No. 85938-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, ex rel. Mark K. Roe

Respondent,

v.

SNOHOMISH COUNTY DISTRICT COURT, EVERGREEN DIVISION
The Hon. Terry Simon, Judge pro tem., and

ALYSHA V. VELASQUEZ,

Petitioner.

ANSWER TO STATEMENT OF GROUNDS FOR DIRECT REVIEW

MARK K. ROE
Prosecuting Attorney

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2011 MAY 27 AM 8:05

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that direct and discretionary review be denied because the Snohomish County Superior Court correctly found on writ of review that the statutory deferred prosecution alternative under RCW 10.05 does not authorize the payment of substance-abuse treatment out of public funds.

II. DECISION

Petitioner Velasquez seeks direct review of the decision of the Snohomish County Superior Court on writ of review in that Court's cause no. 11-2-03307-2. Appendix J. That decision reversed an order of the Snohomish County District Court ordering the disbursement of public funds for substance-abuse treatment as part of a deferred prosecution under RCW 10.05.

III. ISSUES PRESENTED FOR REVIEW

1. When the Legislature uses two different terms in the same statute, courts presume it intended the terms to have different meanings. The language of RCW 10.05.130 distinguishes between "treatment plan," for which it authorizes payment out of "fines and forfeitures of the court," and "treatment program," for which it does not. The Superior Court accordingly concluded the terms had

different meanings. Does its holding implicate a "fundamental and urgent issue" meriting direct review?

2. When interpreting plain language, courts may properly consider the statutory scheme in which it was enacted. The Superior Court reviewed the deferred prosecution statutory scheme at RCW 10.05 to conclude that "treatment plan," for which payment is authorized, meant simply the written outline of planned treatment that must be submitted to the trial court, not the course or program of treatment itself. This holding was consistent with past practice. Is direct review warranted?

3. When enacted in 1975, RCW 10.05.130 contemplated payments coming from the "justice court suspense fund" at RCW 3.62. This fund was eliminated in 1984. Is further review of the Superior Court's ruling warranted, given that a governmental entity cannot disburse unappropriated funds?

IV. WHY REVIEW SHOULD BE DENIED

The Court should deny review under RAP 2.3(b) because no factor listed therein is implicated. The Court should deny direct review under RAP 4.2(a)(4) because a Superior Court's correct interpretation of a statute's plain language, in accordance with well-established principles of statutory construction and consistent with

past practice, does not present "a case involving a fundamental and urgent issue of broad public import." See RAP 4.2(a)(4).

V. STATEMENT OF THE CASE

A. PROCEEDINGS IN THE TRIAL COURT.

The petitioner was charged on November 9, 2010, with DUI and reckless driving out of Evergreen Division of Snohomish County District Court. See docket, attached as Appendix I-1 and I-2. She petitioned for deferred prosecution. Her appointed counsel also asked the court to authorize disbursing public funds for deferred prosecution substance-abuse treatment under RCW 10.05.130. Terry Simon, judge pro tem., found the defendant indigent and by order of January 26, 2011, authorized payment not only for investigation, evaluation and the treatment plan, but also for the full course or program of treatment. See docket. This mirrored an earlier order in a different case from Cascade Division, purportedly authorizing the same. See Appendix A.

B. PRIOR PRACTICE IN THE LIMITED-JURISDICTION COURTS.

In materials submitted to the Superior Court on writ of review, the probation departments in all of the Snohomish County District Court's four divisions indicated no judge had ever, in their collective memory, ordered deferred prosecution treatment be paid

for out of public funds before this case. Appendix B. Prosecutors practicing in the district courts in Skagit, Whatcom, and King Counties, and in the municipal courts for Kent and Bellingham, reported the same. Appendices C and E. The request was made once in Seattle Municipal Court, and was denied. Appendix C. Bellingham Municipal Court has, in the past approved public funds to pay for the evaluation. Id. The former head of DSHS's Division of Alcohol and Substance Abuse, Ken Stark, indicated that in his experience defendants on deferred prosecution typically had 90% of treatment covered by insurance. He had never seen treatment covered by public funds. Appendix D.

C. FUNDING OF SNOHOMISH COUNTY DISTRICT COURT.

1. Currently Out Of The County's General Fund.

As indicated in materials before the Superior Court on writ of review, the Divisions of the Snohomish County District Court are funded out of the General Fund, which in turn comes from such sources as sales taxes and property taxes. The General Fund is especially vulnerable both to citizens' initiatives and to declines in tax revenues. As a result, there have been significant reductions in the number of Snohomish County employees. Appendix F.

Revenues (including fees and fines) that the district courts take in are paid back into the County's General Fund. A portion of those revenues is forwarded to the State, while the rest funds county government, including the courts. RCW 3.62.020; Appendices F, G. While the district court actually brings in more than the cost to operate it, this does not figure in the costs of law enforcement personnel, who file the infractions that account for much of the district court's revenue. Appendices F, G. Both the Senior Legislative Analyst for the Snohomish County Council and the Director of the District Court indicated there is no line item in the budget for deferred-prosecution treatment, and neither had any idea where that money would come from. Id.

2. Out Of "Justice Court Suspense Fund" Prior To 1984.

Legislative history materials submitted to the Superior Court by petitioner Hutchison included a letter of May 12, 1975 by Ronald Hendry, the then Executive Secretary of the Washington Association of Prosecuting Attorneys. Appendix H. Mr. Hendry explained paying for treatment out of "fines and forfeitures" would "work satisfactorily in the District Court, because, under the provisions of RCW Chapter 3.62, all fees, fines, forfeitures and penalties assessed by District Courts are paid into the justice court

suspense fund," and costs of treatment could be paid out of that fund. Id. Such a payment scheme would not work in Superior Court because, since "there is no suspense fund . . . similar to that for the District Court," there would be "no present vehicle in the law which would allow for implementation . . . as presently drafted." Id. The end result was that deferred prosecutions were expressly limited to district and municipal courts. RCW 10.05.010. This was not how the bill was originally drafted. Compare Pet'r's Appendix 7, sec. 1 (senate bill as originally drafted) with RCW 10.05.010, LAWS 1975 1st ex.s. c. 244 §1 (bill as enacted).

The "justice court suspense fund" was eliminated in 1984. LAWS 1984, Ch. 258, §§ 306, 308 (amending RCW 3.62.020 and RCW 3.62.050).

D. PROCEEDINGS IN THE SUPERIOR COURT ON WRIT OF REVIEW.

The State sought review in the Superior Court by writ of certiorari of the lower court's disbursement order. The Superior Court granted the writ and then considered the merits. After full briefing and argument it held that the plain language of the deferred prosecution statute did not authorize payment of the full course of treatment at public expense. See decision and order of March 25,

2011, attached as Appendix J. Defendant, petitioner here, now seeks discretionary review of that order by this Court. Because the superior court's ruling was correct, no factors at RAP 2.3(b) and 4.2(a) are implicated and review should be denied.

VI. ARGUMENT

The plain language of the deferred prosecution statutes does not authorize the payment of treatment at taxpayer expense. Moreover, authorizing such payment is foreclosed as an unfunded mandate.

A. THE SUPERIOR COURT CORRECTLY FOUND THAT RCW 10.05.130 DOES NOT AUTHORIZE SUBSTANCE-ABUSE TREATMENT AT PUBLIC EXPENSE.

1. Deferred Prosecution Generally.

Deferred prosecution under RCW 10.05 is designed to encourage treatment of admittedly culpable persons whose wrongful conduct is caused by a treatable condition, such as (typically) alcoholism. City of Richland v. Michel, 89 Wn. App. 764, 768, 950 P.2d 10 (1998). The petitioner stipulates to the admissibility and sufficiency of facts in the police reports, waives all defenses, and acknowledges that the statement and reports will be entered and used to support a finding of guilt if the deferred

prosecution is revoked. RCW 10.05.020(3); State v. Shattuck, 55 Wn. App. 131, 133, 776 P.2d 1001 (1989).

As part of the petition for deferred prosecution, an approved treatment facility, proposed by the defendant, must find him or her amenable to treatment and must provide the court with a written report and "treatment plan." RCW 10.05.050; State v. Bays, 90 Wn. App. 731, 954 P.2d 301 (1998). The trial court examines the treatment plan and approves or rejects the petition. RCW 10.05.060. If deferred prosecution is granted, the case is removed from the regular criminal docket, and the petitioner participates in a two-year alcohol- or drug treatment program and complies with other conditions. RCW 10.05.060, 10.05.150; Alwood v. Aukeen Dist. Court, 94 Wn. App. 396, 401, 973 P.2d 12 (1999). If treatment is successful, the charge is dismissed and the defendant avoids conviction altogether. Michel, 89 Wn. App. at 769. On the other hand, if the petitioner reoffends or fails to comply with the treatment regimen, the trial court enters judgment based on the stipulated police reports. RCW 10.05.090; Alwood, 94 Wn. App. at 401.

2. RCW 10.05.130 Does Not Authorize Payment For A Full Two-Year Course Of Treatment.

RCW 10.05.130 provides:

> Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.

At issue is the phrase "treatment plan." If it means simply the proposed plan of treatment – as a common-sense reading of the term indicates – then the cost is relatively modest. If, on the other hand, it meant what the trial court said it meant – covering the entire two-year program of treatment – the cost is considerably more.

"In judicial interpretation of statutes, the first rule is 'the court should assume the legislature means exactly what it says. Plain words do not require construction.'" City of Kent v. Jenkins, 99 Wn. App. 287, 290, 992 P.2d 1045 (2000) (context of deferred prosecution statute). When a statute is clear and unambiguous, a reviewing court may not engage in statutory construction or even consider the rule of lenity. State v. Hahn, 83 Wn. App. 825, 834, 924 P.2d 392 (1996), review denied, 131 Wn.2d 1020 (1997). A statute is not rendered ambiguous merely because different interpretations are conceivable. Hahn, 83 Wn. App. at 831; State v. Sunish, 76 Wn. App. 202, 206, 884 P.2d 1 (1994).

The phrase "treatment plan" seems clear enough – the plan or outline for a course of treatment. No further construction is needed. Courts do not construe an unambiguous statute because plain words do not require construction. Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999).

Undefined statutory terms are given their usual and ordinary meaning. Hahn, 83 Wn. App. at 832. When a term is not defined in the statute, courts may look to the ordinary dictionary meaning. Sunish, 76 Wn. App. at 206; State v. Friend, 59 Wn. App. 365, 366-67, 797 P. 2d 539 (1990) (deferred prosecution context). "Plan" is defined as a "method or scheme of action, procedure, or arrangement; project, program, outline or schedule." Webster's Collegiate Dictionary at 758 (5th ed., 1941). It is "a method of achieving something: a way of carrying out a design," "a method of doing something: procedure," or "a proposed undertaking or goal." Webster's Third New Int'l Dictionary at 1729 (2002). It is, simply put, the outline of what is to be done, not the doing itself.

Furthermore, statutes are to be construed as a whole and their individual sections harmonized. State v. Williams, 62 Wn. App. 336, 338, 813 P.2d 1293 (1991); State v. Postema, 46 Wn. App. 512, 515, 731 P.2d 13, review denied, 108 Wn.2d 1014

(1987). Related statutory provisions must be harmonized to effectuate a consistent statutory scheme that maintains the integrity of the respective statutes. State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282, cert. denied, 531 U.S. 984 (2000). Statutes relating to the same subject matter will be read as complimentary. State v. Wright, 84 Wn.2d 645, 650, 529 P.2d 453 (1974). Thus, in ascertaining what "treatment plan" at RCW 10.05.130 means, the court must also look to RCW 10.05.050 and -.060. The latter two provisions discuss "treatment plan" as a document the facility must draft and the trial court must review. Thus, the language at RCW 10.05.130 must be read together with that of RCW 10.05.050 and 10.05.060. This is the analysis the Superior Court engaged in.

A review of the related provisions of RCW 10.05 confirm (and convinced the superior court) that payment of the two-year course or program of treatment at public expense is not authorized, either by RCW 10.05.130 or the overall the deferred-prosecution statutory scheme.

A deferred prosecution petition must include a case history and written assessment prepared by an approved alcoholism treatment facility. RCW 10.05.020(2). The facility must perform an investigation and examination to determine if the individual suffers

from the condition prescribed and is amenable to treatment. RCW 10.05.040. After conducting the examination contemplated in RCW 10.05.040, the facility then makes a written report to the court with its findings and recommendations. RCW 10.05.050(1).

If the treating facility's findings and recommendations support treatment, the facility "shall also recommend a treatment or service plan setting out: (a) The type; (b) Nature; (c) Length; (d) A treatment or service time schedule; and (e) Approximate cost of the treatment[.]" RCW 10.05.050(1).

> If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be filed with the court.

RCW 10.05.060. A reading of RCW 10.05.050 and -.060 confirms that the "treatment plan" is an actual document, prepared by the treatment facility, examined by the trial court, and filed as a court record. It is not the full two-year course or program of treatment.

Moreover, the very statute in question makes the distinction between "plan" and "program." RCW 10.05.130 provides for the payment of an "investigation, examination, report and treatment

plan for any indigent person who is unable to pay the cost of any *program* of treatment" (emphasis added). When the legislature uses two different terms in the same statute, courts presume that it intended the terms to have different meanings. Densley v. Dep't of Retirement Sys., 162 Wn .2d 210, 219, 173 P.3d 885 (2007). The Superior Court, in reviewing the question, so concluded. Its following such a well established principle hardly presents a "fundamental and urgent issue of broad public import" meriting further review. See RAP 4.2(a)(4).

The distinction between "plan" and "program" in RCW 10.05.130 itself; the straightforward dictionary definitions for "plan;" and the usage of the term "plan" elsewhere in RCW 10.05.050 and 10.05.060 all lead to the conclusion that "treatment plan" means the outline, plan, or schedule of treatment – the procedure for reaching a goal – as presented to the district court. It does not mean the two-year course of treatment itself. The Superior Court was correct when it so found. A correct ruling, using well-established principles of statutory construction, does not present an issue for further review.

B. EVEN IF RCW 10.05.130 AUTHORIZED PAYMENT OF TREATMENT AT PUBLIC EXPENSE, DISBURSEMENT IS FORECLOSED BECAUSE THERE IS NO LONGER A FUNDING MECHANISM.

The Washington Constitution forbids money be paid out of the State treasury, or any funds under its management, except those appropriated by law. WASH. CONST. Art. 8, § 4; State v. Perala, 132 Wn. App. 98, 115, 130 P.3d 852 (2006). This constitutional limitation applies to counties. Moore v. Snohomish County, 112 Wn.2d 915, 920, 774 P.2d 1218 (1989). Where a statute does not specifically authorize or obligate the county to pay, payment is prohibited. Id. at 921. The purpose of this constitutional prohibition is to prevent the expenditure of public funds without legislative direction and without the sanction of a legislative body. Mason-Walsh-Atkinson-Kier Co. v. Dep't of Labor & Indus., 5 Wn.2d 508, 513-14, 105 P.2d 832 (1940).

Even if RCW 10.05.130 had originally authorized payment of the full course of deferred-prosecution treatment out of public funds, as petitioner argues from the legislative history, the Legislature removed that funding mechanism when it amended RCW 3.62.020 and 3.62.050 to eliminate the justice court suspense fund. Because the money is no longer appropriated, it cannot be

spent. WASH. CONST. Art. 8, § 4. While the trial court considered, but did not base, its ruling on this principle, its ruling is consistent therewith. Further review is not warranted.

VII. CONCLUSION

Direct review and discretionary review should be denied.

Respectfully submitted on May 24, 2011.

MARK K. ROE
Snohomish County Prosecutor

by: _____
CHARLES FRANKLIN BLACKMAN, #19354
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH, CASCADE DIVISION

STATE OF WASHINGTON, Plaintiff, v HUTCHISON, DOUGLAS P., Defendant.	NO. 596A-10D WSP **REVISED ORDER**

ORDER

THIS MATTER having come on regularly before this Court on the motion of the defendant, and Court having examined the records and files herein, and having heard the arguments of counsel, and the court having found that the defendant herein is an indigent person, NOW THEREFORE;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that verified bills submitted by a court approved alcohol or drug treatment agency for purposes of investigation, examination, report and treatment plan for Mr. Hutchison's deferred prosecution, shall be paid out of fines and forfeitures of the court pursuant to RCW 10.05.130.

SNOHOMISH COUNTY PUBLIC DEFENDERS
1721 HEWITT AVENUE, SUITE 200
EVERETT, WASHINGTON 98201
(425) 339-6300

APPENDIX A

DONE IN OPEN COURT this 13 day of 9, 2010.

~~JUDGE~~ Comm.

Presented by:

SHERYL PEWITT - WSBA # 41327

Attorney for Defendant

SNOHOMISH COUNTY PUBLIC DEFENDERS
1721 HEWITT AVENUE, SUITE 200
EVERETT, WASHINGTON 98201
(425) 339-6300

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, CASCADE DIVISION, The Hon. Paul Moon, Commissioner, Respondent, DOUGLAS P. HUTCHISON, Defendant.	No. 10-2-08562-7 Cascade. Dist. Ct. #596A-10D AFFIDAVIT OF COUNSEL

The undersigned certifies (or declares) that I am a duly appointed deputy prosecuting attorney for Snohomish County, Washington, and make this affidavit in that capacity; that I am the assigned attorney representing petitioner in this petition for writ to review the ruling of the Hon. Paul Moon, Commissioner, that a two year course of substance-abuse treatment for defendant Hutchison's deferred prosecution shall be paid out of the fines and forfeiture of the district court; and that I spoke on October 29, 2010, with the following named individuals in the probation offices of the divisions of Snohomish County District Court, and ascertained the following:

1. **Chris Sanderson, probation clerk, South Division**, (425) 744-6816, indicated that typically, if a person cannot afford treatment, the judge denies the petition. The court looks at the person's overall financial situation, including what other fines the individual has outstanding. She stated that paying for the full course of treatment out of the court's public funds would "never happen in this court." She has been a probation clerk for two years.

APPENDIX B

2. **Ken Kolrud, probation officer, Evergreen Division**, ext. 6780, stated this was the first he'd ever heard of RCW 10.05.130. He has been a probation officer in district court for 11 years. In Evergreen, 90% of the individuals on deferred prosecution are either insured or self-pay. In Kolrud's experience, if a person seeking deferred prosecution is indigent, they are referred to DSHS for ADATSA funding. He added ADATSA funding is hard to get. He has also seen, in the rare case, a church group or Volunteers of America pay for treatment. But he has not seen the court pay for treatment out of public funds.

3. **Linda Upchurch, probation clerk, Everett Division**, ext. 3497, had never heard of the court funding the full course of treatment. Indigent defendants are referred to ADATSA. She checked and confirmed this with a probation officer, Rick Silcox. None of the Everett judges to her knowledge has ever used county funds to pay for treatment. She has been a probation clerk for two years.

4. **Belinda Galde, probation officer, Cascade Division**, (360) 435-7720, stated she had never seen treatment paid for through the court before this current matter. She has been there for 21 years. It has never been done before. She thought that the Commissioner had never had it brought before him, either. In the past, indigent defendants had sought ADATSA funding, or a sliding-scale arrangement with the treatment facility. She understands the matter is "on hold" pending the outcome of this litigation.

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the foregoing is a true and correct recitation of his conversations with Chris Sanderson, Ken Kolrud, Linda Upchurch, and Belinda Galde. (The undersigned has no personal knowledge of the substance of the recitation.)

CHARLES F. BLACKMAN #19354
Deputy Prosecuting Attorney

Signed this 29th day of October, 2010, at the Snohomish County Prosecuting Attorney's Office, Everett, Washington.

-----Original Message-----
From: Russell Brown [mailto:rbrown@co.skagit.wa.us]
Sent: Friday, October 29, 2010 1:54 PM
To: Blackman, Charlie
Cc: Sloan G. Johnson; Melissa Walker Sullivan
Subject: RE: public funding of deferred prosecutions

Hi Charlie,

I don't believe that has ever been approved in Skagit Co. District Court.

Russell Brown
Skagit County Deputy Prosecutor
(360) 336-9460
rbrown@co.skagit.wa.us

"Warren Page" <WPage@co.whatcom.wa.us> 11/1/2010 7:23 AM >>>

That has not yet happened in Whatcom County.

Warren J. Page
Assistant Chief Criminal Deputy
Whatcom County Prosecuting Attorney's Office
phone (360) 676-6784 fax (360) 738-2532

From: SBrady@cob.org [mailto:SBrady@cob.org]
Sent: Friday, October 29, 2010 1:43 PM
To: Pam Loginsky
Cc: Blackman, Charlie
Subject: Re: public funding of deferred prosecutions

Bellingham Muni judges allow for funds for an evaluation but not treatment.

Shane Brady
Asst. City Attorney
City of Bellingham
(360) 778-8290

APPENDIX C

Blackman, Charlie

From: Greene, Richard [Richard.Greene@seattle.gov]
Sent: Monday, November 01, 2010 1:24 PM
To: Blackman, Charlie
Subject: RE: public funding of deferred prosecutions?

Charlie, I am not aware that Seattle Municipal Court has ever paid for a deferred prosecution program. I seem to recall that one case where a public defender asked the court to pay for the treatment program, but the court denied the request. I've checked around the office and nobody else remembers a defendant ever asking for the court to pay for treatment.

-----Original Message-----
From: Blackman, Charlie [mailto:cblackman@co.snohomish.wa.us]
Sent: Monday, November 01, 2010 8:55 AM
To: Greene, Richard
Subject: FW: public funding of deferred prosecutions?

Hi Richard. See my e-mail below. Can I trouble you to inquire of a colleague what the practice is in Seattle Muni? This is nuts, public funding of deferred-prosecution treatment during this recession, so I am trying to beat this back with a writ, under, I guess, the new Holifield standards. Seattle Muni's a big player, so I wonder what's ever happened there. I'd be grateful for any info.

Charlie Blackman

-----Original Message-----
From: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]
Sent: Friday, October 29, 2010 12:54 PM
To:
Subject: Re: public funding of deferred prosecutions

[forwarding message below]

Pam Loginsky

>>>>>> "Blackman, Charlie" <cblackman@co.snohomish.wa.us> 10/29/2010 12:19 PM >>>>>>

Hi Pam. I have a question for the District Court universe.

RCW 10.05.130 says "Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment."

A district court commissioner has interpreted "treatment plan" to mean "treatment" and ordered the expenditure of public funds (some $4K) for treatment. We are seeking a writ. Under the new Holifield standard, to get a writ I have to show "obvious error," "probable error," or that the court "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review."

I'm trying to establish that last prong. It would be helpful to know (as I suspect) that no other jurisdiction has done this. So can we throw this out to the district & muni court folks and ask them?

Charlie Blackman
Deputy Prosecuting Attorney, Criminal Division, Appeals Unit
Snohomish County Prosecutor's Office
3000 Rockefeller, M/S 504, Everett, WA 98201
425-388-3689 (Fax 425-388-7172)

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Blackman, Charlie

From: Walker, Michele [MWalker@ci.kent.wa.us]
Sent: Friday, October 29, 2010 1:07 PM
To: Blackman, Charlie
Subject: Public Funding of DP

My court has never done this. I don't think that a defendant has ever even made such a request.

Michele D. Walker, *Prosecuting Attorney*
Criminal Division | Law Department
220 Fourth Avenue South, Kent, WA 98032
Office **253-856-5770** | Fax **253-856-6770**
www.ci.kent.wa.us

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, CASCADE DIVISION, The Hon. Paul Moon, Commissioner, Respondent, DOUGLAS P. HUTCHISON, Defendant.	No. 10-2-08562-7 Cascade. Dist. Ct. #596A-10D AFFIDAVIT OF COUNSEL

The undersigned certifies (or declares) that I am a duly appointed deputy prosecuting attorney for Snohomish County, Washington, and make this affidavit in that capacity; that I am the assigned attorney representing petitioner in this petition for writ to review the ruling of the Hon. Paul Moon, Commissioner, that a two year course of substance-abuse treatment for defendant Hutchison's deferred prosecution shall be paid out of the fines and forfeiture of the district court; and that I spoke on November 1, 2010, with Ken Stark, former head of DSHS/DASA, and ascertained the following:

Ken Stark, (425) 388-7204, is currently the Director of Human Services for Snohomish County. For 17-1/2 years he was the director of DASA (Division of Alcohol and Substance Abuse) in the Washington State Department of Social and Health Services, from 1988 to 2005. DASA maintains standards for and regulates alcohol-treatment programs, including those for deferred prosecution.

Deferred prosecutions always had a two-year course of treatment. This was not so much based on treatment need as it was to build in some level of

APPENDIX D

supervision to make the public and the court system more comfortable with the concept. Deferred prosecution has therefore always been a two-year model, not a six-month model.

Deferred prosecution treatment is structured in three phases. The first is an initial intensive outpatient phase of 5-6 hours/week for 12 – 20 weeks, depending on the program. Then the client would drop to phase II, meeting once a week, for another 12 weeks. Finally, there is phase III, 18 months of meeting once a month for relapse prevention.

Stark was involved and familiar with several studies that showed deferred prosecution was effective.

As for who pays for this, Stark stated that in his experience, 90% of deferred prosecutions were covered by insurance. Even if a client were eligible for ADATSA, he or she would still have had to figure out how to pay for phase II and III. As a result, there were very few public clients. The public funds only what is clinically necessary (i.e., six months of treatment). Even private sector insurance doesn't always pay for phase II and III.

Stark did not recall ever seeing courts pay even for assessments. He certainly never saw courts pay for actual treatment out of their "fines and forfeitures."

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the foregoing is a true and correct recitation of his conversation with Ken Stark. (The undersigned has no personal knowledge of the substance of the recitation.)

CHARLES F. BLACKMAN #19354
Deputy Prosecuting Attorney

Signed this 1st day of November, 2010, at the Snohomish County Prosecuting Attorney's Office, Everett, Washington.

FILED
2010 NOV 10 AM 11:35
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, CASCADE DIVISION The Hon. Paul F. Moon, Comm'r, Respondent, DOUGLAS P. HUTCHISON, Defendant.	No. 10-2-08562-7 Cascade Dist. Ct. # 596A-10D ADDITIONAL FACTUAL STATEMENT (APPENDIX E)

Petitioner State of Washington submits the following additional factual statement as Appendix E (responses from or concerning King County District court and Bellevue Municipal Court).

RESPECTFULLY SUBMITTED this 10th day of November, 2010.

MARK K. ROE,
Snohomish County Prosecutor

By: _____
CHARLES F. BLACKMAN, #19354
Deputy Prosecuting Attorney
Attorney for Petitioner

APPENDIX E

15

Blackman, Charlie King County District Court

From: Nave, Margaret [Margaret.Nave@kingcounty.gov]
Sent: Friday, November 05, 2010 1:55 PM
To: Blackman, Charlie
Subject: FW: Public funds for treatment`

Charlie, here is what my court contact said. She is a thirty year court manager who know a ton, so if anyone would know, she would.

From: Grindle, Cathy
Sent: Tuesday, November 02, 2010 4:30 PM
To: Nave, Margaret
Subject: Public funds for treatment`

Maggie:

I can't think of a deferred prosecution where public funds paid for the treatment program. I can surmise that in the case where someone is in custody waiting for a bed somewhere, that bed may be funded by public funds.

cg

APPENDIX E

Blackman, Charlie

From: Nave, Margaret [Margaret.Nave@kingcounty.gov]
Sent: Tuesday, November 02, 2010 9:02 AM
To: Blackman, Charlie
Subject: RE: public funding of deferred prosecutions

Charlie, sorry for the delay in responding, this must have slipped under the line.

As far as I know, and I hope I would, no district court judge up here as ordered public funds for payment of actual treatment. Yikes. Sorry I cannot be specific and sorry this info is so late. The judges here only order public funds for obtaining the treatment plan. The treatment program itself is not paid for. I have a call in to a long time court manager who can tell me if this is ever ordered, I will let you know if I find out something different.

-----Original Message-----
From: Blackman, Charlie [mailto:cblackman@co.snohomish.wa.us]
Sent: Friday, October 29, 2010 4:05 PM
To: Nave, Margaret
Subject: FW: public funding of deferred prosecutions

Maggie, what say your people? I need more input

-----Original Message-----
From: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]
Sent: Friday, October 29, 2010 12:54 PM
To:
Subject: Re: public funding of deferred prosecutions

Pam Loginsky
Staff Attorney
Washington Association of Prosecuting Attorneys
206 10th Ave. SE
Olympia, WA 98501

Phone (360) 753-2175
Fax (360) 753-3943

E-mail pamloginsky@waprosecutors.org

>>> "Blackman, Charlie" <cblackman@co.snohomish.wa.us> 10/29/2010 12:19
>>> PM >>>

Hi Pam. I have a question for the District Court universe.

RCW 10.05.130 says "Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment."

A district court commissioner has interpreted "treatment plan" to mean "treatment" and ordered the expenditure of public funds (some $4K) for treatment. We are seeking a writ. Under the new Holifield standard, to get a writ I have to show "obvious error," "probable

error," or that the court "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review."

I'm trying to establish that last prong. It would be helpful to know (as I suspect) that no other jurisdiction has done this. So can we throw this out to the district & muni court folks and ask them?

Charlie Blackman
Deputy Prosecuting Attorney, Criminal Division, Appeals Unit Snohomish County Prosecutor's Office
3000 Rockefeller, M/S 504, Everett, WA 98201
425-388-3689 (Fax 425-388-7172)

Confidentiality Statement This message may contain information that is protected by the attorney-client privilege. If this message was sent to you in error, any use, disclosure or distribution of it's contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

Blackman, Charlie

From: SIrwin@bellevuewa.gov
Sent: Monday, November 08, 2010 9:10 AM Bellevue Muni
To: Blackman, Charlie
Subject: RE: public funding of deferred prosecutions?

Charlie: As I recall, we had one occasion, years ago, when a court said the City had to pay for a def's DP. Needless to say, we didn't have money in our budget for it - we pointed toward ADATSA or one of the public funded programs. I can't recall the ultimate outcome, but I'm fairly certain we didn't fund the DP.

Sorry I can't be more helpful. My memory fades more quickly these days.

>>>>>> "Blackman, Charlie" <cblackman@co.snohomish.wa.us> 10/29/2010 12:19 PM >>>>>>

Hi Pam. I have a question for the District Court universe.

RCW 10.05.130 says "Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment."

A district court commissioner has interpreted "treatment plan" to mean "treatment" and ordered the expenditure of public funds (some $4K) for treatment. We are seeking a writ. Under the new Holifield standard, to get a writ I have to show "obvious error," "probable error," or that the court "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review."

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, CASCADE DIVISION, The Hon. Paul Moon, Commissioner, Respondent, DOUGLAS P. HUTCHISON, Defendant.	No. 10-2-08562-7 Cascade. Dist. Ct. #596A-10D AFFIDAVIT OF COUNSEL

The undersigned certifies (or declares) that I am a duly appointed deputy prosecuting attorney for Snohomish County, Washington, and make this affidavit in that capacity; that I am the assigned attorney representing petitioner in this petition for writ to review the ruling of the Hon. Paul Moon, Commissioner, that a two year course of substance-abuse treatment for defendant Hutchison's deferred prosecution shall be paid out of the fines and forfeiture of the district court; and that I spoke on January 20, 2010, with Susan Neely, Senior Legislative analyst for the Snohomish County Council, (425) 388-6250; and ascertained the following:

1. Courts are funded by the General Fund. They are a General Fund agency.

2. The General Fund is derived from sales and property taxes, charges for service, fines and forfeitures, etc. It is money the county has some discretion over. It covers most of the basics. It is not dedicated to any one specific thing.

APPENDIX F

3. Through citizen's initiatives, decline in sales tax, and decline in property tax, it is one of the most negatively affected funding sources. It may show a slight increase year-to-year, but not near enough to grow with inflation. As a result each year we are required to cover the same services with less money. This is why, for example, there have been significant reductions in the number of county employees within most General Fund departments.

4. As for the district courts, they do bring in revenue. This is primarily through traffic infractions. While the filings may be from the State Patrol or the Sheriff's office, the courts are the medium by which people take care of it, and where they pay. This money, in the end, is split roughly 50-50 between the county and the State. The county's portion goes back into the general fund (the courts don't keep it).

5. This revenue total is sufficient to cover the cost of the court, but is not sufficient to support the work done by other departments' employees (e.g., Sheriff's Office, Prosecuting Attorney's Office) who assist in processing the cases from which the court's revenue is derived. The court actually has three separate budgets: the four court divisions themselves; the probation division; and dispute resolution. (This last involves a contract between VOA and county Human Services for dispute resolution in civil matters, including small claims.) It is true that infractions pay for themselves: they do not take up a lot of judicial and staff time. But misdemeanors do not - especially if a jury trial is required. They take a considerable amount of staff and judicial time. The fines people pay on misdemeanors don't begin to cover their cost.

6. As for paying for deferred prosecution treatment, the courts aren't budgeted for this. The county isn't budgeted for this anywhere. If the courts did pay for it, they would likely come hat in hand to the Council and ask the Council make it up.

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the foregoing is a true and correct recitation of his conversation with Ms. Nelly. (Ms. Nelly in fact reviewed paragraphs 1 – 6, and made corrections that are reflected herein. The undersigned has no personal knowledge of the substance of the recitation.)

CHARLES F. BLACKMAN #19354
Deputy Prosecuting Attorney

Signed this 21st day of January, 2011, at the Snohomish County Prosecuting Attorney's Office, Everett, Washington.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, CASCADE DIVISION, The Hon. Paul Moon, Commissioner, Respondent, DOUGLAS P. HUTCHISON, Defendant.	No. 10-2-08562-7 Cascade. Dist. Ct. #596A-10D AFFIDAVIT OF COUNSEL

The undersigned certifies (or declares) that I am a duly appointed deputy prosecuting attorney for Snohomish County, Washington, and make this affidavit in that capacity; that I am the assigned attorney representing petitioner in this petition for writ to review the ruling of the Hon. Paul Moon, Commissioner, that a two year course of substance-abuse treatment for defendant Hutchison's deferred prosecution shall be paid out of the fines and forfeiture of the district court; and that I spoke on January 21, 2010, with Paulette Revoir, Director of Snohomish County District Court, (425) 388-6508, and ascertained the following:

1. Ms. Revoir confirmed that the court is funded from the General Fund. She agreed that while the court actually brings in more than the cost to run it, that does not figure in the costs of police and prosecutors that help the court generate revenue.

2. She is familiar with the issue posed in this case. She does not have a line item for this. She does not know where the money would come from. She does not know where the money would come from even to do assessments,

APPENDIX G

much less to fund the whole cost of treatment. Even for assessments there could be a lot of applicants for money. She surmises funds would have to come out of the "probation-side" budget (as distinguished from the "court-side" budget). (She confirmed that the district court has three budgets or programs: the court, its probation, and dispute resolution.) Yet they have had to let one probation officer go due to budget constraints.

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the foregoing is a true and correct recitation of his conversation with Ms. Revoir. (The undersigned has no personal knowledge of the substance of the recitation.)

CHARLES F. BLACKMAN #19354
Deputy Prosecuting Attorney

Signed this 21st day of January, 2011, at the Snohomish County Prosecuting Attorney's Office, Everett, Washington.

WASHINGTON STATE ASSOCIATION
OF
PROSECUTING ATTORNEYS

Donald C. Brockett
President

Henry R. Dunn
Vice President

C. J. Rabideau
Secretary

George F. Hanigan
Treasurer

Ronald L. Hendry
Executive Secretary

(206) 943-1812
SCAN 234-7319
105 E. 8th Ave.
Suite 307
Olympia, WA 98501

May 12, 1975

The Honorable Walt O. Knowles, Chairman
House Judiciary Committee
Room 411, House Office Building
Olympia, Washington

Re: ESB 2613 - Pre-Trial Diversion Programs

Dear Representative Knowles:

I will be out of town on Wednesday, May 14, 1975, and thus will be unable to attend the House Judiciary Committee hearing at which ESB 2613 will be considered. At the time this bill was originally heard in the Senate Judiciary Committee, several prosecuting attorneys appeared to testify, including Paul Klasen, Grant County Prosecutor; Donald Brockett, Spokane County Prosecutor; Bob Schillberg, Snohomish County Prosecutor; and David Boerner, King County Chief Deputy Prosecuting Attorney. They pointed out that, according to literature on pre-trial diversion and deferred prosecution, the active participation and cooperation of the prosecutor in such programs is essential. The bill, as originally introduced, made no provision for participation by prosecuting attorneys in the new proposed pre-trial diversion programs. At the close of the hearing, the committee chairman requested the prosecuting attorneys to meet with District Court Judge Lyle Truax of Vancouver, the chief proponent of the bill, and work out some mutually acceptable language which would meet the prosecutors' concerns about the bill.

In the meeting between the prosecutors and Judge Truax, it was agreed to insert the language which is found in the Engrossed Bill on page 1, line 16, starting after the word "petition", reading as follows ". . . and with the concurrence of the prosecuting attorney". On behalf of Prosecuting Attorneys' Association, I would respectfully request that the quoted language be retained in the bill.

APPENDIX H

I have reviewed the problems raised by staff counsel Mooney in his bill analysis of May 6, 1975, and agree with his suggestions therein.

There appears to be one other problem, in connection with the payment for costs of treatment programs for indigent persons. The bill as presently drafted provides that funds shall be appropriated for such payment from the fines and forfeitures of the court. This would work satisfactorily in the District Court, because, under the provisions of RCW Chapter 3.62, all fees, fines, forfeitures and penalties assessed by District Courts are paid into the justice court suspense fund. All costs of operating the Justice Court are paid out of the justice court suspense fund, and the monies remaining are then paid into the county general fund. The bill apparently intends that the costs for treatment programs will be paid out of the justice court suspense fund, and if that is the case, language in the bill, either referring to RCW 3.62.050, or specifically amending that section, would clearly indicate such intent.

The main problem I am raising, however, is in connection with the implementation of the bill in Superior Court. RCW 10.82.070 provides that except as otherwise provided by law, all money derived from fines shall be deposited in the county general fund. The Manual for County Clerks contains several pages of instructions as to where County Clerks should remit various fines and forfeitures generated by violation of various penal provisions throughout the entire Revised Code of Washington. There is no suspense fund for the Superior Court similar to that for the District Court, so there appears to be no present vehicle in the law which would allow for implementation of the bill as presently drafted.

vs per J. Tracy (telephone 5/13/75)

One possible solution would be to restrict the provisions of bill to the District Courts only, thus eliminating any problem with Superior Court fines and forfeitures. As a practical matter, this would essentially accomplish the purpose of the initiators and sponsors of the bill, as most misdemeanors and gross misdemeanors, to which the bill applies, are handled in the District Court.

Very truly yours,

Ronald L. Hendry, Executive Secretary

WASHINGTON STATE ASSOCIATION OF PROSECUTING ATTORNEYS

RLH:dh

D0030I Beginning of Docket **DD1000PI**

05/24/11 12:50:46

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

____ Case: 8910A-10D WSP CT Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

S	11 09 2010	Case Filed on 11/09/2010	ZJB
S		DEF 1 VELASQUEZ, ALYSHA VALENTINE Added as Participant	ZJB
S		ARR Set for 11/29/2010 02:30 PM	ZJB
S		in Room 1 with Judge SMC	ZJB
		CRIMINAL COMPLAINT FILED.	ZJB

D0071I More records available. **DD1000PI**

05/24/11 12:50:51

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

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Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	11 09 2010	AFFIDAVIT OF PROBABLE CAUSE FILED.	ZJB
		1 SUMMONS(ES) STAMPED AND RETURNED TO PA'S OFC FOR MAILING.	ZJB
	11 10 2010	CRIMINAL COMPLAINT RECEIVED FROM THE PROSECUTOR'S OFFICE	VDP
	11 16 2010	SUMMONS FOR DEF TO APPEAR 11/29/10 FILED BY PROSECUTOR	VDP
	11 17 2010	NOTICE OF APPEARANCE,REQUEST FOR DISCOVERY,DEMAND FOR	VDP
		PRODUCTION OF EXPERT WITNESS, AND DEMAND FOR PROOF OF PRIOR	VDP
		CONVICTIONS FILED BY ATTY SCHWARZ	VDP
S		ATY 1 SCHWARZ, JASON M Added as Participant	VDP
	11 29 2010	EGD1/256	SEB
		ARRAIGNMENT - JUDGE PRO TEM J STEVEN THOMAS	SEB
		STATE IS NOT PRESENT	SEB
		COUNSEL PRESENT FROM THE PUBLIC DEFENDERS OFFICE	SEB
		DEFENDANT PRESENT	SEB
		DEFENDANT ADVISED OF RIGHTS AND ENTERS A PLEA	SEB

APPENDIX 1 - 1

D0071I More records available. **DD1000PI**

05/24/11 12:50:52

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

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Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	11 29 2010	OF NOT GUILTY.	SEB
		DEFENDANT SIGNS FOR FUTURE COURT DATES & ALL PARTIES	SEB
		RECEIVE NOTICE OF NEXT HEARING.	SEB
		OPD IS PRESENT - DEFENDANT SENT TO SCREEN	SEB
S		Defendant Arraigned on Charge 1	SEB
S		Plea/Response of Not Guilty Entered on Charge 1	SEB
		PROBABLE CAUSE FOUND IN OFFICERS SWORN REPORT	SEB
S		PTR Set for 01/26/2011 09:30 AM	SEB
S		in Room 1 with Judge SMC	SEB
		CONDITIONS OF RELEASE:	SEB
		- NO DRIVING WITHOUT VALID LICENSE AND INSURANCE	SEB
		- NO BAC REFUSAL	SEB
		- NO POSSESSION OR CONSUMPTION OF ALCOHOL OR NON PRESCRIPTIO	SEB
		DRUGS	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:52

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

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Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

S	11 29 2010	ARR: Held	SEB
	12 17 2010	** PROOF OF VICTIMS PANEL FILED IN PROB DEPT **	ELP
	01 18 2011	CALENDAR SETTING NOTICE FOR 1/25/11 FILED BY ATTY SCHWARZ	VDP
S		MOT Set for 01/25/2011 09:30 AM	VDP
S		in Room 1 with Judge SMC	VDP
	01 25 2011	EGD1/941	SEB
		CRIMINAL MOTION - JUDGE PRO TEM TERRY H SIMON	SEB
		TONI MONTGOMERY PRESENT ON BEHALF OF STATE	SEB
		DEFENDANT PRESENT WITH ATTORNEY JASON SCHWARZ	SEB
		STATE REQUESTS A TWO WEEK CONTINUANCE IN ORDER TO WAIT FOR	SEB
		RULING ON A SIMILAR CASE IN ANOTHER DIVISION	SEB
		DEFENSE OBJECTS TO CONTINUANCE AND REQUESTS THAT MATTER BE	SEB
		RULED ON TODAY	SEB
		COURT SHALL NOT CONTINUE AND MATTER WILL BE HEARD TODAY	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:53

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

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DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	01 25 2011 0952	DEFENSE ARGUMENT	SEB
		0956 STATES ARGUMENT	SEB
		DEFENSE HANDS FORWARD RCW 10.05.060	SEB
		FURTHER ARGUMENTS FROM BOTH SIDES	SEB
		1011 COURT IS PREPARED TO ISSUE A RULING	SEB
		COURT SHALL SET MATTER OVER TO TOMORROW MORNING IN ORDER	SEB
		FOR STATE TO FILE SUPPLEMENTAL BRIEFING	SEB
		COURT SHALL ISSUE RULING AFTER READING STATES BRIEF	SEB
		MATTER SHALL BE CONTINUED UNTIL 9:00 AM TOMORROW MORNING	SEB
S		MOT Set for 01/26/2011 09:00 AM	SEB
S		in Room 1 with Judge SMC	SEB
S		PTR Rescheduled to 03/09/2011 09:30 AM	SEB
S		in Room 1 with Judge SMC	SEB
		DEFENDANTS PRESENCE FOR RULING TOMORROW MORNING IS WAIVED	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:54

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

_____ Case: 8910A-10D WSP CT Csh: Pty: ___ _____ StID: _ _____ __

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Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	01 25 2011	DEFENDANTS PRETRIAL CURRENTLY SCHEDULED FOR TOMORROW SHALL	SEB
		ALSO BE CONTINUED	SEB
		DEFENDANT SIGNS FOR NEW COURT DATES	SEB
S		MOT on 01/25/2011 09:30 AM	SEB
S		Changed to Room 1 with Judge THS	SEB
		EXCLUDED PERIOD IS FOUND	SEB
S		MOT: Held	SEB
		STATES RESPONSE TO DEFENSE REQUEST FOR FUNDING UNDER RCW	SEB
		10.05.130 FILED	SEB
	01 26 2011	EGD1/0922	SEB
		CRIMINAL MOTION - JUDGE PRO TEM TERRY H SIMON	SEB
		TONI MONTGOMERY PRESENT ON BEHALF OF STATE	SEB
		ATTORNEY JASON SCHWARZ PRESENT	SEB
		DEFENDANT NOT PRESENT AS HER PRESENCE HAS BEEN WAIVED	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:54

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

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Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	01 26 2011	923 COURTS RULING	SEB
		COURT RULES IN FAVOR OF THE DEFENSE AND FINDS STATUTE	SEB
		PROVIDES THAT FULL TREATMENT PROGRAM FOR DEFERRED	SEB
		PROSECUTIONS SHALL BE PAID BY THE COURTS	SEB
		COURT FINDS DEFENDANT IS INDIGENT	SEB
S		MOT: Held	PJH
	02 07 2011	STATE'S MOTION FOR RECONSIDERATION FILED BY THE PROSECUTOR	VDP
		CASE FILE FORWARDED TO JUDGE CLOUGH FOR REVIEW	VDP
	02 08 2011	DEFENSE RESPONSE TO THE STATES MOTION FOR RECONSIDERATION	SEB
		IS FILED	SEB
	02 18 2011	MOTION AND ORDER TO SHORTEN TIME FILED BY PROSECUTOR	SEB
		PER LEAD - MATTER SHALL BE PLACED ON CALENDAR	SEB
S		MOT Set for 02/22/2011 09:30 AM	SEB
S		in Room 1 with Judge SMC	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:55

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

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Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

S	02 22 2011	MOT: Held	LAB
		EGD1/941 MOTION HEARING STEVEN M CLOUGH, JUDGE	LAB
		DEFENDANT NOT PRESENT, DEFENSE ATTY JASON SCHWARZ PRESENT.	LAB
		STATE REPRESENTED BY TONI MONTGOMERY, DPA.	LAB
		COURT WILL NOT RECONSIDER THE RULING MADE BY TERRY SIMON AND	LAB
		WILL NOT SCHEDULE TERRY SIMON TO HEAR THE MOTION ONLY. STATE	LAB
		MAY ADD THIS TO THE MATTER UNDER CONSIDERATION IN SUPERIOR	LAB
		COURT. NO FURTHER ACTION TAKEN.	LAB
	02 28 2011	CALENDAR NOTICE, AFFIDAVIT OF SERVICE, MEMORANDUM OF AUTHORI-	LAB
		THIES IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI,	LAB
		APPLICATION AND AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT	LAB
		OF CERTIORARI AND ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT BE	LAB
		GRANTED FILED BY SNOHOMISH COUNTY PROSECUTOR JOHN JUHL.	LAB
	03 09 2011	EGD1/1052	RSW

D0071I More records available. **DD1000PI**

05/24/11 12:50:56

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

_____ Case: 8910A-10D WSP CT Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	03 09 2011	READINESS HEARING: JUDGE PROTEM RICO J TESSANDORE	RSW
		STATE PRESENT REPRESENTED BY TONI MONTGOMERY, DPA	RSW
		DEFENDANT NOT PRESENT AT THIS TIME, WAS EARLIER	RSW
		ATTY JASON SCHWARZ APPEARING	RSW
		COURT REIVEWS THIS MATTER AND SUPERIOR COURT CASTLEBERRY'S	RSW
		MOTION SET TO BE HEARD 3/10/10	RSW
		REGARDING THIS CASE - NO ACTION AT THIS TIME	RSW
S		PTR: Not Held, Hearing Canceled	LAB
S		MOT: Held	LAB
	03 16 2011	DECISION ON ISSUANCE OF WRIT OF CERTIORARI, WRIT OF	PJH
		CERTIORARI TO REVIEW ACTS OF DISTRICT COURT AND ORDER OF	PJH
		JOINDER RECEIVED FROM SUPERIOR COURT. PLACED IN FILE.	PJH
	04 08 2011	DECISION AND ORDER ON MERITS AFTER ISSUANCE OF WRIT OF	PJH
		CERTIORARI FILED BY SUPERIOR COURT.	PJH

D0031I End of Docket **DD1000PI**

05/24/11 12:50:57

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

_____ Case: 8910A-10D WSP CT Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

DUI

Note: ALSO 8910B-10D

Case: 8910A-10D WSP CT Criminal Traffic N

	04 08 2011	COPY PLACED IN FILE.	PJH
		MATTER TO BE SET FOR READINESS HEARING AND ALL PARTIES	PJH
		NOTIFIED.	PJH
S	04 13 2011	PTR Set for 05/11/2011 01:30 PM	LAB
S		in Room 1 with Judge SMC	LAB
S		Notice Issued for PTR on 05/11/2011 01:30 PM	JER
	05 11 2011	EGD1/151 READINESS HEARING STEVEN M CLOUGH, JUDGE	LAB
		DEFENDANT PRESENT WITH COUNSEL TIFFANY MECCA.	LAB
		STATE REPRESENTED BY BOB LANGBEHN, DPA.	LAB
		CLERK TO CHECK STATUS OF CASE AS THIS CASE HAS BEEN APPEALED	LAB
		TO THE SUPREME COURT.	LAB
S		PTR: Not Held, Hearing Canceled	LAB
S		OTH: Held	LAB

12:50:31 Tuesday, May 24, 2011

D0030I Beginning of Docket **DD1000PI**

05/24/11 12:50:15

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

Case: 8910B-10D WSP CN Csh: Pty: StID:

Name: VELASQUEZ, ALYSHA VALENTINE NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:
RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

S	11 09 2010	Case Filed on 11/09/2010	ZJB
S		Charge 1 is DV-related	ZJB
S		Charge 2 is DV-related	ZJB
S		DEF 1 VELASQUEZ, ALYSHA VALENTINE Added as Participant	ZJB
S		ARR Set for 11/29/2010 02:30 PM	ZJB
S		in Room 1 with Judge SMC	ZJB
		CRIMINAL COMPLAINT FILED.	ZJB
		AFFIDAVIT OF PROBABLE CAUSE FILED.	ZJB
		1 SUMMONS(ES) STAMPED AND RETURNED TO PA'S OFC FOR MAILING.	ZJB
	11 10 2010	CRIMINAL COMPLAINT RECEIVED FROM THE PROSECUTOR'S OFFICE	VDP
	11 16 2010	SUMMONS FOR DEF TO APPEAR 11/29/10 FILED BY PROSECUTOR	VDP
	11 17 2010	NOTICE OF APPEARANCE,REQUEST FOR DISCOVERY,DEMAND FOR	VDP
		PRODUCTION OF EXPERT WITNESS, AND DEMAND FOR PROOF OF PRIOR	VDP

D0071I More records available. **DD1000PI**

05/24/11 12:50:22

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

Case: 8910B-10D WSP CN Csh: Pty: StID:

Name: VELASQUEZ, ALYSHA VALENTINE NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:
RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	11 17 2010	CONVICTIONS FILED BY ATTY SCHWARZ	VDP
S		ATY 1 SCHWARZ, JASON M Added as Participant	VDP
	11 29 2010	EGD1/256	SEB
		ARRAIGNMENT - JUDGE PRO TEM J STEVEN THOMAS	SEB
		STATE IS NOT PRESENT	SEB
		COUNSEL PRESENT FROM THE PUBLIC DEFENDERS OFFICE	SEB
		DEFENDANT PRESENT	SEB
		DEFENDANT ADVISED OF RIGHTS AND ENTERS A PLEA	SEB
		OF NOT GUILTY.	SEB
		DEFENDANT SIGNS FOR FUTURE COURT DATES & ALL PARTIES	SEB
		RECEIVE NOTICE OF NEXT HEARING.	SEB
S		Defendant Arraigned on Charge 1	SEB
S		Plea/Response of Not Guilty Entered on Charge 1	SEB
		PROBABLE CAUSE FOUND IN OFFICERS SWORN REPORT	SEB

APPENDIX 1-2

D0071I More records available. **DD1000PI**

05/24/11 12:50:23

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

_____ Case: 8910B-10D WSP CN Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

S	11 29 2010	Defendant Arraigned on Charge 2	SEB
S		Plea/Response of Not Guilty Entered on Charge 2	SEB
S		ARR: Held	SEB
S	12 01 2010	PTR Set for 01/26/2011 09:30 AM	SEB
S		in Room 1 with Judge SMC	SEB
	01 18 2011	CALENDAR SETTING NOTICE FOR 1/25/11 FILED BY ATTY SCHWARZ	VDP
S		MOT Set for 01/25/2011 09:30 AM	VDP
S		in Room 1 with Judge SMC	VDP
	01 25 2011	EGD1/941	SEB
		CRIMINAL MOTION - JUDGE PRO TEM TERRY H SIMON	SEB
		TONI MONTGOMERY PRESENT ON BEHALF OF STATE	SEB
		DEFENDANT PRESENT WITH ATTORNEY JASON SCHWARZ	SEB
		STATE REQUESTS A TWO WEEK CONTINUANCE IN ORDER TO WAIT FOR	SEB
		RULING ON A SIMILAR CASE IN ANOTHER DIVISION	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:23

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

_____ Case: 8910B-10D WSP CN Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	01 25 2011	DEFENSE OBJECTS TO CONTINUANCE AND REQUESTS THAT MATTER BE	SEB
		RULED ON TODAY	SEB
		COURT SHALL NOT CONTINUE AND MATTER WILL BE HEARD TODAY	SEB
		0952 DEFENSE ARGUMENT	SEB
		0956 STATES ARGUMENT	SEB
		DEFENSE HANDS FORWARD RCW 10.05.060	SEB
		FURTHER ARGUMENTS FROM BOTH SIDES	SEB
		1011 COURT IS PREPARED TO ISSUE A RULING	SEB
		COURT SHALL SET MATTER OVER TO TOMORROW MORNING IN ORDER	SEB
		FOR STATE TO FILE SUPPLEMENTAL BRIEFING	SEB
		COURT SHALL ISSUE RULING AFTER READING STATES BRIEF	SEB
		MATTER SHALL BE CONTINUED UNTIL 9:00 AM TOMORROW MORNING	SEB
S		MOT Set for 01/26/2011 09:00 AM	SEB
S		in Room 1 with Judge SMC	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:24

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

____ Case: 8910B-10D WSP CN Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	01 25 2011	DEFENDANTS PRESENCE FOR RULING TOMORROW MORNING IS WAIVED	SEB
		DEFENDANTS PRETRIAL CURRENTLY SCHEDULED FOR TOMORROW SHALL	SEB
		ALSO BE CONTINUED	SEB
		DEFENDANT SIGNS FOR NEW COURT DATES	SEB
S		PTR Rescheduled to 03/09/2011 09:30 AM	SEB
S		in Room 1 with Judge SMC	SEB
S		MOT on 01/25/2011 09:30 AM	SEB
S		Changed to Room 1 with Judge THS	SEB
		EXCLUDED PERIOD IS FOUND	SEB
S		MOT: Held	SEB
		STATE RESPONSE TO DEFENSE REQUEST FOR FUNDING UNDER RCW	SEB
		10.05.130 FILED	SEB
	01 26 2011	EGD1/0922	SEB
		CRIMINAL MOTION - JUDGE PRO TEM TERRY H SIMON	SEB

D0071I More records available. **DD1000PI**

05/24/11 12:50:25

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

____ Case: 8910B-10D WSP CN Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:

RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	01 26 2011	TONI MONTGOMERY PRESENT ON BEHALF OF STATE	SEB
		ATTORNEY JASON SCHWARZ PRESENT	SEB
		DEFENDANT NOT PRESENT AS HER PRESENCE HAS BEEN WAIVED	SEB
		923 COURTS RULING	SEB
		COURT RULES IN FAVOR OF THE DEFENSE AND FINDS STATUTE	SEB
		PROVIDES THAT FULL TREATMENT PROGRAM FOR DEFERRED	SEB
		PROSECUTIONS SHALL BE PAID BY THE COURTS	SEB
		COURT FINDS DEFENDANT IS INDIGENT	SEB
S		MOT: Held	PJH
S	02 22 2011	MOT Set for 02/22/2011 09:30 AM	LAB
S		in Room 1 with Judge SMC	LAB
S		MOT: Held	LAB
		EGD1/941 MOTION HEARING STEVEN M CLOUGH, JUDGE	LAB
		DEFENDANT NOT PRESENT, DEFENSE ATTY JASON SCHWARZ PRESENT.	LAB

D0071I More records available. **DD1000PI**

05/24/11 12:50:25

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

____ Case: 8910B-10D WSP CN Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:
RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	02 22 2011	STATE REPRESENTED BY TONI MONTGOMERY, DPA.	LAB
		COURT WILL NOT RECONSIDER THE RULING MADE BY TERRY SIMON AND	LAB
		WILL NOT SCHEDULE TERRY SIMON TO HEAR THE MOTION ONLY. STATE	LAB
		MAY ADD THIS TO THE MATTER UNDER CONSIDERATION IN SUPERIOR	LAB
		COURT. NO FURTHER ACTION TAKEN.	LAB
	02 28 2011	CALENDAR NOTICE, AFFIDAVIT OF SERVICE, MEMORANDUM OF AUTHORI-	LAB
		THIES IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI,	LAB
		APPLICATION AND AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT	LAB
		OF CERTIORARI AND ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT BE	LAB
		GRANTED FILED BY SNOHOMISH COUNTY PROSECUTOR JOHN JUHL.	LAB
	03 09 2011	EGD1/1052	RSW
		READINESS HEARING: JUDGE PROTEM RICO J TESSANDORE	RSW
		STATE PRESENT REPRESENTED BY TONI MONTGOMERY, DPA	RSW
		DEFENDANT NOT PRESENT AT THIS TIME, WAS EARLIER	RSW

D0071I More records available. **DD1000PI**

05/24/11 12:50:26

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

____ Case: 8910B-10D WSP CN Csh: Pty: ___ _____ StID: _ _____ __

Name: VELASQUEZ, ALYSHA VALENTINE_____ NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:
RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	03 09 2011	ATTY JASON SCHWARZ APPEARING	RSW
		COURT REIVEWS THIS MATTER AND SUPERIOR COURT CASTLEBERRY'S	RSW
		MOTION SET TO BE HEARD 3/10/10	RSW
		NO ACTION TAKEN AT THIS TIME	RSW
S		PTR: Not Held, Hearing Canceled	LAB
S		MOT: Held	LAB
	03 16 2011	DECISION ON ISSUANCE OF WRIT OF CERTIORARI, WRIT OF	PJH
		CERTIORARI TO REVIEW ACTS OF DISTRICT COURT AND ORDER OF	PJH
		JOINDER RECEIVED FROM SUPERIOR COURT. PLACED IN FILE.	PJH
S	03 17 2011	OTH ADD Set For 04/10/2011 08:30 AM In Room Z	ELP
		OTH ADD SET TO TRACK WRIT PER LEAD.	ELP
	04 08 2011	DECISION AND ORDER ON MERITS AFTER ISSUANCE OF WRIT OF	PJH
		CERTIORARI FILED BY SUPERIOR COURT.	PJH
		COPY PLACED IN FILE.	PJH

D0031I End of Docket **DD1000PI**

05/24/11 12:50:27

DD1000MI Case Docket Inquiry (CDK) SNO CO-EVERGREEN DIV PUB

Case: 8910B-10D WSP CN Csh: Pty: StID:

Name: VELASQUEZ, ALYSHA VALENTINE NmCd: IN 039 43573

Name: VELASQUEZ, ALYSHA VALENTINE Cln Sts:
RECKLESS ENDANGERMENT RECKLESS ENDANGERMENT

Note: ALSO 8910A-10D

Case: 8910B-10D WSP CN Criminal Non-Traffic N

	04 08 2011	MATTER TO BE SET FOR READINESS HEARING AND ALL PARTIES	PJH
		NOTIFIED.	PJH
S	04 10 2011	OTH ADD: Not Held, Hearing Canceled	PJH
S	04 13 2011	PTR Set for 05/11/2011 01:30 PM	LAB
S		in Room 1 with Judge SMC	LAB
S		Notice Issued for PTR on 05/11/2011 01:30 PM	JER
	05 11 2011	EGD1/151 READINESS HEARING STEVEN M CLOUGH, JUDGE	LAB
		DEFENDANT PRESENT WITH COUNSEL TIFFANY MECCA.	LAB
		STATE REPRESENTED BY BOB LANGBEHN, DPA.	LAB
		CLERK TO CHECK STATUS OF CASE AS THIS CASE HAS BEEN APPEALED	LAB
		TO THE SUPREME COURT.	LAB
S		PTR: Not Held, Hearing Canceled	LAB
S		OTH: Held	LAB

FILED

2011 MAR 25 PM 1:42

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, EVERGREEN DIVISION The Hon. Terry Simon, pro tem., Respondent, ALYSHA V. VELASQUEZ, Defendant.	No. 11-2-03307-2 Evergr. Dist. Ct. # 8910A/B-10D ORDER ON MERITS AFTER ISSUANCE OF WRIT OF CERTIORARI CLERK'S ACTION REQUIRED

THIS MATTER ("Velasquez")having been joined with State ex rel. Roe v. Snohomish County District Court, Cascade Division, the Hon. Paul Moon et al. ("Hutchison"), cause 10-2-08562-7; and a decision and order on the merits having issued on that case, reversing the District Court; and said decision and order being attached hereto and incorporated herein by reference;

NOW THEREFORE IT IS HEREBY ORDERED that the said decision and order in Hutchison shall be equally binding in this matter.

APPENDIX J **ORIGINAL**

The order authorizing the expenditure of public funds, out of the fees and forfeitures of the District Court, for the payment of deferred-prosecution treatment of indigent persons, is hereby *vacated*, as made without lawful authority, and therefore null and void; and the matter is *remanded* to Snohomish County District Court, Evergreen Division, for further proceedings consistent with the aforesaid opinion and this order.

DONE IN OPEN COURT this 25 day of March, 2011.

RONALD L. CASTLEBERRY, J.
Superior Court Judge

Presented by:

Charles Blackman, #19354
Deputy Prosecuting Attorney
Attorney for Petitioner

Approved as to form:

Jason Schwarz, #38042
Attorney for Defendant-
Respondent Velasquez

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, CASCADE DIVISION The Hon. Paul F. Moon, Comm'r, Respondent, DOUGLAS P. HUTCHISON, Defendant.	No. 10-2-08562-7 Cascade Dist. Ct. # 596A-10D DECISION AND ORDER ON MERITS AFTER ISSUANCE OF WRIT OF CERTIORARI CLERK'S ACTION REQUIRED

DECISION

At the outset, this Court thanks both counsel for the excellent and thorough briefing and research submitted.

This Court issues its decision and order in the captioned Hutchison matter, a writ of review having previously issued. This decision applies with equal force to the Velasquez matter, 11-2-03307-2, which presents the same issue, which has been joined with Hutchison, and on which a writ of review has just issued.

In the District Court, a commissioner (in Hutchison) and a judge pro tem. (in Velasquez) ordered that the cost of treatment in deferred prosecutions, sought by indigent defendants and approved by the court, would be paid for by public funds, per RCW 10.05.130. The question before this Court, upon writs of review having been granted, is whether these rulings are contrary to law. RCW 7.16.040. The matter is of first impression in the State. There are no reported cases on point. Historically, the District Courts have ordered that defendants seeking deferred prosecutions obtain a substance abuse evaluation prior to entering the deferred prosecution. On occasion, the District Courts have ordered that this treatment plan be paid out of public funds if the petitioner was indigent, but have consistently declined to obligate public funds to pay for any approved treatment itself.

The question is one of statutory interpretation. This Court reviews such a question de novo. City of Spokane v. Spokane County, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006); State v. Wentz, 149 Wn.2d 342, 346, 68 P.3d 282 (2003).

The primary statute under consideration is RCW 10.05.130, which states in its entirety:

> Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.

RCW 10.05.130. The defense, as respondents here, assert that the term "treatment plan" in the statute includes the "course of treatment," or the "treatment program," or the treatment itself. In support, the defense has filed extensive documentation dealing with the legislative history of the statute. These

documents suggest that it was the intention of at least some legislators, and of some interested individuals in the criminal justice system, that treatment itself would in fact be paid for out of public funds.

The prosecuting attorney, as petitioner, counters that a close examination of the legislative history indicates that if public funds were to be applied for deferred-prosecution treatment, the legislature intended that it solely be from the then-established "justice court suspense fund." The prosecution goes on to argue that since the "justice court suspense fund" was eliminated in 1984, any intent to pay for treatment out of public funds was eliminated *sub silentio* ~~as well~~, when the funding source was eliminated.

Neither one of these positions is stated in the legislative intent within the confines of the statutory language itself at RCW 10.05. And both petitioner and respondent concede and agree that if the statute's meaning is plain and unambiguous, the statutory meaning must be derived from the wording of the statute itself. In such a case, the court cannot look to legislative history not set forth in the statute itself. And it is axiomatic that a court will not look to extraneous materials to create an ambiguity that does not otherwise exist. Courts do not construe an unambiguous statute because plain words do not require construction. Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999). "In judicial interpretation of statutes, the first rule is 'the court should assume the legislature means exactly what it says. Plain words do not require construction.'" City of Kent v. Jenkins, 99 Wn. App. 287, 290, 992 P.2d 1045 (2000) (context of deferred prosecution statute). A statute is not rendered

ambiguous merely because different interpretations are conceivable. State v. Hahn, 83 Wn. App. 825, 831, 924 P.2d 392 (1996), review denied, 131 Wn.2d 1020 (1997); State v. Sunish, 76 Wn. App. 202, 206, 884 P.2d 1 (1994). When a statute is clear and unambiguous, a court may not engage in statutory construction. State v. Bolar, 129 Wn.2d 361, 366, 917 P.2d 125 (1996); State v. Hahn, 83 Wn. App. at 834.

The fundamental question before the court is whether RCW 10.05.130 is plain and unambiguous on its face. This Court concludes that it is. RCW 10.05.130 sets forth the various items that will be paid for "from the fines and forfeitures of the court:" Investigation; examination, report, and treatment plan. There is nothing within these terms that would suggest that the report and treatment plan include the treatment itself.

To the extent further inquiry is even necessary, undefined statutory terms are given their usual and ordinary meaning. Hahn, 83 Wn. App. at 832; Nationwide Ins. v. Williams, 71 Wn. App. 336, 342, 858 P.2d 516 (1993), review denied, 123 Wn.2d 1022 (1994). When a term is not defined in the statute, courts may look to the ordinary dictionary meaning. State v. Sunish, 76 Wn. App. at 206; State v. Friend, 59 Wn. App. 365, 366-67, 797 P. 2d 539 (1990) (deferred prosecution context). In the ordinary meaning of things, the plan for treatment and the treatment itself are two separate and distinct concepts, for one is the *plan* of action, and the other the *action* itself. These are two different terms, for two different concepts.

Moreover, although the statute does not define "treatment," RCW 10.05.050 sets forth what should be included in the "treatment plan." If the treatment facility's written report stating findings and recommendations supports treatment,

> [the facility] shall also recommend a treatment or service plan setting out
>
> (a) The type;
> (b) Nature;
> (c) Length;
> (d) A treatment or service time schedule: and
> (e) Approximate cost of treatment[.]

RCW 10.05.050(1)(a) – (e). "A copy of the treatment plan shall be filed with the court." RCW 10.05.060. The plan sets forth the intended course of treatment; and obviously there is a distinction between the treatment plan and the treatment itself, as reflected in RCW 10.05.050. Additionally, RCW 10.05.130's concluding language states that some relief is available to "any indigent person who is unable to pay the cost of any *program* of treatment" (emphasis supplied). This indicates a distinction between "plan" and the cost of treatment itself. "Where different terms are used in the same statute, the presumption is that the legislature intended they have separate meanings." State v. Mendoza, 165 Wn.2d 913, 921, 205 P.3d 113 (2009), citing Densley v. Dep't of Ret. Sys., 162 Wn.2d 210, 219, 173 P.3d 885 (2007).

It is clear and unambiguous that the phrase "treatment plan" does not include treatment itself. The statutory scheme mirrors the same distinction between "treatment plan" and treatment itself as is found in the ordinary use of the term. Therefore, this court concludes that, per the plain and unambiguous

language of the statute, the commissioner and judge pro tem. acted without lawful authority when ordering that the cost of treatment be paid out of the fees and forfeitures of the court. This court grants the relief requested by petitioner. Reversed.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the orders authorizing the expenditure of public funds, out of the fees and forfeitures of the District Court, for the payment of deferred-prosecution treatment of indigent persons, are hereby *vacated*, as made without lawful authority, and therefore null and void; and the matters are *remanded* to Snohomish County District Court, Cascade Division (Hutchison) and Evergreen Division (Velasquez) for further proceedings consistent with this opinion and order. A separate order, consistent with this opinion and incorporating it by reference, shall enter in Velasquez under its caption.

DONE IN OPEN COURT this 25 day of March, 2011.

RONALD L. CASTLEBERRY, J.
Superior Court Judge

Presented by:

Charles Blackman, #19354
Deputy Prosecuting Attorney
Attorney for Petitioner

Approved as to form:

Whitney Rivera, # 38139
Attorney for Defendant
Respondent Hutchison

FILED

2011 MAR 15 PM 1:24

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

CL14745964

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, Ex rel. Mark K. Roe, Petitioner, vs. SNOHOMISH COUNTY DISTRICT COURT, EVERGREEN DIVISION The Hon. Terry Simon, pro tem., Respondent, ALYSHA V. VELASQUEZ, Defendant.	No. 11-2-03307-2 Evergr. Dist. Ct. # 8910A/B-10D ORDER OF JOINDER

This case coming before the Court for consideration, and the State as petitioner moving to join the matter with State ex rel. Roe v. Snohomish County District Court, the Hon. Paul Moon et al., 10-2-08562-7, pursuant to CrR 4.3(b) and CR 19 and CR 20, as presenting the identical issue; and counsel for respondent-defendant being present and lodging no objection thereto;

NOW THEREFORE IT IS HEREBY ORDERED:

APPENDIX K **ORIGINAL**

10

This matter shall be joined with the aforesaid State ex rel. Roe v. Moon et al., 10-2-08562-7.

DONE IN OPEN COURT this 10 day of March, 2010.

RONALD L. CASTLEBERRY, J.
Superior Court Judge

Presented by:

Charles Blackman, #19354
Deputy Prosecuting Attorney
Attorney for Petitioner

Approved as to form:

~~Whitney Rivera, #38139~~ 38062
Attorney for Respondent
Jason Schwarz