mr. Quigley:

Upon the Department of Corrections' review of the Judgment and Sentence (enclosed) it appears that a Community Custody Range of 9 to 18 months was ordered on Count I: Attempted Assault of a Child in the Second Degree. While Assault of a Child in the Second Degree is a listed crime under RCW 9.94A.411(2), crimes against persons, the statute does not refer to the categorization of attempts, solicitation or conspiracy to commit these crimes as crimes against a person. Moreover, RCW 9.94A.715, states only that "crimes against a person under RCW 9.94A.411(2)" shall be sentenced to community custody for the community custody range. RCW 9.94A.715 does not include language that would permit community custody to be ordered for attempts to commit these crimes. If statutory language does not indicate that attempts are included, then the assumption is that the legislature intended NOT to include this category.

Please review this case, and if you agree with the finding, cause a correction to be issued and forward a copy to us. In the interest of judicial economy, the Department of Corrections respectfully requests this Court to amend the Judgment and Sentence by deleting the Community Custody Range of 9 to 18 months ordered in Section 4.13

The Department of Corrections greatly appreciates your assistance with this matter.

Sincerely,

Rannie G. Vickers
Correctional Records Manager, WCCW

"Working Together for SAFE Communities"

APPENDIX 3

APPENDIX 4

No.

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

In re the Sentence of:

YULANDA LEACH,

Petitioner.

DECLARATION OF
JACQUELINE RILEY-
NOEL

I, JACQUELINE RILEY-NOEL, declare and state:

1. I am employed as a paralegal by the Attorney General's Office in the Criminal Justice Division in Olympia, Washington. I have knowledge of the facts stated herein and am competent to testify.

2. In December 2005, I spoke by phone with Pierce County Deputy Prosecutor Dione Ludlow and requested that she move for removal of the community custody range from the Judgment and Sentence in State of Washington v. Yulanda Annise Leach, Pierce County Superior Court Cause No. 05-1-02366-1.

3. Ms. Ludlow responded that she had spoken with DOC records manager Wendy Stigall by phone earlier. She stated that she would not ask the court to remove the community custody range because

///

///

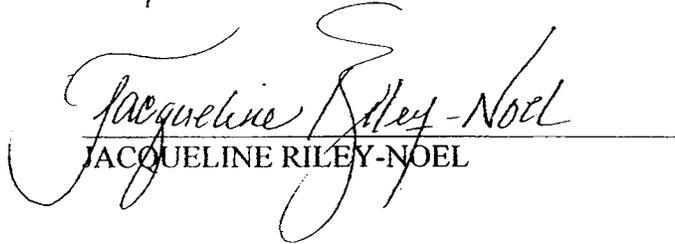
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APPENDIX 4

the crime of attempted second degree assault of a child is a serious offense
and the defendant needs to be supervised.

I declare under the penalty of perjury that the foregoing is true
and correct to the best of my knowledge.

EXECUTED this 4th day of January, 2006, at Olympia,
Washington.



JACQUELINE RILEY-NOEL

APPENDIX 5

RECEIVED

OCT 02 2006

ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV - OLYMPIA

RECEIVED

SEP 28 2006

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION THREE, STATE OF WASHINGTON

<p>In the Matter of the Post Sentence Review of:</p> <p>NICHOLAS DEAN CHILDERS.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 24835-6-III</p> <p>ORDER DENYING MOTION FOR RECONSIDERATION; ORDER GRANTING MOTION TO PUBLISH; ORDER AMENDING OPINION</p>
---	---	--

THE COURT has considered the Department of Corrections' (DOC) motion for reconsideration of the court's opinion and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's opinion filed July 27, 2006 is denied.

IT IS FURTHER ORDERED that the opinion shall be amended as follows:

On page 4, paragraph 1, the last two sentences shall be deleted and be replaced by the following sentence:

Because residential burglary is not listed in RCW 9.94A.411, it does not qualify as a crime against a person, and thus it cannot be a basis for the court to impose community custody.

THE COURT has also considered DOC's and the Washington Association of Prosecuting Attorneys' motions to publish the court's opinion of July 27, 2006,

No. 24835-6-III

In re Post Sentence Review of Childers

and the record and file herein, and is of the opinion the motion to publish should be granted. Therefore,

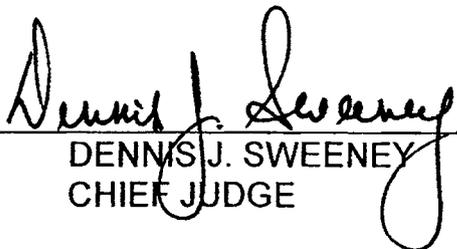
IT IS HEREBY ORDERED that the opinion filed herein on July 27, 2006, be and it is hereby amended by changing the designation in the caption to read "PUBLISHED OPINION".

IT IS FURTHER ORDERED that the opinion is amended by deletion on page 6 of the following paragraph in its entirety:

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040.

DATED: September 28, 2006

FOR THE COURT:


DENNIS J. SWEENEY
CHIEF JUDGE

... by Atty: _____
ed for Due Date _____
to: _____
olution Tab: _____
Other: _____

RECEIVED

JUL 31 2006

ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV-OLYMPIA

FILED

JUL 27 2006

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Post Sentence	)	No. 24835-6-III
Review of:)	
)	
	)	Division Three
NICHOLAS DEAN CHILDERS.)	
	)	UNPUBLISHED OPINION

KATO, J.—The court sentenced Nicholas Childers to 9-18 months community custody for residential burglary. The Department of Corrections (DOC) contacted all parties asking that the sentence be amended because Mr. Childers was not eligible for community custody. DOC filed this petition when the parties failed to act. We grant the petition and remand for resentencing.

Mr. Childers pleaded guilty to residential burglary. On October 6, 2005, the court sentenced him to 24 months confinement and 9-18 months community custody. Finding Mr. Childers's chemical dependency contributed to the crime, it also ordered a substance abuse evaluation.

On October 17, 2005, DOC wrote the court, the prosecutor, and defense counsel stating Mr. Childers was not eligible for community custody. On October 20, the prosecutor responded and disagreed with DOC's position.

On December 8, the Attorney General, on behalf of DOC, requested removal of the community custody provision since residential burglary was an ineligible crime. The prosecutor again disagreed. The Attorney General, on behalf of DOC, contacted the court and counsel requesting that the sentence be amended. There being no response, DOC filed this petition.

The State initially claims DOC should have filed a motion in superior court before filing the petition. Under RCW 9.94A.585(7), DOC has 90 days to file its post-sentence petition with the court of appeals and it must certify it made reasonable efforts to have the matter resolved at the superior court level. Because DOC was not a party to the original criminal action, it could not bring a motion in superior court. Moreover, it is not required in any event to bring a motion to comply with RCW 9.94A.585(7). See *In re Sentence of Chatman*, 59 Wn. App. 258, 264, 796 P.2d 755 (1990).

DOC made three attempts to have the sentencing issue resolved at the superior court level. In these circumstances, it made all reasonable efforts to have this matter resolved below. The petition is proper.

DOC contends the court erred by imposing community custody because it was unwarranted under RCW 9.94A.715(1), which provides that a person sentenced for a sex offense, a violent offense, a crime against a person, or a felony offense under chapter 69.50 or 69.52 RCW shall also be sentenced to a

term of community custody. DOC claims residential burglary does not qualify as one of the four types of offenses.

This court dealt with a similar argument in *In re Sentence of Jones*, 129 Wn. App. 626, 120 P.3d 84 (2005). There, the relevant statute was RCW 9.94A.545, which authorizes courts to impose community custody for those offenders sentenced to one year or less if the offender is convicted of a sex offense, a violent offense, a crime against a person, or a felony violation of chapter 69.50 or 69.52 RCW. *Jones*, 129 Wn. App. at 629-30. This court held RCW 9.94A.545 was unambiguous and limited the court's authority to impose community custody only to the offenses listed. *Id.* at 630.

The relevant language in RCW 9.94A.715 and RCW 9.94A.545 is identical. The only difference is that RCW 9.94A.715 applies to all sentences while RCW 9.94A.545 applies to sentences of one year or less. Consistent with *Jones*, RCW 9.94A.715 appears similarly clear on its face and unambiguously limits the court's authority to impose community custody to those offenses listed in the statute.

The question however, is whether residential burglary is an offense listed in RCW 9.94A.715(1). DOC claims it is not; the State argues it qualifies as a crime against a person.

RCW 9.94A.715(1) specifically refers to RCW 9.94A.411(2) to define what constitutes a crime against a person. Residential burglary is not listed.

“Residential burglary occurs when a person enters or remains unlawfully in a dwelling with intent to commit a crime against persons or property therein.” *State v. Douglas*, 128 Wn. App. 555, 567, 116 P.3d 1012 (2005) (citing RCW 9A.52.025). [Thus, residential burglary can either be a crime against a person or a crime against property. Nothing in the record shows Mr. Childer’s commission of residential burglary was a crime against a person.]

But the State relies on RCW 9.94A.501(2)(b)(i)(E), which states DOC shall supervise every offender sentenced to community custody, regardless of the offender’s risk category, if the offender’s current conviction is for residential burglary. Because DOC must supervise a residential burglary offender who is sentenced to community custody, the State argues the offense must therefore qualify for community custody. We disagree.

Prior to the 2003 amendments, RCW 9.94A.545 authorized the court to impose community custody in all sentences for felonies when the confinement was less than one year. *Jones*, 129 Wn. App. at 629. The purpose of the 2003 amendment was to move less serious offenders out of the state-funded corrections system. *Id.* at 630-31. Prior to the 2003 amendments, a person who committed residential burglary and was sentenced to one year or less was

eligible for community custody. RCW 9.94A.501 simply requires DOC to supervise those who were properly sentenced to community custody prior to the 2003 amendments.

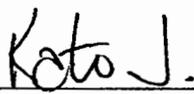
The court imposes community custody pursuant to RCW 9.94A.710 and RCW 9.94A.715. RCW 9.94A.505(2)(a)(iii). Under RCW 9.94A.715, the court may impose community custody in specific situations, none of which exists here. The court erred by imposing community custody.

DOC also asserts the court erred by imposing chemical dependency conditions because they require a term of community custody or community supervision. RCW 9.94A.607(1) authorizes the court to impose affirmative conditions such as participation in chemical dependency treatment when it sentences offenders to a term of community custody under RCW 9.94A.545 or any other statute authorizing it. *Jones*, 129 Wn. App. at 631. Conversely, those conditions are not available in sentences for offenders who are not subject to a term of community custody. *Id.* Because Mr. Childers is not subject to a term of community custody, the court erred by imposing the conditions.

DOC's petition is granted, and the case remanded for resentencing without the community custody and chemical dependency conditions.

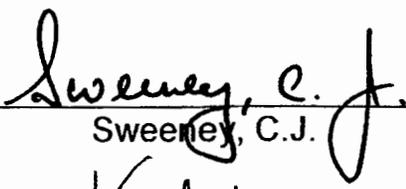
No. 24835-6-III
In re Post Sentence Review of Childers

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Kato, J.

WE CONCUR:



Sweeney, C.J.



Kulik, J.

APPENDIX 6

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JUL 31 2006
ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV-OLYMPIA

JUL 27 2006

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Post Sentence	)	No. 24573-0-III
Review of:)	
)	
	)	Division Three
MYRON A. MANIER.)	
	)	UNPUBLISHED OPINION

KATO, J.—The court sentenced Myron A. Manier to 53 months confinement and 9-18 months community custody for attempted second degree assault—domestic violence. The Department of Corrections (DOC) contacted all parties asking that the sentence be amended because Mr. Manier was not eligible for community custody. DOC filed this petition when the parties failed to act. We deny the petition.

Mr. Manier pleaded guilty to second degree assault—domestic violence. On June 27, 2005, the court sentenced him to 53 months confinement and imposed community custody of 9-18 months.

On August 2, 2005, DOC wrote a letter to the court, the prosecutor, and defense counsel indicating Mr. Manier was not eligible for community custody.

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DOC asked that the community custody provision be removed from the sentence. No action was taken. DOC then filed this petition.

DOC filed the petition pursuant to RAP 16.18 for review of Mr. Manier's sentence. DOC contends the court erred by imposing community custody because Mr. Manier was not eligible under RCW 9.94A.715(1), which provides that a person sentenced for a sex offense, a violent offense, a crime against a person, or a felony offense under chapter 69.50 or 69.52 RCW shall also be sentenced to a term of community custody. Because attempted second degree assault does not qualify as one of the four types of offenses listed in the statute, DOC argues the court erred by imposing community custody.

DOC claims attempted second degree assault does not qualify as a violent offense. Although the State agrees, it asserts the community custody provision was imposed because the crime committed was a crime against a person.

The length of community custody is determined by the type of offense for which the defendant is sentenced. See RCW 9.94A.850(5). The range for violent offenses was 18-36 months, while the range for crimes against a person was 9-18 months. Finding Mr. Manier's conviction for attempted second degree assault was a crime against a person, the court accordingly imposed community custody.

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In re Post Sentence Review of Manier

RCW 9.94A.715(1) references RCW 9.94A.411(2) to define a crime against a person. Second degree assault is listed as such a crime. Attempted second degree assault, however, is not listed. DOC and Mr. Manier argue RCW 9.94A.411(2) is controlling. If a crime is not listed as one against a person, the court cannot impose community custody on that ground. The State counters that anticipatory offenses are not listed because the nature of the crime, whether against a person or property, does not change simply because the offense was attempted rather than actually committed. The State therefore contends attempted second degree assault is a crime against a person.

The ordinary meaning of “crime against a person” is an offense involving injury or threat of injury to another. *State v. Barnett*, 139 Wn.2d 462, 469, 987 P.2d 626 (1999). In 1999, however, the legislature amended the community custody provisions to define “crime against a person” by referring to the prosecutorial standards statute. *Id.* at 470-71. The legislative goal of community custody is to protect the public from offenders who have injured or threatened to injure another. *Id.* at 472.

We must determine whether the definition of “crime against a person” is limited to those crimes specifically listed in RCW 9.94A.411. Our goal in statutory interpretation is to give effect to the legislature’s intent. *In re Parentage of J.M.K.*, 155 Wn.2d 374, 387, 119 P.3d 840 (2005). “This is done by

considering the statute as a whole, giving effect to all that the legislature has said, and by using related statutes to help identify the legislative intent embodied in the provision in question.” *Id.* “Strained, unlikely, or absurd consequences resulting from a literal reading are to be avoided.” *Id.*

Mr. Manier was convicted of attempted second degree assault. “A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” RCW 9A.28.020(1). By statute, an attempt is a lesser included offense of every completed crime. RCW 10.61.003.

The underlying crime here was second degree assault, a crime against a person. RCW 9.94A.411. The jury necessarily found he took a substantial step toward injuring another person. The State’s argument that the nature of the crime does not change simply because it was attempted and not completed is persuasive. Although no anticipatory offenses are listed in RCW 9.94A.411, it is reasonable to conclude attempted second degree assault qualifies as a crime against a person. To assume otherwise would lead to absurd results.

Attempted second degree assault is indeed a crime against a person. The court did not err by imposing community custody.

The petition is denied.

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In re Post Sentence Review of Manier

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kato J.

Kato, J.

WE CONCUR:

Sweeney, C. J.

Sweeney C.J.

Kulik, J.

Kulik, J.

APPENDIX 7

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OCT 25 2006

ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV-OLYMPIA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal	)	No. 53393-2-I
Restraint Petition of:)	
	)	DIVISION ONE
ROOSEVELT SILAS, III,)	
	)	PUBLISHED OPINION
Petitioner.)	
_____	)	FILED: October 23, 2006

AGID, J. -- While incarcerated for two drug felonies, Roosevelt Silas sought 50 percent earned early release based on the 2003 amendments to the Sentencing Reform Act (SRA) that increased eligibility for earned early release from 30 to 50 percent for certain classes of offenders. The Department of Corrections (DOC) denied Silas' request. The amended statute makes the enhanced credit unavailable to offenders with a conviction for "crimes against persons" as defined in the SRA. DOC determined Silas was ineligible for 50 percent earned early release because he had a prior misdemeanor conviction for violating a domestic violence no contact order (DV-NCO), which is classified as a "crime against persons."¹ Silas filed this personal restraint petition challenging DOC's interpretation of the earned early release statute. Silas argues the statute should be applied to exclude only people with prior felony violations of DV-NCOs

¹ Silas pleaded guilty to a violation of a DV-NCO under former Seattle Municipal Code 12A.06.130 (1995). At oral argument, Silas' counsel informed the court that this was a misdemeanor, not a gross misdemeanor, in 1995. It's classification is not clear from the record. But the classification is not relevant to our analysis because neither party disputes that Silas violated a DV-NCO.

and that to do otherwise violates his right to equal protection of the laws. Because the statute is unambiguous and is constitutional under the applicable rational basis test, we deny the petition.

FACTS

On August 3, 1995, Roosevelt Silas pleaded guilty to two domestic violence misdemeanors: assault and violation of a DV-NCO. In 2000, Silas was convicted of two drug felonies. In 2003, while serving time for the drug felonies, Silas applied for the newly enacted 50 percent earned early release credit.² DOC denied his request because of his 1995 DV-NCO conviction.

In November 2003, Silas filed this personal restraint petition (PRP) seeking reversal of the DOC decision. After reviewing the petition, we appointed counsel for Silas. On September 30, 2004, Division II of the Court of Appeals published In re Personal Restraint of Washington, a case very similar to this one.³ On November 1, 2005, we ordered the parties to file supplemental briefs addressing Washington. Silas has since been released from prison.

DISCUSSION

I. Mootness

Because Silas has finished serving his time and been released from custody, we must first determine whether his case is moot. Generally, the courts will not consider a moot issue.⁴ But there is an exception for matters involving continuing and substantial

² Laws of 2003, ch. 379, § 1 (codified at RCW 9.94A.728).

³ 125 Wn. App. 506, 507, 106 P.3d 763, review denied, 153 Wn.2d 1032 (2004).

⁴ In re Pers. Restraint of Myers, 105 Wn.2d 257, 261, 714 P.2d 303 (1986).

public interest.⁵ To determine whether the public interest exception applies, we consider the following factors: (1) the public or private nature of the issue, (2) the need for a judicial decision to provide future guidance to public officers, and (3) the likelihood that the issue will recur.⁶ In In re Personal Restraint of Goulsby, we held that a petition challenging a similar DOC decision involving credits toward release was not moot because it would affect many inmates who already had release dates which would pass before we could decide the issue.⁷ Here, the issue is one of statutory interpretation that affects all inmates with prior misdemeanor violations of DV-NCOs. A judicial decision will provide guidance to DOC in interpreting the statute, and the issue is likely to recur and evade review because many inmates will, like Silas, be released before a PRP can be heard. We will therefore decide the issues Silas has raised.

II. The 50 Percent Earned Early Release Statute

A PRP challenging a decision from which the offender has had no previous or alternative avenue for obtaining judicial review does not require the same heightened threshold showing as other PRPs.⁸ To be entitled to relief, the petitioner need only show he or she has been restrained and the restraint was unlawful.⁹

Silas argues that DOC misinterpreted the earned early release statute. He contends that a misdemeanor violation of a DV-NCO should not be considered a "crime against persons" as defined in RCW 9.94A.411(2)(a) for the purpose of determining

⁵ In re Pers. Restraint of Goulsby, 120 Wn. App. 223, 226, 84 P.3d 922 (2004).

⁶ Myers, 105 Wn.2d at 261.

⁷ 120 Wn. App. 223, 226, 84 P.3d 922 (2004).

⁸ In re Pers. Restraint of Stewart, 115 Wn. App. 319, 332, 75 P.3d 521 (2003) (citing In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 149, 866 P.2d 8 (1994)).

⁹ RAP 16.4; Stewart, 115 Wn. App. at 332.

earned early release under RCW 9.94A.728(1)(b)(ii)(C)(III).¹⁰ Statutory interpretation is a question of law, which we review de novo.¹¹ There is no need to interpret statutes that are unambiguous.¹² In In re Personal Restraint of Washington, the Court recently held that the statute in question is unambiguous and plainly states that when an offender has a prior misdemeanor violation of a DV-NCO, he or she is not eligible for 50 percent earned early release.¹³ We agree with the holding in Washington and adopt its reasoning here.

III. Equal Protection

Silas contends that, if RCW 9.94A.728(1)(b)(ii)(C)(III) is read to include a misdemeanor violation of a DV-NCO, the statute denies him equal protection of the law. The Constitutions of the United States and the State of Washington guarantee equal protection under the law, prohibiting governmental classifications that impermissibly

¹⁰ RCW 9.94A.728(1)(b)(ii)(C) provides in pertinent part:

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

....

(C) Has no prior conviction for:

....

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

RCW 9.94A.411(2)(a) provides in pertinent part:

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

....

Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145).

¹¹ State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001), cert. denied sub nom. Keller v. Washington, 534 U.S. 1130 (2002).

¹² Id.

¹³ 125 Wn. App. at 507.

discriminate among similarly situated groups.¹⁴ Washington courts use the same analysis for alleged violations of both the state and federal equal protection clauses.¹⁵ We use the lowest level of scrutiny, the rational basis test, when a challenged classification implicates physical liberty only and no suspect or semisuspect class is involved.¹⁶ That is the situation here. There is a three part test for determining whether a statute passes rational basis review: (1) does the classification apply equally to all members of the designated class; (2) is there some rational basis for distinguishing between those within and outside the class; (3) does the classification have a rational relationship to the purpose of the legislation?¹⁷

Under the 50 percent earned early release statute, an offender is not eligible for the enhanced credit if he or she has a conviction for a "crime against persons as defined in RCW 9.94A.411."¹⁸ As we concluded above, disqualification under that section extends to *misdemeanor* violations of a DV-NCO. Under the next section of the 50 percent earned early release statute, an offender is not eligible for the enhanced credit if he or she has a conviction for "a *felony* that is domestic violence as defined in RCW 10.99.020."¹⁹ This means that a fourth degree domestic violence assault conviction, which is a gross misdemeanor, would not be a disqualifying conviction.²⁰

¹⁴ U.S. CONST. amend. XIV, § 1; WASH. CONST. art. I, § 12.

¹⁵ In re Pers. Restraint of Ramsey, 102 Wn. App. 567, 573, 9 P.3d 231 (2000) (citing State v. Manussier, 129 Wn.2d 652, 672, 921 P.2d 473 (1996), cert. denied sub nom. Manussier v. Washington, 520 U.S. 1201 (1997)).

¹⁶ In re Pers. Restraint of Bratz, 101 Wn. App. 662, 669, 5 P.3d 759 (2000) (citing In re Det. of Dydasco, 135 Wn.2d 943, 951, 959 P.2d 1111 (1998)).

¹⁷ Id.

¹⁸ RCW 9.94A.728(b)(ii)(C)(III).

¹⁹ RCW 9.94A.728(b)(ii)(C)(IV) (emphasis added).

²⁰ RCW 10.99.020(5)(d) (listing fourth degree assault as a domestic violence crime when committed against a family or household member); RCW 9A.36.041 (defining assault in the fourth degree).

Silas argues there is no rational basis for disqualifying offenders with misdemeanor violations of DV-NCOs from extra release time while granting that benefit to those with other misdemeanor domestic violence convictions. He also contends this distinction bears no rational relationship to the purpose of the statute.

But there is a rational basis for treating people who violate a DV-NCO differently from people who commit other misdemeanor domestic violence offenses like fourth degree assault. That difference in treatment is also rationally related to the purpose of the statute. When a court issues a DV-NCO, there has already been at least an allegation that the person to be restrained has committed an act of domestic violence.²¹ If that person then violates the order prohibiting him from contacting the victim, he has shown that he will not respect a court order. The legislature has determined that a person who violates a DV-NCO shows a propensity to re-offend and to further endanger the victim. This fact distinguishes him from other offenders and justifies the legislature's decision to deny additional earned early release to this group of offenders.

The purpose of the earned early release statute is to preserve "the public peace, health, or safety."²² The 2003 amendments to the SRA added the possibility of 50 percent earned early release for some low risk offenders while increasing the amount of time to be served by those with convictions for serious violent offenses and class A felony sex crimes.²³ The legislature intended to allow DOC to release people earlier

²¹ RCW 10.99.040(2)(a) provides:

Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody . . . the court authorizing the release may prohibit that person from having any contact with the victim.

²² Laws of 2003, ch. 379, § 29.

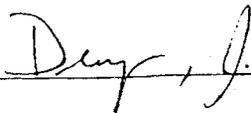
²³ Laws of 2003, ch. 379, § 1.

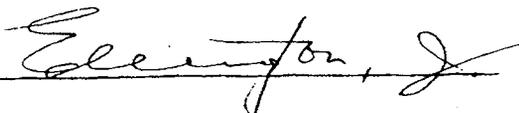
because they are less likely to threaten the public safety. The offender who has violated a DV-NCO has demonstrated his or her willingness to disobey a court order, suggesting he or she will be less likely to comply with the conditions of release and more likely to re-offend. There is thus a rational basis on which the legislature may choose to treat people who violate domestic violence court orders differently from people who commit other domestic violence misdemeanors. That difference in behavior is rationally related to the purpose of the statute, that is, giving additional earned early release to people who are less likely to threaten "the public peace, health or safety." We hold the statute's exclusion of offenders with misdemeanor DV-NCO violations does not deny them the equal protection of the laws.

We deny the personal restraint petition.



WE CONCUR:





APPENDIX 8

FINAL BILL REPORT

E2SSB 5421

C 196 L 99

Synopsis as Enacted

Brief Description: Enhancing supervision of offenders.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke).

Senate Committee on Human Services & Corrections

Senate Committee on Ways & Means

House Committee on Criminal Justice & Corrections

House Committee on Appropriations

Background: The Sentencing Reform Act of 1981 abolished Washington's parole system. Beginning in 1988, however, the Legislature has required the Department of Corrections (DOC) to supervise several classes of offenders following release but has not removed limitations on DOC's ability to effectively supervise offenders in the community. In addition, the existing structure of community supervision is very complex and the terminology that describes it is confusing. Concern exists that the current structure does not reflect either the risks posed by offenders in the community or public expectations of DOC's ability to monitor offenders and protect the public.

Summary: Community supervision for sex offenses, violent offenses, **crimes against persons**, and felony drug offenses committed after July 1, 2000, is community custody. Conditions of community custody and levels of supervision are based on risk. Stalking, custodial assault, and felony violations of domestic violence protection orders are **crimes against persons**. The Sentencing Guidelines Commission establishes community custody ranges and must make recommendations to the Legislature by December 31, 1999. The Legislature may adopt or modify the recommendations. If the Legislature does not act, the initial ranges recommended by the commission become law. The commission may propose annual modifications, but modifications become law only if enacted by the Legislature.

The court must sentence offenders subject to community custody to a range of community custody. It may impose conditions of supervision, including affirmative conditions such as rehabilitative treatment, based on reasonable relation to the circumstances of the offense, the risk of recidivism, or community safety. Offenders may not be discharged from community custody before the end of the period of earned release but DOC may discharge an offender between the end of the earned release and the end of the range specified by the court.

When sex offender treatment is imposed, the treatment provider must be certified by the state. There are four exceptions to the certification requirement: the offender lives out of state; there is no certified provider within a reasonable geographic distance from the offender's home; the treatment provider is employed by DOC; or the treatment program meets Department of Health rules and the provider consults with a certified provider. An offender's failure to participate in required treatment is a violation.

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The court may also impose conditions on sex offenders beyond the end of the term of community custody. DOC is not required to monitor conditions beyond the end of community custody. Where a sex offender lives in a city or town, the police chief or town marshal, rather than the county sheriff, may verify that the offender lives where he or she is registered to live.

DOC may establish and modify additional conditions based on risk to community safety. DOC must provide the offender written notice of any modifications to the conditions. DOC may not impose conditions contrary to conditions set by the court and may not contravene or reduce any court imposed conditions.

DOC must complete risk assessments of offenders using a validated risk assessment tool. When directed by a sentencing court, the initial risk assessment must be completed prior to sentencing and used by the court in sentencing. If not performed prior to sentencing, the initial risk assessment is completed when an offender is placed in a DOC facility. A risk assessment must also be done prior to release. The results of a risk assessment cannot be based on unconfirmed allegations. DOC has jurisdiction over offenders on community custody status and may enforce the conditions through sanctions for violations. DOC must develop a structure of graduated sanctions for violations up to and including a return to full confinement.

Offenders subject to sanctions for violations have the right to a hearing, unless they waive the right. A violation finding cannot be based on unconfirmed or unconfirmable allegations. Violation hearing officers and community corrections officers (CCOs) must report through separate chains of command. Due process protections include notice, timelines for hearings, the right to testify or remain silent, to call and question witnesses, and present documentary evidence. The sanction is overturned if it is not reasonably related to the **crime** of conviction, or the violation committed, or the safety of the community.

DOC may arrange to transfer the duties of collecting legal financial obligations (LFOs) to county clerks or other entities if the clerks do not assume this responsibility. Post-release supervision for purposes of collecting LFOs are no longer tolled when the offender is not available for supervision. DOC, in conjunction with the Washington Association of Sheriffs and Police Chiefs and counties, must establish a baseline jail bed utilization rate and negotiate terms of any increase. The rate of reimbursement is the lowest rate charged for counties with their contract with their respective municipal governments.

The year term of community supervision for unranked felonies becomes a term of community custody. The First Time Offender Waiver becomes a term of community custody and includes conditions of supervision. The term must not exceed one year unless the court orders treatment for between one and two years, in which case supervision ends with treatment.

Except as otherwise prohibited, DOC has the authority to access records maintained by public agencies and may require periodic reports from treatment providers and providers of other required services for the purposes of setting, modifying, or monitoring compliance with the conditions of supervision. DOC must develop and monitor transition and relapse prevention strategies, including risk assessment and release planning, for sex offenders. DOC must also deploy CCOs on the basis of the geographic distribution of offenders and establish a systematic means of assessing the risk to community safety. The Washington State Institute of Public Policy must conduct a study of the effect of the act on recidivism and other outcomes and report annually to the Legislature.

No defense to liability for **personal** injury or death based solely on availability of funds is created.

Votes on Final Passage:

Senate 45 0

House 95 0 (House amended)

Senate 44 0 (Senate concurred)

Effective: July 25, 1999

July 1, 2000 (Section 10)