

NO. 85938-8 and 85950-7
(consolidated cases)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, ex rel. Mark K. Roe

Respondent,

v.

SNOHOMISH COUNTY DISTRICT COURT,

DOUGLAS P. HUTCHISON, and
ALYSHA V. VELASQUEZ,

Petitioners.

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

I. ISSUES 1

II. STATEMENT OF THE CASE.....2

A. PROCEEDINGS IN THE DISTRICT COURT.....2

 1. Petitioner Hutchison.2

 2. Petitioner Velasquez.....3

B. THE LIMITED-JURISDICTION COURTS HAVE NOT PREVIOUSLY AUTHORIZED PUBLIC FUNDS TO PAY FOR DEFERRED PROSECUTION TREATMENT.....3

C. FUNDING OF SNOHOMISH COUNTY DISTRICT COURT. 4

 1. Currently Out Of The County’s General Fund. 4

 2. Out Of “Justice Court Suspense Fund” Prior to 1984.5

D. PROCEEDINGS IN THE SUPERIOR COURT ON WRIT OF REVIEW.6

III. ARGUMENT.....7

A. THE SUPERIOR COURT CORRECTLY FOUND THAT RCW 10.05.130 DOES NOT AUTHORIZE SUBSTANCE-ABUSE TREATMENT AT PUBLIC EXPENSE.7

 1. Deferred Prosecution Generally.7

 2. RCW 10.05.130 Does Not Authorize Payment For A Full Two-Year Course Of Treatment.8

B. EVEN IF RCW 10.05.130 PURPORTED TO AUTHORIZE PAYMENT OF TREATMENT AT PUBLIC EXPENSE, DISBURSEMENT IS FORECLOSED BECAUSE THE LEGISLATURE NEVER APPROPRIATED THE FUNDS..... 14

C. CONSTRUING RCW 10.05.130 TO NOT AUTHORIZE
TREATMENT AT PUBLIC EXPENSE DOES NOT VIOLATE
EQUAL PROTECTION..... 19

IV. CONCLUSION.....28

TABLE OF AUTHORITIES

WASHINGTON CASES

<u>Alwood v. Aukeen Dist. Court</u> , 94 Wn. App. 396, 973 P.2d 12 (1999).....	8
<u>Aripa v. Dep't of Social & Health Services</u> , 91 Wn.2d 135, 588 P.2d 185 (1978).....	21
<u>City of Kent v. Jenkins</u> , 99 Wn. App. 287, 992 P.2d 1045 (2000)....	9
<u>City of Richland v. Michel</u> , 89 Wn. App. 764, 950 P.2d 10 (1998)..	7, 8
<u>Davis v. Dep't of Licensing</u> , 137 Wn.2d 957, 977 P.2d 554 (1999)	10
<u>Densley v. Dep't of Retirement Sys.</u> , 162 Wn.2d 210, 173 P.3d 885 (2007).....	13
<u>Dep't of Ecology v. Campbell & Gwinn, LLC</u> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	10
<u>Hillis v. Department of Ecology</u> , 131 Wn.2d 373, 932 P.2d 139 (1997).....	18, 28
<u>In re Personal Restraint of Runyan</u> , 121 Wn.2d 432, 853 P.2d 424 (1993).....	21, 22, 23, 24, 25
<u>King v. King</u> , 162 Wn.2d 378, 174 P.3d 659 (2007).....	26, 27
<u>Madison v. State</u> , 161 Wn.2d 85, 163 P.3d 757 (2007).....	20, 24
<u>Madison v. State</u> , 161 Wn.2d 85, 163 P.3d 757 (2007).....	20, 25
<u>Mason-Walsh-Atkinson-Kier Co. v. Dep't of Labor & Indus.</u> , 5 Wn.2d 508, 105 P.2d 832 (1940).....	15
<u>Moore v. Snohomish County</u> , 112 Wn.2d 915, 774 P.2d 1218 (1989).....	14
<u>Pannell v. Thompson</u> , 91 Wn.2d 591, 589 P.2d 1235 (1979).....	18
<u>Philippides v. Bernard</u> , 151 Wn.2d 376, 88 P.3d 939 (2004).....	24
<u>Selley v. State</u> , 132 Wn.2d 776, 940 P.2d 604 (1997).....	22, 23
<u>State v. Bays</u> , 90 Wn. App. 731, 954 P.2d 301 (1998).....	8
<u>State v. Chapman</u> , 140 Wn.2d 436, 998 P.2d 282, <u>cert. denied</u> , 531 U.S. 984 (2000).....	11
<u>State v. Friend</u> , 59 Wn. App. 365, 797 P. 2d 539 (1990).....	10
<u>State v. Hahn</u> , 83 Wn. App. 825, 924 P.2d 392 (1996), <u>review denied</u> , 131 Wn.2d 1020 (1997).....	9, 10
<u>State v. Haq</u> , __ Wn. App. __, 268 P.3d 997 (2012).....	19
<u>State v. Harner</u> , 153 Wn.2d 228, 103 P.3d 738 (2004).....	20
<u>State v. Hirschfelder</u> , 170 Wn.2d 536, 242 P.3d 876 (2010) ..	10, 20, 21, 24
<u>State v. Mills</u> , 85 Wn. App. 286, 932 P.2d 192 (1997).....	23
<u>State v. Perala</u> , 132 Wn. App. 98, 130 P.3d 852 (2006).....	14, 28

<u>State v. Phelan</u> , 100 Wn.2d 508, 671 P.2d 1212 (1983)	22
<u>State v. Postema</u> , 46 Wn. App. 512, 731 P.2d 13, <u>review denied</u> , 108 Wn.2d 1014 (1987)	11
<u>State v. Shattuck</u> , 55 Wn. App. 131, 776 P.2d 1001 (1989)	7
<u>State v. Sunish</u> , 76 Wn. App. 202, 884 P.2d 1 (1994)	9, 10
<u>State v. Thorne</u> , 129 Wn.2d 736, 921 P.2d 514 (1996)	19
<u>State v. Williams</u> , 62 Wn. App. 336, 813 P.2d 1293 (1991)	11
<u>State v. Wright</u> , 84 Wn.2d 645, 529 P.2d 453 (1974)	11
<u>State v. WWJ Corp.</u> 138 Wn.2d 595, 980 P.2d 1257 (1999)	21
<u>Wash. State Legislature v. State</u> , 139 Wn.2d 129, 985 P.2d 353 (1999)	15
<u>Wash. Toll Bridge Authority v. Yelle</u> , 54 Wn.2d 545, 342 P.2d 588 (1959)	15
<u>Washington Ass'n of Neighborhood Stores v. State</u> , 149 Wn.2d 359, 70 P.3d 920 (2003)	15

FEDERAL CASES

<u>Abdul-Akbar v. McKelvie</u> , 239 F.3d 307 (3d Cir.2001)	21
<u>Carson v. Johnson</u> , 12 F.3d 818 (5th Cir.1997)	21
<u>Cleburne v. Cleburne Living Center, Inc.</u> , 473 U.S. 432, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985)	19
<u>Dandridge v. Williams</u> , 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970)	26
<u>Eisenbud v. Suffolk County</u> , 841 F.2d 42 (2d Cir.1988)	26
<u>Fetterusso v. State of N.Y.</u> , 715 F. Supp. 1272 (S.D.N.Y., 1989)	23
<u>Hospital Development & Service Corp. v. N. Broward Hosp. Dist.</u> , 619 F. Supp. 535 (D.C. Fla., 1985)	23
<u>Maher v. Roe</u> , 432 U.S. 464, 469, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977)	21
<u>Palmer v. Thompson</u> , 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971)	27
<u>Plyler v. Doe</u> , 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)	22
<u>Pryor v. Brennan</u> , 914 F.2d 921 (7th Cir.1990)	21
<u>Rodriguez v. Cook</u> , 169 F.3d 1176 (9th Cir.1999)	21
<u>San Antonio School District v. Rodriguez</u> , 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973)	20, 21

OTHER CASES

<u>Jae v. Good</u> , 946 A.2d 802 (Pa. 2008)	21
<u>State v. Reed</u> , 192 Conn. 520, 473 A.2d 777 (1984)	23

WASHINGTON CONSTITUTIONAL PROVISIONS

Article 1, § 12 19
Article 8, § 4 1, 14, 15, 17, 28

U.S. CONSTITUTIONAL PROVISIONS

Fourteenth Amendment..... 19

WASHINGTON STATUTES

LAWS 1975 1st ex.s. c. 244 §1 6
LAWS 1984 ch. 258 §§ 306, 308..... 6, 15, 17
LAWS 1984, Ch. 258, §§ 306, 308..... 6, 16, 17
RCW 3.62..... 5
RCW 3.62.020..... 6, 16, 17
RCW 3.62.050..... 6, 16, 17
RCW 10.05..... 7, 11, 26
RCW 10.05.010..... 6, 25
RCW 10.05.020..... 8, 25
RCW 10.05.020(2) 12
RCW 10.05.020(3) 7
RCW 10.05.040..... 12
RCW 10.05.050..... 8, 11, 12, 13, 14
RCW 10.05.050(1) 12
RCW 10.05.060..... 8, 11, 13, 14
RCW 10.05.090..... 8
RCW 10.05.130..... 1, 2, 3, 8, 11, 12, 13, 14, 15, 19, 28
RCW 10.05.150..... 8, 23
RCW 10.73.090..... 22
RCW 9.94A.670(4)..... 26
RCW 9.94A.728 22

COURT RULES

RAP 4.2(a)(4)..... 13

OTHER AUTHORITIES

Webster's Collegiate Dictionary at 758 (5th ed., 1941) 10
Webster's Third New Int'l Dictionary at 1729 (2002) 11

I. ISSUES

1. A subsection of a statutory treatment alternative to conviction, RCW 10.05.130, provided public funding of a treatment *plan* for those unable to afford a treatment *program*. Other subsections describe “treatment plan” as the outline of treatment (type, nature, length, and cost) proposed by the treatment provider for presentation to the trial court. Did RCW 10.05.130 also authorize public funding for a full treatment *program*?

2. Even if the Legislature might have intended to authorize an appropriation of public funding for full treatment programs, it never took further legislative action to appropriate funds. Given the lack of appropriations legislation, is authorizing expenditures for treatment prohibited by Const. Art. 8 § 4?

3. Does restricting RCW 10.05.130 to authorizing public funding only for the cost of preparing the treatment plan for the trial court’s review, or concluding that RCW 10.05.130 is no longer operative as an unfunded mandate, violate equal protection, when all applicants are treated the same?

4. May petitioners raise this last argument, when they did not seek discretionary review of a constitutional question?

II. STATEMENT OF THE CASE

A. PROCEEDINGS IN THE DISTRICT COURT.

1. Petitioner Hutchison.

The petitioner was charged on March 3, 2010, with DUI. The charge was filed in Cascade Division of Snohomish County District Court. (The date of violation was January 11, 2010.) See docket, attached as Appendix I. He petitioned for deferred prosecution. His appointed counsel also asked the court to authorize disbursing public funds for deferred prosecution substance-abuse treatment under RCW 10.05.130. Commissioner Moon of that court found the defendant indigent and by order of September 13, 2010, authorized payment not only for investigation, evaluation and the treatment plan, but also for the full course or program of treatment. See revised order of 9/13/10, attached as Appendix A. While the revised order mirrors the language of the statute, Commissioner Moon clarified that this meant it authorized the full course of treatment, not just the costs of evaluating the defendant and drafting the plan. 9/13/10 CAS2 at 1:47 to 1:54; 8/23/10 CAS2 at 1:44 to 1:51 (verbatim record on CD's maintained in the trial and superior court).

2. Petitioner Velasquez.

The petitioner was charged on November 9, 2010, with DUI and reckless driving. The charges were filed in 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. The Hon. 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 Commissioner Moon's earlier order in Hutchison, purportedly authorizing the same. See Appendix A.

B. THE LIMITED-JURISDICTION COURTS HAVE NOT PREVIOUSLY AUTHORIZED PUBLIC FUNDS TO PAY FOR DEFERRED PROSECUTION TREATMENT.

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 Snohomish County's 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 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 4, 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 writs of certiorari of the lower courts’ disbursement orders. The Superior Court granted the writs and then considered the merits. After 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 & J-1. Defendants, petitioners here, then sought direct discretionary review, which this Court granted.

III. ARGUMENT

The plain language of the deferred prosecution statutes does not authorize the payment of treatment at taxpayer expense. Moreover, courts' authorizing such payment is foreclosed without further legislative action to actually appropriate the funds. Lastly (addressing a new argument), interpreting the statute to not authorize alcohol- or substance-abuse treatment at public expense does not violate equal protection.

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 below was 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 – more than twentyfold.

“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). Nor can resort to legislative history be had – as petitioner has sought to do, both below and here, at some length – when the statutory language is plain and unambiguous. State v. Hirschfelder, 170 Wn.2d 536, 548, 242 P.3d 876 (2010); Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 12, 43 P.3d 4 (2002); see Appendix J at 3 (Superior Court's rejecting both parties' argument drawn from legislative history).

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.

B. EVEN IF RCW 10.05.130 PURPORTED TO AUTHORIZE PAYMENT OF TREATMENT AT PUBLIC EXPENSE, DISBURSEMENT IS FORECLOSED BECAUSE THE LEGISLATURE NEVER APPROPRIATED THE FUNDS.

Moreover, a closer reading of RCW 10.05.130 confirms that it did not, by itself, authorize the expenditure of *any* funds, even for proposed treatment plans, much less for full-blown treatment programs. Rather, it contemplated additional appropriations legislation, which was never forthcoming.

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, review denied, 158 Wn.2d 1018 (2006). The relevant constitutional provision reads, “No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law[.]” This constitutional limitation applies to counties. Perala, 132 Wn. App. at 115; Moore v. Snohomish County, 112 Wn.2d 915, 920, 774 P.2d 1218 (1989).

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. Washington Ass'n of Neighborhood Stores v. State, 149 Wn.2d 359, 70 P.3d 920 (2003); Mason-Walsh-Atkinson-Kier Co. v. Dep't of Labor & Indus., 5 Wn.2d 508, 513-14, 105 P.2d 832 (1940).

RCW 10.05.130 contemplated that “[f]unds *shall be appropriated* from the fines and forfeitures of the court” (emphasis added). By its very terms, this subsection contemplated additional legislative action to actually appropriate the funds. Legislation that is of a general and continuing nature is not itself an appropriation. Perala, 132 Wn. App. at 117; Wash. State Legislature v. State, 139 Wn.2d 129, 145, 985 P.2d 353 (1999); Wash. Toll Bridge Authority v. Yelle, 54 Wn.2d 545, 551, 342 P.2d 588 (1959). An appropriations bill, on the other hand, appropriates funds for a fixed time. Id.; Const. Art 8 § 4. Our constitution requires both: a general, or substantive bill, *and* a legislative appropriation. Const. Art 8 § 4; Wash. State Legislature, 139 Wn.2d at 145 (“a budget appropriates the funds necessary to implement general laws”). Here, the latter never occurred. Consequently, expenditure as petitioners argue is constitutionally prohibited.

That the legislature ultimately decided not to appropriate funds, rather than having merely overlooked the matter, is borne out by subsequent legislative history.

The legislative history cited by petitioners indicates that treatment was contemplated to be paid out of the “justice court suspense fund.” Appendix H. But the Legislature eliminated the “justice court suspense fund” when it amended RCW 3.62.020 and 3.62.050. LAWS 1984, Ch. 258, §§ 306, 308 (part of ESSB 4430, “Court Improvement Act of 1984”).

Prior to 1984, court fines, fees, forfeitures and penalties were remitted by the limited-jurisdiction courts to the county treasurer. The county treasurer placed these moneys in the “justice court suspense fund.” Former RCW 3.62.020. The county treasurer then transferred funds, sufficient to meet the expenditures of the justice (now district) court to the current expense fund, with any excess remitted to the State general fund, any appropriate city treasurer, and as county commissioners direct. Former RCW 3.62.050. After 1984, fees, fines, forfeitures and penalties were remitted by the justice (district) court to the county treasurer, who remitted 35% to the State and the balance to the county current expense fund. Money collected from parking infractions went

directly to the county current expense fund. Funds to meet the expenditures of the justice (district) court were paid out of the remaining money in the county current expense fund. LAWS 1984 ch. 258 §§ 306, 308. The separate “justice court suspense fund” was eliminated altogether. Id.

Meanwhile, the same legislative history relied upon by petitioners revealed that the lack of a parallel pre-1984 court funding mechanism in the Superior Court had prompted the original drafters to limit deferred prosecutions to the limited-jurisdictions courts, then funded by the “justice court suspense fund.” Appendix H.¹ But, as discussed above, that fund was eliminated. LAWS 1984, Ch. 258, §§ 306, 308 (amending RCW 3.62.020 and RCW 3.62.050). Instead, the funds the court collects are deposited into the county’s general fund, after a percentage is remitted to the state. Appendices F, G. Thus, the contemplated funding source was eliminated. This reinforces the conclusion that by never passing an appropriations bill, it was the Legislature’s intent not to commit public funds for deferred-prosecution treatment. WASH. CONST. Art. 8, § 4.

¹ The petitioners have left this letter out of their submitted legislative-history materials.

Neither the parties nor the Court is in a position to demand the legislature re-appropriate funds, or re-establish a court-specific funding source, or remove the percentage remitted to the State. The Legislature, not the judiciary, is responsible for determining how public funds should be spent.

While it may be very tempting for this Court to order the Legislature to appropriate . . . funds . . . , such action would violate the separation of powers doctrine. . . . While there are special situations when the courts can and should order the expenditure of funds, specific appropriation to fund a statutory right, not involving constitutional rights or judicial functions, is normally beyond our powers to order.

Hillis v. Department of Ecology, 131 Wn.2d 373, 389-90, 932 P.2d 139 (1997). “The decision to create a program as well as whether and to what extent to fund it is strictly a legislative prerogative.” Pannell v. Thompson, 91 Wn.2d 591, 599, 589 P.2d 1235 (1979) (cannot require fully funding benefit payments when Legislature’s appropriation was inadequate and became depleted). A program of deferred-prosecution treatment was never funded by the Legislature. The courts are not entitled to fund it on their own, even if doing so advances salutary social goals.

C. CONSTRUING RCW 10.05.130 TO NOT AUTHORIZE TREATMENT AT PUBLIC EXPENSE DOES NOT VIOLATE EQUAL PROTECTION.

In a new argument, petitioners assert that to construe the statute at issue as not authorizing treatment at public expense violates equal protection. By separate motion, respondent moves to strike, as petitioners had not sought review of this issue. But respondent also addresses the merits here, should the Court deny the motion to strike and decide to reach them.

Under the equal protection clauses of the Fourteenth Amendment to the United States Constitution and article I, section 12 of the Washington Constitution, persons similarly situated with respect to the legitimate purpose of a law must receive like treatment from the State. State v. Hag, ___ Wn. App. ___, 268 P.3d 997, 1013 (2012); State v. Thorne, 129 Wn.2d 736, 770–71, 921 P.2d 514 (1996). Equal protection is “essentially a direction that all persons similarly situated should be treated alike.” Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). Petitioners allege that construing RCW 10.05.130 to not authorize treatment at public expense violates this constitutional directive. Petitioners’ merits briefing at 15-17. A statute is presumed to be constitutional, and petitioners

as challengers of its constitutionality bear the burden of proving its unconstitutionality beyond a reasonable doubt. Madison v. State, 161 Wn.2d 85, 91-92, 163 P.3d 757 (2007).

In order to determine whether a state action violates equal protection, one of three different bases of review is employed – strict scrutiny, intermediate scrutiny, or rational basis review. State v. Harner, 153 Wn.2d 228, 235–36, 103 P.3d 738 (2004). The appropriate level of scrutiny depends upon the nature of the alleged classification and the rights involved. State v. Hirschfelder, 170 Wn.2d 536, 550, 242 P.3d 876 (2010).

Suspect classifications (such as race, alienage, and national origin) are subject to strict scrutiny. Strict scrutiny also applies to laws burdening fundamental rights or liberties. Hirschfelder, 170 Wn.2d at 550. Strict scrutiny is thus called for (1) where the policy at issue deprives a select group of a “fundamental right,” or (2) where it discriminates against a “suspect class” such as identified above. San Antonio School District v. Rodriguez, 411 U.S. 1, 17, 93 S.Ct. 1278, 1288, 36 L.Ed.2d 16 (1973).

As for the first prong, fundamental rights are those rights either “explicitly or implicitly guaranteed by the Constitution.” San Antonio School District v. Rodriguez, 411 U.S. 1, 33–34, 93 S.Ct.

1278, 1296–1297, 36 L.Ed.2d 16 (1973). But free medical or substance abuse treatment is not one of them. Maier v. Roe, 432 U.S. 464, 469, 97 S.Ct. 2376, 2380, 53 L.Ed.2d 484 (1977) (no obligation on states to pay medical expenses of indigents). Aripa v. Dep;t of Social & Health Services, 91 Wn.2d 135, 139, 588 P.2d 185 (1978) (no right to individualized or specific alcohol treatment), overruled on other grounds, State v. WWJ Corp. 138 Wn.2d 595, 980 P.2d 1257 (1999) (re scope of appellate review).

As to the second prong, indigency has been repeatedly held to not comprise a suspect class. Jae v. Good, 946 A.2d 802, 808 n. 13 (Pa. 2008); Abdul–Akbar v. McKelvie, 239 F.3d 307 (3d Cir.2001); Rodriguez v. Cook, 169 F.3d 1176, 1179 (9th Cir.1999); Carson v. Johnson, 12 F.3d 818, 821–22 (5th Cir.1997); Pryor v. Brennan, 914 F.2d 921 (7th Cir.1990); Hospital Development & Service Corp. v. N. Broward Hosp. Dist., 619 F. Supp. 535, 539 (D.C. Fla., 1985).

Intermediate scrutiny applies only if the statute implicates both an “important right” and a semi-suspect class not accountable for its status. Hirschfelder, 170 Wn.2d at 550; In re Personal Restraint of Runyan, 121 Wn.2d 432, 448, 853 P.2d 424 (1993). Under intermediate scrutiny, a challenged law, to be upheld, must

be such as “may fairly be viewed as furthering a substantial interest of the State.” Plyler v. Doe, 457 U.S. 202, 217-18, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982). Indigency has been held to be a “semi-suspect” class, not entirely accountable for its status, when the important right of physical liberty and credited-time served is impacted by a detainee’s financial ability or inability to make bail. State v. Phelan, 100 Wn.2d 508, 514, 671 P.2d 1212 (1983) (pre-SRA holding superseded by RCW 9.94A.728). But the “important right” of physical liberty is not at issue here. Even as weighty a consideration as when to appoint appellate counsel for the indigent, as compared to the ability of those of more means to retain counsel whenever they wish, does not trigger even intermediate scrutiny. In re Personal Restraint of Runyan, 121 Wn.2d 432, 448, 853 P.2d 424 (1993) (applying rational basis test to challenge to RCW 10.73.090 et seq. based on indigency). And access to a particular treatment is not an “important right.” Selley v. State, 132 Wn.2d 776, 795, 940 P.2d 604 (1997) (context of terminally ill patient’s access to marijuana treatment prior to passage of medical-marijuana statute).

Since neither strict scrutiny nor intermediate scrutiny applies, the proper test is whether there is a rational basis for a policy of

providing no public funds for deferred-prosecution substance-abuse treatment. This is the least rigorous of the three tests to determine if there is an equal protection violation. Analogous cases confirm this to be the correct standard. For example, a county hospital's policy of refusing to accept transfer of indigent patients whose treatment began in private hospitals survived constitutional scrutiny under the rational basis test. Hospital Development & Service Corp. v. N. Broward Hosp. Dist., 619 F. Supp. 535, 539-40 (D.C. Fla., 1985). Marijuana's classification as a controlled substance not available for treatment was examined under the rational basis test. Selley, 132 Wn.2d at 795. Examining the constitutionality of requiring those found not guilty by reason of insanity to be liable for the cost of their treatment, while ordinary prisoners similarly confined were not, was under rational-basis. State v. Reed, 192 Conn. 520, 473 A.2d 777-81 (1984) (finding distinction unconstitutional); Fetterusso v. State of N.Y., 715 F. Supp. 1272, 1273 (S.D.N.Y., 1989) (upholding the practice). As noted above, challenges to RCW 10.73.150, authorizing counsel at public expense only for some collateral attacks, are analyzed under the rational-basis test. State v. Mills, 85 Wn. App. 286, 291-92, 932 P.2d 192 (1997); In re Personal Restraint of Runyan, 121 Wn.2d at

448. Washington's felon-disenfranchisement statute, that prevented restoration of civil rights until all conditions of sentence, including the payment of legal financial obligations, had been met, was also examined per the rational basis test. Madison v. State, 161 Wn.2d 85, 108, 163 P.3d 757 (2007). Petitioners concede rational basis is the correct test. Petitioners' merits briefing at 16.

Absent a fundamental right or suspect class, or an important right or semi-suspect class, a law will be upheld under rational basis review so long as it bears a rational relation to some legitimate end. Hirschfelder, 170 Wn.2d at 550. Under this standard, a reviewing court determines, (1) whether the legislation applies alike to all members of the designated class, (2) whether there are reasonable grounds to distinguish between those within and those without the class, and (3) whether the classification has a rational relationship to the purpose of the legislation. Philippides v. Bernard, 151 Wn.2d 376, 391, 88 P.3d 939 (2004).

A person is eligible for deferred prosecution if charged with a misdemeanor or gross misdemeanor; if he or she alleges under oath that the wrongful conduct was the result of, or caused by, alcoholism, drug addiction, or mental health problems, for which the person is in need of treatment; and, in the case of at least some

charged crimes, the person has not previously been granted a deferred prosecution. RCW 10.05.010, RCW 10.05.020.

Rich, poor, and medium-income petitioners are treated alike.

In Runyan, prisoners challenged the constitutionality of a time-bar statute, arguing that the statute violated “the equal protection rights of indigent prisoners because they are unable to acquire legal representation quickly enough to collaterally attack their convictions.” Runyan, 121 Wn.2d at 448. This Court upheld the statute because it made “no distinction among rich or poor prisoners and applie[d] equally to both.” Id. at 449. Similarly, in Madison, Washington's felon-disenfranchisement scheme was upheld because it did not distinguish between rich or poor felons but instead required all felons to complete all of the terms of their sentences, including the payment of legal financial obligations, before they could seek reinstatement of their civil rights. Madison, 161 Wn.2d at 103-04. The same result as in Runyan and Madison obtains here.

Moreover, “social and economic legislation that does not discriminate on the basis of inherently suspect classifications or implicate ‘fundamental’ personal rights does not violate equal protection rights if it has any rational relationship to a legitimate

governmental purpose.” Eisenbud v. Suffolk County, 841 F.2d 42, 45 (2d Cir.1988). “In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some ‘reasonable basis,’ it does not offend the Constitution simply because the classification ‘is not made with mathematical nicety or because in practice it results in some inequality.” Dandridge v. Williams, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161, 25 L. Ed. 2d 491 (1970).

The deferred-prosecution treatment alternative at RCW 10.05, like the Special Sex Offender Treatment Alternative at RCW 9.94A.670(4), are statute-based treatment alternatives to convictions, on the one hand, or standard-range SRA sentences, on the other. They do not codify constitutional rights but, rather, are creatures of legislative grace. To the extent these statutory treatment alternatives could be deemed to adversely impact the indigent – because they do not provide for publicly-funded treatment programs – there are reasonable grounds to distinguish based on the ability to pay, for the State has a substantial interest in the financial burden that would result from mandating treatment programs at public expense. See King v. King, 162 Wn.2d 378,

396, 174 P.3d 659 (2007) (whether party to dissolution action is entitled to counsel at public expense implicates substantial State interest). And a de facto restriction of grants of deferred prosecution to those who can pay for their own treatment, if that is indeed the case, advances a legitimate government interest – that is, ensuring the continued availability of treatment alternatives despite increasingly severe funding shortfalls for government-funded programs. To mandate or authorize public funding for discretionary, statutory treatment alternatives could result in the repeal of such alternatives altogether.

To the extent the statute can be deemed to have contemplated treatment at public expense, as petitioners argue, appropriation was never forthcoming, and the contemplated funding source was eliminated. This failure to fund applied equally to everyone. A failure to operate any public program, for whatever reason, affects all people alike and cannot implicate the equal protection clause. Palmer v. Thompson, 403 U.S. 217, 224–25, 91 S. Ct. 1940, 1944–45, 29 L. Ed. 2d 438 (1971).

Lastly, if the Court were to conclude that a statutory scheme denying public funding for treatment for a sentencing or disposition alternative violates equal protection, it has only two potential

remedies: either authorize public funding for treatment, or eliminate deferred prosecutions altogether. As discussed above, the former is constitutionally foreclosed by Art. 8, § 4. Since access to deferred prosecution is not a constitutional right, it would violate the separation of powers doctrine for the Court to fund it absent legislative appropriation. See Hillis v. Department of Ecology, 131 Wn.2d at 389-90; Pannell, 91 Wn.2d at 599 (“we will not direct the Legislature to act . . . unless creation of a program and/or the funding thereof is constitutionally mandated”); compare Perala, 132 Wn. App. at 118-19 (court’s constitutional duty to ensure appointment of counsel for indigent defendants even absent any appropriation therefor). The only constitutionally available remedy left would be to eliminate the deferred-prosecution treatment alternative altogether, for all applicants.

IV. CONCLUSION

The Superior Court’s determination that RCW 10.05.130 does not authorize the public funding of substance-abuse or mental-health treatment programs under the deferred prosecution statutory scheme should be upheld on both statutory and constitutional grounds. The Superior Court’s conclusion and order

that the District Court acted without authority should be upheld as well.

Respectfully submitted on April 26, 2012.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

CHARLES FRANKLIN BLACKMAN, #19354
Deputy Prosecuting Attorney
Attorney for Respondent

APPENDICES

- A District court order purportedly authorizing treatment with public funds
- B Affidavit of counsel re practice of probation in Snohomish County District Court
- C E-mails re practice in Skagit & Whatcom County District Court, and Municipal Courts of Seattle, Bellingham, and Kent
- D Affidavit of counsel re experience and practice of former head of DSHS Division of Alcohol and Substance Abuse
- E Affidavit of counsel re practice in King County District Court and Bellevue Municipal Court
- F Affidavit of counsel re experience and practice of Senior Legislative Analyst for Snohomish County Council
- G Affidavit of counsel re experience and practice of Director of Snohomish County District Court
- H Letter of 5/12/75 from Ronald Hendry to the Hon. Walt Knowles
- I District Court docket, State v. Hutchison
- I-1 District Court docket, State v. Velasquez
- I-2 District Court docket, State v. Velasquez
- J Superior Court decision on writ of review, Hutchison
- J-1 Superior Court decision on writ of review, Velasquez
- K Superior Court order of joinder, Hutchison & Velasquez

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;

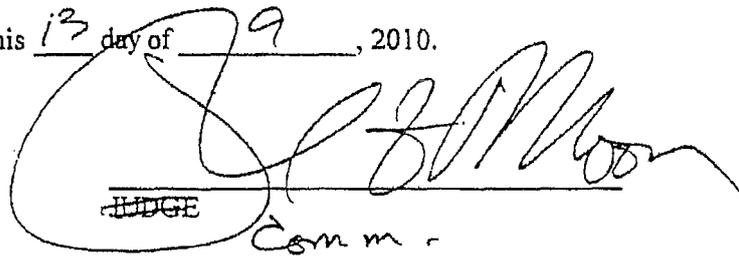
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that verified bills submitted by a court approved alcohol or drug treatment agency for purposes of investigation, examination, report and treatment plan for Mr. Hutchison's deferred prosecution, shall be paid out of fines and forfeitures of the court pursuant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

ORDER FOR DEFERRED
PROSECUTION TREATMENT FUNDS
FOR INDIGENT PERSON

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

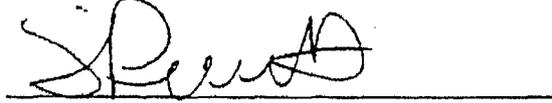
APPENDIX A

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



JUDGE Comm

Presented by:



SHERYL PEWITT - WSBA # 41327

Attorney for Defendant

ORDER FOR DEFERRED
PROSECUTION TREATMENT FUNDS
FOR INDIGENT PERSON

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

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)

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: 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

PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS E-MAIL

This message is private and privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately. Please do not copy or send this message to anyone else.

SUPERIOR COURT OF WASHINGTON.
FOR SNOHOMISH COUNTY

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

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

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.



CL14501698

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: *C. Blackman*
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.

CB

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
To: Blackman, Charlie
Subject: RE: public funding of deferred prosecutions?

Belle vue Muni'

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."

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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
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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.

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

Ronald L. Hendry
Executive Secretary

Henry R. Dunn
Vice President

May 12, 1975

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

C. J. Rabideau
Secretary

George F. Hanigan
Treasurer

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

May 12, 1975

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.

*55 per ff. T. Mack
(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 12:48:23

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Clm Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S	03 09 2010	Case Filed on 03/09/2010	CCM
S		DEF 1 HUTCHISON, DOUGLAS P Added as Participant	CCM
S		ARR Set for 03/24/2010 01:30 PM	CCM
S		in Room D with Judge JFW	CCM
		CRIMINAL COMPLAINT FILED.	CCM
		AFFIDAVIT OF PROBABLE CAUSE FILED.	CCM
S	03 10 2010	ARR Rescheduled to 03/24/2010 01:15 PM	CCM
S		in Room D with Judge JFW	CCM
		1 SUMMONS(ES) STAMPED AND RETURNED TO PA'S OFC FOR MAILING.	CCM
	03 24 2010	CAS2 0213-0217 (RTS 0118-0125) COMMISSIONER PAUL F MOON	SLP

D0071I More records available.

DD1000PI

05/24/11 12:48:29

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Clm Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

	03 24 2010	STATE REPRESENTED BY T MCELVEA	SLP
		ALSO PRESENT R FRANCIS WHO GAVE RIGHTS	SLP
		DEFENDANT APPEARED WITHOUT COUNSEL	SLP
		ARRAIGNED, ADVISED OF RIGHTS, MAX PENALTY, REFERRED TO OPD	SLP
		PROBABLE CAUSE DETERMINED	SLP
S		Defendant Arraigned on Charge 1	SLP
S		Plea/Response of Not Guilty Entered on Charge 1	SLP
S		NCR : No Criminal Violations	SLP
S		NLI : No Driving w/o License and Ins	SLP
S		NAD : No Alcohol or Drugs	SLP
S		DU2 : DUI:No driv w/BAC = or > .08	SLP
S		Not drive a motor vehicle within this state while having	SLP
S		an alcohol concentration of 0.08 or more within two hours	SLP
S		after driving.	SLP

APPENDIX I

D0071I More records available.

DD1000PI

05/24/11 12:48:29

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

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Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

03 24 2010 CORRECTION: NO DRIVING WITH .02 OR GREATER SLP
 S DU3 : DUI: No refusing a BAC test SLP
 S Not refuse to submit to a test of breath/blood to det the SLP
 S alcohol concentration upon req of law enf who has reasonable SLP
 S grounds to believe the person was driving or was in actual SLP
 S phys cntrl of a veh within this st while under the influence. SLP
 S ODD : See docket/special conditions SLP
 S NO DRIVING WITHIN 24 HOURS AFTER USE OF ALCOHOL OR MOOD SLP
 S ALTERING DRUGS SLP
 S ARR: Held SLP
 S 03 25 2010 PTR Set for 06/16/2010 01:15 PM SLP
 S in Room R with Judge JFW SLP
 S 03 26 2010 Summons/Bail Notice Issued MBH
 04 12 2010 NOTICE OF APPEARANCE, REQ FOR DISCOVERY FILED BY PUB DEFENDER JLF

D0071I More records available.

DD1000PI

05/24/11 12:48:30

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S 04 13 2010 ATY 1 PEWITT, SHERYL Added as Participant JLF
 06 16 2010 CAS1 219-221 JUDGE JAY F WISMAN MBH
 DEF APPEARED WITH COUNSEL, S PEWITT MBH
 STATE REPRESENTED BY C SEDGEWICK MBH
 DEF MOTION CONT, STATE NO OBJECT; READINESS RESET. MBH
 S PTR: Not Held, Hearing Canceled MBH
 S MOT: Held MBH
 S 06 17 2010 PTR Set for 08/26/2010 01:15 PM MBH
 S in Room R with Judge JFW MBH
 08 16 2010 MOTION AND DECLARATION FOR ORDER AUTHORIZING PUBLIC FUNDS FOR JLF
 DEFERRED PROSECUTION, CALENDAR SETTING NOTICE FAXED BY SHERI JLF
 PEWITT ATTY FOR DEFENDANT JLF
 S MOT Set for 08/23/2010 01:15 PM JLF
 S in Room 7 with Judge JFW JLF

D0071I More records available.

DD1000PI

05/24/11 12:48:30

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

08 23 2010 CAS2 144-151 BEFORE COMMISSIONER PAUL F MOON JLF
 DEFENDANT APPEARED WITH ATTORNEY SHERYL PEWITT JLF
 STATE REPRESENTED BY DEPUTY PROSECUTOR ROBERT GRANT JLF
 DEFENSE MOTION TO AUTHORIZE PUBLIC FUNDS FOR DEFERRED JLF
 PROSECUTION UNDER RCW 10.05.130 AS DEFENDANT IS UNABLE TO JLF
 AFFORD TREATMENT; DEFENSE MOTION GRANTED FOR EVALUATION AND JLF
 COST OF TREATMENT. DEFENSE TO SUBMIT A WRITTEN ORDER TO BE JLF
 SIGNED. ORDER STAYED FOR 30 DAYS TO GIVE THE STATE AN JLF
 OPPORTUNITY TO APPEAL. JLF
 READINESS CONTINUED. CONDITIONS OF RELEASE REMAIN IN EFFECT. JLF
 S PTR on 08/26/2010 01:15 PM JLF
 S in Room R with Judge JFW Canceled JLF
 S PTR Set for 10/07/2010 01:15 PM JLF
 S in Room R with Judge JFW JLF

D0071I More records available.

DD1000PI

05/24/11 12:48:31

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S 08 23 2010 MOT: Held JLF
 08 24 2010 ORDER FOR EVALUATION AND COST OF TREATMENT SIGNED BY JLF
 COMMISSIONER PAUL MOON. COPIES PROVIDED TO PROSECUTOR AND JLF
 ATTORNEY. JLF
 09 02 2010 MOTION TO RECONSIDER RULING UNDER RCW 10.05.103, NOTE FOR JLF
 MOTION FILED BY JULIE MOHR DEPUTY PROSECUTOR FOR THE STATE JLF
 S MOT Set for 09/13/2010 01:15 PM JLF
 S in Room 7 with Judge JFW JLF
 09 13 2010 CAS2 147-154 COMM PAUL F MOON MBH
 ATTY W RIVERA APPRD FOR DEF WHO WAS NOT PRESENT MBH
 STATE REPRESENTED BY RBT GRANT MBH
 AFTER REVIEW OF THE FILE, COMM MOON STANDS BY HIS DECISION. MBH
 REVISED ORDER SIGNED BY COMM MOON AND FILED. MBH
 COPIES MADE FOR THE PROSECUTOR AND ATTY W RIVERA. MBH

D0071I More records available.

DD1000PI

05/24/11 12:48:31

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P _____ NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S 09 13 2010 MOT: Held MBH
 10 07 2010 CAS1 246-249 JUDGE JAY F WISMAN MBH
 DEF APPEARED WITH COUNSEL, W RIVERA MBH
 STATE REPRESENTED BY RBT GRANT MBH
 DEF MOTION CONT, STATE NO OBJECT; READINESS RESET MBH
 S PTR Set for 12/23/2010 01:15 PM MBH
 S in Room R with Judge JFW MBH
 S PTR: Not Held, Hearing Canceled MBH
 S MOT: Held MBH
 10 13 2010 ORDER TO SHOW CAUSE WHY WRIT SHOULD BE GRANTED, COPY OF CSC
 APPLICATION AND AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT CSC
 OF CERTIORARI, COPY OF MEMORANDUM OF AUTHORITIES IN SUPPORT CSC
 FOR WRIT OF CERTIORARI WITH APPENDIX'S A,B,C BY PROSECUTING CSC
 ATTORNEY BLACKMAN FILED CSC

D0071I More records available.

DD1000PI

05/24/11 12:48:32

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P _____ NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

10 14 2010 COPY OF CD FOR MOTION HEARING HEARD 8/23/10 AND 9/13/10, AND CSC
 CERTIFIED COPY OF DOCKET SENT TO SUPERIOR COURT THIS DATE. CSC
 10 21 2010 CALENDAR NOTE SHOWING HEARING SET FOR 10/28/10 9:30AM IN CSC
 SUPERIOR COURT FOR WRIT ARGUMENT FILED. CSC
 10 22 2010 AFFIDAVIT OF SERVICE SHOWING ORDER TO SHOW CAUSE, APPLICATION CSC
 AND AFFIDAVIT OF WRIT OF CERTIORARI, MEMO OF AUTHORITIES IN CSC
 SUPPORT OF APPLICATION OF WRIT OF CERTIORARI SERVED FILED CSC
 10 25 2010 CALENDAR NOTE WITH 11/4/10 MOTION IN SUPERIOR COURT. AGREED CSC
 RESCHEDULING BY PARTIES FILED. CSC
 10 28 2010 MEMORANDUM IN OPPOSITION TO STATE'S APPLICATION FOR WRIT CSC
 OF CERTIORARI BY ATTY RIVERA FILED. PUT TO FILE. CSC
 11 08 2010 CALENDAR NOTE WITH 11/12/10 MOTION DATE LISTED FOR MOTION CSC
 ON WHETHER WRIT SHOULD BE GRANTED BY ATTY BLACKMAN FILED CSC
 11 17 2010 WRIT OF CERTIORARI TO REVIEW ACTS OF DISTRICT COURT, AND CSC

D0071I More records available.

DD1000PI

05/24/11 12:48:32

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

11	17	2010	ORDER FOR ISSUANCE OF WRIT AND TO STAY PROCEEDINGS BELOW WITH REQUEST FOR CD COPY OF 8/23 AND 9/13 HEARINGS BY DPA C BLACKMAN FILED.	CSC
			CD COPY OF REQUESTED HEARING SENT TO SUPERIOR COURT.	CSC
11	30	2010	COVER SHEET WITH DECISION ON WRIT OF CERTIORARI BY PROS ATTY BLACKMEN: WRIT GRANTED FILED. TO COMM MOON FOR REVIEW	CSC
12	01	2010	COMM MOON ORDERS NO ACTION AT THIS TIME	CSC
12	23	2010	CAS1 242-245 COMM PAUL F MOON	MBH
			DEF APPEARED WITH COUNSEL, S SILBOVITZ FOR W RIVERA	MBH
			STATE REPRESENTED BY J DEJONG	MBH
			DEF MOTION CONT, STATE NO OBJECT; READINESS RESET	MBH
			EXCLUDED PERIOD. CONDITIONS OF RELEASE REMAIN.	MBH
S			PTR: Not Held, Hearing Canceled	MBH
S			MOT: Held	MBH

D0071I More records available.

DD1000PI

05/24/11 12:48:33

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S	12	27	2010	PTR Set for 02/24/2011 01:15 PM	MBH
S				in Room R with Judge JFW	MBH
S	02	24	2011	PTR on 02/24/2011 01:15 PM	RDN
S				Changed to Room R with Judge PFM	RDN
				CAS1 241-243 BEFORE COMMISSIONER PAUL F MOON	RDN
				DEF APPEARED W/ATY RIVERA	RDN
				STATE REPRESENTED BY B LANGBEHN	RDN
				DEF MOVES TO CONTINUE; GRANTED	RDN
				THIS IS AN EXCLUDED PERIOD	RDN
S				PTR: Not Held, Hearing Canceled	RDN
S				MOT: Held	RDN
S	03	01	2011	Imposed date for NCR changed to 02/24/2010	RDN
S				Imposed date for NLI changed to 02/24/2010	RDN
S				Imposed date for NAD changed to 02/24/2010	RDN

D0071I More records available.

DD1000PI

05/24/11 12:48:33

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S 12 27 2010 PTR Set for 02/24/2011 01:15 PM MBH
 S in Room R with Judge JFW MBH
 S 02 24 2011 PTR on 02/24/2011 01:15 PM RDN
 S Changed to Room R with Judge PFM RDN
 CAS1 241-243 BEFORE COMMISSIONER PAUL F MOON RDN
 DEF APPEARED W/ATY RIVERA RDN
 STATE REPRESENTED BY B LANGBEHN RDN
 DEF MOVES TO CONTINUE; GRANTED RDN
 THIS IS AN EXCLUDED PERIOD RDN
 S PTR: Not Held, Hearing Canceled RDN
 S MOT: Held RDN
 S 03 01 2011 Imposed date for NCR changed to 02/24/2010 RDN
 S Imposed date for NLI changed to 02/24/2010 RDN
 S Imposed date for NAD changed to 02/24/2010 RDN

D0031I End of Docket

DD1000PI

05/24/11 12:48:36

DD1000MI Case Docket Inquiry (CDK)

SNO CO-CASCADE DIV

PUB

Case: 596A-10D WSP CT Csh:

Pty: _____ StID: _____

Name: HUTCHISON, DOUGLAS P

NmCd: IN 358 07489

Name: HUTCHISON, DOUGLAS P

Cln Sts:

DUI

Note:

Case: 596A-10D WSP CT Criminal Traffic

N

S 03 28 2011 OTH: Held DKB
 04 25 2011 CAS1 1109-1112 BEFORE COMMISSIONER PAUL F MOON DKB
 DEF APPEARED W/ATY W RIVERA & MOVES TO CONTINUE DKB
 STATE REPRESENTED BY M BOSKA & OBJECTS DKB
 DEF MOTION TO CONTINUE, GRANTED DKB
 THIS IS AN EXCLUDED PERIOD DKB
 S PTR Set for 06/29/2011 01:15 PM DKB
 S in Room R with Judge JFW DKB
 S PTR: Not Held, Hearing Canceled DKB
 S MOT: Held DKB
 05 06 2011 SUPERIOR COURT'S DECISION AND ORDER ON MERITS AFTER DMW
 ISSUANCE OF WRIT OF CERTIORI FILED BY THE STATE OF DMW
 WASHINGTON DMW

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
 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

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

D0071I More records available.

DD1000PI

05/24/11 12:50:52

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

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

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 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

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

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:

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

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

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

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

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 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
 PTR: Not Held, Hearing Canceled LAB
 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

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 I-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
 S 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
 S 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
 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
 PTR: Not Held, Hearing Canceled LAB
 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 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, 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.

ORIGINAL

APPENDIX J

28

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).

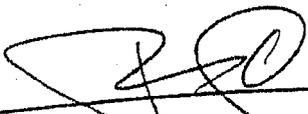
It is clear and unambiguous that the phrase "treatment plan" does not include treatment itself. The statutory scheme mirrors the same distinction between "treatment plan" and treatment itself as is found in the ordinary use of the term. Therefore, this court concludes that, per the plain and unambiguous

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

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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.

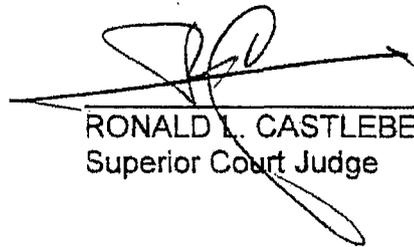
APPENDIX J-1

ORIGINAL

12

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.

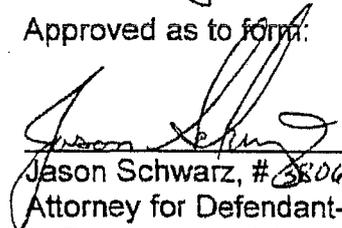
DONE IN OPEN COURT this 25 day of March, 2011.


RONALD L. CASTLEBERRY, J.
Superior Court Judge

Presented by:


Charles Blackman, #19354
Deputy Prosecuting Attorney
Attorney for Petitioner

Approved as to form:


Jason Schwarz, #38062
Attorney for Defendant-
Respondent Velasquez

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

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

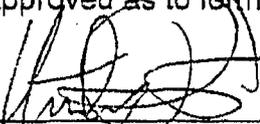
DONE IN OPEN COURT this 25 day of March, 2011.


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

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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

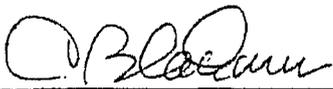
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This matter shall be joined with the aforesaid State ex rel. Roe v. Moon et al., 10-2-08562-7.

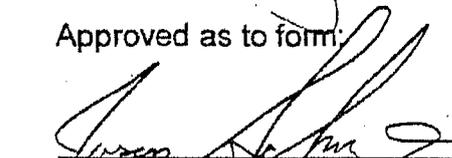
DONE IN OPEN COURT this 10 day of March, 2010.


RONALD L. CASTLEBERRY, J.
Superior Court Judge

Presented by:


Charles Blackman, #19354
Deputy Prosecuting Attorney
Attorney for Petitioner

Approved as to form:


~~Whitney Rivera, #38130~~ 38062
Attorney for Respondent
Jason Schwarz