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THE DEFENDER ASSOC

Court of Appeals No. 61629-3-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

JOSHUA HARRIS,
Petitioner,

vs.

**HONORABLE EDSONYA CHARLES, DIRECTOR OF KING COUNTY ADULT
DETENTION and CITY OF SEATTLE,**
Respondents.

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ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENTS

The Honorable Edsonya Charles, the Director of King County Adult Detention and the City of Seattle ask this court to deny review of the decision designated in Part B of this answer.

B. DECISION

The Court of Appeals decision, entered on August 31, 2009, reversed the superior court order requiring the trial court to give petitioner credit against his jail sentence for the time he was on electronic home monitoring as a condition of pretrial release.

C. ISSUES PRESENTED FOR REVIEW

1. Where the City timely appealed the superior court's order requiring the trial court to give petitioner credit against his jail sentence for time he was on electronic home monitoring as a condition of pretrial release and the Court of Appeals decision reversing that order afforded relief to the City, was petitioner's motion to dismiss the City's appeal properly denied?

2. Does equal protection require that a defendant convicted of a non-felony be given credit against his jail sentence for time he was on electronic home monitoring as a condition of pretrial release?

3. Does double jeopardy require that a defendant convicted of a non-felony be given credit against his jail sentence for time he was on electronic home monitoring as a condition of pretrial release?

4. Does the Court of Appeals decision upholding the trial court's sentencing decision conflict with *State v. Anderson*¹ or *State v. Hardesty*,² involve a significant question of constitutional law or involve a substantial issue of public interest justifying review under RAP 13.4(b)(1), (3) or (4)?

D. STATEMENT OF THE CASE

The superior court, on a writ of habeas corpus, ordered the trial court to give petitioner credit against his jail sentence on a non-felony charge for time he was on electronic home monitoring as a condition of pretrial release. The City appealed, and the Court of Appeals reversed.

In 2001, petitioner was charged with Driving Under the Influence (DUI) and Driving While License Suspended/Revoked 1st degree in Seattle Municipal Court. CP at 31. Later that year, he entered into a deferred prosecution for these charges. CP at 32. In 2004, petitioner's deferred prosecution was revoked because of a DUI conviction in another court. CP at 33-34. Petitioner's sentence was suspended for five years on certain

¹ 132 Wn.2d 203, 937 P.2d 581 (1997).

² 129 Wn.2d 303, 915 P.2d 1080 (1996).

conditions, including no criminal law violations and no driving without an ignition interlock device. CP at 30.

In 2007, petitioner was charged with Driving While License Suspended (DWLS) 3rd degree and Operating a Motor Vehicle Without a Required Ignition Interlock (IID) in Seattle Municipal Court. CP at 12. The court set bail at \$5,000, which petitioner posted, and imposed conditions of release including electronic home monitoring with alcohol breath-testing equipment. CP at 10-11. Eighty days after being released from jail on these conditions, petitioner pled guilty to both of these charges. CP at 13. At petitioner's request, sentencing was continued for 60 days, during which time he remained on electronic home monitoring. CP at 13.

On the DWLS charge,³ he was sentenced to 90 days in jail with zero days suspended and on the IID charge,⁴ to 90 days in jail with 90 days suspended; these sentences to run consecutively. CP at 8-9 & 11. The trial court declined to give petitioner credit against this sentence for 140 days he was on electronic home monitoring before his guilty plea. CP at 14. In

³ The maximum sentence for DWLS 3rd degree is 90 days in jail and a \$1,000 fine. Seattle Municipal Code (SMC) 11.56.320(D); SMC 11.34.020(B).

⁴ The maximum sentence for IID is 90 days in jail and a \$1,000 fine. SMC 11.56.350; SMC 11.34.020(B).

addition, 90 days of his suspended sentence on the 2001 DUI charge was revoked, and this jail time was to run consecutively to the other charges. CP at 29 & 36. Petitioner was ordered to report to jail by April 9, 2008. CP at 14 & 36. Petitioner apparently was or would also be serving a jail sentence imposed by another court. CP at 3.

On March 31, 2008, petitioner sought a writ of habeas corpus to force the trial court to give him credit against his 90-day DWLS jail sentence and his 0-day IID jail sentence for the 140 days he was on electronic home monitoring as a condition of pretrial release. CP at 5-7. On April 7, 2008, the superior court granted the requested relief.

The Court of Appeals, as a preliminary matter, rejected petitioner's contention that the trial court's reimposition of the 90-day jail sentence for DWLS would violate double jeopardy and render the City's appeal moot. Slip opinion, at 4-6. With respect to the substantive issue, the Court of Appeals agreed with the City that the sentencing of felons and non-felons is sufficiently different such that equal protection was not violated by denying petitioner credit against his jail sentence for the time he was on electronic home monitoring as a condition of pretrial release, even though a felon would receive such credit. Slip opinion, at 8-11. Last, the Court of Appeals determined that petitioner had not established that electronic

home monitoring was sufficiently like incarceration such that denying him credit for electronic home monitoring violated double jeopardy. Slip opinion, at 11-13.

E. ARGUMENT

1. The Court of Appeals properly denied petitioner's motion to dismiss the City's appeal as it was not moot and he did not have a legitimate expectation of finality in his modified sentence.

Petitioner contends that the Court of Appeals erred by concluding that the City's appeal was not moot. A case is not moot if a court can still provide effective relief.⁵ Reversing the superior court's decision and upholding the trial court's original sentence plainly would provide the City effective relief. The City's appeal was not moot.

Petitioner contends that this appeal should have been dismissed as he had a legitimate expectation of finality in his modified sentence and resentencing him would violate double jeopardy. A defendant's legitimate expectation of finality in the sentence may be influenced by many factors such as the completion of the sentence, the passage of time, the pendency

⁵ *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983) (review of a contempt finding against a juvenile was not moot even though he already had fully served his 30-day jail sentence because the fines imposed against him were still outstanding).

of an appeal or review of the sentencing determination or the defendant's misconduct in obtaining the sentence.⁶

Petitioner has not completed his suspended sentence. Inasmuch as petitioner's sentence was suspended, including the 90-day IID sentence, and he is on probation until August 16, 2010,⁷ the trial court has jurisdiction over him at least until that date.

In *State v. Hardesty*,⁸ relied on by petitioner, the court held that the defendant had no legitimate expectation of finality in a sentence even though he had served his prison sentence and was not under community supervision when the state brought its motion for relief from judgment.⁹ Petitioner, who will be on probation for at least another 10 months and whose 90-day IID sentence remains unserved, certainly has no more of an expectation of finality in his sentence than does a defendant who is not on probation at all.

The superior court granted petitioner's requested relief on April 7, 2008 and the City filed its notice of appeal on May 5. In *Hardesty*,¹⁰ the court held that the passage of almost one year after the defendant had been

⁶ *Hardesty*, 129 Wn.2d at 311.

⁷ See Docket (attached).

⁸ 129 Wn.2d at 306 & 309-16.

⁹ *Hardesty*, 129 Wn.2d at 306.

¹⁰ 129 Wn.2d at 316.

released from prison before the state sought to modify his sentence was not a sufficient passage of time to give him a legitimate expectation of finality in his sentence. In *State v. Traicoff*,¹¹ the court held that the passage of two years between the defendant's original erroneous sentence and his corrected sentence did not support a reasonable expectation that the original sentence was final. Petitioner likewise could not obtain a legitimate expectation of finality in his modified sentence where review was sought less than 30 days later.

In *State v. Freitag*,¹² the court held that an appeal by the government of an erroneous sentencing decision puts the defendant on notice that his sentence is not final. The City timely appealed the superior court's decision in this case, which gave notice to petitioner that his sentence was not final.

Although petitioner did not commit any misconduct in procuring his modified sentence, such lack of misconduct does not necessarily establish a legitimate expectation of finality.¹³ Petitioner was, however, solely responsible for the 60 days he remained on electronic home

¹¹ 93 Wn. App. 248, 253-54, 967 P.2d 1277 (1998), *review denied*, 138 Wn.2d 1003 (1999).

¹² 127 Wn.2d 141, 145 n 3, 896 P.2d 1254, *amended by* 905 P.2d 355 (1995).

monitoring after pleading guilty as he requested that sentencing be continued.

Petitioner contends that he had a legitimate expectation of finality in his modified sentence because the City did not seek a stay of the superior court's order. In *State v. Pringle*,¹⁴ the court rejected the argument that the absence of a stay of an erroneous sentence prevented review of that sentence. Similarly, the absence of a stay of the erroneous reversal of a correct sentence does not prevent review of that erroneous reversal. The City's decision not to seek a stay of the superior court's order did not give petitioner a legitimate expectation of finality in his modified sentence..

Petitioner also cites the government's inability to appeal an erroneous sentence as support for his claim of a legitimate expectation of finality in his modified sentence. Petitioner chose to seek review of the trial court's original sentence by way of a writ of habeas corpus. He knew that the losing party to the writ could appeal as a matter of right.¹⁵ A

¹³ *Traicoff*, 93 Wn. App. at 256; *State v. H.J.*, 111 Wn. App. 298, 305, 44 P.3d 874 (2002).

¹⁴ 83 Wn.2d 188, 193, 517 P.2d 192 (1973).

¹⁵ See *Honore v. Washington State Board of Prison Terms and Paroles*, 77 Wn.2d 660, 664, 466 P.2d 485 (1970); *Garfinkle v. Sullivan*, 37 Wash. 650, 651, 80 Pac. 188 (1905); *In re Sylvester*, 21 Wash. 263, 266, 57 Pac. 829 (1899).

defendant is charged with knowledge of the prosecution's right to seek review of a sentence.¹⁶ Petitioner now seems to want to avoid the consequences of his own decision. His conscious choice of a remedy that authorized this appeal by the City does not establish a legitimate expectation of finality.

Petitioner did not establish that he had a legitimate expectation of finality in his modified sentence such that review of that sentence would violate double jeopardy. *Hardesty*¹⁷ held that a defendant does not have a legitimate expectation of finality in a sentence where the prosecution timely seeks review of that sentence. The Court of Appeals correctly applied this holding in concluding that the City's timely appeal precluded any legitimate expectation of finality by petitioner in his modified sentence. Petitioner cites not a single case to the contrary. The Court of Appeals' decision plainly does not conflict with *Hardesty*.

2. The Court of Appeals correctly rejected petitioner's equal protection argument.

Petitioner contends that the Court of Appeals erred by rejecting his equal protection claim that he was entitled to credit against his jail sentence for time he spent on electronic home monitoring as a condition of

¹⁶ *Hardesty*, 129 Wn.2d at 315.

¹⁷ 129 Wn.2d at 315-16.

pretrial release. He does not contend that the Court of Appeals' use of the "rational basis" test for analyzing his claim was incorrect nor does he deny that he bore the burden of showing that the classification was arbitrary.¹⁸

Instead, petitioner argues that pretrial electronic home monitoring is the same as pretrial *incarceration* for which a defendant must be given credit against his jail sentence. There are obvious differences, however, between incarceration and electronic home monitoring. As the court noted in *State v. Perrett*,¹⁹ electronic home monitoring eliminates the hardships associated with incarceration – a defendant is free to live as he had before being charged, he is not hindered in preparing his defense and he suffers neither the stigma nor the discomfort of jail.²⁰ In addition, a defendant at home is not subject to the regimentation, surveillance and lack of privacy of a penal institution. A defendant on electronic home monitoring, while generally confined to his home, may be allowed to leave for treatment

¹⁸ See *In re Personal Restraint of Stanphill*, 134 Wn.2d 165, 174-75, 949 P.2d 365 (1998) (distinctions between felony defendants sentenced pursuant to the SRA and those sentenced prior to adoption of the SRA do not violate equal protection).

¹⁹ 86 Wn. App. 312, 318-19, 936 P.2d 426, *review denied*, 133 Wn.2d 1019 (1997).

²⁰ *Perrett*, 86 Wn. App. at 318-19.

sessions or medical appointments or to go to work.²¹ Petitioner presented no evidence regarding the exact nature or restrictions of his electronic home monitoring. Petitioner's claim that "[u]nder any definition, EHD qualifies as detention and punishment,"²² is clearly wrong as *Perrett*²³ held that a defendant on electronic home detention was not "detained" for purposes of the time for trial rule. Courts in other states have rejected the argument that pre-adjudication electronic home monitoring is sufficiently like incarceration such that credit must be given for that electronic home monitoring against a jail sentence.²⁴ Electronic home monitoring simply is not the same as incarceration.

Petitioner also argues that that the sentencing of felons and non-felons is indistinguishable for equal protection purposes. In *State v.*

²¹ See <http://www.ci.seattle.wa.us/courts/comjust/EHM.htm> (outlining electronic home monitoring offered by Seattle Municipal Court).

²² Petition for Review, at 14.

²³ 86 Wn. App. at 317-19.

²⁴ *Matthew v. State*, 152 P.3d 469, 472-73 (Alaska App. 2007); *Commonwealth v. Morasse*, 446 Mass. 113, 842 N.E.2d 909 (2006); *People v. Chavez*, 122 P.3d 1036, review denied (Colo.App. 2005); *Licata v. State*, 788 So.2d 1063 (Fla.App. 2001); *State v. Rauch*, 94 Hawai'i 315, 13 P.3d 324, 334-37 (2000); *Bush v. State*, 338 Ark. 772, 2 S.W.3d 761 (1999); *State v. Climer*, 127 Idaho 20, 896 P.2d 346 (1995); *State v. Wilkinson*, 539 N.W.2d 249, 251-53 (Minn.App. 1995); *State v. Faulkner*, 102 Ohio App.3d 602, 657 N.E.2d 602 (1995); *State v. Muratella*, 240 Neb. 567, 483 N.W.2d 128, 128-30 (1992); *Kupec v. State*, 835 P.2d 359,

*Bowen*²⁵ the court rejected an equal protection challenge to an SRA sentence and noted various factors that differentiate the sentencing of felons and non-felons. “The policy reasons for distinguishing between felony sentencing and sentencing for gross misdemeanors are apparent from the different treatment and consequences which flow from conviction.”²⁶

There are other significant distinctions between felony and non-felony sentencing besides those noted in *Bowen*. Rehabilitation is not the goal of sentencing under the SRA,²⁷ but it is one purpose of sentencing for non-felons.²⁸ Setting restitution is quite different under each system.²⁹ Only a defendant charged in a court of limited jurisdiction may petition for a deferred prosecution.³⁰ Perhaps most important, the SRA represents a

363-65 (Wyo. 1992); *Balderston v. State*, 93 Md.App. 364, 612 A.2d 335 (1992).

²⁵ 51 Wn. App. 42, 47, 751 P.2d 1226, *review denied*, 111 Wn.2d 1017 (1988).

²⁶ *Bowen*, 51 Wn. App. at 47.

²⁷ *State v. Barnes*, 117 Wn.2d 701, 711, 818 P.2d 1088 (1991).

²⁸ *See State v. Williams*, 97 Wn. App. 257, 262-63, 983 P.2d 687 (1999), *review denied*, 140 Wn.2d 1006 (2000).

²⁹ *See State v. Marks*, 95 Wn. App. 537, 977 P.2d 606 (1999) (SRA time limit for setting restitution does not apply to non-felony sentencing); *State v. Ring*, 134 Wn. App. 716, 720, 141 P.3d 669 (2006) (SRA requirement that court must consider the defendant’s ability to pay restitution does not apply to non-felonies).

³⁰ *State v. Hayes*, 37 Wn. App. 786, 788-89, 683 P.2d 237, *review denied*, 102 Wn.2d 1008 (1984).

significant limitation on judicial discretion and permits none of the sentencing flexibility available in courts of limited jurisdiction.³¹ While under the SRA a judge generally is limited to imposing a sentence within the standard sentence range,³² a judge sentencing a non-felon is not so restricted. As the Court of Appeals recently stated:

Our trial courts have great discretion in imposing sentences within the statutory limits for misdemeanors and gross misdemeanors. . . . While the Sentencing Reform Act of 1981(SRA) places substantial constraints on this historical discretion in felony sentencing, no similar legislation restricts the trial courts discretion in sentencing for misdemeanors or gross misdemeanors.³³

Felons and non-felons are not similarly situated, much less indistinguishable, for purposes of sentencing.

The cases addressing equal protections objections to sentencing decisions do not support petitioner's contentions. In *State v. Speaks*,³⁴ the Court of Appeals concluded that the constitution does not require that a

³¹ *Wahleithner v. Thompson*, 134 Wn. App. 931, 941, 143 P.3d 321 (2006).

³² RCW 9.94A.505(2)(a)(i).

³³ *State v. Anderson*, 151 Wn. App. 396, 402, 212 P.3d 591 (2009). Contrary to petitioner's suggestion, the Court of Appeals' decision in this case – that a court of limited jurisdiction has the discretion to give a defendant credit against his jail sentence for time on pretrial electronic home monitoring – is completely consistent with its decision in *Anderson* that such a court has the discretion to convert a mandatory minimum jail sentence to electronic home monitoring.

defendant be given credit against a felony jail sentence for time on electronic home monitoring prior to sentencing. The Supreme Court reversed this decision,³⁵ but solely based on the specific definitions of “confinement” and “partial confinement” in the SRA.

In the case before us, the Court of Appeals held that denial of credit for time served by an accused on home detention does not violate due process, equal protection or double jeopardy. As that court reasoned, home detention is more analogous to probation time than to jail time and therefore the constitution does not require that such detention be credited against the sentence ultimately imposed.

While the Court of Appeals conclusion that presentence home detention is not *constitutionally* mandated may well be correct, we deem it unnecessary to reach that issue in this case since state statutes resolve the question.³⁶

As the SRA does not apply to sentencing in courts of limited jurisdiction,³⁷ the definitions of “confinement” and “partial confinement” in that statute do not govern petitioner’s sentence. As the Court of Appeals determined, and the Supreme Court did not expressly reject,

³⁴ 63 Wn. App. 5, 816 P.2d 95 (1991), *reversed*, 119 Wn.2d 204 (1992).

³⁵ *State v. Speaks*, 119 Wn.2d 204, 829 P.2d 1096 (1992).

³⁶ *Speaks*, 119 Wn.2d at 207 (emphasis in original; footnote omitted).

³⁷ *Bremerton v. Bradshaw*, 121 Wn. App. 410, 413, 88 P.3d 438 (2004), *review denied*, 153 Wn.2d 1012 (2005).

electronic home monitoring before sentencing is not analogous to jail time for constitutional purposes.

*State v. Anderson*³⁸ involved a defendant who was on electronic home monitoring after being sentenced for a felony. The court concluded that the statutory term “imprisoned” did not encompass electronic home monitoring.³⁹ But, because the legislature had required that jail time credit be given to felons who serve pretrial electronic home detention, as recognized by *Speaks*, equal protection required the same credit to be granted to felons who serve electronic home detention after their conviction and pending their appeal.⁴⁰ *Anderson* does not support petitioner’s position as that case involved a felony sentence and the Legislature has not, under any circumstance, required a court of limited jurisdiction to give credit against a jail sentence for electronic home monitoring. Such courts have discretion to grant such credit, but are never required to do so. The Court of Appeals decision in this case reaffirming that discretionary authority does not conflict with *Anderson*.

³⁸ 132 Wn.2d 203, 937 P.2d 581 (1997).

³⁹ *Anderson*, 132 Wn.2d at 208.

⁴⁰ *Anderson*, 132 Wn.2d at 213.

In *State v. Vasquez*,⁴¹ the court rejected the defendant's argument that he was entitled to credit against his jail sentence for time he was on non-electronic home detention prior to conviction. As this was not "home detention" as defined in the SRA, the defendant had no right to credit for it against his jail sentence.⁴² The court did not suggest that the defendant had any constitutional right to such credit.

In *Bremerton v. Bradshaw*,⁴³ the court held that a DUI defendant who was on electronic home monitoring before sentencing was not entitled to credit for that time against his jail sentence. The DUI sentencing statute does not give the defendant such credit nor does any other statute support such a claim.⁴⁴ The court also rejected an equal protection claim as the defendant did not show that she had been treated differently from anyone else in the same class.⁴⁵

In addition, the purposes and function of pretrial electronic home monitoring demonstrate that it is not a type of punishment for which a defendant is entitled to credit against his jail sentence. Indeed, restrictions imposed as punishment cannot be imposed as pretrial conditions of

⁴¹ 75 Wn. App. 896, 881 P.2d 1058 (1994), *review denied*, 126 Wn.2d 1005 (1995).

⁴² *Vasquez*, 75 Wn. App. at 898.

⁴³ 121 Wn. App. at 413.

⁴⁴ *Bradshaw*, 121 Wn. App. at 413.

release.⁴⁶ The needs of the criminal justice system for assuring the presence of a defendant at trial justify treating a defendant detained pending trial differently from a defendant detained pursuant to a sentence with respect to credits against a sentence.⁴⁷ The Court of Appeals correctly rejected petitioner's equal protection argument.

3. The Court of Appeals correctly rejected petitioner's double jeopardy claim.

Although petitioner did not raise a double jeopardy claim in Application for Writ of Habeas Corpus⁴⁸ nor did the superior court decide such a claim,⁴⁹ the Court of Appeals nevertheless considered and rejected petitioner's argument.

For a sanction to violate double jeopardy it must be punishment,⁵⁰ which determination is made by examining any legislative indication of a punitive purpose and whether the sanction is so punitive as to be transformed into a criminal penalty.⁵¹

⁴⁵ *Bradshaw*, 121 Wn. App. at 413 n. 7.

⁴⁶ *Butler v. Kato*, 137 Wn. App. 515, 524-25. 154 P.3d 259 (2007).

⁴⁷ *In re Personal Restraint of Cromeenes*, 72 Wn. App. 353, 357-58, 864 P.2d 423 (1993).

⁴⁸ See CP at 1-16.

⁴⁹ See CP at 38-39.

⁵⁰ *In re Personal Restraint of Metcalf*, 92 Wn. App. 165, 177, 963 P.2d 911 (1998), *cert. denied*, 527 U.S. 1041 (1999).

⁵¹ *Metcalf*, 92 Wn. App. at 178.

The purpose of CrRLJ 3.2(b)(6) & (d)(9), which authorize electronic home monitoring prior to trial, is to assure the presence of the accused at future court hearings and prevent him from committing a violent offense, intimidating witnesses or interfering with the administration of justice. Conditions of pretrial release are not intended as punishment.⁵² A defendant on electronic home monitoring certainly might believe such a restriction is punitive, but whether a sanction constitutes punishment is not determined from the defendant's perspective.⁵³ Neither the purpose nor the effect of electronic home monitoring prior to trial is punitive.⁵⁴ The Court of Appeals correctly rejected petitioner's double jeopardy claim.

4. Petitioner has not established that this case involves a significant question of constitutional law or an issue of substantial public interest justifying review under RAP 13.4(b)(3) or (4).

Petitioner contends that review of the Court of Appeals decision is warranted under RAP 13.4(b)(3) and (4) because electronic home monitoring is increasingly used, the trial court's decision was a departure

⁵² *State v. Heslin*, 63 Wn.2d 957, 960, 389 P.2d 892 (1964) (bail).

⁵³ *State v. McClendon*, 131 Wn.2d 853, 866-67, 935 P.2d 1334, cert. denied, 522 U.S. 1027 (1997).

⁵⁴ See *State v. Jarman*, 140 N.C.App. 198, 535 S.E.2d 875, 879-82 (2000).

from the “common practice” and the Court of Appeals decision was the first published decision on this issue.

In Seattle Municipal Court, electronic home monitoring is used primarily where, as in petitioner’s situation, alcohol testing is desired. Electronic home monitoring is of limited utility where a defendant poses a risk of violence to the victim so the court relies on bail, a protection order, firearms restrictions and a phone block as conditions of pretrial release. Day reporting is the preferred condition of release for a defendant likely to fail to return to court. Petitioner’s factual contentions or assumptions regarding the use of electronic home monitoring appear to be unfounded. Equally unsupported is petitioner’s seeming suggestion that the trial court’s decision was an anomaly.

Again, electronic home monitoring usually is a condition of pretrial release where alcohol testing is called for. Such situations almost always involve a charge of DUI, which is governed by *Bradshaw*. The Court of Appeals recognized that its decision was little more than an application of *Bradshaw*.⁵⁵ Petitioner’s argument that for equal protection purposes he is similarly situated not to another misdemeanant sentenced in a court of limited jurisdiction as in *Bradshaw*, but to a felon sentenced under the

⁵⁵ See Slip opinion, at 10.

SRA, is just silly. Petitioner's outrage at having served 50 days of "dead time"⁵⁶ seems to have overlooked his responsibility for the trial court continuing sentencing for 60 days after he pled guilty.

Petitioner has not demonstrated that the unique factual setting of his case involves a significant constitutional issue or an issue of substantial public interest justifying review. The decision of Court of Appeals stands for the simple and unremarkable proposition that a court of limited jurisdiction has broad sentencing discretion. Petitioner may well have policy reasons why electronic home monitoring should be equated with jail for sentencing purposes, but such arguments should be directed to the legislature.⁵⁷

F. CONCLUSION

Based on the foregoing argument, this court should deny review of the Court of Appeals decision.

Respectfully submitted this 19th day of October, 2009.

Richard Greene

Richard Greene
Assistant City Attorney
WSBA #13496

⁵⁶ See Petition for Review, at 15.

⁵⁷ See *In re Personal Restraint of Knapp*, 102 Wn.2d 466, 471, 687 P.2d 1145 (1984) (credit for nonjail probation time is properly a matter for the Legislature).

MUNICIPAL COURT OF SEATTLE

DOCKET

r295002

Case Status: OPEN Jurisdiction EndDate: 08/16/2010

CITY OF SEATTLE, Plaintiff

** OPEN **

Vs.

HARRIS, JOSHUA , Defendant

Address: 17815 105TH PL SE #M201
RENTON, WA 98055
425 228/1909 (Home)

Case No: 513854
File Loc: REC
Def No: 78528
Incident No: 7429067
Custody: OUT
Rltd Grp No:
Co-Def's:

DOB: 09/15/1962 Age: 47 Sex: M Race: B Lang:

DOL: [REDACTED]

Sentencing Judge: CHARLES, EDSONYA

Prosecutor:

Defense Attorney: PERKINS, ABBEY

ACA 206 624/8105

Interpreter:

** Charges **

Chrg Doc No: 10559099 Type: BK Viol Date: 10/19/2007 Filing Date: 10/19/2007

Chrg 1: LICENSE, DRIVER, SUSP./REVOKED THIRD DEGREE
11.56.320(D) Plea: G Find: G Status: SS
Disposition: SUSPENDED SENTENCE

BAIL BAIL NOT FORFEITABLE SXP
Start:10/20/2007 Due:10/20/2007 End:
Amt:5,000 Susp: Curr:
Rmks:10/20/07 \$5000 BAIL - AND- EHMB. RELEASE TO BI ONLY

BAIL BAIL NOT FORFEITABLE NXB
Start:10/19/2007 Due:10/19/2007 End:10/20/2007 APPEARED IN COURT
Amt:500 Susp: Curr:

CRAS CRIMINAL TRAFFIC ASSESSMENT FEE SXP
Start:03/07/2008 Due:03/18/2008 End:
Amt:43 Susp: Curr:43 Time Pay: OTA

FINE PAY FINE SXP
Start:03/07/2008 Due:03/07/2008 End:
Amt:1,000 Susp:1,000 Curr:

JAIL COMPLY WITH JAIL SENTENCE SXP
Start:03/07/2008 Due:08/16/2010 End:
Jail:90 Susp: Unit:Days Cfts:N
Rmks:3/7/08: JUDGE RECOMMENDS WORK RELEASE, TO RUN
CONSECUTIVELY TO EACH COUNT AND CASE 409400

Chrg Doc No: 10559100 Type: BK Viol Date: 10/19/2007 Filing Date: 10/19/2007

Chrg 2: OPERATING MOTOR VEHICLE WITHOUT IGNITION INTERLOCK
11.56.350 Plea: G Find: G Status: SS
Disposition: SUSPENDED SENTENCE

BAIL BAIL NOT FORFEITABLE NXB
Start:10/19/2007 Due:10/19/2007 End:10/20/2007 APPEARED IN COURT
Amt:250 Susp: Curr:

FINE PAY FINE SXP
Start:03/07/2008 Due:03/18/2008 End:
Amt:1,000 Susp:800 Curr:200 Time Pay: OTA

JAIL COMPLY WITH JAIL SENTENCE SXP
Start:03/07/2008 Due:08/16/2010 End:
Jail:90 Susp:90 Unit:Days Cfts:N
Rmks:3/7/08: TO RUN CONSECUTIVELY TO EACH COUNT AND CASE
409400

Chrg 3: OPERATING MOTOR VEHICLE WITHOUT IGNITION INTERLOCK
11.56.350 Plea: Find: Status: NC
Disposition: NO COMPLAINT FILED

BAIL BAIL NOT FORFEITABLE CXT
Start:10/19/2007 Due:11/18/2007 End:10/20/2007 NO COMPLAINT FILED
Amt:500 Susp: Curr:

Other Case Obligations:

CCFE CRIMINAL CONVICTION FEE SXP
Start:03/07/2008 Due:03/18/2008 End:
Amt:43 Susp: Curr:43 Time Pay

CADD REPORT ADDR CHANGE TO COURT IN WRITING W/IN 24HR SXP
Start:03/07/2008 Due:08/16/2010 End:

EHMB ELECTRONIC HOME MONITORING WITH TEST EQUIPMENT TSD
Start:10/20/2007 Due:04/17/2008 End:11/05/2007 OBL CORRECTION
Rmks:10/20/07:EHMP WITH BAC, IN ADDITION TO BAIL
10/22/07:DEFENDANT ENROLLED

EHMP EHM PRIOR TO ADJUDICATION JMM
Start:10/22/2007 Due:04/20/2008 End:03/07/2008 OBLIGATION COMPLETED
Rmks:WITH BAC

NCLV NO CRIMINAL LAW VIOLATIONS SXP
Start:03/07/2008 Due:08/16/2010 End:

NVOI COMPLY NOT DRIVE W/OUT VALID LIC OR INSURANCE SXP
Start:03/07/2008 Due:08/16/2010 End:

OTHR OTHER OBLIGATION JMM
Start:10/20/2007 Due:04/17/2008 End:03/07/2008 OBLIGATION COMPLETED
Rmks:10/20/07 CONDS OF RELEASE: NCLV, NARO, NDRO, NO
DRIVING, ABST, DONT & EHMB

 ** Scheduled Hearings **

S	Date	Time	Ctrrm	Type	Tape	Judge	Prosecutor	Date	Clk
H	10/20/2007	10:05	KCJ2	ICA		EISENBERG, A	SALA, T	10/19/2007	TMO
H	11/05/2007	9:00	1101	IPTH		CHARLES, E	SANDERS, M	10/20/2007	NXB
H	01/07/2008	9:00	1101	PTH		CHARLES, E	DORN, S	11/05/2007	TSD
H	03/07/2008	9:00	1101	SENT		CHARLES, E	GRANT, J	01/07/2008	TSD
H	03/14/2008	9:00	1101	MOTION		CHARLES, E	GRANT, J	03/13/2008	TSD
H	04/08/2008	9:00	1101	SENT		CHARLES, E	GREENE, R	04/07/2008	TSD
C	04/09/2008	8:45	1101	J-REV				03/14/2008	TSD

 ** Events **

Date	Description	Clk
10/19/2007	DEFENDANT BOOKED.. BA# 207044915	TMO
10/19/2007	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 10/20/2007 AT 1005 IN COURTROOM KCJ2	TMO
10/19/2007	CHARGE # 3 115635000 (NO INTERLOCK) PENDING	TMO
10/20/2007	CHARGE # 3 115635000 (NO INTERLOCK) NO COMPLAINT FILED	CXT
10/20/2007	DF: HARRIS, JOSHUA (78528) PRESENT CLK; NDB DL; 12:41 ATTY; J. KVISTAD DEFENSE MOTION FOR RELEASE - DENIED CITY MOTION TO SET BAIL - GRANTED	NXB
10/20/2007	DEF SCREENED-CASE REFERRED TO ACA FOR ASSIGNMENT	NXB
10/20/2007	PROBABLE CAUSE FOUND BY COURT	NXB
10/20/2007	CHARGE # 1 11563200D (SUSP.OL.3RD) NOT GUILTY PLEA ENTERED	NXB
10/20/2007	CHARGE # 2 115635000 (NO INTERLOCK) NOT GUILTY PLEA ENTERED	NXB
10/20/2007	IN CUSTODY PRE-TRIAL HEARING SCHEDULED FOR 11/05/2007 AT 900 IN COURTROOM 1101	NXB
10/24/2007	UPDATE CIT# -SCAN. (CS EVENT)	EXR
10/26/2007	EHM ENROLLMENT REPORT/EHM STARTED 10/22/07	MXB
11/05/2007	DF: HARRIS, JOSHUA (78528) PRESENT DL:9:26 CLK:TD ATTY:K.LONGACRE	TSD
11/05/2007	CONTINUANCE REQUESTED BY DEFENSE-CONSULTATION/DOL RECORDS-GRANTED.	TSD
11/05/2007	SPEEDY TRIAL RULE WAIVER FILED NEW COMM DATE 1/3/08; NEW EXP DATE 4/3/08	TSD

11/05/2007 PRE-TRIAL HEARING SCHEDULED FOR 01/07/2008 AT 900 IN TSD
COURTROOM 1101

11/15/2007 NOTICE OF APPEARANCE FILED BY ACA ATTY ABBEY PERKINS AXR
WSBA 36998 FILED 10/25/07.

01/07/2008 DF: HARRIS, JOSHUA (78528) PRESENT TSD
DL:11:19 CLK:TD ATTY:K.LONGAKER
GUILTY PLEA ENTERED, STATEMENT OF DEF ON PLEA OF
GUILTY ATTACHED HERETO.

01/07/2008 JURY WAIVER FILED TSD

01/07/2008 BENCH TRIAL WAIVED TSD

01/07/2008 DEFENSE MOTION FOR DELAY OF SENTENCING (CITY DOES NOT TSD
OBJECT)-GRANTED. DEF TO REMAIN ON EHMP WITH BAC UNTIL
SENTENCING DATE

01/07/2008 PLEA CHANGED TO GUILTY CHARGE# 1 11563200D TSD
(SUSP.OL.3RD)

01/07/2008 CHARGE # 1 11563200D (SUSP.OL.3RD) GUILTY FINDING TSD
ENTERED

01/07/2008 CHARGE # 1 11563200D (SUSP.OL.3RD) FINDING ENTERED TSD

01/07/2008 PLEA CHANGED TO GUILTY CHARGE# 2 115635000 (NO TSD
INTERLOCK)

01/07/2008 CHARGE # 2 115635000 (NO INTERLOCK) GUILTY FINDING TSD
ENTERED

01/07/2008 CHARGE # 2 115635000 (NO INTERLOCK) FINDING ENTERED TSD

01/07/2008 SENTENCING SCHEDULED FOR 03/07/2008 AT 900 IN TSD
COURTROOM 1101

03/07/2008 DF: HARRIS, JOSHUA (78528) PRESENT JMM
CLERK:JMM, DL:9:59. DA: K. LONGAKER.

03/07/2008 CHARGE # 1 11563200D (SUSP.OL.3RD) SUSPENDED SENTENCE JMM

03/07/2008 CHARGE # 2 115635000 (NO INTERLOCK) SUSPENDED SENTENCE JMM

03/07/2008 JURISDICTION END DATE SET TO 03/06/2010 JMM

03/07/2008 SENTENCE IMPOSED JMM

03/07/2008 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE JMM

03/07/2008 JUDGE RECOMMENDS WORK RELEASE JMM
TO RUN CONSECUTIVELY TO EACH COUNT AND CASE 409400
COURT DECLINES TO GIVE DEF CFTS FOR EHM PRE AND POST

03/07/2008 ****BOND TO BE HELD UNTIL DEF REPORTS TO WORK RELEASE** JMM
(CS EVENT)

03/07/2008	DEFENDANT REPORTING TO JAIL- CHECK SCHEDULED FOR 04/09/2008 AT 845 IN COURTROOM 1101 **WORK RELEASE**	JMM
03/07/2008	EHM REPORT CITING TERMINATION; REMOVED FROM EHM: ON 03/07/08 MR. HARRIS COMPLETED HIS EHMP OBLIGATION. HE SERVED 140 DAYS.	TSD
03/07/2008	DATA SENT ELECTRONICALLY TO DOL ON CHARGE # 1	B
03/07/2008	DATA SENT ELECTRONICALLY TO DOL ON CHARGE # 2	B
03/12/2008	MOTION TO ADD ON RECEIVED FROM K. LONGAKER (MOTION TO STAY SENTENCING PENDING APPEAL) -FORWARDED TO JUDGE CHARLES FOR REVIEW MOTION TO ADD ON GRANTED	TSD
03/13/2008	DEFENDANT REPORTING TO JAIL- CHECK HRNG SCHDLD FOR 04/09/2008 AT 845 IN DEPT 1101, CANCELLED!	TSD
03/13/2008	MOTION HEARING SCHEDULED FOR 03/14/2008 AT 900 IN COURTROOM 1101	TSD
03/14/2008	DF: HARRIS, JOSHUA (78528) PRESENT DL:9:35 CLK:TD ATTY:K.LONGAKER DL:9:35 CLK:TD ATTY:K.LONGAKER DEF MOTION TO STAY JAIL SENTENCE PENDING APPEAL- GRANTED (ON CONDITON DEF POSTS \$5,000 APPEAL BOND)	TSD
03/14/2008	*COURT REVOKES AUTHORIZATION OF WORK RELEASE* (DEF IS NOT EMPLOYED)	TSD
03/14/2008	NOTICE OF APPEAL BOND FIXED AT \$5,000 BY JUDGE E. CHARLES *JAIL SENTENCE STAYED-ALL OTHER OBLIGATIONS STILL ACTIVE*	TSD
03/14/2008	ORDER ON CRIMINAL MOTION S/F: MR. HARRIS HAS UNTIL 9/28/08 TO MAKE A DOWN PAYMENT ON HIS FINANCIAL OBLIGATION. THEREAFTER, MR. HARRIS IS TO ARRANGE MONTHLY PAYMENTS WITH RRU.	TSD
03/14/2008	DEFENDANT REPORTING TO JAIL- CHECK SCHEDULED FOR 04/09/2008 AT 845 IN COURTROOM 1101	TSD
03/15/2008	FTA RTND FROM 1435 QUEEN AVE NE RENTON WA, 98056 W/ FORWARD ADDR. ADDR UPDTD. (CS EVENT)	JPN
03/21/2008	NOTICE OF APPEAL FILED ON 03/19/2008, SUPRCT CAUSE# 81037491	SXP
03/25/2008	TRANSCRIPT ISSUED	SXP
04/07/2008	MOTION TO ADD ON FOR RESENTENCING RECEIVED FROM K. LONGAKER - GRANTED	TSD

04/07/2008	DEFENDANT REPORTING TO JAIL- CHECK HRNG SCHDLD FOR 04/09/2008 AT 845 IN DEPT 1101, CANCELLED!	TSD
04/07/2008	SENTENCING SCHEDULED FOR 04/08/2008 AT 900 IN COURTROOM 1101	TSD
04/08/2008	DF: HARRIS, JOSHUA (78528) PRESENT DL:9:21 CLK:TD ATTY:K.LONGAKER ORDER ON CRIMINAL MOTION RECEIVED FROM KING COUNTY SUPERIOR COURT - PETITION IS GRANTED AND SEATTLE MUNICIPAL COURT SHALL CREDIT DEF 90 DAYS ON EHM...	TSD
04/08/2008	...DETENTION AGAINST HIS 90 DAY SENTENCE IN SMC NO. 513854 FOR DWLS 3.	TSD
04/08/2008	DEF WILL RECEIVED CFTS FOR 90 DAYS SPENT ON EHM TOWARDS 90 DAY JAIL SENTENCE IMPOSED ON 3/7/08. DEF MOTION TO RECEIVE 50 DAYS CFTS TO BE APPLIED TOWARD COUNT 2 (DEF SERVED 140 DAYS ON EHM) - DENIED AT THIS TIME.	TSD
04/08/2008	BOND EXONERATED	TSD
04/08/2008	RENTON CITY JAIL COMMITMENT SCHEDULED 4/8/08	BJK
05/01/2008	BOND RETURNED TO SURETY	RMS
05/16/2008	NOTICE OF WITHDRAWAL FILED 043008 ACA KIRSTEN K LONGAKE R (CS EVENT)	ADS
07/17/2008	RENTON CITY JAIL RELEASE 7/17/08	BJK
08/29/2008	REMANDED BY SUPERIOR COURT; SEE ORDER AND COST SHEET.	SXP
09/05/2008	REMANDED BY SUPERIOR COURT ON 08/29/2008; CONVICTION (JUDGMENT) AFFIRMED; SENTENCE NOT STAYED; NO JUDICIAL ACTION REQUIRED, APPEAL DISMISSED AS MOOT PREVIOUS ORDER;PER JUDGE RIETSCHEL.	SXP
11/29/2008	TIME PAY OFFICE ALLEGES FAILURE TO PAY FINE	B
12/01/2008	REVOCATION HRNG (Time Pay) CANCELLED, PAYMENTS CURRENT	KLC
12/30/2008	TIME PAY OFFICE ALLEGES FAILURE TO PAY FINE	B

 ** Accounting Summary **

Post	Bail						
Date :	Amount:	Type:	Paid:	Method:	Status:	DC:	Posted By
10/20/2007	5000.00	BAIL	5000.00	BO	E		ALLCITY BAIL BOND

Chg :	Obl :	Orig Obl :	Obl :	TP :
Sq# :	Type :	Amount :	Bal Due :	Status :
1	CRAS	43.00	43.00	OTA
2	FINE	1000.00	200.00	OTA

.CCFE 43.00 43.00 OTA

** Total due on this case: 286.00 **