NO. 83284-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT PETITION OF

TEDDY TALLEY,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER TEDDY TALLEY

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A. ISSUE

Whether a Skamania County Jail policy that completely denies earned early release credit to presentence inmates violates RCW 9.92.151 and constitutional equal protection?

B. STATEMENT OF THE CASE

Teddy Talley seeks relief from the personal restraint imposed following his 2007 plea of guilty to second degree murder. App. A. The trial court sentenced him to 123 months of confinement. App. A. The Skamania County Jail certified 516 days of credit for time served time but zero days of earned early release credit. App. B.

Under its policy, the Skamania County Jail only grants early release credit to those inmates who have been sentenced. App. C, D, E. In addition, only sentenced inmates classified as low or medium risk and allowed to participate in trustee and work programs may earn credit. App. C, D, E. The jail does not allow pre-sentence inmates to earn early release credit for simple good behavior. App. C, D, E.

Talley was unable to post bail due to indigency. App. F; Petition at 14. Talley's entire detention in Skamania County Jail consisted of pre-sentence time. App. A, G. The jail did not deny early release credit based on misbehavior. App H, I. Rather, the jail denied credit because Talley was a presentence inmate and classified as high risk. App. H, I.

Talley filed a pro se personal restraint petition, arguing the Skamania County Jail policy that completely denied him the opportunity to earn early release credit violated his right to constitutional equal protection. Petition at 1, 10-14. Talley identified the Department of Corrections (DOC) rate of 10 percent as the statutory maximum to which he was entitled for early release time earned in jail. Petition at 7-8.

The Court of Appeals rejected Talley's argument that he was entitled to early release credit for his jail time, citing cases upholding the authority of county jails to grant such credit to pre-sentence jail inmates at rates lower than those applicable to inmates in DOC custody. App. J at 2.[1]

Talley filed a pro se motion for discretionary review on the equal protection issue. Motion for Discretionary Review at 1-11. Supreme Court Commissioner Steven Goff questioned whether the Skamania Jail policy, in denying Talley the opportunity to earn any earned release credit, violated former RCW 9.92.151 as well as equal protection. App. L, M. This Court granted review and assigned counsel to assist Talley.

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[1] Talley also argued he was entitled to 518 days credit for time served in jail. Petition at 9-10. The Court of Appeals remanded on this issue. App. J. The Skamania County Jail issued an amended certification showing 517 days credit for jail time served. App. G, K. The DOC ultimately determined Talley was entitled to 518 days of jail time served after taking into account that Talley spent one day in Clark County Jail as part of the transport process to a DOC facility. App. K.

C. ARGUMENT

1. THE SKAMANIA COUNTY JAIL POLICY THAT COMPLETELY DENIES ALL PRESENTENCE INMATES THE OPPORTUNITY TO EARN EARLY RELEASE CREDIT VIOLATES BOTH STATUTORY MANDATE AND CONSTITUTIONAL EQUAL PROTECTION.

County jails are statutorily and constitutionally prohibited from denying the capacity of presentence inmates to earn early release credit. The Skamania County Jail violated Talley's right to earn early release credit as a presentence inmate by categorically preventing him an opportunity to obtain it.

a. The Skamania Jail Policy Violated Talley's Statutory Right To Earned Early Release Credits.

Washington's penal law allows correctional facilities to reduce the sentences of offenders committed to their care by "earned early release time." In re Pers. Restraint of Williams, 121 Wn.2d 655, 658, 853 P.2d 444 (1993). Former RCW 9.92.151[2] governs credit programs established by county jails. Former RCW 9.94A.728[3] governs the credit program

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[2] Laws of 2004, ch. 176 § 5. This was the version of the statute in effect at the time of Talley's offense. The current version, which made technical corrections and updated a statutory reference in subsection (2), is identical in all substantive respects. Laws of 2009, ch 28 § 3. All references to RCW 9.92.151 are to the 2004 version unless otherwise noted.

[3] Laws of 2004, ch. 176 § 6. This was the version of the statute in effect when the jail certified Talley's earned early release time to DOC. The provision is now codified at RCW 9.94A.729.

established by the DOC. Earned early release credit takes two forms: credit based on good behavior and credit based on good performance through participation in a trustee or work program. RCW 9.92.151(1); In re Pers. Restraint of Fogle, 128 Wn.2d 56, 60, 904 P.2d 722 (1995); In re Pers. Restraint of Cromeenes, 72 Wn. App. 353, 355-56, 864 P.2d 423 (1993). A county jail must certify the number of earned early release days when an offender is transferred from a county jail to the DOC. Former RCW 9.94A.728(1).

RCW 9.92.151, which applies to county jails, provides:

> (1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.
>
> (2) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section.

The Skamania County Jail policy categorically disallows the opportunity to earn early release credit to all jail inmates who have not been sentenced. App. C, D, E. The same policy also categorically disallows the opportunity to earn early release credit to all inmates classified as high risk. App. C, D, E.

That blanket policy violates the plain requirement of RCW 9.92.151(1) that all presentence inmates be allowed to earn credit. When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal and strict interpretation. State v. Delgado, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003). RCW 9.92.151(1) unequivocally provides "*Any* program established pursuant to this section *shall* allow an offender to earn early release credits for presentence incarceration." (emphasis added).

There is no ambiguity in use of the word "any" in the phrase "*Any* program established pursuant to this section *shall* allow an offender to earn early release credits for presentence incarceration." RCW 9.92.151(1). See State v. Acrey, 135 Wn. App. 938, 943, 146 P.3d 1215 (2006) (no ambiguity in the statutory phrase "as part of any sentence.").

"Any" means "one, no matter what one: EVERY . . . without restriction or limitation in choice." Acrey, 135 Wn. App. at 943 (quoting

Webster's Third New Int'l Dictionary 97 (3d ed.1993)); see also State v. Armendariz, 160 Wn.2d 106, 113-14, 156 P.3d 201 (2007) (citing Acrey analysis with approval). It follows *every* jail program established to govern early release credit pursuant to RCW 9.92.151(1) shall allow pre-sentence inmates to earn that credit.

Furthermore, the word "shall" in a statute is presumptively imperative and operates to create a duty. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). The plain language of RCW 9.92.151(1) mandates every jail that implements a policy on early release credits must allow offenders to earn such credit for presentence incarceration. Under the statute, the Skamania County Jail lacks discretion to prevent pre-sentence inmates from earning early release credit.

Moreover, statutes must be construed to avoid rendering any portion meaningless or superfluous. In re Pers. Restraint of King, 146 Wn.2d 658, 663, 49 P.3d 854 (2002). Any argument that a county jail is not required to allow presentence inmates the opportunity to earn early release credit would render that portion of RCW 9.92.151(1) containing the requirement meaningless. See King, 146 Wn.2d at 663 (rejecting DOC interpretation of good time credit statute applicable to DOC (former RCW 9.94A.150(1)): "If the Department's interpretation and application of the statute were followed, a portion of the statute would be rendered

meaningless, specifically the portion that states, '[a]ny program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration.'").

The DOC and county prosecutor have claimed the jail has discretionary authority to disallow early release credit to those jail inmates who have not been sentenced as well as to those inmates who have been classified high risk. County Response at 5-7; DOC Response at 4-6. They are wrong. Jail policy must comport with statutory mandate. Statutory mandate does not yield to jail policy. Whatever the particular contours a given jail policy may take in terms of how credit may be earned and at what rate, the policy must at minimum give every pre-sentence inmate an opportunity to earn credit by some means in order to obey the Legislature's command. See King, 146 Wn.2d at 663 (DOC policy on early release credit must conform to legislative dictate: "The Department cannot save its policy by qualifying an unambiguous mandate.").

The county may argue the word "may" in the first sentence of RCW 9.92.151(1) allows the county jail to deny presentence inmates the opportunity to earn early release credit. This Court, in addressing a former version of the statute that contained the same "may" language, has already ruled out that interpretation: "The statute now requires that all inmates sentenced for crimes committed after July 1, 1989 receive good-time

credit for time served in presentence detention." In re Pers. Restraint of Mota, 114 Wn.2d 465, 471, 788 P.2d 538 (1990); Fogle, 128 Wn.2d at 58-59 (reaching same conclusion).

Particular statutory words are not read in isolation divorced from context. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 10-11, 43 P.3d 4 (2002). "Where a provision contains both the words 'shall' and 'may,' it is presumed that the lawmaker intended to distinguish between them, 'shall' being construed as mandatory and 'may' as permissive." Scannell v. Seattle, 97 Wn.2d 701, 704, 648 P.2d 435, 656 P.2d 1083 (1982). Moreover, "[w]hen an individual's rights depend upon giving the word 'shall' an imperative construction, 'shall' is presumed to have been used in reference to that right or benefit and it receives a mandatory interpretation." Scannell, 97 Wn.2d at 705. Use of the word "shall" relating to presentence inmates shows that once a jail establishes an early release policy, it must allow presentence inmates the opportunity to earn early release credits.

The mandatory language is only strengthened by the enumeration of an exception inapplicable to Talley. RCW 9.92.151(2) provides "An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this

section." This exception refers to those sentenced under the Special Sex Offender Sentencing Alternative. RCW 9.94A.670.

"Where a statute specifically lists the things upon which it operates, there is a presumption that the legislating body intended all omissions, i.e., the rule of expressio unius est exclusio alterius applies." Washington State Republican Party v. Washington State Public Disclosure Comm'n, 141 Wn.2d 245, 280, 4 P.3d 808 (2000). Specifically, "[w]here a statute provides for a stated exception, no other exceptions will be assumed by implication." Jepson v. Dep't of Labor & Indus., 89 Wn.2d 394, 404, 573 P.2d 10 (1977). RCW 9.92.151 plainly lists the sole exception to the requirement that presentence inmates be allowed early release credit. That exception does not encompass the type of sentence Talley received.

The Legislature originally created an explicit exception for those convicted of serious violent offenses, only allowing them to become eligible for community custody in lieu of earned early release time. Laws of 1989, ch. 248 § 2. After the Court of Appeals held the denial of early release credit to presentence inmates violates constitutional equal protection, [4] the Legislature promptly removed that exception and

[4] In re Pers. Restraint of Mota, 54 Wn. App. 252, 253, 773 P.2d 129 (1989), aff'd, 114 Wn.2d 465, 788 P.2d 538 (1990).

specifically allowing those convicted of serious violent offenses to earn early release time. Laws of 1990, ch. 3 § 201.

The statute carves out no exception for presentence inmates like Talley who are classified by the jail as high risk. The inclusion of language spelling out an exception to a general rule demonstrates there is no basis to infer any other exception. State v. Sommerville, 111 Wn.2d 524, 535, 760 P.2d 932 (1988); State v. Schelin, 147 Wn.2d 562, 589, 55 P.3d 632 (2002).

b. The Statutory Question Is Properly Before This Court.

Talley's pro se personal restraint petition and pro se motion for discretionary review raised a constitutional rather than a statutory challenge to the Skamania County Jail policy. Commissioner Goff, in addressing Talley's motion, properly recognized this case presented a statutory question as well as a constitutional one and called for substantive responses from both the DOC and county prosecutor to help resolve the issue. App. L, M. The commissioner's rulings allowed Talley to file replies to both responses. Id. The DOC and the county responded but both declined to substantively address the statutory question. DOC Response at 2-8; County Response at 7-8. Talley's pro se replies to the parties' responses argued a statutory violation. Reply to DOC Response at

1-6; Reply to County Response at 1-6. Following appointment to represent Talley, undersigned counsel notified the parties that the statutory issue would be argued in this supplemental brief.

The statutory question is properly before this Court. "A reviewing court should not pass on constitutional issues unless absolutely necessary to the determination of the case." State v. Hall, 95 Wn.2d 536, 539, 627 P.2d 101 (1981). Indeed, it is fundamental that an appellate court should refrain from deciding constitutional issues if a case can be decided on non-constitutional grounds. Isla Verde Intern. Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 752, 49 P.3d 867 (2002). In keeping with this principle, this Court will avoid deciding an issue on constitutional grounds where the issue may be resolved on statutory grounds. Isla Verde Intern. Holdings, 146 Wn.2d at 752-53 (citing cases).

The Court of Appeals should not have even reached the constitutional question raised by Talley in his pro se petition without first addressing the statutory requirement. Id. at 752. Commissioner Goff correctly identified the statutory violation as a potential issue in initially ruling on Talley's motion for discretionary review, requested substantive responses from the DOC and county to address the issue, and allowed Talley to file replies to those responses in which he squarely claimed a statutory violation.

"Under RAP 13.7(b), parties may not introduce new issues *after* the petition for review is granted." State v. Cantu, 156 Wn.2d 819, 821 n.1, 132 P.3d 725 (2006) (emphasis added). Here, the statutory issue was raised *before* review was granted. As authorized by RAP 13.7(a), Commissioner Goff called for briefing on the statutory issue. The issue is not being raised for the first time in the supplemental brief. Even if it were, this Court may address the statutory issue because it is pertinent to the substantive issue and necessary to rendering a proper decision. City of Spokane v. Rothwell, 166 Wn.2d 872, 880 n.9, 215 P.3d 162 (2009); Cantu, 156 Wn.2d at 821 n.1.

There is no good reason not to reach the statutory issue. Whether jail policy violates the statute is a purely legal issue involving undisputed facts. See Stuckey v. Dep't of Labor & Indus., 129 Wn.2d 289, 295, 916 P.2d 399 (1996) (construction of statute is legal question reviewed de novo). The opposing parties were on notice that the statutory question would be addressed in Talley's supplemental brief and have had full opportunity to brief the issue.

c. Equal Protection Requires Earned Early Release Credit Be Granted For Presentence Incarceration.

Equal protection guarantees "persons similarly situated with respect to the legitimate purpose of the law must receive like treatment."

State v. Manussier, 129 Wn.2d 652, 672, 921 P.2d 473 (1996); U.S. Const. amend. XIV; Wash. Const. art. I, § 12. This Court has already held "the equal protection clause of the fourteenth amendment to the United States Constitution requires that indigent prisoners who cannot make bail prior to trial and sentencing are entitled to receive good-time credit for the period spent in county jail awaiting sentencing." Mota, 114 Wn.2d at 467. Mota used intermediate scrutiny in holding the State failed to assert a substantial interest in denying presentence detainees any earned early release credit. Id. at 473-74, 476-77.

The law is settled. Mota controls. It is undisputed Talley was unable to make bail due to indigency and spent 517 days in Skamania County jail awaiting sentence as a result. Petition at 14; Motion for Discretionary Review at 6; County Response at 5. Equal protection required the jail to allow Talley the opportunity to earn early release credit. Mota, 114 Wn.2d at 467, 477.

In claiming Talley is in no way unlawfully restrained, the DOC and the county rely on Fogle and Cromeenes. Those cases are inapposite. Both cases addressed the rate of credit to which an inmate was entitled, not the complete denial of presentence credit.

In fact, the petitioners in Fogle received early release credit pursuant to county jail policy. Fogle, 128 Wn.2d at 60. The issue was

whether they were entitled to more. Id. at 60-63. Fogle held county jail policies could set a maximum earned early release credit lower than DOC policy. Id. at 58. Further, jails are not required to allow inmates to earn the statutory maximum amount of credit through participation in work crew or other performance based programs. Id. at 61-63.

Cromeenes addressed the same type of issue. The petitioner in that case earned some early release credit through "good time" based on jail policy, but argued his constitutional rights were violated by the disparate earned release time policies of the Skagit County jail and the DOC. Cromeenes, 72 Wn. App. at 355-56. The "sole issue" addressed by the court was whether Skagit County's award of earned release time violated equal protection because it was less than the full statutory maximum awarded by the DOC. Id. at 355. The court, using a rational basis test, found no equal protection violation. Id. at 357-58.

Relying on Fogle and Cromeenes, the county and DOC argue disparate treatment between sentenced inmates and pre-sentence inmates does not violate equal protection. County Response at 5-7; DOC Response at 4-6. That argument does not save the illegality at issue here. Jails are permitted to allow some inmates to earn more release credit than others. Fogle, 128 Wn.2d at 61-63. But no jail may completely deny

presentence inmates the ability to earn early release credit by any means whatsoever.

Fogle and Cromeenes recognized the equal protection holding of Mota. Cromeenes, 72 Wn. App. at 356-57; Fogle, 128 Wn.2d at 58, 62-63. Fogle and Cromeenes do not disturb the principle that a jail violates equal protection when it categorically denies presentence inmates unable to afford bail the opportunity to earn early release credit. That issue had already been decided in Mota. And that same issue clearly presents itself in this case. The Court of Appeals misapprehended the depth of the violation here in focusing solely on whether the jail could constitutionally allow a lower amount of early release credit than the DOC or set different earned release rates for sentenced inmates. App. J at 2.

In violation of RCW 9.92.151 and constitutional equal protection, the jail did not allow Talley to earn any early release credit for his presentence time. Regardless of whether Talley was entitled to earn early release credit for his jail time at the *same* rate as afforded by the DOC program or sentenced inmates within the jail, Talley had the statutory and constitutional right to earn *some* amount of early release time by some means while in county jail awaiting sentencing.

d. Rationalizations For Why The Jail Imposed A Blanket Policy Denying Credit To Presentence Inmates Cannot Stand In The Face Of Statutory And Constitutional Requirements.

The statute and constitutional equal protection require county jails to allow presentence inmates the opportunity to earn early release credit. Jail policies, however fashioned, must accommodate that requirement.

Skamania County Jail policy only allows sentenced inmates who are not classified as high risk to participate in its trustee and work crew programs and thereby earn early release credit. App. C, D, E. Citing flight and safety concerns, the county and DOC argue the jail has good reason not to allow presentence inmates to participate in performance based programs. County Response at 6-7; DOC Response at 1, 4-5.

Reconciling those concerns with statutory and constitutional requirements, jail policy could allow for presentence inmates to earn credit for good behavior as opposed to good performance. Indeed, RCW 9.92.151(1) provides "The earned early release time *shall* be for good behavior *and* good performance as determined by the correctional agency having jurisdiction." (emphasis added). "Courts should assume the Legislature means exactly what it says." Berger v. Sonneland, 144 Wn.2d 91, 105, 26 P.3d 257 (2001). Again, the presumption and general rule is that the word "shall" is construed as mandatory. Krall, 125 Wn.2d at 148.

Furthermore, the word "and" connects "good behavior" and "good performance." The default rule is that the word "and" does not mean "or" unless legislative intent clearly indicates otherwise. Tesoro Refining & Marketing Co. v. Dep't of Revenue, 164 Wn.2d 310, 319, 190 P.3d 28 (2008); State v. Bolar, 129 Wn.2d 361, 365-66, 917 P.2d 125 (1996).

The statute requires county jails to include credit for "good behavior" in addition to "good performance." Allowing presentence inmates to earn early release credit through good behavior, as opposed to good performance, enhances rather than undermines security concerns. A central purpose behind early release credit is to ensure discipline. Williams, 121 Wn.2d at 664-65; Mota, 54 Wn. App. at 255. The ability to earn credit creates an incentive for inmates to follow internal facility rules. State v. Brown, 142 Wn.2d 57, 60, 11 P.3d 818 (2000). Good behavior credit is an incentive to preserve discipline among those presentence inmates who for one reason or another are ineligible to receive performance based credit.

The county and the DOC also assert pre-sentence inmates should not be treated more favorably than sentenced inmates who must engage in affirmative conduct to earn full credit. County Response at 2; DOC Response at 6 (citing Cromeenes, 72 Wn. App. at 358). Talley's argument is that he is entitled to some credit. The jail is not legally required to give

him the same rate as sentenced inmates who participate in performance based programs. Fogle, 128 Wn.2d at 61-63. But to comply with statutory and constitutional mandate, jail policy needed to afford presentence inmates like Talley the opportunity to earn credit at some rate in some manner. It could do so by allowing presentence inmates to earn good behavior credits without allowing them to participate in performance based programs and at a rate lower than the one-third rate enjoyed by sentenced inmates who participate in those programs.[5] The bottom line is that statutory mandate and equal protection require the jail to allow sentenced inmates the opportunity to earn credit by some means.

e. The Appropriate Remedy Is Remand To Award Credit At The Statutory Maximum Rate.

The remaining question is appropriate relief. RAP 16.4(a). Mota is instructive. In that case, the DOC did not have in place a procedure by which it could ascertain whether the prisoner in fact demonstrated good conduct while in the county jail. Mota, 54 Wn. App. at 256. Mota sought the one-third statutory maximum rate for good-conduct time. Mota, 114 Wn.2d at 468; Mota, 54 Wn. App. at 253, 256. The Court of Appeals granted Mota's petition and awarded him the statutory maximum amount

[5] The Skamania County Jail policy allows sentenced inmates to earn a maximum rate of one-third. App. C.

of earned early release credit available. Mota, 54 Wn. App. at 253, 256. This Court affirmed. Mota, 114 Wn.2d at 478.

Similarly, the Skamania County Jail did not have in place a procedure by which it calculated earned early release credit for presentence inmates even though it should have had one. Talley indisputably committed no infractions while detained in jail. Petition at 3; App. H, I. The general presumption is that available good-conduct time credit is fully earned unless the facility specifically deducts for misbehavior. See Fogle, 128 Wn.2d at 59 (addressing prisoners in DOC facility) (citing Cromeenes, 72 Wn. App. at 355, which addressed county jail and DOC policy).

RCW 9.92.151(1) provides "In the case of an offender convicted of a serious violent offense . . . the aggregate earned early release time may not exceed fifteen percent of the sentence." Talley was convicted of a serious violent offense and is thus subject to the 15 percent rate. App. A; Former RCW 9.94A.030(40)(a)(ii) (Laws of 2005, ch. 436 § 1).

Consistent with the relief provided in Mota, Talley requests the statutory maximum 15 percent rate in calculating his early release credit. Cf. In re Pers. Restraint of Salinas, 130 Wn. App. 772, 773-74, 780-81, 124 P.3d 665 (2005) (requiring DOC to credit prisoner with early release time using DOC standards for the time served in confinement in South

Dakota on concurrent sentence, even though South Dakota prison system did not have system in place to calculate early release time).

The jail must use the proper method of calculation in certifying the actual number of credit days to which Talley is entitled under the 15 percent earned early release rate. The calculation is not based upon the amount of time the offender is *incarcerated* in jail, but rather upon 15 percent of the *sentence imposed.* Williams, 121 Wn.2d at 658-59. Talley served 517 days in the Skamania County Jail. Talley is therefore entitled to receive 91 days of earned early release credit (x= total; 517 = .85(x); x = 608.23; 608.23 - 517 days served = 91.23 days early release credit).

D. CONCLUSION

Talley respectfully requests that this Court grant his personal restraint petition and remand for the appropriate calculation of 91 days of earned early release credit for presentence jail time.

DATED this 31st day of March 2011.

Respectfully Submitted,

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APPENDIX A

SKAMANIA COUNTY
FILED
MAR 29 2007
SHARON K. VANCE, CLERK
DEPUTY

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAMANIA

STATE OF WASHINGTON, Plaintiff, vs. TEDDY GLENN TALLEY, SID: If no SID, use DOB: 5-29-51 Defendant.	No. 05-1-00111-7 Felony Judgment and Sentence (FJS) [x] Prison [ ] RCW 9.94A.712 Prison Confinement [ ] Jail One Year or Less [ ] First-Time Offender [ ] Special Sexual Offender Sentencing Alternative [ ] Special Drug Offender Sentencing Alternative **[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8**

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 3-7-07 by [x] plea [ ] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	MURDER IN THE SECOND DEGREE	RCW 9A.32.050(1)(a)	10-27-05

(If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Third Amended Information.

[ ] Additional current offenses are attached in Appendix 2.1.

[ ] The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

[ ] A special verdict/finding that the offense was predatory was returned on Count(s) _____. RCW 9.94A.___.

[ ] A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s)_____ RCW 9.94A.____.

[ ] A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) _____ RCW 9.94A.___, 9A.44.010.

[ ] A special verdict/finding of sexual motivation was returned on Count(s) _____. RCW 9.94A.835.

[ ] This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

[ ] A special verdict/finding for use of firearm was returned on Count(s) _____. RCW 9.94A.602, 9.94A.533.

[ ] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____. RCW 9.94A.602, 9.94A.533.

[ ] A special verdict/finding for Violation of the Uniform Controlled Substances Act (VUCSA) was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

[ ] A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

[ ] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.

[ ] The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.

[ ] The crime charged in Count(s) _____ 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):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv	TYPE OF CRIME
NO KNOWN HISTORY					

[ ] Additional criminal history is attached in Appendix 2.2.

[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

[ ] The court finds that the following prior convictions are one offense

for purposes of determining the offender score (RCW 9.94A.525):

[ ] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENT (F) FIREARM (D) DEADLY WEAPON (V) VUCSA in a protected zone	TOTAL STANDARD RANGE	MAXIMUM TERM
I	0	XIV	123-220 MONTHS	N/A	123-220	LIFE $50,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [ ] Exceptional Sentence. Substantial and compelling reasons exist which justify an exceptional sentence:

[ ] within [ ] below the standard range for Count(s) _____.

[ ] above the standard range for Count(s) _____.

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4.

[ ] Jury's special interrogatory is attached. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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 and Appendix 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:

JASS CODE	$ TBD	Restitution to: Birkenfeld Family	
RTN/RJN	$_____	Restitution to: _____	
	$_____	Restitution to: _____	
		Name & Address-Address may be withheld and provided confidentially to Clerk's Office	
PCV	$ 500.00	Victim Assessment	RCW 7.68.035
	$_____	Domestic Violence assessment	RCW10.99.080
CRC	$ 200.00	Court costs including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190.	
		Criminal Filing Fee $ 200.00	FRC
		Witness costs $_____	WFR
		Sheriff service fees $_____	SFR/SFS/SFW/WRF
		Jury demand fee $_____	JFR
		Extradition Cost $_____	EXT
		Other $_____	
PUB	$_____	Fees for court appointed attorney	RCW 9.94A.760
WFR	$_____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	$_____	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD	$_____	Drug enforcement fund of: _____	RCW 9.94A.760
NTF/SAD/SDI			
CLF	$ 100.00	Crime lab fee [ ] suspended due to indigency	RCW 43.43.690
	$ 100.00	Felony DNA collection fee [ ] not imposed due to	

hardship RCW 43.43.7541

RTN/RJN $_____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1,000 maximum) RCW 38.52.430

$ 500.00 Other costs for: Skamania County Sheriff's Office Investigation Fund

$ 1400.00 TOTAL RCW 9.94A.760

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

[X] shall be set by the prosecutor.

[ ] is scheduled for .

[ ] *Restitution* Schedule attached.

[ ] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant	Cause Number	(Victim's name)	(Amount-$)
RJN			

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ 25 per month commencing May 1, 2007. RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

[ ] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of $50.00 per day, unless another rate is specified here: _____. (*JLR*) RCW 9.94A.760.

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. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.2 **DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release

from confinement. RCW 43.43.754.

[ ]HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 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 life (not to exceed the maximum statutory sentence).

[ ]Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

[ ] The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

4.4 Other: _____

_____

_____

_____.

4.5 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):

123 months on Count I	_____ months on Count _____

Actual number of months of total confinement ordered is: _____.

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

[ ] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present 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 with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____.

(b) Confinement. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____ minimum term _____ maximum term _____

Count _____ minimum term _____ maximum term _____

(c) 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: _____.

4.6 [ ] Community Placement is ordered as follows:

Count _____ for _____ months; Count _____ for _____ months;

Count _____ for _____ months; Count _____ for _____ months.

[ ] **Community Custody** for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[X] **Communuty Custody** is ordered as follows:

Count__I___ for a range from __24____ to __48____ 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.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 commited before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses commited on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant commited a current or prior:

i) Sex offense ii) Violent offense iii) Crime against a person(RCW 9.94A.411)

iv)Domestic violence offense (RCW 10.99.020) v) Residential burglary offense

vi)Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,

vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)

b) the conditions of community placement or community custody include chemical dependency treatment.

c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.

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 restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed 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 not sentenced under RCW 9.94A.712 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.

[X] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: Nicole Birkenfeld and her children, LARRY BIRKENFELD, JOANNE BIRKENFELD

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: _____.

[ ] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8)).

[ ] The defendant shall participate in the following crime-related treatment or counseling services: _____.

[ ] 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: _____.

[X] Other conditions: See 'Appendix A'.

[ ] For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 [ ] **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 4.6.

4.8 **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). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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 or the clerk of the court 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.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **Restitution Hearing.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): _____.

5.5 Any violation of this Judgment and Sentence is punishable by up

to 60 days of confinement per violation. RCW 9.94A.634.

5.6 **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 clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.8 [ ]The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **Other:** _____.

DONE IN OPEN COURT in the presence of the defendant this date: 3-29-07

JUDGE E. THOMPSON REYNOLDS

Attorney for Defendant
WSBA # 7449
Print Name: STEVEN W. THAYER

Prosecuting Attorney
WSBA # 7174
Print Name: PETER S. BANKS

TEDDY GLENN TALLEY
Defendant

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

CAUSE NUMBER of this case: 05-1-00111-7

I, SHARON K. VANCE, 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: _____.

Clerk of the Court of said county and state, by: _____ Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. _____ Date of Birth 5-29-51

(If no SID take fingerprint card for State Patrol)

FBI No. _____ Local ID No. _____

PCN No. _____ Other _____

Alias name, SSN, DOB: __

Race: Ethnicity: Sex:

[ ] Asian/Pacific Islander [ ] Black/African American [X] Caucasian [ ] Hispanic [X] Male

[ ] Native American [ ] Other: _____ [ ] Non-hispanic [ ] Female

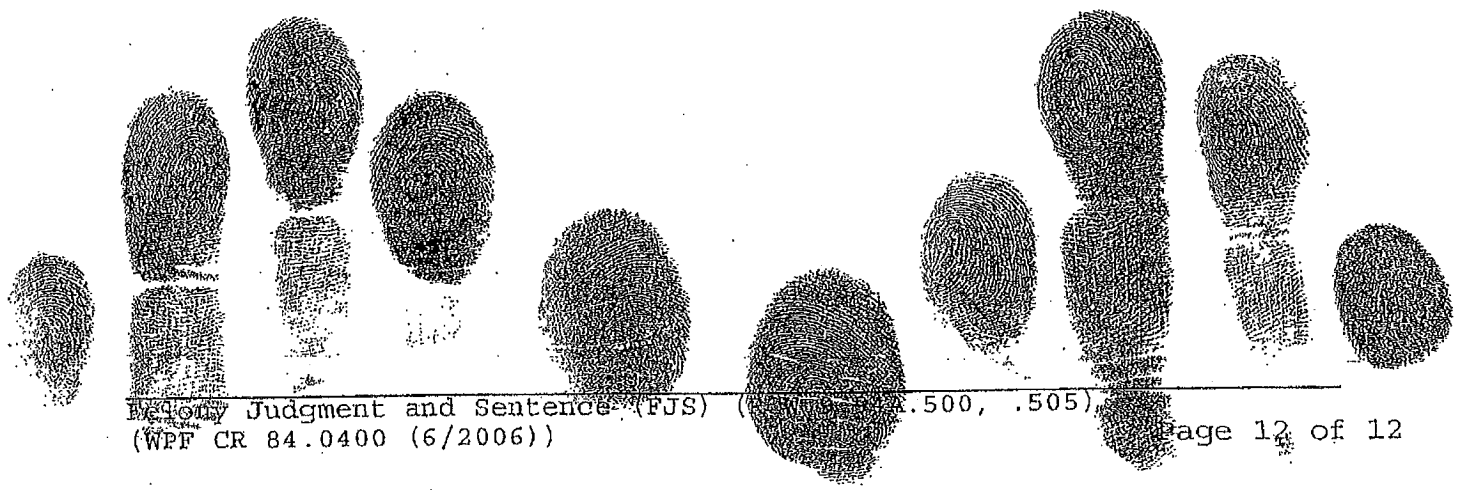
FINGERPRINTS: I attest that I saw the same defendant who appeared in Court, on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: Paula L Serna, Deputy Clerk.

Dated: March 29, 2007

DEFENDANT'S SIGNATURE: [signature]

Left 4 fingers taken simultaneously | Left Thumb | Right Thumb | Right 4 fingers taken simultaneously



APPENDIX "A"

[ ] to devote time specific employment or occupation
[ ] to pursue a prescribed course of secular study
[✓] to notify the court or community corrections officer in advance of any change in defendant's address or employment
[ ] to remain within prescribed geographical boundaries
[✓] prohibited from the ownership, possession and/or control of any firearm or any deadly weapon as defined by statute.
[ ] prohibited from the possession, control and/or consumption of alcohol.
[ ] prohibited from the possession, control and/or consumption of any controlled substance.
[ ] subject to random BAC, blood draw and/or urinalysis upon request of the Department of Corrections.
[ ] required to obtain a substance abuse evaluation and fully comply with any recommended treatment.
[ ] required to obtain an anger management evaluation and fully comply with any recommended treatment.
[ ] restricted to travel within Skamania County, except as permitted by the Department of Corrections.
[ ] subject to curfew as established by the Department of Corrections.
[ ] prohibited from operating a motor vehicle without a valid operator's license and insurance as required by statute.
[✓] required to be on his good behavior and have no further law violations.
[✓] required to make regular monthly payments towards his legal financial obligations.

Judge
3/29/07

APPENDIX B

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

JAIL TIME CERTIFICATION

The following information is requested for the purpose of crediting time spent in confinement prior to the transfer of the below listed subject:

NAME Talley, Teddy G. DOC DATE OF BIRTH: [redacted]

COUNTY: SKAMANIA CAUSE 05-1-00111-7

Please list all dates of arrest and release plus earned early release credits concerning the above subject up to the Date of Transfer, then return to the address below. Thank you.

START DATE	END DATE	TOTAL DAYS SERVED	EARNED EARLY RELEASE CREDITS
10/28/05	03/29/07	516	0
	TOTAL DAYS SERVED		

[illegible]
SIGNATURE OF JAIL RECORDS OFFICIAL

03/29/07
DATE

RECORDS OFFICER, DEPARTMENT OF CORRECTIONS

DATE

Washington Corrections Center-Records
P. O. Box 900
Shelton, WA 98584

DOC 5-293 WCC(8/94)

EXHIBIT 4

APPENDIX C

SKAMANIA COUNTY JAIL FACILITY
TRUSTEE PROGRAM

9.01.010

Trustee status in the Skamania County Jail Facility is a privilege. Skamania County Jail staff shall designate those prisoners who are allowed trustee status. When a vacancy occurs, jail staff shall select an inmate to fill the vacancy through application process. The final decision in appointing an inmate to trustee status shall be by the Corrections Sergeant or Jail Manager

Trustees are expected to comply with all jail rules and regulations. The jail staff supervises trustees, or other qualified persons, and is expected to complete their assigned duties.

An inmate wishing to participate in our trustee program must first meet the following criteria:

1. Sentenced on all charges
2. Have no outstanding warrants or holds from other agencies.
3. Must show the willingness and ability to perform all necessary duties.
4. Because trustees will be required to interact with other inmates and jail staff in conjunction with their duties, their attitude and personality may be the deciding factor in the selection process.
5. Any inmate with an active protection order in which the protected person resides in Skamania County will not be allowed to work outside our facility but may be approved for interior facility work.

Some Trustee duties are:

1. Prepare and set up inmate meals(while serving meals the trustees are not to enter pods)
2. Stock and rotate food when delivered
3. Keep the kitchen neat and clean
4. Wash, dry, fold and stack jail laundry
5. Sweep and mop the kitchen, elevator, laundry room, visitation and booking area daily.
6. Keep the Kitchen and trustee area neat and clean.
7. Wash vehicles
8. Participate in the "in custody" work crew program.
9. Other duties as assigned.

Trustee status may be revoked for the following

1. A warrant or new charges are filed against the inmate.
2. Violation of any state/federal laws, or any jail rule or regulation.
3. Inadequate performance of the duties as required, or requested by the jail staff.
4. Personality conflicts with the jail staff and or the other inmates. The factors involving this conflict will be reviewed by the Corrections Sergeant or his designee.
5. **Inmates may have their trustee status revoked at anytime by the jail staff.**

Good Time:

1. Sentences may be reduced up to 1/3 for trustees, and work crew participants based on their performance, and the amount of sentence that was served as a trustee.

Good Time is not allowed for trustees who are serving time on fines, court ordered "not to receive good time" and Sex offenders.

Trustee Agreement:

1. Being a trustee at the Skamania County Jail is a privilege.

2. Your trustee privilege can be revoked for any violation.

I _____ have read, understand, and agree to follow the requirements listed above.

Inmate's Signature _____ Date _____

Witnessing Officer's Signature _____ Date _____

OFF PREMISE WORK REQUIREMENTS

9.01.020

SUPEVISOR OBLIGATIONS

There may be times when trustees are allowed to participate in work programs outside of the Sheriff's Office complex. These work details shall be limited to work only for County programs, supervised by County employees. Sex offenders or inmates with other agency holds may only participate in these off premise jobs when a Corrections Officer is present.

County employees who elect to use in custody Trustees shall be considered an extension of the Sheriff's Jail staff and shall comply with those rules and regulations regulating duties of Staff employees. Each Governmental employee who elects to use in custody Trustees shall comply with the following rules and regulations in addition to department policy and procedures.

1. **Supervisor shall keep records.**
   Accurate attendance records, work completed records, and time spent on projects shall be kept for each inmate under supervision.

2. **Supervisor shall provide safety orientation.**
   Prior to the start of a new project, a safety orientation shall be presented to the Trustee participants. Such safety considerations shall include those issues pertaining to the project or hazards associated with the project the Trustees will be involved with. Additionally the supervising Governmental department shall provide all necessary safety equipment to complete the task.

3. **Supervisor shall be in charge of supervision of Trustees.**
   The supervising department shall provide a supervisor that shall oversee the work and safety of the Trustees. The supervisor shall have all authority to do what is necessary to insure the safety and well being of all participants of the work project. The supervisor shall be responsible for all activities associated with the work project and will conform to the listed restrictions involved with supervision of in custody Trustees.

   a. Trustees shall not have direct contact with the general public.
   b. Trustees are not allowed to go into or loiter in a public business.
   c. Trustees shall be in jail Trustee uniforms at all times during outside work details. At no time will a trustee be allowed to wear civilian attire. They must have a uniform that identifies them as jail inmates.
   d. Workers Insurance coverage will be the responsibility of the Sheriff's Office. (Non-covered charges will be the responsibility of supervising department.)
   e. Supervisor shall report, in writing, any observed violations to the Jail Sergeant, Jail Manager, or Sheriff.
   f. Supervisor shall be responsible for transportation from the Jail to the work site and back to the jail.

SKAMANIA COUNTY IN CUSTODY WORK CREW

10.01.010

It is the objective of the Skamania County Sheriff's Office In-Custody Work Crew Program to provide an opportunity for medium security prisoners to participate in outside work programs. To effectively achieve this objective, alternate means of security may be implemented. The use of leg restraints may be utilized in addition to the correction officer supervision of the inmates.

Supervision will consist of one corrections officer in uniform armed with OC spray and Taser. If no leg restraints are used the inmates shall be in constant observation of the work crew supervisor.

The inmates will be housed in the Skamania County Jail. They will be required to maintain their living units and themselves in a military fashion. They will undergo daily personal and housing inspections. The will address all Officers by "Sir" and Ma'am."

Inmates will generally work 9 hours a day, up to 7 days per week, Monday through Sunday. Work will consist of; road cleanup, trash removal, cemetery maintenance, woodcutting, and community oriented work programs. Any proceeds or benefits obtained by the in custody work crew will be utilized by the In Custody Work Program and/or returned to the community.

Note: The work Crew supervisor shall not take a member of the opposite sex on a work detail unless there are other inmates or staff present at all times.

In addition to labor, participants in the In Custody Work Crew program inmates may have an opportunity to attend classes within the jail facility oriented toward life skills, educational, and/or rehabilitative programs.

The use of the In-Custody Work Crew program will benefit the community, Skamania County Sheriff's Office, and the inmate population.

SPECIFICATIONS

10.01.020

Location:

The In-Custody Work Crew will work only in locations that can be satisfactorily supervised by one corrections officer. In areas within the populated parts of Skamania County a maximum of two consecutive days will be spent at one location. If the crew needs to be contacted they can be reached through dispatch.

Selection:

Inmates who wish to participate in the In-Custody Work Crew program shall submit their request in writing. Only those inmates classified as medium security or lower shall be

allowed to apply for the program. Post-sentenced inmates are eligible for the work crew program. Those inmates that have a valid felony warrant from other jurisdictions and no local charges are unable to participate without written authorization from the jurisdiction of the warrant specifying the inmate is eligible. Any inmate determined to be a risk of flight, assault, and/ or restricted by medical reasons will be determined ineligible. Inmate must also meet the following selection criteria;

1. Sentenced on all charges
2. Have no outstanding felony warrants or holds from other agencies.
3. Any inmate with an active protection order in which the protected person resides in Skamania County will not be allowed to work outside our facility.
4. Not be a Sex Offender.
5. A Criminal History check of all applicants will be done. Any person with an extensive criminal history that includes violent offenses may be dis-qualified from this process.

Inmates selected for the in custody work crew program will be selected by the Corrections Sergeant or his designee. All inmate requests should be forwarded to the Correction Sergeant.

Each inmate applying for the In Custody Work Crew program may be required to submit to a physical examination provided by Skamania County Jail Health Specialist for a determination of fitness for the work program.

Hours:
0745 till 1700 hrs. Inmates will be served breakfast, undergo personal and housing inspections, prepare their lunch meal, and be loaded into the work crew van prior to 0800. Inmates will be returned to the facility, strip searched by the In Custody Work Crew supervisor and returned to their housing unit prior to dinner service.

Supplies:
In Custody inmates will be issued the necessary clothing and gloves to perform the work crew service. Adequate footwear shall be the responsibility of the inmate.

Laundry:
Work uniforms will be laundered daily. They will set the uniforms out at night to be laundered by a trustee. Uniforms will need to be returned prior to the next working day. Sheets, towels, and blankets will be laundered on the regularly scheduled laundry day.

ITINERARY

10.01.030

Skamania County Sheriff's Office in Custody Work Crew Itinerary:

0600 Breakfast

APPENDIX D

Non-emergency problems will be given close attention to prevent an emergency situation from happening. Pain medication such as aspirin or Tylenol will be administered when needed, and if medication on hand is not adequate, a doctor will be called for an assessment.

The Corrections Sergeant or his designee will make appointments as necessary for dental needs and arrange transportation to and from the dentist's office with adequate security. The costs will be deducted from an inmates funds when possible and paid for by the jail when necessary. Prescriptions for medications will also be paid for by inmates when funds are available.

GOOD TIME COMPUTATION:

Individuals sentenced to the Skamania County Jail Facility are eligible for a deduction from the length of their sentence in accordance with RCW 9.92.151. This "good time" shall be awarded on the following basis:

1. A sentence of thirty days or less - one day for each seven days served.
2. A sentence of more than thirty days - five days for each thirty days served.

Note: Only inmates willing and qualified to work on the "in custody work crew program", attending educational or treatment programs, or other work inside the facility shall be eligible for good time. These inmates must all be classified as medium or low risk inmates and be sentenced before they may be allowed to participate in these programs and begin earning "Good Time".

In addition to the above guidelines, sentenced inmates who are appointed to trustee status to work within the facility or outside of the facility may receive ten days per thirty days served. (This does not apply to convicted sex offenders unless the offense is classified as a victimless crime. In such cases they may earn the normal good time as outlined above.) Additional "good time" may be awarded to those trustees or other inmates who demonstrate, by their actions, an extraordinary effort on their part to earn additional good time. Additional "good time" shall be awarded only with approval of the Sheriff.

TRUSTEE STATUS:

Individuals who have been sentenced to the Skamania County Jail Facility are eligible for consideration as trustees, however, the fact that a person is sentenced does not mean that he/she will be allowed to become a trustee. In order to be considered for this position, an individual must not have any other charges pending, must display dependability and good hygiene habits. Trustees perform custodial tasks, laundry duties, and cooking and serving duties, and/or any other duties that may be assigned by the jail staff. As noted in item 16 above, above average effort as a trustee may earn the individual additional good time. To the contrary, a below average performance, or misconduct on the part of the trustee may cause that individual to lose his trustee status and be returned to the cellblock area. In addition, the prisoner may lose what extra good time he has accumulated as a trustee up to that point. Misconduct may result in criminal charges being placed against him.

APPENDIX E

Larson, Ronda (ATG)

From: David Waymire [davidw@co.skamania.wa.us]
Sent: Wednesday, November 04, 2009 11:52 AM
To: Larson, Ronda (ATG)
Subject: FW:

Ronda

Good Time:

1. Sentences may be reduced up to 1/3 for trustees, and work crew participants based on their performance, and the amount of sentence that was served as a trustee.

Good Time is not allowed for trustees who are serving time on fines, court ordered "not to receive good time" and Sex offenders.

Trustee
An inmate wishing to participate in our trustee program must first meet the following criteria:

1. Sentenced on all charges
2. Have no outstanding warrants or holds from other agencies.
3. Must show the willingness and ability to perform all necessary duties.
4. Because trustees will be required to interact with other inmates and jail staff in conjunction with their duties, their attitude and personality may be the deciding factor in the selection process.
5. Any inmate with an active protection order in which the protected person resides in Skamania County will not be allowed to work outside our facility but may be approved for interior facility work.

Work Crew
Selection:
Inmates who wish to participate in the In-Custody Work Crew program shall submit their request in writing. Only those inmates classified as medium security or lower shall be allowed to apply for the program. Post-sentenced inmates are eligible for the work crew program. Those inmates that have a valid felony warrant from other jurisdictions and no local charges are unable to participate without written authorization from the jurisdiction of the warrant specifying the inmate is eligible. Any inmate determined to be a risk of flight, assault, and/ or restricted by medical reasons will be determined ineligible. Inmate must also meet the following selection criteria.

1. Sentenced on all charges
2. Have no outstanding felony warrants or holds from other agencies.
3. Any inmate with an active protection order in which the protected person resides in Skamania County will not be allowed to work outside our facility.
4. Not be a Sex Offender.
5. A Criminal History check of all applicants will be done. Any person with an extensive criminal history that includes violent offenses may be dis-qualified from this process.

APPENDIX 9

David Waymire
Chief Deputy
Skamania County Sheriff's Office

APPENDIX F

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAMANIA

SKAMANIA COUNTY
FILED
OCT 3 1 2005
LORENA E. HOLLIS, CLERK
DEPUTY _____

STATE OF WASHINGTON, Plaintiff, vs. TEDDY GLENN TALLEY, Defendant.	NO. 05-1-00111-7 ORDER SETTING CONDITIONS OF PRE-TRIAL RELEASE

THIS MATTER is before the Court on Motion of the defendant for an Order for Pre-Trial Release under CrR 3.2, the Court has considered the records herein, the applicable rule, and the least restrictive conditions under which the Court believes the defendant should be released,

( ) And has determined there is a danger the defendant:

( ) will not appear in court when required;
( ) will seek to intimidate witnesses or otherwise unlawfully interfere with the administration of justice;
( ) will commit a violent crime;

IT IS ORDERED that the defendant's release pending trial, whether by personal recognizance or by the posting of bail, shall be on the condition that the defendant:

(1) remain on good behavior;
(2) reside at the address provided to the court: 760-11123 Pine Tree Rd. Pinon Hill, Calif. 92372; 868-0061
(3) not change residence without the court's approval;
(4) contact his attorney Chris Lanz at least once a week by telephone or in person;
(5) not possess or consume any controlled substance except by valid

SKAMANIA COUNTY PROSECUTOR
P O Box 790
240 NW Vancouver Avenue
Stevenson, WA 98648-0790
(509) 427-9406

prescription;

(6) appear at the scheduled arraignment on 11-3-05 9:00 a.m., appear at the scheduled CrR 3.5 hearing, pre-trial conference and trial; and

(7) sign a waiver of extradition.

The defendant's release shall also be subject to the following conditions:

( ) Not leave Skamania County except as required by actual employment or _____.

(✓) Not possess firearms or dangerous weapons.

(✓) Not possess or consume intoxicating beverages.

(✓) Not approach, communicate or associate with: Nicole Birkenfeld or her children.

( ) Be and remain in the custody of _____ provided such person shall agree in writing to immediately report any loss of contact with the defendant to the Prosecuting Attorney and/or the Skamania County Sheriff's Office.

( ) Proceed to the Sheriff's Office and undergo the administrative booking process.

( ) Be subject to a curfew from _____.

( ) Supervised release by Department of Corrections at the expense of the defendant.

(✓) Other: if bond posted, must have an approved address within Skamania County.

( ) Bail shall remain in the amount presently set _____.

(✓) Bail is hereby set at $1,000,000.00

DATED: 10/31/05

Karen L Wynne
JUDGE/Court Commissioner

Approved for Entry:

_____ WSBA# _____
Attorney for Defendant

Peter S. Banks
PETER S. BANKS, WSBA# 7174
Prosecuting Attorney

Teddy G. Talley
TEDDY GLENN TALLEY
Defendant

I agree to supervise Defendant's release:

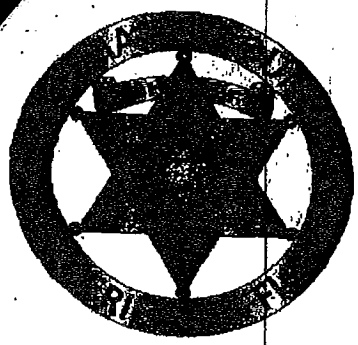
_____
Name

_____
Address

_____
Telephone

SKAMANIA COUNTY PROSECUTOR
P O Box 790
240 NW Vancouver Avenue
Stevenson, WA 98648-0790
(509) 427-9406

APPENDIX G



OFFICE OF THE SKAMANIA COUNTY
SHERIFF

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Fax: (509) 427-4369
www.skamaniasheriff.com
scso@co.skamania.wa.us

DAVID S. BROWN
SHERIFF

Dave Cox
Undersheriff

Pat Bond
Chief Criminal Deputy

Marlea McKenzie
Chief Civil Deputy

David Waymire
Jail Superintendent

To Whom It May Concern:

Upon reviewing the credit for time served for Talley, Teddy Glen it has been determined there was a mistake in the calculation. By my calculation Teddy is to receive 517 days credit for time served. The reason I calculate credit for time served being 517 days is by going in 24hr increments. Teddy was booked into the Skamania County Jail on 10/28/2005 on 10/26/2005 would be one day served and so on.
10/28/2005 to 03/29/2007 = 517.

Sgt J Wenz

Skamania County Sheriff's Office

APPENDIX H

OFFICE OF THE SKAMANIA COUNTY
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scso@co.skamania.wa.us

DAVID S. BROWN
SHERIFF

Dave Cox
Undersheriff

Pat Bond
Chief Criminal Deputy

Marlea McKenzie
Chief Civil Deputy

David Waymire
Jail Superintendent

Steven W. Thayer
Attorney

Re: Teddy Glenn Talley

Mr. Thayer,

This is in response to your letter dated July 13, 2007. I have already submitted the jail time certification for Mr. Talley. It does not show any earned early release credits (Good Time). The reason for this is as the RCW states facilities **may** reduce an inmate's sentence in accordance with procedures they have developed. We have a policy in place that states inmates may be given good time if they participate in one of our work programs. To be eligible for these programs you must be sentenced as well as be a medium or low risk inmate. Mr. Talley did not meet either of these requirements and therefore did not participate in any work programs while housed in the Skamania County Jail. For these reasons, Mr. Talley did not earn any early release time while serving time in the Skamania County Jail. If you have any further questions please feel free to contact me.

David Waymire
Chief of Corrections
Skamania County SO

APPENDIX I

OFFICE OF THE SKAMANIA COUNTY
SHERIFF

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DAVID S. BROWN
SHERIFF

Dave Cox
Undersheriff

Pat Bond
Chief Criminal Deputy

Marlea McKenzie
Chief Civil Deputy

David Waymire
Jail Superintendent

Teddy Glenn Talley

Re: Good Time Policy

Mr. Talley,

This is in response to your letter dated February 17, 2008. This letter was sent to the Skamania County Clerk's office who does not have anything to do with setting up these policies. They forwarded it to me and I received it on February 28, 2008. I have already submitted the same information to your attorney Mr. Thayer back in July of 2007. I am sending the response I sent him as well as the documentation to go with it. The reason for no good time on the time served in our facility is as the RCW states facilities **may** reduce an inmate's sentence in accordance with procedures they have developed. We have a policy in place that states inmates may be given good time if they participate in one of our work programs. To be eligible for these programs you must be sentenced as well as be a medium or low risk inmate. You did not meet either of these requirements and therefore did not participate in any work programs while housed in the Skamania County Jail. For these reasons, you did not earn any early release time while serving time in the Skamania County Jail. If you have any further questions please feel free to contact me.

David Waymire
Chief of Corrections
Skamania County SO

APPENDIX J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

83284-6

FILED
COURT OF APPEALS
DIVISION II
09 JUN 17 PM 2:23
STATE OF WASHINGTON
BY
DEPUTY

In re the Personal Restraint Petition of TEDDY GLEN TALLEY, Petitioner.	No. 39080-9-II ORDER GRANTING PETITION IN PART AND DENYING PETITION IN PART

Teddy Talley seeks relief from personal restraint imposed following his 2007 plea of guilty to second degree murder.[1] The trial court sentenced him to 123 months of confinement. The Skamania County Jail certified 516 days of jail time served but zero days of earned early release credits. Upon being received by the Department of Corrections on March 20, 2007, the Department calculated Talley's possible early release date as follows: 3,743 days (123 months) of confinement, less 516 days of jail time served, less 323 days (ten percent of the remaining time for DOC earned release credits).

Talley argues that his possible early release date has been miscalculated in two ways. First, he argues that the Skamania County Jail denied him equal protection by not certifying earned early release credits at the same ten percent rate that he would have earned release credits if he had been serving his time in the custody of the Department. Under its policy, the Skamania County Jail only grants earned early release credits to those inmates who have been sentenced and who are low or medium risk inmates. Talley

[1] Talley filed his petition in the Washington State Supreme Court, which transferred the petition to this court.

was a pre-sentence inmate and was a high risk inmate, so the Jail did not grant him earned early release credits. Talley claims that this policy violates equal protection. But Washington courts have upheld the authority of county jails to grant earned early release credits to pre-sentence inmates at rates lower than the rate applicable to inmates in the custody of the Department. *In re Personal Restraint of Fogle*, 128 Wn.2d 56, 63, 904 P.2d 722 (1995); *In re Personal Restraint of Cromeenes*, 72 Wn. App. 353, 358, 864 P.2d 423 (1993). Talley cites a Ninth Circuit opinion that held such practices by county jails violate equal protection. *MacFarlane v. Walter*, 179 P.3d 1131 (9th Cir. 1999). However, the United States Supreme Court vacated that opinion and ordered that the appeal be dismissed as moot. *Lehman v. MacFarlane*, 529 U.S. 1106, 120 S. Ct. 1959, 146 L. Ed. 2d 790 (2000). Talley was not denied equal protection by the Skamania County Jail's refusal to grant him earned early release credits during his confinement there.

Second, Talley argues that the Skamania County Jail miscalculated his jail time. He contends that he was confined in the jail from October 28, 2005, to March 29, 2007, which is 518 days, not 516 days as certified by the jail. Talley's arithmetic is correct, so unless there is some reason why he should not be granted credit for 518 days of jail time, he is entitled to those two additional days. In order to clarify this issue, we remand to the Skamania County Jail to either issue an amended certification certifying that Talley earned 518 days of jail time or send to the Department an explanation of the grounds for not certifying those two additional days.

Accordingly, it is hereby

ORDERED that Talley's petition is granted as to the remand to the Skamania County Jail addressed above. The remainder of Talley's petition is denied.

DATED this 17th day of June, 2009.

Bridgewater, J.

Penoyar, J.

Hunt, J.

cc: Teddy G. Talley
Ronda D. Larson
Department of Corrections
Skamania County Jail

APPENDIX K

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

FILED
COURT OF APPEALS
DIVISION II
09 JUN 30 PM 12: 34
STATE OF WASHINGTON
BY
DEPUTY

June 29, 2009

RECEIVED
JUN 30 2009
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

83284-6

Court of Appeals
Division II
950 Broadway
Ste 300, MS TB-06
Tacoma, WA 98402-4454

RE: Personal Restraint Petition of Teddy G. Talley
COA Cause No. 39080-9-II

Dear Mr. Johnson:

By order dated June 17, 2009, the Court ordered the jail to either amend its jail certification to reflect 518 days of credit for time served or justify why the jail time served between October 28, 2005, and March 29, 2007, is only 516 days. This letter is to update the Court on that issue.

The Department of Corrections (DOC) has since received a corrected jail certification from the jail reflecting 517 days of credit. Also, DOC records staff independently calculated that time period as 517 days. Likewise, counsel for DOC came up with 517 days using the website http://www.timeanddate.com/date.

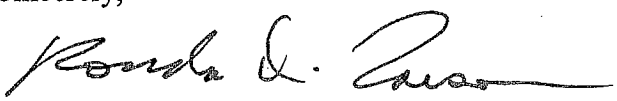
The DOC's time start on that cause was originally Friday, March 30, 2007. See Exhibit 3 to DOC's Response to PRP. Counsel for DOC called the Skamania County Jail and was informed that its records indicate that Talley left the jail to go to DOC on March 29th at 2:00 p.m., consistent with the current jail certification. Counsel for DOC also spoke with DOC records staff and was informed that all the paperwork for intake at DOC in Shelton is dated March 30th, consistent with DOC's start date. Hence, it took Talley a day to get from Skamania County Jail to DOC.

To determine why it took so long, DOC records staff further investigated the matter and discovered that DOC's transport buses do not go to Washington's smaller counties. Instead, inmates from counties such as Skamania must be transported by the jail to a larger county. In Talley's case, he was transported from Skamania County Jail to Clark County Jail on March 29th. On March 30th, DOC's transport bus picked him up from Clark County Jail and delivered him to the Washington Corrections Center in Shelton.

The DOC has retained Talley's March 30, 2007, start date for his prison time but has credited him with an extra day of jail time to account for the day he spent at Clark County Jail. Hence, he now has received 518 days of jail time served. Attached is an updated cause credits printout reflecting the 518 days of total credits. See attached OMNI Cause Credits Sentence Information.

Thank you for your attention to this matter.

Sincerely,



RONDA D. LARSON
Assistant Attorney General
Corrections Division

RDL:ks
Enclosure

Cause Information

*Last Name:	*First Name:	Middle Name:	Suffix:	WA State ID No.:	Date Of Birth:
TALLEY	Teddy	Glenn	Please select		

☐ Vacated

*State:	*County:	*Cause No.:
Washington	Skamania	051001117

*Judge:	*Date Of Sentence:	*Initial Time Start Date:	
Reynolds, E Thom	03/29/2007	03/30/2007	☐ HIV

☐ Supervised Appeal	Post Sentence Review Start Date:	User Provided ERD:	User Provided SED:
☐ Exceptional Sentence			

Cause Credits

*Credit Type	*Days	ERT Credit Type	*Days	Stat Max Only
Jail Time	516	Jail Time ERT	0	☐
Jail Time	2	Jail Time ERT	0	☐

Total Cause Credit Time	518 days	Total Cause ERT Credit Time	0 day

Cause Prefix Information

Prefix	*Sentence Category	*Sentence Type	*Distinct Supervision	*Superv
AA	Washington SRA	Confinement Over One Year	CCP	Commu

Close

APPENDIX L

FILED
SUPREME COURT
STATE OF WASHINGTON
09 OCT 2 PM 12:51
BY RONALD R. CARPENTER
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of TEDDY GLEN TALLEY, Petitioner.	NO. 83284-6 RULING

Teddy Talley pleaded guilty to second degree murder in 2007. The trial court sentenced him to 123 months confinement. The Skamania County Jail certified 516 days of prejudgment confinement without any earned early release credit. Mr. Talley filed a personal restraint petition in this court challenging his projected early release date. I transferred the petition to Division Two of the Court of Appeals, which agreed that Mr. Talley may have been eligible for an additional two days of jail time. The court therefore granted the petition in part and remanded for correction or clarification. But the court rejected Mr. Talley's argument that he was entitled to earned early release credit for his jail time. Mr. Talley now seeks this court's discretionary review. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Talley claims that denying him early release credit for his jail time violates equal protection principles. Presentence offenders detained in county jail may earn early release credit, and it is a violation of equal protection to deny credit only because a presentence detainee is unable to post bail. *See In re Pers. Restraint of*

569/177

Mota, 114 Wn.2d 465, 472-74, 788 P.2d 538 (1990). But county jails are not obligated to adhere to Department of Corrections standards in awarding early release credit. *In re Pers. Restraint of Fogle*, 128 Wn.2d 56, 63-64, 904 P.2d 722 (1995). Local jail policies resulting in a lower rate of early release credit are allowed in light of the heightened security risks posed by presentence detainees. *Id.* at 64-65. But jail programs for early release credit must "allow an offender to earn early release credits for presentence incarceration." Former RCW 9.92.151(1) (2004).

The Skamania County Jail awards earned early release credit to low or medium risk detainees who participate in programs and have been sentenced. Mr. Talley was apparently denied credit because he was deemed a high risk detainee ineligible to participate in programs and had not yet been sentenced. Under the jail policies it appears Mr. Talley would have been denied credit even if he was a low or medium risk detainee because of his presentence status. Aside from equal protection principles, the validity of a policy that effectively denies any early release credit to presentence jail detainees may be questionable in light of former RCW 9.92.151(1).

A substantive response from the Department of Corrections may help resolve this issue. The department is therefore directed to file a response to the motion for discretionary review in this court by November 30, 2009. Mr. Talley may file a reply by not later than December 16, 2009.

COMMISSIONER

October 28, 2009

APPENDIX M

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
SUPREME COURT
STATE OF WASHINGTON
10 FEB 11 PM 1:48
BY RONALD R. CARPENTER
CLERK

In re the Personal Restraint of

TEDDY GLEN TALLEY,

Petitioner.

NO. 83284-6

RULING

Teddy Talley pleaded guilty to second degree murder in 2007. The trial court sentenced him to 123 months confinement. The Skamania County Jail certified 516 days of prejudgment confinement without any earned early release credit. Mr. Talley filed a personal restraint petition in this court challenging his projected early release date. I transferred the petition to Division Two of the Court of Appeals, which agreed that Mr. Talley may have been eligible for an additional two days of jail time. The court therefore granted the petition in part and remanded for correction or clarification. But the court rejected Mr. Talley's argument that he was entitled to earned early release credit for his jail time. Mr. Talley now seeks this court's discretionary review. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Talley claims that denying him early release credit for his jail time violates equal protection principles. Presentence offenders detained in county jail may earn early release credit. It is a violation of equal protection to deny credit only because a presentence detainee is unable to post bail. *See In re Pers. Restraint of Mota*, 114 Wn.2d 465, 472-74, 788 P.2d 538 (1990). But county jails are not obligated to adhere to Department of Corrections standards in awarding early release credit. *In*

579/143

re Pers. Restraint of Fogle, 128 Wn.2d 56, 63-64, 904 P.2d 722 (1995). Local jail policies resulting in a lower rate of early release credit are allowed in light of the heightened security risks posed by presentence detainees. *Id.* at 64-65. But jail programs for early release credit must "allow an offender to earn early release credits for presentence incarceration." Former RCW 9.92.151(1) (2004).

The Skamania County Jail awards earned early release credit to low or medium risk detainees who participate in programs and have been sentenced. Mr. Talley was apparently denied credit because he was deemed a high risk detainee ineligible to participate in programs and had not yet been sentenced. Under the jail policies, it appears Mr. Talley would have been denied credit even if he had been a low or medium risk detainee because of his presentence status.

The Department of Corrections responds that it properly relied on the jail certification. The department does not administer the county jail and does not draft the jail's early release credit policies. But aside from equal protection principles, the validity of a county jail policy that effectively denies any early release credit to presentence jail detainees may be questionable in light of former RCW 9.92.151(1). A response from the county may assist me in resolving this matter.

Skamania County is therefore directed to file a substantive response to the motion for discretionary review in this court by March 15, 2010, addressing the concerns related above. Mr. Talley may file a reply by not later than March 31, 2010. The Department of Corrections may file a supplemental reply to the county's response by that same date.

COMMISSIONER

February 11, 2010

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:	)	
TEDDY TALLEY,	)	NO. 83284-6
Petitioner,	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 31ST DAY OF MARCH 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER TEDDY TALLEY** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DANIEL McGILL
SKAMANIA COUNTY PROSECUTOR'S OFFICE
P.O. BOX 790
STEVENSON, WA 98648

[X] RONDA LARSON
ATTORNEY GENERAL'S OFFICE
P.O. BOX 40116
OLYMPIA, WA 98504

[X] TEDDY TALLEY
DOC NO. 304090
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 31ST DAY OF MARCH 2011.

x Patrick Mayovsky